

Chapter 296-19A WAC

VOCATIONAL REHABILITATION

(Formerly chapter 296-18A WAC)

WAC

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- 296-19A-290 How does the department incorporate performance measurement into making referrals to providers? [Statutory Authority: RCW 51.04.020, 51.04.030, 51.32.095, 51.36.100, 51.36.110. WSR 00-18-078, § 296-19A-290, filed 9/1/00, effective 6/1/01.] Repealed by WSR 07-04-009, filed 1/25/07, effective 2/28/07. Statutory Authority: RCW 51.04.010.
- 296-19A-300 How does the department evaluate performance when a vocational rehabilitation provider does not have either a performance rating with the department or previous experience delivering services to Washington injured workers? [Statutory Authority: RCW 51.04.020, 51.04.030, 51.32.095, 51.36.100, 51.36.110. WSR 03-11-009, § 296-19A-300, filed 5/12/03, effective 2/1/04; WSR 00-18-078, § 296-19A-300, filed 9/1/00, effective 6/1/01.] Repealed by WSR 07-04-009, filed 1/25/07, effective 2/28/07. Statutory Authority: RCW 51.04.010.
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- 296-19A-630 Can a worker change their option election? [Statutory Authority: RCW 51.04.020, 51.04.030, 51.32.095, 51.32.099 and 51.32.0991 (2007 c 72). WSR 10-07-054, § 296-19A-630, filed 3/12/10, effective 4/12/10.] Repealed by WSR 16-03-060, filed 1/19/16, effective 2/19/16. Statutory Authority: RCW 51.04.020, 51.04.030, and 2015 c 137.

DEFINITIONS

WAC 296-19A-010 Definitions. (1) What does it mean to say an injured worker is employable?

(a) "Employable" means having the skills and training that are commonly and currently necessary in the labor market to be capable of performing and obtaining gainful employment on a reasonably continuous basis when considering the worker's:

- (i) Age, education, and experience;
- (ii) Preexisting physical and mental limitations; and
- (iii) Physical and mental limitations caused, at least in part, by the worker's industrial injury or occupational disease.

(b) Physical and/or mental conditions that arose after the industrial injury/occupational disease that were not caused or aggravated by the industrial injury/occupational disease are not considered in determining whether the worker is employable under the Industrial Insurance Act.

(c) If there are no physical or mental restrictions caused by the worker's industrial injury/occupational disease, the worker must be found employable under the Industrial Insurance Act.

(2) **What are vocational rehabilitation services?** Vocational rehabilitation services are those provided by a vocational rehabilitation provider and include, but are not limited to, the following:

(a) Gathering industrially injured or ill workers' work and/or education histories and physical capacities information;

(b) Assessing industrially injured or ill workers' employability;

(c) Developing, documenting, and writing vocational rehabilitation plans;

(d) Monitoring injured workers' progress during training;

(e) Writing progress reports;

(f) Analyzing and documenting the transferable skills of the injured worker and writing transferable skills analyses;

(g) Performing occupational research;

(h) Conducting labor market surveys and writing labor market survey reports;

(i) Conducting and writing job analyses;

(j) Communicating with industrially injured or ill workers, employers, physicians and others;

(k) Developing job modifications and work site modifications, as well as prejob accommodations, and writing reports for this work; and

(l) All work done to obtain any job with any employer for injured workers referred for vocational rehabilitation services.

(3) **What is a vocational rehabilitation provider (provider)?** A provider is any person, firm, partnership, corporation, or other legal entity that provides vocational rehabilitation services to industrially injured or ill workers, pursuant to RCW 51.32.095. A provider must meet the qualifications listed in WAC 296-19A-210.

