

**ORDER OF THE WISCONSIN
DEPARTMENT OF WORKFORCE DEVELOPMENT**

The Wisconsin Department of Workforce Development adopts the following rule to repeal DWD 65.03 (10) and (16), 68.05 (3), 68.06 (3), 68.07, 68.10, 68.16 (title) and 75.19 (2) (b) and (c) and (4); to renumber and amend DWD 68.08, 68.14 (intro.) and (1), 68.16 and 75.19 (2); to amend DWD 65.03 (5m), 65.04 (3), 65.06, 65.08 (intro.) and (3), 65.09, 65.11, 68.01, 68.02 (intro.), (1), (2), (3) and (4), 68.02 (5), 68.03, 68.04, 68.05 (intro.), (1), (2) and (4) to (7), 68.06 (intro.), (1) and (2), 68.09, 68.11, 68.12 (intro.), (1), (2) and (3), 68.13, 68.14 (title), 68.15, 68.17, 75.01, 75.02, 75.03 (3), (8), (10), (13) and (14), 75.04, 75.05 (1), 75.08 (intro.) and (4), 75.10 (1) and (2), 75.11 (2), 75.14 (2), 75.16 (1), (6) (a), (7), (8) (b), (14), (15) and (16), 75.17 and 75.19 (2) (title); to repeal and recreate DWD 65.11 (Note) and 68.14 (2), (3) and (Note); and to create DWD 68.02 (4m), 68.05 (7) (Note) and 68.12 (2g) and (2r); relating to the order of selection for vocational rehabilitation services, the protection, use, and release of personal information, and the appeal procedures for vocational rehabilitation services.

The statement of scope for this rule, SS 084-21, was approved by the Governor on October 7, 2021, published in register No. 790A2, on October 11, 2021, and approved by the Department of Workforce Development on November 4, 2021. SS 084-21 also proposes changes to the business enterprise program under ch. DWD 60. Those changes will be subject to review and approval by the Rehabilitative Services Administration (RSA) of the U.S. Department of Education. Therefore, the Department will promulgate another rule based on SS 084-21 that addresses those changes after the Department obtains RSA approval for the changes.

Analysis Prepared by the Department of Workforce Development

Statutes Interpreted

Chapter 47, Stats.

Statutory Authority

Sections 47.02 (1), (1m), (5) and (7) (a) and (b) 2., 103.005 (1), and 227.11 (2) (a), Stats.

Explanation of Statutory Authority

Section 47.02 (1), Stats., allows the Department to adopt methods of administering the vocational rehabilitation program to maximize federal participation. Section 47.02 (1m), Stats., allows the Department to cooperate with federal government to carry out federal regulations for vocational rehabilitation.

Section 47.02 (5), Stats., allows the Department to promulgate rules for aggrieved persons to appeal the Department's determination of eligibility or ineligibility for vocational rehabilitation services or to appeal the furnishing or denial of vocational rehabilitation.

Section 47.02 (7) (a), Stats., requires the Department to promulgate rules to administer s. 47.02 (7), Stats., which, with exceptions, prohibits the disclosure of information concerning any person who applies for or receives vocational rehabilitation services without the consent of the person. The exceptions apply to disclosures that are necessary to the administration of ch. 47, Stats., or to carry out a person's rehabilitation plan developed pursuant to ch. 47. Stats.

Section 47.02 (7) (b) 2., Stats., allows the Department to promulgate rules allowing a person who has applied for or received vocational rehabilitation services to obtain access to the person's records.

Section 103.005 (1), Stats., provides "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."

Section 227.11 (2), Stats, provides.: "Rule-making authority is expressly conferred on an agency as follows: (a) 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...."

Related Statutes or Rules

The federal Rehabilitation Act, Title I, 29 USC 720 to 751.

Chapter HA 1: Currently, the Division of Vocational Rehabilitation (DVR) in the Department of Workforce Development contracts with the Division of Hearings and Appeals (DHA) in the Department of Administration for DHA to provide contested case hearing services. The services include the appointment of administrative law judges (ALJ) to conduct hearings and make findings and orders pursuant to ch. DWD 75. The current memorandum of understanding between DVR and DHA specifies that the hearings are conducted in accordance with federal regulations and DWD rules. However, if DWD rules do not apply to issues before a DHA hearing ALJ , the memorandum of understanding allows DHA to apply rules in ch. HA 1, to the extent consistent with Wisconsin statutes and federal law.

Plain Language Analysis

The rule makes the changes described below to chs. DWD 65, 68, and 75, which are administered by DVR.

Chapter DWD 65

Under this chapter, DVR implements a waiting list called an order of selection that is used to determine which categories of individuals will receive vocational rehabilitation services when

resources are not available to serve all categories of eligible individuals who apply for the services. DVR evaluates individuals and places them in categories based on the significance of their disabilities. 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 to 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 under an order of selection to individuals who are not placed in the category for most significant disabilities. However, WIOA amended the Rehabilitation Act to authorize state agencies to provide specific services and equipment for maintaining employment to individuals regardless of their category under the order of selection. This rule amends s. DWD 65.04 (3) to allow DVR to exercise that authority.

