

## ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

<p>1. Type of Estimate and Analysis <input checked="" type="checkbox"/> Original   <input type="checkbox"/> Updated   <input type="checkbox"/> Corrected</p>	<p>2. Date January 20, 2022</p>
<p>3. Administrative Rule Chapter, Title and Number (and Clearinghouse Number if applicable) Chapters DWD 65, 68, and 75</p>	
<p>4. Subject Order Of Selection For Vocational Rehabilitation Services, Confidential Information, and Appeal Procedures For Persons Applying For Or Receiving Vocational Rehabilitation Services</p>	
<p>5. Fund Sources Affected <input checked="" type="checkbox"/> GPR   <input checked="" type="checkbox"/> FED   <input type="checkbox"/> PRO   <input type="checkbox"/> PRS   <input type="checkbox"/> SEG   <input type="checkbox"/> SEG-S</p>	<p>6. Chapter 20, Stats. Appropriations Affected 20.445 (5) (a) and (n)</p>
<p>7. Fiscal Effect of Implementing the Rule <input type="checkbox"/> No Fiscal Effect   <input type="checkbox"/> Increase Existing Revenues   <input type="checkbox"/> Increase Costs   <input type="checkbox"/> Decrease Costs <input type="checkbox"/> Indeterminate   <input type="checkbox"/> Decrease Existing Revenues   <input checked="" type="checkbox"/> Could Absorb Within Agency's Budget</p>	
<p>8. The Rule Will Impact the Following (Check All That Apply) <input type="checkbox"/> State's Economy   <input type="checkbox"/> Specific Businesses/Sectors <input type="checkbox"/> Local Government Units   <input type="checkbox"/> Public Utility Rate Payers <input type="checkbox"/> Small Businesses <b>(if checked, complete Attachment A)</b></p>	
<p>9. Estimate of Implementation and Compliance to Businesses, Local Governmental Units and Individuals, per s. 227.137(3)(b)(1). \$0</p>	
<p>10. Would Implementation and Compliance Costs Businesses, Local Governmental Units and Individuals Be \$10 Million or more Over Any 2-year Period, per s. 227.137(3)(b)(2)? <input type="checkbox"/> Yes   <input checked="" type="checkbox"/> No</p>	
<p>11. Policy Problem Addressed by the Rule Chapter DWD 65: The federal Workforce Innovation and Opportunity Act of 2014 (WIOA), Public Law 113-128, authorizes state agencies to provide services and equipment to an individual for maintaining employment regardless of the individual's category under a wait list for vocational rehabilitation services that is called an order of selection. The rule allows the Department's Division of Vocational Rehabilitation (DVR) to exercise that authority. Chapter DWD 65 also contains definitions that are not consistent with federal law, which the rule repeals. The rule also makes the deadline for an individual to appeal the individual's placement in a category under an order of selection consistent with the deadline described below for appealing vocational rehabilitation determinations. In addition, the rule clarifies provisions regarding category placement.  Chapter DWD 68: The chapter refers to individuals who apply for or receive vocational services as clients, instead of the term used in other DWD chapters, which is consumers. The rule makes ch. DWD 68 consistent with the other chapters regarding those references. Although s. 47.02 (7), Stats., prohibits certain disclosures of information about consumers, some provisions in ch. DWD 68 apply more narrowly to disclosures of information from consumer case files. The rule revises those provisions so that they are not limited to information in case files. Chapter DWD 68 also requires consumers and other individuals who request the disclosure of consumer information to state the purpose of the disclosure. In addition, consumer requests for information in case files are required to be in writing. The rule eliminates those requirements, which DVR views as unnecessarily burdensome. Certain requirements in the chapter are inconsistent with federal regulations. Those requirements relate to the release of consumer information that is detrimental to a consumer's mental or physical health. The rule revises those requirements so that they are consistent with federal regulations. The chapter contains procedures for appealing decisions about determinantal information that are not consistent with the procedures under ch. DWD 75. The rule subjects those appeals to ch. DWD 75. The chapter does not contain requirements under the federal regulations for consumers to request amending inaccurate or misleading information in case files. The rule adds those requirements to the chapter. The rule also eliminates provisions that are</p>	

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unnecessary or outdated.

Chapter DWD 75: The Rehabilitative Services Administration (RSA) of the U.S. Department of Education has informed DVR that the 12-month deadline in the chapter for appealing vocational rehabilitation determinations is the longest in the country. The rule revises the deadline so that it is 180 days after the date of a determination. The rule reverses the order in which parties present evidence in hearings to require DVR to first present evidence in support of its determination. To increase the ease and efficiency of the appeal process, the rule also allows motions to be filed at any time prior to a hearing and permits electronic mail to satisfy a requirement for mailing certain documents. The rule makes various changes to align with federal regulations.

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12. Summary of the Businesses, Business Sectors, Associations Representing Business, Local Governmental Units, and Individuals that may be Affected by the Proposed Rule that were Contacted for Comments.

