

**UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES
REHABILITATION SERVICES ADMINISTRATION
WASHINGTON, DC 20202**

**INFORMATION MEMORANDUM
RSA-IM-98-20
DATE: AUGUST 17, 1998**

ADDRESSEES: STATE VOCATIONAL REHABILITATION AGENCIES (GENERAL)
STATE VOCATIONAL REHABILITATION AGENCIES (BLIND)
STATE REHABILITATION ADVISORY COUNCILS
CLIENT ASSISTANCE PROGRAMS
REGIONAL REHABILITATION CONTINUING EDUCATION
PROGRAMS
AMERICAN INDIAN VOCATIONAL REHABILITATION PROGRAMS
RSA SENIOR MANAGEMENT TEAM

SUBJECT: THE REHABILITATION ACT AMENDMENTS OF 1998

CONTENT: On August 7, 1998, President Clinton signed into law The Rehabilitation Act Amendments of 1998 as part of the Workforce Investment Act (WIA) of 1998 thus both amending and extending for five years the authorization of the Rehabilitation Act of 1973 (the Act).

The Rehabilitation Services Administration (RSA) as the cognizant Federal agency responsible for many of the programs authorized by the Act is in the process of developing materials outlining the major changes in the Act with respect to the programs for which it is responsible. The attached side-by-side comparisons show selected changes between the former and new statutory provisions related to the vocational rehabilitation (VR) program authorized under title I of the Act. RSA has posted an electronic version of the amended Act in WordPerfect 6.1 on its electronic bulletin board at 202.401.6159 and on its website at www.ed.gov/offices/OSERS/RSA/rsa.

Over the next few months RSA will be conducting orientation meetings on the Amendments. The first orientation will be held in Washington on Wednesday, September 2, 1998, from 10:00 AM until 4:30 PM at the Barnard Auditorium, Federal Office Building 10, Department of Education, 600 Independence Avenue. Additional meetings will be held in selected cities across the country in the early part of the Fall. When

arrangements for these meetings are completed, information will be disseminated to RSA constituencies as quickly as possible.

The 1998 Amendments to the Act were the product of intensive bi-partisan efforts between the legislative and executive branches of the Federal government and the input of various constituencies, including individuals with disabilities, advocacy organizations, and providers of services. The Amendments reflect the consensus achieved by Congress through the resolution of the differences between the House bill (H.R. 1385) and the Senate bill (S.1579) relating to the reauthorization of the Act.

The House's reauthorization proposal was contained in "The Employment, Training, and Literacy Enhancement Act of 1997", which proposed the consolidation of several employment and training programs into an unified workforce development system in States. H.R. 1385 was passed by the House in May, 1997. The Senate's bill, "The Rehabilitation Amendments of 1998", was adopted on May 5, 1998, as an amendment to the Workforce Investment Partnership Act which, similar to the House bill, proposed the consolidation of several employment and training programs into a statewide system of workforce investment partnerships.

With respect to the VR program, both bills placed emphasis on:

- * expanding the exercise of informed choice by individuals with disabilities;
- * streamlining administrative procedures to improve program efficiency and access to services;
- * increasing opportunities for high quality employment outcomes;
- * ensuring due process; and
- * linking the VR program to a State's workforce investment system.

The following provides a brief discussion on the above identified themes of the Amendments.

Expanding Choice

Informed choice provisions in the VR program are expanded in several ways. State VR agencies, in consultation with their State Rehabilitation

Councils, are required to develop and implement policies and procedures to afford opportunities for applicants for services and eligible individuals to exercise informed choices throughout the entire rehabilitation process. The policies and procedures must include the provision of information and the necessary support services to assist applicants and eligible individuals in making informed choices. These provisions were very consistent in both bills, modeled on the current regulatory provisions, and reflect the policy articulated in section 100(a)(3)(C) of the Act that individuals with disabilities are to be active and full partners in their rehabilitation programming through the exercise of informed choices with respect to assessments for determining eligibility and VR needs and in the selection of their employment goals, services and service providers.

The Amendments renamed the Individualized Written Rehabilitation Program (IWRP) to the Individualized Plan for Employment (IPE) to further emphasize the focus of the VR program on employment. The IPE provisions also expand the role of the eligible individual as a collaborating partner with a qualified VR counselor in the development, monitoring, implementation and evaluation of the IPE. Eligible individuals (or their representatives) now have the option to develop their own IPEs or request the technical assistance of a qualified VR counselor in developing their IPEs. The Amendments also incorporate current regulatory language with respect to the exercise of informed choice in the selection of the IPE's employment goal, services, service providers and procurement methods. The Amendments place increased emphasis on the requirement that assessment services and services under an IPE must be provided in the most integrated setting that is both appropriate to the service being provided and also reflects the informed choice of the individual.

Streamlining Administrative Procedures

The Amendments streamline the title I State plan provisions by reducing the current 36 requirements to 24, and by limiting the circumstances in which a new State plan or plan amendment must be submitted to RSA. The Act now provides States complete flexibility with respect to locating the agency designated to administer the title I program of VR, while at the same time retaining the organizational requirements for the designated State VR unit when the designated State agency is not one that is primarily concerned with the VR, or the vocational and other rehabilitation of individuals with disabilities.

The Amendments also reduce burden on the States by eliminating the strategic plan requirements; however, they maintain the requirement that

a portion of title I formula grant funds allotted under section 110 must be reserved to support the development and implementation of innovative approaches to expand and improve VR services to individuals with disabilities, particularly individuals with the most significant disabilities.

