

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

**INFORMATION MEMORANDUM  
RSA-IM-98-23**

**DATE: AUGUST 21, 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 : IMPLEMENTATION OF THE PROVISIONS OF THE  
REHABILITATION ACT AMENDMENTS OF 1998**

**CONTENT :** This provides information and guidance to designated State vocational rehabilitation (VR) agencies on the implementation of the provisions of the Rehabilitation Act Amendments of 1998 for the State VR Services Program authorized under title I of the Rehabilitation Act (the Act).

Consistent with section 507 of the Workforce Investment Act (WIA), the new statutory provisions governing the VR program took effective on the date of the enactment of WIA which was August 7, 1998. State VR agencies are required to move forward immediately with their implementation of the new statutory provisions related to the VR program and should not wait for the publication of implementing regulations.

The Rehabilitation Services Administration (RSA) plans to publish a Notice of Proposed Rulemaking for the VR program in early 1999. In addition, the Department of Labor has provided us preliminary information that the Department plans to have a WIA State plan guide and information available to the States by April of 1999. In this regard, RSA will address the title I State plan issues created by the 1998 Amendments and will develop title I State plan materials, including a preprint and instructions, that meet the requirements of the Act, streamline the State plan development and approval processes, and reduce burden on the States.

The following reflects the new major statutory provisions that VR agencies need to address immediately in their administration of the VR program. State VR agencies may find the information provided in RSA-IM 98-20, dated August 17, 1998, entitled "The Rehabilitation Act Amendments of 1998" to be helpful in their efforts to implement these new statutory provisions.

### **Presumptive Eligibility for SSDI Beneficiaries and SSI Recipients**

Section 102(a)(3)(A)(ii) of the Act stipulates that an individual who has a disability or is blind and is determined to be an allowed Social Security Disability Income (SSDI) beneficiary or an allowed Supplemental Security Income (SSI) recipient under the provisions of the Social Security Act is to be presumed to meet both eligibility criteria identified in section 102(a)(1)(A) and (B) of the Act provided that the individual intends to achieve an employment outcome that is consistent with the unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice of the individual.

The statutory presumption that a SSDI beneficiary or SSI recipient meets the second element in the definition of the term "individual with a disability" in section 7(20)(A) of the Act, i.e., the individual can benefit from VR services in terms of an employment outcome, however, can be rebutted by the State VR agency demonstrating, through clear and convincing evidence produced by the exploration of the individual's abilities, capabilities, and capacity to perform in work situations (which replaces the former provisions related to "extended evaluation") consistent with the requirements of section 102(a)(2)(B) of the Act, that the SSDI beneficiary or SSI recipient is incapable of benefiting in terms of an employment outcome from VR services due to severity of the disability.

### **Automatic Determination of SSDI Beneficiaries and SSI Recipients as Individuals with Significant Disabilities**

Section 102(a)(3)(A)(i) of the Act stipulates that a SSDI beneficiary or SSI recipient is to be considered an individual who meets all of the elements of the definition of the term "individual with a significant disability" in section 7(21)(A) of the Act. Such individuals are to be automatically considered to be individuals with significant disabilities.

### **Individualized Plan for Employment**

One of the major modifications that State agencies must immediately

address in their administration of the VR program relates to the implementation of the new statutory requirements for the Individualized Plan for Employment (IPE) as identified in section 102(b) of the Act. The IPE provisions delete some of the former content and process requirements for the Individualized Written Rehabilitation Program (IWRP) and add new provisions to both enhance the collaborative relationships between the eligible individual and the qualified vocational rehabilitation counselor with respect to the development, implementation and evaluation of the IPE and to support the exercise of informed choice of the individual in the selection of the IPE's employment outcome, specific services, service providers, and the methods to procure the services.

State VR agencies need to be particularly focused on moving forward with respect to the development and implementation of policies, procedures and practices that relate to the options that the Act provides in section 102(b)(1) for the development of the IPE. While many of the statutory requirements related to the mandatory IPE procedures identified in section 102(b)(2) and the IPE components identified in section 102(b)(3) are similar to the former IWRP requirements, State agencies will need to be careful in their implementation of the IPE provisions to ensure that they are faithfully expressed in the agencies' IPE policies, procedures and practices.

