

HAWAII ADMINISTRATIVE RULES

TITLE 17

DEPARTMENT OF HUMAN SERVICES

SUBTITLE 4

VOCATIONAL REHABILITATION

CHAPTER 401.1

VOCATIONAL REHABILITATION SERVICES

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Historical note: Chapter 17-401.1 is based substantially upon chapter 17-400. [Eff 11/5/81; am and comp 4/22/94; R [AUG 13 2007](#) ]

§17-401.1-1 Purpose. (a) The purpose of the State vocational rehabilitation (VR) services program is to assess, plan, develop, and provide VR services to assist eligible individuals with physical or mental impairments (disabilities) in preparing for, securing, retaining, or regaining employment which is consistent with their strengths, resources, priorities, concerns, abilities, capabilities, interests and informed choice.

(b) The program is authorized under title I of the Rehabilitation Act of 1973, as amended, hereafter referred to as the Act (29 U.S.C. §§701 et seq.).

(c) The program must be implemented in accordance with final rules for the State VR services program promulgated by the Secretary of Education (34 C.F.R. Part 361). [Eff AUG 13 2007 ] (Auth: HRS §§347-4, 348-3, 348-6; 29 U.S.C. §720; 34 C.F.R. §361.1) (Imp: HRS §§347-4, 348-3, 348-6; 29 U.S.C. §720; 34 C.F.R. §361.1)

§17-401.1-2 Applicable definitions. The following definitions listed in alphabetical order apply to the State VR services program:

"Act" means the Rehabilitation Act of 1973, as amended (29 U.S.C. §701 et seq.)

"Applicant" means an individual or representative chosen by an individual, who submits an application for VR services. An individual is considered to have submitted an application when the individual or individual's representative, as appropriate:

- (1) Has completed and signed the division's application form; or has completed a common intake application form in a One-Stop center requesting VR services; or has otherwise requested services from the division;
- (2) Has provided to the division information necessary to initiate an assessment to determine eligibility and priority for services; and
- (3) Is available to complete the assessment process.

"Appropriate modes of communication" means specialized aids and supports that enable an individual with a disability to comprehend and respond to information that is being communicated. Appropriate modes of communication include, but are not limited to, the use of interpreters, open and closed captioned videos, specialized telecommunications services and audio recordings, brailled and large print materials, materials in electronic formats, augmentative communication devices, graphic presentations, and simple language materials.

"Assistive technology device" means any item, piece of equipment, or product system, whether acquired commercially off the shelf, modified, or customized, that is used to increase, maintain, or improve the functional capabilities of an individual with a disability.

"Assistive technology service" means any service that directly assists an individual with a disability in the selection, acquisition, or use of an assistive technology device, including:

- (1) The evaluation of the needs of an individual with a disability, including a functional evaluation of the individual in the individual's customary environment;
- (2) Purchasing, leasing, or otherwise providing for the acquisition by an individual with a disability of an assistive technology device;
- (3) Selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing, or replacing assistive technology devices;
- (4) Coordinating and using other therapies, interventions, or services with assistive technology devices, such as those associated with existing education and rehabilitation plans and programs;
- (5) Training or technical assistance for an individual with a disability or, if appropriate, the family members, guardians, advocates, or authorized representatives of the individual; and
- (6) Training or technical assistance for professionals (including individuals providing education and rehabilitation services), employers, or others who provide services to, employ, or are otherwise substantially involved in the major life functions of individuals with disabilities, to the extent that training or technical assistance is necessary to the achievement

of an employment outcome by an individual with a disability.

"Community rehabilitation program" means a program (agency, organization, or institution, or unit of an agency, organization, or institution), that provides directly or facilitates the provision of one or more of the following VR services to individuals with disabilities, as one of its major functions, to enable those individuals to maximize their opportunities for employment, including career advancement:

- (1) Medical, psychiatric, psychological, social, and vocational services that are provided under one management.
- (2) Testing, fitting, or training in the use of prosthetic and orthotic devices.
- (3) Recreational therapy.
- (4) Physical and occupational therapy.
- (5) Speech, language, and hearing therapy.
- (6) Psychiatric, psychological, and social services, including positive behavior management.
- (7) Assessment for determining eligibility and vocational rehabilitation needs.
- (8) Rehabilitation technology.
- (9) Job development, placement, and retention services.
- (10) Evaluation or control of specific disabilities.
- (11) Orientation and mobility services for individuals who are blind.
- (12) Extended employment.
- (13) Psychosocial rehabilitation services.
- (14) Supported employment services and extended services.
- (15) Services to family members if necessary to enable the applicant or eligible individual to achieve an employment outcome.
- (16) Personal assistance services.
- (17) Services similar to the above services (1) through (16).

"Comparable services and benefits" means services and benefits (not including awards and scholarships based on merit), that are:

- (1) Provided or paid for, in whole or in part, by other Federal, State, or local public agencies, by health insurance, or by employee benefits;
- (2) Available to the individual at the time needed to ensure the progress of the individual toward achieving the employment outcome in the individual's individualized plan for employment in accordance with section 17-401.1-13; and
- (3) Commensurate to the services that the individual would otherwise receive from the division.

"Competitive employment" means work:

- (1) In the competitive labor market that is performed on a full-time or part-time basis in an integrated setting; and
- (2) For which an individual is compensated at or above the minimum wage, but not less than the customary wage and level of benefits paid by the employer for the same or similar work performed by individuals who are not disabled.

"Department" means the department of human services.

"Diagnosis and treatment of physical and mental impairments" (physical and mental restoration services) means:

- (1) Corrective surgery or therapeutic treatment that is likely, within a reasonable period of time, to correct or modify substantially a stable or slowly progressive physical or mental impairment that constitutes a substantial impediment to employment;
- (2) Diagnosis and treatment for mental or emotional disorders by qualified personnel in accordance with State licensure laws;
- (3) Dentistry;

- (4) Nursing services;
- (5) Necessary hospitalization (either inpatient or outpatient care) in connection with surgery or treatment and clinic services;
- (6) Drugs and supplies;
- (7) Prosthetic and orthotic devices;
- (8) Eyeglasses and visual services, including visual training, and the examination and services necessary for the prescription and provision of eyeglasses, contact lenses, microscopic lenses, telescopic lenses, and other special visual aids prescribed by personnel that are qualified in accordance with State licensure laws;
- (9) Podiatry;
- (10) Physical therapy;
- (11) Occupational therapy;
- (12) Speech or hearing therapy;
- (13) Mental health services;
- (14) Treatment of either acute or chronic medical complications and emergencies that are associated with or arise out of the provision of physical and mental restoration services, or that are inherent in the condition under treatment;
- (15) Special services for the treatment of individuals with end-stage renal disease, including transplantation, dialysis, artificial kidneys, and supplies; and
- (16) Other medical or medically related rehabilitation services.

"Division" means the vocational rehabilitation and services for the blind division (VRSBD, DVR) of the department of human services.

"Eligible individual" means an applicant for VR services who meets the eligibility requirements as follows, and as described in section 17-401.1-7(b):

- (1) A determination by qualified personnel that the applicant has a physical or mental impairment.

- (2) A determination by qualified personnel that the applicant's physical or mental impairment constitutes or results in a substantial impediment to employment for the applicant.
- (3) A determination by a qualified vocational rehabilitation counselor employed by the division that the applicant requires VR services to prepare for, secure, retain, or regain employment consistent with the applicant's unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice.
- (4) A presumption that an applicant who meets eligibility requirements (1) and (2) can benefit in terms of an employment outcome from the provision of VR services, unless the division demonstrates, based on clear and convincing evidence, that the applicant is incapable of benefiting in terms of an employment outcome from VR services due to the severity of the applicant's disability.

"Employment outcome" means, with respect to an individual, entering or retaining full-time or, if appropriate, part-time competitive employment in the integrated labor market, supported employment, or any other type of employment in an integrated setting, including self-employment, telecommuting, or business ownership, that is consistent with an individual's strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice.

"Extended employment" means work in a non-integrated or sheltered setting for a public or private nonprofit agency or organization that provides compensation in accordance with the Fair Labor Standards Act.

"Extended services" means ongoing support services and other appropriate services that are needed to support and maintain an individual with a most significant disability in supported employment



and that are provided by a State agency, a private nonprofit organization, employer, or any other appropriate resource, from funds other than funds received under this chapter and after an individual with a most significant disability has made the transition from support provided by the division.

"Extreme medical risk" means a probability of substantially increasing functional impairment or death if medical services, including mental health services, are not provided expeditiously.

"Family member," for purposes of receiving VR services in accordance with section 17-401.1-6, means an individual:

- (1) Who either:
  - (A) Is a relative or guardian of an applicant or eligible individual; or
  - (B) Lives in the same household as an applicant or eligible individual; and
- (2) Who has a substantial interest in the well-being of that individual; and
- (3) Whose receipt of VR services is necessary to enable the applicant or eligible individual to achieve an employment outcome.

"Individual who is blind" means a person having:

- (1) Not more than 10 percent visual acuity in the better eye after correction, which means a person who has:
  - (A) Not more than 20/200 central visual acuity in the better eye after correction; or
  - (B) An equally disabling loss of the visual field as evidenced by a limitation to the field of vision in the better eye to such a degree that its widest diameter subtends an angle no greater than 20 degrees.

"Individual with a disability," means an individual:

- (1) Who has a physical or mental impairment;
- (2) Whose impairment constitutes or results in a substantial impediment to employment; and

- (3) Who can benefit in terms of an employment outcome from the provision of VR services.

"Individual with a most significant disability" means an individual with a significant disability who meets the following criteria of the division for an individual with a most significant disability:

- (1) Who has a physical or mental impairment (such as amputation, mental illness, or another disability or combination) which seriously limits two or more functional capacities (mobility, communication, self-care, self-direction, interpersonal skills, work tolerance, and work skills) in terms of an employment outcome;
- (2) Whose vocational rehabilitation is expected to require three or more VR services; and
- (3) Whose vocational rehabilitation is expected to require a period of 12 months or more.

"Individual with a significant disability" means an individual with a disability:

- (1) Who has a severe physical or mental impairment (such as amputation, mental illness, or another disability or combination) that seriously limits one or more functional capacities (mobility, communication, self-care, self-direction, interpersonal skills, work tolerance, and work skills) in terms of an employment outcome;
- (2) Whose vocational rehabilitation is expected to require two or more VR services; and
- (3) Whose vocational rehabilitation is expected to require a period of 6 months or more.

"Individual's representative" means any representative chosen by an applicant or eligible individual, as appropriate, including a parent, guardian, other family member, or advocate, unless a representative has been appointed by a court to represent the individual, in which case the court-appointed representative is the individual's representative.

"Integrated setting" means:

- (1) With respect to the provision of services, a setting typically found in the community in which applicants or eligible individuals interact with non-disabled individuals other than non-disabled individuals who are providing services to those applicants or eligible individuals.
- (2) With respect to an employment outcome, a setting typically found in the community in which applicants or eligible individuals interact with non-disabled individuals, other than non-disabled individuals who are providing services to those applicants or eligible individuals, to the same extent that non-disabled individuals in comparable positions interact with other persons.

"Maintenance" means monetary support provided to an individual for expenses, such as food, shelter, and clothing, that are in excess of the normal expenses of the individual and that are necessitated by the individual's participation in the assessment for determining eligibility and vocational rehabilitation needs or the individual's receipt of VR services under an individualized plan for employment.

"Mediation" means the act or process of using an independent third party to act as a mediator, intermediary, or conciliator to assist persons or parties in settling differences or disputes prior to pursuing formal administrative or other legal remedies. Mediation under the program must be conducted in accordance with the requirements in section 17-400.1-6 by a qualified and impartial mediator as defined in section 17-400.1-6(a)(5).

"Ongoing support services," as used in the definition of "Supported employment":

- (1) Means services that are:
  - (A) Needed to support and maintain an individual with a most significant disability in supported employment;

- (B) Identified based on a determination by the division of the individual's need as specified in an individualized plan for employment; and
  - (C) Furnished by the division from the time of job placement until transition to extended services, unless post-employment services are provided following transition, and thereafter by one or more extended services providers throughout the individual's term of employment in a particular job placement or multiple placements if those placements are being provided under a program of transitional employment;
- (2) Must include an assessment of employment stability and provision of specific services or the coordination of services at or away from the worksite that are needed to maintain stability based on:
- (A) At a minimum, twice-monthly monitoring at the worksite of each individual in supported employment; or
  - (B) If under specific circumstances, especially at the request of the individual, the individualized plan for employment provides for off-site monitoring, twice-monthly meetings with the individual;
- (3) Consist of:
- (A) Any particularized assessment supplementary to the comprehensive assessment of rehabilitation needs described in section 17-401.1-10(b)(3);
  - (B) The provision of skilled job trainers who accompany the individual for intensive job skill training at the worksite;
  - (C) Job development and training;
  - (D) Social skills training;

- (E) Regular observation or supervision of the individual;
- (F) Follow-up services including regular contact with the employers, the individuals, the parents, family members, guardians, advocates, or authorized representatives of the individuals, and other suitable professional and informed advisors, in order to reinforce and stabilize the job placement;
- (G) Facilitation of natural supports at the worksite;
- (H) Any other service identified in the scope of VR services for individuals, described in section 17-401.1-6; or
- (I) Any service similar to the foregoing services.

"On the job or other personal attendant services" means a range of services provided by one or more persons designed to assist an individual with a disability to perform daily living activities on or off the job that the individual would typically perform without assistance if the individual did not have a disability. The services must be designed to increase the individual's control in life and ability to perform everyday activities on or off the job. The services must be necessary to the achievement of an employment outcome and may be provided only while the individual is receiving other VR services. The services may include training in managing, supervising, and directing personal assistance services.

"Physical and mental restoration services" (see "Diagnosis and treatment of physical and mental impairments").

"Physical or mental impairment" means:

- (1) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological, musculo-skeletal,

special sense organs, respiratory including speech organs, cardiovascular, reproductive, digestive, genitourinary, hemic and lymphatic, skin, and endocrine; or

- (2) Any mental or psychological disorder such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

"Post-employment services" (see "Specific post-employment services").

"Rehabilitation engineering" means the systematic application of engineering sciences to design, develop, adapt, test, evaluate, apply, and distribute technological solutions to problems confronted by individuals with disabilities in functional areas, such as mobility, communications, hearing, vision, and cognition, and in activities associated with employment, independent living, education, and integration into the community.

"Rehabilitation technology" means the systematic application of technologies, engineering methodologies, or scientific principles to meet the needs of, and address the barriers confronted by, individuals with disabilities in areas that include education, rehabilitation, employment, transportation, independent living, and recreation. The term includes rehabilitation engineering, assistive technology devices, and assistive technology services.

"Specific post-employment services" (post-employment services) means one or more of the services identified in section 17-401.1-6 that are provided subsequent to the achievement of an employment outcome and that are necessary for an individual to maintain, regain, or advance in employment, consistent with the individual's strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice.

"Substantial impediment to employment" means that a physical or mental impairment (in light of attendant medical, psychological, vocational, educational, communication, and other related factors) hinders an

individual from preparing for, entering into, engaging in, or retaining employment consistent with the individual's abilities and capabilities.

"Supported employment" means:

- (1) Competitive employment in an integrated setting, or employment in integrated work settings in which individuals are working toward competitive employment, consistent with the strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice of the individuals with ongoing support services for individuals with the most significant disabilities:
  - (A) For whom competitive employment has not traditionally occurred or for whom competitive employment has been interrupted or intermittent as a result of a significant disability; and
  - (B) Who, because of the nature and severity of their disabilities, need intensive supported employment services from the division and extended services after transition as described in this section to perform this work; or
- (2) Transitional employment, as defined in this section, for individuals with the most significant disabilities due to mental illness.

"Supported employment services" means ongoing support services and other appropriate services needed to support and maintain an individual with a most significant disability in supported employment that are provided by the division:

- (1) For a period of time not to exceed 18 months, unless under special circumstances the eligible individual and the VR specialist jointly agree to extend the time to achieve the employment outcome identified in the individualized plan for employment; and

- (2) Following transition, as post employment services that are unavailable from an extended services provider and that are necessary to maintain or regain the job placement or advance in employment.

"Transition services" means a coordinated set of activities for a student designed within an outcome-oriented process that promotes movement from school to post-school activities, including postsecondary education, vocational training, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation. The coordinated set of activities must be based upon the individual student's needs, taking into account the student's preferences and interests, and must include instruction, community experiences, the development of employment and other post-school adult living objectives, and if appropriate, acquisition of daily living skills and functional vocational evaluation. Transition services must promote or facilitate the achievement of the employment outcome identified in the student's individualized plan for employment.

"Transitional employment" as used in the definition of "Supported employment," means a series of temporary job placements in competitive work in integrated settings with ongoing support services for individuals with the most significant disabilities due to mental illness. In transitional employment, the provision of ongoing support services must include continuing sequential job placements until job permanency is achieved.

"Transportation" means travel and related expenses that are necessary to enable an applicant or eligible individual to participate in a vocational rehabilitation service, including expenses for training in the use of public transportation vehicles and systems.

"Vocational rehabilitation services":

- (1) If provided to an individual, means those services listed in section 17-401.1-6; and



- (2) If provided for the benefit of groups of individuals, also means those services listed in 34 C.F.R. section 361.49. [Eff [AUG 13 2007](#) ] (Auth: HRS §§347-4, 348-3, 348-6; 29 U.S.C. §§705, 723; 34 C.F.R. §§361.5(b), 361.48) (Imp: HRS §§347-4, 348-3, 348-6; 29 U.S.C. §§705, 723; 34 C.F.R. §§361.5(b), 361.48)

§17-401.1-3 Information and referral services.

(a) The division shall implement an information and referral system, adequate to ensure that individuals with disabilities, including eligible individuals who do not meet the division's order of selection criteria for receiving VR services when the division is operating under an order of selection, are:

- (1) Provided accurate VR information and guidance (which may include counseling and referral for job placement) using appropriate modes of communication to assist them in preparing for, securing, retaining, or regaining employment.
- (2) Referred to other appropriate Federal and State programs, including programs carried out by other components of the statewide workforce investment system, best suited to address the specific employment needs of the individual.

(b) The division must refer to local extended employment providers an individual with a disability who makes an informed choice to pursue extended employment as the individual's employment outcome. Before making the referral the division must:

- (1) Consistent with section 17-401.1-7(b)(4)(A), explain to the individual that the purpose of the VR program is to assist individuals to achieve an employment outcome as defined in section 17-401.1-2 (i.e., employment in an integrated setting);
- (2) Consistent with section 17-401.1-12, provide the individual with information concerning

- the availability of employment options, and of VR services, in integrated settings;
- (3) Inform the individual that services under the VR program can be provided to eligible individuals in an extended employment setting if necessary for purposes of training or otherwise preparing for employment in an integrated setting;
  - (4) Inform the individual that, if the individual initially chooses not to pursue employment in an integrated setting, the individual can seek services from the division at a later date if, at that time, the individual chooses to pursue employment in an integrated setting; and
  - (5) Refer the individual, as appropriate, to the Social Security Administration in order to obtain information concerning the ability of individuals with disabilities to work while receiving benefits from the Social Security Administration.
- (c) In making the referrals identified in paragraph (a)(2), the division must:
- (1) Provide the individual who is being referred:
    - (A) A notice of the referral by the division to the agency carrying out the program;
    - (B) Information identifying a specific point of contact within the agency to which the individual is being referred; and
    - (C) Information and advice regarding the most suitable services to assist the individual to prepare for, secure, retain, or regain employment.
  - (2) Document the nature and scope of services provided by the division to the individual and on the referral itself in the division's record of services for the individual.

