

CHAPTER 401.1 VOCATIONAL REHABILITATION SERVICES

TABLE OF CONTENTS

<u>Section</u>	<u>Page No.</u>
401.1-1 Purpose	401.1-1.1
(A) Purpose of the State VR Services Program	401.1-1.1
(B) Authority for the Program	401.1-1.1
(C) Implementation of the Program	401.1-1.1
401.1-2 Applicable Definitions	401.1-2.1
(A) "Act"	401.1-2.1
(B) "Applicant"	401.1-2.1
(C) "Appropriate modes of communication"	401.1-2.1
(D) "Assistive technology device"	401.1-2.2
(E) "Assistive technology service"	401.1-2.2
(F) "Community rehabilitation program"	401.1-2.3
(G) "Comparable services and benefits"	401.1-2.4
(H) "Competitive integrated employment"	401.1-2.5
(I) "Department"	401.1-2.5
(J) "Diagnosis and treatment of physical and mental impairments"	401.1-2.5
(K) "Division"	401.1-2.6
(L) "Eligible individual"	401.1-2.6
(M) "Employment outcome"	401.1-2.7
(N) "Extended employment"	401.1-2.8
(O) "Extended services"	401.1-2.8
(P) "Extreme medical risk"	401.1-2.8
(Q) "Family member"	401.1-2.8
(R) "Individual who is blind"	401.1-2.9
(S) "Individual with a disability"	401.1-2.9
(T) "Individual with a most significant disability"	401.1-2.9
(U) "Individual with a significant disability"	401.1-2.10
(V) "Individual's representative"	401.1-2.10
(W) "Integrated setting"	401.1-2.11
(X) "Maintenance"	401.1-2.11
(Y) "Mediation"	401.1-2.11
(Z) "Ongoing support services"	401.1-2.12
(AA) "On-the-job or other personal attendant services"	401.1-2.14
(BB) "Physical and mental restoration services"	401.1-2.14
(CC) "Physical or mental impairment"	401.1-2.14
(DD) "Post-employment services"	401.1-2.14

(EE) "Pre-Employment Transition Services"

<u>Section</u>	<u>Page No.</u>
(FF) "Rehabilitation engineering"	401.1-2.15
(GG) "Rehabilitation technology"	401.1-2.15
(HH) "Specific post-employment services"	401.1-2.15
(II) "Student with a Disability"	
(JJ) "Subminimum Wage Employment"	
(KK) "Substantial impediment to employment"	401.1-2.15
(LL) "Supported employment"	401.1-2.16
(MM) "Supported employment services"	401.1-2.16
(NN) "Transition services"	401.1-2.17
(OO) "Transitional employment"	401.1-2.17
(PP) "Transportation"	401.1-2.18
(QQ) "Vocational rehabilitation services"	401.1-2.18
(RR) "Youth with a Disability"	
401.1-3 Information and Referral	401.1-3.1
(A) Information and Referral System	401.1-3.1
(B) Referral to Local Extended Employment Providers	401.1-3.1
(C) Referral Requirements	401.1-3.2
(D) Reporting Requirements	401.1-3.3
(E) Case Documentation Requirements	401.1-3.3
401.1-4 Referral and Application	401.1-4.1
(A) Definition of Referral	401.1-4.1
(1) Minimum Referral Information	401.1-4.1
(2) Time Period for Contacting Referrals	401.1-4.1
(B) Definition of Applicant	401.1-4.1
(1) Submittal of Application	401.1-4.2
(2) Processing Applicants	401.1-4.2
(3) Availability of Referral and Application Forms	401.1-4.3
(4) Information About the VR Program	401.1-4.3
(5) Assuring the Individual's Informed Consent, Participation, and Exercise of Rights and Remedies	401.1-4.4
401.1-5 Order of Selection	401.1-5.1
(A) Purpose and Intent of the Order of Selection	401.1-5.1
(B) Review of Ability to Provide Services	401.1-5.1
(1) State Plan Requirements	401.1-5.1

(2)	Determination of Ability to Provide Services and Meet Program Requirements	401.1-5.1
-----	--	-----------

<u>Section</u>		<u>Page No.</u>
	(3) If Unable to Serve All Eligible Individuals	401.1-5.2
(C)	Assurance of Services to All Eligible Individuals	401.1-5.3
	(1) Demonstration of Ability	401.1-5.3
	(2) Determination of Ability	401.1-5.4
(D)	Determination of Need for Order of Selection	401.1-5.5
	(1) When to Make the Determination	401.1-5.6
	(2) Consultation with the State Rehabilitation Council	401.1-5.6
	(3) Reevaluation of Need for Order of Selection	401.1-5.6
	(4) Establishment of Order of Selection but Determination Not to Implement	401.1-5.7
	(5) When to Implement the Order of Selection	401.1-5.7
	(6) When to Terminate the Order of Selection	401.1-5.7
(E)	Priority for Services Under the Order Of Selection	401.1-5.8
	(1) Definition of an Individual With a Most Significant Disability	401.1-5.8
	(2) Definition of an Individual With a Significant Disability	401.1-5.9
	(3) Definition of an Individual With a Non-Significant Disability	401.1-5.10
(F)	Determination of Priority Category Classification	401.1-5.10
	(1) Individual Determination	401.1-5.11
	(2) Classification of Eligible SSDI or SSI Recipients as Significantly Disabled	401.1-5.11
	(3) Decrease in Severity of Disability	401.1-5.11
	(4) Increase in Severity of Disability	401.1-5.11
(G)	Basis for Order of Selection - Prohibited Factors	401.1-5.12
(H)	Administration of the Order of	

	Selection	401.1-5.12
(I)	Documentation in the Case Record	401.1-5.15

<u>Section</u>		<u>Page No.</u>
----------------	--	-----------------

401.1-6	Scope of Vocational Rehabilitation Services	401.1-6.1
----------------	--	------------------

401.1-7	Assessment for Determining Eligibility and Priority for Services	401.1-7.1
----------------	---	------------------

(A)	Responsibility for Determining Eligibility and Priority for Services	401.1-7.1
(B)	Eligibility Requirements	401.1-7.1
	(1) Basic Requirements	401.1-7.1
	(2) Presumption of Benefit	401.1-7.2
	(3) Presumed Eligibility of Social Security Recipients and Beneficiaries for VR Services	401.1-7.2
	(4) Intent to Achieve an Employment Outcome	401.1-7.3
	(5) Not an Entitlement to VR Services	401.1-7.4
(C)	Prohibited Factors in Determining Eligibility	401.1-7.4
(D)	Assessment for Determining Eligibility and Priority for Services	401.1-7.5
(E)	Trial Work Experiences for Individuals with Significant Disabilities	401.1-7.6
	(1) Exploration of Individual's Abilities, Capabilities and Capacity	401.1-7.6
	(2) Written Plan	401.1-7.8
(F)	Extended Evaluation	401.1-7.9
(G)	Eligibility for Supported Employment Services	401.1-7.10
(H)	Alien Status of Applicants and Eligibility	401.1-7.11
(I)	Determination of Eligibility Within Sixty Calendar Days	401.1-7.14
(J)	Data for Determination of Priority for Services	401.1-7.14
(K)	Exemption From Financial Needs Test and Comparable Services and Benefits Provisions	401.1-7.14
(L)	Documentation of Eligibility in the Case Record	401.1-7.15

(M)	Documentation of Need for Trial Work Experiences or Extended Evaluation in the Case Record	401.1-7.15
<u>Section</u>		<u>Page No.</u>
401.1-8	Determination of Ineligibility	401.1-8.1
(A)	Requirements for Determining Ineligibility	401.1-8.1
(1)	Opportunity for Full Consultation	401.1-8.1
(2)	Inform Individual in Writing	401.1-8.1
(3)	Services Available from the Client Assistance Program	401.1-8.1
(4)	Refer Individual to One-Stop or Extended Employment Provider	401.1-8.2
(5)	Review Ineligibility Determination	401.1-8.2
(B)	Closure Without Eligibility Determination	401.1-8.2
(C)	Documentation of Ineligibility	401.1-8.3
401.1-9	Certification of Eligibility Or Ineligibility	401.1-9.1
(A)	Responsibility for Certification	401.1-9.1
(1)	Certification of Eligibility for VR Services	401.1-9.1
(2)	Certification of Eligibility For Supported Employment Services	401.1-9.1
(3)	Certification of Ineligibility for VR Services	401.1-9.1
(B)	Documentation of Eligibility or Ineligibility	401.1-9.2
(C)	Persons Authorized to Determine Eligibility or Ineligibility	401.1-9.2
401.1-10	Development of the Individualized Plan for Employment	401.1-10.1
(A)	Development of the Individualized Plan for Employment	401.1-10.1
(B)	Assessment for Determining VR Needs	401.1-10.1
(1)	Purpose of the Assessment	401.1-10.1
(2)	Basic Data for the Assessment	401.1-10.1
(3)	Comprehensive Assessment	401.1-10.2
(C)	Design of the IPE	401.1-10.3
(D)	Required Information for Eligible	

Individuals or Representatives	401.1-10.4
(1) Options for Developing the IPE	401.1-10.4

<u>Section</u>	<u>Page No.</u>
(2) Additional Information for Developing the IPE	401.1-10.4
(3) Individual's Rights and Remedies	401.1-10.5
(4) Client Assistance Program	401.1-10.5
(E) Mandatory IPE Procedures	401.1-10.5
(1) Written Document - Division Form	401.1-10.6
(2) Opportunity for Informed Choice	401.1-10.6
(3) Agreed to, Signed and Approved	401.1-10.6
(4) Copy of the IPE and Amendments Provided to the Eligible Individual or Representative	401.1-10.6
(5) Reviewed At Least Annually	401.1-10.7
(6) Amended as Necessary	401.1-10.7
(7) When Amendments Take Effect	401.1-10.7
(8) IPE for Special Education Student	401.1-10.8
(F) Prompt Development of IPEs	401.1-10.8
(G) Copy of IPE and Amendments in the Case Record	401.1-10.8
(H) Exemption of Assessment Services from Comparable Services and Benefits and Personal Resources Provisions	401.1-10.8

401.1-11 Content of the Individualized Plan for Employment	401.1-11.1
(A) Mandatory Components of the IPE	401.1-11.1
(1) Specific Employment Outcome	401.1-11.1
(2) Specific Rehabilitation Services	401.1-11.1
(3) Timelines	401.1-11.1
(4) Service Provider Entity	401.1-11.2
(5) Criteria to Evaluate Progress	401.1-11.2
(6) Terms and Conditions	401.1-11.2
(B) IPE for Individual with a Most Significant Disability	401.1-11.3
(C) Post-Employment Services	401.1-11.4
(D) Coordination of IPE with IEP for Special Education Students	401.1-11.4
(E) Decision that an Individual is Not Capable of Achieving an Employment Outcome and No Longer Eligible	401.1-11.5
(F) Copy of IPE and Amendments in	

	the Case Record	401.1-11.5
(G)	Justification of Need for Services in a Non-Integrated Setting	401.1-11.5
<u>Section</u>		<u>Page No.</u>
401.1-12	Opportunity to Exercise Informed Choice	401.1-12.1
(A)	Informing Applicants and Eligible Individuals	401.1-12.1
(B)	Development and Implementation of Written Policies and Procedures	401.1-12.1
(C)	Assisting in Exercising Informed Choice	401.1-12.2
(D)	Methods or Sources of Information	401.1-12.3
(E)	Documentation in the Case Record	401.1-12.4
401.1-13	Use of Comparable Services and Benefits	401.1-13.1
(A)	Determination of Comparable Services and Benefits	401.1-13.1
(B)	Exempt Services	401.1-13.1
(C)	Definition of Comparable Services and Benefits	401.1-13.2
(D)	Application of Comparable Services and Benefits	401.1-13.3
(E)	Refusal to Apply or Accept Comparable Services or Benefits	401.1-13.3
(F)	Use of Comparable Services or Benefits by Individuals in Trial Work Experience, Extended Evaluation, or Post-Employment	401.1-13.3
(G)	Duplication of Payment	401.1-13.4
(H)	Requirements for Interagency Coordination	401.1-13.4
(I)	Responsibilities of Other Public Entities	401.1-13.6
401.1-14	Use of Personal Resources	401.1-14.1
(A)	Determination of Available Personal Resources	401.1-14.1
(B)	VR Services Subject to Financial Needs Assessment	401.1-14.1
(C)	Services Exempted from Financial Needs Test or Financial Participation	401.1-14.3
(D)	Procedures for Determining Financial Status	401.1-14.4

