



# RULE-MAKING ORDER EMERGENCY RULE ONLY

## CR-103E (December 2017) (Implements RCW 34.05.350 and 34.05.360)

CODE REVISER USE ONLY

OFFICE OF THE CODE REVISER  
STATE OF WASHINGTON  
FILED

DATE: December 30, 2022

TIME: 10:54 AM

WSR 23-02-044

**Agency:** Department of Social and Health Services, Division of Vocational Rehabilitation

**Effective date of rule:**

**Emergency Rules**

- Immediately upon filing.
- Later (specify) January 5, 2023

**Any other findings required by other provisions of law as precondition to adoption or effectiveness of rule?**

- Yes
  - No
- If Yes, explain:

**Purpose:** This emergency removes references in WAC to Post-Employment Services provided by DVR as being available to the customer post exit. The department filed a CR 101 preproposal under WSR 22-12-030 to begin the permanent adoption process.

**Citation of rules affected by this order:**

- New:
- Repealed:
- Amended: 388-891A-0610 and 388-891A-0890
- Suspended:

**Statutory authority for adoption:** RCW 34.05.350(1)(b), 74.29.020(8) and 74.29.050

**Other authority:**

**EMERGENCY RULE**

Under RCW 34.05.350 the agency for good cause finds:

- That immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.
- That state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule.

**Reasons for this finding:** DVR received guidance from the Rehabilitation Services Administration (RSA) that clarifies RSA's interpretation of when vocational rehabilitation agencies may provide post-employment services under the Rehabilitation Act. RSA's interpretation is inconsistent with how Washington VR currently provides Post-Employment services and how it is defined in WAC. Provision of Post-Employment Services is subject to receipt of federal funding. Continuing to apply 388-891A-0610 and 388-891A-0890 as currently written will place DVR out of compliance with federal guidance and could jeopardize its ability to receive federal funding. If DVR chose not to pursue an emergency rule it could be interpreted to be in violation of RCW 74.29.050.

**Note: If any category is left blank, it will be calculated as zero.  
No descriptive text.**

Count by whole WAC sections only, from the WAC number through the history note.  
A section may be counted in more than one category.

**The number of sections adopted in order to comply with:**

Federal statute:	New	___	Amended	___	Repealed	___
Federal rules or standards:	New	___	Amended	<u>2</u>	Repealed	___
Recently enacted state statutes:	New	___	Amended	___	Repealed	___

**The number of sections adopted at the request of a nongovernmental entity:**

New \_\_\_\_ Amended \_\_\_\_ Repealed \_\_\_\_

**The number of sections adopted on the agency's own initiative:**

New \_\_\_\_ Amended \_\_\_\_ Repealed \_\_\_\_

**The number of sections adopted in order to clarify, streamline, or reform agency procedures:**

New \_\_\_\_ Amended \_\_\_\_ Repealed \_\_\_\_

**The number of sections adopted using:**

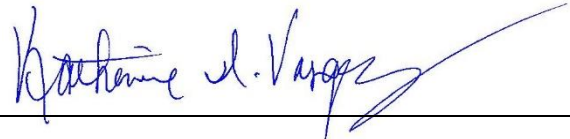
Negotiated rule making:	New	____	Amended	____	Repealed	____
Pilot rule making:	New	____	Amended	____	Repealed	____
Other alternative rule making:	New	____	Amended	<u>2</u>	Repealed	____

**Date Adopted:** December 30, 2022

**Name:** Katherine I. Vasquez

**Title:** DSHS Rules Coordinator

**Signature:**



AMENDATORY SECTION (Amending WSR 18-12-035, filed 5/29/18, effective 6/30/18)

**WAC 388-891A-0610 How are individuals selected for services when DVR is operating under an order of selection?** When DVR is operating under an order of selection, individuals are selected for services as follows:

(1) At the time you are determined eligible for VR services, a DVR counselor assigns you to a priority category based on the severity of your disability.

(2) The priority categories are defined in WAC 388-891A-0620 through 388-891A-0660.

(3) As resources become available for DVR to serve additional individuals, DVR selects names from the waiting list in the priority category being served at that time.

(4) Within a priority category, the date you applied for VR services determines the order in which you are selected from the waiting list.

(5) DVR may provide you specific services or equipment without requiring that you wait for services under an order of selection if:

(a) You are at immediate risk of losing your job in a competitive integrated setting for reasons related to your disability; and

(b) You require specific services or equipment in the very near future that will enable you to keep your job.

~~((6) If you have successfully achieved an employment outcome as described in WAC 388-891A-1310, are currently employed, and require post-employment services, you are not required to wait for services under an order of selection.))~~

AMENDATORY SECTION (Amending WSR 18-12-035, filed 5/29/18, effective 6/30/18)

**WAC 388-891A-0890 What are post-employment services?** Post-employment services include one or more vocational rehabilitation services provided if:

(1) ~~((Your case was closed because y))~~ You achieved ~~((an))~~ employment ~~((outcome))~~;

(2) Your rehabilitation needs are limited in scope and duration; and

(3) You need post-employment services to maintain, advance in, or regain employment that is consistent with your unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice.