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DIVISION 1

PROCEDURAL RULES

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582-001-0001

Notice of Proposed Rule

Prior to the adoption, amendment, or repeal of any permanent rule, the Vocational Rehabilitation Division shall give notice of the proposed adoption, amendment, or repeal:

- (1) In the Secretary of State's Bulletin at least fifteen (15) days prior to the effective date.
- (2) By mailing a copy of the notice to persons on the Vocational Rehabilitation Division's administrative rule interested persons mailing list.
- (3) By mailing a copy of the notice to the following persons, organizations, or publications:
 - (a) Capitol Press Room and Associated Press;
 - (b) President, Oregon Chapter National Rehabilitation Association;
 - (c) Chair, State Rehabilitation Advisory Council;
 - (d) Executive Director, Oregon Rehabilitation Association;
 - (e) Director, Client Assistance Program of the Oregon Disabilities Commission;
 - (f) Director, Oregon Disabilities Commission; and
 - (g) Legislators per ORS 183.335(14).

Stat. Auth.: ORS 344.530(2)

Stats. Implemented: ORS 183.335, ORS 183.341 & ORS 344.530(2)

Hist.: [VRD 19, f. & ef. 11-10-75; VRD 1-1990, f. & cert. ef. 11-26-90; VRD 2-1993, f. & cert. ef. 9-15-93; VRD 2-1993, f. & cert. ef. 9-15-93; VRD 5-1997, f. & cert. ef. 11-21-97; Renumbered from 582-001-0000]

582-001-0003

Purpose of Adoption of Rules of Procedure, the Act, the Social Security Act and Code of Federal Regulations 34 CFR §§ 361, 363, and 365, as Amended, and 20 CFR, Chapter III, as Amended

Adoption provides for a standard procedure to be used in all matters relating to the Administrative Procedures Act, the Rehabilitation Act of 1973, as amended, for provision of Rehabilitation Services and the Social Security Act provisions for deciding disability claims in the state in which a worker resides.

Stat. Auth.: ORS 183 & ORS 344

Stats. Implemented: ORS 183.325 - ORS 183.410, ORS 183.413 - ORS 183.470, ORS 344.511 - ORS 344.690 & ORS 344.710 - ORS 344.730

Hist.: VRD 25, f. & ef. 9-28-76; VRD 1-1990, f. & cert. ef. 11-26-90; VRD 2-1993, f. & cert. ef. 9-15-93

582-001-0005

General Procedures

The Vocational Rehabilitation Division hereby adopts the 1997 Model Rules of Procedure as promulgated by the Attorney General of the State of Oregon under the Administrative Procedures Act. The Model Rules of Procedure are used as the Rules of Procedure for rulemaking and for conducting contested case hearings in matters relating to Rehabilitation Services and shall be controlling except as otherwise modified by the Rehabilitation Act of 1973, as amended, and the implementing and attending federal regulations and state statutes.

[ED. NOTE: The full text of the Attorney General's Model Rules of Procedure

is available from the office of the Attorney General or Vocational Rehabilitation Division. The full text of the Rehabilitation Act of 1973, as amended, 34 CFR §§ 361, 363, and 365, as amended, the Social Security Act of 1935, as amended, and 20 CFR Chapter III, as amended, are available at most major libraries and law libraries including the Oregon Supreme Court Library, the State Library, Vocational Rehabilitation Division and from the Superintendent of Documents, Washington D.C.]

Stat. Auth.: ORS 344.530(2)

Stats. Implemented: ORS 183.335, ORS 183.341 & ORS 344.530(2)

Hist.: VRD 14, f. 10-30-73, ef. 11-25-73; VRD 25, f. & ef. 9-29-76; VRD 4-1978, f. 3-14-78, ef. 3-15-78; VRD 1-1980, f. & ef. 2-25-80; VRD 6-1981, f. & ef. 12-8-81; VRD 1-1990, f. & cert. ef. 11-26-90; VRD 2-1993, f. & cert. ef. 9-15-93; VRD 5-1997, f. & cert. ef. 11-21-97

DIVISION 10

STATE STANDARDS FOR COMMUNITY REHABILITATION PROGRAMS IN OREGON

582-010-0005

Statement of Policy

Except when context specifies otherwise, these rules represent state requirements, as described and defined in federal regulation **34 CFR 361.25**:

(1) Recognizing that Community Rehabilitation Programs include a broad range of providers of varied sizes and types and offering a wide scope of services, approval of such providers requires a flexible yet thorough approach. Availability of all types of community Rehabilitation Programs is essential to establishing and maintaining a statewide network of Vocational and Independent Living Rehabilitation Services.

(2) The Oregon Vocational Rehabilitation Division provides goods and services for eligible individuals with disabilities through public and private approved vendors, including Community Rehabilitation Programs as defined in the federal Rehabilitation Act.

(3) The Division promotes the availability, relevance and quality of Community Rehabilitation Programs (CRPs) through a process of "approval" based on OAR 582-050, Vendor Selection Policies, and State Standards in OAR 582-010-0025, tailored to utilization needs identified locally and reflected in the State Plan for Community Rehabilitation Programs.

(4) For a CRP whose primary purpose is provision of VRD Services to individuals with disabilities and whose utilization by the Division exceeds "minimal utilization" level, "approval" requires implementing a current "Statement of Assurances and Conditions" and, as appropriate, documented evidence of acceptable "accreditation". Development or expansion of qualifies CRPs is encouraged through a policy which allows "minimal utilization" standards to be applied to approval of new or expanding CRPs. Also, VRD sponsored federal grants may be used by public or nonprofit CRPs to meet or maintain standards for approval, as funds are available, and in keeping with identified priorities.

(5) Authority to establish State Standards for implementing federally funded programs and approval of CRPs for grants is found in ORS Chapter 344 in general and specifically ORS 344.720. Responsibility for establishing appropriate State standards for CRPs and other providers is also found in federal regulation **34 CFR 361.45** and the Rehabilitation Act of 1973, as amended.

(6) These standards shall be readily available to the Division's personnel and the public. Excepting as provided in OAR 582-010-0020(1)(b), these rules shall be effective upon filing.

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the agency.]

Stat. Auth.: ORS 344

Stats. Implemented: ORS 344.511 - ORS 344.690 & ORS 344.710 - ORS 344.730

Hist.: VRD 17, f. 8-28-74, ef. 9-25-74; VRD 24, f. & ef. 9-29-76; VRD 5-1978, f. 4-20-78, ef. 5-1-78; VRD 2-1980, f. & ef. 7-2-80; VRD 1-1992, f. & cert. ef. 1-30-92; VRD 3-1993, f. & cert. ef. 10-15-93

582-010-0010**Definitions**

For the purposes of these rules the following definitions apply:

(1) "Accreditation" is the term which signifies that a community rehabilitation program meets standards of performance set by an organization or methodology listed in these rules.

(2) "Approval" is a term signifying that appropriate standards for vendor selection are met, and the vendor may be utilized by a local Vocational Rehabilitation Division office to provide Division purchased services for individuals with disabilities.

(3) "Client", for purposes of these rules, means an individual with a medically documented physical or mental impairment which, for that individual, is a substantial impediment to:

(a) Employment, and who has applied for and can benefit from Vocational Rehabilitation Services in terms of an employment outcome; or

(b) Independent living, and who has applied for and can benefit from rehabilitation services in terms of an independent living outcome.

(4) "Community Rehabilitation Program" is referred to in these rules as "CRP" and means a program that, as its primary purpose, provides directly or facilitates the provision of Vocational Rehabilitation Services to individuals with disabilities, and that provides, singly or in combination, for an individual with a disability to enable the individual to maximize opportunities for employment, including career advancement.

NOTE: The following services, listed from the 1992 amendments to the Rehabilitation Act of 1973, are the full list of services for purposes of defining a CRP and include services which may or may not be provided by the Division.

(a) Medical, psychiatric, psychological, social, and vocational services that are provided under one management;

(b) Testing, fitting, or training in the use of prosthetic and orthotic devices;

(c) Recreational therapy;

(d) Physical and occupational therapy;

(e) Speech, language and hearing therapy;

(f) Psychiatric, psychological and social services, including positive behavior management;

(g) Assessment for determining eligibility and vocational needs;

(h) Rehabilitation technology;

(i) Job development, placement, and retention services;

(j) Evaluation or control of specific disabilities;

(k) Orientation and mobility services for individuals who are blind;

(l) Extended employment;

(m) Psychosocial rehabilitation services;

(n) Supported employment services and extended services;

(o) Services to family members when necessary to the vocational rehabilitation of the individual;

(p) Personal assistance services; or

(q) Services similar to the services described in subsections (a) through (p) of this section.

(5) "Minimal Utilization" means fees collected from the Vocational Rehabilitation Division for provision of rehabilitation services total \$5,000 or less in any state fiscal year following "approval".

(6) "State Standards for CRP Vendor Approval" in these rules mean a set of criteria, applied as appropriate to the type of program and used by the Division to evaluate a CRP's operation and to determine whether the CRP may be listed as an approved vendor. State Standards are in addition to any federal requirements in the Act or regulations and shall, at a minimum and as appropriate, relate to physical plant, health and safety, production, insurance, physical accessibility, organization, fiscal management, personnel, program management, consumer issues, program evaluation, human rights (including the safeguarding of confidential information about clients), and community relations.

(7) "Rehabilitation Facility", for the purposes of these rules,

means a CRP or unit of a larger organization which meets the definition for a CRP and that is operated for the primary purpose of providing Vocational Rehabilitation Services to individuals with disabilities and that provides singly or in combination, one or more of the services listed in section (4) of this rule.

(8) "Statement of Assurances and Conditions" means a document executed and signed by a CRP vendor attesting to an understanding of and intent to comply with applicable criteria in these rules any attending policy for implementing these rules.

(9) "Consumer", in these rules, means client.

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the agency.]

Stat. Auth.: ORS 344

Stats. Implemented: ORS 344.511 - ORS 344.690 & ORS 344.710 - ORS 344.730

Hist.: VRD 17, f. 8-28-74, ef. 9-25-74; VRD 5-1978, f. 4-20-78, ef. 5-1-78; VRD 2-1980, f. & ef. 7-2-80; VRD 1-1992, f. & cert. ef. 1-30-92; VRD 3-1993, f. & cert. ef. 10-15-93

582-010-0015**Recognized Accreditation Methodologies for CRPs**

When viewed in combination with applicable State Standards in these rules, the Division recognizes as significant to approval the following:

(1) Accreditation by the Commission on Accreditation of Rehabilitation Facilities (CARF).

(2) Accreditation by the Rehabilitation Services Accreditation System (RSAS).

(3) Certification by the Mental Health and Developmental Disability Services Division for employment services under OAR 309-047-0000 through 309-047-0140.

(4) As appropriate, for an individual meeting the definition of CRP, certification by the Commission on Rehabilitation Counselor Certification (CRCC) or by the Workers' Compensation Division of the Oregon Department of Consumer and Business Services.

(5) Accreditation by the Northwest Association of Schools and Colleges (NASC) if clear evidence of relationship to OAR 582-010-0025 is provided.

(6) Interim Accreditation by Vocational Rehabilitation Division staff for a CCRP when utilization exceeds minimal level and further utilization requires accreditation but the CRP is without access to other approved or equivalent accreditation methods. This interim accreditation may be effective for up to one year. During that period the CRP must apply for and receive accreditation from an acceptable accrediting organization or provide the Division with evidence that necessary assurances of compliance with State Standards are met and that accreditation is not an appropriate prerequisite to further utilization as an approved vendor.

(7) Accreditation by other organizations approved by the Division demonstrating an ability to evaluate based upon State Standards in OAR 582-010-0025.

(8) For those CRPs providing Vocational Rehabilitation Services other than vocational or independent living evaluation, personal and/or work adjustment, skill training, work readiness retention, job development, or extended employment, accreditation may be by a recognized accrediting organization or methodology within the CRP's field of expertise.

Stat. Auth.: ORS 344

Stats. Implemented: ORS 344.511 - ORS 344.690 & ORS 344.710 - ORS 344.730

Hist.: VRD 17, f. 8-28-74, ef. 9-25-74; VRD 24, f. & ef. 9-29-76; VRD 5-1978, f. 4-20-78, ef. 5-1-78; VRD 2-1980, f. & ef. 7-2-80; VRD 1-1992, f. & cert. ef. 1-30-92; VRD 3-1993, f. & cert. ef. 10-15-93

582-010-0020**Approval Policy**

(1) Approval Required:

(a) No person, public or private organization shall provide VRD Services and receive Vocational Rehabilitation fees without first being placed on the Division's Approved Vendor List; and

(b) Excepting that contracts and certifications implemented

under terms of OAR 582-010 prior to April 1, 1994 may continue until (the earlier of) scheduled expiration, termination for cause or replacement by mutual agreement, no CRP whose primary purpose is provision of VRD Services to individual with disabilities shall receive VRD funds above minimal utilization level without implementing a Statement of Assurances and Conditions, as described in section (2) of this rule, and documenting required accreditation as appropriate.

(c) At the discretion of the Division, separate approvals may be required for separate sites and/or for different programs operated under the same management.

(2) A Statement of Assurances and Conditions shall be provided and signed by the designated representative of the CRP, and reviewed mutually by the Division and the CRP at least biennially for compliance and continued applicability, and shall include:

(a) Scope and nature of service(s), conditions, criteria and procedure under which each is provided and rates of payment for each approved service or group of services;

(b) No guarantee of total dollar commitment or number of total client referrals during any specific time frame unless so determined as a condition of a cooperative agreement for implementing a federal grant;

(c) Understanding that, before client services are provided at a cost to the local VRD office, prior authorization is secured in writing for that service from the referring counselor or other appropriate representative of the Division for that service;

(d) Assurances of compliance with State Standards and federal requirements as appropriate for the specific CRP;

(e) Assurance that the CRP will compile and submit, as required by the Division, pertinent process and outcome data concerning the service(s) or groups of services provided; and

(f) Assurance that pertinent program and fiscal records shall be accessible for necessary review and/or audit by or for the Division.

(3) Federal Funding Provisions. Generally, for a non-approved CRP to be considered for a VRD sponsored federal grant to enable provision of VR services and/or to meet standards for approval the CRP must:

(a) Document that receipt of such grant may reasonably be expected to enable the CRP to meet all applicable State Standards in these rules by completion of the grant period;

(b) Implement an acceptable cooperative agreement document with the Division which specifies the conditions and responsibilities of the grant, addresses removal of any deficiencies and includes a Statement of Assurances and Conditions as prescribed in these rules;

(c) Demonstrate that identified deficiencies are not of a nature or severity likely to result in substantive negative impact on either clients or services and that a plan is in place to address removal of deficiencies.

(4) Approval Standards:

(a) The Division wishes to promote the availability of needed CRPs throughout the state. The Division will therefore allow, with VR field office concurrence and proof of acceptable levels of insurance, minimal level utilization of a CRP meeting minimum standards for being an approved vendor based upon OAR 582-080, Vendor Selection Policies and applicable State Standards in OAR 582-010-0025;

(b) A person, public or private organization requesting approval by the Division to operate as a CRP above minimal utilization level must also meet the following:

(A) Makes application within 30 days of exceeding minimal utilization level and documents accreditation by an approved accrediting organization or methodology, or provides evidence leading to exemption from accreditation;

(B) Is on the Approved Vendor List or is recommended for addition to the Approved Vendor List by the local VRD office as outlined under OAR 582-080-0020 and the Division's **Rehabilitation Services Manual, Section 2.83**, and the Quality Assurance Unit is notified of this action;

(C) Implements a Statement of Assurances and Conditions as required in section (2) of this rule;

(D) Provides services to the satisfaction of the authorizing

vocational rehabilitation counselors and the VRD sponsored individuals with disabilities.

NOTE: The withdrawal of approval may occur with the recommendation of the local VRD office and Rehabilitation Services Quality Assurance Unit concurrence, if deficiencies in the ability to provide required services or meet legal requirements are noted.

(5) Application for Approval for a CRP to Provide VR Services Above Minimal Utilization Level:

(a) The application shall be on a form provided by the Division and shall include all information requested by the Division, including, but not limited to, information related to type of organization, program services to be provided, relevant cost factors and needs data, compliance with federal and State laws, and, if applicable, the accreditation option utilized and findings of such accreditation review.

(b) A completed application shall include a Statement of Assurances and Conditions as required in section (2) of this rule;

(c) Notice of Approval or Disapproval shall be given within 30 days of receiving all required information and documentation. If Approval is denied the CRP shall be notified of reasons for such denial and the process for appeal.

(6) Renewal of Approval:

(a) If accreditation is required for continued approval and a renewal of accreditation is indicated, reapplication to the Division for continuation of approval shall be made at least 60 days prior to the accreditation expiration date.