<u>Section</u>	<u>Page No.</u>
(E) Refusal to Provide Information to Determine the Individual's Financial Status or to Consider or Use Available Personal or Family Resources	401.1-14.6
(F) Use of Personal Resources by Individuals in Trial Work Experience, Extended Evaluation or Post-Employment	401.1-14.7
401.1-15 Annual Reviews	401.1-15.1
(A) Annual Reviews of Individuals in Extended Employment or Employment Under Special Certificate of the Fair Labor Standards Act (See Section 401.1-8(A) (5) for Ineligibility Reviews)	401.1-15.1
(B) Content of the Annual Reviews	401.1-15.1
401.1-16 Vocational Rehabilitation Counseling and Guidance Services	401.1-16.1
(A) Definition of Vocational Rehabilitation Counseling and Guidance Services	401.1-16.1
(B) Purpose of VR Counseling and Guidance Services	401.1-16.1
(C) General Supportive Role vs. VR Counseling and Guidance	401.1-16.2
(D) Exemption from the Comparable Services and Benefits and Personal Resources Provisions	401.1-16.2
401.1-17 Referral and Other Services	401.1-17.1
(A) Provision of Referral and Other Services	401.1-17.1
(B) Exemption from the Comparable Services and Benefits and Personal Resources Provisions	401.1-17.1
401.1-18 Diagnosis and Treatment of Physical and Mental Impairments	401.1-18.1
(A) Definition of Diagnosis and Treatment Services	401.1-18.1
(B) Purpose of Diagnosis and Treatment Services	401.1-18.2

<u>Section</u>	<u>Page No.</u>
(C) Requirements for Providing Diagnosis and Treatment Services	401.1-18.3
(D) Diagnosis and Treatment of Acute and Transitory Conditions is Not Allowed	401.1-18.5
(E) Division Administrator Responsible for All Matters Pertaining to Fees Charged the Division	401.1-18.5
401.1-19 Vocational and Other Training Services	401.1-19.1
(A) Definition of Vocational and Other Training Services	401.1-19.1
(1) Vocational Training (College or University, Community College, Private Business and Technical Trade Schools, Tutorial, On-the-Job Training)	401.1-19.1
(2) Community Rehabilitation Program Evaluation and Training	401.1-19.4
(3) Personal Adjustment Training	401.1-19.5
(4) Prevocational Training	401.1-19.5
(5) Training Materials	401.1-19.6
(B) Purpose of Training Services	401.1-19.6
(C) Requirements for Providing Vocational and Other Training Services	401.1-19.6
(1) Individual Must Be Eligible	401.1-19.7
(2) Services in the Individual's IPE	401.1-19.7
(3) Limited to Type and Time Needed to Achieve the Employment Outcome	401.1-19.7
(4) Criteria for Selection of Training, Facilities and Personnel	401.1-19.7
(5) Rates of Payment for Training Services	401.1-19.8
(6) Preference for In-State Training Services	401.1-19.9
(7) Amounts of Tuition and Other Costs Allowed for Non-Residents	401.1-19.10
(8) Related Costs for Training	401.1-19.10
(9) Individual's Responsibilities	401.1-19.11
(10) Individual Performance Required	401.1-19.11
(11) Use of Comparable Services and Benefits and Personal Resources	401.1-19.12

<u>Section</u>	<u>Page No.</u>
401.1-20 Job-Related Services	401.1-20.1
(A) Definition of Job-Related Services	401.1-20.1
(1) Job Readiness	401.1-20.1
(2) Job Development	401.1-20.1
(3) Job Placement	401.1-20.1
(4) Job Follow-up and Follow-Along	401.1-20.2
(B) Purpose of Job-Related Services	401.1-20.2
(C) Ultimate Responsibility for Providing Job-Related Services	401.1-20.3
(D) Exemption from the Comparable Services and Benefits and Personal Resources Provisions	401.1-20.3
401.1-21 Specific Post-Employment Services	401.1-21.1
(A) Definition of Post-Employment Services	401.1-21.1
(B) Eligibility for Post-Employment Services	401.1-21.1
(1) To Retain Employment	401.1-21.1
(2) To Regain Employment	401.1-21.1
(3) To Secure Appropriate Employment	401.1-21.1
(C) Purpose of Post-Employment Services	401.1-21.2
(D) Appropriate Use of Post-Employment Services	401.1-21.2
(E) Determination of Need for Post-Employment Services	401.1-21.2
(1) Documentation of Need in the IPE	401.1-21.2
(2) Informing the Individual Through Appropriate Modes of Communication	401.1-21.3
(F) Requirements That Apply to Each VR Service Under Post-Employment	401.1-21.3
(G) Factors to Consider in Terminating Post-Employment Services	401.1-21.3
(H) Handling Rehabilitated Individuals from Other States	401.1-21.4
401.1-22 Vocational Rehabilitation Services to Family Members	401.1-22.1
(A) Purpose of Vocational Rehabilitation Services to Family Members	401.1-22.1
(1) To Determine Eligibility	401.1-22.1
(2) To Achieve an Employment Outcome	401.1-22.1
(3) As Part of and in Accordance with the IPE and Any Amendments	401.1-22.1

<u>Section</u>	<u>Page No.</u>
(B) Limitation of Services to Family Members	401.1-22.1
(C) Use of Comparable Services and Benefits and Personal Resources	401.1-22.1
(D) Termination of VR Services to Family Members	401.1-22.2
401.1-23 Maintenance Services	401.1-23.1
(A) Definition of Maintenance Services	401.1-23.1
(B) Examples of Expenses that Would Meet The Definition of Maintenance	401.1-23.1
(C) Criteria for Providing Maintenance	401.1-23.1
(D) Conditions Governing the Amount of Maintenance	401.1-23.2
401.1-24 Interpreter Services and Tactile Interpreting Services	401.1-24.1
(A) Provision of Interpreter and Tactile Interpreting Services	401.1-24.1
(1) Interpreter Services	401.1-24.1
(2) Tactile Interpreting Services	401.1-24.2
(B) Use of Qualified Interpreters	401.1-24.2
(C) Use of Comparable Services and Benefits But Exempt from Use of Personal Resources	401.1-24.2
401.1-25 Reader, Rehabilitation Teaching, and Orientation and Mobility Services	401.1-25.1
(A) Provision of Reader, Rehabilitation Teaching, and Orientation and Mobility Services	401.1-25.1
(1) Reader Services	401.1-25.1
(2) Rehabilitation Teaching Services	401.1-25.1
(3) Orientation and Mobility Services	401.1-25.2
(B) Qualifications of Providers of Reader, Rehabilitation Teaching, and Orientation and Mobility Services	401.1-25.2
(1) Provision of Reader Services	401.1-25.3
(2) Provision of Rehabilitation Teaching Services	401.1-25.3
(3) Provision of Orientation and Mobility Services	401.1-25.4

<u>Section</u>	<u>Page No.</u>
(C) Use of Comparable Services and Benefits But Exempt from Use of Personal Resources	401.1-25.5
401.1-26 Occupational Licenses, Tools, Equipment, and Initial Stocks and Supplies	401.1-26.1
(A) Provision of Occupational License, Tools, Equipment, and Initial Stocks and Supplies	401.1-26.1
(1) Occupational License	401.1-26.1
(2) Tools	401.1-26.1
(3) Equipment	401.1-26.2
(4) Initial Stocks and Supplies	401.1-26.3
(B) Use of Comparable Services and Benefits and Personal Resources	401.1-26.4
(C) Title to Tools, Equipment, Shelters, Initial Stocks and Supplies	401.1-26.4
(D) Disposition of Items	401.1-26.5
401.1-27 Transportation Services	401.1-27.1
(A) Definition of Transportation Services	401.1-27.1
(B) Use of Comparable Services and Benefits and Personal Resources	401.1-27.1
(C) Additional Conditions for Providing Transportation Services	401.1-27.1
(D) Prohibited Services	401.1-27.2
(E) Services Requiring Supervisor's Review and Approval	401.1-27.2
401.1-28 Rehabilitation Technology Services	401.1-28.1
(A) Definition of Rehabilitation Technology Services	401.1-28.1
(B) Conditions for the Provision of Rehabilitation Technology Services	401.1-28.3
(C) Informed Choice in Selecting Rehabilitation Technology Services	401.1-28.3
(D) Types of Aids, Devices and Systems	401.1-28.4
(1) Devices for Individuals who are Blind or Visually Impaired	401.1-28.4
(2) Devices for Individuals who are Deaf, Hearing Impaired, Speech Impaired	401.1-28.5

<u>Section</u>	<u>Page No.</u>
(3) Devices for Other Individuals or Groups who are Significantly Disabled with Communicative Impairments	401.1-28.6
(4) Services to Groups of Individuals	401.1-28.7
(5) Other Devices for Individuals With Limited Mobility or Motor Coordination	401.1-28.7
(E) Exemption from the Use of Comparable Services and Benefits But Subject to the Use of Personal Resources	401.1-28.7
401.1-29 Transition Services	401.1-29.1
(A) Definition of Transition Services	401.1-29.1
(B) Provision of Transition Services to Students Referred by the DOE	401.1-29.2
(1) Referral of Students for General VR Services or the SE-VR Work-Study Program	401.1-29.2
(2) Outreach to Non-Special Education Students with Disabilities	401.1-29.3
(3) Coordination of Services with DOE School Personnel	401.1-29.3
(4) Provision of SE-VR Work-Study Program in Accordance with the Program Standards	401.1-29.3
(C) Purpose of Transition Services	401.1-29.4
(D) Use of Comparable Services and Benefits And Personal Resources	401.1-29.4
401.1-29 Pre-Employment Transition Services	401.1-29.01
(A) Purpose	401.1-29.02
(B) Target Population	401.1-29.03
(C) Required Services, Authorized Services and Coordination	401.1-29.04
(D) Auxiliary Aids and services Required Under ADA or Section 504	401-1-29.05
(E) Outreach and Collaboration	401-1-29.06
(F) Provision of Pre-Employment Transition Services to Students with Disabilities	401.1-29.07

401.1-30	On-The-Job or Other Related Personal Attendant Services	401.1-30.1
(A)	Definition of Personal Attendant Services	401.1-30.1
(B)	Purpose of Personal Attendant Services	401.1-30.1
(C)	Conditions for Providing Personal Attendant Services	401.1-30.1
(D)	Informed Choice in Selecting Personal Attendants	401.1-30.2
(E)	Use of Comparable Services and Benefits but Exempt from Use of Personal Resources	401.1-30.2

<u>Section</u>	<u>Page No.</u>
----------------	-----------------

401.1-31	Supported Employment Services	401.1-31.1
(A)	Definition of Supported Employment Services	401.1-31.1
(1)	Definition of Supported Employment	401.1-31.1
(2)	Definition of Ongoing Support Services	401.1-31.2
(3)	Definition of Extended Services	401.1-31.4
(4)	Definition of Competitive Integrated Employment	401.1-31.4
(B)	Consideration of Persons with the Most Significant Disabilities for Supported Employment	401.1-31.5
(1)	Eligibility for Supported Employment Services	401.1-31.5
(2)	Certification of Eligibility for Supported Employment Services	401.1-31.6
(C)	Conditions for Providing Supported Employment Services	401.1-31.6
(D)	Requirements for an Employment Outcome in Supported Employment	
(E)	Use of Comparable Services and Benefits and Personal Resources	401.1-31.7

401.1-32	Technical Assistance and Other Consultation Services	401.1-32.1
(A)	Availability of Technical Assistance and Other Consultation Services	401.1-32.1
(B)	Referral for Other Resources	401.1-32.1

(C)	Use of Comparable Services and Benefits and Personal Resources	401.1-32.1
401.1-33	Other Goods and Services	401.1-33.1
(A)	Definition of Other Goods and Services	401.1-33.1
(B)	Availability of Other Goods and Services	401.1-33.1
(C)	Use of Comparable Services and Benefits and Personal Resources	401.1-33.1
401.1-34	Record of Services	401.1-34.1
(A)	Record of Services Documentation Requirements	401.1-34.1
(B)	Consultation from the State Rehabilitation Council in Determining Type of Documentation Required	401.1-34.4
<u>Section</u>		<u>Page No.</u>
401.1-35	Confidentiality	401.1-35.1
(A)	Informing Applicants of Division's Need to Collect Personal Information and Requirements Governing its Use	401.1-35.1
(B)	Written Informed Consent to Request for Information from Other Agencies or Individuals.	401.1-35.1
(C)	Informing Applicants and Eligible Individuals of the Confidentiality of Personal Information and Conditions for Access and Release	401.1-35.2
(D)	Protection of Personal Information	401.1-35.3
(E)	Inspection of Confidential Records	401.1-35.4
(F)	Release of Confidential Information To Applicants and Eligible Individuals	401.1-35.4
(G)	Release of Information for Audit, Evaluation, or Research	401.1-35.7
(H)	Conditions for Release of Information to Other Programs or Authorities	401.1-35.8
401.1-36	Requirements for Successful Closures	401.1-36.1
(A)	Requirements for Closure of the Record of Services of an Individual Who Has Achieved an Employment Outcome	401.1-36.1
401.1-37	Disposition of Case Records	401.1-37.1

- (A) Retainment of Closed Case Records 401.1-37.1
- (B) Disposing of Closed Case Records 401.1-37.2

PURPOSE 401.1-1.1

401.1-1 Purpose

(A) Purpose of the State VR Services Program

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) Authority for the Program

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) Implementation of the Program

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)

APPLICABLE DEFINITIONS

401.1-2.1

401.1-2 Applicable Definitions

The following definitions listed in alphabetical order apply to the State VR Services Program:

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

- (C) "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.