(d) In providing the information and referral services under this section to eligible individuals who are not in the priority category or categories to receive VR services under the State's order of selection, the division must identify, as part of its reporting under section 101(a)(10) of the Rehabilitation Act, as amended and 34 C.F.R. section 361.40, the number of eligible individuals who did not meet the division's order of selection criteria for receiving VR services and did receive information and referral services under this section.

(e) In the event an individual is referred to another program through the division's information and referral system under this section, including other components of the statewide workforce investment system, documentation of the nature and scope of services provided by the division to the individual and of the referral itself, consistent with the requirements of this section, shall be included in the division's record of services for the individual.  
 [Eff AUG 13 2007 ] (Auth: HRS §§347-4, 348-3, 348-6; 29 U.S.C. §§709, 721; 34 C.F.R. §§361.37, 361.47) (Imp: HRS §§347-4, 348-3, 348-6; 29 U.S.C. §§709, 721; 34 C.F.R. §§361.37, 361.47)

§17-401.1-4 Referral and application. (a) A referral is defined as any individual who has been referred to the division for VR services by letter, telephone, direct contact, through the One-Stop service delivery systems established under section 121 of the Workforce Investment Act of 1998, or any other means.

- (1) The referral shall include the following minimum information:
  - (A) Name and address (if P.O. Box, include residence address);
  - (B) Birthdate and sex;
  - (C) Disability;
  - (D) Source of referral;
  - (E) Date of referral; and

- (F) Primary language if limited- or non-English speaking.
- (2) Individuals referred for services shall be contacted within two weeks to schedule an orientation meeting or intake interview to initiate an assessment to determine eligibility and priority for services in accordance with section 17-401.1-7.
- (b) An applicant is any individual, or representative chosen by an individual, who submits an application for VR services.
  - (1) An individual is considered to have submitted an application for VR services when the individual or the individual's representative:
    - (A) Has completed and signed an agency application form; or
      - (i) Has completed a common intake application form in a One-Stop center requesting VR services; or
      - (ii) Has otherwise requested services from the division;
    - (B) Has provided to the division information necessary to initiate an assessment to determine eligibility and priority for services; and
    - (C) Is available to complete the assessment process.
  - (2) Once an individual has submitted an application for VR services, including applications made through common intake procedures in One-Stop service delivery systems established under section 121 of the Workforce Investment Act of 1998:
    - (A) An eligibility determination must be made within 60 days, unless:
      - (i) Exceptional and unforeseen circumstances beyond the control of the division preclude making an eligibility determination

- within 60 days and the division and the individual agree to a specific extension of time; or
- (ii) An exploration of the individual's abilities, capabilities, and capacity to perform in work situations is carried out in accordance with section 17-401.1-7(e) or, if appropriate, an extended evaluation is carried out in accordance with section 17-401.1-7(f).
- (3) Copies of the division's referral and application forms shall be widely available throughout the State, particularly in the One-Stop centers established under the Workforce Investment Act of 1998.
  - (4) Applicants shall be provided pertinent information about the VR program in the native language or appropriate mode of communication of the individual, whenever practicable. Appropriate modes of communication include, but are not limited to:
    - (A) The use of interpreters;
    - (B) Open and closed captioned videos;
    - (C) Specialized telecommunications services and audio recordings;
    - (D) Braille, and large print materials;
    - (E) Materials in electronic formats;
    - (F) Augmentative communication devices;
    - (G) Graphic presentations; and
    - (H) Simple language materials.
  - (5) A review of topics listed below shall be provided to assure the individual's informed consent, participation, and exercise of rights and remedies.
    - (A) Description of the VR program including eligibility criteria, order of selection for services, and the provision of services to individuals

who must intend to achieve an employment outcome.

- (B) Confidentiality of information.
- (C) Nondiscrimination provisions.
- (D) Mediation and hearing.
- (E) Services available through the Client Assistance Program (CAP).
- (F) Non-VR services that may be available in the community for which the individual may have need and to which the individual may be referred.

[Eff AUG 13 2007 ] (Auth: HRS §§347-4, 348-3, 348-6; 29 U.S.C. §§721, 722; 34 C.F.R. §361.41) (Imp: HRS §§347-4, 348-3, 348-6; 29 U.S.C. §§721, 722; 34 C.F.R. §361.41)

§17-401.1-5 Order of selection. (a) The purpose and intent of the division's order of selection is to provide an organized and equitable system for serving eligible individuals and processing of referrals when the division is unable to serve, on a timely basis, all eligible individuals who have applied for services.

(b) The division shall review its ability to provide the full range of services each Federal fiscal year.

- (1) The division either must be able to provide the full range of services listed in section 17-401.1-6, as appropriate, to all eligible individuals or, in the event that VR services cannot be provided to all eligible individuals in the State who apply for the services, include in the State plan the order established in subsection (e) to be followed in selecting eligible individuals to be provided VR services.
- (2) The ability of the division to provide the full range of VR services to all eligible individuals must be supported by a determination that satisfies the

requirements of subsections (c) or (d) and a determination that, on the basis of the division's projected fiscal and personnel resources and its assessment of the rehabilitation needs of individuals with significant disabilities within the State, it can:

- (A) Continue to provide services to all individuals currently receiving services;
  - (B) Provide assessment services to all individuals expected to apply for services in the next Federal fiscal year;
  - (C) Provide services to all individuals who are expected to be determined eligible in the next Federal fiscal year; and
  - (D) Meet all program requirements.
- (3) If the division is unable to provide the full range of VR services to all eligible individuals in the State who apply for the services, the State plan must:
- (A) Show the order to be followed in selecting eligible individuals to be provided VR services;
  - (B) Provide a justification for the order of selection;
  - (C) Identify services and outcome goals and the time within which the goals may be achieved for individuals in each priority category within the order; and
  - (D) Assure that:
    - (i) In accordance with the criteria established in subsection (e) for the order of selection, individuals with the most significant disabilities will be selected first for the provision of VR services; and
    - (ii) Individuals who do not meet the order of selection criteria will

have access to services provided through the information and referral system established under section 17-401.1-3.

(c) The assurance that services can be provided to all eligible individuals must be based on the following:

- (1) In determining, for the current and preceding Federal fiscal year, that the division is able to provide the full range of services, as appropriate, to all eligible individuals, the division, during the current and preceding Federal fiscal year, must have in fact:
  - (A) Provided assessment services to all applicants and the full range of services, as appropriate, to all eligible individuals;
  - (B) Made referral forms widely available throughout the State;
  - (C) Conducted outreach efforts to identify and serve individuals with disabilities who have been unserved or underserved by the VR system; and
  - (D) Not delayed, through waiting lists or other means, determinations of eligibility, the development of individualized plans for employment for individuals determined eligible for VR services, or the provision of services for eligible individuals for whom individualized plans for employment have been developed.
- (2) If the division was unable to provide the full range of services to all eligible individuals during the current or preceding Federal fiscal year or has not met the requirements in paragraph (c)(1), the determination that the division is able to provide the full range of services to all



eligible individuals in the next Federal fiscal year must be based on:

- (A) Circumstances that have changed that will allow the division to meet the requirements of (c)(2) in the next Federal fiscal year, including:
  - (i) An estimate of the number of and projected costs of serving, in the next Federal fiscal year, individuals with existing individualized plans for employment;
  - (ii) The projected number of individuals with disabilities who will apply for services and will be determined eligible in the next Federal fiscal year and the projected costs of serving those individuals;
  - (iii) The projected costs of administering the program in the next Federal fiscal year, including, but not limited to, costs of staff salaries and benefits, outreach activities, and required statewide studies; and
  - (iv) The projected revenues and projected number of qualified personnel for the program in the next Federal fiscal year;
- (B) Comparable data, as relevant, for the current or preceding fiscal year, or for both years, of the costs listed in paragraphs(c)(2)(A)(i) through (iii)and the resources identified in paragraphs (c)(2)(A)(iv) and an explanation of any projected increases or decreases in these costs and resources; and
- (C) A determination that the projected revenues and the projected number of qualified personnel for the program in

the next Federal fiscal year are adequate to cover the costs identified in paragraphs (c)(2)(A)(i) through (iii) to ensure the provision of the full range of services, as appropriate, to all eligible individuals.

- (d) The division must determine the need for establishing and implementing an order of selection:
- (1) The division must determine, prior to the beginning of each Federal fiscal year, whether to establish and implement an order of selection.
  - (2) The division must consult with the State Rehabilitation Council regarding the:
    - (A) Need to establish an order of selection, including any reevaluation of the need under (d)(2);
    - (B) Priority categories of the particular order of selection;
    - (C) Criteria for determining individuals with the most significant disabilities; and
    - (D) Administration of the order of selection.
  - (3) If the division determines that it does not need to establish an order of selection, it must reevaluate this determination whenever changed circumstances during the course of a Federal fiscal year, such as a decrease in its fiscal or personnel resources or an increase in its program costs, indicate that it may no longer be able to provide the full range of services, as appropriate, to all eligible individuals, as described in paragraph (b)(2).
  - (4) If the division establishes an order of selection, but determines that it does not need to implement that order at the beginning of the Federal fiscal year, it must continue to meet the requirements of paragraph (b)(2), or it must implement the

order of selection by closing one or more priority categories.

- (5) When the evaluation indicates that the available resources will not be adequate to provide assessment services to all applicants and the full range of services to all eligible individuals that will be needing services in the upcoming year in an equitable and expeditious manner, the division administrator shall declare the division under order of selection for VR services.
- (6) While under the order of selection, the division shall carefully consider any decision to terminate the order of selection, in consideration of the effort to establish and implement an order of selection, and the extent to which the division's resources will be sufficient to sustain services to all eligible individuals once the order of selection is terminated.

(e) Under the order of selection, first priority shall be given to individuals with a most significant disability, second priority to individuals with a significant disability, and third priority to individuals with a non-significant disability (having neither a significant nor a most significant disability).

- (1) The term individual with a most significant disability means an individual determined eligible for VR services by the division, who meets all three of the following refined criteria in the definition of individual with a most significant disability:
  - (A) Has a severe physical or mental impairment that seriously limits two or more functional capacities (such as mobility, communication, self-care, self-direction, interpersonal skills, work tolerance, or work skills) in terms of an employment outcome;

- (B) Requires three or more of the following VR services (VR counseling and guidance, diagnosis and treatment of physical impairments (physical restoration), diagnosis and treatment of mental impairments (mental restoration), vocational training, personal adjustment training, specialized job placement, rehabilitation technology, or other substantial services); and
  - (C) Requires VR services for 12 months or more.
- (2) The term individual with a significant disability means an individual determined eligible for VR services by the division, who does not meet all three of the refined criteria in the definition of individual with a most significant disability, and who is either:
- (A) Considered to meet the definition of an individual with a significant disability based on evidence provided by the individual or verification by the division of the individual's eligibility for Social Security disability insurance (SSDI) benefits or supplemental security income (SSI) payments under titles II and XVI of the Social Security Act; or
  - (B) Meets all three of the following refined criteria in the definition of individual with a significant disability:
    - (i) Has a severe physical or mental impairment that seriously limits one or more functional capacities (such as mobility, communication, self-care, self-direction, interpersonal skills, work

- tolerance, or work skills) in terms of an employment outcome;
- (ii) Requires two or more of the following VR services (VR counseling and guidance, diagnosis and treatment of physical impairments (physical restoration), diagnosis and treatment of mental impairments (mental restoration), vocational training, personal adjustment training, specialized job placement, rehabilitation technology, or other substantial services); and
  - (iii) Requires VR services for 6 months or more.
- (3) The term individual with a non-significant disability means an individual determined eligible for VR services by the division, who does not meet all three of the refined criteria in the definition of individual with a most significant disability or individual with a significant disability.
- (f) The division will determine the priority category classification of each individual determined eligible for VR services, at the time of eligibility determination or immediately thereafter, in accordance with subsection (e), and written format determined by the division.
- (1) Each individual determined eligible shall be determined to be most significantly disabled, significantly disabled, or non-significantly disabled. No individual will be assigned more than one of these categories.
  - (2) An eligible SSDI beneficiary or SSI recipient under the Social Security Act shall not be afforded any special consideration of priority for services other than the automatic priority category

- classification of the individual as an individual with a significant disability.
- (3) If an individual's disability becomes less severe due to an improvement in the individual's disabling condition or situation, the individual's priority category shall not be changed.
  - (4) If an individual's disability becomes more severe and can be documented, the individual's priority shall be documented and changed accordingly. The date of eligibility for the new priority category classification will be the date of the individual's application for services.
- (g) The order of selection shall not be based on any other factors, including:
- (1) Any duration of residency requirement, provided the individual is present in the State;
  - (2) Type of disability;
  - (3) Age, gender, race, color, or national origin;
  - (4) Source of referral;
  - (5) Type of expected employment outcome;
  - (6) The need for specific services or anticipated cost of services required by an individual; or
  - (7) The income level of an individual or an individual's family.
- (h) In administering the order of selection, the division shall:
- (1) Implement the order of selection on a statewide basis.
  - (2) Inform referral sources, service providers, frequently used employers, officials of other affected State agencies, the public, and others, about the need for an order of selection and the general policies that govern its implementation.
  - (3) Provide all prospective applicants with the following information:

- (A) Information about the division's order of selection at the point that a referral is taken to assure that they have accurate information regarding the availability of services.
  - (B) Information about the division's order of selection at the time of initial orientation or application, or both including more specific information if available, to enable the individual to make an informed decision about pursuing VR services.
  - (C) Information that the determination of eligibility and severity of disability process is highly individualized and should be discussed with a VR counselor before the individual decides not to pursue services.
- (4) Notify each individual determined eligible, in writing of:
- (A) The priority categories;
  - (B) The individual's assignment to a particular priority category classification;
  - (C) Any reclassification of priority category assignment due to changes in the individual's circumstances or due to any misclassifications;
  - (D) The individual's right to appeal the category assignment; and
  - (E) The availability of assistance from the Client Assistance Program.
- (5) Continue to provide all needed services to any eligible individual who has begun to receive services under an individualized plan for employment prior to the effective date of the order of selection, irrespective of the severity of the individual's disability; and
- (6) Ensure that funding arrangements for providing services under the State plan,

including third-party arrangements and awards under the establishment authority, are consistent with the order of selection. Any funding arrangements which are inconsistent with the order of selection, must be renegotiated so that they are consistent with the order of selection.

- (7) Establish caseload standards to ensure an equitable system for the assignment and processing of cases under the order of selection.
  - (A) Caseload size minimums, and minimum goals for processing of referrals, applications, and active cases, shall be established for each VR specialist (counselor) level (VRS I, II, III, and IV).
  - (B) Assignment of referrals will be in chronological order by date of referral.
  - (C) Assignment of eligible individuals will be in chronological order by priority category and date of application.
- (8) Establish and maintain deferred service lists, by priority category and date of application when all eligible individuals cannot be assigned immediately. Individuals on the lists shall be periodically informed of their status on the deferred service lists.

(i) If an individual has been determined to be an individual with a significant disability or an individual with a most significant disability, the division shall include documentation supporting that determination in the division's record of services for the individual. [Eff [AUG 13 2007](#) ] (Auth: HRS §§347-4, 348-3, 348-6; 29 U.S.C. §§709, 721, 794; 34 C.F.R. §§361.5(b)(30) and (31), 361.36, 361.47) (Imp: HRS §§347-4, 348-3, 348-6; 29 U.S.C. §§709, 721, 794; 34 C.F.R. §361.36. 361.47)



§17-401.1-6 Scope of VR services for individuals with disabilities. As appropriate to the VR needs of each individual and consistent with each individual's informed choice, the division must ensure that the following VR services are available to assist the individual with a disability in preparing for, securing, retaining, or regaining an employment outcome that is consistent with the individual's strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice:

- (1) Assessment for determining eligibility and priority for services by qualified personnel, including if appropriate, an assessment by personnel skilled in rehabilitation technology, in accordance with section 17-401.1-7.
- (2) Assessment for determining VR needs by qualified personnel, including if appropriate, an assessment by personnel skilled in rehabilitation technology, in accordance with section 17-401.1-10.
- (3) Vocational rehabilitation counseling and guidance, including information and support services to assist an individual in exercising informed choice in accordance with section 17-401.1-12.
- (4) Referral and other services necessary to assist applicants and eligible individuals to secure needed services from other agencies, including other components of the statewide workforce investment system, in accordance with section 17-401.1-3, and to advise those individuals about the Client Assistance Program of the Hawaii Disability Rights Center.
- (5) Diagnosis and treatment of physical and mental impairments (physical and mental restoration services), as defined in section 17-401.1-2 and in accordance with section 17-401.1-18, and to the extent that financial support is not readily available

from a source other than the division (such as through health insurance or a comparable service or benefit in accordance with section 17-401.1-13).

- (6) Vocational and other training services, including personal and vocational adjustment training, books, tools, and other training materials, except that no training or training services in an institution of higher education (universities, colleges, community or junior colleges, vocational schools, technical institutes, or hospital schools of nursing) may be paid for with funds under this section unless maximum efforts have been made by the division and the individual to secure grant assistance in whole or in part from other sources to pay for that training.
- (7) Maintenance, as defined in section 17-401.1-2 and in accordance with section 17-401.1-23.
- (8) Transportation in connection with the rendering of any vocational rehabilitation service as defined in section 17-401.1-2 and in accordance with section 17-401.1-27.
- (9) Vocational rehabilitation services to family members, as defined in section 17-401.1-2, of an applicant or eligible individual if necessary to enable the applicant or eligible individual to achieve an employment outcome and in accordance with section 17-401.1-22.
- (10) Interpreter services, including sign language and oral interpreter services, for individuals who are deaf or hard of hearing and tactile interpreting services for individuals who are deaf-blind provided by qualified personnel, in accordance with section 17-401.1-24.
- (11) Reader services, rehabilitation teaching services, and orientation and mobility

- services for individuals who are blind, in accordance with section 17-401.1-25.
- (12) Job-related services, including job search and placement assistance, job retention services, follow-up services, and follow-along services, in accordance with section 17-401.1-20.
  - (13) Supported employment services as defined in section 17-401-2 and in accordance with section 17-401.1-31.
  - (14) On the job or other related personal attendant (personal assistance) services as defined in section 17-401.1-2 and in accordance with section 17-401.1-30.
  - (15) Specific post-employment services as defined in section 17-401.1-2 and in accordance with section 17-401.1-21.
  - (16) Occupational licenses, tools, equipment, initial stocks, and supplies in accordance with section 17-401.1-26.
  - (17) Rehabilitation technology as defined in section 17-401.1-2, including vehicular modification, telecommunications, sensory, and other technological aids and devices, in accordance with section 17-401.1-28.
  - (18) Transition services as defined in section 17-401.1-2 and in accordance with section 17-401.1-29.
  - (19) Technical assistance and other consultation services to conduct market analyses, develop business plans, and otherwise provide resources, to the extent those resources are authorized to be provided through the statewide workforce investment system, to eligible individuals who are pursuing self-employment or telecommuting or establishing a small business operation as an employment outcome, in accordance with section 17-401.1-32.
  - (20) Other goods and services determined necessary for the individual with a

disability to achieve an employment outcome, in accordance with section 17-401.1-33.