(4) **What is an injured worker's labor market?** Generally, the worker's relevant labor market is the geographic area where the worker was last gainfully employed. The labor market must be within a reasonable commuting distance and be consistent with the industrially injured or ill worker's

physical and mental capacities. The exceptions to this rule are listed in the table below:

When a worker:	Then the department:
<ul style="list-style-type: none"> Relocates to a labor market other than at the time of injury and Returns to work and Suffers an aggravation of the work-related condition. 	Uses the labor market where the industrially injured or ill worker worked at the time of the aggravation. This applies whether the department closed and reopened the claim or whether the claim remained open during the period of aggravation.
<ul style="list-style-type: none"> Relocates after the industrial injury/illness or aggravation and Now lives in a labor market with more employment opportunities than where the industrially injured or ill worker worked at the time of injury. 	Uses the industrially injured or ill worker's current labor market. For example, an industrially injured or ill worker was injured in Forks but after the injury, moves to Tacoma. Provider would use Tacoma as the industrially injured or ill worker's labor market.
<ul style="list-style-type: none"> Relocates to a labor market other than at the time of injury or onset of illness and The move was proximately caused by the medical condition arising from the occupational injury or disease. 	Uses the injured or ill worker's current labor market. For example, an industrially injured or ill worker moves to a drier climate due to an accepted asthma condition. Provider would use the labor market in the drier climate.

(5) **What is a labor market survey (LMS)?** It is a survey of employers in an industrially injured or ill worker's labor market to obtain specific information (such as physical demands and qualifications) related to job possibilities.

(6) **What is a job analysis (JA)?** It is the gathering, evaluating, and recording of accurate, objective data about the characteristics of a particular job.

(7) **What is a transferable skill?** Transferable skills are any combination of learned or demonstrated behavior, education, training, work traits, and work-related skills that can be readily applied by the worker. They are skills that are interchangeable among different jobs and workplaces. Nonwork-related talents or skills that are both demonstrated and applicable may also be considered.

(8) **What is a transferable skills analysis?** It is a systematic study of the transferable skill or skills a worker has demonstrated to see if that skill set makes him/her employable.

(9) **What are job modifications?** Job modifications are adjustments or alterations made to the way a job is performed to accommodate the restrictions imposed by an industrial injury or occupational disease. The purpose of job modification benefits is to encourage employers to modify jobs to retain or hire injured workers. Job modifications are used when an employer-employee relationship exists, and they

may include worksite adjustment; job restructuring; and/or tools, equipment or appliances.

(10) **What are prejob accommodations?** Prejob accommodations are adjustments or alterations made to the way a job is performed to accommodate the restrictions imposed by an industrial injury or occupational disease. The purpose of prejob accommodation benefits is to make it possible for the worker to perform the essential functions of a job. Accommodations are used when an industrially injured or ill worker is engaged in a vocational rehabilitation plan or in a job search, and they may include tools, equipment or appliances.

[Statutory Authority: RCW 51.04.020, 51.04.030, 51.32.095, 51.36.100, 51.36.110. WSR 03-11-009, § 296-19A-010, filed 5/12/03, effective 2/1/04; WSR 00-18-078, § 296-19A-010, filed 9/1/00, effective 6/1/01.]

GENERAL INFORMATION

WAC 296-19A-020 When may the department offer vocational rehabilitation services? The department may, at its sole discretion, authorize vocational rehabilitation services that are necessary and likely to enable the industrially injured or ill worker to become employable.

[Statutory Authority: RCW 51.04.020, 51.04.030, 51.32.095, 51.36.100, 51.36.110. WSR 03-11-009, § 296-19A-020, filed 5/12/03, effective 2/1/04; WSR 00-18-078, § 296-19A-020, filed 9/1/00, effective 6/1/01.]

WAC 296-19A-025 What information does the department consider when exercising discretion? In exercising its discretion the department considers, but is not limited to:

- (1) Whether the worker took advantage of and utilized vocational rehabilitation services offered in this or other claims;
- (2) The worker's ability and willingness to participate in and benefit from vocational rehabilitation services; and
- (3) The likelihood that the worker will be employable after the vocational rehabilitation services are completed.

[Statutory Authority: RCW 51.04.020, 51.04.030, 51.32.095, 51.36.100, 51.36.110. WSR 03-11-009, § 296-19A-025, filed 5/12/03, effective 2/1/04.]