The rule was posted for 14 days for public comment on economic impact and no comments were received. In drafting the rule, the Department obtained the advice of the Wisconsin Rehabilitation Council.

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13. Identify the Local Governmental Units that Participated in the Development of this EIA.  
None.

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14. Summary of Rule's Economic and Fiscal Impact on Specific Businesses, Business Sectors, Public Utility Rate Payers, Local Governmental Units and the State's Economy as a Whole (Include Implementation and Compliance Costs Expected to be Incurred)

There is no fiscal impact associated with this rule.

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15. Benefits of Implementing the Rule and Alternative(s) to Implementing the Rule

Chapter DWD 65 benefits: Provisions in the chapter will be clarified and align with federal law. DVR will be able to exercise its authority under WIOA to provide employment maintenance services to individuals. The procedure for appealing category placement will be consistent with procedures for appealing other DVR decisions.

Chapter DWD 68 benefits: The chapter's references to consumers will be consistent with other chapters. The chapter's provisions that currently apply to consumer information in case records will conform to s. 47.02 (7), Stats., and apply to consumer information without limitation to case records. Burdens on requesting information and inconsistencies with federal regulations will be eliminated. Appeals regarding detrimental information will be consistent with other appeals. Unnecessary and outdated provisions will be eliminated.

Chapter DWD 75 benefits: DVR's administration of the appeals procedures will be more efficient and align with federal regulations.

Alternative: The policy alternative is to do nothing, which would fail to resolve inconsistencies and eliminate unnecessary burdens and outdated and unnecessary provisions. In addition, the Department would not be in conformity with WIOA or federal regulations and federal funding for vocational rehabilitation services will be impacted and could be reduced.

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16. Long Range Implications of Implementing the Rule

Other than the benefits described above, there are no long-range implications for implementing the rule.

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17. Compare With Approaches Being Used by Federal Government

Chapter DWD 65: The RSA makes grants to state agencies for vocational rehabilitation services under the federal 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

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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). Chapter DWD 65 includes a similar definition, but also defines "multiple services" and "extended period of time." The federal regulations do not define those terms and RSA has advised DVR that the definitions should be repealed to make DVR's rules consistent with the federal regulations.

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 federal Rehabilitation Act and its implementing regulations require 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.

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### 18. Compare With Approaches Being Used by Neighboring States (Illinois, Iowa, Michigan and Minnesota)

Chapter DWD 65: Illinois, Iowa, and Minnesota have similar rules related to order of selection. See Ill. Admin. Code title 89, ss. 553.130 and 553.140; Iowa Admin. Code 281-56.6 (6); and Minn. Rules, parts 3300.5010 and 3300.5030. The Iowa and Minnesota rules do not define extended period of time or multiple services for an individual with a significant disability. The Illinois rules define extended period of time but not multiple services. See Ill. Admin. Code title 89, s. 521.20. Minnesota's vocational rehabilitation agency that serves individuals who are blind provides services to all eligible applicants, regardless of order of selection category, who are currently employed and require the services to maintain employment. Michigan does not appear to have any rules regarding order of selection for vocational rehabilitation services.

Chapter DWD 68: Illinois, Iowa, and Minnesota do not have rules regarding confidentiality. Michigan's rules on confidentiality are set forth at Mich. Admin. Code R 395.55. The rules require requests for information to be in writing, see Mich. Admin. Code R 395.55 (5), but do not specify any other requirements for those requests.

Chapter DWD 75: Illinois and Minnesota do not have rules on appeal procedures but have policies that allow a consumer to file an appeal within 60 days after a decision is made. Iowa rules include a 90-day deadline for filing an appeal. Iowa Admin. Code 281-56.22. Michigan rules require consumers to file an appeal within 30 days of the agency notice regarding the agency's determination or decision. Mich. Admin. Code R 395.88 (2).

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19. Contact Name Meredith Dressel	20. Contact Phone Number (608) 405-4615
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This document can be made available in alternate formats to individuals with disabilities upon request.

**ADMINISTRATIVE RULES**  
**Fiscal Estimate & Economic Impact Analysis**

**ATTACHMENT A**

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1. Summary of Rule's Economic and Fiscal Impact on Small Businesses (Separately for each Small Business Sector, Include Implementation and Compliance Costs Expected to be Incurred)

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2. Summary of the data sources used to measure the Rule's impact on Small Businesses

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3. Did the agency consider the following methods to reduce the impact of the Rule on Small Businesses?

- Less Stringent Compliance or Reporting Requirements
- Less Stringent Schedules or Deadlines for Compliance or Reporting
- Consolidation or Simplification of Reporting Requirements
- Establishment of performance standards in lieu of Design or Operational Standards
- Exemption of Small Businesses from some or all requirements
- Other, describe:

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4. Describe the methods incorporated into the Rule that will reduce its impact on Small Businesses

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5. Describe the Rule's Enforcement Provisions

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6. Did the Agency prepare a Cost Benefit Analysis (if Yes, attach to form)

- Yes    No
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