(Eff AUG 13 2007](Auth: HRS §§347-4, 348-3, 348-6; 29 U.S.C. §723; 34 C.F.R. §361.48)

(Imp: HRS §§347-4, 348-3, 348-6; 29 U.S.C. §723; 34 C.F.R. §361.48)

§17-401.1-7 Assessment for determining eligibility and priority for services. (a) The division shall conduct an assessment, in the most integrated setting possible and consistent with the individual's needs and informed choice, to determine the eligibility of all individuals applying for VR services, and the individual's priority for services. Integrated setting means a setting typically found in the community in which applicants or eligible individuals interact with non-disabled individuals other than those who provide them services.

(b) The assessment must be conducted in accordance with the following provisions:

- (1) The determination of an applicant's eligibility for VR services must be based only on the following basic requirements:
  - (A) A determination by qualified personnel that the applicant has a physical or mental impairment.
  - (B) A determination by qualified personnel that the applicant's physical or mental impairment constitutes or results in a substantial impediment to employment for the applicant.
  - (C) A determination by a qualified vocational rehabilitation counselor employed by the division that the applicant requires VR services to prepare for, secure, retain, or regain employment consistent with the applicant's unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice.

- (D) A presumption, in accordance with paragraph (b)(2), that the applicant can benefit in terms of an employment outcome from the provision of VR services.
- (2) The division must presume that an applicant who meets the eligibility requirements in paragraph (b)(1)(A) and (B) can benefit in terms of an employment outcome unless it demonstrates, based on clear and convincing evidence as defined in subparagraph (e)(1)(A), that the applicant is incapable of benefiting in terms of an employment outcome from VR services due to the severity of the applicant's disability.
- (3) The division shall presume the eligibility of Social Security recipients and beneficiaries for VR services:
  - (A) Any applicant who has been determined eligible for Social Security benefits under title II or title XVI of the Social Security Act is:
    - (i) Presumed eligible for VR services under paragraphs (b)(1) and (2); and
    - (ii) Considered an individual with a significant disability as defined in section 17-401.1-2.
  - (B) If an applicant for VR services asserts to be eligible for Social Security benefits under title II or title XVI of the Social Security Act (and therefore presumed eligible for VR services under this paragraph), but is unable to provide appropriate evidence, such as an award letter, to support that assertion, the division must verify the applicant's eligibility under title II or title XVI of the Social Security Act by contacting the Social Security

Administration. This verification must be made within a reasonable period of time that enables the division to determine the applicant's eligibility for VR services within 60 days of the individual submitting an application for services in accordance with section 17-401.1-4(b)(2).

- (4) Any eligible individual, including an individual whose eligibility for VR services is based on the individual being eligible for Social Security benefits under title II or title XVI of the Social Security Act, must intend to achieve an employment outcome that is consistent with the individual's strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice.
  - (A) The division is responsible for informing individuals, through its application process for VR services, that individuals who receive services under the program must intend to achieve an employment outcome.
  - (B) The applicant's completion of the application process for VR services is sufficient evidence of the individual's intent to achieve an employment outcome, and no additional demonstration on the part of the applicant is required for purposes of satisfying this intent.
- (5) Nothing in this section, including paragraph (b)(3)(A), is to be construed to create an entitlement to any VR service.
  - (c) The following factors are prohibited in determining eligibility under this section:
    - (1) The division shall not impose a duration of residence requirement that excludes from services any applicant who is present in the State.

- (2) The division must also ensure that:
  - (A) No applicant or group of applicants is excluded or found ineligible solely on the basis of the type of disability; and
  - (B) The eligibility requirements are applied without regard to the:
    - (i) Age, gender, race, color, or national origin of the applicant;
    - (ii) Type of expected employment outcome;
    - (iii) Source of referral for VR services; and
    - (iv) Particular service needs or anticipated cost of services required by an applicant or the income level of an applicant or applicant's family.
- (3) No additional tests or procedures, other than the individual applying for services, shall be used to assess the "intent" of applicants who are allowed SSDI benefits or SSI payments when they apply for services.
- (d) Except as provided in subsection (e), the division:
  - (1) Must base its determination of each of the basic eligibility requirements in paragraph (b)(1) on:
    - (A) A review and assessment of existing data, including counselor observations, education records, information provided by the individual or the individual's family, particularly information used by education officials, and determinations made by officials of other agencies; and
    - (B) To the extent existing data do not describe the current functioning of the individual or are unavailable, insufficient, or inappropriate to make

an eligibility determination, an assessment of additional data resulting from the provision of VR services, including trial work experiences, assistive technology devices and services, personal attendant services, and any other support services that are necessary to determine whether an individual is eligible; and

- (2) Must base its presumption under (b)(3)(A) that an applicant who has been determined eligible for Social Security benefits under title II and title XVI of the Social Security Act satisfies each of the basic eligibility requirements in paragraph (b)(1) on determinations made by the Social Security Administration.

(e) The division must conduct trial work experiences for individuals with significant disabilities to demonstrate with clear and convincing evidence that such individuals are incapable of benefiting from VR services in terms of an employment outcome.

- (1) Prior to any determination that an individual with a disability is incapable of benefiting from VR services in terms of an employment outcome because of the severity of the individual's disability, the division must conduct an exploration of the individual's abilities, capabilities, and capacity to perform in realistic work situations to determine whether or not there is clear and convincing evidence to support such a determination.

(A) Clear and convincing evidence means that the division shall have a high degree of certainty before concluding that an individual is incapable of benefiting from services in terms of an employment outcome. The "clear and convincing" standard constitutes the



highest standard used in our civil system of law and is to be individually applied on a case-by-case basis. The term "clear" means unequivocal. Given these requirements, a review of existing information, such as an intelligence test result alone, generally would not provide or constitute clear and convincing evidence. Clear and convincing evidence might include a description of assessments, including situational assessments, from service providers who have concluded that they would be unable to meet the individual's needs due to the severity of the individual's disability.

- (B) The demonstration of "clear and convincing evidence" must include, if appropriate, a functional assessment of skill development activities, with any necessary supports (including assistive technology), in real life settings.
  - (C) Employment outcome means entering or retaining full-time or, if appropriate, part-time competitive employment in the integrated labor market; satisfying the vocational outcome of supported employment; or satisfying any other vocational outcome determined to be appropriate by the Secretary of the U.S. Department of Education (including satisfying the vocational outcome of self-employment, telecommuting, or business ownership), in a manner consistent with the Rehabilitation Act, as amended.
- (2) The division must develop a written plan to assess periodically the individual's abilities, capabilities, and capacity to perform in work situations through the use

of trial work experiences, which must be provided in the most integrated setting possible, consistent with the informed choice and rehabilitation needs of the individual.

- (A) Trial work experiences include supported employment, on-the-job training, and other experiences using realistic work settings.
  - (B) Trial work experiences must be of sufficient variety and over a sufficient period of time for the division to determine that:
    - (i) There is sufficient evidence to conclude that the individual can benefit from the provision of VR services in terms of an employment outcome; or
    - (ii) There is clear and convincing evidence that the individual is incapable of benefiting from VR services in terms of an employment outcome due to the severity of the individual's disability.
  - (C) The division must provide appropriate supports, including assistive technology devices and services and personal attendant services, to accommodate the rehabilitation needs of the individual during the trial work experiences.
- (f) The division shall provide extended evaluation for certain individuals with significant disabilities.
- (1) Under limited circumstances if an individual cannot take advantage of trial work experiences or if options for trial work experiences have been exhausted before the division is able to make the determinations described in paragraph (e)(2)(B), the

division must conduct an extended evaluation to make these determinations.

- (2) During the extended evaluation period, VR services must be provided in the most integrated setting possible, consistent with the informed choice and rehabilitation needs of the individual.
  - (3) During the extended evaluation period, the division must develop a written plan for providing services necessary to make a determination under paragraph (e)(2)(B).
  - (4) During the extended evaluation period, the division provides only those services that are necessary to make the determinations described in paragraph (e)(2)(B) and terminates extended evaluation services when the division is able to make the determinations.
- (g) Eligibility for supported employment services shall be based on the following:
- (1) The individual is eligible for VR services in accordance with subsection (b);
  - (2) The individual meets the three criteria of a most significantly disabled individual in accordance with section 17-401.1-5;
  - (3) The individual is one for whom competitive employment has not traditionally occurred or has been interrupted or intermittent as a result of a significant disability; and
  - (4) The individual requires intensive supported employment services or extended services for a period of time not to extend beyond 18 months, unless under special circumstances the eligible individual and the VR counselor jointly agree to extend the time in order to achieve the employment outcome identified in the individualized plan for employment.
- (h) Where an applicant is known to be an alien or where there is reason to question an applicant's alien status, the applicant shall be requested to

present proper credentials or clarify status with the U.S. Immigration and Naturalization Service (INS) in order for the division to determine eligibility for services.

- (1) Immigrant aliens admitted for purposes of permanent residence who are required to register prior to arrival and must report change of address, shall be expected to comply with the duly-executed registration. Where registration has not been maintained, the division shall request the person to clear up the person's status. Where registration has been maintained, the division shall proceed with determination of eligibility.
- (2) Non-immigrant aliens admitted for a particular purpose and time period are expected to return to their country upon completion of such purpose or time period. Examples include:
  - (A) Visiting for business or pleasure;
  - (B) Crewman of vessels or aircraft;
  - (C) Students;
  - (D) Representatives of international organizations; and
  - (E) Ambassadors and career diplomatic and consular officers.
- (3) The division shall request that the individual provide documentation regarding the persons status, and whether work is permitted under conditions of the person's visa in order to determine eligibility for services. The person shall be informed that failure or refusal to provide the requested documentation can result in termination of the individual's application.
  - (A) Upon receipt of appropriate documentation of the individual's alien status indicating that work is permitted, the division shall proceed

in determining the individual's eligibility for services.

- (B) If the individual fails or refuses to provide the requested documentation, the division may terminate the individual's application for reasons other than ineligibility (e.g. failure to cooperate, refused service).
- (C) If the individual provides documentation of the individual's alien status indicating that work is not permitted, the division shall consider this documentation as clear and convincing evidence that the individual cannot benefit from VR services in terms of an employment outcome so long as the individual is not permitted to work, and is therefore ineligible for VR services.
- (D) Illegal aliens are persons present without legal status. The division shall request that the person provide proper credentials or clear identification of status in order to reach an appropriate decision.
  - (i) If the individual fails or refuses to provide the requested documentation, the division shall terminate the individual's application for reasons other than ineligibility (e.g. failure to cooperate, refused services).
  - (ii) If the individual provides documentation of legal status indicating that work is permitted, the division shall proceed in determining the individual's eligibility for services.
  - (iii) If the individual provides documentation of legal status indicating that work is not

permitted, the division shall consider this documentation as clear and convincing evidence that the individual cannot benefit from VR services in terms of an employment outcome so long as the individual is not permitted to work, and is therefore ineligible for VR services.

(i) Once an individual has submitted an application for services, provided information necessary to initiate an assessment for determining eligibility and priority for services, and is available to complete the assessment, the division must determine the individual's eligibility within sixty calendar days, unless:

- (1) Exceptional and unforeseen circumstances beyond the control of the division preclude making an eligibility determination within sixty calendar days and the individual agrees to a specific extension of time; or
- (2) The division is exploring an individual's abilities, capabilities, and capacity to perform in trial work experiences under subsection (e); or in extended evaluation under subsection (f).

(j) If the division is operating under an order of selection for services, as provided in section 17-401.1-5, the division must base its priority assignments on:

- (1) A review of the data that was developed under paragraphs (d), and (e) or (f) to make the eligibility determination; and
- (2) An assessment of additional data, to the extent necessary.

(k) Assessment services, for determining eligibility and priority for services, including assessment services under a trial work experience or extended evaluation to determine eligibility for services, are exempt from the comparable services and

benefits provisions of section 17-401.1-13 and the personal resources provisions of section 17-401.1-14.

(l) If an applicant has been determined to be an eligible individual the division shall include documentation supporting that determination in the division's record of services for the individual in accordance with this section.

(m) If an individual with a significant disability requires an exploration of abilities, capabilities, and capacity to perform in realistic work situations through the use of trial work experiences or, as appropriate, an extended evaluation to determine whether the individual is an eligible individual, documentation supporting the need for, and the plan relating to, that exploration or, as appropriate, extended evaluation and documentation regarding the periodic assessments carried out during the trial work experiences or, as appropriate, the extended evaluation, shall be included in the division's record of services for the individual.

[Eff AUG 13 2007 ] (Auth: HRS §§347-4, 348-3, 348-6; 29 U.S.C. §§705, 721, 722, 723; 34 C.F.R. §§361.42, 361.47) (Imp: HRS §§347-4, 348-3, 348-6; 29 U.S.C. §§705, 721, 722, 723; 34 C.F.R., §§361.42, 361.47)

§17-401.1-8 Determination of ineligibility. (a) When the division determines that an applicant is ineligible for VR services or determines that an individual receiving VR services under an individualized plan for employment is no longer eligible for services, the division must:

- (1) Make the determination only after providing an opportunity for full consultation with the individual or, as appropriate, with the individual's representative;
- (2) Inform the individual in writing, supplemented as necessary by other appropriate modes of communication consistent with the informed choice of the individual, of the ineligibility determination, including the reasons for

that determination, the requirements under this section, and the means by which the individual may express and seek remedy for any dissatisfaction, including the procedures for review of division personnel determinations in accordance with section 17-400.1-5;

- (3) Provide the individual with a description of services available from the Client Assistance Program of the Hawaii Disability Rights Center and information on how to contact that program;
- (4) Refer the individual:
  - (A) To other programs that are part of the One-Stop service delivery system under the Workforce Investment Act that can address the individual's training or employment-related needs; or
  - (B) To local extended employment providers if the ineligibility determination is based on a finding that the individual is incapable of achieving an employment outcome as defined in section 17-401.1-2.
- (5) Review within 12 months and annually thereafter if requested by the individual or, if appropriate, by the individual's representative any ineligibility determination that is based on a finding that the individual is incapable of achieving an employment outcome. The review need not be conducted in situations in which the individual has refused it, the individual is no longer present in the State, the individual's whereabouts are unknown, or the individual's medical condition is rapidly progressive or terminal.
  - (b) The division may not close an applicant's record of services prior to making an eligibility determination unless the applicant declines to



participate in, or is unavailable to complete, an assessment for determining eligibility and priority for services, and the division has made a reasonable number of attempts to contact the applicant or, if appropriate, the applicant's representative to encourage the applicant's participation.

(c) If an applicant or eligible individual receiving services under an IPE has been determined to be ineligible, the division shall include documentation supporting that determination in the division's record of services for the individual in accordance with the requirements of this section. If closure of the division's record of services for the individual is based on reasons other than ineligibility, the division shall include documentation that describes the reason for closure, in the division's record of services for the individual, including, as appropriate, documentation that the division has satisfied the requirements of paragraph (b). [Eff AUG 13 2007 ] (Auth: HRS §§347-4, 348-3, 348-6; 29 U.S.C. §§709, 722; 34 C.F.R. §§361.43, 361.44, 361.47) (Imp: HRS §§347-4, 348.3, 348-6; 29 U.S.C. §§709, 722; 34 C.F.R. §§361.43, 361.44, 361.47)

§17-401.1-9 Certification of eligibility or ineligibility. (a) The division shall certify on the appropriate forms developed by the division, that the basic conditions for determining eligibility or ineligibility for VR services have been met.

- (1) After or simultaneously with acceptance of an applicant for VR services, the division shall certify that the individual meets the basic eligibility requirements for VR services in accordance with section 17-401.1-7.
- (2) After or simultaneously with acceptance of an eligible individual, who is determined to be an individual with a most significant disability, for supported employment

services, the division shall certify as an addendum to the individual's certification of eligibility for VR services, that the individual meets the eligibility requirements for supported employment services in accordance with sections 17-401.1-7 and 17-401.1-31.

- (3) When an applicant for VR services fails to meet the basic eligibility requirements for VR services, or when an eligible individual receiving services under an individualized plan for employment is determined no longer capable of achieving an employment outcome due to the severity of the disability, based on clear and convincing evidence, including a demonstration of incapability following a period of trial work experience or extended evaluation, in accordance with section 17-401.1-8, the division shall certify the individual's ineligibility for VR services.

(b) The division's record of services for the individual shall contain documentation supporting the determination that an applicant or eligible individual has been determined eligible or ineligible for VR services, including the certification of eligibility or ineligibility in support of such determination.

(c) All decisions affecting eligibility or ineligibility for VR services shall be made by authorized persons of the division and not delegated to any other agency or individual. [Eff AUG 13 2007] (Auth: HRS §§347-4, 348-3, 348-6; 29 U.S.C. §§705, 722; 34 C.F.R. §§361.42, 361.43, 361.47) (Imp: HRS §§347-4, 348-3, 348-6; 29 U.S.C. §§705, 722; 34 C.F.R. §§361.42, 361.43, 361.47)

§17-401.1-10 Development of the individualized plan for employment. (a) The division shall ensure that an individualized plan for employment (IPE) meeting the requirements of this section and section 17-401.1-11 is developed and implemented in a timely manner for each individual determined to be eligible

for VR services or, if the division is operating under an order of selection in accordance with section 17-401.1-5, for each eligible individual to whom the division is able to provide services, and that services are provided in accordance with the provisions of the IPE.

(b) The division must conduct an assessment for determining VR needs, if appropriate, for each eligible individual or, if the division is operating under an order of selection, for each eligible individual to whom the division is able to provide services.

