

STATEMENT OF SCOPE
Department of Workforce Development

Rule Nos.: Chapters DWD 60 to 75

Relating to: the business enterprise program for blind business operators; the order of selection for vocational rehabilitation services; the protection, use, and release of personal information; and the appeal procedures for vocational rehabilitation services.

Rule Type: Permanent

Detailed Description of the Objective of the Proposed Rule

The objectives of the proposed rule are to do all of the following with respect to programs administered by the Department of Workforce Development's Division of Vocational Rehabilitation (DVR) in the Department of Workforce Development:

1. Revise rules in ch. DWD 60 regarding the business enterprise program (BEP), which supports blind persons in operating vending, food service, and other small for-profit business enterprises on federal and state property. The objectives of the revisions are to do the following: a) allow DVR to consider geographic proximity in matching blind persons with properties; b) specify a process for DVR to collect certain past due amounts; c) clarify requirements for resolving grievances; d) clarify the qualifications for serving on a committee that participates in administering the BEP; e) identify how DVR can use a nonprofit agency or organization to assist in administering the BEP; f) explore options for ensuring that blind persons are given a priority on federal and state properties; and g) remove outdated references

2. Revise rules in ch. DWD 65 regarding the order of selection for vocational rehabilitation services in order to: a) explore options to allow DVR to provide services and equipment necessary to maintain employment to individuals regardless of their priority under the order of selection; b) make definitions consistent with federal regulations; and c) resolve conflicts in the existing rules with federal regulations

3. Revise rules in ch. DWD 68 regarding access to information about individuals who apply for or receive vocational rehabilitation services in order to: a) refer to those individuals as consumers; b) make it easier for those individuals to request information in their case files; and c) align the rules with federal regulations.

4. Revise rules in ch. DWD 75 regarding the appeal procedures for individuals applying for or receiving vocational rehabilitation services. The purposes of the revisions are to: a) shorten the time period allowed for appeals; b) make the procedures consistent with procedures that apply to other state agencies; and c) align the rules with federal regulations.

Description of Existing Policies Relevant to the Rule, New Policies Proposed to be Included in the Rule, and an Analysis of Policy Alternatives

Chapter DWD 60:

This chapter sets forth requirements for DVR to administer the BEP. For business enterprises on federal and certain other properties, DVR is designated as a State Licensing Agency (SLA) under the Randolph-Sheppard Act by the Rehabilitative Services Administration (RSA) of the US Department of Education. As an SLA, DVR must comply with federal regulations under the Randolph-Sheppard Act. The chapter includes requirements for DVR to select locations that are suitable for business enterprises, establish business enterprises at those locations, grant licenses to blind persons who are eligible to operate the business enterprises, and select business enterprise operators from among the licensees. A new policy in the proposed rule would allow DVR to consider geographic proximity in selecting business enterprise operators. The chapter also requires DVR to collect a percentage of a business enterprise's net proceeds, which is called a set-aside, to help fund the BEP. A new policy in the proposed rule would identify processes for DVR to collect past-due set-asides. In the rule making, DVR will also explore options for ensuring that BEP licensees are given in a priority to operate business enterprises on federal and state properties. In addition, DVR will remove any outdated references in the chapter.

The chapter includes procedures for DVR to resolve grievances about the BEP. If a person is not satisfied with DVR's resolution of a grievance, the chapter allows the person to file a complaint with the US Department of Education for arbitration. A new policy under the proposed rule would allow filing of arbitration complaints with the US Department of Education only for grievances that are eligible for arbitration under the federal regulations, which are grievances involving business enterprises on federal property or businesses enterprises on nonfederal property that are established or operated with funds derived from business operations on federal property.

As required under the Randolph-Sheppard Act, the chapter creates an elected committee of licensees that participates in administration of the BEP. A new policy under the proposed rule would clarify that only blind persons who actively operate a business enterprise under the BEP are eligible to serve on that committee.

The federal regulations allow DVR to enter into an agreement with a nonprofit agency or organization, which is called a nominee agency, to assist in the administration of the BEP. The current chapter does not address details for agreements with nominee agencies. The proposed rule would identify provisions and parameters for DVR to make agreements with nominee agencies.

The alternative to the proposed rule is to do nothing, which would hinder DVR's ability to expand opportunities under the BEP and to administer the BEP in an efficient manner.

Chapter DWD 65:

Under this chapter, DVR implements a waiting list called an order of selection that is used to determine which individuals will receive vocational rehabilitation services when resources are not available to serve all eligible individuals who apply for the services. For DVR to be eligible for federal funding for those services, the order of selection must comply with requirements

under Title I of the federal Rehabilitation Act, 29 USC 720-751. Prior to passage of the federal Workforce Innovation and Opportunity Act of 2014 (WIOA), Public Law 113-128, the Rehabilitation Act prohibited state agencies such as DVR from providing services to individuals who do not meet criteria under the order of selection that gives a priority to individuals with the most significant disabilities. However, WIOA amended the Rehabilitation Act to authorize state agencies to provide services and equipment for maintaining employment to individuals who require those services regardless of their priority under the order of selection. A new policy under the proposed rule will explore options for giving DVR the discretion to exercise that authority.