(b) The Division may require reapplication when a CRP undergoes significant changes in its management or operation affecting continued eligibility for accreditation.

(7) Issuance of Approval. Within available resources and up to a maximum of \$375 per organization, the Division agrees (on a one time basis) to share equitably in the cost of an initial accreditation required by the Division. Prior to payment for such accreditation, the applicant must provide all requested information demonstrating capability of providing services in a manner consistent with the requirements of these rules.

(8) Termination Standards:

(a) If approval is to be terminated, except for substantive deficiencies with negative consequences to clients and which require immediate termination, the CRP shall be notified thirty days prior to the effective termination of approval, including:

(A) Reason(s) for termination;

(B) Date after which no further services shall be purchased by the Division; and

(C) Explanation of appeal procedure for reinstatement, including the date after which an appeal will not be heard (see OAR 582-001 and AG's Model Rules for conducting contested case hearings, published November 1991, excepting that attorney representation is not required);

(b) When notice of termination of approval is executed and the CRP's appeal right is not exercised or fails to result in reinstatement, re-approval may not occur until it is demonstrated that requirements are met to the satisfaction of the Division;

(c) Vocational Rehabilitation Division sponsored federal grant funds shall not be awarded or paid nor any authorization for individual client cost services issued while the CRP remains in non-approved status;

(d) Termination may occur:

(A) At any time mutually acceptable to both parties or with 30 days notice by either party; or

(B) Immediately, with concurrence by VRD Administration, based on a recommendation of withdrawal of approval by the local VRD office or the Rehabilitation Services Quality Assurance Unit, if documented deficiencies in the ability to provide required services or failure to meet the provisions agreed to in the Statement of Assurances and Conditions have substantive negative consequences for clients of the Division.

(9) Use of Out-of-State Community Rehabilitation Programs. Only those out-of-state CRPs accredited by an approved organization or on the approved CRP vendor list of that state's VR Agency may be utilized by the Division for out-of-state services.

[Publications: The publication(s) referred to or incorporated by reference in

this rule are available from the agency.]

Stat. Auth.: ORS 344

Stats. Implemented: ORS 344.511 - ORS 344.690 & ORS 344.710 - ORS 344.730

Hist.: VRD 17, f. 8-28-74, ef. 9-25-74; VRD 5-1978, f. 4-20-78, ef. 5-1-78; VRD 2-1980, f. & ef. 7-2-80; VRD 1-1992, f. & cert. ef. 1-30-92; VRD 3-1993, f. & cert. ef. 10-15-93

582-010-0025

State Standards for CRP Vendor Approval

In addition to the vendor approval requirements of OAR 582-080, the state Vocational Rehabilitation Division adopts the following State Standards as required assurances that CRPs provide service to individuals with disabilities in a safe environment and in compliance with applicable state, federal and local laws, rules or regulations. Approval methods will evaluate each CRP/applicant's ability to assure compliance with each of the following standards which, for the purposes of these rules, apply to the type of CRP being evaluated:

(1) Physical Plant Standards. Provides services in an environment which meets accessibility requirements, is free of known health or safety hazards and in a site(s) which serves to support the accomplishment of its defined purpose(s).

(2) Health and Safety Standards. Meets all applicable governmental requirements, including OSHA standards for the Department of Labor; secures regular inspections and consultations (if applicable) from persons with expertise; and, has an organized internal health and safety program (if applicable).

(3) Production Standards. When work opportunities are directly provided to individuals with disabilities: Establishes production and payment practices which maximize earning potential; assures fair and equitable wages; meets minimum expectations for working hours and conditions; and maintains all applicable certification and documentation for the Wage and Hour Division, U.S. Department of Labor.

(4) Insurance Standard. Maintain required workers' compensation insurance and applicable levels of vehicle, general and (if required) professional liability insurance protection, adequate to compensate staff and workers with disabilities for injuries and damages for which the organization may be liable.

(5) Physical Accessibility Standard. Complies with Section 504 of the Rehabilitation Act, the Architectural Barriers Act of 1968, the Uniform Accessibility Standards and their implementing standards in **41 CFR Part 101-19.6**, the **American National Standards Institute No. A117-1-1986**, and applicable sections of the Americans with Disabilities Act.

(6) Organizational Standard. The CRP is structured to achieve its stated mission, secure all licenses or permits to do business within its jurisdiction(s) and scope of operation, plan and monitor the efficiency and effectiveness of services, and maintain records and reports that reflect the operation and provision of services and the organization's status.

(7) Fiscal Management Standard. Fiscal affairs relative to provision of rehabilitation services are managed in a manner consistent with its stated purposes and in accordance with a standard of sound business practices and legal requirements, including assurances that any state or federal audit and reporting requirements are met.

(8) Personnel Standard. As applies, maintains competent qualified staff and written agency personnel policies which support the provision of services essential to the achievement of defined individual and program goals. The CRP, when providing client transportation, ensures use of qualified, licensed vehicle operators and appropriate, safe vehicles. When providing medical and related health services, ensures such services are prescribed by or under the formal supervision of persons licensed by the state to prescribe or supervise the provision of these services. Maintains pertinent professional and business licensure as appropriate to the type of program or service(s) provided to clients.

(9) Program Management Standard. Ensures that services provided are individually tailored and coordinated in order to enhance each client's employment independence, integration,

and/or productivity as identified within each individual written (re)habilitation or independent living plan.

(10) Consumer Standard. Ensures that the persons served are participants in decisions affecting them through active involvement in their Individual Written Rehabilitation Plan (IWRP) and/or Individual Written Independent Living Plan (IWILP) and through consumer participation in service planning, implementation and evaluation, using language or mode of communication most compatible with the individual client's abilities and culture.

(11) Program Evaluation Standard. Utilizes an approved method to enable it to identify the results of services to individuals with disabilities against established goals. Provides timely reports to the Division of such information, and by such means, as the Division may require to evaluate ongoing program effectiveness, costs and appropriateness of services provided by the CRP.

(12) Human Rights Standard. Ensures, in its policies and practices, compliance with all laws and regulations dealing with non-discrimination, human and civil rights, personal dignity and choice, and confidentiality.

(13) Community Relations Standard. The CRP bases its program on documented evidence of the needs of prospective and current consumers and maintains effective communications to assure the programs and services are responsive and appropriately utilized.

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the agency.]

Stat. Auth.: ORS 344

Stats. Implemented: ORS 344.511 - ORS 344.690 & ORS 344.710 - ORS 344.730

Hist.: VRD 17, f. 8-28-74, ef. 9-25-74; VRD 24, f. & ef. 9-29-76; VRD 26, f. & ef. 7-1-77; VRD 5-1978, f. 4-20-78, ef. 5-1-78; VRD 2-1980, f. & ef. 7-2-80; VRD 1-1992, f. & cert. ef. 1-30-92; VRD 3-1993, f. & cert. ef. 10-15-93

DIVISION 20

REVIEW AND REDETERMINATION OF REHABILITATION SERVICES

582-020-0010

Definitions

(1) The "Act," as used in Division 020 means the Rehabilitation Act of 1973, as amended, and its implementing federal regulations.

(2) "Aggrieved," as used in ORS 344.590 means:

(a) With respect to an individual applying for vocational rehabilitation, that the individual has been denied vocational rehabilitation; or

(b) With respect to an individual receiving vocational rehabilitation, that the individual is dissatisfied with a decision concerning the furnishing or denial of vocational rehabilitation services.

(3) "Clear and Convincing Evidence" means with a high degree of certainty.

(4) "Client," as used in Division 020 means either the applicant, client, applicant's representative, or the client's representative.

(5) "Decision," as used in ORS 344.590 means a decision concerning the furnishing or denial of vocational rehabilitation services.

(6) "Delay," as used in ORS 344.590 means:

(a) The Division failed to make a decision within the time limit provided by law; or

(b) If the law does not impose a time limit, that the client has made a dated, written request for a decision and the Division has unreasonably delayed in making the decision.

(7) "Final Order," as used in Division 020, means:

(a) An impartial hearing officer's decision that has been accepted by the Administrator;

(b) An impartial hearing officer's decision that has become final because the Division did not mail a notice of the Administrator's decision to review within 20 calendar-days of the mail-

ing of the impartial hearing officer's decision; or

(c) The Administrator's final order, described in OAR 582-020-0120(2)(e).

(8) "Good Cause" means due to unforeseen circumstances beyond the control of the parties, including but not limited to the client's extended illness that requires significant medical care or illness or death of a family member.

Stat. Auth.: ORS 344.530(2) & ORS 344.590

Stats. Implemented: ORS 183.310 - ORS 183.550, ORS 344.511 - ORS 344.690 & Ch. 734, OL 1971

Hist.: VRD 21, f. & ef. 3-5-76; VRD 1-1990, f. & cert. ef. 11-26-90; VRD 2-1993, f. & cert. ef. 9-15-93; VRD 4-1997, f. & cert. ef. 11-20-97; VRD 1-1998, f. & cert. ef. 2-26-98

582-020-0020

Notice of Right to a Hearing

(1) A client who is dissatisfied with a decision concerning the furnishing or denial of vocational rehabilitation services, may request a hearing.

(2) When the Division makes such a decision, the Division shall give the client notice of the right to request a hearing if the client is dissatisfied with the decision. The Notice shall include the following information:

(a) The date of the notice;

(b) The decision;

(c) The basis of the decision;

(d) The client's right to request a hearing if the client is dissatisfied with the decision;

(e) The name and address of the office where the hearing request must be filed;

(f) That hearings are conducted according to federal statute and rule, Oregon's Administrative Procedures Act, and Division 20 of the Division's Administrative Rules and Sections and Oregon's 1997 Uniform and Model Rules of Procedure under the Administrative Procedures Act.

(g) Impartial hearing officers are selected on a rotational basis;

(h) Information about services available through the Client Assistance Program;

(i) Interpreters and materials in alternative formats are available, if needed; and

(j) The Division must receive a request for hearing within 60 calendar-days of the date of the notice, and if the request for hearing is not received by that time without good cause, the client will have waived the right to a hearing.

(3) If the client is represented by a family member, friend, private attorney, Client Assistance Program or other representative, the Division shall also provide notice to the representative.

Stat. Auth.: ORS 344.530(2) & ORS 344.590

Stats. Implemented: ORS 183.310 - ORS 183.550, ORS 344.511 - ORS 344.690 & Ch. 734, OL 1971

Hist.: VRD 21, f. & ef. 3-5-76; VRD 1-1981, f. & ef. 12-1-81; VRD 1-1990, f. & cert. ef. 11-26-90; VRD 2-1993, f. & cert. ef. 9-15-93; VRD 4-1997, f. & cert. ef. 11-20-97

582-020-0030

Hearing Request

(1) The client will use a Request for Review (Form R-184), or its equivalent, to request a hearing. If an equivalent is used, the request shall be in writing and shall include:

(a) A description of the Division's decision concerning the furnishing or denial of vocational rehabilitation services; and

(b) A statement that the client is dissatisfied with the decision; and

(c) A request for a hearing; and

(d) The signature of the client, or as appropriate, of the client's guardian or representative.

(2) The Division shall forward the request to the Hearings Unit if the hearing request:

(a) Includes the information required by OAR 582-020-0030(1); and

(b) Is received within the time period prescribed by OAR

582-020-0040(1).

(3) If it cannot be determined by the Division that the hearing request meets the requirements of subsections (2)(a) and (b), the Division shall forward the request to the impartial hearing officer to determine whether subsections (2)(a) and (b) are met, including whether, if appropriate, good cause exists for not meeting the deadline in 582-020-0040(1).

(4) If the requirements of subsection (2)(a) and (b) are not met, the request for hearing will be returned by the impartial hearing officer to the Division as not meeting the requirements of this rule, and the Division will advise the client regarding appropriate remedies.

(5) If the client or the client's guardian or representative requests assistance or the client is unable to request a hearing without assistance, the Division shall assist the client in completing the hearing request.

(6) The client may withdraw a request for hearing any time before there is a final order, as defined in OAR 582-020-0120(2)(e). The withdrawal shall be in writing.

(7) If the request for hearing is withdrawn, the Division shall transmit the withdrawal to the Hearings Unit or the Impartial Hearing Officer, when one has been selected, for an order dismissing the request for hearing.

Stat. Auth.: ORS 344.530(2) & ORS 344.590

Stats. Implemented: ORS 183.310 - ORS 183.550, ORS 344.511 - ORS 344.690 & Ch. 734, OL 1971

Hist.: VRD 21, f. & ef. 3-5-76; VRD 1-1981, f. & ef. 12-1-81; VRD 1-1990, f. & cert. ef. 11-26-90; VRD 2-1993, f. & cert. ef. 9-15-93; VRD 4-1997, f. & cert. ef. 11-20-97

582-020-0040

Deadlines and Time

(1) The Division must receive a request for hearing no later than 60 calendar-days after the date of the notice concerning the furnishing or denial of vocational rehabilitation services, unless good cause exists.

(2) The hearing shall be held no later than 45 calendar-days after the date of the Division's receipt of the hearing request, unless the parties agree to an extension for a specific time.

(3) The impartial hearing officer shall provide the client and the Administrator the decision and written report described in OAR 582-020-0110(1) and (2) no later than 30 calendar-days after the completion of the hearing, unless the parties agree to an extension for a specific time.

(4) If the Administrator decides to review the impartial hearing officer's decision, the Administrator shall notify the client of the decision to review, described in OAR 582-020-0120(2)(b) no later than 20 calendar-days after the mailing of the impartial hearing officer's decision. This deadline may not be extended.

(5) If the client submits additional evidence and information, pursuant to OAR 582-020-0120(2)(c), for the Administrator's review of the impartial hearing officer's decision, the client shall mail the evidence and information no later than 14 calendar-days after the date of the notice of decision to review.

(6) The Administrator shall mail the client the final decision and written report described in OAR 582-020-0120(2)(e) within 30 calendar-days of the date of the notice of decision to review the impartial hearing officer's decision.

(7) The deadlines in these rules, with the exception of those described in subsections (2), (3), and (4) of this rule may be extended for

(a) Good cause shown by one party; or

(b) At the request of both parties.

(8) If the last calendar-day of the time period falls on a Saturday, Sunday, or legal holiday, the period will be extended until the next working day.

Stat. Auth.: ORS 344.530(2) & ORS 344.590

Stats. Implemented: ORS 183.310 - ORS 183.550, ORS 344.511 - ORS 344.690 & Ch. 734, OL 1971

Hist.: VRD 4-1997, f. & cert. ef. 11-20-97

582-020-0050

Continuation of Services

(1) If a client has a pending request for a hearing to appeal a decision concerning the furnishing or denial of vocational rehabilitation services, the Division shall not suspend, reduce, or terminate the client's vocational rehabilitation services provided under an Individual Written Rehabilitation Plan (IWRP) until there is a final order as defined in OAR 582-0020-0120(2)(e) or the client requests the suspension, reduction, or termination of services.

(2) The Division may suspend, reduce or terminate services if there is evidence that the client has obtained services through misrepresentation, fraud, collusion, or criminal conduct.

Stat. Auth.: ORS 344.530(2) & ORS 344.590

Stats. Implemented: ORS 183.310 - ORS 183.550, ORS 344.511 - ORS 344.690 & Ch. 734, OL 1971

Hist.: VRD 4-1997, f. & cert. ef. 11-20-97

582-020-0060

Informal Resolution

(1) The client, counselor, branch manager, and/or district manager may resolve the issue(s) informally before the hearing.

(2) If the issue(s) is resolved informally, the client shall withdraw the request for the hearing in writing.

(3) If the client is represented by a family member, friend, private attorney, Client Assistance Program or other representative, the representative must receive notice of informal resolution settlement offers.

Stat. Auth.: ORS 344.530(2) & ORS 344.590

Stats. Implemented: ORS 183.310 - ORS 183.550, ORS 344.511 - ORS 344.690 & Ch. 734, OL 1971

Hist.: VRD 4-1997, f. & cert. ef. 11-20-97

582-020-0070

Selection of Impartial Hearing Officer

(1) Impartial hearing officers are assigned on an rotational basis from a pool of qualified persons identified jointly by the Division and the State Rehabilitation Advisory Council.

(2) Either party may request that the assigned impartial hearing officer remove himself or herself because of a potential conflict of interest or disqualification.

(3) If the impartial hearing officer removes himself or herself, a new officer will be chosen by rotation from the pool.

(4) If the impartial hearing officer denies the request, he or she must advise the parties of the nature of the conflict and the rationale for the decision not to remove himself or herself.

(5) The impartial hearing officer's decision not to remove himself or herself may be appealed immediately to the Administrator, whose decision is final.