- (1) The purpose of this assessment is to determine the employment outcome, and the nature and scope of VR services to be included in the IPE.
- (2) To the extent possible, the employment outcome and the nature and scope of rehabilitation services to be included in the individual's IPE must be determined based on the data used for the assessment of eligibility and priority for services under section 17-401.1-7.
- (3) To the extent additional data are necessary to make a determination of the employment outcome and the nature and scope of VR services to be included in the IPE of an eligible individual, the division must conduct a comprehensive assessment of the unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice, including the need for supported employment services, of the eligible individual. This comprehensive assessment:
  - (A) Is limited to information that is necessary to identify the rehabilitation needs of the individual and to develop the IPE of the eligible individual;

- (B) Uses as a primary source of information to the maximum extent possible and appropriate and in accordance with confidentiality requirements:
  - (i) Existing information obtained for the purposes of determining the eligibility of the individual and assigning the priority for an order of selection described in section 17-401.1-5 for the individual; and
  - (ii) Information that can be provided by the individual and, if appropriate, by the family of the individual;
- (C) May include, to the degree needed to make such a determination, an assessment of the personality, interests, interpersonal skills, intelligence and related functional capacities, educational achievements, work experience, vocational aptitudes, personal and social adjustments, and employment opportunities of the individual and the medical, psychiatric, psychological, and other pertinent vocational, educational, cultural, social, recreational, and environmental factors that affect the employment and rehabilitation needs of the individual; and
- (D) May include, to the degree needed, an appraisal of the patterns of work behavior of the individual and services needed for the individual to acquire occupational skills and to develop work attitudes, work habits, work tolerance, and social and behavior patterns necessary for successful job performance, including the use of work in real job situations to assess and

develop the capacities of the individual to perform adequately in a work environment.

(c) The IPE must be designed to achieve a specific employment outcome as defined in section 17-401.1-2, that is selected by the individual consistent with the individual's strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice.

(d) The division must provide the following information to each eligible individual or, as appropriate, the individual's representative, in writing and, if appropriate, in the native language or mode of communication of the individual or the individual's representative:

- (1) Information on the available options for developing the IPE, including the option that an eligible individual or, as appropriate, the individual's representative may develop all or part of the IPE:
  - (A) Without assistance from the division or other entity; or
  - (B) With assistance from:
    - (i) A qualified vocational rehabilitation counselor employed by the division;
    - (ii) A qualified vocational rehabilitation counselor who is not employed by the division; or
    - (iii) Resources other than those in (i) or (ii);
- (2) Additional information to assist the eligible individual or, as appropriate, the individual's representative in developing the IPE, including:
  - (A) Information describing the full range of components that must be included in an IPE;
  - (B) As appropriate to each eligible individual:

- (i) An explanation of agency guidelines and criteria for determining an eligible individual's financial commitments under an IPE;
  - (ii) Information on the availability of assistance in completing division forms required as part of the IPE; and
  - (iii) Additional information that the eligible individual requests or the division determines to be necessary to the development of the IPE;
- (3) A description of the rights and remedies available to the individual, including, if appropriate, recourse to the processes described in section 17-400.1-5; and
- (4) A description of the availability of the Client Assistance Program of the Hawaii Disability Rights Center and information on how to contact them.
- (e) The division must ensure that:
  - (1) The IPE is a written document prepared on forms provided by the division;
  - (2) The IPE is developed and implemented in a manner that gives eligible individuals the opportunity to exercise informed choice, consistent with section 17-401.1-12 in selecting:
    - (A) The employment outcome, including the employment setting;
    - (B) The specific VR services needed to achieve the employment outcome, including the settings in which services will be provided;
    - (C) The entity or entities that will provide the VR services; and
    - (D) The methods available for procuring the services;
- (3) The IPE is:

- (A) Agreed to and signed by the eligible individual or, as appropriate, the individual's representative; and
  - (B) Approved and signed by a qualified VR counselor employed by the division;
- (4) A copy of the IPE and a copy of any amendments to the IPE are provided to the eligible individual or, as appropriate, to the individual's representative, in writing and, if appropriate, in the native language or mode of communication of the individual or, as appropriate, the individual's representative;
- (5) The IPE is reviewed at least annually by a qualified VR counselor and the eligible individual or, as appropriate, the individual's representative to assess the eligible individual's progress in achieving the identified employment outcome;
- (6) The IPE is amended, as necessary, by the individual or, as appropriate, the individual's representative, in collaboration with a representative of the division or a qualified VR counselor (to the extent determined to be appropriate by the individual), if there are substantive changes in the employment outcome, the VR services to be provided, or the providers of VR services;
- (7) Amendments to the IPE do not take effect until agreed to and signed by the eligible individual or, as appropriate, the individual's representative and by a qualified VR counselor employed by the division; and
- (8) An IPE for a student with a disability receiving special education services is developed:
- (A) In consideration of the student's IEP (individualized education program); and

(B) In accordance with the plans, policies, procedures, and terms of the interagency agreement required under section 17-400.1-13(a)(2).

(f) The division must establish and implement standards for the prompt development of IPEs for the individuals identified under subsection (a), including timelines that take into consideration the needs of the individuals.

(g) A copy of the IPE and any amendments must be included in the division's record of services for the individual.

(h) Assessment services for determining VR needs are exempt from the comparable services and benefits provisions of section 17-401.1-13 and personal resources provisions of section 17-401.1-14. [Eff

AUG 13 2007](Auth: HRS §§347-4, 348-3, 348-6; 29 U.S.C. §§705, 721, 722, 723; 34 C.F.R. §§361.5(b)(6), 361.45, 361.47) (Imp: HRS §§347-4, 348-3, 348-6; 29 U.S.C. §§705, 721, 722, 723; 34 C.F.R. §§361.5(b)(6), 361.45, 361.47)

§17-401.1-11 Content of the individualized plan for employment. (a) Regardless of the approach in section 17-401.1-10(d)(1) selected by an eligible individual for developing the IPE, each IPE must include the following mandatory components:

- (1) A description of the specific employment outcome, as defined in section 17-401.1-2, that is chosen by the eligible individual that is consistent with the individual's unique strengths, resources, priorities, concerns, abilities, capabilities, career interests, and informed choice;
- (2) A description of the specific rehabilitation services under section 17-401.1-6 that are:
  - (A) Needed to achieve the employment outcome, including, as appropriate, the provision of assistive technology devices, assistive technology services, and personal attendant services,



- including training in the management of those services; and
- (B) Provided in the most integrated setting that is appropriate for the services involved and is consistent with the informed choice of the eligible individual;
- (3) Timelines for the achievement of the employment outcome and for the initiation of services;
  - (4) A description of the entity or entities chosen by the eligible individual or, as appropriate, the individual's representative that will provide the VR services and the methods used to procure those services;
  - (5) A description of the criteria that will be used to evaluate progress toward achievement of the employment outcome; and
  - (6) The terms and conditions of the IPE, including, as appropriate, information describing:
    - (A) The responsibilities of the division;
    - (B) The responsibilities of the eligible individual, including:
      - (i) The responsibilities the individual will assume in relation to achieving the employment outcome;
      - (ii) If applicable, the extent of the individual's participation in the cost of services in accordance with section 17-401.1-14; and
      - (iii) The responsibility of the individual with regard to applying for and securing comparable services and benefits in accordance with section 17-401.1-13; and
    - (C) The responsibilities of other entities as the result of arrangements made pursuant to the comparable services or

benefits requirements in section 17-401.1-13.

(b) For an eligible individual with a most significant disability for whom an employment outcome in a supported employment setting has been determined to be appropriate, the IPE must:

- (1) Specify the supported employment services to be provided by the division;
- (2) Specify the expected extended services needed, which may include natural supports;
- (3) Identify the source of extended services or, to the extent that it is not possible to identify the source of extended services at the time the IPE is developed, include a description of the basis for concluding that there is a reasonable expectation that those sources will become available;
- (4) Provide for periodic monitoring to ensure that the individual is making satisfactory progress toward meeting the weekly work requirement established in the IPE by the time of transition to extended services;
- (5) Provide for the coordination of services provided under an IPE with services provided under other individualized plans established under other Federal or State programs;
- (6) To the extent that job skills training is provided, identify that the training will be provided on site; and
- (7) Include placement in an integrated setting for the maximum number of hours possible based on the unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice of individuals with the most significant disabilities.

(c) As determined to be necessary, the IPE for each individual must contain statements concerning:

- (1) The expected need for post-employment services prior to closing the record of

services of an individual who has achieved an employment outcome;

- (2) A description of the terms and conditions for the provision of any post-employment services; and
- (3) If appropriate, a statement of how post-employment services will be provided or arranged through other entities as the result of arrangements made pursuant to the comparable services or benefits requirements in section 17-401.1-13.

(d) The IPE for a student with a disability who is receiving special education services must be coordinated with the individualized education program (IEP) for that individual in terms of the goals, objectives, and services identified in the IEP.

(e) The decision that an individual is not capable of achieving an employment outcome and is no longer eligible to receive services under an IPE shall be made in accordance with the requirements in section 17-401.1-8. The decision, and the reasons on which the decision is based, must be included as an amendment to the IPE.

(f) A copy of the IPE and any amendments, consistent with the requirements of this section, shall be filed in the division's record of services for the individual.

(g) In the event that an individual's IPE provides for VR services in a non-integrated setting, the division's record of services for the individual shall include a justification to support the need for the non-integrated setting. [Eff [AUG 13 2007](#) ]  
(Auth: HRS §§347-4, 348-3, 348-6; 29 U.S.C. §§721, 722, 795; 34 C.F.R. §§361.46, 361.47) (Imp: HRS §§347-4, 348-3, 348-6; 29 U.S.C. §§721, 722, 795; 34 C.F.R. §361.46, 361.47)

§17-401.1-12 Opportunity to exercise informed choice. (a) All applicants and eligible individuals or, as appropriate, their representatives shall be provided information concerning the availability of,

and opportunities to exercise informed choice, including the availability of support services for individuals with cognitive or other disabilities who require assistance in exercising informed choice, to assist them in exercising informed choice throughout the rehabilitation process consistent with section 102(d) of the Rehabilitation Act, as amended, and the requirements of this section.

(b) The division, in consultation with the State Rehabilitation Council, must develop and implement written policies and procedures that enable an applicant or eligible individual to exercise informed choice throughout the VR process. These policies and procedures must provide for:

- (1) Informing each applicant and eligible individual (including students with disabilities who are making the transition from programs under the department of education to programs under the division), through appropriate modes of communication, about the availability of and opportunities to exercise informed choice, including support services for individuals with cognitive or other disabilities who require assistance in exercising informed choice throughout the VR process;
- (2) Assisting applicants and eligible individuals in exercising informed choice in decisions related to the provision of assessment services;
- (3) Developing and implementing flexible procurement policies and methods that facilitate the provision of VR services and that afford eligible individuals meaningful choices among the methods used to procure VR services;
- (4) Assisting eligible individuals or, as appropriate, the individuals' representatives in acquiring information that enables them to exercise informed

choice in the development of their IPEs with respect to the selection of the:

- (A) Employment outcome;
- (B) Specific VR services needed to achieve the employment outcome;
- (C) Entity that will provide the services;
- (D) Employment setting and the settings in which the services will be provided;
- (E) Methods available for procuring the services; and
- (F) Ensuring that the availability and scope of informed choice is consistent with the obligations of the division.

(c) In assisting an applicant or eligible individual in exercising informed choice during the assessment for determining eligibility and VR needs and during development of the IPE, the division must provide the individual or the individual's representative, or assist the individual or the individual's representative in acquiring, information necessary to make an informed choice about the specific VR services including the providers of those services, that are needed to achieve the individual's employment outcome. This information must include, at a minimum, information relating to the:

- (1) Cost, accessibility, and duration of potential services;
- (2) Consumer satisfaction with those services to the extent that information relating to consumer satisfaction is available;
- (3) Qualifications of potential service providers;
- (4) Types of services offered by the potential providers;
- (5) Degree to which services are provided in integrated settings; and
- (6) Outcomes achieved by individuals working with service providers, to the extent that such information is available.

(d) In providing or assisting the individual or the individual's representative in acquiring the

information required under subsection (c), the division may use, but is not limited to, the following methods or sources of information:

- (1) Lists of services and service providers.
- (2) Periodic consumer satisfaction surveys and reports.
- (3) Referrals to other consumers, consumer groups, or disability advisory councils qualified to discuss the services or service providers.
- (4) Relevant accreditation, certification, or other information relating to the qualifications of service providers.
- (5) Opportunities for individuals to visit or experience various work and service provider settings.

(e) The division shall include in the division's record of services for the individual, documentation describing the extent to which the applicant or eligible individual exercised informed choice regarding:

- (1) The provision of assessment services; and
- (2) The extent to which the eligible individual exercised informed choice in the development of the IPE with respect to:
  - (A) The selection of the specific employment outcome;
  - (B) The specific VR services needed to achieve the employment outcome;
  - (C) The entity to provide the services;
  - (D) The employment setting;
  - (E) The settings in which the services will be provided; and
  - (F) The methods to procure the services.  
[Eff AUG 13 2007 ] (Auth: HRS §§347-4, 348-3, 348-6; 29 U.S.C. §§709, 721, 722; 34 C.F.R. §§361.47, 361.52)  
(Imp: HRS §§347-4, 348-3, 348-6; 29 U.S.C. §§709, 721, 722; 34 C.F.R. §§361.47, 361.52)

§17-401.1-13 Use of comparable services and benefits. (a) The division must assure that prior to providing any VR services, except those services listed in subsection (b), to an eligible individual, or to members of the individual's family, the division must determine whether comparable services and benefits, as defined in section 17-401.1-2, exist under any other program and whether those services and benefits are available to the individual unless such a determination would interrupt or delay:

- (1) The progress of the individual toward achieving the employment outcome identified in the IPE;
- (2) An immediate job placement; or
- (3) The provision of VR services to an individual who is determined to be at extreme medical risk, based on medical evidence provided by an appropriate qualified medical professional.

(b) The following VR services described in section 17-401.1-6 are exempt from a determination of the availability of comparable services and benefits under subsection (a):

- (1) Assessment for determining eligibility and priority for services.
- (2) Assessment for determining VR needs.
- (3) VR counseling and guidance, including information and support services to assist an individual in exercising informed choice.
- (4) Referral and other services to secure needed services from other agencies, including other components of the statewide workforce investment system, if those services are not available under this part.
- (5) Job-related services, including job search and placement assistance, job retention services, follow-up services, and follow-along services.
- (6) Rehabilitation technology, including telecommunications, sensory, and other technological aids and devices.

- (7) Specific post-employment services consisting of the above services (1) through (6).
- (c) Comparable services and benefits means services and benefits that are:
  - (1) Provided or paid for, in whole or part, by other Federal, State, or local public agencies, by health insurance, or by employee benefits;
  - (2) Available to the individual at the time needed to ensure the progress of the individual toward achieving the employment outcome in the individual's IPE in accordance with this section; and
  - (3) Commensurate to the services that the individual would otherwise receive from the division.
- (d) If comparable services or benefits exist under any other program, the division must provide services, in accordance with the following:
  - (1) If comparable services or benefits exist under any other program and are available to the individual at the time needed to ensure the progress of the individual toward achieving the employment outcome in the individual's IPE, the division must use those comparable services and benefits to meet, in whole or part, the costs of the VR services.
  - (2) If comparable services or benefits exist under any other program, but are not available to the individual at the time needed to ensure the progress of the individual toward achieving the employment outcome in the individual's IPE, the division must provide VR services until those comparable services and benefits become available.
- (e) The division shall not use VR funds to pay for services which require full consideration of comparable services and benefits if the individual refuses to apply for or accept services from another



agency as other resources for which the individual may be eligible.

(f) Applicants in a trial work experience or extended evaluation, and individuals in post-employment status shall use comparable services and benefits on the same bases as eligible individuals.

(g) If any advanced payment for services by the division or any benefit award results in a duplication of payment as a consequence of the individual receiving other comparable services and benefits, the portion advanced by the division shall be refunded.

(h) The division must assure that the following requirements for interagency coordination are developed and implemented:

- (1) The State plan must assure that the division, in consultation with other appropriate agencies, and with the Governor's assurance, if necessary, will effect an interagency agreement or other mechanism for interagency coordination between the division and any appropriate public entity, including the State entity responsible for administering the State medicaid program, a public institution of higher education, and a component of the statewide workforce investment system, to ensure the provision of VR services (other than those services listed in subsection (b)) that are included in the IPE, including the provision of those VR services during the pendency of any interagency dispute in accordance with the provisions of paragraph (3)(C).
- (2) The requirements of paragraph (1) may be met through:
  - (A) A State statute or regulation;
  - (B) A signed agreement between the respective officials of the public entities that clearly identifies the responsibilities of each public entity for the provision of the services; or

- (C) Another appropriate mechanism as determined by the division.
- (3) The interagency agreement or other mechanism for interagency coordination must include the following:
  - (A) An identification of, or description of a method for defining, the financial responsibility of the public entity for providing the VR services other than those listed in subsection (b) and a provision stating the financial responsibility of the public entity for providing those services.
  - (B) Information specifying the conditions, terms, and procedures under which the division must be reimbursed by the other public entities for providing VR services based on the terms of the interagency agreement or other mechanism for interagency coordination.
  - (C) Information specifying procedures for resolving interagency disputes under the interagency agreement or other mechanism for interagency coordination, including procedures under which the division may initiate proceedings to secure reimbursements from other public entities or otherwise implement the provisions of the agreement or mechanism.
  - (D) Information specifying policies and procedures for public entities to determine and identify interagency coordination responsibilities of each public entity to promote the coordination and timely delivery of VR services other than those listed in subsection (b).
    - (i) The following responsibilities apply to other public entities under other law:

- (1) If a public entity (other than the division) is obligated under Federal law (such as the Americans with Disabilities Act, section 504 of the Act, or section 188 of the Workforce Investment Act) or State law, or assigned responsibility under State policy or an interagency agreement established under this section, to provide or pay for any services considered to be VR services (e.g., interpreter services under section 17-401.1-6, other than those listed in subsection (b)), the public entity must fulfill that obligation or responsibility through:
  - (A) The terms of the interagency agreement or other requirements of this section;
  - (B) Providing or paying for the service directly or by contract; or
  - (C) Other arrangement.
- (2) If a public entity other than the division fails to provide or pay for VR services for an eligible individual as established under this section, the division must provide or pay for those services to the individual and may claim reimbursement for the services from the public entity that failed to provide or pay for those services. The public entity must reimburse the division pursuant to the terms of the interagency agreement or other mechanism described in subsection (h) in accordance with the procedures established in the agreement or mechanism pursuant to paragraph (h)(3)(B). [Eff AUG 13 2007 ] (Auth: HRS §§347-4, 348-3, 348-6; 29 U.S.C. §§709, 721; 34 C.F.R. §361.53) (Imp: HRS §§347-4, 348-3, 348-6; 29 U.S.C. §§709, 721; 34 C.F.R. §361.53)

§17-401.1-14 Use of personal resources. (a) The division shall determine the financial status of applicants and eligible individuals for purposes of

determining the extent of their participation in the cost of the following VR services described in section 17-401.1-6, other than those services exempted under subsection (c).