Currently, s. DWD 65.03 (12) 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 inconsistent with federal regulations. For purposes of that definition, s. DWD 65.03 (10) and (16) define "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. This rule repeals those definitions.

The rule also makes the following changes:

1. Currently, s. DWD 65.09 allows a consumer to make a written request for review of the consumer's category placement when new documentation is available. The rule allows a consumer to make an oral or written request for the review when new information is available.
2. Currently, s. DWD 65.11 requires a consumer to submit a request for a hearing on category placement within 12 months of the date that notice about the placement was provided. The rule requires instead that the request must be submitted within 180 days of the date of the notice. The rule also revises s. DWD 65.08 (intro.) to require that the Department provide the notice to all consumers who may not receive services due to an order of selection, instead of to all consumers who may not receive services during a 12-month period from the effective date of the order of selection.
3. Currently, s. DWD 65.06 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 rule resolves this conflict by amending s. DWD 65.06 to eliminate the prohibition regarding length of time.
4. The rule makes minor changes regarding terms used in the chapter.

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 but other administrative code chapters refer to those individuals as consumers. The rule revises ch. DWD 68 so that it is consistent with the other chapters.

Currently, s. DWD 68.03 provides that the chapter applies to persons with access to case records and s. DWD 68.04 (1) prohibits the disclosure of information from case records without informed consent. Also, s. DWD 68.04 (2) imposes requirements on information from case records obtained from the records of a private or public agency or individual. In addition, s. DWD 68.08 requires DVR to ensure that persons with access to case records are aware of their responsibilities regarding confidentiality. The rule amends those provisions to refer to information about consumers, which may include case records. The amendments are consistent with s. 47.02 (7) (a), Stats., which generally prohibits disclosures of information. The rule also amends s. DWD 68.06 to clarify that notations about releases of information must be made in a consumer's record when the information is released pursuant to the consumer's informed consent.

The chapter also imposes requirements on consumers and other persons who request DVR to disclose consumer information. Section DWD 68.05 (3) requires a consumer who consents to disclosure of information to another person to state the purpose of the disclosure. Section DWD 68.09 requires non-consumers who request information from consumer case files to state the purpose for which the information will be used. The rule eliminates the requirement for consumers and non-consumers to state those purposes. Currently, s. DWD 68.14 requires consumers to make requests in writing for information in their case files. The rule allows consumers to make oral or written requests.

The rule also makes the following changes:

1. Currently, s. DWD 68.14 (2) imposes requirements on the release of information that is detrimental to the mental or physical health of a consumer. The rule replaces those requirements with requirements based on 34 CFR s. 361.38 (c) (2) regarding the release of medical, psychological, or other information that may be harmful to a consumer. Currently, s. DWD 68.14 (3) specifies procedures for appeals related to those requirements. The rule requires instead that appeals must be filed within 180 days after the date of notice to the consumer regarding the requirements and provides that the appeals are subject to ch. DWD 75.

2. Currently, s. DWD 68.13 allows for the release of information, other than consumer identifying information, from a consumer's case record to a potential employer without the consumer's consent, but only if the release is to ascertain job placement possibilities. Section DWD 68.13 also requires obtaining the consumer's oral consent to the release whenever possible. The rule eliminates the requirement regarding oral consent.

3. The rule revises requirements in s. DWD 68.12 regarding information released from case records for research purposes so that the requirements are consistent with 34 CFR s. 361.38 (d).

4. The rule amends s. DWD 68.15 to allow consumers to request the amendment of inaccurate and misleading information in their case files. This provision is based on 34 CFR s. 361.38 (c) (4). The rule also requires DVR to document such requests and DVR's responses to the requests.

5. The rule repeals s. DWD 68.07, which requires DVR to designate a person responsible for the implementation and execution of ch. DWD 68.

6. The rule repeals s. DWD 68.10, which requires non-consumers who are provided information to give certain assurances about the information.

7. The rule eliminates outdated language regarding photocopies from s. DWD 68.16.

Chapter DWD 75

As required under the federal Rehabilitation Act, this chapter establishes procedures for appealing DVR determinations relating to eligibility for providing, denying, or altering vocational rehabilitation services. The rule amends many provisions of the chapter to clarify that the chapter applies to appeals of a determination of ineligibility for those services and any determination affecting the provision of those services. Currently, s. DWD 75.05 (1) requires an appeal to be filed within 12 months after a determination is mailed. The RSA has informed DVR that the 12-month time period for appeals is the longest in the country. For efficient administration of the vocational rehabilitation services program, the rule changes the deadline for filing an appeal to 180 days after the date of written notice of a determination.

The rule also makes the following changes:

1. Currently, under s. DWD 75.16 (14), the individual who requested the hearing has the first opportunity to present evidence and question opposing witnesses, which is followed by DVR's opportunity to make a presentation and question opposing witnesses. Currently, under s. DWD 75.16 (15), rebuttal of evidence follows the same order. The rule switches the order so that DVR must first present the evidence in support of its decision and the consumer is then allowed the opportunity to present evidence in response.

2. Currently, s. DWD 75.08 requires motions to be filed within 5 working days before a scheduled hearing. The rule provides instead that motions may be filed at any time before a scheduled hearing.