Stat. Auth.: ORS 344.530(2) & ORS 344.590

Stats. Implemented: ORS 183.310 - ORS 183.550, ORS 344.511 - ORS 344.690 & Ch. 734, OL 1971

Hist.: VRD 4-1997, f. & cert. ef. 11-20-97

582-020-0080

Evidence

The client may review the Division's case file and review the Division's evidence before and during the hearing. At the hearing, the client may examine the Division's witnesses, call witnesses to testify, and introduce additional evidence.

Stat. Auth.: ORS 344.530(2) & ORS 344.590

Stats. Implemented: ORS 183.310 - ORS 183.550, ORS 344.511 - ORS 344.690 & Ch. 734, OL 1971

Hist.: VRD 4-1997, f. & cert. ef. 11-20-97

582-020-0090

The Hearing

(1) The hearing shall be held at a time consistent with OAR 582-020-0040(2) and designated by the impartial hearing officer.

(2) The hearing shall be held in a location that is accessible and convenient to the client, and agreed to by the impartial hearing officer, the client, and the Division.

Stat. Auth.: ORS 344.530(2) & ORS 344.590

Stats. Implemented: ORS 183.310 - ORS 183.550, ORS 344.511 - ORS

344.690 & Ch. 734, OL 1971

Hist.: VRD 4-1997, f. & cert. ef. 11-20-97

582-020-0100

Agency Representation

(1) The Division may be represented by an Assistant Attorney General.

(2) Subject to the approval of the Attorney General, an employee of the Division is authorized to appear as the agency representative in hearings governed by OAR Chapter 582, Division 020.

(3) A Division representative may not make "legal argument".

(a) "Legal argument" includes arguments on:

(A) The jurisdiction of the agency to hear the contested case;

(B) The constitutionality of a statute or rule or the application of a constitutional requirement to the agency; and

(C) The application of court precedent to the facts of the particular contested case proceeding.

(b) "Legal argument" does not include presentation of evidence, examination and cross-examination of witnesses or presentation of factual arguments or arguments on:

(A) The application of the facts to the statutes or rules directly applicable to the issues in the contested case;

(B) Comparison of prior actions of the agency in handling similar situations;

(C) The literal meaning of the statutes or rules directly applicable to the issues in the contested case; and

(D) The admissibility of evidence or the correctness of procedures being followed.

(4) When an agency representative represents the Division, the impartial hearing officer shall advise the representative of the manner in which objections may be made and matters preserved for appeal. Such advice is of a procedural nature and does not change applicable law on waiver or the duty to make timely objection. Where such objections involve legal argument, the impartial hearing officer shall provide reasonable opportunity for the Division employee to consult legal counsel and permit such legal counsel to file written legal argument within a reasonable time after conclusion of the hearing.

Stat. Auth.: ORS 344.530(2) & ORS 344.590

Stats. Implemented: ORS 183.310 - ORS 183.550, ORS 344.511 - ORS 344.690 & Ch. 734, OL 1971

Hist.: VRD 4-1997, f. & cert. ef. 11-20-97; VRD 1-1998, f. & cert. ef. 2-26-98

582-020-0110

Impartial Hearing Officer's Decision

(1) The impartial hearing officer's decision shall be based on the approved State Plan, the Act, federal vocational rehabilitation regulations, relevant state statutes, the Oregon Administrative Rules, and/or Division policy.

(2) The impartial hearing officer shall provide a full written report of the findings and grounds for his or her decision to the client and the Administrator within the time prescribed by OAR 582-020-0040(3).

Stat. Auth.: ORS 344.530(2) & ORS 344.590

Stats. Implemented: ORS 183.310 - ORS 183.550, ORS 344.511 - ORS 344.690 & Ch. 734, OL 1971

Hist.: VRD 4-1997, f. & cert. ef. 11-20-97

582-020-0120

Division's Decision

(1) The Administrator shall decide whether to accept or review the impartial hearing officer's decision.

(2) If the Administrator decides to review any or all of the impartial hearing officer's decision:

(a) The Division shall provide the client notice of the decision to review within the time prescribed by OAR 582-020-0040(4);

(b) The notice shall describe, consistent with subsection (f) of this rule, the reason(s) that the Administrator shall review the impartial hearing officer's decision.

(c) The notice shall inform the client that the client may submit additional evidence and information in writing that is relevant to the final decision(s) and such information shall be mailed within the time prescribed by OAR 582-020-0040(5).

(d) The Administrator shall not delegate the responsibility to make any final decision to any other officer or employee of the Division.

(e) Within the time prescribed by OAR 582-020-0040(6), the Administrator shall issue a final order and provide the client a full written report that explains the decision and includes findings and the statutory, regulatory and/or policy grounds for the decision.

(f) The Administrator may not overturn or modify an impartial hearing officer's decision, in whole or in part, that supports the position of the client unless the Administrator concludes, based on clear and convincing evidence, that the impartial hearing officer's decision is clearly erroneous on the basis of being contrary to the approved State Plan, the Act, federal or state vocational rehabilitation law or regulations, Oregon Administrative Rules, and/or policy.

(3) If the administrator decides to accept the impartial hearing officer's decision, the Division shall provide the client notice of the decision to accept the impartial hearing officer's decision.

(4) If the Division does not mail the client the notice described in subsections (2)(a) and (b) of this rule or mails the notice after the time prescribed by OAR 582-020-0040(4), the impartial hearing officer's decision becomes the Division's final decision and the Division shall give the client notice the impartial hearing officer's decision has become the Division's final order.

(5) The Administrator's final order, the notice of the Administrator's acceptance of the impartial hearing officer's decision, and the notice that the impartial hearing officer's decision has become the Division's final order shall include the following information: The document is the Division's final order and the client is entitled to judicial review of the order, pursuant to ORS 183.482, by filing a petition for review in the Oregon Court of Appeals within 60 days from the service of the final order.

(6) A client who believes his or her civil rights have been violated may, in addition to using the hearing process, file a complaint with the appropriate federal agency or file a civil suit.

Stat. Auth.: ORS 344.530(2) & ORS 344.590

Stats. Implemented: ORS 183.310 - ORS 183.550, ORS 344.511 - ORS 344.690 & Ch. 734, OL 1971

Hist.: VRD 4-1997, f. & cert. ef. 11-20-97

DIVISION 30

CONFIDENTIALITY OF CLIENT INFORMATION AND RELEASE OF INFORMATION

582-030-0000

General Provisions

(1) Purpose. The purpose of this division is primarily to adopt and implement policies and procedures pertaining to confidentiality in the provision of Rehabilitation Services under the federal Rehabilitation Act and attending state statute and/or federal regulations. These rules are intended to safeguard the privacy of individuals with disabilities and the confidentiality of all personal client information of or about individuals who are or have been applicants for Rehabilitation Services. Reference may also be made to Disability Determination Services which are governed by the federal Social Security Administration Act and **Federal Regulations 4 and 16**. These safeguards protect both on-hand and stored VR client information, including, but not limited to:

(a) Photographs and lists of names;

(b) Client case file records;

(c) Knowledge of personal client information gained by staff through the client's association with the Division, even though unrecorded; and

(d) Any other written, filmed or electronically recorded or transmitted information identifying or depicting a client or clients of the Division.

(2) Citations. Statutes and regulations relied on in addition to Oregon law (ORS 344.511 and 344.600) and/or legislative budget authority:

(a) The Rehabilitation Act of 1973, as amended, and **34 CFR 361**, specifically **Subsection .49** — Protection, Use and Release of Personal Information, and **34 CFR 363 and 365**;

(b) The Social Security Act — P.L. 93-647 and **42 U.S.C. 653** — Parent Locator Service;

(c) The Public Health Services Act — P.L. 98-24, Sections 523 and 527; **42 U.S.C. 290ee-3** and **dd-3** and **42 CFR Part 2** — Confidentiality of Alcohol and Drug Abuse Patient Records;

(d) The **Rehabilitation Services Administration Manual, Section 0550.1, Subsections 0550.01 to 0550.06** — Protection, Use and Release of Personal Information;

(e) Exemption from public records disclosure: ORS 40.270 — Evidence Rule 509 and ORS 192.502(7) and (8);

(f) ORS 344.600 — Unauthorized Use — VRD Data;

(g) ORS 433.045 — HIV Testing — Health Division;

(h) AG Opinion Number 8226 (8-4-93).

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the agency.]

Stat. Auth.: ORS 344

Stats. Implemented: ORS 344.511 - ORS 344.690 & ORS 344.710 - ORS 344.730

Hist.: VRD 4-1991, f. & cert. ef. 12-13-91; VRD 2-1993, f. & cert. ef. 9-15-93

580-030-0005

Definitions

(1) "Administrator" means the Administrator of the Vocational Rehabilitation Division.

(2) "Administration of the Vocational Rehabilitation Program" means actions taken to implement the approved State Plan as authorized under the Rehabilitation Act of 1973, as amended, **34 CFR 361, 363 and 365**, and ORS Chapter 344.

(3) "Public Officer Privilege" means, as provided in ORS 40.270, a public officer shall not be examined as to public records determined to be exempt from disclosure under ORS 192.502(7) and (8).

(4) "Alcohol and Drug Abuse Patient Records" means any patient/client information (or records) obtained by, or made available to, VRD under confidentiality safeguards prescribed by **42 CFR Part 2**, regulations of the federal Public Health Services Administration.

(5) "Client" means any person who has made application for VR Services.

(6) "Client Information" means any personally identifiable VR Program information acquired or developed by the Division, its staff or its representatives or that identifies an individual as a VR Program client of the Division.

(7) "Client's Representative" means any person identified by the client as being authorized to speak or act on behalf of the client or to assist the client in any matter pertaining to services of the Division.

(8) "Confidential" or "Protected" refers to assurances that all personally identifiable information about the client is used only for purposes directly connected with administration of the Vocational Rehabilitation Program and, except as otherwise provided by federal or state laws or regulations, is not further divulged without the client's informed written consent or request.

(9) "Contempt of Court" means resisting the power of the court to compel testimony or delivery of material. When so empowered, punishment may be imposed by the court to compel compliance with the order.

(10) "Cooperative Agreement" means a written agreement (between the Division, or one of its units, and another agency or organization) which includes terms protecting confidentiality of VR client information in keeping with the statutory and regulatory requirements of all parties to the agreement.

(11) "Court of Competent Jurisdiction" means a court having proper jurisdiction over the issue being decided.

(12) "Court Order" means a verbal or written order by a judge for compliance to do an act (testify and/or provide material

in a legal proceeding) or be held in contempt of court.

(13) "Custodian of Record" means the Administrator (or his/her designee) who is responsible for safeguarding all VR client information held by the Division and who determines whether information shall be released in response to a subpoena or a court order.

(14) "Designee" (Administrative) means an employee (or employees) of the Division assigned by the Administrator to speak or act on behalf of the Administrator in matters pertaining to authorizing Attorney General contacts, safeguarding and/or releasing client information in response to a subpoena or a court order.

(15) "Division", "VRD" and "OVRD" mean the Vocational Rehabilitation Division of the Department of Human Resources of the State of Oregon. (See "VR Program".)

(16) "Deposition" means testimony taken under oath, usually prior to a hearing.

(17) "Division Policy" means any directive, standard or regulation of the Division which applies to the public, Division staff and/or a client of the Division in the administration of the VR Program or Disability Determination Services, as established under legislative and/or statutory authority granted under applicable federal and state laws, rules and regulations.

(18) "Finding" means a judicial determination of fact.

(19) "Good Cause" means a special finding of fact, by a court of competent jurisdiction, that otherwise confidential client information, including but not limited to "alcohol and drug abuse patient records", may be released without the informed written consent of the affected client.

(20) "Informed Written Consent" means, after receiving a thorough explanation and understanding of the purposes, limitations, involved organizations or individuals and specific information to be released, a client completes and signs a Department of Human Resources Form DHR 2100, a Division Form R-113, or the equivalent (or in the case of Disability Determination Services, Form SSA 27), releasing personal information from or to the Division.

(21) "Investigation" means formal inquiries by a legally authorized and established public investigative body or judicial authority involving the release of otherwise confidential or protected client information with or without the informed written consent of the client.

(22) "Parent or Guardian" means a person or persons having legal responsibility for the overall welfare and well-being of a client under age 18 or a client who, if over age 18, is considered legally incompetent.

(23) "Parent Locator Service" means a provision of the Social Security Act under 42 U.S.C. 653 which prevails over other federal confidentiality standards and requires VRD to release certain otherwise confidential client information needed to locate an absent parent, when requested by a state child support enforcement agency operating under a State Plan implementing P.L. 93-647.

(24) "Subpoena" means a written order for a witness to appear and give testimony and/or deliver named material.

(25) "VR Program" means any client service provided or administrative function performed and authorized under terms of the Rehabilitation Act of 1973, as amended, 34 CFR 361, 363 and 365, and ORS Chapter 344.

(26) Confidential "HIV/AIDS Information" is any information in the client record that is likely to identify, directly or indirectly, that the client has been tested for the HIV virus or has HIV infection, antibodies to HIV, AIDS (Acquired Immunodeficiency Syndrome) or related infections or illnesses, or is suspected of having HIV as a result of high risk activities.

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the agency.]

Stat. Auth.: ORS 344

Stats. Implemented: ORS 344.511 - ORS 344.690 & ORS 344.710 - ORS 344.730

Hist.: VRD 4-1991, f. & cert. ef. 12-13-91; VRD 2-1993, f. & cert. ef. 9-15-93

582-030-0008

Division Policy and Procedures

Division VR Services Policy and Procedure, as provided in the Division's **Rehabilitation Services Administrative Manual**, shall state and explain methods and means to safeguard all client information, including:

(1) Providing to all applicants, clients, representatives of clients, and as appropriate, service providers, cooperating agencies, and other interested parties explanations as to the:

- (a) Confidential nature of all client information;
- (b) Conditions for accessing or releasing information;
- (c) Need to collect personal information;
- (d) Authority to collect personal information;
- (e) Principal purposes for use and release;
- (f) Mandatory or voluntary conditions for providing;
- (g) Effects of not providing;
- (h) Situations requiring informed written consent;
- (i) Situations not requiring informed written consent;
- (j) Identification of other agencies to which information is routinely released, and why.

(2) Providing explanations through methods and procedures understandable to each VR client, especially to persons unable to communicate in English or who rely on special means or modes of communication. Methods shall include use of interpreter services if understanding of policies and procedures affecting confidentiality of client information can be enhanced by this means.

(3) Billing procedure, if any applies, shall be made available to affected individuals to implement policies concerning the conditions under which fees may be assessed and current rates which apply when client information is provided. Billing procedures are based on the following policies:

(a) Such billing by the Division (**34 CFR 361.49(a)**) is limited to amounts which reasonably represent recovery of actual costs;

(b) Fees may be assessed for accessing stored records, extracting filed matter, duplication of records in excess of ten separate sheets from a single case record and/or other costs necessary to releasing requested information;

(c) In situations requiring a written summary of matter extracted from a record or records, fees may also be assessed to recover costs for research, dictation and typing of such summaries;

(d) All moneys received shall be handled and recorded under approved state accounting procedures;

(e) At the option of the office or unit which processes the requested material, fee assessment may be waived.

(4) Operational policies and procedures of the Division shall ensure that federal requirements in **34 CFR 361.49**, concerning confidentiality and release of client information, shall prevail over less stringent state laws and regulations.

(5) Each page of any document, record or report containing VR client information released to any other agency or person is imprinted with an inked rubber stamp (see OAR 582-030-0020), requiring Division approval for any further release

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the agency.]

Stat. Auth.: ORS 344

Stats. Implemented: ORS 344.511 - ORS 344.690 & ORS 344.710 - ORS 344.730

Hist.: VRD 4-1991, f. & cert. ef. 12-13-91; VRD 2-1993, f. & cert. ef. 9-15-93

582-030-0010

Program Use by Division

(1) All information regarding the VR client which is obtained, generated by, or made available to, the Oregon Vocational Rehabilitation Division, its representative or employees, shall be protected, held confidential, and is the property of VRD.

(2) Except as provided in OAR 582-030-0020, 582-300-0030 and 582-030-0040, when the Division obtains personal VR client information from service providers and cooperating agencies such information is not to be further divulged (**34 CFR 361.49(c)**).

(3) Client information may be used by the Division and shall

be used only for purposes directly connected with the administration of the vocational rehabilitation program. Regulations prohibit other use of VR client information, records, or reports unless:

- (a) Required by federal/state law or regulation;
- (b) Ordered by a judge;
- (c) Authorized by these rules; or
- (d) Requested in writing by the VR client or his/her representative.

(4) Client information requested by other agencies or sources is not considered to be within the "administration of the VR Program" unless such information has a direct bearing upon the provision of VR Services.