(b) The following VR services are subject to the financial needs test defined in (d)(6) and may be provided only after the division has determined the individual's ability to participate in the cost of the services:

- (1) Diagnosis and treatment of physical and mental impairments (physical and mental restoration services), as defined in section 17-401.1-2 and in accordance with section 17-401.1-18.
- (2) Vocational and other training services, including personal and vocational adjustment training, books, tools, and other training materials as defined in section 17-401.1-6 and in accordance with section 17-401.1-19. No training or training services in an institution of higher education (universities, colleges, community or junior colleges, vocational schools, technical institutes, or hospital schools of nursing) may be paid for with funds under this section unless maximum efforts have been made by the division and the individual to secure grant assistance in whole or part from other sources to pay for that training.
- (3) Maintenance, as defined in section 17-401.1-2 and in accordance with section 17-401.1-23.
- (4) Transportation, as defined in section 17-401.1-2 and in accordance with section 17-401.1-27.
- (5) Vocational rehabilitation services to family members, as defined in section 17-401.1-2 and in accordance with section 17-401.1-22.
- (6) Supported employment services, as defined in section 17-401.1-2 and in accordance with section 17-401.1-31.

- (7) Occupational licenses, tools, equipment, initial stocks, and supplies, in accordance with section 17-401.1-26.
  - (8) Rehabilitation technology services as defined in section 17-401.1-2 and in accordance with section 17-401.28.
  - (9) Transition services, as defined in section 17-401.1-2 and in accordance with section 17-401.1-29.
  - (10) Technical assistance and other consultation services to conduct market analyses, develop business plans, and otherwise provide resources, to the extent those resources are authorized to be provided through the statewide workforce investment system, to eligible individuals who are pursuing self-employment or telecommuting or establishing a small business operation as an employment outcome, in accordance with section 17-401.1-32.
  - (11) Other goods and services determined necessary for the individual with a disability to achieve an employment outcome in accordance with section 17-401.1-33.
  - (12) Specific post-employment services consisting of the above services (1) through (10).
- (c) The division shall not apply the financial needs test, or require the financial participation of the individual:
- (1) As a condition for furnishing the following VR services:
    - (A) Assessment for determining eligibility and priority for services, except those non-assessment services that are provided to an individual with a significant disability during either an exploration of the individual's abilities, capabilities, and capacity to perform in work situations through the use of trial work experiences under section 17-401.1-7(e), or an extended

- evaluation under section 17-401.1-7(f).
- (B) Assessment for determining VR needs under section 17-401.1-10(b).
  - (C) Vocational rehabilitation counseling and guidance.
  - (D) Referral and other services.
  - (E) Job-related services.
  - (F) On-the-job and other related personal attendant services.
  - (G) Any auxiliary aid or service (e.g., interpreter services under section 17-401.1-6(10), reader services under section 17-401.1-6(11)) that an individual with a disability requires under section 504 of the Act or the Americans with Disabilities Act, or regulations implementing those laws, in order for the individual to participate in the VR program.
  - (H) Specific post-employment services consisting of the above services (A) through (G); or
- (2) As a condition for furnishing any VR service if the individual in need of the service has been determined eligible for Social Security benefits under titles II or XVI of the Social Security Act.
- (d) The division shall determine the financial status of applicants or eligible individuals, as follows:
- (1) The individual or, as appropriate, the individual's representative shall be the primary source of information about the individual's financial circumstances and needs. This may be supplemented by information from other reliable sources with the consent of the individual or, as appropriate, the individual's representative.
  - (2) It must be applied uniformly to all individuals in similar circumstances and

- within each geographic region.
- (3) It shall not apply to individuals receiving public financial assistance, or Social Security benefits under title II or XVI of the Social Security Act because they are already qualified by more stringent needs test.
  - (4) It shall be a quick inventory of the individual's assets, income, and expenses, including the individual's guardian or family, as appropriate, and a determination of net monthly income considerable for rehabilitation completed by the individual or, as appropriate, the individual's representative, using the division's determination of financial status form.
  - (5) The level of an individual's participation in the cost of VR services shall be reasonable, based on the individual's financial needs, including consideration of any disability-related expenses paid by the individual, and not so high as to effectively deny the individual a necessary service.
  - (6) The financial needs test shall consist of the following:
    - (A) Identification of resources including consequential resources comprising of current income, savings, or resources of responsible parents, guardians, or private parties, including but not limited to pensions;
    - (B) Assessment of the individual's obligations and living requirements;
    - (C) Determination of kind and amount of net resources which are available for the rehabilitation program;
    - (D) Maintenance for expenses such as food, shelter, and clothing, that are in excess of the normal expenses of the individual and that are necessitated by

- the individual's participation in a program of VR services;
- (E) Determination of available resources to be used considering the situation and circumstances of the individual;
  - (F) Identification of resources to disregard after review, documentation, and discussion to provide basis and justification for costs over and above normal costs due to special food or diet requirements, and other unusual and demonstrated circumstances or needs; and
  - (G) Determination of supplementation by the division to meet the costs of the individual's rehabilitation program based on the difference between the total cost of services and the amount of the individual's resources, plus available comparable benefits, and limitations in the division's supplementation by established fee schedules.

(e) The division shall not use VR funds to pay for services covered by the financial needs test if the individual refuses to provide information necessary to determine the individual's financial status, or refuses to consider or use available personal or family resources to meet the costs of such services.

(f) Applicants in a trial work experience or extended evaluation, and individuals in post-employment status shall use personal resources on the same basis as eligible individuals. [Eff [AUG 13 2007](#) ] (Auth: HRS §§347-4, 348-3, 348-6; 29 U.S.C. §709; 34 C.F.R. §361.54) (Imp: HRS §§347-4, 348-3, 348-6; 29 U.S.C. §709; 34 C.F.R. §361.54)

§17-401.1-15 Annual reviews. (a) The division shall conduct an annual review and reevaluation in accordance with the requirements in subsection (b) for



an individual with a disability served under this chapter:

- (1) Who has achieved an employment outcome in which the individual is compensated in accordance with section 14(c) of the Fair Labor Standards Act; or
  - (2) Whose record of services is closed while the individual is in extended employment on the basis that the individual is unable to achieve an employment outcome as defined in section 17-401.1-2 or that the individual made an informed choice to remain in extended employment.
- (b) For each individual with a disability who meets the criteria in subsection (a), the division must:
- (1) Annually review and reevaluate the status of each individual for two years after the individual's record of services is closed (and thereafter if requested by the individual or, if appropriate, the individual's representative) to determine the interests, priorities, and needs of the individual with respect to competitive employment or training for competitive employment;
  - (2) Enable the individual or, if appropriate, the individual's representative to provide input into the review and reevaluation and must document that input in the record of services, consistent with section 17-401.1-34(a)(10), with the individual's or, as appropriate, the individual's representative's signed acknowledgement that the review and reevaluation have been conducted; and
  - (3) Make maximum efforts, including identifying and providing VR services, reasonable accommodations, and other necessary support services, to assist the individual engaging in competitive employment as defined in

section 17-401.1-2. [Eff AUG 13 2007 ]  
(Auth: HRS §§347-4, 348-3, 348-6; 29 U.S.C.  
§§709, 721; 34 C.F.R. §361.55) (Imp: HRS  
§§347-4, 348-3, 348-6; 29 U.S.C. §§709, 721;  
34 C.F.R. §361.55)

§17-401-1-16 Vocational rehabilitation  
counseling and guidance services. (a) Vocational  
rehabilitation (VR) counseling and guidance services  
means discrete, therapeutic counseling and guidance  
services including:

- (1) Personal adjustment counseling;
- (2) Counseling that addresses medical, family,  
or social issues;
- (3) Vocational counseling;
- (4) Information and support services to assist  
an individual in exercising informed choice  
consistent with section 17-401.1-12; and
- (5) Any other form of counseling and guidance  
that is necessary for an individual with a  
disability to achieve an employment outcome,  
other than the general supportive counseling  
and guidance role that the VR counselor  
performs throughout the rehabilitation  
process in connection with any service.

(b) VR counseling and guidance services shall be  
provided when necessary to address and overcome issues  
and barriers to achieving an employment outcome,  
confronted by an applicant or eligible individual  
seeking employment, to enable the individual to  
prepare for, secure, retain, or regain an employment  
outcome consistent with the individual's strengths,  
resources, priorities, concerns, abilities,  
capabilities, interests, and informed choice. Issues  
and barriers include:

- (1) Issues associated with adjusting to  
environmental barriers.
  - (2) Medical issues.
  - (3) Family and social issues.
  - (4) Other related issues.
- (c) VR counseling and guidance services do not

include the general supportive role that the VR counselor performs throughout the rehabilitation process in connection with any service.

(d) VR counseling and guidance services are exempt from consideration under the use of comparable services and benefits provisions of section 17-401.1-13, and the use of personal resources (financial needs test) provisions of section 17-401.1-14. [Eff [AUG 13 2007](#) ] (Auth: HRS §§347-4, 348-3, 348-6; 29 U.S.C. §§709, 723; 34 C.F.R. §361.50) (Imp: HRS §§347-4, 348-3, 348-6; 29 U.S.C. §§709, 723; 34 C.F.R. §361.50)

§17-401.1-17 Referral and other services. (a) As appropriate, the division shall provide referral and other services necessary to assist applicants and eligible individuals to secure needed services from other agencies, including other components of the statewide workforce investment system, in accordance with sections 17-400.1-14, 17-400.1-15, 17-400.1-16 and 17-401.1-3.

(b) Referral services are exempt from consideration under the use of comparable services and benefits provisions of section 17-401.1-13 and the use of personal resources (financial needs test) provisions of section 17-401.1-14. [Eff [AUG 13 2007](#) ] (Auth: HRS §§347-4, 348-3, 348-6, 348-7; 29 U.S.C. §§709, 723; 34 C.F.R. §§361.48, 361.50) (Imp: HRS §§347-4, 348-3, 348-6, 348-7; 29 U.S.C. §§709, 723; 34 C.F.R. §§361.48, 361.50)

§17-401.1-18 Diagnosis and treatment of physical and mental impairments. (a) Diagnosis and treatment services (physical and mental restoration services) include:

- (1) Corrective surgery or therapeutic treatment that is likely, within a reasonable period of time, to correct or modify substantially a stable or slowly progressive physical or mental impairment that constitutes a substantial impediment to employment;

- (2) Diagnosis of and treatment for mental or emotional disorders by qualified personnel in accordance with State licensure laws;
- (3) Dentistry;
- (4) Nursing services;
- (5) Necessary hospitalization (either inpatient or outpatient care) in connection with surgery or treatment and clinic services;
- (6) Drugs and supplies;
- (7) Prosthetic and orthotic devices;
- (8) Eyeglasses and visual services, including visual training, and the examination and services necessary for the prescription and provision of eyeglasses, contact lenses, microscopic lenses, telescopic lenses, and other special visual aids prescribed by personnel that are qualified in accordance with State licensure laws;
- (9) Podiatry;
- (10) Physical therapy;
- (11) Occupational therapy;
- (12) Speech or hearing therapy;
- (13) Mental health services;
- (14) Treatment of either acute or chronic medical complications and emergencies that are associated with or arise out of the provision of physical and mental restoration services, or that are inherent in the condition under treatment;
- (15) Special services for the treatment of individuals with end-stage renal disease, including transplantation, dialysis, artificial kidneys, and supplies; and
- (16) Other medical or medically related rehabilitation services.

(b) Diagnosis and treatment services shall be provided when necessary to correct or modify substantially, within a reasonable period of time, a stable or slowly progressive physical or mental impairment that constitutes a substantial impediment to employment, to enable an eligible individual to

prepare for, secure, retain, or regain an employment outcome that is consistent with the individual's strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice.

(c) Diagnosis and treatment services shall be provided in accordance with the definition in subsection (a), and the following:

- (1) The individual must be eligible for VR services;
- (2) The services must be provided as part of a planned program of vocational rehabilitation in accordance with the individual's IPE;
- (3) Choice of physician, dentist, therapist and other service providers, as appropriate to the needs of the eligible individual, shall be governed by the following:
  - (A) The eligible individual's family physician, specialist, or service provider may be used when they meet the division's standards for the service in question and is the choice of the individual or, as appropriate, the individual's representative.
  - (B) Where the eligible individual's service provider of choice is not available, or when the eligible individual does not have a preferred service provider, the individual shall be offered a choice from among those providers who meet the division's standards for the particular services needed, in accordance with sections 17-400.1-10 and 17-401.1-12.
  - (C) Under certain circumstances where examinations and reports by qualified resource persons are difficult to obtain, the division's medical consultant may provide necessary services.
  - (D) Where an eligible individual is or previously was a private patient of the division's medical consultant, such

status shall not in any way influence or prejudice the current service to be provided to the individual by the consultant at the division's request.

- (4) The determination that corrective surgery or therapeutic treatment is likely, within a reasonable period of time, to correct or modify substantially a stable or slowly progressive physical or mental impairment shall be based on such factors as the expected period of employability after treatment, and the expected effect the treatment will have in substantially improving the individual's employability.
- (5) The division's medical consultant shall review all authorizations for diagnostic and treatment services.
- (6) Before or simultaneously with the purchase of diagnostic or treatment services, the division shall authorize such services in writing and shall retain a record of such authorization, in accordance with sections 17-400.1-10 and 17-400.1-11.
- (7) Diagnosis and treatment services are subject to the use of comparable services and benefits provisions of section 17-401.1-13 and the use of personal resources (financial needs test) provisions of section 17-401.1-14.

(d) Diagnosis and treatment of acute and transitory conditions not related to a diagnosed disability, such as injuries or illnesses of thirty days duration or less, including but not limited to accidental fractures of a temporary nature, acute appendicitis, and upper respiratory infections, is not allowed.

- (1) All eligible individuals shall be informed that the division will not pay for diagnosis and treatment of acute and transitory conditions not related to the individual's diagnosed disabilities.

- (2) All eligible individuals shall be encouraged to apply for medical insurance to address their needs. Referral services shall be provided to assist them in applying for medical insurance, in accordance with section 17-401.1-17.

(e) The division administrator shall be responsible for all matters pertaining to fees charged the division for goods and services purchased in the administration of the VR program. [Eff AUG 13 2007 ] (Auth: HRS §§347-4, 348-3, 348-6; 29 U.S.C. §§709. 723; 34 C.F.R. 361.50) (Imp: HRS §§347-4, 348-3, 348-6; 29 U.S.C. §§709, 723; 34 C.F.R. §361.50)

§17-401.1-19 Vocational and other training services. (a) Vocational and other training services includes personal and vocational adjustment training, books, tools, and other training materials, except that no training or training services in an institution of higher education (universities, colleges, community or junior colleges, vocational schools, technical institutes, or hospital schools of nursing) may be paid for unless maximum efforts have been made by the division and the individual to secure grant assistance in whole or in part from other sources to pay for that training.

- (1) Vocational training includes any organized form of instruction which provides the knowledge and skills that are essential in performing the tasks involved in an occupation.

(A) College or university training may be provided to eligible individuals who have demonstrated through their high school records and college entrance examinations their ability to pursue such training.

- (i) Only accredited colleges and universities shall be used.
- (ii) State-supported schools of higher learning are preferred. However,

private colleges may be used provided that the tuition paid by the division does not exceed the fees charged to residents by a State-supported college or university or when comparable training is not available in a public institution.

- (iii) Maximum efforts shall be made by the division to secure grant assistance, in whole or part, from other sources to pay for training services in institutions of higher education, before using VR funds. Maximum effort means that each eligible individual to be provided such training shall be required to apply for and accept grant assistance from the prospective institution. If the individual refuses to apply for or accept such services for which the individual might be eligible, the division shall not use VR funds to pay for such services.
- (B) Community colleges and vocational training at accredited community colleges may be provided. Maximum efforts to secure grant assistance as described in subparagraph (A)(iii) shall be made by the division before VR funds are used to pay for these services.
- (C) Private business and technical trade schools may be used under the following conditions:
  - (i) Public institutions shall be used except when comparable training is not available in such public institutions;



- (ii) Only private business and technical trade schools, which meet State certification or licensing requirements shall be used;
  - (iii) Satisfactory performance according to established school standards shall be required of all trainees; and
  - (iv) Periodic evaluation of progress and counseling as needed shall be provided to assure maximum success of individuals in training.
- (D) Tutorial training consisting of individual instructions given on a one-to-one basis, of specific subjects or areas which are related to a vocational course or to an employment outcome, may be provided.
- (i) It may include private lessons as part of a personal adjustment plan, such as lip-reading or speech training;
  - (ii) Tutors shall be selected who are qualified by license, certification, or evidence of professional or technical skill to teach the specific subject for which the tutor is hired; and
  - (iii) Payment to a tutor shall be commensurate with prevailing wages for similar instruction in the community.
- (E) On-the-job training (OJT) by private businesses, potential employers, and other profit making organizations shall be based on the ability of such entities to provide instructional services by an individual with trade competency and experience in training other workers in the operations to be

performed. The following factors shall be defined, as appropriate, prior to implementing an OJT:

- (i) Employment outcome;
  - (ii) Training subject, topics, skills, and knowledge of objectives;
  - (iii) Length of training and fees if any;
  - (iv) Pay for the trainee;
  - (v) Necessary tools, manuals, supplies;
  - (vi) Progress reports; and
  - (vii) Employment requirements such as level of proficiency or skill.
- (2) Community rehabilitation programs which are certified by the commission for accreditation of rehabilitation facilities shall be given preference for providing evaluation, training, and other services for applicants and eligible individuals of the division.
- (3) Personal adjustment training includes training given for any one or a combination of the following reasons:
- (A) To assist the individual to acquire personal habits, attitudes, and skills that will enable the individual to function effectively in employment, in spite of the individual's disability;
  - (B) To develop or increase work tolerance before engaging in prevocational or vocational training or in employment;
  - (C) To develop work habits and to orient the individual to the work world; and
  - (D) To provide skills or techniques for the specific purpose of enabling the individual to compensate for the loss of a member of the body or the loss of a sensory function.
- (4) Prevocational training includes any form of academic or basic training given to acquire

background knowledge of skills, prerequisite or preparatory to vocational training, or to employment, where the primary occupational knowledge and skills are learned on the job.

- (5) Training materials include books, supplies, and tools.
  - (A) Training materials shall be limited to the kind and amount needed to enable the individual to participate in a training program consistent with the individual's chosen employment outcome.
  - (B) Training materials provided to eligible individuals shall be of a quality equal to that normally used by other students in the same course and as specified by the trainer for all trainees.
  - (C) Exceptions may be made when special materials or equipment are needed as a reasonable accommodation to compensate for a disabling condition, such as braille, typewriters, or tape recorders for blind persons.

(b) Vocational and other training services shall be provided when necessary to equip an eligible individual with the skills needed to assist the individual in preparing for, securing, retaining, or regaining an employment outcome that is consistent with the individual's strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice.