3. Currently, s. DWD 75.10 (1) requires documents to be mailed to the designated representative of an individual who requested a hearing. The rule clarifies that the documents may be sent by mail or electronic mail. The rule also amends s. DWD 75.16 (8) (b) to allow notices of certain rescheduled hearings to be sent by electronic mail.

4. The rule eliminates the Department Secretary's authority under s. DWD 75.19 to authorize a designee to modify a decision of a hearing officer. The rule also eliminates requirements regarding the review of hearing officer decisions. These changes align s. DWD 75.19 with federal regulations.

Summary of, and comparison with, existing or proposed federal statutes and regulations

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 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 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.

Comparison with rules in adjacent states

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).

Summary of factual data and analytical methodologies

Policy analysts and staff of the Department's Division of Vocational Rehabilitation's senior leadership team reviewed WIOA, federal regulations, state statutes, and consulted with the Wisconsin Rehabilitation Council. The data used by the Department to prepare this proposed rule and analysis comply with s. 227.14 (2m), Stats.

Analysis and supporting documents used to determine effect on small business or in preparation of an economic impact analysis

The Statement of Scope for the rule was posted for 14 days to solicit comments on economic impact from the public and no comments were received.

Fiscal Estimate and Economic Impact Analysis

See attached.

Effect on small business

The proposed rule will have no significant economic impact on small businesses, as defined in s. 227.114 (1), Stats.

Agency contact person

Questions related to this rule may be directed to:
Meredith Dressel, Deputy Administrator
Division of Vocational Rehabilitation
Department of Workforce Development
P.O. Box 7852
Madison, WI 53707
(608) 405-4615
E-Mail: Meredith.Dressel@dwd.wisconsin.gov

Place where comments are to be submitted and deadline for submission

Mark Kunkel, Rules and Records Coordinator
Department of Workforce Development
P.O. Box 7946
Madison, WI 53707
(608) 267-7713
E-Mail: DWDAdminRules@dwd.wisconsin.gov

The deadline for comments was February 18, 2022.

Text of Rule

1

2 **SECTION 1.** DWD 65.03 (5m) is amended to read:

3 DWD 65.03 (**5m**) "Consumer" means an individual ~~certified~~ determined by the
4 department as eligible for vocational rehabilitation services.

5 **SECTION 2.** DWD 65.03 (10) and (16) are repealed.

6 **SECTION 3.** DWD 65.04 (3) is amended to read:

7 DWD 65.04 (**3**) PROVIDING SERVICES UNDER AN ORDER OF SELECTION. If an order of
8 selection is imposed under sub. (1), the department shall provide services to consumers with the

1 most significant disabilities and consumers who require specific services or equipment to
2 maintain employment before servicing consumers with less significant disabilities as prescribed
3 under s. DWD 65.07.

4 **SECTION 4.** DWD 65.06 is amended to read:

5 DWD 65.06 **Prohibited practices.** The department shall determine the relative position
6 of an individual in the order of selection without regard to ~~length~~ duration of residency, type of
7 disability, age, sex, race, color, creed, national origin, source of referral, expected employment
8 outcome, type of service needs, costs of services, ~~length of time needed to complete service~~ or
9 income level.

10 **SECTION 5.** DWD 65.08 (intro.) is amended to read:

11 DWD 65.08 (intro.) The department shall provide written notification to all consumers
12 who may not receive services ~~during a 12-month period from the effective date of~~ due to an
13 order of selection. The notice shall include all of the following:

14 **SECTION 6.** DWD 65.08 (3) is amended to read:

15 DWD 65.08 (3) Information on how to request a reevaluation of category placement
16 based on new ~~documentation~~ information not previously considered during the evaluation
17 process under s. DWD 65.07 (1).

18 **SECTION 7.** DWD 65.09 is amended to read:

19 DWD 65.09 **Request for review of category placement.** A consumer may request a
20 review of their category placement within an order of selection when new ~~documentation~~
21 information not previously considered during the evaluation process under s. DWD 65.07 (1) is
22 available ~~by submitting a written request to the department with a copy of the new documents~~
23 upon request by the consumer or the consumer's designated representative.

1 **SECTION 8.** DWD 65.11 is amended to read:

2 DWD 65.11 **Appeal of assigned position under an order of selection.** A consumer
3 may appeal their category placement by submitting a request for a hearing to the department
4 within ~~12 months~~ 180 days of the date ~~the order of selection~~ of the notice was provided under s.
5 DWD 65.08. Appeals are heard by impartial hearing officers under procedures established by
6 the department in ch. DWD 75. A consumer may appeal the decision issued by an impartial
7 hearing officer as prescribed under s. 227.53, Stats.

8 **SECTION 9.** DWD 65.11 (Note) is repealed and recreated to read:

9 NOTE: To obtain a hearing request form, or for questions relating to filing a hearing
10 request, contact the Hearing Coordinator, Division of Vocational Rehabilitation, P.O. Box 7852,
11 Madison, Wisconsin 53707, telephone (800) 442-3477 or access the form online at
12 <http://dwd.wisconsin.gov/dvr/>.