APPLICABLE DEFINITIONS

401.1-2.2

- (D) "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.

- (E) "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

APPLICABLE DEFINITIONS

401.1-2.3

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.

- (F) "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

APPLICABLE DEFINITIONS

401.1-2.4

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).

- (G) "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 401.1-13; and
 - (3) Commensurate to the services that the individual would otherwise receive from the division.

APPLICABLE DEFINITIONS

401.1-2.5

- (H) "Competitive integrated employment" means full or part-time work at minimum wage or higher, with wages and benefits similar to those without disabilities performing the same work, and fully integrated with co-workers without disabilities.
- (I) "Department" means the Department of Human Services.
- (J) "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;

APPLICABLE DEFINITIONS

401.1-2.6

- (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.

(K) "Division" means the Vocational Rehabilitation and Services for the Blind Division (VRSBD, DVR) of the Department of Human Services.

(N) "Eligible individual" means an applicant for VR services who meets the eligibility requirements as follows, and as described in

APPLICABLE DEFINITIONS

401.1-2.7

Section 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 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.

- (M) "Employment outcome" means: competitive integrated employment including customized employment; or supported employment.
 - (a) Uncompensated outcomes, such as homemaker and unpaid family workers does not qualify as an employment outcome.
 - (b) If an individual with a disability wants to pursue uncompensated employment, after exercising informed choice, he or she may still do so, but not under the VR program.
 - (c) Individuals who choose to pursue uncompensated outcomes to other Federal, State, and local programs and providers that can best meet their needs.

APPLICABLE DEFINITIONS

401.1-2.8

- (N) "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.
- (O) "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 significantly disability has made the transition from support provided by the division.

Extended Services for Youth with the Most Significant Disabilities

"Extended services" under supported employment can be used for youth with the most significant disabilities for a period not to exceed four years or until the youth reaches the age of 25 and no longer meets the definition of "youth with a disability" or whichever occurs first. Reference, Section (RR) "youth with a disability". 34 CFR 361.5(c)(58)

Although the division must discontinue funding extended services once a youth reaches age 25, the VR counselor should explore the availability of funding from other sources. The division may use the Supported Employment program or VR funds to provide extended services only to youth with the most significant disabilities; it may not use either source of funding to provide extended services to individuals with the most significant disabilities who are not youth.

Section 604(b)(2) of the Act, as amended by WIOA, Requirement is implemented in the definition of "extended services" in §361.5(c)(19)(v) and service in §363.4(a)(2) Sections 604(b)(1) of the Act and §363.4(b)

- (P) "Extreme medical risk" means a probability of substantially increasing functional impairment or death if medical services, including mental health services, are not provided expeditiously.
- (Q) "Family member," for purposes of receiving VR services, in accordance with Section 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

APPLICABLE DEFINITIONS

401.1-2.9

(3) Whose receipt of VR services is necessary to enable the applicant or eligible individual to achieve an employment outcome.

(R) "Individual who is blind" means a person having not more than 10 percent visual acuity in the better eye after correction, which means a person who has:

(1) Not more than 20/200 central visual acuity in the better eye after correction; or

(2) 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.

(S) "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.

(T) "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)

APPLICABLE DEFINITIONS

401.1-2.10

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.

(U) "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, or 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.

- (V) "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.

APPLICABLE DEFINITIONS

401.1-2.11

- (W) "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.
- (X) "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.
- (Y) "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 400.1-6 by a qualified and impartial mediator as defined in Section 400.1-6(A) (5).

APPLICABLE DEFINITIONS

401.1-2.12

- (Z) "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;
 - (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

APPLICABLE DEFINITIONS

401-2.13

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 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 401.1-6; or

(i) Any service similar to the foregoing services.

APPLICABLE DEFINITIONS

401.1-2.14

(AA) "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.

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

(CC) "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.

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

APPLICABLE DEFINITIONS

401.1-2.15

(EE) "Pre-Employment Transition Services" means the five required services which include job exploration counseling, work-based learning experiences, counseling on opportunities for enrollment in comprehensive transition or postsecondary educational programs at institutions of higher education, workplace readiness training, and instruction in self-advocacy. These services must be made available statewide to all students with disabilities in need of such services, regardless of whether a student has applied for VR services.

(FF) "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.

(GG) "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.

- (HH) "Specific post-employment services" (post-employment services) means one or more of the services identified in Section 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.
- (II) "Student with a Disability" means an individual with a disability enrolled in an educational program including post-secondary education who are not less than 14 years of age or older than 21 years of age.
- (JJ) "Subminimum Wage Employment" means employment at less than the Federal minimum wage by an employer who is issued a certificate under section 14(c) of the Fair Labor Standards Act (29 U.S.C. 214(c)).
- (KK) "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.

APPLICABLE DEFINITIONS

401.1-2.16

- (LL) "Supported employment" means:
 - (1) Competitive integrated employment, including customized employment; or employment in an integrated work setting in which an individual with a most significant disability is working on a short-term basis toward competitive integrated employment; and

- (a) Employment that is individualized and customized, consistent with the individuals' unique strengths, abilities interests and informed choice, including with ongoing support services for individuals with the most significant abilities.
 - (b) Individuals with the most significant disabilities, including youth with the most significant disabilities, for whom: competitive integrated employment has not historically occurred; or
 - (c) Competitive integrated employment has been interrupted or intermittent; and
 - (d) Intensive supported employment services and extended services are needed in order to perform the work involved, because of the nature and severity of their disability.
- (2) Supported Employment serves:
- (a) Individuals with the most significant disabilities, including youth with the most significant disabilities, for whom-
 - (b) Competitive integrated employment has not historically occurred; or
 - (c) Competitive integrated employment has been interrupted or intermittent; and
 - (d) Intensive supported employment services and extended services are needed in order to perform the work involved, because of the nature and severity of their disability.

[Eff July 22, 2016] Section 7(38) of the Act and §§361.5(c) (53) and

363.1(b) State Supported Employment Services Program- Title VI of the Rehabilitation Act, as amended by the Workforce Innovation and Opportunity Act

- (3) Short-term Basis: Refers to supported employment for an individual with a most significant disability, whose supported employment in an integrated setting does not satisfy the criteria of competitive integrated employment, is considered to be working on a short-term basis toward competitive integrated employment so long as the individuals can reasonably anticipate achieving competitive integrated employment.

For purposes of supported employment, an individual with a most significant disability, whose supported employment in an integrated setting does not satisfy the criteria of competitive integrated employment, as defined is considered to be working on a short-term basis toward competitive integrated employment so long as the individual can reasonably anticipate achieving competitive integrated employment-

- (a) Within six months of achieving a supported employment outcome; or,
- (b) In limited circumstances, within a period not to exceed 12 months from the achievement of the supported employment outcome,
- (c) If a longer period is necessary based on the needs of the individual, and the individual has demonstrated progress toward competitive earnings based on information contained in the service record.

- (d) The six-month short-term basis period, and the additional six months that may be available in limited circumstances, begins after an individual has completed up to 24 months of supported employment services (unless a longer period of time is necessary based upon the individual's needs) and the individual has achieved a supported employment outcome.
- (e) If the individual is stable in the supported employment placement for a minimum period of 90 days following the transition to extended services,
- (f) The individual has achieved a supported employment outcome.

{Eff July 22, 2016} CFR §363.54
State Supported Employment Services
Program- Title VI of the
Rehabilitation Act, as amended by
the Workforce Innovation and
Opportunity Act

(4) Transitional employment, as defined in this Section, for individuals with the most significant disabilities due to mental illness.

(MM) "Supported employment services" means ongoing support services, including customized employment, needed to support and maintain an individual with a most significant disability in supported employment, that

- (a) Are provided singly or in combination and are organized and made available in such a way as to assist an eligible individual to achieve competitive integrated employment;

- (b) Are based on a determination of the needs of an eligible individual, as specified in an individualized plan for employment (IPE); and
- (c) Are provided for a period of not more than 24 months, with the exception of extension if necessary, in order to achieve the employment outcome identified in the individual plan for employment (IPE).

Extended Services for Youth with the Most Significant Disabilities under supported employment.

- (a) Reference "Extended Services"
Applicable Definitions in Section
401.1-2.8.

APPLICABLE DEFINITIONS

401.1-2.17

(NN) "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.

- (OO) "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

APPLICABLE DEFINITIONS

401.1-2.18

job placements until job permanency is achieved.

- (PP) "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.

- (QQ) "Vocational Rehabilitation services":

- (1) If provided to an individual, means those services listed in Section 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)

- (RR) "Youth with a Disability" means an individual with a disability that is not less than 14 years of age or older than 24 years of age.

401.1-3 Information and Referral Services

(A) Information and Referral System

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) Referral to Local Extended Employment Providers

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 401.1-7(B)(4)(a), explain to the individual with a disability that the purpose of the VR program is to assist individuals to achieve an employment outcome as defined in Section 401.1-2 (i.e., employment in an integrated setting);

- (2) Consistent with Section 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) Referral Requirements

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) Reporting Requirements

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) Case Documentation Requirements

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)

401.1-4 Referral and Application

(A) Definition of Referral

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) Minimum Referral Information

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) Time Period for Contacting Referrals

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 401.1-7.

(B) Definition of Applicant

An applicant is any individual, or representative chosen by an individual, who

submits an application for VR services.

(1) Submittal of Application

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

1) Has completed a common intake application form in a One-Stop Center requesting VR services; or

2) 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) Processing Applications

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:

1) 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

- 2) An exploration of the individual's abilities, capabilities, and capacity to perform in work situations is carried out in accordance with Section 401.1-7(E) or, if appropriate, an extended evaluation is carried out in accordance with Section 401.1-7(F).

- (3) Availability of Referral and Application Forms

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) Information About the VR Program

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) Assuring the Individual's Informed Consent, Participation, and Exercise of Rights and Remedies

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)

401.1-5 Order of Selection

(A) Purpose and Intent of the Order of Selection

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) Review of Ability to Provide Services

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

(1) State Plan Requirements

The division either must be able to provide the full range of services listed in Section 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) Determination of Ability to Provide Services and Meet Program Requirements

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 Unable to Serve All Eligible Individuals

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:
 - 1) 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

- 2) 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 401.1-3.

(C) Assurance of Services to All Eligible Individuals

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

(1) Demonstration of Ability

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) Determination of Ability

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:
 - 1) An estimate of the number of and projected costs of serving, in the next Federal fiscal year, individuals with existing Individualized Plans for Employment;
 - 2) 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

eligible in the next Federal fiscal year and the projected costs of serving those individuals;

3) 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

4) 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) 1) through 3) and the resources identified in paragraphs (C)(2)(a) 4) 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) 1) through 3) to ensure the provision of the full range of services, as appropriate, to all eligible individuals.