(5) VR client information, including lists of names and addresses, reports, and records, are safeguarded by the Administrator of the Oregon Vocational Rehabilitation Division to be used *only* in the administration of the vocational rehabilitation program, and (except as provided in section (3) of this rule and OAR 582-030-0040) shall not otherwise be released or disclosed without the written consent of the client:

(a) This policy does not protect any information about a crime committed by any individual or threat to commit a crime (especially threat of death or serious bodily injury), or suspected abuse or neglect;

(b) Any subpoena for release of a VR client record must be directed to the Administrator of the Division, who is the official custodian of all client records for the Division;

(c) Identifiable personal information may not be shared with advisory or other bodies which do not have official responsibility for administration of the program (**34 CFR 361.49(b)**), unless the client gives written consent.

(6) Except for alcohol and drug or HIV/AIDS related information (see subsection (b) of this section) written informed consent is not required in connection with job placement efforts. Each affected VR client shall be informed that discussion of work related client information with potential employers, in connection with the job placement of a client, is considered to be within the scope of the administration of the vocational rehabilitation program:

(a) Such information shall be limited to that which the counselor determines to be necessary to the placement process and directly related to the client's abilities to perform, retain, or acquire the skills to perform, specific employment;

(b) When releasing VR client information for placement purposes, disclosure of alcohol and drug patient records protected by **42 CFR Part 2** or HIV/AIDS information always requires informed written consent of the affected client (see OAR 582-030-0020(5)).

(7) VR client information may be used by the Division or released to other agencies which have cooperative agreements with the Division *without* the written consent of the client only if providing such information has a bearing on administration of the VRD program and/or the provision of VRD services:

(a) At time of application and at other times that client information is being collected, the Division shall inform the VR client about situations where information is routinely released and identify the involved agencies;

(b) Such notification shall include informing affected individuals that all agency VR client/applicant information is protected;

(c) Except as noted in OAR 582-030-0040 or the client consents in writing, with or without an interagency agreement, when such information involves alcohol or drug patient/client information records protected by **42 CFR Part 2** or HIV/AIDS, the Division will not disclose this information or reveal that the individual has been or is an abuser of alcohol or drugs or that HIV/AIDS information exists in the client's record.

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the agency.]

Stat. Auth.: ORS 344

Stats. Implemented: ORS 344.511 - ORS 344.690 & ORS 344.710 - ORS 344.730

Hist.: VRD 22, f. & ef. 3-5-76; VRD 3-1981, f. & ef. 12-1-81; VRD 4-1991, f. & cert. ef. 12-13-91; VRD 2-1993, f. & cert. ef. 9-15-93

582-030-0020

Release of Information to Other Agencies, Organizations, Authorities or Individuals

(1) DHR 2100 or VR Services Release Form R-113, or its equivalent, shall be utilized to obtain VR client permission to release or obtain client information. Before the client signs this form it must be completed so as to indicate informed consent, involved parties and timelines for obtaining or releasing specified information. For a client under age 18 or who is considered legally incompetent, the parent or legal guardian must also sign the form. In a case where legal competency is thought questionable, an attempt will be made to secure the counter-signature of the parent, guardian, or other person having or assuming responsibility for the safety of the client.

(2) Each page of any document, record, or report containing VR client information released to any other agency, organization or person shall be imprinted with an inked rubber stamp provided to all VR Services offices and units of the Division which reads:

"CONFIDENTIAL"

"This information cannot be released to any other person, agency, or organization without the prior written approval of the Vocational Rehabilitation Division".

(3) Release to other agencies. Upon receiving the informed written consent of the VR client, the Division may release client information to another agency or organization for its program purposes, but only that information which may be released to the client and only to the extent that it has been demonstrated that such information is necessary to its program. Client information believed to be harmful if released directly to the VR client may be released when the Division secures written agreement from the requester that the information will be used only for the purposes authorized and will not be further released to the client.

(4) Release for audit, evaluation, research, or public relations purposes. Client information may be released to an organization, agency, or individual engaged in audit, evaluation, research, or public relations only for purposes directly connected with the administration of the vocational rehabilitation program, or for purposes which would significantly improve the quality of life for individuals with disabilities and only when the Division is assured that:

(a) The information will be used only for the purposes authorized;

(b) The information will be released only to persons officially connected with the authorized activity;

(c) The information will not be released to the involved client;

(d) The information will be managed in a manner to safeguard confidentiality; and

(e) The information will be managed in a manner which will assure that the final product shall not reveal the identity of any involved VR client without his/her, or his/her representative's written consent.

(5) Client records containing HIV/AIDS information or subject to **42 U.S.C. 290dd-3** and **ee-3** and **42 CFR Part 2**. Except for direct release to the client or his/her representative, alcohol or drug related client information which is identified as "protected by the confidentiality provisions of **42 CFR Part 2**", and any HIV/AIDS related information about the client, always requires the written informed consent of the client before disclosure, unless disclosure involves a situation described in OAR 582-030-0040.

(6) A subpoena generated or authorized by the VR client to appear, release information or to give a deposition is handled as follows:

(a) Notify Supervisory and Administrative level staff as required in the **Rehabilitation Services Policy Manual**;

(b) Obtain the VR client's written consent to release pertinent records or testimony; and

(c) Appear as requested with any VR Services materials authorized for release;

(d) The employee may testify and/or release VR client information with the signed authorization of the client, but only to the extent provided in OAR 582-030-0030 and federal regulations **34 CFR 361.49(c)** for release to the affected client.

(7) A subpoena not generated or authorized by the client. If any employee of the Division is personally served with such a subpoena to appear, give a deposition, or release records to a judicial or other legal proceeding, the employee shall:

(a) If the subpoena also requests the VR client record, immediately notify the serving person that: Any subpoena for the client record must be served on the Administrator of the Division (ORS 344.530(2)(b)); and, VR client information is deemed confidential under state law and federal regulation, exempt from disclosure under ORS 192.502(7) and (8); and is subject to "public officer privilege" under ORS 40.270 — Evidence Rule 509;

(b) Immediately notify Supervisory and Administrative level staff as required in the Division's **Rehabilitation Services Policy/Procedures Manual**;

(c) Should the employee need legal advice or assistance in dealing with the subpoena, obtain approval by the Office of the Administrator or designee for contact with the Office of the Attorney General;

(d) The Office of the Administrator (or designee) will provide instructions to the employee, including any approval to seek legal advice/assistance and/or take the client's record to the proceeding;

(e) Unless instructed to do otherwise by Supervisory/Administrative staff, the employee shall appear as directed by the subpoena and, when asked to provide testimony and/or produce the VR client record, the employee shall make the following statement: **"Confidentiality policy imposed by state law and federal regulation requires the Division to invoke public officer privilege under ORS 40.270 — Evidence Rule 509, with respect to the release of client information or provision of testimony not requested or authorized by the client or the client's representative";** and

(f) If, after making this statement, the employee is instructed by a judge, empowered to make such finding, to comply or be held in contempt, the employee shall comply with the order;

(g) Only a subpoena or order issued by a judge empowered to impose a finding of contempt can compel testimony and/or release of client information without the client's authorization. Lawyers, hearing officers and others without judicial authority to compel release of confidential information may petition a judge for an order to require an employee to appear and/or release client information.

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the agency.]

Stat. Auth.: ORS 344

Stats. Implemented: ORS 344.511 - ORS 344.690 & ORS 344.710 - ORS 344.730

Hist.: VRD 22, f. & ef. 3-5-76; VRD 3-1981, f. & ef. 12-1-81; VRD 4-1991, f. & cert. ef. 12-13-91; VRD 2-1993, f. & cert. ef. 9-15-93

582-030-0030

Release to Involved Individuals

(1) Upon written request, any information from the VR case file shall be released to the VR client or, as appropriate, his/her parent, guardian, or other representative, in a timely manner, with the following exceptions:

(a) When case file information has been obtained from another public organization, this information will be released only by that organization or, with the provider's written approval, by VRD;

(b) Medical or psychological information, the knowledge of which may be harmful to the client, will be released (as appropriate) to the parent, guardian, or other representative of the client, or to the client by a physician or licensed psychologist.

(2) If a client or (as appropriate) a parent, guardian, or other representative presents a written request to review medical or psychological reports from the client's VR file and the counselor believes direct release of such information to any of the above

persons may be harmful to the client, the following procedures must be followed:

(a) The counselor will contact the practitioner(s) who wrote the report(s) to request an opinion as to whether the practitioner believes direct release of the information would be harmful to the client; or, if a practitioner is unavailable;

(b) The counselor will obtain an opinion from the appropriate office medical or psychological consultant as to whether the consultant believes direct release of the information would be harmful to the client; the consultant is to record his/her opinion on the R-114 Consultation Record;

(c) If the practitioner or consultant states that direct release would not be harmful, the counselor will release the requested VR Services information directly to the VR client or (as appropriate) to the client's parent, guardian, or designated representative;

(d) If the practitioner or consultant states that direct release would be harmful, the counselor requests the client to designate an appropriate and qualified physician or psychologist of the client's choosing for the purpose of reviewing and interpreting the contents of the report(s) to the client; the counselor schedules the appointment, mails copies of the report(s) to the practitioner, and if the client so requests, executes an Authorization for Purchase to pay the practitioner for an office visit at the Division's current approved rate of payment.

Stat. Auth.: ORS 344

Stats. Implemented: ORS 344.511 - ORS 344.690 & ORS 344.710 - ORS 344.730

Hist.: VRD 22, f. & ef. 3-5-76; VRD 3-1981, f. & ef. 12-1-81; VRD 4-1991, f. & cert. ef. 12-13-91; VRD 2-1993, f. & cert. ef. 9-15-93

582-030-0040

Exceptions to Written Consent Requirements

(1) Required Reporting and Response to Investigations:

(a) Division employees are required to report "abuse" (as defined by state law) to appropriate authorities. The state law currently requires reporting of abuse of children, elder abuse, nursing home abuse and abuse of mentally ill and/or developmentally disabled adults;

(b) The Division must release client information if required by federal law or 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 judicial order. The agency or organization with jurisdiction shall provide written documentation (with such request) sufficient for the Division to determine that the following conditions are met before information is released:

(A) Release is required by federal or state law or regulation, or by a judge's order or is not expressly prohibited by state or federal law or regulation;

(B) Release is essential to the law enforcement agency's investigation and/or prosecution of a crime such as homicide or serious bodily injury, fraud or abuse; or

(C) Release is essential to an investigation by another agency with jurisdiction over matters of fraud or abuse; and

(D) The specific information needed is identifiable as under control of and subject to release by the Division.

(2) Response to Child Support Enforcement. Section 453 of the Social Security Act (P.L. 93-647) prevails over other federal laws and regulations and requires release or disclosure of information requested by a state Child Support Enforcement Office when requested in accordance with its State Plan for locating absent parents (**42 U.S.C. 653 — Parent Locator Service**).

(3) Client Records Subject to **42 U.S.C. 290dd-3** and **ee-3** and **42 CFR Part 2** or involving HIV/AIDS. Except for direct release to the client or his/her representative, disclosure of alcohol or drug related client information which is identified as "protected by the confidentiality provisions of **42 CFR Part 2**" or HIV/AIDS always requires the written informed consent of the client, unless disclosure involves a following situation:

(a) Qualified medical personnel in a bona fide medical emergency;

(b) Qualified personnel of an authorized audit, evaluation or

research program and subject to the conditions in OAR 582-030-0020(4)(a) through (e);

(c) A court order, as provided under **Subpart E, 2.61(a)** of **42 CFR Part 2**, meeting the requirement that a court of competent jurisdiction make a finding of “good cause” before a subpoena can be exercised to compel release of “alcohol or drug abuse patient record”, or as pertains to HIV/AIDS information in the client file.

(4) The Division may release client information to protect the individual or others when the individual poses a threat to his/her health and safety or the health and safety of others. Federal and state laws and Division policy do not protect any information about a crime committed by any person, especially threat to life or serious bodily injury and suspected child abuse or neglect.

(5) For Deceased Persons:

(a) Vital Statistics. These rules do not restrict the disclosure of VR client identifying information relating to the death of a client under laws requiring the collection of such vital statistics or permitting inquiry into the cause of death;

(b) Consent by Personal Representative. Other requirements of these rules notwithstanding, if written consent to such disclosure is required, that consent may be given by an executor, administrator or other personal representative appointed under applicable state law. If there is no such appointment, consent may be given by the spouse or other responsible member of the client’s family.

(6) Participation in Shared Information System: The Division will participate in the State Shared Information System to the extent allowed by and consistent with state and federal law and/or regulations.

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the agency.]

Stat. Auth.: ORS 344

Stats. Implemented: ORS 344.511 - ORS 344.690 & ORS 344.710 - ORS 344.730

Hist.: VRD 4-1991, f. & cert. ef. 12-13-91; VRD 2-1993, f. & cert. ef. 9-15-93

DIVISION 50

REFERRAL, APPLICATION AND ELIGIBILITY FOR VOCATIONAL REHABILITATION SERVICES

582-050-0000

Standards

(1) Referrals to and applications for Vocational Rehabilitation Services provided by the Division shall be handled equitably and expeditiously, with equitable statewide distribution of available staff and other resources.

(2) The Division shall process all new referrals and applications promptly.

(3) The Division shall screen all new referrals and, shall provide application forms to potentially eligible “individuals with disabilities” who wish to obtain a determination of “eligibility”.

(4) When an Order of Selection is invoked, emphasis in screening of new referrals and processing of applicants shall be placed upon both a determination of eligibility and the severity of the impairment. Priority for services goes first to eligible individuals with the most severe disabilities. Other priority-of-service groups or sub-groups are added or deleted through amendment to the State Plan.

(5) Except when the record shows that delay is reasonable and mutually acceptable, evaluation (for the purposes of basic eligibility determination) shall begin promptly and to the maximum extent possible will be expedited through use of existing information, especially that from the records of schools, Social Security, personal physicians and family members.

(6) Unless delay is documented as mutually agreeable, within 60 days of application, the counselor shall render a decision of “ineligible”, “eligible”, or “eligible for extended evaluation”, with regard to further services. During this process the individual may be provided with those services necessary to achieve a timely and

appropriate determination.

(7) The Division shall not make a determination of ineligibility on the basis that the individual with a severe disability is too severely impaired unless an extended evaluation results in clear and convincing evidence that such individual is presently incapable of an employment outcome as result of the provision of further Vocational Rehabilitation Services.

Stat. Auth.: ORS 344

Stats. Implemented: ORS 344.511 - ORS 344.690 & ORS 344.710 - ORS 344.730

Hist.: VRD 2-1991, f. & cert. ef. 9-11-91; VRD 2-1993, f. & cert. ef. 9-15-93

582-050-0010

General Provisions

(1) Eligibility requirements are applied without regard to sex, handicap, race, age, creed, color, or national origin of the applicant. Unless otherwise stated in the context, the rules in OAR 582-050 pertain only to Vocational Rehabilitation Services.

(2) Eligibility is based solely upon existence of physical or mental impairment(s) which for that individual constitute(s) or results in a substantial impediment to employment and ability to benefit, in terms of an employment outcome, from needed and available substantial Vocational Rehabilitation Services.

(3) Except for individuals whose impairments fall within the definition of legal blindness, or are of a rapidly progressive nature leading to legal blindness, the Division shall not exclude any group of individuals from eligibility for services solely on the basis of type of disability or impairment (ORS 344.511(2)).

Stat. Auth.: ORS 344

Stats. Implemented: ORS 344.511 - ORS 344.690 & ORS 344.710 - ORS 344.730

Hist.: VRD 3-1978, f. 3-14-78, ef. 3-15-78; VRD 2-1991, f. & cert. ef. 9-11-91; VRD 2-1993, f. & cert. ef. 9-15-93

582-050-0020

Criteria

Applicants must meet all the following conditions before they can be certified as “eligible” for Vocational Rehabilitation Services:

(1) The applicant has a diagnosed physical or mental impairment which for that individual constitutes a substantial impediment to employment.

(2) The counselor is able to determine that identified substantial Vocational Rehabilitation Services are required to attain an employment outcome.

Stat. Auth.: ORS 344

Stats. Implemented: ORS 344.511 - ORS 344.690 & ORS 344.710 - ORS 344.730

Hist.: VRD 3-1978, f. 3-14-78, ef. 3-15-78; VRD 2-1991, f. & cert. ef. 9-11-91; VRD 2-1993, f. & cert. ef. 9-15-93

582-050-0030

Definitions

(1) “Assessment for Determination of Eligibility and Vocational Needs” means, as appropriate in each case:

(a) A review of existing data to determine whether an individual is eligible or potentially eligible, including, to the extent possible, a determination of the severity of the impairment(s);

(b) A comprehensive assessment to determine the type and extent of services which may benefit the individual in terms of an employment outcome;

(c) Any other goods or services, including rehabilitation technology, needed to determine the nature or severity of the impairment(s);

(d) Essential counseling and, as appropriate, referral to other services of the Division or to other agencies; and

(e) Provision of Vocational Rehabilitation Services during an “extended evaluation” when required to establish the extent and scope of needed services or whether an otherwise “eligible” individual is presently incapable of achieving an employment outcome and/or whether the Division is able to deliver the needed services.