13 **SECTION 10.** DWD 68.01 is amended to read:

14 DWD 68.01 **Introduction.** Pursuant to s. 47.02 (7), Stats., the purpose of this ~~rule~~
15 chapter is to insure that the confidentiality of ~~client~~ consumer records is maintained by the
16 ~~division of vocational rehabilitation~~ and to allow access by a ~~client~~ consumer to ~~his or her~~ the
17 consumer's case record.

18 **SECTION 11.** DWD 68.02 (intro.), (1), (2), (3) and (4) are amended to read:

19 DWD 68.02 Definitions. In this ~~rule, the term~~ chapter:

20 (1) "Case record" or "record" means information, whether written or not, relating to a
21 ~~client~~ consumer, received or acquired in connection with the performance of a vocational
22 rehabilitation function;

1 (2) ~~Client~~ "Consumer identifying information" means the name, address, social security
2 number, or similar information by which the identity of the ~~client~~ consumer can be determined
3 with reasonable accuracy and speed, either directly, or by reference to other publicly available
4 information;

5 (3) ~~Client~~ "Consumer" means a person who has been referred to or has applied for, is
6 currently receiving, or has received in the past, vocational rehabilitation services;

7 (4) "Designated representative" means an attorney, physician, parent, guardian, or other
8 adult designated in writing by a ~~client~~ consumer to represent ~~his or her~~ the consumer's interests;

9 **SECTION 11m.** DWD 68.02 (4m) is created to read:

10 DWD 68.02 (4m) "Division" means the division of vocational rehabilitation.

11 **SECTION 12.** DWD 68.02 (5) is amended to read:

12 DWD 68.02 (5) ~~is~~ Except as provided in sub. (6), "in the administration of the
13 vocational rehabilitation program" means any of the following:

14 (a) The direction and coordination of ~~client~~ consumer services within the division of
15 ~~vocational rehabilitation~~, including contracts with the division of ~~vocational rehabilitation~~ for
16 purchased rehabilitation services that are part of the ~~client's~~ consumer's rehabilitation program;

17 (b) The coordination of programs in the department of workforce development involving
18 the vocational rehabilitation plan of a ~~client~~, ~~or~~ consumer.

19 (c) The auditing, planning, or evaluation of vocational rehabilitation programs by
20 lawfully authorized governmental agencies if the resulting report does not contain ~~client~~
21 consumer identifying information.

22 **SECTION 13.** DWD 68.03 is amended to read:

1 DWD 68.03 **Applicability.** The provisions of this ~~rule~~ chapter apply to ~~a~~ any person
2 who has access to ~~case record~~ information about consumers. The provisions apply both during
3 and after ~~his or her~~ a person's employment or other relationship giving rise to the access.

4 **SECTION 14.** DWD 68.04 is amended to read:

5 DWD 68.04 **Administration of this ~~rule~~ chapter.** ~~Release of information in general:~~

6 (1) No person, agency, or organization may disclose, directly or indirectly, any
7 information ~~from a client case record~~ concerning a consumer except in the administration of the
8 vocational rehabilitation program, or as authorized in this ~~rule~~ chapter, or with the informed
9 written consent of the ~~client~~ consumer.

10 (2) The release of information ~~from a case record~~ concerning a consumer obtained from
11 the records of a private or public agency or individual, is subject to the law applicable to or rules
12 of the agency or individual concerning the release of the information. If no law or rule exists, the
13 information is subject to the provisions of this ~~rule~~ chapter.

14 **SECTION 15.** DWD 68.05 (intro.), (1) and (2) are amended to read:

15 DWD 68.05 **Informed consent of ~~clients~~ consumers.** (intro.) An informed consent for
16 disclosure of information to an individual, agency, or organization other than the ~~client~~ consumer
17 or a designated representative must be in writing and must contain all of the following:

18 (1) The name of the person or organization to which the disclosure is to be made,;

19 (2) The name of the ~~client,~~ consumer.

20 **SECTION 16.** DWD 68.05 (3) is repealed.

21 **SECTION 17.** DWD 68.05 (4) to (7) are amended to read:

22 DWD 68.05 (4) The specific type of information to be disclosed,;

23 (5) The time period during which the consent is effective,;

1 (6) The date on which the consent is signed, ~~and,~~

2 (7) The signature of the ~~client~~ consumer or person legally authorized to give consent for
3 the ~~client~~ consumer.

4 **SECTION 18** DWD 68.05 (7) (Note) is created to read:

5 NOTE: A form for providing informed consent for disclosure of information may be
6 accessed online at <https://dwd.wisconsin.gov/dwd/forms/dvr/dvr-199-e.htm>.

7 **SECTION 19.** DWD 68.06 (intro.), (1) and (2) are amended to read:

8 DWD 68.06 **Notation of release of information.** (intro) Each time information about a
9 consumer is released ~~from a case record~~ pursuant to the consumer's informed consent under s.
10 DWD 68.05, a notation must be made in the consumer's record that includes all of the following:

11 (1) The name of the person or organization to whom the information was released_;

12 (2) The identification of the information released_;

13 **SECTION 20.** DWD 68.06 (3) is repealed.