(D) Determination of Need for Order of Selection

The division must determine the need for

establishing and implementing an Order of Selection:

(1) When to Make the Determination

The division must determine, prior to the beginning of each Federal fiscal year, whether to establish and implement an Order of Selection.

(2) Consultation with the State Rehabilitation Council

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) Reevaluation of Need for Order of Selection

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) Establishment of Order of Selection but Determination Not to Implement

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 to Implement the Order of Selection

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) When to Terminate the Order of Selection

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) Priority for Services Under the Order of Selection

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 (have neither a significant nor a most significant disability).

(1) Definition of an Individual With a Most Significant Disability

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) Definition of an Individual With a Significant Disability

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:
 - 1) 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;

- 2) 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
- 3) Requires VR services for 6 months or more.

(3) Definition of an Individual With a Non-significant Disability

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) Determination of Priority Category Classification

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) Individual Determination

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) Classification of Eligible SSDI or SSI Recipients as Significantly Disabled

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) Decrease in Severity of Disability

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) Increase in Severity of Disability

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) Basis for Order of Selection - Prohibited Factors

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) Administration of the Order of Selection

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 services lists.

(I) Documentation in the Case Record

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. §§361.5(b)(30) and (31), 361.36, 361.47)

401.1-6 Scope of Vocational Rehabilitation Services

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 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 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 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 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 401.1-2 and in accordance with Section 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 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 401.1-2 and in accordance with Section 401.1-23.
- (8) Transportation in connection with the rendering of any vocational rehabilitation service as defined in Section 401.1-2 and in accordance with Section 401.1-27.
- (9) Vocational rehabilitation services to family members, as defined in Section 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 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 401.1-24.

- (11) Reader services, rehabilitation teaching services, and orientation and mobility services for individuals who are blind, in accordance with Section 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 401.1-20.
- (13) Supported employment services as defined in Section 401.1-2 and in accordance with Section 401.1-31.
- (14) On-the-job or other related personal attendant (personal assistance) services as defined in Section 401.1-2 and in accordance with Section 401.1-30.
- (15) Specific post-employment services as defined in Section 401.1-2 and in accordance with Section 401.1-21.
- (16) Occupational licenses, tools, equipment, initial stocks, and supplies in accordance with Section 401.1-26;
- (17) Rehabilitation technology as defined in Section 401.1-2, including vehicular modification, telecommunications, sensory, and other technological aids and devices, in accordance with Section 401.1-28.
- (18) Transition services as defined in Section 401.1-2 and in accordance with Section 401.1-29.
- (19) Technical assistance and other consultation services to conduct market analysis, 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 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 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)

401.1-7 Assessment for Determining Eligibility and
Priority for Services

(A) Responsibility for Determining Eligibility
and Priority for Services

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) Eligibility Requirements

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

(1) Basic Requirements

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) Presumption of Benefit

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) Presumed Eligibility of Social Security Recipients and Beneficiaries for VR Services

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:

- 1) Presumed eligible for VR services under paragraphs (B) (1) and (2); and
 - 2) Considered an individual with a significant disability as defined in Section 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 401.1-4(B) (2).
- (4) Intent to Achieve an Employment Outcome

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) Not an Entitlement to VR Services

Nothing in this Section, including paragraph (B) (3) (a), is to be construed to create an entitlement to any VR service.

(C) Prohibited Factors in Determining Eligibility

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:

1) Age, gender, race, color, or national origin of the applicant;

2) Type of expected employment outcome;

3) Source of referral for VR services; and

4) 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) Assessment for Determining Eligibility and Priority for Services

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) Trial Work Experiences for Individuals with Significant Disabilities

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) Exploration of Individual's Abilities, Capabilities and Capacity

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) Written Plan

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:

- 1) There is sufficient evidence to conclude that the individual can benefit from the provision of VR services in terms of an employment outcome; or
- 2) 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) Extended Evaluation

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

A State may provide supported employment services to any individual who—

- (1) Has been determined eligible for vocational rehabilitation services;
- (2) Is an individual with a most significant disability; and
- (3) Has had supported employment identified as the appropriate employment outcome based on a comprehensive assessment of rehabilitation needs and an evaluation of rehabilitation, career and job needs.
- (4) The individual requires intensive supported employment services or extended services for a period of time not to extend beyond 24 months; youth with the most significant disabilities, for a period of time not to exceed four

years, or until such time that a youth reaches the age of 25 and no longer meets the definition of a youth with a disability under 34 CFR 361.5(c)(58), unless

ASSESSMENT FOR DETERMINING

ELIGIBILITY AND PRIORITY FOR SERVICES

401.1-7.11

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. [Eff July 22, 2016] (Auth: C.F.R. §363.3, Section 605 of the Rehabilitation Act of 1973 as amended by the Workforce Innovation and Opportunity Act)

(H) Alien Status of Applicants and Eligibility

Where an applicant is known to be an alien or where there is reason to question an applicant's status, the applicant shall be requested to present proper credentials or clarify status with the Immigration and Naturalization Services (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

ASSESSMENT FOR DETERMINING

ELIGIBILITY AND PRIORITY FOR SERVICES

401.1-7.12

organizations; and

- (e) Ambassadors and career diplomatic and consular officers.
- (3) The division shall request that the individual provide documentation regarding the person's 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 services).

- (c) If the individual provides documentation of the person'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

ASSESSMENT FOR DETERMINING

ELIGIBILITY AND PRIORITY FOR SERVICES

401.1-7.13

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.

- 1) 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).
- 2) 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.
- 3) 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.

ASSESSMENT FOR DETERMINING
ELIGIBILITY AND PRIORITY FOR SERVICES 401.1-7.14

(I) Determination of Eligibility Within Sixty Calendar Days

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) Data for Determination of Priority for Services

If the division is operating under an Order of Selection for services, as provided in Section 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) Exemption from Financial Needs Test and Comparable Services and Benefits Provisions

ASSESSMENT FOR DETERMINING
ELIGIBILITY AND PRIORITY FOR SERVICES 401.1-7.15

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 401.1-13 and the personal resources provisions of Section 401.1-14.

- (L) Documentation of Eligibility in the Case Record

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) Documentation of Need for Trial Work Experience or Extended Evaluation in the Case Record

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,

ASSESSMENT FOR DETERMINING

ELIGIBILITY AND PRIORITY FOR SERVICES

401.1-7.16

721, 722, 723; 34 C.F.R. §§361.42, 361.47)

DETERMINATION OF INELIGIBILITY

401.1-8.1

401.1-8 Determination of Ineligibility

(A) Requirements for Determining Ineligibility:

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) Opportunity for Full Consultation

Make the determination only after providing an opportunity for full consultation with the individual or, as appropriate, with the individual's representative;

(2) Inform Individual in Writing

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 400.1-5;

(3) Services Available from the Client Assistance Program

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;

DETERMINATION OF INELIGIBILITY

401.1-8.2

(4) Refer Individual to One-Stop or Extended Employment Provider

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 401.1-2.

(5) Review Ineligibility Determination

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) Closure Without Eligibility Determination:

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

DETERMINATION OF INELIGIBILITY 401.1-8.3

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) Documentation of Ineligibility

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)

CERTIFICATION OF ELIGIBILITY OR INELIGIBILITY 401.1-9.1

401.1-9 Certification of Eligibility or Ineligibility

(A) Responsibility for Certification

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) Certification of Eligibility for VR Services

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 401.1-7.

(2) Certification of Eligibility for Supported Employment Services

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 401.1-7 and 401.1-31.

(3) Certification of Ineligibility for VR Services

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

CERTIFICATION OF ELIGIBILITY OR INELIGIBILITY 401.1-9.2

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 401.1-8, the division shall certify the individual's ineligibility for VR services.

If an individual makes an informed choice not to pursue competitive integrated employment, the division shall certify the individual's ineligibility for VR services.

(B) Documentation of Eligibility or Ineligibility

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) Persons Authorized to Determine Eligibility or Ineligibility

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, 34 C.F.R. §397, Section 511 of the Rehabilitation Act of 1973 as amended by the Workforce Innovation and Opportunity Act P.L. 113-128, 29 U.S.C. 794g) (Imp: HRS §§347-4, 348-3, 348-6, 29 U.S.C. §§705, 722; 34 C.F.R. §§361.42, 361.43, 361.47)

DEVELOPMENT OF THE
INDIVIDUALIZED PLAN FOR EMPLOYMENT 401.1-10.1

401.1-10 Development of the Individualized Plan for
Employment

(A) Development of the Individualized Plan for Employment

The division shall ensure that an Individualized Plan for Employment (IPE) meeting the requirements of this Section and

Section 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 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) Assessment for Determining VR Needs

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) Purpose of the Assessment

The purpose of this assessment is to determine the specific employment outcome, and the nature and scope of VR services to be included in the IPE.

(2) Basic Data for the Assessment

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

DEVELOPMENT OF THE
INDIVIDUALIZED PLAN FOR EMPLOYMENT 401.1-10.2

priority for services under Section 401.1-7.

(3) Comprehensive Assessment

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:
 - 1) 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 401.1-5 for the individual; and
 - 2) Information that can be provided by the individual and, if appropriate, by the

DEVELOPMENT OF THE
INDIVIDUALIZED PLAN FOR EMPLOYMENT 401.1-10.3

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) Design of the IPE

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

DEVELOPMENT OF THE
INDIVIDUALIZED PLAN FOR EMPLOYMENT 401.1-10.4

(D) Required Information for Eligible Individuals or Representatives

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) Options for Developing the IPE

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:
 - 1) A qualified vocational rehabilitation counselor employed by the division;
 - 2) A qualified vocational rehabilitation counselor who is not employed by the division; or
 - 3) Resources other than those in 1) or 2);

(2) Additional Information for Developing the IPE

Additional information to assist the eligible individual or, as appropriate, the individual's representative in developing the IPE, including:

DEVELOPMENT OF THE
INDIVIDUALIZED PLAN FOR EMPLOYMENT 401.1-10.5

- (a) Information describing the full range of components that must be included in an IPE;
- (b) As appropriate to each eligible individual:

- 1) An explanation of agency guidelines and criteria for determining an eligible individual's financial commitments under an IPE;
- 2) Information on the availability of assistance in completing division forms required as part of the IPE; and
- 3) Additional information that the eligible individual requests or the division determines to be necessary to the development of the IPE;

(3) Individuals Rights and Remedies

A description of the rights and remedies available to the individual including, if appropriate, recourse to the processes described in Section 400.1-5; and

(4) Client Assistance Program

A description of the availability of the Client Assistance Program of the Hawaii Disability Rights Center and information on how to contact them.

(E) Mandatory IPE Procedures

The division must ensure that:

DEVELOPMENT OF THE INDIVIDUALIZED PLAN FOR EMPLOYMENT 401.1-10.6

(1) Written Document - Division Form

The IPE is a written document prepared on forms provided by the division;

(2) Opportunity for Informed Choice

The IPE is developed and implemented in a manner that gives eligible individuals the opportunity to exercise informed choice, consistent with Section 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) Agreed to, Signed and Approved

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) Copy of the IPE and Amendments Provided to the Eligible Individual or Representative

DEVELOPMENT OF THE
INDIVIDUALIZED PLAN FOR EMPLOYMENT 401.1-10.7

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) Reviewed At Least Annually

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) Amended as Necessary

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) When Amendments Take Effect

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

DEVELOPMENT OF THE
INDIVIDUALIZED PLAN FOR EMPLOYMENT

401.1-10.8

(8) IPE for Special Education Student

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 400.1-13(a)(2).

