



EXPEDITED RULE MAKING

CR-105 (December 2017) (Implements RCW 34.05.353)

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STATE OF WASHINGTON
FILED

DATE: July 12, 2023

TIME: 2:43 PM

WSR 23-15-044

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

Title of rule and other identifying information: (describe subject) Amending references in WAC 388-891A-0610 and WAC 388-891A-0890 addressing Post-Employment Services.

Purpose of the proposal and its anticipated effects, including any changes in existing rules: DVR received recent 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 Division of Vocational Rehabilitation (DVR) was providing post-employment services prior to filing Emergency Rule WSR 23-10-044, which modified how the service is defined in WAC. Provision of Post-Employment Services is subject to receipt of federal funding and continuing to apply WACs as written will place DVR out of compliance with federal guidance and could jeopardize its ability to receive federal funding. DVR is pursuing a rule change to stay in compliance with RCW 74.29.050. The Attorney General's Office, Client Assistance Program, and the Washington State Rehabilitation Council have been consulted and support DVR's reasons for the rule making.

Reasons supporting proposal: Updating the rule will ensure DVR is in compliance with the RSA's guidance regarding the provision of Post-Employment services after employment has been achieved but before the individual is reported as having exited the vocational rehabilitation program.

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

Statute being implemented: 34 CFR 361.5(c)(41)

Is rule necessary because of a:

Federal Law?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
Federal Court Decision?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
State Court Decision?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No

If yes, CITATION:

Name of proponent: (person or organization) Department of Social and Health Services

Private
 Public
 Governmental

Name of agency personnel responsible for:

	Name	Office Location	Phone
Drafting:	Mari Heusman	4565 7 th Ave SE, Lacey, WA 98504	360-280-2044
Implementation:	Cassi Villegas	4565 7 th Ave SE, Lacey, WA 98504	360-764-0731
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Agency comments or recommendations, if any, as to statutory language, implementation, enforcement, and fiscal matters: none

Expedited Adoption - Which of the following criteria was used by the agency to file this notice:

- Relates only to internal governmental operations that are not subject to violation by a person;
- Adopts or incorporates by reference without material change federal statutes or regulations, Washington state statutes, rules of other Washington state agencies, shoreline master programs other than those programs governing shorelines of statewide significance, or, as referenced by Washington state law, national consensus codes that generally establish industry standards, if the material adopted or incorporated regulates the same subject matter and conduct as the adopting or incorporating rule;
- Corrects typographical errors, make address or name changes, or clarify language of a rule without changing its effect;
- Content is explicitly and specifically dictated by statute;
- Have been the subject of negotiated rule making, pilot rule making, or some other process that involved substantial participation by interested parties before the development of the proposed rule; or
- Is being amended after a review under RCW 34.05.328.

Expedited Repeal - Which of the following criteria was used by the agency to file notice:

- The statute on which the rule is based has been repealed and has not been replaced by another statute providing statutory authority for the rule;
- The statute on which the rule is based has been declared unconstitutional by a court with jurisdiction, there is a final judgment, and no statute has been enacted to replace the unconstitutional statute;
- The rule is no longer necessary because of changed circumstances; or
- Other rules of the agency or of another agency govern the same activity as the rule, making the rule redundant.

Explanation of the reason the agency believes the expedited rule-making process is appropriate pursuant to RCW 34.05.353(4): Amendments to WAC 388-891A-0610 and 388-891A-0890 incorporate language interpreted from explicit federal guidance, which falls under RCW 34.05.353(4), thus DVR believes the expedited rule-making process is appropriate.

NOTICE

THIS RULE IS BEING PROPOSED UNDER AN EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THIS USE OF THE EXPEDITED RULE-MAKING PROCESS, YOU MUST EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO

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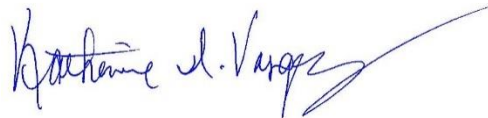
AND RECEIVED BY (date) 5:00 p.m. on September 18, 2023

Date: July 12, 2023

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.