14 **SECTION 21.** DWD 68.07 is repealed.

15 **SECTION 22.** DWD 68.08 is renumbered DWD 68.08 (1) and amended to read:

16 DWD 68.08 **Notification of rights and responsibilities.** (1) The division ~~of vocational~~
17 ~~rehabilitation~~ shall ~~insure~~ ensure that a person, including an ~~employee~~ employee, who has access
18 to information about consumers, including consumer case records, is aware of ~~his or her~~ the
19 person's responsibilities to maintain the confidentiality of the information and the criminal
20 liabilities for violation of this ~~rule~~ chapter. ~~-A~~

21 (2) The division shall provide without cost a copy of this rule chapter and any policies
22 created to interpret this rule must be provided without cost chapter to each employee, employee
23 and, upon request, to the client a consumer or to any other person.

1 (3) The division of vocational rehabilitation shall notify each ~~client~~ consumer that
2 information ~~he or she~~ that the consumer gives to the division shall be kept confidential and that a
3 ~~client~~ consumer has certain rights of access to ~~his or her~~ the consumer's case record.

4 **SECTION 23.** DWD 68.09 is amended to read:

5 DWD 68.09 ~~Non-client~~ **Non-consumer** requests. A request for information from a case
6 record, by an individual or organization that is neither a ~~client~~ consumer nor included in s. DWD
7 68.02 (5), must be in writing and must specify the particular information wanted ~~and the purpose~~
8 ~~for which it is to be used.~~

9 **SECTION 24.** DWD 68.10 is repealed.

10 **SECTION 25.** DWD 68.11 is amended to read:

11 DWD 68.11 **Notice not to re-release.** Information released from a case record to an
12 agency, organization, or individual that is not a ~~client~~ the consumer must be accompanied by a
13 written notice that it shall not release the information to any other individual, agency, or
14 organization without the informed written consent of the ~~client~~ consumer.

15 **SECTION 26.** DWD 68.12 (intro.), (1) and (2) are amended to read:

16 DWD 68.12 **Release of records for an audit, evaluation, or research.** (intro.)
17 Information from a case record may be released without the consent of the ~~client,~~ consumer to an
18 organization or individual engaged in an audit, evaluation, or research only for purposes
19 connected with the administration of the vocational rehabilitation program if all of the following
20 are satisfied:

- 21 (1) The information will be used only for the purpose for which it was provided;
- 22 (2) The information will ~~not~~ be released only to ~~a person not~~ persons officially connected
23 with the ~~study under consideration, and~~ audit, evaluation, or research.

1 **SECTION 26g.** DWD 68.12 (2g) and (2r) are created to read:

2 DWD 68.12 (2g) The information will not be released to the consumer.

3 (2r) The information will be managed in a manner to safeguard confidentiality.

4 **SECTION 26r.** DWD 68.12 (3) is amended to read:

5 DWD 68.12 (3) The final product of the research will not reveal any consumer
6 identifying information ~~that may serve to identify a former, current, or potential client~~ without
7 the informed written consent of the ~~individual and the division~~ consumer.

8 **SECTION 27.** DWD 68.13 is amended to read:

9 DWD 68.13 **Release of records to employers.** Relevant information from a ~~client's~~
10 consumer's case record may be released to a potential employer without consent of the ~~client~~
11 consumer in order to ascertain the possibilities of a job placement for the ~~client~~ consumer if no
12 ~~client~~ consumer identifying information is disclosed. ~~Oral consent of the client must be obtained,~~
13 ~~whenever possible. Client~~ Consumer identifying information may be released to a potential
14 employer only with the informed written consent of the ~~client~~ consumer.

15 **SECTION 28.** DWD 68.14 (title) is amended to read:

16 DWD 68.14 **Release of records to ~~clients~~ consumers.**

17 **SECTION 29.** DWD 68.14 (intro.) is renumbered DWD 68.14 (1m) and, as renumbered, is
18 amended to read:

19 DWD 68.14 (1m) ~~Upon written~~ Except as provided in sub. (2), upon request of a ~~client~~
20 consumer, information in the ~~client's~~ consumer's case record shall be released to the ~~client~~
21 consumer, or, upon the ~~written~~ request of the ~~client~~ consumer, to ~~his or her~~ the consumer's
22 designated representative.

1 **SECTION 30.** DWD 68.14 (1) is renumbered DWD 68.14 (1s) and, as renumbered, is amended to
2 read:

3 DWD 68.14 (1s) The ~~client~~ consumer or the designated representative shall present valid
4 identification or be identified by a vocational rehabilitation ~~employee~~ employee before
5 information is released.

6 **SECTION 31.** DWD 68.14 (2), (3) and (Note) are repealed and recreated to read:

7 DWD 68.14 (2) (a) Medical, psychological, or other information that the division
8 determines may be harmful to a consumer may not be released directly to the consumer, but must
9 be provided to the consumer through a third party chosen by the consumer, including an
10 advocate, family member, or qualified medical or mental health professional, except that if a
11 representative has been appointed by a court to represent the consumer, the information must be
12 released to the court-appointed representative.