(F) Prompt Development of IPEs

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) Copy of IPE and Amendments in the Case Record

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

(H) Exemption of Assessment Services from Comparable Services and Benefits and Personal Resources Provisions

Assessment services for determining VR needs are exempt from the comparable services and benefits provisions of Section 401.1-13 and personal resources provisions of Section 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

DEVELOPMENT OF THE
INDIVIDUALIZED PLAN FOR EMPLOYMENT 401.1-10.9

U.S.C. §§705, 721, 722, 723; 34 C.F.R. §§361.5(b)(6), 361.45, 361.47)

CONTENT OF THE INDIVIDUALIZED
PLAN FOR EMPLOYMENT

401.1-11.1

401.1-11 Content of the Individualized Plan for Employment

(A) Mandatory Components of the IPE

Regardless of the approach in Section 401.1-10(D) (1) selected by an eligible individual

for developing the IPE, each IPE must include the following mandatory components:

(1) Specific Employment Outcome

A description of the specific employment outcome, as defined in Section 401.1-2, that is chosen by the eligible individual that is consistent with the individual's unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice;

(2) Specific Rehabilitation Services

A description of the specific rehabilitation services under Section 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

Timelines for the achievement of the
CONTENT OF THE INDIVIDUALIZED
PLAN FOR EMPLOYMENT 401.1-11.2

employment outcome and for the initiation of services;

(4) Service Provider Entity

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) Criteria to Evaluate Progress

A description of the criteria that will be used to evaluate progress toward achievement of the employment outcome; and

(6) Terms and Conditions

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:
 - 1) The responsibilities the individual will assume in relation to achieving the employment outcome;
 - 2) If applicable, the extent of the individual's participation in the costs of services in accordance with Section 401.1-14; and
 - 3) The responsibility of the individual with regard to

CONTENT OF THE INDIVIDUALIZED
PLAN FOR EMPLOYMENT

401.1-11.3

applying for and securing comparable services and benefits in accordance with Section 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 401.1-13;

(B) IPE for Individual with a Most Significant Disability

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;

CONTENT OF THE INDIVIDUALIZED
PLAN FOR EMPLOYMENT

401.1-11.4

- (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) Post-Employment Services

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 401.1-13.

(D) Coordination of IPE with IEP for Special Education Students

CONTENT OF THE INDIVIDUALIZED
PLAN FOR EMPLOYMENT

401.1-11.5

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) Decision that an Individual is Not Capable of Achieving an Employment Outcome and No Longer Eligible

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 401.1-8. The decision, and the reasons on which the decision is based, must be included as an amendment to the IPE.

- (F) Copy of IPE and Amendments in the Case Record

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) Justification of Need for Services in a Non-Integrated Setting

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)

OPPORTUNITY TO EXERCISE INFORMED CHOICE 401.1-12.1

401.1-12 Opportunity to Exercise Informed Choice

- (A) Informing Applicants and Eligible Individuals

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) Development and Implementation of Written Policies and Procedures

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;

OPPORTUNITY TO EXERCISE INFORMED CHOICE 401.1-12.2

- (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 individual's 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) Assisting in Exercising Informed Choice

In assisting an applicant or eligible individual in exercising informed choice during the assessment for determining

OPPORTUNITY TO EXERCISE INFORMED CHOICE 401.1-12.3

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) Methods or Sources of Information

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

OPPORTUNITY TO EXERCISE INFORMED CHOICE 401.1-12.4

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) Documentation in the Case Record

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;

OPPORTUNITY TO EXERCISE INFORMED CHOICE 401.1-12.5

- (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)

USE OF COMPARABLE SERVICES AND BENEFITS 401.1-13.1

401.1-13 Use of Comparable Services and Benefits

- (A) Determination of Comparable Services and Benefits

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 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) Exempt Services

The following VR services described in Section 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

USE OF COMPARABLE SERVICES AND BENEFITS 401.1-13.2

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) Definition of Comparable Services and Benefits

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.

USE OF COMPARABLE SERVICES AND BENEFITS

401.1-13.3

(D) Application of Comparable Services and Benefits

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) Refusal to Apply or Accept Comparable Services or Benefits

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) Use of Comparable Services or Benefits by Individuals in Trial Work Experience, Extended Evaluation, or Post-Employment

Applicants in a trial work experience or
USE OF COMPARABLE SERVICES AND BENEFITS 401.1-13.4

extended evaluation, and individuals in post-employment status shall use comparable services and benefits on the same bases as eligible individuals.

(G) Duplication of Payment

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) Requirements for Interagency Coordination

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, develops 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

USE OF COMPARABLE SERVICES AND BENEFITS

401.1-13.5

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) Responsibilities of Other Public Entities

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 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;

USE OF COMPARABLE SERVICES AND BENEFITS

401.1-13.7

- (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)

USE OF PERSONAL RESOURCES

401.1-14.1

401.1-14 Use of Personal Resources

- (A) Determination of Available Personal Resources

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 401.1-6, other than those services exempted under subsection (C).

(B) VR Services Subject to Financial Needs Assessment

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 401.1-2 and in accordance with Section 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 401.1-6 and in accordance with Section 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.

USE OF PERSONAL RESOURCES 401.1-14.2

- (3) Maintenance, as defined in Section 401.1-2 and in accordance with Section 401.1-23.

- (4) Transportation, as defined in Section 401.1-2 and in accordance with Section 401.1-27.
- (5) Vocational rehabilitation services to family members, as defined in Section 401.1-2 and in accordance with Section 401.1-22.
- (6) Supported employment services, as defined in Section 401.1-2 and in accordance with Section 401.1-31.
- (7) Occupational licenses, tools, equipment, initial stocks, and supplies, in accordance with Section 401.1-26.
- (8) Rehabilitation technology services as defined in Section 401.1-2 and in accordance with Section 401.1-28.
- (9) Transition services, as defined in Section 401.1-2 and in accordance with Section 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 401.1-32.
- (11) Other goods and services determined

USE OF PERSONAL RESOURCES

401.1-14.3

necessary for the individual with a disability to achieve an employment outcome in accordance with Section 401.1-33.

(12) Specific post-employment services consisting of the above services (1) through (10).

(C) Services Exempted from Financial Needs Test or Financial Participation

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 401.1-7(E), or an extended evaluation under Section 401.1-7(F).

(b) Assessment for determining VR needs under Section 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

USE OF PERSONAL RESOURCES 401.1-14.4

personal attendant services.

(g) Any auxiliary aid or service (e.g., interpreter services under

Section 401.1-6(10), reader services under Section 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) Procedures for Determining Financial Status

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) If must be applied uniformly to all individuals in similar circumstances and within each geographic region.

USE OF PERSONAL RESOURCES

401.1-14.5

- (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

USE OF PERSONAL RESOURCES

401.1-14.6

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) Refusal to Provide Information to Determine the Individual's Financial Status or to Consider or Use Available Personal or Family Resources

The division shall not use VR funds to pay
USE OF PERSONAL RESOURCES 401.1-14.7

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) Use of Personal Resources by Individuals in Trial Work Experience, Extended Evaluation, or Post-Employment

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)

- (A) Annual Reviews of Individuals in Extended Employment or Employment Under Special Certificate of the Fair Labor Standards Act (See Section 401.1-8(A) (5) for Ineligibility Reviews)

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 401.1-2 or that the individual made an informed choice to remain in extended employment.

- (B) Content of the Annual Reviews

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 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 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)

401.1-16 Vocational Rehabilitation Counseling and Guidance Services

(A) Definition of Vocational Rehabilitation Counseling and Guidance Services

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 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) Purpose of VR Counseling and Guidance Services

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) General Supportive Role vs. VR Counseling and Guidance

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) Exemption from the Comparable Services and Benefits and Personal Resources Provisions

VR counseling and guidance services are exempt from consideration under the use of comparable services and benefits provisions of Section 401.1-13, and the use of personal resources (financial needs test) provisions of Section 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)

401.1-17 Referral and Other Services

(A) Provision of Referral and Other Services

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 components of the Statewide Workforce Investment System, in accordance with Section 400.1-14, 400.1-15, 400.1-16 and 401.1-3.

(B) Exemption from the Comparable Services and Benefits and Personal Resources Provisions

Referral services are exempt from consideration under the use of comparable services and benefits provisions of Section 401.1-13 and the use of personal resources (financial needs test) provisions of Section 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. §§361.48, 361.50) (Imp: HRS §§347-4, 348-3, 348-6; 29 U.S.C. §§709, 723; 34 C.F.R. §§361.48, 361.50)

401.1-18 Diagnosis and Treatment of Physical and Mental
Impairments

(A) Definition of Diagnosis and Treatment
Services

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) Purpose of Diagnosis and Treatment Services

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) Requirements for Providing Diagnosis and
Treatment Services

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 400.1-10 and 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 an 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 400.1-10 and 400.1-11.
- (7) Diagnosis and treatment services are subject to the use of comparable services and benefits provisions of

Section 401.1-13 and the use of personal resources (financial needs test) provisions of Section 401.1-14.

(D) Diagnosis and Treatment of Acute and Transitory Conditions is Not Allowed

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 401.1-17.

(E) Division Administrator Responsible for All Matters Pertaining to Fees Charged the Division

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 §§347-3, 348-3, 348-6; 29 U.S.C. §§709, 723; 34 C.F.R. §361.50)

401.1-19 Vocational and Other Training Services

(A) Definition of Vocational and Other Training Services

Vocational and other training services includes personal and vocational adjustment training, books, tools, and other training materials, except that no training or training services provided 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 (College or University, Community College, Private Business and Technical Trade Schools, Tutorial, On-the-Job Training)

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.

- 1) Only accredited colleges and universities shall be used.
- 2) 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.

- 3) 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 college and vocational training at accredited community colleges may be provided. Maximum efforts to secure grant assistance as described in subparagraph (A) 3) 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:
 - 1) Public institutions shall be

- used except when comparable training is not available in such public institutions;
- 2) Only private business and technical trade schools, which meet State certification or licensing requirements shall be used;
 - 3) Satisfactory performance according to established school standards shall be required of all trainees; and
 - 4) 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.
- 1) It may include private lessons as part of a personal adjustment plan, such as lip-reading or speech training;
 - 2) 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
 - 3) 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:

- 1) Employment outcome;
- 2) Training subject, topics, skills, and knowledge of objectives;
- 3) Length of training and fees if any;
- 4) Pay for the trainee;
- 5) Necessary tools, manuals, supplies;
- 6) Progress reports; and
- 7) Employment requirements such as level of proficiency or skill.

- (2) Community Rehabilitation Program Evaluation and Training

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

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

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

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) Purpose of Training Services

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) Requirements for Providing Vocational and Other Training Services

Vocational and other training services shall

be provided in accordance with subsection (A) and the following requirements:

(1) Individual Must Be Eligible

The individual must be eligible for VR services.

(2) Services in the Individual's IPE

The services must be provided as part of a planned program of vocational rehabilitation in accordance with the individual's IPE.

(3) Limited to Type and Time Needed to Achieve the Employment Outcome

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) Criteria for Selection of Training, Facilities and Personnel

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 401.1-12.

(5) Rates of Payment for Training Services

Rates of payment shall be in accordance with Section 400.1-10 (Standards of Services), Section 400.1-11 (Administration of Funds), Section 401.1-13 (Use of Comparable Services and Benefits), Section 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) Preference for In-State Training Services

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:

- 1) Non-resident tuition and fees charged by the out-of-State training institution;
 - 2) Services not necessary for local training is necessary due to out-of-State situation; and
 - 3) Out-of-State costs for comparable services are greater than local costs.
- (7) Amounts of Tuition and Other Costs Allowed for Non-Residents

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

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) Individual's Responsibilities

All responsibilities, agreed upon by the individual with the division relative to training, shall be documented in the individual's IPE.

(10) Individual Performance Required

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:
- 1) Change in the employment outcome to a more suitable field within the individual's capacities;
 - 2) A change in status to part-time under the conditions in paragraph (1), if applicable; or
 - 3) Termination of the training plan.

(11) Use of Comparable Services and Benefits and Personal Resources

Vocational and other training services are subject to the use of comparable services and benefits provisions of Section 401.1-13 and the use of personal resources (financial needs test) provisions of Section 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)

401.1-20 Job-Related Services

(A) Definition of Job-Related Services

Job-related services include:

(1) Job Readiness

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

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

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

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) Purpose of Job-Related Services

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 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) Ultimate Responsibility for Providing Job-Related Services

As appropriate to the needs of the individual and consistent with the individual's informed choice in accordance with Section 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) Exemption from the Comparable Services and Benefits and Personal Resources Provisions

Job-related services are exempt from the use of comparable services and benefits provisions of Section 401.1-13, and the use of personal resources provisions of Section 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)

401.1-21 Specific Post-Employment Services

(A) Definition of Post-Employment Services

Post-employment services, as defined in Section 401.1-2 are one or more of the specific services identified in Section 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) Eligibility for Post-Employment Services

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) To Retain Employment

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) To Regain Employment

An individual's job is eliminated through reorganization and new placement services are needed.