(c) Vocational and other training services shall be provided in accordance with subsection (a) and the following requirements:

- (1) The individual must be eligible for VR services.
- (2) The services must be provided as part of a planned program of vocational rehabilitation in accordance with the individual's IPE.
- (3) Training shall be limited to the type and time needed to equip the individual with skills necessary to enable the individual to

- achieve the employment outcome selected by the individual.
- (4) Selection of training, training facilities, and personnel shall be in accordance with the following:
    - (A) Training shall be consistent with the employment outcome chosen by the individual and the assessment for determining VR needs of the individual.
    - (B) Training facilities shall meet applicable accreditation, licensing or certification requirements in accordance with subsection (c).
    - (C) Individuals providing specialized training such as tutorial, on-the-job, personal adjustment, or other services shall be selected and used when investigation reveals that they are the best-qualified persons available for the specific training or service needed and have adequate instructional equipment.
    - (D) The individual or, as appropriate, the individual's representative shall be given opportunity to make informed choices in the selection of training services, training facilities and personnel in accordance with this section and section 17-401.1-12.
  - (5) Rates of payment shall be in accordance with section 17-400.1-10 (standards of services), section 17-400.1-11 (administration of funds), section 17-401.1-13 (use of comparable services and benefits), section 17-401.1-14 (use of personal resources), and the following requirements:
    - (A) The division shall pay a training facility or person for services purchased for eligible individuals, at a rate not to exceed that published by

- the facility for the type of training purchased.
- (B) For facilities or persons without published rates, payment shall be comparable with the amounts charged by other public agencies for similar services.
- (6) Training available within the State shall take precedence over other comparable training out-of-State. Out-of-State training may be considered only if all of the following conditions are met:
- (A) The individual has sufficient good health, capabilities, emotional stability and reliability to pursue training with minimal supervision and assistance;
  - (B) Suitable facilities and courses are not available within the State;
  - (C) Alternate courses are not sufficient to provide equivalent training;
  - (D) Alternate goals have been fully explored;
  - (E) Training is needed to attain the individual's chosen employment outcome;
  - (F) Out-of-State training institution or facility meets all standards applicable to State facilities;
  - (G) The cost of such training does not exceed that which is available in the State; and
  - (H) The individual and the individual's family are able and willing to pay for extra costs which shall not be paid by the division if similar training is available in the State. "Extra costs" may be the result of the following factors:
    - (i) Non-resident tuition and fees charged by the out-of-State training institution;

- (ii) Services not necessary for local training is necessary due to out-of-State situation; and
  - (iii) Out-of-State costs for comparable services are greater than local costs.
- (7) Eligible individuals, considered "non-residents" by the State universities and other training institutions, who are eligible for VR services, shall be eligible for tuition and other costs up to the amounts allowed for "resident" students.
- (8) Related costs for training such as transportation and clothing shall be allowed only up to amounts equal to amounts necessary locally and in keeping with the division's policies on transportation, maintenance, and other services. Should an individual who is considered a "non-resident" by local institutions choose to return to the individual's home state or any other state, no provision for transportation or training shall be allowed by the division.
- (9) All responsibilities, agreed upon by the individual with the division relative to training, shall be documented in the individual's IPE.
- (10) Satisfactory performance according to established school or training facility standards shall be required of all individuals in school or training. Periodic evaluation of progress and counseling shall be provided at appropriate intervals to determine the feasibility of continuance and need for changes. The following requirements shall be generally applied to all individuals enrolled in institutions of higher education:
  - (A) The individual shall carry a minimum of twelve credit hours per semester in

required and elective courses relating to the individual's employment outcome. An exception may be made when the individual's disability permits only part-time training provided that the individual's employment outcome and rehabilitation is considered attainable after training is completed.

- (B) A cumulative grade point average of at least 2.0 shall be maintained.
  - (C) An individual falling below the grade point average of 2.0 may be carried one additional semester on probation to attempt to raise the grade point to at least 2.0.
  - (D) An individual on probation shall consider alternatives such as the following during a probationary period:
    - (i) Change in the employment outcome to a more suitable field within the individual's capacities;
    - (ii) A change in status to part-time under the conditions in paragraph (1), if applicable; or
    - (iii) Termination of the training plan.
- (11) Vocational and other training services are subject to the use of comparable services and benefits provisions of section 17-401.1-13 and the use of personal resources (financial needs test) provisions of section 17-401.1-14. [Eff [AUG 13 2007](#) ] (Auth: HRS §§347-4, 348-3, 348-6; 29 U.S.C. §§709, 723; 34 C.F.R. §361.50) (Imp: HRS §§347-4, 348-3, 348-6; 29 U.S.C. §§709, 723; 34 C.F.R. §361.50)

§17-401.1-20 Job-related services. (a) Job-related services include:

- (1) Job readiness activities consisting of assessment and preparation of the individual in terms of job search skills, job interview

- skills, resume preparation, appropriate work attitudes and habits, and understanding of employer expectations.
- (2) Job development information obtained by the VR counselor which consists of a working knowledge of the local job market, requirements of specific jobs, local employer expectations, rapport and relationships with prospective employers, identification of employment opportunities for individuals with disabilities, and commitments of employers to provide opportunities for individuals with disabilities.
  - (3) Job placement by the VR counselor, relating to a specific employer to secure a select job for a specific individual. It includes such activities as job matching, job accommodations, job application and the interview process, on-the-job training negotiation, clarifying conditions, requirements and expectations of the job and other concerns critical to the enhancement of job success.
  - (4) Job follow-up and follow-along services provided, to the extent needed, by the VR counselor to assure the success and performance of the individual in the job placement. Follow-up and follow-along services deal with;
    - (A) The individual's performance;
    - (B) Adjustment to the job, supervisor, and co-workers;
    - (C) Safety and health factors;
    - (D) Needed interventions for emerging problems;
    - (E) Assisting employers in understanding and accommodating the individual; and
    - (F) Assuring the stability and permanence of the job placement.
- (b) Job-related services shall be provided when



necessary to assist an eligible individual in securing, retaining, or regaining an employment outcome that is consistent with the individual's strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice. Employment outcome means, with respect to the individual:

- (1) Entering or retaining full-time or, if appropriate, part-time competitive employment as defined in section 17-401.1-2, in the integrated labor market;
- (2) Supported employment; or
- (3) Any other type of employment in an integrated setting, including self-employment, telecommuting, or business ownership, that is consistent with an individual's strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice.

(c) As appropriate to the needs of the individual and consistent with the individual's informed choice in accordance with section 17-401.1-12, the VR counselor may enlist the cooperation and participation of individuals, groups, and agencies in providing job-related services, but ultimate responsibility cannot be delegated.

(d) Job-related services are exempt from the use of comparable services and benefits provisions of section 17-401.13, and the use of personal resources provisions of section 17-401.1-14. [Eff [AUG 13 2007](#) ] (Auth: HRS §§347-4, 348-3, 348-6; 29 U.S.C. §§709, 723; 34 C.F.R. §361.50) (Imp: HRS §§347-4, 348-3, 348-6; 29 U.S.C. §§709, 723; 34 C.F.R. §361.50)

§17-401.1-21 Specific post-employment services.

(a) Post-employment services, as defined in section 17-401.1-2 are one or more of the specific services identified in section 17-401.1-6 that are provided subsequent to the achievement of an employment outcome

that are necessary for an eligible individual to maintain, regain, or advance in employment that is consistent with the individual's strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice.

(b) Specific post-employment services shall only be provided to individuals who have achieved an employment outcome, under an amended IPE, when the individual requires specific post-employment service to maintain, regain, or advance in employment. The following are examples of when these services may be needed:

- (1) An individual's employment is jeopardized because of conflicts with supervisors or co-workers, and the individual needs mental health and counseling services to maintain the employment.
- (2) An individual's job is eliminated through reorganization and new placement services are needed.
- (3) An individual's employment is no longer consistent with the individual's strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice.

(c) Specific post-employment services are intended to ensure that the employment outcome remains consistent with the individual's strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice.

(d) Specific post-employment services shall be available to meet rehabilitation needs that do not require a complex and comprehensive provision of services and, thus, shall be limited in scope and duration. If more comprehensive services are required, then a new rehabilitation effort shall be considered.

(e) The need for specific post-employment services must be determined during the development and amendment of the IPE, and prior to case closure when the individual has achieved an employment outcome.

- (1) The IPE for each individual determined eligible must contain, as determined to be necessary, statements concerning:
  - (A) The expected need for post-employment services prior to closing the record of services of an individual who has achieved an employment outcome;
  - (B) A description of the terms and conditions for the provision of any post-employment services; and
  - (C) If appropriate, a statement of how post-employment services will be provided or arranged through other entities.
- (2) The individual who has achieved an employment outcome must be informed through appropriate modes of communication of the availability of post-employment services prior to case closure.

(f) The requirements that apply to the provision of each of the VR services in sections 17-401.1-16 through 17-401.1-33 are also applicable when providing the VR service as a specific post-employment service following achievement of the employment outcome, including the requirements for use of, or exemption from the use of comparable services and benefits and personal resources, or both, as applicable to each service.

(g) The following factors shall be considered in terminating post-employment services:

- (1) Satisfactory remediation of the individual's problems requiring the services;
- (2) The individual's attainment of sufficient independence to function without continuing post-employment services;
- (3) The individual's employment appears secure based on continuing suitable work performance, job satisfaction, and acceptance in the job setting;
- (4) The individual's employment continues at a suitable level; or

- (5) The individual's condition or situation has worsened to the extent that post-employment services cannot maintain the individual in employment.

(h) A rehabilitated individual from another state in need of post-employment services in the State shall be handled as a new applicant for services. [Eff AUG 13 2007 ] (Auth: HRS §§347-4, 348-3, 348-6; 29 U.S.C. §§709, 723; 34 C.F.R. §361.50) (Imp: HRS §§347-4, 348-3, 348-6; 29 U.S.C. §§709, 723; 34 C.F.R. §361.50)

§17-401.1-22 Vocational rehabilitation services to family members. (a) Vocational rehabilitation services to family members may be provided to family members, as defined in section 17-401.1-2, of an applicant or eligible individual:

- (1) During an assessment to determine eligibility for VR services when necessary to enable an applicant to complete the assessment process.
- (2) When such services are necessary to enable an eligible individual to achieve an employment outcome.
- (3) As part of a planned program of vocational rehabilitation, including post-employment services to maintain the employment outcome of the individual, in accordance with the individual's IPE and any amendments.

(b) VR services to family members may include only those goods or services which are necessary to the rehabilitation of the individual.

(c) VR services to family members are subject to the use of comparable services and benefits provisions of section 17-401.1-13 and the use of personal resources (financial needs test) provisions of section 17-401.1-14

(d) Services to family members shall be terminated when:

- (1) The service is no longer required by the individual;

- (2) The service ceases to make a substantial impact on the individual's vocational rehabilitation program; and
- (3) Services are terminated and the individual's record of services is closed. [Eff [AUG 13 2007](#)](Auth: HRS §§347-4, 348-3, 348-6; 29 U.S.C. §§709, 723; 34 C.F.R. §361.50) (Imp: HRS §§347-4, 348-3, 348-6; 29 U.S.C. §§709, 723; 34 C.F.R. §361.50)

§17.401.1-23 Maintenance services. (a)

Maintenance, as defined in section 17-401.1-2, means monetary support provided to an individual for expenses, such as food, shelter, and clothing, that are in excess of the normal expenses of the individual and that are necessitated by the individual's participation in an assessment for determining eligibility and VR needs, or the individual's receipt of VR services under an IPE, or during post-employment services under an amendment to the IPE.

(b) Examples of expenses that would meet the definition of maintenance are:

- (1) The cost of a uniform or other suitable clothing that is required for an individual's job placement or job seeking activities.
- (2) The cost of short-term shelter that is required in order for an individual to participate in vocational training at a site that is not within commuting distance of an individual's home.
- (3) The initial one-time costs, such as a security deposit or charges for the initiation of utilities, that are required in order for an individual to relocate for a job placement.

(c) Maintenance shall be provided to the extent appropriate, when the following criteria are met:

- (1) The individual is unable to meet the costs of maintenance, in whole or part, that is in excess of the normal expenses of the

individual and that are necessitated by the individual's participation in an assessment for determining eligibility or VR needs or the individual's receipt of VR services under an IPE.

- (A) The division has determined in accordance with section 17-401.1-13, that comparable services and benefits are not available, or can meet only part of the costs for the required services.
  - (B) The division has determined in accordance with section 17-401.1-14, that the individual or, as appropriate, the individual's family, lacks the personal resources to meet the costs for required services, or can meet only part of the costs for required services.
- (2) The maintenance allowance does not duplicate a similar allowance provided to the individual in the individual's public assistance grant.
- (d) The following conditions shall govern the amount of money maintenance allowable:
- (1) The amount of maintenance for goods and services such as costs of a uniform or other suitable clothing for job placement or job seeking activities shall be based on the lowest cost for comparable goods and services in accordance with section 17-400.1-10.
  - (2) The amount of maintenance for short-term shelter costs required for an individual to participate in training at a site that is not within the commuting distance of an individual's home shall be based on the travel per diem rates used for State employees in the BU-13 collective bargaining agreement.

- (3) The amount of maintenance for one-time costs, such as a security deposit or charges for the initiation of utilities required for an individual to relocate for a job placement shall be based on the minimum cost required.
- (4) Amounts and duration of maintenance expenses shall be documented in the IPE. The division's record of services for the individual shall contain written justification of the following:
  - (A) The need for maintenance services in accordance with this section.
  - (B) Unusual duration or conditions attached to the maintenance service.
  - (C) Any exceptions applied to allowance amounts in accordance with sections 17-400.1-10 and 17-400.1-11.
- (5) Money maintenance allowances shall be paid by purchase order authorized by the division.
  - (A) Purchase orders for more than one month shall be authorized and used when the primary services being supported can be expected to last more than one month.
  - (B) The duration of the purchase order shall depend upon the expected duration of the concurrent primary service.
  - (C) Purchase orders cannot be extended beyond June 30. A new purchase order is needed for each fiscal year.
  - (D) The purchase order shall be prepared initially so as to enable the individual to receive the money maintenance allowance on the first day of participation in the concurrent primary service, when applicable. [Eff [AUG 13 2007](#) ] (Auth: HRS §§347-4, 348-3, 348-6; 29 U.S.C. §§709, 723; 34 C.F.R. §361.50) (Imp: HRS §§347-4,

348-3, 348-6; 29 U.S.C. §§709, 723; 34 C.F.R. §361.50)

§17-401.1-24 Interpreter services and tactile interpreting services. (a) The division shall provide interpreter services for applicants and eligible individuals who are deaf and tactile interpreting services for applicants and eligible individuals who are deaf-blind when necessary to assure the provision of efficient and meaningful VR services throughout the VR process.

- (1) Interpreter services consists of sign language and oral interpreter services to facilitate communication between individuals who are deaf and individuals who can hear.
  - (A) Individuals who have low vision or a restricted visual field may continue to use some preferred form of sign language with minor modifications. Appropriate use of lighting and distance may enable the staff to work directly with the individual.
  - (B) Individuals who have a narrow visual field may hold onto a speaker's wrists in order to follow what is being signed. One modification of this system is for the individual to place the individual's hands on either side of the visual field so the speaker can sign within the field.
  - (C) Fingerspelling can be read visually, by tracking, or tactually. The individual aids the speaker in positioning the hand so that both are comfortable and comprehension is optimal.
- (2) Tactile interpreting services consists of hand-over-hand sign language using any preferred sign system. The individual who is deaf-blind places the individual's hands over the speaker's hand or hands. The speaker uses the same handshapes and



placement as in visual signing, which are read tactually by the individual who is deaf-blind.

(b) The division shall obtain interpreter or tactile interpreting services from qualified interpreters. The most skilled interpreter available shall be used based on American sign language/English oral interpreter certification standards.

(c) Interpreter or tactile interpreting services are subject to the use of comparable services and benefits provisions of section 17-401.1-13, but are exempt from the use of personal resources (financial needs test) provisions of section 17-401.1-14. [Eff AUG 13 2007] (Auth: HRS §§347-4, 348-3, 348-6; 29 U.S.C. §§709, 723; 34 C.F.R. §361.50) (Imp: HRS §§347-4, 348-3, 348-6; 29 U.S.C. §§709, 723; 34 C.F.R. §361.50)

§17-401.1-25 Reader, rehabilitation teaching, and orientation and mobility services. (a) Reader, rehabilitation teaching, and orientation and mobility services shall be included as VR services in an assessment for determining eligibility for VR services of applicants who are blind, or in an IPE when necessary for the vocational rehabilitation of eligible individuals who are blind.

(1) "Reader services" means any person's oral reading to an individual who is blind, of ink print material which is not available through any of the accepted special non-visual methods of reading used by individuals who are blind (braille, talking book, tape recording). Reader services may also be the oral reading of material which are available in those forms, when an individual who is blind or visually impaired has not yet acquired sufficient skill in using them to meet an immediate need in the rehabilitation process which, if unfulfilled at the stage of rehabilitation, would impede the person's rehabilitation process, or the

person's attainment of or continuation in employment.

- (2) "Rehabilitation teaching services" include the teaching of techniques fundamental to developing personal independence by mastering common skills of daily living without eyesight or with impaired eyesight. They encompass specific and identifiable teaching methods to assist individuals who are blind and visually impaired in personal independence.
- (3) "Orientation and mobility services" refers to the teaching of methods of independent travel without sight or with partial sight. "Mobility" in this context is the act of moving, while "orientation" is awareness of pertinent factors in the environment which enable the person with partial or total impairment of sight to react, move, and travel in a safe, appropriate and purposeful manner.

(b) Reader, rehabilitation teaching and orientation and mobility services shall be provided by trained personnel, as necessary to assist individuals who are blind and visually impaired in developing use of their remaining senses, especially hearing and touch, and an awareness of obstacles to be overcome, including the initial effect blindness can have on the individual's morale. In each instance, the purpose for the services shall be explained to the applicant or eligible individual who is blind. Such services shall be provided consistent with the needs of the individual and, as appropriate with the individual's informed choice in accordance with section 17-401.1-12.

- (1) Reader services shall be provided in accordance with the following:
  - (A) When substantial amounts of reading are necessary for individuals who are blind during the assessment to determine eligibility and priority for services,

- or when entering employment, both for an individual working for an employer or an individual who is self-employed, especially in the beginning of employment.
- (B) Payment for reader services for an individual who is employed and before case closure is limited to an initial period of four months and shall not exceed one year.
- (2) Rehabilitation teaching services may include the following:
- (A) Instruction in skills related to personal management including but not limited to grooming, table etiquette, and personal hygiene.
- (B) Instruction in communication skills, including braille, tape recording, typing, and manual writing.
- (C) Instruction in home management including childcare and supervision, techniques of home maintenance, budgeting, cooking, cleaning, and dietary and menu planning.
- (D) Limited instruction in travel techniques.
- (E) Participation in group activities in the community with sighted as well as blind and visually impaired persons.
- (3) Orientation and mobility services shall be provided to enable an individual who is blind or visually impaired to move about at an optimum level of independence in immediate personal surroundings and ranges as far as required by the individual's activities and interests. Services may include but are not limited to:
- (A) Sensory development;
- (B) Use of a sighted guide;
- (C) Use of hands, arms, and other body movements in a protective way;

- (D) Grip and use of a cane;
- (E) Principles of indoor and outdoor orientation to the environment, including how to obtain and use reference data through the remaining senses;
- (F) Use of common modes of transportation;
- (G) Travel in residential and business areas;
- (H) Travel with electronic mobility aids;
- (I) Travel with guide dog; and
- (J) Travel with low vision aids.