13 (b) If the division makes a determination under par. (a) about a consumer, the division
14 shall provide the consumer with written notice of the determination.

15 (3) A consumer may appeal a determination under sub. (2)(a) by submitting a request for
16 a hearing to the department within 180 days after the date of the written notice under sub. (2) (b).
17 Appeals shall be heard by impartial hearing officers under the procedures established by the
18 department in ch. DWD 75.

19 NOTE: To obtain a hearing request form, or for questions relating to filing a hearing
20 request, contact the Hearing Coordinator, Division of Vocational Rehabilitation, P.O. Box 7852,
21 Madison, Wisconsin 53707, telephone (800) 442-3477 or access the form online at
22 <http://dwd.wisconsin.gov/dvr/>.

23 **SECTION 33.** DWD 68.15 is amended to read:

1 DWD 68.15 ~~Additions to record by client.~~ **Record amendments and additions.** A
2 consumer who believes that information in the consumer's case record is inaccurate or
3 misleading may request that the division amend the information. A letter, memorandum, or
4 document submitted by a ~~client~~ consumer for the purpose of correcting alleged ~~misinformation~~
5 inaccurate or misleading information in the ~~client's~~ consumer's case record ~~must~~ shall be
6 included in that record. The division shall document in the case record the consumer's request
7 under this section and the division's response to the request.

8 **SECTION 35.** DWD 68.16 (title) is repealed.

9 **SECTION 36.** DWD 68.16 is renumbered DWD 68.14 (1e) and, as renumbered, is amended to
10 read:

11 DWD 68.14 **(1e)** A case record is the property of the department of workforce
12 development. ~~A client, or a designated representative, may copy, by hand or photocopy, any~~
13 ~~information in the client's case record if consistent with this rule. The division may request the~~
14 ~~reimbursement of the cost of each copy it provides~~ and may be released to clients as provided in
15 this section.

16 **SECTION 37.** DWD 68.17 is amended to read:

17 DWD 68.17 **Penalties.** A person who violates this ~~rule~~ chapter shall, pursuant to s. 47.02
18 (7), Stats., be fined not exceeding \$500 or imprisoned not exceeding 6 months or both.

19 **SECTION 38.** DWD 75.01 is amended to read:

20 DWD 75.01 **Authority and purpose.** This chapter is promulgated under the authority
21 of ss. 47.02 (5) and 103.005 (1), Stats., and in conformity with requirements under 29 USC 722
22 (c), and 34 CFR 361.57, to develop and implement procedures for an applicant or eligible
23 individual appealing the determination of ineligibility ~~for services or the decision of the~~

1 ~~furnishing or denial of services issued~~ or any determination made by personnel of the
2 ~~department's division of vocational rehabilitation~~ that affects the provision of vocational
3 rehabilitation services by the division under the rehabilitation act of 1973, as amended.

4 **SECTION 39.** DWD 75.02 is amended to read:

5 DWD 75.02 **Applicability.** This chapter applies to the department, applicants, eligible
6 individuals, and ~~the representative~~ representatives of ~~the applicant~~ applicants or eligible
7 ~~individual~~ individuals. An applicant or eligible individual who is dissatisfied with a
8 determination of ineligibility or any determination issued made by personnel of the department's
9 ~~division of that affects the provision of vocational rehabilitation concerning eligibility for or the~~
10 ~~furnishing or denial of services~~ under the act, or a decision issued by a hearing officer that affects
11 the provisions of vocational rehabilitation services, may request a timely review of that
12 determination or decision.

13 **SECTION 40.** DWD 75.03 (3) is amended to read:

14 DWD 75.03 (3) "Appeal" means a request for relief filed with the division by the
15 applicant or eligible individual based on the determination of ineligibility ~~of services~~ or the
16 ~~decision of the furnishing or denial~~ determination affecting the provision of services issued by
17 the division.

18 **SECTION 41.** DWD 75.03 (8) is amended to read:

19 DWD 75.08 (8) "Hearing" means a formal review by an impartial hearing officer of the
20 determination of ineligibility ~~for services~~ or the ~~decision of the furnishing or denial~~
21 determination affecting the provision of services issued by the division.

22 **SECTION 42.** DWD 75.03 (10) is amended to read:

1 DWD 75.03 (10) "Hearing request" means a written request for a hearing signed by an
2 applicant or eligible individual to appeal a determination of ineligibility ~~of services~~ or the
3 ~~decision of the furnishing or denial~~ determination affecting the provision of services.

4 **SECTION 43.** DWD 75.03 (13) is amended to read:

5 DWD 75.03 (13) "Order of selection" means the order of priority for service, by
6 category, required by 29 USC 721 (a) (5) (A) to ensure that ~~clients~~ consumers with the most
7 severe functional limitations who need multiple services over an extended period of time or
8 consumers who require specific services or equipment to maintain employment are served before
9 ~~clients~~ consumers who have less severe functional limitations or do not require multiple services
10 over an extended period of time.

11 **SECTION 44.** DWD 75.03 (14) is amended to read:

12 DWD 75.03 (14) "Party" means an applicant ~~or~~ eligible individual, or ~~the~~ their
13 representative ~~of the applicant or eligible individual~~, or the administrator's representative.