Currently, the chapter defines "individual with a significant disability" as an individual who has a severe physical or mental impairment which seriously limits one or more functional capabilities and who will need multiple vocational rehabilitation services over an extended period of time. This definition is consistent with federal regulations. For purposes of that definition, the chapter also defines "multiple services" and "extended period of time." However, the federal regulations do not define those terms and the RSA has advised DVR that those definitions should be repealed to make DVR's rules consistent with the federal regulations. A new policy under the proposed rule would repeal those inconsistent definitions.

Further, the chapter currently prohibits DVR from determining an individual's relative position in the order of selection based on specified factors, including the length of time needed to complete a vocational rehabilitation service. However, the prohibition regarding length of time directly conflicts with the definition of "individual with a significant disability," which, as noted above, refers to an individual who will need multiple services over an extended period of time. The proposed rule will resolve the conflict by eliminating the prohibition regarding length of time.

The policy alternative to the proposed rule is to do nothing. If the proposed rule is not promulgated, DVR will not be able to expand services to additional consumers as allowed under WIOA. In addition, the inconsistent definitions could jeopardize DVR's eligibility for federal funding for vocational rehabilitation services. Also, the conflict regarding length of time would remain unresolved.

Chapter DWD 68:

This chapter imposes requirements for the protection, use, and release of personal information about individuals who apply for or receive vocational rehabilitation services. Currently, the chapter refers to those individuals as clients. However, other DVR rules refer to individuals who are eligible for vocational rehabilitation services as consumers. See s. DWD 65.03 (5m). The proposed rule will make the references consistent by revising the chapter to refer to consumers instead of clients.

The chapter also imposes requirements on individuals who request DVR to disclose information from their case records. The chapter requires those requests to be in writing. In addition, when requesting disclosure, individuals must state the need or purpose for the disclosure. The proposed rule will eliminate the requirements to make requests in writing and to state the purpose or need for disclosure, which DVR views as unnecessarily burdensome.

The alternative is to nothing, which would leave inconsistent terminology unchanged. In addition, the alternative would continue to impose unnecessary burdens on an individual's access to information in his or her case records.

Chapter DWD 75:

As required under the Rehabilitation Act, this chapter establishes procedures for appealing DVR decisions relating to eligibility for providing, denying, or altering vocational rehabilitation services. The chapter requires an appeal to be filed within 12 months after a decision is mailed. The RSA has informed DVR that the 12-month time period for appeals is the longest in the country. In addition, DVR is required to make quarterly reports to the RSA that include information on cases closed due to DVR decisions. After the quarter in which DVR reports that a case is closed, an RSA policy directive prohibits DVR from reopening the case. As a result, if an individual achieves a successful result in his or her appeal in a quarter after the case is reported as closed, DVR is required to open a new case for the individual and processing the new case creates delays in providing services to the individual. The proposed rule will explore options for shortening the time period allowed for appeals.

Currently, DVR contracts with the Department of Administration's Division of Hearings and Appeals (DHA) to conduct hearings under the chapter. DHA has recommended changes to clarify the chapter's procedures and make them consistent with hearings conducted by DHA for other state agencies. The proposed rule will explore options to implement DHA's recommended changes, as well as to align the existing rules with federal regulations.

The alternative is to do nothing. If the time period for filing an appeal is not shortened, individuals who successfully appeal DVR ineligibility decisions are likely to experience delays from the opening of new cases. A long time period also prolongs uncertainty over the resolution of appeals and hinders DVR's effective administration of vocational rehabilitation services. In addition, the unclear and inconsistent procedures will prevent DHA from conducting hearings in an efficient manner.

Detailed Explanation of Statutory Authority for the Rule (Including the Statutory Citation and Language)

Chapters DWD 60 to 75:

Section 227.11 (2) (a), Stats.: "Rule-making authority is expressly conferred on an agency as follows: Each agency may promulgate rules interpreting the provisions of any statute enforced or administered by the agency, if the agency considers it necessary to effectuate the purpose of the statute...."

Chapter DWD 60:

Section 47.03 (4) (b), Stats.: "The department may charge a portion of the expenses of its supervised business enterprise program to the net proceeds of each business operating under the

program. The department shall establish the procedure for setting these charges by rule, with the participation of a committee of blind vendors established under 20 USC 107b-1."

Section 47.03 (8), Stats.: "A blind person participating in the supervised business enterprise program who is aggrieved by an act or omission of the department may commence a grievance proceeding under rules promulgated by the department."

Section 103.005 (1), Stats.: "The department shall adopt reasonable and proper rules and regulations relative to the exercise of its powers and authorities and proper rules to govern its proceedings and to regulate the mode and manner of all investigations and hearings."

Chapter DWD 68:

Section 47.02 (7) (a), Stats.: "Except as provided in par. (b), no person may disclose any information concerning any person who applies for or receives vocational rehabilitation services without the consent of the person except when necessary for the administration of this chapter or to carry out a person's rehabilitation plan developed pursuant to this chapter. The department shall promulgate rules to administer this subsection."