The 1992 amendments introduced the provision that all individuals with disabilities were presumed to benefit from VR services in terms of an employment outcome unless the designated State VR unit demonstrated by clear and convincing evidence that an individual was incapable of doing so. As a result of the 1992 Amendments, the National eligibility rates in the VR program increased from 56.5% in 1992 to 76.5% in 1996. The 1998 Amendments further simplify and streamline eligibility determinations by establishing presumptive eligibility for disabled individuals who are recipients of Supplemental Security Income (SSI) or beneficiaries of Social Security Disability Insurance (SSDI) payments and who intend to achieve an employment outcome. While this provision does not establish an entitlement to VR services for SSI recipients and SSDI beneficiaries, it does recognize that these individuals have already been determined by the stringent criteria applied by the Social Security Administration to be among the most severely disabled individuals who apply for VR services. It is anticipated that presumptive eligibility will increase administrative efficiency, reduce eligibility-related costs, and speed up the provision of employment related services to individuals who already have been determined to have a significant disability that affects their ability to work.

As noted earlier, the Amendments rename the IWRP to the IPE. They also streamline the IPE by eliminating unnecessary content; providing that it need only to be developed for those individuals in open categories of a State's order of selection, if the State is operating on an order; requiring it be implemented in a timely manner; and by requiring that the plan be amended only when there are substantive changes in the employment goal, services to be provided, or in service providers. The Amendments retain current content requirements on the use of comparable services and benefits, the projected need for post-employment services, and rights and remedies available to the individual.

The 1998 Amendments also provide a two year time period on the conduct of reviews of individuals who achieve employment outcomes in an extended employment setting in a community rehabilitation program or any other employment outcomes under the special certificate provisions of the Fair Labor Standards Act to determine their interests, priorities, and

needs regarding the achievement of competitive employment outcomes. The individual or the individual's representative must be involved in the reviews and may request that the reviews be conducted annually after the second required review.

These steps to streamline and eliminate unnecessary administrative requirements, and speed up access to services will save States both monetary and personnel resources that can be better utilized to support the provision of direct services such as vocational exploration, job training and other employment-related services to individuals with disabilities.

Increasing High Quality Employment Outcomes

The staggering unemployment rate of individuals with disabilities, recently measured at nearly 70 percent by the 1998 Lou Harris poll, can be reduced through the efforts of the VR program in assisting individuals with disabilities, especially individuals with the most significant disabilities, to prepare for and achieve employment outcomes to which they aspire and that are consistent with their strengths, resources, priorities, concerns, abilities, capabilities, and informed choice. In this regard, the Amendments address the need to increase successful employment outcomes through new provisions that emphasize telecommuting, self-employment and small business operation as legitimate employment outcomes. In section 103(a) of the Act, the amendments also add to the scope of authorized services for individuals, technical assistance and other consultation services for eligible individuals who are pursuing employment outcomes in self-employment or in a small business operation.

A new provision in the Act eliminates the need for an extended evaluation prior to determining that an individual with a significant (severe) disability was ineligible for VR services and replaces that requirement with the provision for the use of trial work experiences, including on-the-job supports and/or training, before the State VR agency can determine that an individual cannot benefit from VR services due to the severity of the individual's disability. The new trial work requirement will help assure that individuals with significant disabilities have the opportunity to benefit from "real work" experiences as part of the eligibility determination process and will enhance the likelihood that they will be eligible for VR services leading to successful employment outcomes.

The Amendments also place emphasis on the provision of appropriate information and referral services to Federal and State agencies, including

other components of the State's workforce system, for individuals who do not meet the criteria for the open priority categories in a State's order of selection so as to assist such individuals to achieve their chosen employment outcomes.

Due Process

The Amendments make major changes in the former due process requirements and now require the State VR agency have in place policies and procedures not only for a formal hearing before an impartial hearing officer (IHO) but also for a mediation step that can be chosen by the individual. The mediation would not be binding and cannot be used to deny or delay the right of an individual to an impartial hearing. The revised due process provisions also eliminates the review of IHO decisions by the State VR unit director. The State, however, can elect to use an impartial review carried out by an official from the Governor's office or the head of the State VR agency if the agency has a designated VR unit.

Linkages to State Workforce Investment Systems

For several years Congress and the States have been attempting to reform the Nation's job training system to more effectively assist a greater number of people to prepare for and obtain employment. The WIA is the result of legislative proposals developed in the House and the Senate to overhaul and consolidate several employment and training programs into a unified statewide workforce investment system. Both the House and Senate bills, aware of the employment needs of individuals with disabilities, especially individuals with significant disabilities, saw the VR program as a key component in any State's workforce system thus they included requirements that link the VR system to the State's workforce investment system.

The Act includes numerous amendments that link the VR and workforce investment systems through common definitions, common reporting requirements on program outcomes, and requirements for cooperative agreements between VR agencies and state workforce investment systems that must also be replicated at local levels. While the Act contains the very clear expectation for coordination and cooperation between the two systems, no provision in the Act or WIA is intended to violate the integrity of the VR program. Language in the Committee Report accompanying the Senate bill states unequivocally that under no circumstance will the funds of a State VR agency be diverted to any purpose other than those spelled

out in the Act. It is fully anticipated, however, that the linkages required by the Act between the VR system and the State workforce investment system will lead to close coordination and cooperation between the VR and workforce investment systems which in turn will lead to more and better opportunities for training and high quality employment outcomes for individuals with disabilities.

Fredric K. Schroeder, Ph.D.
Commissioner

Attachment

cc: CSAVR
NAPAS
NCIL
RSA Regional Offices
(Regions II, IV, V, VIII, and X)