(c) Reader, rehabilitation teaching, and orientation and mobility services are subject to the use of comparable services and benefits provisions of section 17-401.1-13, but are exempt from the use of personal resources (financial needs test) provisions of section 17-401.1-14. [Eff AUG 13 2007 ] (Auth: HRS §§347-4, 348-3, 348-6; 29 U.S.C. §§709, 723; 34 C.F.R. §361.50) (Imp: HRS §§347-4, 348-3, 348-6; 29 U.S.C. §§709, 723; 34 C.F.R. §361.50)

§17-401.1-26 Occupational licenses, tools, equipment, and initial stocks and supplies. (a) The division may provide an applicant in a trial work experience or extended evaluation, or an individual determined eligible for VR services with an occupational license, tools, equipment, initial stocks, and supplies for employment or self-employment, consistent with the individual's needs and, as appropriate, the individual's informed choice in accordance with section 17-401.1-12, when necessary to determine the applicant's eligibility for VR services or when necessary for the eligible individual to achieve an employment outcome.

- (1) "Occupational licenses" are any license, permit or other written authority required by a state, city, or other government unit to be obtained in order to enter an occupation or a small business such as a

- chauffeur license, food service license, realtor license, or business license.
- (2) "Tools" shall be limited to those types needed or required by the VR applicant or eligible individual during training or for entry into employment and customarily required for the job and normally possessed by workers in the same or similar trade or profession. Special tools may be provided in cases where they are required by the individual to perform normal tasks because of the individual's disability or functional limitations.
- (3) "Equipment" refers to pieces of occupational fixtures normally found in places of business for use in carrying out the requirements of the particular business and which are needed to provide for an efficient operation.
- (A) Generally, equipment includes apparatus, machinery, and appliances that are usually of a stationary nature during the time of use.
- (B) Equipment which have no connection with the actual functions of a business, trade, or profession but are required because of the nature of the individual's disability may be provided.
- (C) "Shelter" to house a self-employment business venture is included as equipment if customarily furnished by an operator of a like undertaking, occupying premises under a short-term lease. Shelters which are normally portable, easily dismantled, moved, and reassembled with a minimum loss of value, are differentiated from buildings, which are excluded as rehabilitation service to individuals based on permanency of structure.

- (D) Automobiles, trucks, vans and other like vehicles shall not be considered as equipment.
- (4) "Initial stocks and supplies" may be provided only to individuals entering self-employment.
  - (A) "Initial stock" includes the initial inventory of merchandise or goods necessary for direct resale or for further preparation for direct resale either on a wholesale or retail basis.
    - (i) The amount of such goods to be provided as an initial stock shall be determined by the amount considered necessary to enable the individual to initially open business. When a turnover of the primary operation stock occurs, the individual should have adequate income to replenish the depleted stock for the first time in addition to having the necessary income to meet daily living needs.
    - (ii) The initial purchase of livestock necessary for the establishment of a base stock of animals or the purchase of initial supplies of seed, fertilizer, fuel, and other supplies for a farming or agricultural self-employment venture may be provided as a rehabilitation service.
  - (B) "Supplies" are expendable items necessary to enable the individual to carry out the day-to-day operations of the self-employment business and are consumed on the premises such as:
    - (i) Stationery, pencils, pens, stamps, and other office supplies for a business office;

- (ii) Soap, shampoo, hair tonic, and other barber supplies for a barber shop; and
- (iii) Wrapping paper, string, stationery, and other supplies for a retail store.

(b) Occupational licenses, tools, equipment, and initial stocks and supplies are subject to the use of comparable services and benefits provisions of section 17-401.1-13 and the use of personal resources (financial needs test) provisions of section 17-401.1-14.

(c) The division shall retain title to all tools, equipment, shelters, initial stock and supplies, including livestock provided to an applicant or eligible individual, until the individual with a disability is vocationally rehabilitated and on condition that tools, equipment, shelters, and initial supplies, including livestock, are still needed or required for continued employment. An inventory of items provided shall be maintained in the division's record of services for the individual.

(d) Disposition of items on inventory shall be clearly indicated in the division's record of services for the individual, including justification for action taken, and other details to account for its whereabouts and other status of possession. [Eff [AUG 13 2007](#) ] (Auth: HRS §§347-4, 348-3, 348-6; 29 U.S.C. §§709, 723; 34 C.F.R. 361.50) (Imp: HRS §§347-4, 348-3, 348-6; 29 U.S.C. §§709, 723; 34 C.F.R. §361.50)

§17-401.1-27 Transportation services. (a) Transportation means travel and related expenses that are necessary to enable an applicant or eligible individual to participate in a VR service, including expenses for training in the use of public transportation vehicles and systems. Examples of expenses that would meet the definition of transportation include:

- (1) Travel and related expenses for a personal care attendant or aide if the services of that person are necessary to enable the applicant or eligible individual to travel to participate in any VR service; and
- (2) Relocation expenses incurred by an eligible individual in connection with a job placement that is a significant distance from the eligible individual's current residence.

(b) Transportation services are subject to the use of comparable services and benefits provisions of section 17-401.1-13 and the use of personal resources (financial needs test) provisions of section 17-401.1-14.

(c) The following additional conditions apply to the provision of transportation services:

- (1) The transportation allowance shall be adjusted when the individual is excessively absent from a training facility.
- (2) A gas allowance for use of a private automobile may be provided where public transportation is not readily available or is inappropriate due to the individual's disability. The allowance shall not exceed the maximum rate per mile allowable for State employees in the BU-13 collective bargaining agreement.
- (3) The most economical public means of transportation available which meets the individual's needs shall be used.

(d) The purchase of motorized vehicles including cars, trucks, vans, and motorcycles is prohibited.

(e) Other transportation services not prohibited, may be provided with supervisory review and approval and documentation supporting the decision in the division's record of services for the individual. [Eff [AUG 13 2007](#) ] (Auth: HRS §§347-4, 348-3, 348-6; 29 U.S.C. §§709, 723; 34 C.F.R. §361.50) (Imp: HRS §§347-4, 348-3, 348-6; 29 U.S.C. §§709, 723; 34 C.F.R. §361.50)



§17-401.1-28 Rehabilitation technology services.

(a) Rehabilitation technology means the systematic application of technologies, engineering methodologies, or scientific principles to meet the needs of, and address the barriers confronted by individuals with disabilities in areas that include education, rehabilitation, employment, transportation, independent living, and recreation. The term includes the following:

- (1) Rehabilitation engineering as defined in section 17-401.1-2;
- (2) Vehicular modification;
- (3) Telecommunications systems: any transmission, emission, or reception of signs, signals, written images and sounds of intelligence of any nature by wire, radio, visual, or other electromagnetic systems including any intervening processing and storage;
- (4) Sensory and other technological aids and devices: an electronic or mechanical piece of equipment or hardware intended to improve or substitute for one or more of an individual's senses or for impaired mobility or motor coordination. Ordinarily such devices are used with individuals who have partial sight, are hearing impaired, or have limited mobility or motor coordination;
- (5) Assistive technology devices: any item, piece of equipment, or product system, whether acquired commercially off the shelf, modified, or customized, that is used to increase, maintain, or improve functional capabilities of individuals with disabilities;
- (6) Assistive technology services: any services that directly assist an individual with a disability in the selection, acquisition, or use of an assistive technology device, including:

- (A) Evaluating the needs of an individual with a disability, including a functional evaluation of the individual in the individual's customary environment;
- (B) Purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices by individuals with disabilities;
- (C) Selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing, or replacing of assistive technology devices;
- (D) Coordinating and using other therapies, interventions, or services with assistive technology devices, such as those associated with existing education and rehabilitation plans and programs;
- (E) Training or technical assistance for an individual with disabilities or, where appropriate, the family of an individual with disabilities; and
- (F) Training or technical assistance for professionals (including individuals providing education and rehabilitation services), employers, or other individuals who provide services to, employ, or are otherwise substantially involved in the major life functions of individuals with disabilities.

(b) Rehabilitation technology services may be provided in accordance with the following:

- (1) Where appropriate for determining eligibility and VR needs, by personnel skilled in rehabilitation technology, to assess and develop the capacities of an individual with a disability to perform in a work environment.
- (2) If appropriate, each IPE shall include a statement of the specific rehabilitation

technology services to be provided to assist in the achievement of the specific employment outcome of the eligible individual.

(c) The division shall provide each applicant or eligible individual or, as appropriate, the individual's representative, through appropriate modes of communication, information concerning the availability and costs of rehabilitation technology services, qualifications of service providers, and consumer satisfaction with those services to the extent that such information is available, to assist the individual in making an informed choice in accordance with section 17-401.1-12. Referrals may be made to other consumers or consumer groups, disability advisory councils or other resources qualified to discuss the services or service providers.

(d) Aids, devices, and systems that may be considered include, but are not limited to the following:

- (1) Devices for individuals who are blind or visually impaired such as:
  - (A) Optacon;
  - (B) Closed circuit TV systems to be used as low vision aids;
  - (C) Braille embossing equipment, particularly end-line terminals which interface for the purpose of providing braille printout;
  - (D) Braille attachments of magnetic-card/selectric typewriters;
  - (E) Telebraille or other similar mechanism for the employment of individuals who are deaf-blind for communication with business associates;
  - (F) Any subnormal vision lenses or travel aids to assist an individual with a disability in performing more effectively on the job;
  - (G) Braille writer, or tape recorder which may be necessary in the case of college students;

- (H) Equipment for compressing speech for the use of college students or employed persons who are blind to enable them to absorb essential material at a greatly increased rate of speed using an auditory method of reading;
  - (I) Stereotoner;
  - (J) Radio reading services (closed circuit radio receivers for both direct and indirect rehabilitation services activities); and
  - (K) White cane (of sufficient length to ascertain by touch what is in front of the individual who is blind).
- (2) Devices for individuals who are deaf, hearing impaired, and speech impaired:
- (A) Hearing aids and other assistive listening devices;
  - (B) Telephone communication devices such as specially-equipped teletypewriters, C-Phone, Porta-Printer, and Porta-Tel in cases where use of telephone broadens possibilities in the individual's vocational rehabilitation, including training and employment;
  - (C) Captioned or manually interpreted films and TV programs to be used as training aids;
  - (D) Fixed or portable warning and attention-getting equipment such as flashing lights, vibrators, and buzzers; and
  - (E) Devices that enable laryngectomees and other voice-deficient individuals to produce speech or to communicate mechanically.
- (3) Devices for other individuals or groups who are significantly impaired with communicative impairments, either physical or environmental, which interface with existing communications systems. These

devices are many and varied and may be used in their original state or be specially-designed. Package software for use with these and other devices such as videotapes, audiotapes, and videocassettes shall also be considered as part of the rehabilitation services to individuals.

- (A) TV monitor;
  - (B) Terminal units;
  - (C) Videotape recorder (VTR);
  - (D) Dial-access devices;
  - (E) Mini-computer terminals;
  - (F) Picture-phone;
  - (G) Oversize TV screens for group viewing or for the visually impaired; and
  - (H) Speech synthesizers.
- (4) Services to groups of individuals such as:
- (A) The purchase and installation of a closed circuit TV system in a rehabilitation facility, including necessary software, to evaluate and test groups of individuals;
  - (B) Tele-counseling; and
  - (C) Radio-reading services for disseminating rehabilitation-related information with direct or indirect impact on the rehabilitation of individuals with reading impairments.
- (5) Other devices for individuals with limited mobility or motor coordination, such as:
- (A) Switches;
  - (B) Environmental controls;
  - (C) Manual and powered wheelchairs;
  - (D) Gripping aids;
  - (E) Driving controls;
  - (F) Voice recognition software; and
  - (G) Reacher.

(e) Rehabilitation technology services are exempt from the use of comparable services and benefits provisions of section 17-401.1-13, but are

subject to the use of personal resources (financial needs test) provisions of section 17-401.1-14.

[Eff AUG 13 2007 ] (Auth: HRS §§347-4, 348-3, 348-6; 29 U.S.C. §§709, 723; 34 C.F.R. §361.50) (Imp: HRS §§347-4, 348-3, 348-6; 29 U.S.C. §§709, 723; 34 C.F.R. §361.50)

§17-401.1-29 Transition services. (a)

Transition services means a coordinated set of activities for a student designed within an outcome-oriented process that:

- (1) Promotes movement from school to post-school activities, including:
  - (A) Postsecondary education;
  - (B) Vocational training;
  - (C) Integrated employment (including supported employment);
  - (D) Continuing and adult education;
  - (E) Adult services;
  - (F) Independent living; or
  - (G) Community participation.
- (2) Must be based upon the individual student's needs, taking into account the student's preferences and interests, and must include:
  - (A) Instruction;
  - (B) Community experiences;
  - (C) Development of employment and other post-school adult living objectives; and,
  - (D) Acquisition of daily living skills and functional vocational evaluation.

(b) Transition services shall be provided to students with disabilities referred by the department of education who are determined eligible for VR services and require VR services to facilitate transition from the receipt of educational services in school to the receipt of VR services under the responsibility of the division.

- (1) Students with disabilities may be referred for:

- (A) General VR services during their last high school year, or at ages 15-20 or grades 9-12 depending on the student's need for VR services and the student's availability to participate in the VR program; or
  - (B) The special education-vocational rehabilitation work-study program established by formal interagency agreement, for eligible special education students of ages 15-20 or grades 9-12, in need of in-school and community work training experiences to assist them in transitioning from school to employment, who meet the following requirements:
    - (i) Eligibility for VR services; and
    - (ii) The student is a participant for whom competitive employment at or above the minimum wage level is not immediately obtainable and who, because of the student's disability, will need intensive on-going support to perform in a work setting.
- (2) Outreach to students with disabilities, other than those determined eligible for special education and related services under the Individuals with Disabilities Education Act (IDEA), shall be encouraged through an annual meeting with key school personnel conducted by the VR counselor assigned to each school, and must include, at a minimum:
- (A) A description of the purpose of the VR program;
  - (B) Eligibility requirements;
  - (C) Application procedures; and
  - (D) Scope of services that may be provided to eligible individuals.
- (3) The planning and provision of transition services shall be coordinated between the

division and school personnel in accordance with this section and established standards, procedures and guidelines.

- (4) Services to students in the special education-vocational rehabilitation work-study program shall be administered in accordance with the program guidelines jointly developed by the departments of education and human services.

(c) Transition services must promote or facilitate the achievement of the employment outcome identified in the student's individualized plan for employment (IPE) which must be consistent with the student's strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice, and the transition goals in the student's individualized education program (IEP).

(d) Transition services are subject to the use of comparable services and benefits provisions of section 17-401.1-13 and the use of personal resources (financial needs test) provisions of section 17-401.1-14. [Eff AUG 13 2007 ] (Auth: HRS §§347-4, 348-3, 348-6; 29 U.S.C. §§709, 723; 34 C.F.R. §§361.22, 361.50) (Imp: HRS §§347-4, 348-3, 348-6; 29 U.S.C. §§709, 723; 34 C.F.R. §§361.22, 361.50)

§17-401.1-30 On-the-job or other related personal attendant services. (a) Personal attendant services means a range of services, provided by one or more persons, designed to assist an individual with a disability to perform daily living activities on or off the job that the individual would typically perform without assistance if the individual did not have a disability. The services may include training in managing, supervising, and directing personal attendant services.

(b) Personal attendant services must be designed to increase the individual's control in life and ability to perform everyday activities on or off the job, and must be necessary to the achievement of an employment outcome.



- (c) Personal attendant services may be provided:
  - (1) Only while an individual with a disability is receiving other VR services and when necessary to enable the individual to access those services; and
  - (2) In accordance with the division's standards of services in section 17-400.1-10 pertaining to the authorization for expenditure of funds, payments to vendors, amount of payment, and vendor qualifications.

(d) The division shall provide each applicant or eligible individual or, as appropriate, the individual's representative, in need of personal attendant services, the opportunity to make an informed choice in selecting a personal attendant from among a list of qualified individuals.

- (1) To assist the individual in making an informed choice, the division shall provide the applicant or eligible individual or, as appropriate, the individual's representative, through appropriate modes of communication, information concerning:
  - (A) The availability and costs of personal attendant services;
  - (B) The qualifications of service providers; and
  - (C) Consumer satisfaction with those services to the extent that such information is available.
- (2) Referral may be made to other resources qualified to discuss the services or service providers.

(e) Personal attendant services are subject to the use of comparable services and benefits provisions of section 17-401.1-13, but are exempt from the use of personal resources (financial needs test) provisions of section 17-401.1-14. [Eff. [AUG 13 2007](#) ]  
(Auth: HRS §§347-4, 348-3, 348-6; 29 U.S.C. §§709, 723; 34 C.F.R. §361.50) (Imp: HRS §§347-4, 348-3, 348-6; 29 U.S.C. §§709, 723; 34 C.F.R. §361.50)

§17-401.1-31 Supported employment services. (a) Supported employment services means ongoing support services and other appropriate services needed to support and maintain an individual with a most significant disability in supported employment.