Section 47.02 (7) (b) 2., Stats.: "Any person who has applied for or received vocational rehabilitation services may obtain access to his or her records under rules promulgated by the department." Section 47.02 (7) (b) 2., Stats.

Chapter DWD 75:

Section 47.02 (5), Stats.: "Any person aggrieved by a determination of eligibility or ineligibility for vocational rehabilitation services or by the furnishing or denial of vocational rehabilitation services may commence an appeal as provided under rules promulgated by the department."

Section 103.005 (1), Stats.: "The department shall adopt reasonable and proper rules and regulations relative to the exercise of its powers and authorities and proper rules to govern its proceedings and to regulate the mode and manner of all investigations and hearings."

Estimate of Amount of Time that State Employees Will Spend Developing the Rule and of Other Resources Necessary to Develop the Rule

The estimated time is 200 hours.

List with Description of All Entities that May Be Affected by the Proposed Rule

Individuals who apply for or receive vocational rehabilitation services from DVR, blind persons and other persons who operate business enterprises, and federal and state agencies that manage properties.

Summary and Preliminary Comparison with Any Existing or Proposed Federal Regulation that is Intended to Address the Activities to be Regulated by the Proposed Rule

Chapter DWD 60:

As an SLA under the Randolph-Sheppard Act, DVR administers the BEP for business enterprises on federal and certain other property. The Randolph-Sheppard Act uses the term "vending facility" to refer to a business enterprise. The Randolph-Sheppard Act requires an SLA to establish procedures for resolving grievances and allows a person dissatisfied with an SLA's resolution of a grievance to apply to the US Department of Education to arbitrate the dispute. 20 USC 107b (6), 107d-1 (a), and 107d-2. Under the federal regulations, the grievance and arbitration procedures apply to disputes involving vending facilities on federal property or other property. See 34 CFR 395.13 (a) (referring to "vending facility program") and 34 CFR 395.1 (p) (defining "program"). The federal regulations define "other property" as non-federal property on which vending facilities are established or operated with funds derived from vending facilities on federal property. 34 CFR 395.1 (n). The Randolph-Sheppard Act also requires SLAs to establish an elected committee of blind licensees. 20 USC 107b-1 (2) and (3). See also 34 CFR 395.14. Federal regulations under the Randolph-Sheppard Act allow SLAs to enter into agreements with nominee agencies. 34 CFR 395.15 (a).

Chapter DWD 65:

The RSA makes grants to state agencies for vocational rehabilitation services under the Rehabilitation Act. Federal regulations implementing the grant program are set forth at 34 CFR Part 361. To be eligible for the grants, a state must have a state plan that is approved by the RSA. 29 USC 721 (a) (1) (A). See also 34 CFR 361.2. If vocational rehabilitation services cannot be provided to all eligible individuals, the state plan must include an order of selection that ensures that individuals with the most significant disabilities are selected first to receive the services. 29 USC 721 (a) (5) (C). However, WIOA added a provision to the Rehabilitation Act that allows a state, at its discretion, to serve eligible individuals, whether or not they are receiving vocational rehabilitation services, who require specific services or equipment to maintain employment. 29 USC 721 (a) (5) (D); 34 CFR 361.36 (a) (3) (v).

The federal regulations define "individual with a significant disability," in part, as an individual with a disability "[w]hose vocational rehabilitation can be expected to require multiple vocational rehabilitation services over an extended period of time." 34 CFR 361.5 (c) (30) (ii). Unlike ch. DWD 65, the federal regulations do not include definitions for "multiple services" or "extended period of time."

Chapter DWD 68:

To be eligible for federal grants for vocational rehabilitation services, DVR must comply with federal regulations under 34 CFR 361.38 regarding the protection, use, and release of personal information. Under those regulations, DVR must adopt and implement procedures to safeguard the confidentiality of personal information. 34 CFR 361.38 (a) (1). In addition, with certain exceptions, if an applicant or recipient of vocational rehabilitation services makes a written request for information in his or her case file, DVR must release the information to the individual

or the individual's representative in a timely manner. 34 CFR 361.38 (c) (1). However, the federal regulations do not explicitly require the request to be in writing.

Chapter DWD 75:

The Rehabilitation Act requires states to establish procedures for the mediation and review of decisions affecting the provision of vocational rehabilitation services to applicants and eligible individuals. 29 USC 722 (c) (1), 34 CFR 361.57.

Anticipated Economic Impact of Implementing the Rule (Note if the Rule is Likely to Have a Significant Economic Impact on Small Businesses)

If the Department is able to revise ch. DWD 60 to ensure that blind persons are given a priority to operate business enterprises on federal and state properties, then the blind persons who operate those business enterprises will be less reliant on benefit programs and the revision will have a positive economic impact. The proposed revisions to chs. DWD 60, 65, 68, and 75 are not otherwise expected to have an economic impact on businesses, including small businesses, as defined in s. 227.114 (1), Stats.

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