(3) To Secure Appropriate Employment

An individual's employment is no longer

consistent with the individual's strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice.

(C) Purpose of Post-Employment Services

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) Appropriate Use of Post-Employment Services

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) Determination of Need for Post-Employment Services

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) Documentation of Need in the IPE

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) Informing the Individual Through Appropriate Modes of Communication

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) Requirements That Apply to Each VR Service Under Post-Employment

The requirements that apply to the provision of each of the VR services in Sections 401.1-16 through 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) Factors to Consider in Terminating Post-Employment Services

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) Handling Rehabilitated Individuals from Other States

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)

401.1-22 Vocational Rehabilitation
Services to Family Members

(A) Purpose of Vocational Rehabilitation
Services to Family Members

Vocational rehabilitation services to family members may be provided to family members, as defined in Section 401.1-2, of an applicant or eligible individual:

(1) To Determine Eligibility

During an assessment to determine eligibility for VR services when necessary to enable an applicant to complete the assessment process.

(2) To Achieve an Employment Outcome

When such services are necessary to enable an eligible individual to achieve an employment outcome.

(3) As Part of and in Accordance with the
IPE and Any Amendments

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) Limitation of Services to Family Members

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

(C) Use of Comparable Services and Benefits and
Personal Resources

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

(D) Termination of VR Services to Family Members

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)

401.1-23 Maintenance Services

(A) Definition of Maintenance Services

Maintenance, as defined in Section 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

The following are examples of expenses that would meet the definition of maintenance:

- (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 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, are required in order for an individual to relocate for a job placement.

(C) Criteria for Providing Maintenance

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 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 401.1-14, that the individual or, as appropriate, the individual's family lack 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) Conditions Governing the Amount of Maintenance

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 401.1-10.

- (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 400.1-10 and 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 years.
- (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)

401.1-24 Interpreter Services and
Tactile Interpreting Services

(A) Provision of Interpreter and Tactile
Interpreting Services

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

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

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) Use of Qualified Interpreters

The division shall obtain interpreter and 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) Use of Comparable Services and Benefits But Exempt from Use of Personal Resources

Interpreter or tactile interpreting services are subject to the use of comparable services and benefits provisions of Section 401.1-13, but are exempt from the use of personal resources (financial needs test) provisions of Section 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)

401.1-25 Reader, Rehabilitation Teaching,
and Orientation and Mobility Services

- (A) Provision of Reader, Rehabilitation Teaching, and Orientation and Mobility Services

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

"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

"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

"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) Qualifications of Providers of Reader, Rehabilitation Teaching, and Orientation and Mobility Services

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 is accordance with Section 401.1-12.

(1) Provision of Reader Services

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) Provision of Rehabilitation Teaching Services

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) Provision of Orientation and Mobility Services

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) Use of Comparable Services and Benefits But Exempt from Use of Personal Resources

Reader, rehabilitation teaching, and orientation and mobility services are subject to the use of comparable services and benefits provisions of Section 401.1-13, but are exempt from the use of personal resources (financial needs test) provisions of Section 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)

401.1-26 Occupational Licenses, Tools,
Equipment, and Initial Stocks and Supplies

(A) Provision of Occupational License, Tools,
Equipment, and Initial Stocks and Supplies

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 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

"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

"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

"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

"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.
- 1) 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.
 - 2) 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

OCCUPATIONAL LICENSES, TOOLS,
EQUIPMENT, AND INITIAL STOCKS AND SUPPLIES 401.1-26.4

operations of the self-employment business and are consumed on the premises such as:

- 1) Stationery, pencils, pens, stamps, and other office supplies for a business office;
- 2) Soap, shampoo, hair tonic, and other barber supplies for a barber shop; and
- 3) Wrapping paper, string, stationery, and other supplies for a retail store.

(B) Use of Comparable Services and Benefits and Personal Resources

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

(C) Title to Tools, Equipment, Shelters, Initial Stocks and Supplies

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

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)

401.1-27 Transportation Services

(A) Definition of Transportation Services

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) Use of Comparable Services and Benefits and Personal Resources

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

(C) Additional Conditions for Providing Transportation Services

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 need shall be used.

(D) Prohibited Services

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

(E) Services Requiring Supervisor's Review and Approval

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)

401.1-28 Rehabilitation Technology Services

(A) Definition of Rehabilitation Technology Services

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 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 service 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) Conditions for the Provision of Rehabilitation Technology Services

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) Informed Choice in Selecting Rehabilitation Technology Services

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 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) Types of Aids, Devices and Systems

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

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

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

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

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) Exemption from the Use of Comparable Services and Benefits But Subject to the Use of Personal Resources

Rehabilitation technology services are exempt from the use of comparable services and benefits provisions of Section 401.1-13, but are subject to the use of personal resources (financial needs test) provisions of Section 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)

401.1-29 Transition Services

(A) Definition of Transition Services

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) Provision of Transition Services to Students Referred by the DOE

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 the school to the receipt of VR services under the responsibility of the division.

(1) Referral of Students for General VR Services or the SE-VR work-Study Program

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:
 - 1) Eligibility for VR services; and
 - 2) 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 Non-Special Education Students with Disabilities

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) Coordination of Services with DOE School Personnel

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) Provision of SE-VR Work-Study Program in Accordance with the Program Standards

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) Purpose of Transition Services

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) Use of Comparable Services and Benefits and Personal Resources

Transition services are subject to the use of comparable services and benefits provisions of Section 401.1-13 and the use of personal resources (financial needs test) provisions of Section 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)

401.1-29.01 Pre-Employment Transition Services

In July, 2014, the Workforce Innovation and Opportunity Act (WIOA) was signed into law. WIOA requires a vocational rehabilitation (VR) agency to reserve 15% of its funds to provide Pre-Employment Transition Services to students with disabilities.

401.1-29.02 Purpose

The primary purpose of Pre-Employment Transition Services provided or coordinated by the Division is to help students with disabilities begin to identify career interests and learn skills which can be further explored in subsequent vocational rehabilitation services, such as transition services.

Pre-Employment Transition Services are the earliest set of services available to students with disabilities.

401.1-29.03 Target Population

- (A) Pre-Employment Transition Services are provided to "students with disabilities" who are:
 - a. Eligible for VR services; or
 - b. **Potentially eligible** for VR services (i.e. all students with disabilities, including those who have not applied or been determined eligible for VR services)
- (B) A "student with a disability" meets all of the following criteria:
 - a. Is at least 14 years but not more than 21 years of age (has not yet reached 22nd birthday)
 - b. Has a disability; and has submitted the required qualifying medical documentation signed by a medical provider or a copy of an Individualized Education Program (IEP) or 504 plan;

- c. Has documentation confirming enrollment as a student in an educational program, including:
- i. Secondary school, including home school and alternative school programs (e.g. those housed within the juvenile justice system)
 - ii. Post-secondary education programs approved by a state's post-secondary education oversight agency (i.e. Hawaii post-Secondary Education Authorization Program in the Department of Commerce and Consumer Affairs).
 - iii. Adult basic education programs which lead to a recognized educational credential (e.g. General Educational Development transcript).
 - iv. State, national or industry recognized certificate programs leading to a credential (e.g. Certified Nursing Assistant, Phlebotomy Technician Certification, Commercial Driver's License Certification).

Documentation may include an IEP, 504 Plan, report card, college registration receipt, or other documentation from the educational program.

401.1-29.04 Required Services, Authorized Services And Coordination

There are five (5) required Pre-Employment Transition Services. These services may be provided in a group, classroom setting, and/or an individualized setting and are limited to any or all of the services described below.

- (A) **Required Pre-Employment Transition Services:**
- (1) **Job Exploration Counseling** may include, but is not limited to the following examples:
 - a. Review of information regarding in-demand industry sectors and occupations, as well as non-traditional employment.
 - b. Administration of vocational interest inventories, and review of local labor market information that apply to the student's particular interests.

- c. Identification of career pathways consistent with the student's particular interests.
- (2) **Work-Based Learning Experiences** may include opportunities that are available in school, after school, or outside the traditional school setting (including internships); however, they must be provided in an integrated setting in the community to the maximum extent possible. VR shall seek every opportunity to provide work-based learning experiences in integrated settings before providing these services in non-integrated settings. Services may include, but are not limited to:
- a. Work-site tours to learn about necessary job skills;
 - b. Coordinating a school-based program of job training and informational interviews to research employers;
 - c. Job shadowing;
 - d. Mentoring opportunities in the community;
 - e. On-site work-based experiences (paid or unpaid), volunteering, service learning.
- (3) **Counseling on opportunities for Enrollment in Comprehensive Transition or Post-Secondary Education Programs** may include, but is not limited to, the following examples:
- a. Types of academic and occupational training needed to succeed in the workplace;
 - b. Post-secondary opportunities associated with career fields or pathways;
 - c. Information about college application and admission processes;

- d. Resources that may be used to support individual student success in education and training (i.e. disability support services);
 - e. Advising students and parents or representatives on academic curricula and course offerings;
 - f. Completing the Free Application for Federal Student Aid (FAFSA).
- (4) **Workplace Readiness Training to Develop Social Skills and Independent Living Skills** critical to employment may include, but is not limited to, the following examples:
- a. Understanding employer expectations for punctuality and performance; as well as "soft" skills necessary for employment;
 - b. Learning communication and interpersonal skills;
 - c. Financial literacy, including benefits planning services;
 - d. Orientation and mobility skills to access workplace readiness training or to learn to travel independently;
 - e. Job seeking skills;
 - f. On-site workplace readiness training during work-based learning experiences.
- (5) **Instruction in Self-Advocacy** which may include, but is not limited to, the following examples:
- a. Learning about rights and responsibilities;
 - b. Learning how to request accommodations, services, or supports;
 - c. Participating in youth leadership activities offered in educational or community settings;
 - d. Mentoring with educational staff (e.g. principals, nurses, teachers, office staff);

- e. Mentoring with individuals employed by or volunteering for employers, boards, associations, or organizations in integrated community settings.

(B) Authorized Pre-Employment Transition Services

If reserved federal funds remain after the Division has made the required services available, DVR may provide the following to improve the transition of students with disabilities from school to post-secondary education or an employment outcome:

- (1) Implement effective strategies that increase independent living and including in their communities and competitive integrated workplaces;
- (2) Develop and improve strategies for individuals with intellectual and significant disabilities to live independently, participate in post-secondary education experiences, and obtain and retain competitive integrated employment;
- (3) Provide training to vocational rehabilitation counselors, school transition staff, and others supporting students with disabilities;
- (4) Disseminate information on innovative, effective and efficient approaches to implement Pre-Employment Transition Services;
- (5) Coordinate activities with transition services provided by local educational agencies under the Individuals with Disabilities

Education Act (IDEA) (20 U.S.C. 1400 et seq.);

- (6) Apply evidence-based findings to improve policy, procedure, practice and the preparation of personnel;
- (7) Develop model transition demonstration projects;
- (8) Establish or support multi-state or regional partnerships that involve States, the local educational agencies, designation State unites, developmental disability agencies, private businesses, or others; and
- (9) Disseminate information and strategies to improve the transition to post-secondary activities of those who are traditionally unserved.

(C) Pre-Employment Transition Coordination

Each local VR office shall carry out responsibilities consisting of:

- (1) Attending individualized education program meetings for students with disabilities, when invited;
- (2) Working with the local workforce development boards, one-stop centers, and employer to develop work opportunities for students with disabilities, including internships, summer employment and other employment opportunities available throughout the school year, and apprenticeships;
- (3) Work with schools, including those carrying out activities under section 614 (d) (1) (A) (I) (VIII) of the Individuals with Disabilities Education Act (20 U.S.C. 1414 (d) (A) (i) (VIII)), to coordinate and ensure the provision

of Pre-Employment Transition Services under this section; and

- (4) When invited, attend person-centered planning meetings for individuals receiving services under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.).

401.1-29.05 Auxiliary Aids and Services required under ADA or Section 504

VR will ensure no qualified student with a disability is denied the benefit of Pre-Employment Transition Services on the basis of disability. If a student with a disability requires an auxiliary aid or service to access or participate in any of the required Pre-Employment Transition Services, and no other public entity is required to provide such aid or service, then VR may pay for such costs.