(2) "Extended Evaluation" means any services provided to an otherwise "eligible" individual (for a period of up to 18 months) only as necessary for the limited purposes of determining that an "employment outcome" cannot result from further provision of VR Services, or for establishing the nature and scope of "substantial Vocational Rehabilitation Services" needed.

(3) "Physical or Mental Disability" means a physical or mental impairment which is stable or slowly worsening and which substantially impedes, contributes to impeding or, if not corrected, will probably result in substantial impediment to an individual's employment activities or vocational functioning; or, regarding independent living, substantially limits one or more major life activities.

(4) "Substantial Impediment to Employment" means that a "physical or mental disability" or disabilities, (in light of available medical, psychological, vocational, educational, and other related factors), severely impair(s) an individual's occupational performance by preventing the obtaining, retaining, or preparing for employment consistent with the individual's capacities, abilities, and limitations.

(5) "Substantial Vocational Rehabilitation Services" means any Vocational Rehabilitation Services which are provided within a counseling and guidance relationship and have a discerned and positive impact upon attaining an "employment outcome" of an "individual with disability" by reducing or eliminating an identified "substantial impediment to employment".

(6) An "Individual with a Disability" means one who has a "physical or mental impairment" which for that individual constitutes or results in a "substantial impediment to employment"; and, who can benefit in terms of an "employment outcome" from the provision of "substantial Vocational Rehabilitation Services".

(7) "Employment Outcome" means, with respect to an individual, entering or retaining full-time or, if appropriate, part-time competitive employment in the integrated labor market (including satisfying the vocational outcome of supported employment) or satisfying any other vocational outcome deemed consistent with the federal Rehabilitation Act, as amended.

(8) An "Individual with a Severe Disability" means an "individual with a disability" whose "physical or mental impairment" is severe and results in seriously limiting one or more functional capacities in the areas of mobility, communication, self care, self direction, interpersonal skills, work tolerance and/or work skills in terms of an "employment outcome" and whose vocational rehabilitation can be expected to require multiple "substantial Vocational Rehabilitation Services" over an extended period of time.

(9) "Order of Selection" is a process which is invoked or revoked by the Administrator of the Division by amendment to the federally approved State Plan. When invoked, it assures that eligible individuals with the most severe disabilities are served before other eligible individuals when the Division lacks the staff or other resources to serve all eligible individuals.

(10) "Resources" refers to availability of staff and/or funding to provide or deliver needed Vocational Rehabilitation Services.

(11) "Equitably" means that available resources, including staff, are distributed fairly (in proportion to the distribution of the documented population of need) among the local offices where individuals with disabilities are served.

(12) "Expediently" means that individuals seeking Vocational Rehabilitation Services are screened and applicants processed without undue delay, usually establishing eligibility or ineligibility within 60 days or less from initial application, using (to the maximum extent possible) existing diagnostic information.

(13) An "Eligible Individual" means an individual with a disability, as defined in section (6) of this rule, who makes application for services and requires identified "substantial Vocational Rehabilitation Services" to prepare for, enter, engage in, or retain gainful employment.

Stat. Auth.: ORS 344

Stats. Implemented: ORS 344.511 - ORS 344.690 & ORS 344.710 - ORS 344.730

Hist.: VRD 3-1978, f. 3-14-78, ef. 3-15-78; VRD 2-1991, f. & cert. ef. 9-11-91; VRD 2-1993, f. & cert. ef. 9-15-93

582-050-0040

Employed Persons

For an employed person, a "substantial impediment to employment" may be present when the person's job is in jeopardy because a confirmed "physical or mental impairment(s)" results in the inability of the employee to adequately perform the work functions of the job and that without the provision of substantial Vocational Rehabilitation Services, he/she will likely be terminated from employment, or significantly under employed.

Stat. Auth.: ORS 344

Stats. Implemented: ORS 344.511 - ORS 344.690 & ORS 344.710 - ORS 344.730

Hist.: VRD 3-1978, f. 3-14-78, ef. 3-15-78; VRD 2-1991, f. & cert. ef. 9-11-91; VRD 2-1993, f. & cert. ef. 9-15-93

582-050-0050

Citizenship

Citizenship is not a basic criteria for eligibility. A person may be eligible for Vocational Rehabilitation Services if he/she meets the basic criteria for eligibility (OAR 582-050-0020) and he/she is:

(1) A United States citizen (birth or naturalization).

(2) A permanent resident of the Trust Territory of the Pacific Islands or the Northern Mariana Islands.

(3) In the United States for other than a temporary purpose and provides evidence from the Immigration and Naturalization Service, with intention to become a permanent resident.

(4) A permanent resident of the United States as determined by the Immigration and Naturalization service.

(5) Present in the state and available for services, able to demonstrate and/or document the likelihood of being able to complete a Vocational Rehabilitation Plan culminating in employment, and is legally entitled to hold employment in this country.

Stat. Auth.: ORS 344

Stats. Implemented: ORS 344.511 - ORS 344.690 & ORS 344.710 - ORS 344.730

Hist.: VRD 4-1981, f. & ef. 12-1-81; VRD 2-1991, f. & cert. ef. 9-11-91

582-050-0060

Residency

(1) There shall be no residency requirement, durational or otherwise, which excludes services to an otherwise eligible individual who is present in the state, available and able to participate in services leading to an employment outcome.

(2) The Division may, through mutual agreement, cooperate with another state's Vocational Rehabilitation Agency in the implementation or supervision of planned services of an individualized written Rehabilitation Program.

(3) For a non-resident who lives in a contiguous state, but who is available and wishes to apply for services in Oregon, the Oregon VRD case-carrying counselor will negotiate with the Vocational Rehabilitation Agency of the applicant's home state to determine which single state agency will accept the application.

(4) Reasonable effort is made to assure that duplicate services are not provided concurrently in more than one state VR Agency nor shall more than one file per client be open and active within the Division.

(5) When an Oregon client in open plan status establishes residence in another state and is no longer available to participate actively with the Oregon case-carrying counselor in the provision of services, the counselor may:

(a) Negotiate with the Vocational Rehabilitation Agency of the new state-of-residence to obtain assistance in supervision of the Oregon VRD Services needed to complete the plan and obtain employment; or

(b) Close the case file as "ineligible" for further services due to the client's unavailability and, if requested by the client, provide copies of appropriate in-file data to the Vocational Rehabilitation Agency of the new state-of-residence.

Stat. Auth.: ORS 344

Stats. Implemented: ORS 344.511 - ORS 344.690 & ORS 344.710 - ORS

344.730

Hist.: VRD 4-1981, f. & ef. 12-1-81; VRD 2-1991, f. & cert. ef. 9-11-91; VRD 2-1993, f. & cert. ef. 9-15-93

DIVISION 60

TERMINATION OF VOCATIONAL REHABILITATION SERVICES

580-060-0010

Termination of Services Because of Ineligibility

(1) When the applicant does not meet one or more of the criteria for eligibility, a statement certifying the ineligibility shall be recorded in the case file and the case closed.

(2) Certification of ineligibility following a formal application for services:

(a) Can be made only after full participation with the individual or, as appropriate, the parent, guardian, or other representative, or after offering a clear opportunity for such consultation; and

(b) If inability to benefit from services in terms of an employment outcome is due to the severity of the disability, may be made only after providing extended evaluation services.

(3) Notification of Ineligibility: All applicants found ineligible for Vocational Rehabilitation Services shall be so notified in writing at the time of case closure (unless closure is due to death of the applicant or inability to locate or contact). The written notification will include:

(a) Notification that the case is being closed;

(b) Reasons for ineligibility;

(c) Instructions regarding availability of the Client Assistance Program, procedures for administrative review and/or a hearing by an impartial hearing officer, should the applicant disagree with the disposition of his/her case.

Stat. Auth.: ORS 344

Stats. Implemented: ORS 344.511 - ORS 344.690 & ORS 344.710 - ORS 344.730

Hist.: VRD 2-1978, f. 3-14-78, ef. 3-15-78; VRD 2-1991, f. & cert. ef. 9-11-91; VRD 2-1993, f. & cert. ef. 9-15-93

582-060-0020

Termination of Services After Eligibility

(1) Termination of Services — Not Rehabilitated:

(a) An eligible client can be closed when reasonable alternatives no longer exist to initiate or complete a Rehabilitation Program for the client, or suitable progress is not made to achieve or complete identified intermediate objectives leading to employment;

(b) The decision to close such a case can be made only with the full participation of the client, or as appropriate, the parent, guardian, or other representative. Exceptions to this procedure will be made when the client refuses to participate, is no longer present in the state or his or her whereabouts becomes unknown, or the client's medical condition is rapidly progressive or terminal;

(c) At the time of closure it is required that the client be informed in writing of the reason(s) for termination, of services, availability of the Client Assistance Program, and procedures for requesting an administrative review and/or a hearing by an impartial hearing officer.

(2) Termination of Services — Rehabilitated:

(a) An eligible client can be closed as rehabilitated when the client has been suitably employed for a period of time not less than 60 calendar days and is no longer in need of regular Vocational Rehabilitation Services;

(b) Clients closed rehabilitated must be advised in writing that their file has been closed and the basis on which this determination has been made;

(c) Clients closed rehabilitated must be informed at time of closure that:

(A) They may receive necessary post-employment services,

explaining the purposes and procedures for such services; and

(B) They may, if dissatisfied with this decision, request an administrative review and/or a hearing by an impartial hearing officer and of availability of the Client Assistance Program.

Stat. Auth.: ORS 344

Stats. Implemented: ORS 344.511 - ORS 344.690 & ORS 344.710 - ORS 344.730

Hist.: VRD 2-1978, f. 3-14-78, ef. 3-15-78; VRD 2-1991, f. & cert. ef. 9-11-91

DIVISION 70

STANDARDS FOR PROVISION OF SERVICES AND RATES OF PAYMENT

582-070-0005

Definitions/Citations

The following definitions and citations are relied upon in these rules:

(1) Definitions are those found in the Rehabilitation Act of 1973, as amended and **Code of Federal Regulations, 34 CFR 361, 363 and 365**, as amended or the **Social Security Act of 1935**, as amended and attending Federal Regulations, except for the following:

(a) "Disability Determination Services" or "DDS" refers to services of the Division which are limited to determination of eligibility for Social Security Disability Insurance (SSDI) or Supplemental Security Income (SSI) as per federal regulations for provision of such services to individuals referred by the Social Security Administration's local offices. In the context of these rules such expenditures are limited to the purchase of diagnostic related services necessary to determine if the individual is, or remains, unable to engage in any substantial gainful activity by reason of any medically determined physical or mental impairment which can be expected to result in death or has lasted or can be expected to last for a continuous period of not less than 12 months;

(b) "Division" or "VRD" refer to the agency as a whole and the administration of any of its programs, including: DDS, Vocational Rehabilitation Services, Independent Living Rehabilitation Services, and Supported Employment Services;

(c) "Rehabilitation Services" refers to non-DDS client services programs of the Division and may include services provided for purposes of vocational rehabilitation, independent living rehabilitation or supported employment and those diagnostic services necessary to determine clients' eligibility for one or more of these programs;

(d) "Diagnostic/Evaluation/Assessment Services" refer to services of the Division necessary to determination of eligibility for one or more of the Division's programs, including DDS determination for SSDI or SSI, by evaluating the extent to which a physical or mental disability or disabilities interfere(s) with the individual's ability to engage in gainful activity, perform functions of daily living and/or obtain or retain suitable employment;

(e) "Community Rehabilitation Program (CRP) Approval": See OAR 582-010, as applies to CRP Approval;

(f) "Substantial Rehabilitation Services": The provision of any service(s), within a counseling relationship, that contribute(s) in an identifiably positive way to accomplishing the client's rehabilitation, excepting that the following services are considered only as supportive to one or more other rehabilitation services:

(A) Increased Cost Client Maintenance;

(B) Transportation;

(C) Services to Client's Family Members;

(D) Interpreter or Note-Taking Services for the Deaf Client; and/or

(E) Telecommunications and Other Technological Aids.

(2) Citations and Documents Relied Upon:

(a) ORS Chapter 344;

(b) The Rehabilitation Act of 1973, as amended;

(c) **CFR 34, 361, 363 and 365**;

(d) The federal Office of Rehabilitation Services Administrative Manual: **Rehabilitation Services Manual, Parts 1500,**

2000 and 2500;

(e) OAR Chapter 582;

(f) Vocational Rehabilitation Division's **Administrative Manual for Rehabilitation Services**; and

(g) Title II and XVI of the Social Security Act — **Manual for Disability Evaluation Under Social Security**.

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the agency.]

Stat. Auth.: ORS 344

Stats. Implemented: ORS 344.511 - ORS 344.690 & ORS 344.710 - ORS 344.730

Hist.: VRD 2-1992, f. & cert. ef. 4-20-92; VRD 4-1993, f. & cert. ef. 11-1-93

580-070-0010

General Policy

NOTE: For community rehabilitation programs and medical or related services refer also to OAR 582-010, 582-075 and 582-085.

It is the policy of the Oregon Vocational Rehabilitation Division to reimburse vendors who provide previously-authorized services and/or supplies to persons who qualify for such services; in accordance with:

(1) The lesser of:

(a) The vendor's usual charge for such service, i.e., that fee for service which the vendor under ordinary circumstances charges to the general public for such services; or

(b) A pre-determined charge which has been negotiated between the vendor and an agency person authorized to consummate agreements between this agency and the vendor.

(2) In addition to any such general contracts or agreements, actual services to individuals must be specifically prior authorized and are not considered approved or billable until the vendor receives a completed Agency Authorization for Purchase (AFP) form or its equivalent, listing specific prior authorized services and estimated billable amounts, signed by the appropriate agency representative(s):

(a) Only in extreme emergencies may services be prior authorized verbally and any such verbal authorization must be documented promptly and followed with a written AFP within 72 hours;

(b) Only counselors, disability analysts, medical doctors, nurses, (for specific emergency authorizations, designated Quality Assurance personnel), and/or supervisors of such employees of the Division can authorize expenditures for evaluation and/or rehabilitation services to clients/applicants;

(c) Apparent fraud, misrepresentation or substantial discrepancies between services rendered and billed amounts shall be investigated and, as appropriate, legal steps taken to prevent or recover overpayments.

(3) With the following exceptions only, Rehabilitation Services funds will not be expended before the Division determines that "comparable benefits and services" are not available to meet, in whole or in part, the cost of such services. Further, except for student loans, for training provided in institutions of higher education (any training institutions where such grant assistance may likely be available) the Division assures that maximum effort has been made by the client to obtain and use any "comparable benefits or services" before expending Rehabilitation Services funds. Exceptions include:

(a) Evaluation of rehabilitation potential, including diagnostic services portions of Extended Evaluation;

(b) Counseling, guidance, and referral;

(c) Training not in institutions of higher education (universities, colleges, community/junior colleges, vocational schools, technical institutes, or hospital schools of nursing);

(d) Rehabilitation Technology;

(e) Placement;

(f) Post-employment services consisting of any of the services in subsections (a) through (e) of this section; and

(g) Delay of otherwise appropriate treatment services at "extreme medical risk" to the individual or delay of any services needed to effect an immediate job placement if such placement would be lost due to a delay in provision of such comparable

benefits.

(4) Purchases shall be of the most reasonable and satisfactory quality at the lowest available cost, subject to supervisory and/or administrative review and/or approval prior to authorization; accordingly, the Division reserves the right to establish upper limits on the utilization of existing services. For Rehabilitation Services, the **Administrative Manual, Section 2.84**, lists "levels of approval" for specific types of services or expenditure amounts requiring consultation or Manager/Administrator level prior approval before authorization.

(5) Preliminary diagnostic assessment is limited to a review of existing data and such additional data as is necessary to determine eligibility or, for Rehabilitation Services, to assign priority for order of selection for service (when appropriate). Comprehensive assessment and/or extended evaluation services may be provided only until eligibility/ineligibility or extent and scope of needed Rehabilitation Services can be determined. Additionally, other services are available (including the use of Rehabilitation Technology services, as appropriate) to determine the nature, scope and types of services needed to attain a specific vocational rehabilitation or independent living objective of the eligible client. Continued eligibility is contingent upon reasonable progress by the client toward attainment of measurable intermediate objectives within time-lines arrived at and agreed to through joint counselor/client development of the plan and any amendments thereto.

(6) Unless context specifies otherwise, it is intended that these rules apply uniformly to all client/applicant services of the Division in each of its programs. These include Vocational Rehabilitation, Supported Employment, Independent Living Rehabilitation and Disability Determination Services. All applicable State and federal laws, regulations and rules are recognized as taking precedent over any less stringent policies offered in these rules.