### **Due Process and Mediation Procedures**

The Act in section 102 (c) now requires States to have procedures both for mediation of and review through an impartial due process hearing of determinations made by personnel of the designated State VR unit that affect the provision of VR services to both applicants and individuals determined eligible for VR services. The Amendments also provide the State the option of establishing procedures for the review of decisions of the impartial hearing officer. If the State chooses to implement this option, the reviewing official can either be the director of the designated State VR agency when there is a designated VR State unit or an official in the Governor's office.

The State VR agency should use the detailed provisions in section 102 (c) to immediately undertake the modification of its current due process procedures to accommodate the new statutory provisions without waiting for the publication of implementing regulations.

### **Composition and Appointment of State Rehabilitation Council**

## **Members**

Membership of the Council has been expanded to now include at least one representative of the directors of the projects funded under section 121 of the Act related to the American Indians VR program, if there is one or more of these projects in the State; at least one representative of the State workforce investment board; and at least one representative of the State educational agency responsible for the public education of students with disabilities eligible to receive services under title I of the Act and part B of the Individuals with Disabilities Education Act. The new statutory provision relating to the authority to appoint Council members now reserves this authority solely to the Governor, although for filling Council vacancies, the Governor can delegate this authority to the remaining members of the Council. States need to move forward without delay in the implementation of these new statutory requirements.

## **Expanded Functions of the Council**

While the Council maintains an advisory function to the designated State unit, its functions have been expanded beyond those of an advisory nature as evidenced by the name change introduced by the 1998 Amendments from the State Rehabilitation Advisory Council to the State Rehabilitation Council. Within this context, the Council must in partnership with the State VR unit develop, agree to, and review State goals and priorities consistent with section 101(a)(15)(C) of the Act that must be described in the title I State plan to be submitted to RSA. Both the Council and the designated State VR unit need to begin to address these requirements so that the designated State unit can comprehensively describe the State's goals and priorities in its State plan when the new title I State plan materials are made available to the States. In addition, the Council needs to expand the scope of its consumer satisfaction surveys to encompass employment outcomes achieved by eligible individuals receiving VR services from the designated VR unit.

## **Scope of VR Services to Individuals and Groups of Individuals**

The 1998 Amendments revised section 103(a) of the Act and expanded the scope of services to individuals by broadening the provision of maintenance services to now encompass both assessment services and services provided under an IPE. The Amendments also introduced a new category of service, namely, the provision of technical assistance and consultation to individuals to pursue self-employment, telecommuting or a small business operation which are now identified as examples of

employment outcomes in the definition of the term "employment outcome" in section 7(11) of the Act. The Amendments also specify that in the provision of counseling and guidance to an individual, the designated State unit can also provide information and support services to assist an individual in the exercise of informed choice. State VR agencies need to begin providing such services as appropriate to the needs of the applicant or eligible individual.

In addition to the expanded scope of VR services to individuals, the Amendments in section 103(b) add to the authorized services to groups of individuals with disabilities the provision of technical assistance and consultation services to assist schools in their transition planning for students with disabilities. State VR agencies are now authorized to provide this service to facilitate the transition of students with disabilities from school to post-school activities, including employment.

### **Policies and Procedures Related to the Exercise of Informed Choice**

The Amendments consolidate in new section 102(d) of the Act the key provisions on the exercise of informed choice by the individual throughout the entire rehabilitation process. To a large extent, these statutory provisions are modeled on the current regulatory requirements in 34 CFR §361.52 thus the designated State unit should already have in place most of the new requirements; however, the statute does introduce a requirement for the designated State agency to develop and implement flexible procurement policies and methods to facilitate the provision of services and afford individuals meaningful choices among the methods used to procure services. Agencies will need to examine their procurement policies and procedures in this regard to ensure that individuals have meaningful choices from which to choose in terms of how to procure VR services.

### **Comparable Services and Benefits**

The Amendments introduce some new requirements in section 101(a)(8) of the Act related to the determination of the availability of comparable services and benefits under any other program to be used in the provision of VR services. One of the requirements clarifies that awards and scholarships based on merit are not to be considered a comparable benefit. Another, more complex, provision requires the Governor in consultation with the designated State VR agency and other appropriate agencies to effect an interagency agreement or other mechanism for interagency coordination between the designated State VR unit and any public entity,

such as the State medicaid program, a public institution of higher learning, or a component of the State workforce investment system to ensure the provision of VR services not exempted by the Act from the determination that comparable services and benefits exist. Since the statute in section 101(a)(8)(B) provides detailed guidance on these interagency agreements, each designated State VR agency should begin to work with its Governor's office to begin the process to develop the required interagency agreements.