(A) Auxiliary aids and services include:

- (1) Qualified interpreter on-site or through Video Remote Interpreting (VRI) services; note takers; real-time computer-aided transcription services; written materials; exchange of written notes; telephone handset amplifiers; assistive listening devices; telephones compatible with hearing aids, closed caption decoders; open and closed captioning, including real-time captioning; voice, text, and video-based telecommunications products and systems, including text telephones (TTY), videophones, and captioned telephones, or equally effective telecommunications devices; videotext displays; accessible electronic and information technology; or other effective methods of making aurally delivered

information available to individuals who are deaf, hard of hearing or deaf-blind.

- (2) Qualified readers; taped texts; audio recordings; Brailled materials and displays; screen reader software; magnification software; optical readers; secondary auditory programs (SAP); large print materials; accessible electronic and information technology; or other effective methods of making visually delivered materials available to individuals who are blind or have low vision;
 - (3) Assistive technology assessments to determine whether modified equipment or devices are needed for a student to participate in Pre-Employment Transition Services.
 - (4) Non-adapted or adapted equipment or devices, when needed for a student during participation in Pre-Employment Transition Services. VR will retain ownership of the equipment or devices and require its return at the conclusions of the Pre-Employment Transition Service for which it was provided, so that it may be available for use by other students during Pre-Employment Transition Services.
- (B) Pre-Employment Transition service funds may not be used to modify a student's personal equipment or devices, or to provide personal equipment or devices of which students would retain ownership.
- (C) Auxiliary aids and services do not include:
- (1) Personal devices (e.g. computers, laptops, tablets, etc.)

- (2) Prescribed devices (e.g. eyeglasses, hearing aids, wheelchairs);
 - (3) Readers for personal use or study;
 - (4) Attendant care or other services of a personal nature
 - (5) Home or vehicle modifications
- (D) Provision of Other Necessary Support Services Funding of series needed shall be determined in collaboration with the local school system and other resources.

Potentially Eligible Case Type:
When a student requires a personal device to participate in services, VR may loan the device, contingent on availability. This loan will be documented on the student's Pre-Employment Transition Service Agreement, and the student will be required to return the device when no longer required for participation in services.

VR Case Type:
When a student has an Individualized Plan for employment and requires a personal device or other goods and services (e.g. uniforms, maintenance and transportation, or bus pass) to participate in any of the five required Pre-Employment Transition Services, they may be purchased using traditional vocational rehabilitation funding, consistent with the IPE, or VR may loan the device, if available.

401.1-29.06

Outreach and Collaboration

VR managers, counselors and employment specialists will develop and maintain cooperative working relationships with state secondary education staff (including alternative school programs), post-secondary education staff, and workforce development

partners to coordinate Pre-Employment Transition Services.

Coordination activities include:

- (A) Participating in Individualized Education Program (IEP) meetings for both eligible and potentially eligible students. Participation may be in person or by teleconference, when invited, pending VR representation availability;
- (B) Attending person-centered planning meetings for students with disabilities receiving services under title XIX of the Social Security Act, when invited, pending VR representation availability;
- (C) Working with other WIOA Program, and employers to develop work-based learning experiences for students with disabilities;
- (D) Encouraging referral sources to refer students with disabilities in secondary education as early as age 14 for Pre-Employment Transition Services and to check on the status of these referrals.
- (E) Providing accurate information to referral sources regarding the timeline and application process for vocational rehabilitation services.

School officials continue to be responsible for providing a free and appropriate public education to include transition services required under IDEA.

401.1-29.07 Provision of Pre-Employment Transition Services to Students with Disabilities

Pre-Employment Transition Services to students with disabilities shall be

- (A) Governed by the Division's policies and procedures, in accordance with:
 - (1) State and federal laws and regulations;
 - (2) Statewide Educational Agreement;
 - (3) Special Education-Vocational Rehabilitation Work-Study Agreement;
- (B) Made available to students with disabilities statewide, to include those who are "potentially eligible for VR services; and
- (C) Provided based on parental consent to participate in Pre-Employment Transition Services.

Students with disabilities are not exempt from the Order of Selection requirements for vocational rehabilitation services. A student with a disability who needs individualized VR services, in addition to Pre-Employment Transition Services, must apply and be determined eligible for the VR program and have an approved IPE.

ON-THE-JOB OR OTHER RELATED
PERSONAL ATTENDANT SERVICES

401.1-30.1

401.1-30 On-the-Job or Other Related
Personal Attendant Services

(A) Definition of Personal Attendant Services

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) Purpose of Personal Attendant Services

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

(C) Conditions for Providing Personal Attendant Services

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 400.1-10 pertaining to the authorization for expenditure of funds, payments to vendors, amount of payment, and vendor qualifications.

ON-THE-JOB OR OTHER RELATED
PERSONAL ATTENDANT SERVICES

401.1-30.2

(D) Informed Choice in Selecting Personal Attendants

The division shall provide each applicant or eligible individual or, as appropriate, the individual's representative, in need of personal attendant services, 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) Use of Comparable Services and Benefits but Exempt from Use of Personal Resources

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

ON-THE-JOB OR OTHER RELATED
PERSONAL ATTENDANT SERVICES

401.1-30.3

34 C.F.R. 361.50) (Imp: 347-4, 348-3, 348-6; 29 U.S.C. §§709, 723; 34 C.F.R. §361.50)

SUPPORTED EMPLOYMENT SERVICES

401.1-31.1

401.1-31 Supported Employment Services

- (A) Definition of Supported Employment Services

Supported employment services means ongoing support services, including customized employment, needed to support and maintain an individual with a most significant disability in supported employment, that

- (a) Are provided singly or in combination and are organized and made available in such a way as to assist an eligible individual

to achieve competitive integrated employment;

(b) Are based on a determination of the needs of an eligible individual, as specified in an individualized plan for employment (IPE); and

(c) Are provided for a period of not more than 24 months, with the exception of extension if necessary, in order to achieve the employment outcome identified in the individual plan for employment (IPE).

(1) Definition of Supported Employment

Supported employment means competitive integrated employment, including customized employment, or employment in an integrated work setting in which an individual with a most significant disability, including a youth with a most significant disability, is working on a short-term basis toward competitive integrated employment, that is individualized and customized, consistent with the unique strengths, abilities, interests, and informed choice of the individual, including with ongoing support services for individuals with the most significant disabilities—

- 1) For whom competitive integrated employment has not historically occurred; or
- 2) For whom competitive integrated employment has been interrupted or intermittent as a result of a significant disability; and

- 3) Who, because of the nature and severity of the disability, need intensive supported employment services, and extended services after the transition from support provided by the designated State unit in order to perform the work.
- 4) *Short-term Basis*: Refers to supported employment for an individual with a most significant disability, whose supported employment in an integrated setting does not satisfy the criteria of competitive integrated employment, is considered to be working on a short-term basis toward competitive integrated employment so long as the individuals can reasonably anticipate achieving competitive integrated employment.

For purposes of supported employment, an individual with a most significant disability, whose supported employment in an integrated setting does not satisfy the criteria of competitive integrated employment, as defined is considered to be working on a short-term basis toward competitive integrated employment so long as the individual can reasonably anticipate achieving competitive integrated employment—

- (a) Within six months of achieving a supported employment outcome; or,
- (b) In limited circumstances, within a period not to exceed 12 months from the achievement of the supported employment outcome,

- (c) If a longer period is necessary based on the needs of the individual, and the individual has demonstrated progress toward competitive earnings based on information contained in the service record.
- (d) The six-month short-term basis period, and the additional six months that may be available in limited circumstances, begins after an individual has completed up to 24 months of supported employment services (unless a longer period of time is necessary based upon the individual's needs) and the individual has achieved a supported employment outcome.
- (e) If the individual is stable in the supported employment placement for a minimum period of 90 days following the transition to extended services,
- (f) The individual has achieved a supported employment outcome.

{Eff July 22, 2016] CFR §363.54
State Supported Employment Services
Program- Title VI of the
Rehabilitation Act, as amended by
the Workforce Innovation and
Opportunity Act

- 5) Transitional employment, as defined in Section 401.1-2, for individuals with the most significant disabilities due to mental illness.

SUPPORTED EMPLOYMENT SERVICES

401.1-31.2

(2) Definition of Ongoing Support Services

Ongoing support services as used in this Section:

(a) Means services that are:

- 1) Needed to support and maintain an individual with a most significant disability in supported employment.
- 2) Identified based on a determination by the division of the individual's needs as specified in an IPE; and
- 3) 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

SUPPORTED EMPLOYMENT SERVICES

401.1-31.3

needed to maintain stability based on:

- 1) At a minimum, twice monthly monitoring at the worksite of each individual in supported employment; or

- 2) 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:

- 1) Any particularized assessment supplementary to the comprehensive assessment of rehabilitation needs described in Section 401.1-10(B) (3);
- 2) The provision of skilled job trainers who accompany the individual for intensive job skill training at the worksite;
- 3) Job development and training;
- 4) Social skills training;
- 5) Regular observation or supervision of the individual;
- 6) Follow-up services including regular contacts with the employers, the individuals, the parents, family members, guardians, advocates or

SUPPORTED EMPLOYMENT SERVICES

401.1-31.4

authorized representatives of the individuals, and other suitable professional and informed advisors, in order to reinforce and stabilize the job placement;

- 7) Facilitation of natural supports at the worksite; and
- 8) Any other service identified in the scope of VR services for individuals, described in Section 401.1-6; or
- 9) Any services similar to the foregoing services.

(3) Definition of Extended Services

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.
- (c) Extended Services for Youth with the Most Significant Disabilities
 - (1) "Extended services" under supported employment can be used for youth with the most significant disabilities for a period not to exceed four years or until the youth reaches the age of 25 and no longer meets the definition of "youth with a disability" or whichever occurs first. Reference, Section (RR)

"youth with a disability". 34
CFR 361.5(c) (58)

- (2) Although the division must discontinue funding extended services once a youth reaches age 25, the VR counselor should explore the availability of funding from other sources.
- (3) The division may use the Supported Employment program or VR funds to provide extended services only to youth with the most significant disabilities;
- (4) it may not use either source of funding to provide extended services to individuals with the most significant disabilities who are not youth.
Section 604(b)(2) of the Act, as amended by WIOA, Requirement is implemented in the definition of "extended services" in §361.5(c) (19) (v) and service in §363.4(a) (2)
Sections 604(b) (1) of the Act and §363.4 (b)

(4) Definition of Competitive Employment

SUPPORTED EMPLOYMENT SERVICES

401.1-31.5

Competitive integrated employment means full or part-time work at minimum wage or higher, with wages and benefits similar to those without disabilities performing the same work, and fully integrated with co-workers without disabilities.

- (B) Consideration of Persons with the Most Significant Disabilities for Supported Employment

In areas where supported employment programs are available, persons with the most significant disabilities shall be considered for competitive **integrated** 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 401.1-12.

(1) **Eligibility for Supported Employment Services**

An individual shall be determined eligible for supported employment services by the division if:

- (a) They have been determined eligible for vocational rehabilitation services;
- (b) Is an individual with a most significant disability; and
- (c) Has had supported employment identified as the appropriate employment outcome based on a comprehensive assessment of rehabilitation needs and an evaluation of rehabilitation, career and job needs.
- (d) The individual requires intensive supported employment services or extended services for a period of time not to extend beyond 24 months, unless under special circumstances the eligible individual and the VR Counselor jointly agree to extend the time in order to achieve competitive integrated employment.

- (1) Certification of Eligibility for Supported Employment Services

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) Conditions for Providing Supported Employment Services

Supported employment services shall be provided by the division:

- (1) For a period of time not to exceed 24 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.

SUPPORTED EMPLOYMENT SERVICES

401.1-31.7

(D) Requirements for an Employment Outcome in Supported Employment:

- (1) The individual must have completed supported employment services, which may be received for up to 24 months, or longer if the counselor and the individual have determined that such services are needed to support and maintain the individual in supported employment.
 - (a) Any other vocational rehabilitation services listed on the IPE provided to individuals who are

working on a short-term basis toward the achievement of competitive integrated employment in supported employment need not be completed prior to satisfying the achievement of an employment outcome.

(2) The individual has transitioned to extended services provided either by the division for a youth with the most significant disability, or another provider.