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the agency.]

Stat. Auth.: ORS 344

Stats. Implemented: ORS 344.511 - ORS 344.690 & ORS 344.710 - ORS 344.730

Hist.: VRD 1-1978, f. 3-14-78, ef. 3-15-78; VRD 2-1992, f. & cert. ef. 4-20-92; VRD 4-1993, f. & cert. ef. 11-1-93

582-070-0020

Specific Policies

Specific rules pertain to the provision of the following services:

(1) On-the-Job Training:

(a) Payment to on-the-job trainers/employers for training services will be negotiated at the lowest reasonable level and will always be considered as reimbursement for actual expenses and/or trainer time; the trainer/employer cannot expect to make a profit from such payments;

(b) Offset against client wages will be negotiated with the trainer/employer on a mutual sharing basis at the lowest reasonable level to adequately pay the client for his/her productive work efforts with the trainer/employer ultimately paying the entire wage. Total length of the training program and length of VRD involvement in payments will be negotiated on the basis of the complexity of the training and the amount of relevant skill and knowledge the client possesses prior to entering training.

(2) Training: Educational and training services, except on-the-job training, must be purchased from public educational organizations in Oregon. Exceptions are authorized only when:

(a) No publicly-supported school provides the courses necessary for the client's needs in order to reach the vocational objective; or

(b) A client cannot utilize publicly-supported schools because of his or her disability; or

(c) VRD's financial participation in the plan is no greater than if the client had enrolled at the nearest appropriate publicly-supported school; or

(d) The net cost to Oregon governmental agencies is significantly less; or

(e) The training services for the client will be significantly delayed.

(3) Client Maintenance:

(a) Supplemental maintenance can be provided only when the client's maintenance costs are increased due to his or her involvement in evaluation of vocational potential (e.g., per diem essential to travel for diagnostic purposes) or a rehabilitation program and the client does not possess sufficient financial resources to provide for these expenses;

(b) Maintenance is not available during a period when planned services are interrupted (status 24);

(c) Any exceptions to subsection (3)(b) of this rule require Branch Manager approval prior to authorization.

(4) Clothing Purchases: Clothing purchases may be authorized if the need is a result of participation by the client in a rehabilitation program and the client does not possess sufficient financial resources to provide for these expenses. These must be appropriate in type and in a price range, comparable to clothing items normally used by persons engaged in similar rehabilitation, training or employment settings.

(5) Client/Applicant Transportation: Is provided only when necessary to determine eligibility or supportive to "substantial rehabilitation services":

(a) Where public transportation is available and can be used by the client, any reimbursement will not exceed the public transportation rate. Use of public transportation costing in excess of the least expensive mode available to the client requires written justification prior to authorization (e.g., disability prevents using the least costly mode);

(b) Where public transportation is not available or cannot be used by the client due to his/her disability, reimbursement may be authorized up to actual cost of approved private vehicle use. Otherwise, use of private vehicles is a client option and may not be reflected in determining reimbursement levels of transportation costs;

(c) Only when determined by the Division to be the most feasible means of providing for necessary client transportation for rehabilitation services, vehicle purchase or modification may be authorized. Any vehicle purchase/modification must be prior approved by the Rehabilitation Services Branch Manager, Field Operations Manager, and/or Administrator (or designee), depending on the expenditure level. Administrative level approval is obtained prior to authorizing any such costs in excess of \$18,000 per case, cumulative during the client's lifetime;

(d) The individual Rehabilitation Services client record must document the means by which continued insurance, repair and replacement is to be managed by the client following closure;

(e) The Division requires being shown as primary lien holder until case closure. Ownership is transferred to the client only if the vehicle is needed to participate in employment or is essential to the individual's approved independent living goal. When client ownership is not justified based on the above criteria the vehicle shall be repossessed and reassigned or otherwise disposed of by the Division.

(6) Community Rehabilitation Programs' Services.

NOTE: Refer also to OAR 582-010.

(a) The Division establishes statewide standards for the purchase of community rehabilitation program (CRP) services and establishes Statements of Assurances and Conditions with each individual CRP having a service program the Division wishes to purchase, in excess of \$5,000 per CRP per fiscal year, for its clients;

(b) Except for minimal use (under \$5,000 per year) of approved vendors, it is the policy of the Division to use only "Approved" Community Rehabilitation Programs having current Statements of Assurances and Conditions or unexpired Certifications which were implemented prior to April 1, 1994;

(c) State-wide rates are intended to pay only the anticipated cost of standard rehabilitation services. This fee schedule may be adjusted for a specific CRP to reflect non-standard types or levels of service, or statewide for standard service, if a significant increase or decrease in the actual cost of serving clients occurs;

(d) For Community Rehabilitation Programs operated under private auspices, fees may be negotiated taking into consideration costs such as buildings, staffing and equipment. For publicly owned and operated Community Rehabilitation Programs (e.g., state or county owned or operated) fees, if any, must be based upon and not exceed actual costs;

(e) If it is determined that services consistently fall below established State Standards for Community Rehabilitation Programs (see OAR 582-010), approval and/or certification (for a certification implemented before April 1, 1994 and otherwise valid until scheduled expiration date) shall be terminated and utilization discontinued until that CRP's operation is brought within acceptable standards.

(7) Extended Evaluation: Except for Placement Services, Placement Equipment, or Placement Services leading to Self-Employment, Extended Evaluation (of up to 18 months) may consist of any reasonable services essential to determining eligibility/ineligibility or extent and scope of needed services.

(8) Personal Care Assistance (PCA): Is provided only when necessary to allow client to benefit from other rehabilitation services, including evaluation:

(a) Client as Employer: The client, in most cases, as the employer of the PCA may be reimbursed for necessary PCA services required to participate in rehabilitation services;

(b) Third Party Vendor: Direct payment to the PCA vendor by the Division requires prior approval by the Branch Manager;

(c) Written Contract: In most instances the client is to be the employer of his/her own personal care assistant. The Division may assist the client to establish an appropriate written contract with the provider.

(9) Interpreter Service: Is provided only when necessary to assist the client to derive full benefit from other rehabilitation services:

(a) Limitation: To be provided by the Division only when "comparable benefits" are not available;

(b) For the Deaf and Hearing Impaired: The Division gives preference to using interpreters certified by the National Registry of Interpreters for the Deaf and/or one who is on the approved vendor list of the State Association of the Deaf. When deemed mutually acceptable by the client and the counselor, another interpreter may be utilized;

(c) Regional Resources: The Deaf and Hearing Impaired Access Program may be used as a resource to both clients and staff for securing interpreters.

(10) Other Support Services Providers: May be selected for specific skills needed. Where provider licenses, insurance, certificates and state or local codes are indicated the Division reasonably attempts to assure that appropriate levels are met before authorizing services from the provider. (See OAR 582-080 and 582-085 for additional rules on vendor selection.)

(11) Insurance: Providers shall obtain and maintain insurance as required by law for that provider; additionally, where the Division is providing for services, appropriate levels of personal, professional and general liability insurance may be required, depending on the type of service. Where the client is the employer/contractor the Division shall assist the client in verifying that proper insurance coverage is in force for those services in order that the client may be reimbursed by the Division for such contracted services as are a part of the approved plan.

(12) Occupational Licenses, Tools and Equipment for Training and/or Employment:

(a) May be provided when required for either extended evaluation or in other plan statuses, including post employment. The Division accepts no responsibility for client lease/rental agreements or the leased/rented items other than to reimburse the client for such prior authorized expenditures;

(b) Repossessed items will be used whenever appropriate and available;

(c) Except for personally prescribed items, title/ownership of a Division purchased (or jointly purchased) item is held by the Division (or jointly with the Division) until case closure when ownership may be transferred to the client for non-expendable

items deemed by the Division to be needed for continued success in the client's program.

(13) Land and/or Stationary Buildings: Are never purchased by the Division as a service to an individual client. Existing buildings may be modified when necessary to enable an eligible client to attain a vocational or independent living plan goal. No permanent additions or weight bearing partitions are to be erected as services to individuals.

(14) Moving Expenses: May be provided for training or employment only when it has been determined by the Division that it is less costly and/or more beneficial than having the client commute. The Division retains the right to deny reimbursement for client opted commuting/moving costs in excess of the least costly alternative.

(15) Rehabilitation Technology Services (RTS): May be applied at any time during rehabilitation services to address barriers to the client's participation in evaluation, training, employment and, when appropriate, independent living:

(a) Approved Vendors: The Division ensures that providers used by the Division are qualified in the areas of engineering skills and/or technology required for a given service. Selected Community Rehabilitation Programs' Approvals may include RTS, when State Standards for Approvals are met for RTS;

(b) Authorization of: RTS is not conditioned upon unavailability of Comparable Benefits or Services, but all reasonably available comparable services shall be used before authorizing expenditure by the Division. Personal services contracts for RTS require Branch Manager approval prior to implementation.

Stat. Auth.: ORS 344

Stats. Implemented: ORS 344.511 - ORS 344.690 & ORS 344.710 - ORS 344.730

Hist.: VRD 1-1978, f. 3-14-78, ef. 3-15-78; VRD 2-1992, f. & cert. ef. 4-20-92; VRD 4-1993, f. & cert. ef. 11-1-93; VRD 1-1996(Temp), f. 2-26-96, cert. ef. 3-1-96

582-070-0025

Applicant/Client Transportation

(1) This rule is effective August 28, 1996. Requests for service which were made on or after February 26, 1996 through August 27, 1996, are governed by the temporary rule on applicant/client transportation which expired August 27, 1996.

(2) The following definitions apply to this rule:

(a) "Comparable services and benefits" means services and benefits that are provided or paid for, in whole or in part, by other federal, state or local public agencies; by health insurance; or by employee benefit and are available to the individual within a reasonable period of time and are commensurate to services the individual would otherwise receive from the Division. Client participation in costs is not "comparable services and benefits;"

(b) "Extreme medical risk" means a risk of substantially increasing functional impairment or risk of death if medical services, including mental health services, are not provided expeditiously;

(c) "Good cause" means a substantial change in the client's circumstances that arose after successful file closure, including post-employment closure when employment is maintained or retained, when a previous motor vehicle modification was purchased for the client. Examples include but are not limited to substantial unanticipated medical expenses, substantial change in medical condition, substantial change in employment duties, or substantial change in national economic conditions, such as significant inflation, without corresponding increases in the client's income. Financial Need may constitute good cause;

(d) "Qualified professional evaluation" means, but is not limited to, evaluation done by a physician, psychologist or occupational therapist;

(e) 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. Motor vehicle modification is a rehabilitation technology service;

(f) "Transportation" means travel and related expenses that are necessary to enable an applicant or eligible individual to participate in any vocational rehabilitation service. When provided for an applicant, transportation services enable the applicant to participate in services to determine eligibility. When provided for an eligible individual, transportation services enable the client to participate in services either to determine nature and scope of required services in the development of the employment plan; or transportation services are part of the employment plan, supportive to substantial rehabilitation services, and essential to meet the employment plan goal.

(3) For prudent use of federal and state dollars, preference is given to the most inexpensive alternative that meets the applicant/client's needs and the Division pays only the amount necessary to allow the applicant/client to participate in Division services:

(a) If public transportation is available and can be used by the applicant/client, the Division payment shall not exceed the appropriate public transportation rate;

(b) If public transportation is not available or the applicant/client's impairment prohibits its use, the Division may authorize payment for private transportation;

(c) If public and private transportation are not available, or the client's impairment prohibits their use, and a motor vehicle modification is required to address a barrier to the employment plan goal, the Division may authorize motor vehicle modification as a rehabilitation technology service. The Division does not purchase motor vehicles, except as an exception under section (6) of this rule.

(4) If motor vehicle modification is required to address a barrier to the employment plan goal, Division payment for all or part of a motor vehicle modification as a rehabilitation technology service must comply with subsections (a) through (e) of this section:

(a) If the client is the motor vehicle driver and if the Division is concerned about the client's ability to operate the motor vehicle safely, the Division shall require qualified professional evaluation(s), including but not limited to physical and/or psychological, as required, sufficient to address the Division's concerns, and the evaluation(s) must conclude the client can operate a motor vehicle with reasonable safety to the client and the public;

(b) The purchase addresses a barrier to the employment plan goal;

(c) The Division concludes that the client is likely to have sufficient income after successful client file closure, including post-employment closure when employment is maintained or regained, in order to maintain, repair and replace the modification; and the client agrees in writing to the Division's assessment and agrees to the payment of such costs after successful client file closure;

(d) Second or subsequent motor vehicle modification may be authorized only after a determination that the client's failure to comply with the prior agreement to maintain, repair and replace the previous modification was for good cause;

(e) Motor vehicle modification as a rehabilitation technology service does not require a comparable services and benefits determination. However, the Division payment shall not exceed the minimum cost of the modification sufficient to address a barrier to the employment plan goal minus the sum of the following:

(A) Any voluntary client contribution to such purchase; and

(B) All other reasonably available resources that would not delay the employment plan, or place the client at extreme medical risk.

(5) When the modified motor vehicle is delivered to the client at purchase, the motor vehicle driver must possess insurance that meets Oregon minimum limits and must comply with all Department of Transportation's Driver and Motor Vehicle licensing requirements.

(6) The Administrator of the Division (or the Administrator's designee) may grant an exception and furnish payment for all or part of the purchase of a motor vehicle if:

(a) The exception is not prohibited by state or federal statute, rule or regulation; and

(b) The exception is granted only after the Division and the client have explored all reasonable transportation alternatives as defined in subsection (d) of this section; and

(c) The Division has also made the following determinations:

(A) Purchase of a motor vehicle eliminates a barrier to the employment plan goal and the Division has determined that no other reasonable alternative is available that would not delay the employment plan or place the client at extreme medical risk;

(B) Available financial resources, which include, but are not limited to comparable services and benefits, voluntary client contributions, PASS plans, grants or other resources do not meet the minimum cost of the motor vehicle sufficient to eliminate a barrier to the employment plan;

(C) The client is likely to have sufficient income and resources after successful client file closure, including post-employment closure when employment is maintained or regained, in order to meet his/her daily living expenses, as well as to maintain, repair and replace the motor vehicle; and the client agrees in writing to the Division's assessment and agrees to the payment of such costs after successful client file closure. Motor vehicle purchases may only be approved if there is a reasonable expectation that the client will have sufficient income and resources to meet daily living expenses and the cost of motor vehicle operation and replacement;

(D) If the client is to be the motor vehicle driver and if the Division is concerned about the stability of the client's disability and the client's ability to operate the motor vehicle safely, the Division shall require qualified professional evaluation(s), including but not limited to physical and/or psychological, as required, sufficient to address the Division's concerns, and the evaluation(s) must conclude the client can operate a motor vehicle with reasonable safety to the client and the public.

(d) Other reasonable transportation alternatives include, but are not limited to, car repairs to an already owned vehicle; use of mass transit or other community transportation options; a move to another area which allows access to employment, mass transit and community transportation options; family members, volunteers, paid driver/attendants, car pool or other public transportation options; short-term automobile lease; or reasonable accommodation by the client's employer;

(e) Second or subsequent motor vehicle purchase may be authorized only after a determination that the client's failure to comply with the prior agreement to maintain, repair and replace the previous motor vehicle was for good cause.

Stat. Auth.: ORS 344

Stats. Implemented: ORS 344.511 - ORS 344.690 & ORS 344.710 - ORS 344.730

Hist.: VRD 2-1996, f. & cert. ef. 8-28-96

582-070-0030

Limitations of Payments

NOTE: For medical and related services refer also to OAR 582-075 and 582-085; and, for community rehabilitation program (CRP) services refer also to OAR 582-010.

(1) Payment in Full: Vendors providing any services authorized by the Division shall not make any charge to or accept any payment from the client/applicant or his/her family for such services unless the amount of the service charge or payment to be borne by the client is previously agreed to by the individual or his/her family, known to and, where applicable, approved by the Division.

(2) Client Financial Responsibility: The Division's State Plan (as provided in the Rehabilitation Act and attending Code of Federal Regulations) may or may not (as determined by the approved State Plan) invoke a formal financial means test to establish client need before expending Division funds for services. The Division's policy is that the client has the primary responsibility to pay for his/her rehabilitation services to the extent possible through his/her own resources or through such "comparable benefits or services" as may be available to the individual with the following

exceptions:

(a) OAR 582-070-0010(3)(a) through (g) of these rules lists specific services for which use of Division funding is not contingent upon unavailability of "comparable benefits or services"; and

(b) If such "comparable benefits and services" are not immediately available, the counselor will assist the client in exploring and making use of such benefits. Excepting for those services noted in subsection (a) of this section, if the client appears to be eligible for any comparable benefit or service and refuses to apply, Rehabilitation Services funds will not be used for that service.