- (1) Supported employment means:
  - (A) Competitive employment in an integrated setting, or employment in integrated work settings in which individuals are working toward competitive employment, consistent with their strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice with ongoing support services for those with the most significant disabilities:
    - (i) For whom competitive employment has not traditionally occurred or for whom competitive employment has been interrupted or intermittent as a result of a significant disability; and
    - (ii) Who, because of the nature and severity of the disabilities, need intensive supported employment services from the division and extended services after transition to perform this work; or
  - (B) Transitional employment, as defined in section 17-401.1-2, for individuals with the most significant disabilities due to mental illness.
- (2) Ongoing support services as used in this section:
  - (A) Means services that are:
    - (i) Needed to support and maintain an individual with a most significant disability in supported employment;
    - (ii) Identified based on a determination by the division of

- the individual's needs as specified in an IPE; and
- (iii) Furnished by the division from the time of job placement until transition to extended services, unless post-employment services are provided following transition, and thereafter by one or more extended services providers through the individual's term of employment in a particular job placement or multiple placements if those placements are being provided under a program of transitional employment.
- (B) Must include an assessment of employment stability and provision of specific services or the coordination of services at or away from the worksite that are needed to maintain stability based on:
- (i) At a minimum, twice monthly monitoring at the worksite of each individual in supported employment; or
  - (ii) If under special circumstances, especially at the request of the individual, the IPE provides for off-site monitoring, twice-monthly meetings with the individual.
- (C) Consists of:
- (i) Any particularized assessment supplementary to the comprehensive assessment of rehabilitation needs described in section 17-401.1-10(b)(3);
  - (ii) The provision of skilled job trainers who accompany the individual for intensive job skill training at the worksite;
  - (iii) Job development and training;

- (iv) Social skills training;
  - (v) Regular observation or supervision of the individual;
  - (vi) Follow-up services including regular contacts with the employers, the individuals, the parents, family members, guardians, advocates or authorized representatives of the individuals, and other suitable professional and informed advisors, in order to reinforce and stabilize the job placement;
  - (vii) Facilitation of natural supports at the worksite; and
  - (viii) Any other service identified in the scope of VR services for individuals, described in section 17-401.1-6; or
  - (ix) Any services similar to the foregoing services.
- (3) Extended services as used in this section means ongoing support services and other appropriate services:
- (A) That are needed to support and maintain an individual with a most significant disability in supported employment; and
  - (B) That are provided by a state agency, a private nonprofit organization, employer, or any other appropriate resource, from funds other than funds received under 34 C.F.R. parts 361, 363, 376, or 380, after an individual with a most significant disability has made the transition from support provided by the division.
- (4) Competitive employment means work:
- (A) In the competitive labor market that is performed on a full-time or part-time basis in an integrated setting; and
  - (B) For which an individual is compensated

at or above the minimum wage, but not less than the customary wage and level of benefits paid by the employer for the same or similar work performed by individuals who are not disabled.

(b) In areas where supported employment programs are available, persons with the most significant disabilities shall be considered for competitive employment through this program. Supported employment services shall be consistent with the needs of the individual and, as appropriate, the individual's informed choice in accordance with section 17-401.1-12.

- (1) An individual shall be determined eligible for supported employment services by the division if:
  - (A) The individual is eligible for VR services in accordance with section 17-401.1-7;
  - (B) The individual is determined to be an individual with the most significant disability in accordance with section 17-401.1-7;
  - (C) The individual is one for whom competitive employment has not traditionally occurred, or for whom competitive employment has been interrupted or intermittent as a result of a most significant disability; and
  - (D) The individual requires ongoing supported employment services or extended services in order to perform such work.
- (2) The division shall certify an individual's eligibility for supported employment services as an addendum to the certification of eligibility for VR services. The certification addendum shall explain, describe, or show how the conditions of paragraph (b)(1) are met.
- (c) Supported employment services shall be

provided by the division:

- (1) For a period of time not to exceed 18 months, unless under special circumstances the eligible individual and the VR counselor jointly agree to extend the time to achieve the employment outcome identified in the IPE; and
- (2) Following transition, as post-employment services that are unavailable from an extended services provider and that are necessary to maintain or regain the job placement or advance in employment.

(d) Supported employment services are subject to the use of comparable services and benefits provisions of section 17-401.1-13, and the use of personal resources (financial needs test) provisions of section 17-401.1-14. [Eff [AUG 13 2007](#) ] (Auth: HRS §§347-4, 348-3, 348-6; 29 U.S.C. §§709, 723; 34 C.F.R. §361.50) (Imp: HRS §§347-4, 348-3, 348-6; 29 U.S.C. §§709, 723; 34 C.F.R. §361.50)

§17-401.32 Technical assistance and other consultation services. (a) Technical assistance and other consultation services to conduct market analyses, develop business plans, and otherwise provide resources, to the extent those resources are authorized to be provided through the statewide workforce investment system, shall be available to eligible individuals who are pursuing self-employment or telecommuting or establishing a small business operation as an employment outcome.

(b) Referral of an eligible individual to the specific program component of the statewide workforce investment system responsible for other resources, to the extent available, shall be made by the division and shall consist of:

- (1) A notice of the referral by the division to the agency responsible for providing the services; and
- (2) Information identifying a specific point of contact within the agency responsible for

providing the services.

(c) These services are subject to the comparable services and benefits provisions of section 17-401.1-13 and personal resources provisions of section 17-401.1-14. [Eff [AUG 13 2007](#) ] (Auth: HRS §§347-4, 348-3, 348-6; 29 USC §§709, 723; 34 C.F.R. §361.50) (Imp: HRS §§347-4, 348-3, 348-6; 29 U.S.C. §§709, 723; 34 C.F.R. §361.50)

§17-401.1-33 Other goods and services. (a) Other goods and services means any other goods and services determined necessary for the vocational rehabilitation of an individual with a disability, and included in the IPE of the individual, to achieve the individual's employment outcome.

(b) The division must assure that other goods and services, as appropriate to the VR needs of each individual and consistent with each individual's informed choice in accordance with section 17-401.1-12, are made available.

(c) The division shall consider the individual's use of comparable services and benefits in accordance with section 17-401.1-13 and the individual's use of personal resources (financial needs test) in accordance with section 17-401.1-14. [Eff [AUG 13 2007](#) ] (Auth: HRS §§347-4, 348-3, 348-6; 29 U.S.C. §§709, 723; 34 C.F.R. §361.50) (Imp: HRS §§347-4, 348-3, 348-6; 29 U.S.C. §§709, 723; 34 C.F.R. §361.50)

§17-401.1-34 Record of services. (a) The division shall maintain a record of services (case record, case file) for each applicant or eligible individual, that includes, to the extent pertinent, the following documentation:

- (1) If an applicant has been determined to be an eligible individual, documentation supporting that determination in accordance with the requirements in section 17-401.1-7.
- (2) If an applicant or eligible individual receiving services under an IPE has been determined to be ineligible, documentation

- supporting that determination in accordance with the requirements in section 17-401.1-8.
- (3) Documentation that describes the justification for closing an applicant's or eligible individual's record of services if that closure is based on reasons other than ineligibility, including, as appropriate, documentation indicating that the division has satisfied the requirements in section 17-401.1-8(b).
  - (4) If an individual has been determined to be an individual with a significant disability or an individual with a most significant disability, documentation supporting that determination.
  - (5) If an individual with a significant disability requires an exploration of abilities, capabilities, and capacity to perform in realistic work situations through the use of trial work experiences or, as appropriate, an extended evaluation to determine whether the individual is an eligible individual, documentation supporting the need for, and the plan relating to, that exploration or, as appropriate, extended evaluation and documentation regarding the periodic assessments carried out during the trial work experiences or, as appropriate, the extended evaluation, in accordance with the requirements under section 17-401.1-7(e) and (f).
  - (6) The IPE, and any amendments to the IPE, consistent with the requirements under section 17-401.1-11.
  - (7) Documentation describing the extent to which the applicant or eligible individual exercised informed choice regarding the provision of assessment services and the extent to which the eligible individual exercised informed choice in the development



of the IPE with respect to the selection of the specific employment outcome, the specific VR services needed to achieve the employment outcome, the entity to provide the services, the employment setting, the settings in which the services will be provided, and the methods to procure the services.

- (8) In the event that an individual's IPE provides for VR services in a non-integrated setting, a justification to support the need for the non-integrated setting.
- (9) In the event that an individual obtains competitive employment, verification that the individual is compensated at or above the minimum wage and that the individual's wage and level of benefits are not less than that customarily paid by the employer for the same or similar work performed by non-disabled individuals.
- (10) In the event that an individual achieves an employment outcome in which the individual is compensated in accordance with section 14(c) of the Fair Labor Standards Act or the division closes the record of services of an individual in extended employment on the basis that the individual is unable to achieve an employment outcome as defined in section 17-401.1-2 or that an eligible individual through informed choice chooses to remain in extended employment, documentation of the results of the annual reviews required under section 17-401.1-15, of the individual's input into those reviews, and of the individual's or, if appropriate, the individual's representative's acknowledgment that those reviews were conducted.
- (11) Documentation concerning any action or decision resulting from a request by an individual under section 17-400.1-5 for a

review of determinations made by division personnel.

- (12) In the event that an applicant or eligible individual requests under section 17-401.1-35(f)(4) that documentation in the record of services be amended and the documentation is not amended, documentation of the request.
- (13) In the event an individual is referred to another program through the division's information and referral system under section 17-401.1-3, including other components of the statewide workforce investment system, documentation on the nature and scope of services provided by the division to the individual and on the referral itself, consistent with the requirements of section 17-401.1-3.
- (14) In the event an individual's record of service is closed under section 17-401.1-36, documentation that demonstrates the services provided under the individual's IPE contributed to the achievement of the employment outcome.
- (15) In the event an individual's record of service is closed under section 17-401.1-36, documentation verifying that the provisions of section 17-401.1-36 have been satisfied.

(b) The division, in consultation with the State Rehabilitation Council, must determine the type of documentation that the division must maintain for each applicant and eligible individual in order to meet the requirements in subsection (a). [Eff [AUG 13 2007](#) ]  
(Auth: HRS §§347-4, 348-3, 348-6; 29 U.S.C. §§721, 722; 34 C.F.R. §361.47) (Imp: HRS §§347-4, 348-3, 348-6; 29 U.S.C. §§721, 722; 34 C.F.R. §361.47)

§17-401.1-35 Confidentiality. (a) The division shall inform all applicants or, as appropriate, their representatives about the division's need to collect personal information and the requirements governing its use, including:

- (1) The authority under which information is collected;
  - (2) The principal purposes for which the division intends to use or release the information;
  - (3) Whether providing the requested information to the division is mandatory or voluntary and the effects of not providing the requested information;
  - (4) Identification of those situations in which the division requires or does not require informed written consent of the individual before information may be released; and
  - (5) Identification of other agencies to which information is routinely released.
- (b) The division shall secure the written and informed consent of the applicant or eligible individual or, as appropriate, individual's representative, as authorization for requesting information about the individual from other agencies or individuals.
- (1) The authorization for release of information shall list the specific types of information being requested.
  - (2) Any and all requests for records and information that indicate that a person has a human immunodeficiency virus (HIV) infection, AIDS related complex (ARC) or acquired immune deficiency syndrome (AIDS), necessary to determine an applicant's eligibility for VR services shall be requested on an authorization for release of information form, separate from requests for any other records and information.
- (c) All applicants and eligible individuals and, as appropriate, those individual's representatives, service providers, cooperating agencies, and interested persons shall be informed through appropriate modes of communication of the confidentiality of personal information and the conditions for accessing and releasing this

information.

- (1) An explanation of the division's policies and procedures affecting personal information shall be provided to each individual in that individual's native language, or through the appropriate mode of communication.
- (2) Any and all records given or made available to the division, including all communication which identifies any applicant or eligible individual who has a human immunodeficiency virus (HIV) infection, AIDS related complex (ARC), or acquired immune deficiency syndrome (AIDS), shall be protected and, as appropriate, kept in a separate part of the division's record of services for the individual, apart from other confidential information, and shall not be released or made public upon subpoena or any other method of discovery except in accordance with chapter 325, part VI, Hawaii Revised Statutes.

(d) The division shall safeguard the confidentiality of all current or stored personal information including photographs and lists of names of applicants or eligible individuals, given or made available to the division, its representatives, or its employees, in the course of the administration of the VR program.

- (1) All records shall be kept in confidential folders and filed in secured equipment or rooms of the division.
- (2) All personal information in the possession of the division shall be used only for purposes directly connected with the administration of the VR program. Identifiable personal information shall not be shared with advisory or other bodies that do not have official responsibility for administration of the program.
- (3) Personal information may be obtained from

service providers and cooperating agencies under assurances that the information may not be further divulged in the administration of the program, except as provided under subsections (e) through (h).

(e) Confidential records shall be open to inspection in the division's offices only under the following conditions:

- (1) By authorized division employees and those of the United States government, Federal Department of Education, in connection with their official duties in the administration of the VR and related programs;
- (2) By personnel of a rehabilitation agency approved by the division when inspection of the record is for the sole purpose of providing related rehabilitation services and the agency and personnel are subject to standards of confidentiality comparable to those of the division; and
- (3) By an outside source, when a written waiver specifically consenting to have the record reviewed has been obtained from the applicant or eligible individual or, as appropriate, the individual's representative.

(f) Confidential information may be released to applicants and eligible individuals under the following conditions:

- (1) Except as provided in paragraphs (2) and (3), if requested in writing by an applicant or eligible individual, the division shall make all requested information in the division's record of services for that individual, accessible to and shall release a copy of the requested information to the individual or individual's representative within ten working days following the date of request. The ten-day period may be extended for an additional twenty days if the division provides to the individual,

within the initial ten working days, a written explanation of unusual circumstances causing the delay.

- (2) Medical, psychological, or other information that the division determines may be harmful to the individual may not be released directly to the individual, but must be provided to the individual through a third party chosen by the individual, which may include, among others, an advocate, a family member, or a qualified medical or mental health professional, unless a representative has been appointed by a court to represent the individual, in which case the information must be released to the court-appointed representative.
- (3) If personal information has been obtained from another agency or organization, copies may be released only by, or under the conditions established by, the other agency or organization.
- (4) An applicant or eligible individual who believes that information in the individual's record of services is inaccurate or misleading may request in writing that the division amend the information. If the information is not amended, the request for an amendment must be documented in the record of services.
  - (A) Within twenty business days after receipt of a written request from an applicant or eligible individual or, as appropriate, the individual's representative, to correct or amend any factual error, misrepresentation, or misleading entry in the division's record of services for that individual, the division shall acknowledge receipt of the request and purported evidence in writing and shall promptly:
    - (i) Make the requested correction or

amendment; or  
 (ii) Inform the individual in writing of its refusal to correct or amend the record, the reason for the refusal, and of the individual's right to request for a review of the decision in accordance with section 17-400.1-5.

(B) Not later than thirty working days after the receipt of a request for review of the division's refusal to allow correction or amendment of information in the division's record of services for the individual, the division shall make a final determination. If upon final determination, the division refuses to allow the correction or amendment of the record, the division shall so state in writing and:

(i) Permit the individual, whenever appropriate, to file in the record a concise statement setting forth the reasons for the individual's disagreement with the division's refusal to make the correction or amendment; and

(ii) Notify the individual or, as appropriate, the individual's representative of the individual's right to bring civil action against the division in accordance with section 92F-27, Hawaii Revised Statutes.

(g) Copies of personal information may be released to an organization, agency, or individual engaged in audit, evaluation, or research only for purposes directly connected with the administration of

the VR program, or for purposes that would significantly improve the quality of life for applicants and eligible individuals and only if the organization, agency, or individual assures that the following conditions will be met:

- (1) The information will be used only for the purposes for which it is being provided;
- (2) The information will be released only to persons officially connected with the audit, evaluation, or research;
- (3) The information will not be released to the involved individual;
- (4) The information will be managed in a manner to safeguard confidentiality; and
- (5) The final product will not reveal any personal identifying information without the informed written consent of the involved individual or the individual's representative.

(h) The division may release information to other programs or authorities under the following conditions:

- (1) Upon receiving the informed written consent of the individual or, if appropriate, the individual's representative, the division may release personal information to another agency or organization for its program purposes only to the extent that the information may be released to the involved individual, and only to the extent that the other agency or organization demonstrates that the information requested is necessary for its program.
- (2) Medical or psychological information that the division determines may be harmful to the individual may be released if the other agency or organization assures the division in writing that the information will be used only for the purposes for which it is being provided and will not be further released to the individual.



- (3) The division shall release personal information if required by Federal law or regulations.
- (4) The division must release personal information in response to investigations in connection with law enforcement, fraud, or abuse, unless expressly prohibited by Federal or State laws or regulations, and in response to an order issued by a judge, magistrate, or other authorized judicial officer.
- (5) The division also may release personal information in order to protect the individual or others if the individual poses a threat to the individual's own safety or to the safety of others.
- (6) Information from, or the contents of the division's record of services for the individual may be released upon the direct order of a judge as part of a judicial proceeding after the State attorney general's office has been notified and consulted.
- (7) A fee shall be charged for reproducing any information or record furnished to any individual, agency, or organization under this section, in accordance with section 92-21, Hawaii Revised Statutes. All such fees shall be paid in to the State director of finance. [Eff AUG 13 2007 ] (Auth: HRS §§92-21, 92F-14, 92F-23, 346-10, 347-4, 348-3, 348-6; 29 U.S.C. §§709, 721; 34 C.F.R. §361.38) (Imp: HRS §§92-21, 92F-14, 92F-23, 346-10, 347-4, 348-3, 348-6; 29 U.S.C. §§709, 721; 34 C.F.R. §361.38)

§17-401.1-36 Requirements for successful closures. (a) The record of services of an individual who has achieved an employment outcome may be closed only if all of the following requirements are met:

- (1) The individual has achieved the employment outcome that is described in the individual's IPE in accordance with section 17-401.1-11(a)(1) and is consistent with the individual's strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice.
  - (2) The individual has maintained the employment outcome for an appropriate period of time, but not less than ninety days, necessary to ensure the stability of the employment outcome, and the individual no longer needs VR services.
  - (3) At the end of the appropriate period of time necessary to ensure stability of the employment, the individual and the qualified VR counselor employed by the division consider the employment outcome to be satisfactory and agree that the individual is performing well in the employment.
  - (4) The individual is informed through appropriate modes of communication of the availability of post-employment services.
- [Eff AUG 13 2007 ] (Auth: HRS §§347-4, 348-3, 348-6; 29 U.S.C. §§721, 726; 34 C.F.R. §361.56)  
(Imp: HRS §§347-4, 348-3, 348-6; 29 U.S.C. §§721, 726; 34 C.F.R. §361.56)

§17-401.1-37 Disposition of case records. (a)  
The division's record of services for applicants and eligible individuals shall be retained after case closure, as follows:

- (1) Closed records not requiring periodic or annual reviews, audit, post-employment services, mediation or fair hearing, shall be stored in a locked file cabinet for at least five State fiscal years and tabbed for destruction in the year following the end of the five-year period.
- (2) Closed records requiring follow-up action

that is known before or at closure shall be tabbed with appropriate labeling indicating exception from destruction and stored by due date of the required follow-up action.

- (A) Tab "Do Not Destroy" on all closed records to be kept beyond five years after closure for special reasons.
  - (B) Tab "Annual Review" on all closed records scheduled for review.
  - (C) Tab "Post-Employment Services" on all closed records scheduled for such services.
- (3) Closed records subjected to follow-up action (periodic or annual review, audit, post-employment services, or mediation or fair hearing), shall be stored for five State fiscal years following the last and conclusive follow-up action, in a locked file cabinet and tabbed for destruction in the year following the end of the five-year period.

(b) At the beginning of each State fiscal year, closed case records tabbed for destruction shall be disposed of by each branch, section, or field office in which the closed records are stored.

- (1) Unaudited records past the fifth year shall be destroyed by shredding. If disposed of by a company other than the division, the company must provide adequate assurance of confidentiality and a receipt verifying that the records were disposed of properly.
- (2) Audited records shall be destroyed only after audit and reports indicate no significant audit exceptions or questions, in the same manner as unaudited records.  
[Eff AUG 13 2007 ] (Auth: HRS §§94-3, 348-6) (Imp: HRS §§94-3, 348-6)