§§363.4(a)(2) and 363.22

(3) The individual has maintained employment and achieved stability in the work setting for a minimum of 90 days after transitioning to extended services, and;

(4) The employment must be individualized and customized consistent with the strengths, abilities, interests, and informed choice of the individual.

(E) Use of Comparable Services and Benefits and Personal Resources

Supported employment services are subject to the use of comparable services and benefits provisions of Section 401.1-13, and the use of personal resources (financial needs test) provisions of Section 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)

TECHNICAL ASSISTANCE AND
OTHER CONSULTATION SERVICES

401.1-32.1

401.1-32 Technical Assistance and
Other Consultation Services

(A) Availability of Technical Assistance and
Other Consultation Services

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 for Other Resources

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) Use of Comparable Services and Benefits and Personal Resources

These services are subject to the comparable services and benefits provisions of Section 401.1-13 and personal resources provisions of Section 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

TECHNICAL ASSISTANCE AND
OTHER CONSULTATION SERVICES

401.1-32.2

§§347-4, 348-3, 348-6; 29 U.S.C. §§709, 723;
34 C.F.R. §361.50)

401.1-33 Other Goods and Services

(A) Definition of Other Goods and Services

Other goods and services means any other goods or 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) Availability of Other Goods and Services

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 401.1-12, are made available.

(C) Use of Comparable Services and Benefits and Personal Resources

The division shall consider the individual's use of comparable services and benefits in accordance with Section 401.1-13 and the individual's use of personal resources (financial needs test) in accordance with Section 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)

RECORD OF SERVICES

401.1-34.1

401.1-34 Record of Services

(A) Record of Services Documentation Requirements

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 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 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 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

RECORD OF SERVICES

401.1-34.2

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 401.1-7(E) and (F).

- (6) The IPE, and any amendments to the IPE, consistent with the requirements under Section 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

RECORD OF SERVICES

401.1-34.3

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 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 401.1-15, of the individual's input into those reviews, and of the individual's or, if appropriate, the individual's representative's acknowledgement that those reviews were conducted.

- (11) Documentation concerning any action or decision resulting from a request by an individual under Section 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 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 401.1-3, including

RECORD OF SERVICES

401.1-34.4

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 401.1-3.

- (14) In the event an individual's record of service is closed under Section 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 401.1-36, documentation verifying that the provisions of Section 401.1-36 have been satisfied.

(B) Consultation from the State Rehabilitation Council in Determining Type of Documentation Required

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 §§437-4, 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)

CONFIDENTIALITY

401.1-35.1

401.1-35 Confidentiality

(A) Informing Applicants of Division's Need to Collect Personal Information and Requirements Governing its Use

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) Written Informed Consent to Request for Information from other Agencies or Individuals

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

CONFIDENTIALITY

401.1-35.2

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) Informing Applicants and Eligible Individuals of the Confidentiality of Personal Information and Conditions for Access and Release

All applicants and eligible individuals and, as appropriate, those individual's representative's, 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

CONFIDENTIALITY

401.1-35.3

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) Protection of Personal Information

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

CONFIDENTIALITY

401.1-35.4

in the administration of the program, except as provided under subsections (E) through (H).

(E) Inspection of Confidential Records

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) Release of Confidential Information to Applicants and Eligible Individuals

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

CONFIDENTIALITY

401.1-35.5

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

CONFIDENTIALITY

401.1-35.6

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:

- 1) Make the requested correction or amendment; or

2) 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 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:

(a) Permit the individual,

CONFIDENTIALITY

401.1-35.7

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

(b) 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) Release of Information for Audit,
Evaluation, or Research

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;

CONFIDENTIALITY

401.1-35.8

- (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) Conditions for Release of Information to
Other Programs or Authorities

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.

CONFIDENTIALITY

401.1-35.9

- (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)

REQUIREMENTS FOR SUCCESSFUL CLOSURES

401.1-36.1

401.1-36 Requirements for Successful Closures

- (A) Requirements for Closure of the Record of Services of an Individual Who has Achieved an Employment Outcome

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 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)

DISPOSITION OF CASE RECORDS 401.1-37.1

401.1-37 Disposition of Case Records

(A) Retainment of Closed Case Records

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 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 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

DISPOSITION OF CASE RECORDS

401.1-37.2

the year following the end of the five-year period.

(B) Disposing of Closed Case Records

At the beginning of each State fiscal year, closed 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)

LIMITATIONS ON THE USE OF SUBMINIMUM WAGE

401.1-38

401.1-38 Limitations on the Use of Subminimum Wage

- (A) Requirements for Youth to Enter into Subminimum Wage Employment:

Before a Youth with a Disability enters Subminimum Wage Employment, the following requirements and documentation must be completed. Without the documentation, the Youth cannot work in Subminimum Wage Employment.

- (1) Documentation of completion of appropriate Pre-Employment Transition Services OR appropriate Transition Services:
 - (a) Documentation of completion of appropriate Pre-Employment

Transition Services for a Student with a Disability must be provided by the division to the Student within 45 days of completion of the required activity or service, and must contain, at minimum, the following information:

- 1) Youth's name;
- 2) Description of the service or activity completed;
- 3) Name of the individual or the provider of the required service or activity;
- 4) Date required service or activity completed;
- 5) Date of signature;
- 6) Signature of designated division staff transmitting documentation to the Youth; and
- 7) Date and method (hand-delivered, faxed, mailed, emailed) by which document was transmitted to the Youth.

The division must provide a coversheet itemizing each of the documents provided to the Youth.

Note: The Youth would have had to receive Pre-Employment Transition Services while he/she fulfilled the definition of a Student with a Disability.

- (b) Documentation of appropriate Transition Services for a Youth with a Disability under the Individuals with

Disabilities Education Act must be provided by the educational agency to the division within 30 days of completion of activities, and must contain, at minimum, the following information:

- 1) Youth's name;
- 2) Description of the service or activity completed;
- 3) Name of the provider of the required service or activity;
- 4) Date required service or activity completed;
- 5) Signature of educational personnel documenting completion of the required service or activity;
- 6) Date of signature documenting completion of the required service or activity;
- 7) Signature of educational personnel transmitting documentation to the division; and
- 8) Date and method (hand-delivered, faxed, mailed, emailed) by which document was transmitted to the division.

The educational agency must provide a coversheet itemizing the documentation provided to the division.

- (c) Refusal of Transition or Pre-Employment Transition Services

If a Student and/or Youth with a Disability and their parent or guardian refuses, through informed choice, to participate in or receive Transition or Pre-Employment Transition Services, the documentation of the refusal must contain, at minimum, the following information:

- 1) Youth's name;
 - 2) Description of the refusal and the reason for such refusal;
 - 3) Signature of the Youth, or as applicable, the Youth's parent/guardian;
 - 4) Signature of the designated division staff or educational personnel documenting the youth's refusal;
 - 5) Date of signatures; and
 - 6) Date and method (hand-delivered, faxed, mailed, emailed) by which document was transmitted to the Youth.
- (2) The Youth must apply for VR services and either be found ineligible, or if determined eligible, have an approved IPE and have worked towards a vocational goal with appropriate supports and services without success for a reasonable period of time.
- (3) The Youth must be provided with career counseling, and information and referral to Federal and State programs, and other resources in the individual's geographic area that offer employment-related services and supports designed to enable the individual to explore,

discover, experience and attain competitive integrated employment.

- (a) Provision of career counseling and information and referral services:

Must be provided so that it facilitates informed choice and decision-making by the Youth and cannot be provided by a 14c employer.

Must not include information on subminimum wage employment by a 14c employer, and the employed-related services must not be compensated at subminimum wage or result in work at a subminimum wage.

Must be provided to the Youth known to be seeking Subminimum Wage Employment within 30 days of a determination of ineligibility or closure from an IPE.

Must be provided to the Youth once every six months during the first year of employment and annually thereafter for the life of the Subminimum Wage Employment.

Can be provided individually or in a group setting and can be provided at the work site.

- (b) Documentation of career counseling and information and referral services

Documentation of completion of career counseling and information and referral

services must be provided by the division to the Youth as soon as possible upon completion, but no later than 45 days after completion of the activities. It must include, at minimum, the following information:

- 1) Youth's name;
- 2) Description of the service or activity completed;
- 3) Name of the provider of the required service or activity;
- 4) Date required service or activity completed;
- 5) Signature of individual documenting completion of the required services or activity;
- 6) Date of signature;
- 7) Signature of designated division personnel transmitting documentation to the Youth; and
- 8) Date and method (hand-delivered, faxed, mailed, emailed) by which document was transmitted to the Youth.

- (c) Refusal of career counseling and information and referral services

If a Youth, or a Youth's representative, refuses to participate in career counseling and information and referral services, the division must document this refusal. The documentation

must contain, at minimum, the following information:

- 1) Youth's name;
- 2) Description of the refusal and the reason for such refusal;
- 3) Signature of division personnel documenting the individual's refusal;
- 4) Date of signatures; and
- 5) Date and method (hand-delivered, faxed, mailed, emailed) by which document was transmitted to the Youth.

Documentation of the refusal must be provided to the Youth within 10 days of the refusal.

- (4) Provision of information on self-advocacy, self-determination and peer mentoring training opportunities available in the Youth's geographic area:

- (a) Provision of information on self-advocacy, self-determination and peer mentoring training opportunities available in the Youth's geographic area:

Must be provided by the 14c employer unless the 14c employer has less than 15 employees, in which case the division must provide the services.

The information can be provided by a Center for Independent Living or similar

program that has information about or provides the services.

The information must be provided to the Youth within 30 calendar days of being known to the division that the Youth is seeking to enter subminimum wage employment.

The information must be provided to the Youth every six months for the first year of employment and annually thereafter for the life of the Subminimum Wage Employment.

(B) Requirements for All Individuals, Regardless of Age, Working in Subminimum Wage Employment:

1) The following requirements and documentation must be completed for all individuals working in Subminimum Wage Employment. Without the documentation, individuals cannot continue working in Subminimum Wage Employment.

(a) Provision of career counseling and information and referral services:

Must be provided so that it facilitates informed choice and decision-making by the individual and cannot be provided by a 14c employer.

Must not include information on subminimum wage employment by a 14c employer, and the employed-related services must not be compensated at subminimum wage or result in work at a subminimum wage.

Must be provided to the individual once every six months during the first year of employment and annually thereafter for the life of the Subminimum Wage Employment.

Can be provided individually or in a group setting and can be provided at the work site.

(b) Documentation of career counseling and information and referral services

Documentation of completion of career counseling and information and referral services must be provided by the division to the individual as soon as possible upon completion, but no later than 45 days after completion of the activities. It must include, at minimum, the following information:

- 1) Individual's name;
- 2) Description of the service or activity completed;
- 3) Name of the provider of the required service or activity;
- 4) Date required service or activity completed;
- 5) Signature of individual documenting completion of the required services or activity;
- 6) Date of signature;
- 7) Signature of designated division personnel transmitting documentation to the individual; and
- 8) Date and method (hand-delivered, faxed, mailed, emailed) by which document was transmitted to the individual.

(c) Refusal of career counseling and information and referral services

If an individual, or an individual's representative, refuses to participate in career counseling and information and referral services, the division must document this refusal. The documentation must contain, at minimum, the following information:

- 1) Youth's name;
- 2) Description of the refusal and the reason for such refusal;
- 3) Signature of division personnel documenting the individual's refusal;
- 4) Date of signatures; and
- 5) Date and method (hand-delivered, faxed, mailed, emailed) by which document was transmitted to the individual.

Documentation of the refusal must be provided to the individual within 10 days of the refusal.

(d) Provision of information on self-advocacy, self-determination and peer mentoring training opportunities available in the individual's geographic area:

Must be provided by the 14c employer unless the 14c employer has less than 15 employees, in which case the division must provide the services.

The information can be provided by a Center for Independent Living or similar program that has

information about or provides the services.

The information must be provided to the individual within 30 calendar days of being known to the division that the individual is seeking to enter subminimum wage employment.

The information must be provided to the individual every six months for the first year of employment and annually thereafter for the life of the Subminimum Wage Employment.

[Eff July 22, 2016] (Auth: 34 C.F.R. §397, Section 511 of the Rehabilitation Act of 1973 as amended by the Workforce Innovation and Opportunity Act P.L. 113-128, 29 U.S.C. 794g)