(3) Student Financial Aid: The Division assures that "maximum" effort is made by Rehabilitation Services clients to secure student financial aid for any approved training in institutions of higher education. "Maximum" effort includes making timely application for such grant assistance on a consistent basis and utilizing such benefits as are available in lieu of Vocational Rehabilitation funding:

(a) Coverage: All clients, including graduate students, must apply for all financial aid benefits each academic year, but student loans are not required nor treated as "comparable benefits";

(b) Other Comparable Benefits or Services: If a third party (e.g., employer, insurance company, WCD) is required to or agrees to pay or reimburse to the Division all of the case service rehabilitation costs of the client, the financial aid grant offer need not be applied against the plan costs nor treated as a "comparable benefit";

(c) Late Applications: Pending determination of student aid by the financial aid officer, Division funds can be expended for education-related expenses between the date of application and determination of the client's eligibility for assistance provided that such expenditures are reduced by any amounts of comparable benefits subsequently received, excepting student loans;

(d) Duplicate Payments: When student financial aid is approved arrangements must be made promptly to reduce projected VRD payments and/or recover duplicate payments;

(e) Parent Non-Participation: With the Branch Manager's approval, the counselor may fund the parental contribution portion of the student's budget (as prepared by the college or university FAO) if the parents refuse or are unable to contribute.

(4) For Industrially-Injured Workers: The Division will provide only for the cost of those rehabilitation services which are not the responsibility of the employer, insurer or the Oregon Worker's Compensation Division.

(5) Increased Cost Maintenance: The Division will not provide client maintenance except for additional costs incurred while participating in authorized services, such as when the client must maintain a second residence away from the regular household in order to achieve a rehabilitation goal. Such maintenance will be provided according to the provisions under OAR 582-070-0020(3).

(6) Physical and Mental Restoration Services: Are provided only to ameliorate a diagnosed physical or mental condition which presents a substantial impediment to employment or independent living for the eligible individual. The services must be essential for the individual's achievement of a vocational or independent living goal:

(a) Drugs: When a physician (MD or OD) or dentist recommends prescription medication, if practical, the lowest price (e.g., generic) will be obtained prior to authorizing drugs;

(b) Dental Services: Dental care may be provided by VRD when the condition of teeth or gums imposes a major impediment to employment (e.g., endangers health, emergency needs, or serious cosmetic needs). Dentures may be purchased from licensed dentists or certified denturists;

(c) Eye Glasses: Eye glasses may be purchased when determined essential for evaluation of eligibility or the achievement of the vocational or independent living goal, limited to basic frames and lenses unless other features are medically required (e.g., sun glasses, tints, contact lenses);

(d) Wheelchairs: A wheelchair may be purchased when it is essential to a vocational or independent living plan. Wheelchairs

must be prescribed by a physiatrist or, if one is not available, physical therapist or other qualified medical specialist;

(e) Hearing Aids: Hearing aids may be provided only when essential to evaluation, vocational services (including independent living) or the individual's ability to obtain or retain employment. In order to purchase hearing aids for a client, the following are required:

(A) An evaluation by a physician skilled in diseases of the ear or an otologist; and

(B) An evaluation by a speech and hearing center or by a private audiologist.

(f) Other Prosthetic Devices: Prosthetic devices may be purchased only upon the authorization of the counselor and with a written prescription by a specialist;

(g) Psychotherapy: Group or individual psychotherapy may be provided in those instances when required for a person to reach a vocational or independent living goal and when an immediate and positive goal related impact is anticipated. Such services must be recommended by the VRD office psychological or psychiatric consultant, but when so recommended may not be provided by that consultant. A specific number of sessions or a specified time limit is required;

(h) Exclusions: Physical or mental restoration services will not be provided by Disability Determination Services for any purpose, nor by VRD for the treatment of an acute medical or psychological condition unless this condition interferes with provision of VRD Services. Physical and mental restoration services will not be provided for clients with rapidly progressive (worsening) conditions unless intervention can materially limit, correct or prevent onset of substantially handicapping disability, or in other than plan status unless an acute condition results from a VRD-authorized diagnostic procedure (excepting eye glasses or hearing aids essential to the diagnostic/evaluation process). VRD will not provide transsexual surgery;

(i) Unusual Treatment: Unusual treatment procedures are not normally provided by VRD. Unusual treatment procedures include but are not limited to the following:

- (A) Abortion;
- (B) Surgical Sterilization;
- (C) Breast Enlargement or Reduction;
- (D) Hysterectomy;
- (E) Electric Shock Therapy;
- (F) Acupuncture/Acupressure;
- (G) Surgical Treatment for Obesity;
- (H) Open Heart Surgery;
- (I) Removal of Lung;
- (J) Brain Surgery;
- (K) Corneal Transplant;
- (L) Total Joint Replacement;
- (M) Radiation Therapy;
- (N) Experimental or Research Procedures;
- (O) Organ Transplant;
- (P) AIDS or AIDS Related Complex; or
- (Q) Megavitamin Treatment.

(7) Services not Provided: The following services cannot be provided or authorized at any time by the Vocational Rehabilitation Division:

- (a) Any client-incurred debt;
- (b) Any services obtained by the client prior to the date of application;
- (c) Purchase of land or stationary buildings;
- (d) Fines or penalties, such as traffic violations, parking tickets, library fines, etc.;
- (e) Breakage fees and other refundable deposits;
- (f) Contributions and donations;
- (g) Entertainment costs;
- (h) Payments to credit card companies;
- (i) Authorization to supermarkets or grocery stores for food items;
- (j) Basic Client Maintenance;
- (k) Except for eye glasses or hearing aids essential to completing diagnostic/evaluation services (to determine Rehabilitation

Services eligibility) in applicant status (status 02), or occupational tools or licenses essential to Extended Evaluation Services (status 06), the following may never be authorized for an individual who has applied but has not yet been found eligible for rehabilitation services:

- (A) Prosthetic devices;
- (B) Occupational tools and licenses;
- (C) Placement services.

Stat. Auth.: ORS 344

Stats. Implemented: ORS 344.511 - ORS 344.690 & ORS 344.710 - ORS 344.730

Hist.: VRD 1-1978, f. 3-14-78, ef. 3-15-78; VRD 2-1981, f. & ef. 12-1-81; VRD 2-1992, f. & cert. ef. 4-20-92; VRD 4-1993, f. & cert. ef. 11-1-93

582-070-0040

Repossession/Disposition of Non-Expendable Property

(1) For tools, supplies, equipment, vehicles, etc., needed by the client for employment or independent living at time of closure in status 26 or 33, ownership or title is transferred to the client; and

(2) Any such non-prescription property not needed by the client for employment or independent living, where practical and appropriate, shall be repossessed and reassigned or otherwise disposed of by the Division:

(a) For such property with a current value of \$700 or less the counselor shall make a reasonable effort to repossess the property through voluntary cooperation by the involved client, client's family or other individual who may be in current possession of said property, including small claims court; and

(b) For current values estimated to be over the amount of \$700 the Division shall pursue, if necessary, other available legal means to regaining such property, or its equivalent value, including obtaining advice or assistance from the Office or the Attorney General.

Stat. Auth.: ORS 344

Stats. Implemented: ORS 344.511 - ORS 344.690 & ORS 344.710 - ORS 344.730

Hist.: VRD 2-1992, f. & cert. ef. 4-20-92

DIVISION 75

RATES OF PAYMENT — MEDICAL

582-075-0010

General Policy

(1) The Vocational Rehabilitation Division, herein called the Division, does not have the authority to reimburse vendors for the cost of goods and services if the Division has not authorized payment prior to the provision of goods and services. The Division shall reject all charges without such prior authorization.

(2) Except as provided in subsection (3) of this rule and OAR 582-075-0030, the amount that the Division shall pay vendors for previously authorized medical or psychological services shall be the lesser of the following:

(a) The lowest fee that the vendor charges the general public or other state agencies for the service; or

(b) One of the following prescribed fees:

(A) The maximum fee prescribed by the July 1, 1997 Workers' Compensation Schedule.

(B) For medical, psychological, laboratory, and other services not governed by that schedule, the Division shall pay the amount derived by applying the cost ratio between that schedule and the July 16, 1997 Oregon Medical Assistance Program (OMAP) Schedule to the fee prescribed by the OMAP schedule.

(3) With prior written approval by the branch manager, the Division may exceed the fee prescribed by subsection (2) of this rule when financial or human considerations outweigh the difference in cost.

Stat. Auth.: ORS 344.530(2)

Stats. Implemented: ORS 344.511 - ORS 344.690

Hist.: VRD 1-1991, f. 1-14-91, cert. ef. 3-1-91; VRD 4-1993, f. & cert. ef. 11-

1-93; VRD 6-1997, f. 12-31-97, cert. ef. 1-1-98

582-075-0020

Definitions

(1) "Brief narrative," as used in Division 075, means a document from a treating vendor that summarizes client treatment to date and current status; responds briefly to 3-5 specific questions posed by the Division, if any; and is usually one or two pages.

(2) "Complete narrative," as used in Division 075, means a document from a treating vendor that describes an extended client history, addresses six or more specific topics, and is usually three or more pages.

(3) "Contractor," as used in Division 075, means a vendor that has signed a contract with the Division to provide medical records and perform additional related services.

(4) "Vendor," as used in Division 075, means an entity that provides goods and/or services at the Division's request.

Stat. Auth.: ORS 344.530(2)

Stats. Implemented: ORS 344.511 - ORS 344.690

Hist.: VRD 1-1991, f. 1-14-91, cert. ef. 3-1-91; VRD 4-1993, f. & cert. ef. 11-1-93; VRD 1-1997(Temp), f. 5-8-97, cert. ef. 6-15-97; OAR 582-075-0020(Temp) suspended by VRD 2-1997(Temp), f. 6-13-97, cert. ef. 6-15-97; VRD 6-1997, f. 12-31-97, cert. ef. 1-1-98

582-075-0030

Medical Evidence of Record (MER) and Narrative Charges

(1) OAR 582-075-0010(2) and (3) do not govern payment for Medical Evidence of Record and Narratives.

(2) Division payment for existing medical records shall not exceed the lesser of the following:

(a) The lowest fee that the vendor charges the general public or other state agencies for the service; or

(b) When the invoice itemizes the number of pages copied and provided:

(A) \$18.00 for ten or fewer pages;

(B) \$0.25 per page for pages 11 to 20;

(C) \$0.10 per page for pages greater than 21; and

(D) A total maximum payment of \$22.50.

(c) When the invoice does not itemize the number of pages copied and provided, a total maximum payment of \$18.00.

(3) Additional payment will not be made for second or subsequent requests when the information to be provided was available to the vendor when the original request was processed.

(4) Integrated records will be paid as a single record request.

(5) When the Division receives copies of existing medical records within 15 days from the date recorded on the Division's record request, the Division shall pay the vendor an additional \$5.00. Time shall be measured from the date of the Division's written request to the date that the Division electronically receipts the copies or receives them in the rehabilitation services local office.

(6) When the Division and a vendor enter a public contract for the contractor to obtain existing medical records on behalf of the Division and perform additional related services:

(a) The contract governs payment to the contractor;

(b) The fee schedule prescribed by subsection (2) governs the contractor's payment to those from whom the contractor obtains the medical records.

(c) No bonus, as prescribed by subsection (5) of this rule shall be paid by the Division or by the contractor.

(7) When purchasing a brief narrative, the Division shall pay the amount billed up to a maximum payment of \$35.00.

(8) When purchasing a complete narrative, the Division shall pay the amount billed up to a maximum payment of \$75.00.

Stat. Auth.: ORS 344.530(2)

Stats. Implemented: ORS 344.511 - ORS 344.690

Hist.: VRD 1-1991, f. 1-14-91, cert. ef. 3-1-91; VRD 4-1993, f. & cert. ef. 11-1-93; VRD 1-1997(Temp), f. 5-8-97, cert. ef. 6-15-97; OAR 582-075-0030(Temp) suspended by VRD 2-1997(Temp), f. 6-13-97, cert. ef. 6-15-97; VRD 6-1997, f. 12-31-97, cert. ef. 1-1-98

582-075-0040

Limitations of Payments

(1) A price agreement and/or contract with one part of the Division requires the contractor to provide the contracted services, at the contracted rate, to additional part(s) of, or all of the Division if additional part(s) or all of the Division so requests.

(2) The vendor shall accept the fees prescribed by Division 75 as payment in full. If a vendor's usual and customary fee for a service exceeds the fee prescribed by Division 075, the client and/or his or her family shall not be liable to the vendor for any portion of a vendor's usual and customary fee unless the client and/or his or her family agrees in writing to assume the additional charges. Without such explicit agreement, the vendor must accept the Division's payment, including any client copayment, as payment in full.

Stat. Auth.: ORS 344.530(2)

Stats. Implemented: ORS 344.511 - ORS 344.690

Hist.: VRD 6-1997, f. 12-31-97, cert. ef. 1-1-98

DIVISION 80

VENDOR SELECTION POLICIES

582-080-0010

General Policy

State imposed requirements of the Division reflected in these rules are authorized by ORS Chapter 344, the Rehabilitation Act of 1973, as amended, the Social Security Act of 1935 and the **Code of Federal Regulations**, specifically **34 CFR 361, 363, 365 and 20 CFR Chapter III**. It is the policy of the Division to purchase goods and services only from qualified vendors, in accordance with state licensure laws, Division Approval Standards, state purchasing regulations and applicable federal regulations. Goods and services will be purchased that are within the purview of the particular license or approval standards. The Division reserves the right to establish additional standards, including restricted use of selected vendors based on comparative cost factors, quality of service, facilities, barrier free access and program length. It is policy not to discriminate against a vendor based upon sex, race, creed, ethnic origin or disability. Favoritism in the selection or use of a vendor resulting from a deliberate action or lack of action on the part of the Division will be avoided. Other factors being equal, a suitable vendor nearest the client's residence will be used. The Division maintains a listing of approved vendors selected to provide services to the Division.

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the agency.]

Stat. Auth.: ORS 344

Stats. Implemented: ORS 344.511 - ORS 344.690 & ORS 344.710 - ORS 344.730

Hist.: VRD 6-1978, f. 5-18-78, ef. 6-1-78; VRD 3-1992, f. & cert. ef. 4-20-92; VRD 4-1993, f. & cert. ef. 11-1-93

580-080-0020

Standards for Selection of Vendors

Except for medical services (see OAR 582-075 and 582-085) and approved community rehabilitation programs (see OAR 582-010), selection and utilization of vendors shall be in accordance with the following standards. In all instances, the authorizing vocational rehabilitation counselor (with the guidance of the Branch Manager) has the primary responsibility to assure that the vendor meets the applicable standards. When there is no client preference or circumstances which would dictate otherwise, vendor choice will be made from the pool of approved vendors available in the community, moving consecutively through the list in alphabetical order:

(1) Licensed professional individuals — (physicians, dentists, pharmacists, psychologists, academic teachers, etc.). Licensable professional individuals must be licensed by the appropriate state licensing boards as required by law to provide services as private practitioners. It is the responsibility of the vocational rehabilitation counselor to use only licensed individuals. If the vocational reha-

bilitation counselor has reason to believe that a professional vendor is not appropriately licensed, the counselor is to discontinue further use until the matter can be cleared through the state Medical/Psychological Consultant, or Resource Specialist, as appropriate. For additional requirements specific to medical services providers refer to OAR 582-085-0010 through 582-085-0050.

(2) Service organizations — (hospitals, mental health clinics, child care facilities, placement agencies, group homes, foster homes, nursing homes, sheltered workshops, community rehabilitation programs, etc.). Service organizations must be qualified under state law or certified or accredited by a recognized state or national organization or be official arms of state or local government, and/or approved under the terms of OAR Chapter 582 for vendor selection. For all practicing groups of licensable, certifiable or other professionals, sections (1), (5), and (6) of this rule apply. For additional requirements pertaining to Community Rehabilitation Programs refer to OAR 582-010-0005 through 582-010-0025.

(3) Commercial vendors — (supplies or material goods, transportation, insurance, shipping, and other commercial services, etc.). Commercial vendors must conform to all applicable state licensing requirements. All purchases will be made in accordance with state purchasing policies. In addition, the vendor must be able to provide the requested goods and services at the levels of quantity and quality and in the required time period authorized by the vocational rehabilitation counselor.

(4) Training vendors — (universities, community colleges, proprietary schools and OJT trainers, and correspondence schools, etc.). Training vendors must conform to all applicable licensing requirements. Degree granting academic institutions must be accredited by a regional or national accrediting organization. Except when circumstances such as overall cost or specific need of a client justify otherwise, state-supported schools are used. The Division conducts studies based on periodic sampling of training vendors to assure acceptable quality, reasonable costs, and effective results from the services provided. The studies may, on an annual basis, include a review of factors such as cost, utilization levels and rehabilitation survival rates for each community rehabilitation program or major training vendor used. OJT vendors will only be utilized if the vocational rehabilitation counselor and (as appropriate) the counselor's supervisor are assured in terms of their professional judgement, that the trainer/employer can deliver the training services as per the terms of the OJT contract.