14 **SECTION 45.** DWD 75.04 is amended to read:

15 DWD 75.04 **Right to a hearing.** An applicant or eligible individual may appeal a
16 determination of ineligibility ~~for services~~ or the ~~decision of the furnishing or denial~~
17 determination affecting the provision of services including a decision relating to an order of
18 selection for services, whenever vocational rehabilitation services for an individual are denied,
19 reduced, suspended, or terminated.

20 **SECTION 46.** DWD 75.05 (1) is amended to read:

21 DWD 75.05 (1) **TIMELIMITS.** The time limit for filing a hearing request shall be within ~~12~~
22 ~~months~~ 180 days after the date of written notice of a determination of ineligibility ~~for services~~ or
23 ~~the decision of the furnishing or denial~~ or a determination affecting the provision of services ~~was~~

1 ~~mailed to the applicant or eligible individual, or the representative of the applicant or eligible~~
2 ~~individual.~~ Failure to file a hearing request within the ~~12-month~~ 180-day limit shall be cause for
3 the hearing request to be dismissed.

4 **SECTION 47.** DWD 75.08 (intro.) is amended to read:

5 DWD 75.08 **Motions relative to a hearing.** (intro.) Motions shall be ~~filed~~ in writing
6 ~~within 5 working days~~ and may be filed at any time prior to a scheduled hearing. A motion shall
7 state the grounds of the motion and the relief or order requested. Briefs, affidavits, documentary
8 evidence and other papers in support of a motion shall be filed with the motion and the hearing
9 officer. Motions relative to a hearing may include any of the following:

10 **SECTION 48.** DWD 75.08 (4) is amended to read:

11 DWD 75.08 **(4) MOTION TO WITHDRAW A HEARING REQUEST.** An applicant ~~or~~ eligible
12 individual, or ~~the~~ their representative ~~of the applicant or eligible individual,~~ may withdraw from
13 the appeal process at any time.

14 **SECTION 49.** DWD 75.10 (1) and (2) are amended to read:

15 DWD 75.10 **(1) DOCUMENTS FILED WITH REPRESENTATIVE.** If the applicant or eligible
16 individual has designated a representative in writing, all correspondence and other documents
17 related to the hearing shall be ~~mailed~~ sent by mail or electronic mail to the representative of the
18 applicant or eligible individual. For documents sent by mail or electronic mail, the date the
19 document is received by the applicant ~~or~~ eligible individual, or their representative ~~of the~~
20 ~~applicant or eligible individual,~~ determines the date of filing.

21 **(2) FILING IN PERSON.** For papers filed in person, the date the applicant ~~or~~ eligible
22 individual, or ~~the~~ their representative ~~of the applicant or eligible individual,~~ receives the
23 document determines the filing date.

1 **SECTION 50.** DWD 75.11 (2) is amended to read:

2 DWD 75.11 (2) The applicant, eligible individual, or, in appropriate cases, the ~~applicant~~
3 applicant's or eligible ~~individuals~~ individual's representative requests a suspension, reduction, or
4 termination of services.

5 **SECTION 51.** DWD 75.14 (2) is amended to read:

6 DWD 75.14 (2) PARTICIPATION. The administrator's representative shall participate in
7 the prehearing conference. If the applicant ~~or~~ eligible individual, or ~~the~~ their representative ~~of~~
8 ~~the applicant or eligible individual,~~ fails to participate in a prehearing conference without prior
9 notice, the hearing officer shall continue the prehearing conference period for 5 working days.
10 During this period the applicant ~~or~~ eligible individual, or ~~the~~ their representative ~~of the applicant~~
11 ~~or eligible individual,~~ may file a good cause explanation, including the need for reasonable and
12 specific disability accommodations, and request that the prehearing conference be rescheduled.
13 If a ~~motion~~ good cause explanation is not filed within 5 working days, the hearing officer shall
14 schedule the hearing within the 60-day limit and notify the parties and the hearing coordinator of
15 this decision. The department may review this decision as provided in s. DWD 75.19.

16 **SECTION 52.** DWD 75.16 (1) is amended to read:

17 DWD 75.16 (1) HEARING IS CLOSED. A hearing shall be closed to the public as a
18 confidential matter unless the applicant ~~or~~ eligible individual, or ~~the~~ their representative ~~of the~~
19 ~~applicant or eligible individual~~ files a motion to open the hearing within 5 working days in
20 advance of the scheduled hearing.

21 **SECTION 53.** DWD 75.16 (6) (a) is amended to read:

22 DWD 75.16 (6) (a) *Recording.* The hearing officer shall record each hearing. The
23 applicant ~~or~~ eligible individual, or ~~the~~ their representative ~~of the applicant or eligible individual,~~

1 may obtain one free copy of the recording by contacting the hearing coordinator. No other
2 recording of the hearing is permitted.

3 **SECTION 54.** DWD 75.16 (7) is amended to read:

4 DWD 75.16 (7) OPENING STATEMENT BY HEARING OFFICER. The hearing officer shall open
5 the hearing with a brief statement of the date, the location of the hearing, the issues, the parties
6 directly involved in the hearing and the standard procedures, and shall remind all parties and
7 witnesses present that all personally identifiable information made available for the hearing is
8 confidential.