WAC 296-19A-030 What are the responsibilities of the parties? The attending health care provider, department, self-insured employer, employer, worker and vocational rehabilitation provider have the following responsibilities in assisting the worker to become employable at gainful employment:

(1) **Attending health care provider.** The attending health care provider must:

(a) Maintain open communication with the worker's assigned vocational rehabilitation provider and the referral source.

(b) Respond to any request for information which is necessary to evaluate a worker's:

- (i) Ability to work;
- (ii) Need for vocational services; and
- (iii) Ability to participate in a vocational retraining plan.

(c) Do all that is possible to expedite the vocational rehabilitation process, including making an estimate of the physical or mental capacities that affect the worker's employabil-

ity. If unable to provide an estimate, refer the worker for the appropriate consultation or evaluation.

(2) **Department.**

(a) **State fund claims.** For state fund claims, the department must:

(i) Obtain medical information required to initiate vocational rehabilitation services before a referral is made to a vocational rehabilitation provider.

(ii) Notify the chargeable employer(s), if any, at the time any referrals are made to a vocational rehabilitation provider.

(iii) Provide the vocational rehabilitation provider with access to all reports and any other relevant documentation generated during prior vocational rehabilitation services including plans that have been provided on any claim.

(iv) Review the assessment report and determine whether the worker is eligible for vocational rehabilitation plan development services.

(v) Notify all parties of the eligibility determination in writing. When the worker is eligible for plan development services, the notification letter must advise that the chargeable employer(s), if any, has fifteen calendar days from the date of the letter to make a valid return to work offer. However, should the employer attempt to make a valid return-to-work offer within the fifteen calendar days, the department may grant up to ten additional calendar days to modify the offer if it does not meet all of the requirements for approval.

(vi) Assign plan development services to the vocational rehabilitation provider that completed the assessment report unless the department decides the provider cannot complete the required report.

(vii) Review the submitted vocational rehabilitation plan within fifteen days of receipt at the department, and determine whether to approve or deny the plan.

(viii) Notify all parties of plan approval or denial in writing. Should the department fail to send a notification letter within fifteen calendar days of the date the report is received by the department, the plan is considered approved.

When a plan is approved, the notification must advise the worker that he or she can elect Option 2 at any point within the following time period:

- Beginning with the date of plan approval or the department's determination that a disputed plan is valid; and
- Ending the fifteenth day after completion of the first academic quarter or three months' training.

However, the department may approve an election submitted in writing within twenty-five days of the completion of the first academic quarter or three months' training if the worker provides a written explanation of why he or she was unable to submit the election of Option 2 benefits within fifteen days.

(b) **Self-insured claims.** For self-insured claims, the department must:

(i) Review the assessment report and determine whether the worker is eligible for vocational rehabilitation plan development services.

(ii) Notify all parties of the eligibility determination in writing.

When the worker is eligible for plan development services, the notification letter must advise the employer it has fifteen calendar days from the date of the letter to make a valid return to work offer; and

(iii) Review the submitted vocational rehabilitation plan within fifteen days of receipt at the department, and determine whether to approve or deny the plan.

(iv) Notify all parties of plan approval or denial in writing. Should the department fail to send a notification letter within fifteen calendar days of the date the report is received by the department, the plan is considered approved.

When a plan is approved, the notification letter must advise the worker that he or she can elect Option 2 at any point within the following time period:

- Beginning with the date of plan approval or the department's determination that a disputed plan is valid; and
- Ending the fifteenth day after completion of the first academic quarter or three months' training.

However, the department may approve an election submitted in writing within twenty-five days of the completion of the first academic quarter or three months' training if the worker provides a written explanation of why he or she was unable to submit the election of Option 2 benefits within fifteen days.

(3) **Employer.** The employer must:

(a) Assist the vocational rehabilitation provider in any way necessary to collect data regarding the worker's gainful employment at the time of the injury.

(b) Assist the vocational rehabilitation provider and attending health care provider to determine whether a job could be made available for employment of the worker.

(4) **Worker.** The worker must fully participate and cooperate in all aspects of their vocational services including determination of physical capacities, development of vocational goals, and implementation of the rehabilitation process. Examples include but are not limited to:

- Providing accurate and complete information regarding his or her work history and educational background.
- Attending all scheduled appointments.
- Cooperating with return to work efforts when it is determined return to work opportunities exist.
- Actively participating and cooperating in selecting a job goal when it is determined retraining is necessary.