### **Reporting Requirements**

Section 101(a)(10) of the Act identifies reporting requirements for the VR program. While some of the data are already being collected and/or reported by State agencies through the various RSA reporting instruments, the Act now identifies some data elements, such as the number of individuals with disabilities and the number with significant disabilities who have maintained employment 6 and 12 months after achieving, regaining, or advancing in employment, that will require State agencies to determine how best to gather and report these and the other data mandated by the statute. Although reporting mechanisms and instructions will need to be developed by RSA, State agencies need now to examine the mandated data elements to determine the most effective and efficient procedures it will need to develop to gather the data.

### **Cooperation, Collaboration and Coordination with Other Programs**

The Act in section 101(a)(11) consolidates many former statutory requirements related to the State VR unit cooperating with other agencies for the provision of services to individuals. Some of the requirements are carried over from former statutory provisions thus State VR agencies will need to assess their collaboration activities, including formal interagency agreements such as those with education programs responsible for the public education of students with disabilities, to ensure that the already implemented activities are consistent with new statutory provisions. In addition, the statute now requires the designated State unit to enter into cooperative agreements with other components of the statewide workforce investment system and to replicate the statewide agreements at the local level between individual offices of the designated State unit and local entities carrying out activities through the statewide workforce investment system. Since States are at various stages in their implementation of the statewide workforce investment system, VR agencies need to determine when conditions are appropriate to develop such agreements; however, agencies need to be preparing now to fulfill this new requirement.

### **Innovation and Expansion Activities**

While the Amendments delete the requirement for a designated State VR unit to develop a strategic plan to expand and improve VR services to individuals with disabilities with the use of at least 1.5% of title I funds allotted to the State unit under section 110 of the Act, the 1998 Amendments introduce the requirement for the designated State unit to reserve an unspecified amount of the section 110 allotment for the development and implementation of innovative approaches to expand and improve VR services to individuals with disabilities, particularly individuals with the most significant disabilities. Agencies need to consider how they will address this requirement in terms of the activities already initiated under the previous strategic plan requirements and what new innovation and expansion activities they may want to undertake in the coming year.

### **Annual State Goals and Reports of Progress**

The 1998 Amendments consolidate many of the evaluation and goal planning provisions of the former statutory requirements into section 101(a)(15) of the Act. State agencies will need to study carefully the various components of this new statutory provision and begin now to plan, in collaboration with the Council, if the agency has one, how best to address the requirements related to conducting the various assessments and evaluations and submitting annual estimates to RSA based on the assessments in terms of the number of individuals to be served under the VR and supported employment programs (including the number of individuals to be served in the priority categories of the agency's order of selection if the agency is operating under an order) and the estimated costs of the services. The designated State unit and the Council, if the unit has a Council, also need to begin planning how they will develop the goals and priorities for the VR program which will need to be included as part of the title I State plan submission to RSA. To achieve the goals and priorities agencies will need to articulate in their State plans their strategies to address the findings of the assessment of rehabilitation needs of individuals with disabilities and achieve the agency's goals and priorities. To address adequately all of these requirements, the designated State unit will need to carry out careful planning so that when title I State plan materials are made available agencies will be in the position of articulating a focused, integrated and approvable State plan description.

As State VR agencies begin their activities to implement the 1998

Amendments, RSA Regional Offices will provide technical assistance and guidance. The Amendments provide us with the tools to improve and expand the exercise of informed choice of individuals throughout the entire rehabilitation process; streamline our policies and processes to facilitate the access of individuals with disabilities to the VR system; protect the rights of individuals through mediation and impartial due process hearings; and link the VR program to the statewide workforce investment system to better meet the rehabilitation needs of individuals with disabilities. All of these tools, however, exist for only one reason - to assist individuals with disabilities, particularly individuals with significant disabilities, to achieve the high quality employment outcomes to which they aspire and which are consistent with their strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice.

Fredric K. Schroeder, Ph.D.

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