9 **SECTION 55.** DWD 75.16 (8) (b) is amended to read:

10 DWD 75.16 (8) (b) If either party fails to appear at a hearing without prior notice, the
11 hearing officer shall immediately reschedule the hearing to a date within 5 working days after the
12 current date to allow the absent party to explain the absence. The hearing officer shall notify the
13 parties and the hearing coordinator by certified mail or electronic mail of the new hearing date
14 and the reason for rescheduling the hearing. If the applicant ~~or~~ eligible individual, or ~~the~~ their
15 representative ~~of the applicant or eligible individual,~~ fails to appear at the rescheduled hearing,
16 the hearing officer shall dismiss the appeal. This dismissal shall not be construed as violation of
17 the 60-day limit for holding a hearing since the hearing was scheduled and held but the applicant
18 ~~or~~ eligible individual, or ~~the~~ their representative ~~of the applicant or eligible individual,~~ did not
19 appear to present testimony or evidence. The department may review this decision as provided
20 in s. DWD 75.19.

21 **SECTION 56.** DWD 75.16 (14) is amended to read:

22 DWD 75.16 (14) DIRECT TESTIMONY. (a) The hearing officer shall ask ~~the applicant or~~
23 ~~eligible individual, or the~~ administrator's representative ~~of the applicant or eligible individual,~~

1 and witnesses to make the first presentation and to question the ~~administrator's~~ applicant, eligible
2 individual, or their representative ~~and witnesses~~.

3 (b) The hearing officer shall ask the ~~administrator's~~ applicant, eligible individual, or
4 their representative to make the second presentation and to question the ~~applicant or eligible~~
5 ~~individual, or the administrator's~~ representative ~~of the applicant or eligible individual,~~ and
6 witnesses.

7 **SECTION 57.** DWD 75.16 (15) is amended to read:

8 DWD 75.16 (15) REBUTTAL AND QUESTIONS. The hearing officer shall give the ~~applicant~~
9 ~~or eligible individual or the administrator's~~ representative ~~of the applicant or eligible individual,~~
10 and witnesses the opportunity to make a rebuttal of evidence presented at the hearing and to
11 question the ~~administrator's~~ applicant, eligible individual, or their representative ~~and witnesses~~
12 and then give the same opportunity to the ~~administrator's~~ applicant, eligible individual, or their
13 representative.

14 **SECTION 58.** DWD 75.16 (16) is amended to read:

15 DWD 75.16 (16) CLOSING ARGUMENTS. The hearing officer shall ask the administrator's
16 representative to present closing arguments and then ask the applicant ~~or,~~ eligible individual, or
17 ~~the~~ their representative ~~of the applicant or eligible individual,~~ to present closing arguments.

18 Closing arguments may be submitted both as verbal arguments and as written briefs.

19 **SECTION 59.** DWD 75.17 is amended to read:

20 DWD 75.17 **Decision of the hearing officer.** The hearing officer shall issue a written
21 decision within 10 calendar days of a written motion under s. DWD 75.08 and within 30 calendar
22 days of a hearing. The hearing officer shall provide a report of the hearing including the findings
23 and the grounds for the decision. The decision shall state that the decision is final unless the

1 administrator's representative, or the applicant or, eligible individual, ~~or the~~ their representative
2 ~~of the applicant or eligible individual,~~ requests a review of the decision of the hearing officer
3 within 20 calendar days after the decision is issued, under s. DWD 75.19, ~~or the applicant or~~,
4 eligible individual, ~~or the~~ their representative ~~of the applicant or eligible individual,~~ chooses to
5 petition the circuit court under s. 227.53, Stats. The notice shall specify the procedures for ~~filing~~
6 ~~a claim~~ seeking judicial review in circuit court. The hearing officer shall send the original to the
7 applicant ~~or~~, eligible individual, ~~or the~~ their representative ~~of the applicant or eligible individual,~~
8 and send a copy of the notice to the administrator's representative and to the hearing coordinator
9 for placement in the applicant's or eligible individual's case record.

10 **SECTION 60.** DWD 75.19 (2) (title) is amended to read:

11 DWD 75.19 (2) (title) REVIEW ~~PROCEDURE~~ AUTHORITY.

12 **SECTION 61.** DWD 75.19 (2) (a) is renumbered DWD 75.19 (2) and, as renumbered, is amended
13 to read:

14 DWD 75.19 (2) Authority for modifying the decision of a hearing officer under this
15 chapter is reserved to the department secretary ~~or the secretary's authorized designee~~ and may
16 not be otherwise delegated.

17 **SECTION 62.** DWD 75.19 (2) (b) and (c) and (4) are repealed.

18 **SECTION 63.** EFFECTIVE DATE. This rule takes effect on the first day of the month following
19 publication in the Wisconsin Administrative Register as provided in s. 227.22 (2) (intro.), Stats.

20

Dated this _____ day of _____, 2022.

WISCONSIN DEPARTMENT OF WORKFORCE DEVELOPMENT

By: _____

Amy Pechacek, Secretary-Designee