(5) **Vocational rehabilitation provider.** In assisting the worker to become employable at gainful employment, the vocational rehabilitation provider must:

(a) Follow the priorities in RCW 51.32.095 and the requirements in this chapter. The highest priority is returning a worker to employment.

(b) For state fund claims, immediately inform the department orally if the worker:

- (i) Returns to work;
- (ii) Is released for work without restrictions;
- (iii) Returns to work and is unsuccessful; or
- (iv) Fails to cooperate.

Note: Written notification and documentation must follow oral notification within two working days.

(c) Identify all vocational rehabilitation counselors and interns who provided services in each reporting period.

(d) Provide copies of reports and attachments submitted to the referral source to the employer (if different than the referral source) and the worker or the worker's representative when requested.

(e) Prior to a determination of eligibility, work with the employer, if necessary, to develop job analyses for work the employer is offering or has available and provide other assistance necessary to facilitate return to work with the employer.

(f) When providing plan development services, the vocational rehabilitation provider should, whenever possible and appropriate, focus on identifying goals and occupations that are considered high demand in the workforce. High demand occupations, as determined by the employment security department, means the number of job openings in the labor market for the occupation or with the required skill set exceeds the supply of qualified workers.

(g) Should the employer choose to make a valid return to work offer within fifteen calendar days of the date of the notification letter approving plan development services, the vocational rehabilitation provider may provide assistance necessary to facilitate return to work with the employer. The department may approve up to an additional ten days for an employer to modify a job offer if it does not meet all of the requirements. When this occurs, the vocational rehabilitation provider may assist the employer in making the necessary modifications.

[Statutory Authority: RCW 51.04.020, 51.04.030, and 2015 c 137. WSR 16-03-060, § 296-19A-030, filed 1/19/16, effective 2/19/16. Statutory Authority: Chapter 51.32 RCW. WSR 11-23-070, § 296-19A-030, filed 11/15/11, effective 12/16/11. Statutory Authority: RCW 51.04.020, 51.04.030, 51.32.-095, 51.32.099 and 51.32.0991 (2007 c 72). WSR 08-06-058, § 296-19A-030, filed 2/29/08, effective 3/31/08. Statutory Authority: RCW 51.04.020, 51.04.030, 51.32.095, 51.36.100, 51.36.110. WSR 03-11-009, § 296-19A-030, filed 5/12/03, effective 2/1/04; WSR 00-18-078, § 296-19A-030, filed 9/1/00, effective 6/1/01.]

WAC 296-19A-040 What vocational rehabilitation services require authorization? All vocational rehabilitation services must be preauthorized. For state fund claims, the department may make one or more of the following type of referrals: Early intervention; ability to work assessment ("AWA" or "assessment"); plan development; plan implementation; forensic services; or stand alone job analysis. Each referral is a separate authorization for vocational rehabilitation services.

[Statutory Authority: RCW 51.04.020, 51.04.030, 51.32.095, 51.32.099 and 51.32.0991 (2007 c 72). WSR 08-06-058, § 296-19A-040, filed 2/29/08, effective 3/31/08. Statutory Authority: RCW 51.04.020, 51.04.030, 51.32.-095, 51.36.100, 51.36.110. WSR 03-11-009, § 296-19A-040, filed 5/12/03, effective 2/1/04; WSR 00-18-078, § 296-19A-040, filed 9/1/00, effective 6/1/01.]

DEPARTMENT VOCATIONAL REHABILITATION REFERRALS

WAC 296-19A-045 Which rules under "vocational rehabilitation referrals" apply only to state fund claims? WAC 296-19A-050, 296-19A-060, 296-19A-080, 296-19A-098, 296-19A-118, and 296-19A-125 through 296-19A-137 pertain only to referrals for vocational rehabilitation services made by the department for state fund claims.