(5) Certified professionals — (interpreters for the deaf, psychological and vocational counselors, occupational therapists, etc.). Certifiable professionals must possess a current certificate from a recognized state or national professional association or organization. If the vocational rehabilitation counselor questions the validity of the credentials, the counselor should refer the matter to the Field Operations Quality Assurance Specialist for guidance.

(6) Non-certified or non-licensed professionals — (tutors, language interpreters, job developers, supported employment job coaches, etc.). In instances where a professional individual is not subject to the VRD approval process for CRP's or licensing, the qualifications of the vendor must be determined to the satisfaction of the authorizing vocational rehabilitation counselor, the client and (as appropriate) the counselor's supervisor prior to the authorization of services.

Stat. Auth.: ORS 344

Stats. Implemented: ORS 344.511 - ORS 344.690 & ORS 344.710 - ORS 344.730

Hist.: VRD 6-1978, f. 5-18-78, ef. 6-1-78; VRD 3-1992, f. & cert. ef. 4-20-92; VRD 4-1993, f. & cert. ef. 11-1-93

580-080-0030

Selection Policy for Out-of-State Vendors

The vendor selection policies of these rules and OAR 582-010, 582-075 and 582-085 will be used for all out-of-state vendors. The vocational rehabilitation counselor may contact the other Vocational Rehabilitation state agency for vendor information and to check rates.

Stat. Auth.: ORS 344

Stats. Implemented: ORS 344.511 - ORS 344.690 & ORS 344.710 - ORS 344.730

Hist.: VRD 6-1978, f. 5-18-78, ef. 6-1-78; VRD 3-1992, f. & cert. ef. 4-20-92

582-080-0040

Conflict of Interest Regarding Vendor Selection

The Department of Human Resources and the Vocational Rehabilitation Division have established a conflict of interest policy which precludes any employee or representative of the Division from taking any action that would result in the person's private financial benefit, nor shall the action benefit any member or any business with which he/she or any member of his/her household is associated. All Division employees must give notice to their immediate supervisor of all potential conflicts of interest. If the supervisor agrees that there is a conflict of interest, the supervisor shall send the matter through supervisory channels to the appointment authority for resolution.

Stat. Auth.: ORS 344

Stats. Implemented: ORS 344.511 - ORS 344.690 & ORS 344.710 - ORS 344.730

Hist.: VRD 6-1978, f. 5-18-78, ef. 6-1-78

582-080-0050

Civil Rights

All vendors must provide all of their services in compliance with Titles VI and VII of the Civil Rights Act of 1964 as amended; Sections 503 and 504 of the Rehabilitation Act of 1973 as amended; Architectural Barriers Act of 1968 as amended; Uniform Accessibility Standards in **41 CFR Part 101-19.6 et seq.; American National Standards Institute No. A 117.1 — 1986;** and, Americans with Disabilities Act (P.L. 101-336).

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the agency.]

Stat. Auth.: ORS 344

Stats. Implemented: ORS 344.511 - ORS 344.690 & ORS 344.710 - ORS 344.730

Hist.: VRD 6-1978, f. 5-18-78, ef. 6-1-78; VRD 3-1992, f. & cert. ef. 4-20-92

DIVISION 85

MEDICAL SERVICES

Vendor Selection Policies

582-085-0010

General Policy

(1) It is the Division's policy that medical** services will normally be purchased through the treating source when that source is:

(a) Willing and qualified to provide the authorized service; and

(b) Willing to provide the service at or below the maximum fee in the fee schedule for the service, or at or below the price for the best contract for that service within the geographic area of the proposed service, whichever is the lower.

(2) It is the Division's policy to promote competition and discourage favoritism in the selection and use of vendors providing services to clients/claimants. No potential provider of services shall be discriminated against based on sex, race, creed, ethnic origin or disability. The selection of the appropriate vendor will be made in the following order:

(a) A contracted provider when such is available in the geographic area for the required service;

(b) The provider nearest to the client/claimant, for the required service, who is listed in the agency panel or pool of providers:

(A) No new provider in the area shall be used until qualifications are approved;

(B) When more than one provider is listed in the geographic area, selection of appropriate vendor will be made on an equal distribution of services or rotation of providers listed.

NOTE: When there is a significant discrepancy in cost, timeliness of

scheduling and reporting, and quality of services the appropriate administrative unit shall be notified to resolve these issues.

**As defined in Physician Current Procedural Terminology, most current issue.

Stat. Auth.: ORS 344

Stats. Implemented: ORS 344.511 - ORS 344.690 & ORS 344.710 - ORS 344.730

Hist.: VRD 1-1991, f. 1-14-91, cert. ef. 3-1-91

582-085-0020

Standards for Selection of Vendors

Selection and utilization of vendors shall be in accordance with the following standards. In all instances, the authorizing individual has the primary responsibility to assure that the vendor meets the applicable standards:

(1) Licensed Professional Individuals — (physicians, psychologists, optometrists, and etc.); licensable professional individuals must be licensed by the appropriate state licensing boards as required by law to provide services as private practitioners. If there is reason to believe that a professional vendor is not appropriately licensed, the Division is to refrain from use until the matter can be cleared through the appropriate administrative unit.

(2) Medical service organization — (hospitals, medical groups, mental health clinics, etc.); service organizations must be licensed under state law or certified by a recognized state or national organization, and all employees providing medical services to the client/claimants of the Division shall have appropriate professional licenses or certification.

Stat. Auth.: ORS 344

Stats. Implemented: ORS 344.511 - ORS 344.690 & ORS 344.710 - ORS 344.730

Hist.: VRD 1-1991, f. 1-14-91, cert. ef. 3-1-91

582-085-0040

Conflict of Interest Regarding Vendor Selection

The Department of Human Resources, and Vocational Rehabilitation Division have established a conflict of interest policy which precludes any employee or representative of the Division from taking any action that would result in the person's private financial benefit, nor shall the action benefit any member or any business with which he/she or any member of his/her household or immediate family is associated. Any division employee must give notice to his/her immediate supervisor should a potential conflict of interest arise. If the supervisor agrees that there is a conflict of interest, the supervisor shall send the matter through supervisory channels to the appointment authority for resolution.

Stat. Auth.: ORS 344

Stats. Implemented: ORS 344.511 - ORS 344.690 & ORS 344.710 - ORS 344.730

Hist.: VRD 1-1991, f. 1-14-91, cert. ef. 3-1-91

580-085-0050

Vendors

All vendors must provide all of their services in compliance with Titles VI and VII of the Civil Rights Act of 1964 as amended, Sections 503 and 504 of the Rehabilitation Act of 1973 as amended, and applicable portions of the Americans with Disabilities Act.

Stat. Auth.: ORS 344

Stats. Implemented: ORS 344.511 - ORS 344.690 & ORS 344.710 - ORS 344.730

Hist.: VRD 1-1991, f. 1-14-91, cert. ef. 3-1-91; VRD 4-1993, f. & cert. ef. 11-1-93

DIVISION 90

CERTIFICATION OF PERSONS WITH SEVERE DISABILITY(IES) FOR STATE EMPLOYMENT

582-090-0010

What This Rule Does

This rule establishes procedures to certify individuals with

severe disability(ies) for appointment to state employment. Individuals with severe disability(ies) who are certified eligible may be appointed without written examination for 90 days to state employment for which the individual meet(s) the minimum qualifications of training and/or experience. Those who successfully complete a 90-day appointment shall be placed in trial service status without additional examination.

Stat. Auth.: ORS 240

Stats. Implemented: ORS 240.391 - ORS 240.394

Hist: VRD 1-1979, f. & ef. 10-1-79; VRD 5-1981, f. & ef. 12-1-81; VRD 1-1993, f. & cert. ef. 9-7-93

582-090-0020

Statutory Authority

This rule carries out and is authorized by ORS Chapter 240.391 to 240.394.

Stat. Auth.: ORS 240

Stats. Implemented: ORS 240.391 - ORS 240.394

Hist: VRD 1-1979, f. & ef. 10-1-79; VRD 5-1981, f. & ef. 12-1-81

582-090-0030

Obtaining Eligibility Notice

To be considered eligible for state employment under the provisions of this rule, an individual with disability(ies) must:

(1) Obtain a Person with Severe Disability Eligibility Notice Form (R-96S) from a local office of the Vocational Rehabilitation Division or the Commission for the Blind;

(2) Have a licensed physician or other licensed practitioner diagnose the individual's disability(ies) and complete and sign the appropriate section of the form certifying that the individual has a severe physical or mental impairment as defined under ORS 240.391, Section 1(1) and (3); and

(3) Have a Vocational Rehabilitation Counselor who is an employee of a local office of the Vocational Rehabilitation Division or, if the individual is legally blind, the Commission for the Blind, complete and sign the appropriate section of the form certifying that the individual has a severe physical or mental impairment which:

(a) Seriously limits the individual's functional capacities as described in ORS 240.391, Section 1(1); and

(b) Requires multiple vocational rehabilitation services over an extended period of time as described in ORS 240.391, Section 1(2); and

(c) Is described in ORS 240.391, Section 1(3).

Stat. Auth.: ORS 240

Stats. Implemented: ORS 240.391 - ORS 240.394

Hist: VRD 1-1979, f. & ef. 10-1-79; VRD 5-1981, f. & ef. 12-1-81; VRD 1-1988, f. & cert. ef. 3-4-88; VRD 1-1993, f. & cert. ef. 9-7-93

582-090-0050

Application for Employment and Interview Procedures

(1) An individual who has been determined eligible, pursuant to OAR 582-090-0030, or the individual's representative must:

(a) Obtain a job announcement, that is open for application and, for which the individual with a severe disability(ies) meets the minimum qualifications; and

(b) If the appointing authority or the Department of Administrative Services, Personnel and Labor Relations Division has determined that there are additional special requirements for the job, the individual must also meet the special requirements described in the position description; and

(c) Submit a completed state employment application (PD100) with an attached copy of the Person with Severe Disability Eligibility Notice (R-96S) issued pursuant to OAR 582-090-0030 to the agency named on the job announcement.

(2) The appointing authority or the Department of Administrative Services, Personnel and Labor Relations Division, must evaluate the individual's completed state employment application to determine whether the individual meets the minimum qualifications for the job classification specifications and job announcement. Individuals who meet the minimum qualifications and any special requirements included in the recruiting announcement and

who have attached a completed Person with Severe Disability(ies) Eligibility Notice (R-96S) shall have his/her name placed on state hiring list(s).

(3) Appointing authorities that obtain state certified hiring lists for the purpose of filling job vacancies, pursuant to Department of Administrative Services, Personnel and Labor Relations Division procedures, shall offer an interview to individuals who have applied for employment in accordance with the requirements of this rule.

(4) If an individual with a severe disability is selected for appointment, the agency shall prepare a personnel action in accordance with the policies and procedures of the Department of Administrative Services, Personnel and Labor Relations Division to effectively appoint the individual for a period not to exceed 90 calendar days.

(5) Prior to completion of the 90-day appointment period, the individual's supervisor will conduct a performance appraisal in accordance with the appointing authority's established performance appraisal system:

(a) If the individual's supervisor determines that the individual's work performance has been satisfactory, the individual shall be appointed to trial service. The initial 90-day appointment period shall be counted toward completion of the established trial service period for the individual's position;

(b) If the performance appraisal indicates that the employee's work is unsatisfactory, action to terminate the employee will be initiated. A Personnel action coded according to Department of Administrative Services, Personnel and Labor Relations Division policies and procedures shall be prepared by the agency indicating the agency's decision.

(6) Each biennium, the Vocational Rehabilitation Division shall submit annual statistical reports for each calendar year of the biennium regarding the employment progress of persons with severe disability(ies) hired under ORS 240.379 - 240.394. The report shall include:

(a) The number of persons hired initially;

(b) The number of persons who completed 90-day appointments; and

(c) The number of persons who completed trial service.

Stat. Auth.: ORS 240

Stats. Implemented: ORS 240.391 - ORS 240.394

Hist.: VRD 1-1979, f. & ef. 10-1-79; VRD 5-1981, f. & ef. 12-1-81 VRD 1-1988, f. & cert. ef. 3-4-88; VRD 1-1993, f. & cert. ef. 9-7-93

DIVISION 100

ORDER OF SELECTION FOR VOCATIONAL REHABILITATION SERVICES

582-100-0010

What This Rule Does

This rule establishes the order in which eligible individuals with disabilities are selected to receive Vocational Rehabilitation Services when the Division lacks sufficient staff and/or other resources to furnish such services equitably and expeditiously to all eligible individuals, on a state wide basis.

Stat. Auth.: ORS 344

Stats. Implemented: ORS 344.511 - ORS 344.690 & ORS 344.710 - ORS 344.730

Hist.: VRD 3-1980, f. & ef. 7-2-80; VRD 3-1991, f. & cert. ef. 9-11-91; VRD 2-1993, f. & cert. ef. 9-15-93

582-100-0020

Statutory Authority

This rule is authorized by ORS 344.530 and 344.540 and Federal Regulation **34 CFR 361.30** and **361.36**.

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the agency.]

Stat. Auth.: ORS 344

Stats. Implemented: ORS 344.511 - ORS 344.690 & ORS 344.710 - ORS 344.730

Hist.: VRD 3-1980, f. & ef. 7-2-80; VRD 3-1991, f. & cert. ef. 9-11-91

582-100-0030

Definitions

This rule utilizes the definitions given in OAR 582-050-0020 and 582-050-0030, and the Code of Federal Regulations **34 CFR 361.1**.

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the agency.]

Stat. Auth.: ORS 344

Stats. Implemented: ORS 344.511 - ORS 344.690 & ORS 344.710 - ORS 344.730

Hist.: VRD 3-1980, f. & ef. 7-2-80; VRD 3-1991, f. & cert. ef. 9-11-91

582-100-0040

Order of Selection for Services

If VR Services cannot be provided equitably and expeditiously to all eligible individuals who apply, the Administrator of the Division shall invoke an Order of Selection which shall assure that eligible individuals with the most severe disabilities are served before other eligible individuals. Such an Order of Selection and any suborders of priority (deemed necessary) shall be established by amending the federally approved State Plan:

(1) General Terms:

(a) Except for Extended Evaluation Plans, persons already in active plan status on or before the effective date of the Order and post employment plan services shall not be impacted by invoking an Order of Selection;

(b) As soon as it is known that the Division will invoke Order of Selection or move to a different priority level within an Order of Selection affected individuals and referral sources are notified;

(c) Except when an individual has become unavailable or requests case closure earlier in the process, referrals and applications shall continue to be handled equitably and expeditiously toward establishment of either Eligibility or Ineligibility for each individual;

(d) Extended Evaluation Plan Services of up to 18 months may be provided but shall be continued only for as long as is required to establish whether or not an otherwise eligible individual has the potential to achieve employment and/or the nature and scope of needed services that the Division has the ability to deliver;

(e) Guidance shall be provided to impacted individuals and potential referral sources, and appropriate referrals made to alternative resources;

(f) Individuals found eligible shall be classified according to the terms of the Order of Selection portion of the federally approved State Plan for VR Services and definitions in **34 CFR 361**;

(g) In all situations, eligible individuals classified as Most Severe shall be served before other eligible individuals;

(h) Otherwise eligible individuals who are classified as Non Severe, or fall in a subgroup below the priority level for which the Division has sufficient staff and other resources to provide plan services equitably and expeditiously, are advised of their priority status, the likelihood of receiving future services in that status, and the possibility and appropriateness of file closure;

(i) Public safety officers whose disabling conditions were sustained while performing in the line of duty shall be given special consideration as a group and shall be served first within whatever category of priority they appear.

(2) Priority of Service Order. Open plans implemented before the effective date of an Order of Selection and those needing Post Employment services shall not be impacted. Otherwise, subject to the availability of sufficient staff and other resources, the following priorities shall be applied equitably state wide:

(a) Priority One. Eligible persons classified as Most Severe shall be served first, in the order of each individual's date of application and within each suborder of priority one (if suborders have been established);

(b) Priority Two. All other eligible persons are served in the

order of each individual's date of application, within each sub order of priority (if suborders have been established and documented in the federally approved State Plan for Rehabilitation Services).

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the agency.]

Stat. Auth.: ORS 344

Stats. Implemented: ORS 344.511 - ORS 344.690 & ORS 344.710 - ORS 344.730

Hist.: VRD 3-1980, f. & ef. 7-2-80; VRD 3-1991, f. & cert. ef. 9-11-91; VRD 2-1993, f. & cert. ef. 9-15-93