[Statutory Authority: RCW 51.04.020, 51.04.030, 51.32.095, 51.32.099 and 51.32.0991 (2007 c 72). WSR 08-06-058, § 296-19A-045, filed 2/29/08, effective 3/31/08. Statutory Authority: RCW 51.04.020, 51.04.030, 51.32.-095, 51.36.100, 51.36.110. WSR 03-22-030, § 296-19A-045, filed 10/28/03, effective 2/1/04; WSR 00-18-078, § 296-19A-045, filed 9/1/00, effective 6/1/01.]

(1/19/16)

WAC 296-19A-050 What are early intervention services? Early intervention services are intended to help an industrially injured or ill worker return to work, or continue to work, for the employer of injury or the current employer. These services include, but are not limited to, the following:

- (1) Discussing early return to work options with the employer, worker, and attending physician;
- (2) Identifying return to work goals and barriers that may interfere with or prevent the industrially injured or ill worker from returning or continuing to work;
- (3) Assisting employers with offers of employment;
- (4) Planning and working with the referral source on necessary job modifications and prejob accommodations;
- (5) Performing job analyses; and
- (6) Assessing the industrially injured or ill worker's need for preferred worker status and educating the worker on the preferred worker benefit, if appropriate.

[Statutory Authority: RCW 51.04.020, 51.04.030, 51.32.095, 51.36.100, 51.36.110. WSR 00-18-078, § 296-19A-050, filed 9/1/00, effective 6/1/01.]

WAC 296-19A-060 What reports does the department require when early intervention services are provided at its request? (1) Progress reports. The vocational rehabilitation provider must submit a written progress report to the department, and upon request, to the injured worker or the injured worker's representative, every thirty calendar days from the date of the electronic referral summarizing progress during the most recent reporting period. The progress report must include the following:

- (a) Summarized results of all contacts the provider had with the industrially injured or ill worker, employer of injury or current employer, and medical provider(s);
- (b) Summary of all actions taken including progress on previously recommended actions;
- (c) Identification and analysis of any barriers preventing completion of the referral; and
- (d) Description of the specific actions the provider intends to take to overcome barriers and the expected time frame to complete those actions.

(2) Closing reports. The provider must always submit an early intervention closing report at the conclusion of services. In the report the provider must include or address:

- (a) A brief description of the industrially injured or ill worker's work history;
- (b) Summary of the industrially injured or ill worker's education, training, licenses, and certificates;
- (c) A medically reviewed job analysis for the job of injury and any other return to work options;
- (d) Description of the worker's medical status and physical capacities;
- (e) Indication of which return to work priority relates to the situation;
- (f) Any other supporting documentation;
- (g) The date the worker returned to work and the monthly salary or wage, or document attempts to obtain this information, if applicable;
- (h) Documentation that no return to work options exist with the employer of injury or current employer, if applicable.

(3) The provider must notify the department orally and in writing within two working days after learning of an unsuccessful return to work by the injured worker.

(4) The provider must notify the department orally and in writing within two working days after learning of a return to work by the injured worker.

[Statutory Authority: RCW 51.04.020, 51.04.030, 51.32.095, 51.36.100, 51.36.110. WSR 03-11-009, § 296-19A-060, filed 5/12/03, effective 2/1/04; WSR 00-18-078, § 296-19A-060, filed 9/1/00, effective 6/1/01.]

WAC 296-19A-065 What are assessment services?

Assessment services are used by the department or self-insured employer to determine if a worker should receive vocational rehabilitation plan development services. Assessment services may include, but are not limited to, the following:

- (1) Documenting work restrictions;
- (2) Performing job analyses;
- (3) Evaluating the worker's ability to work at the job of injury;
- (4) Assessing transferable skills;
- (5) Conducting labor market surveys as defined in WAC 296-19A-140;
- (6) Evaluating the worker's ability to work at any other job;
- (7) Evaluating the worker's ability to benefit from plan development services, including vocational testing if appropriate; and
- (8) Assessing the worker's need for preferred worker status and when appropriate educating the worker on the preferred worker benefit.

[Statutory Authority: RCW 51.04.020, 51.04.030, 51.32.095, 51.32.099 and 51.32.0991 (2007 c 72). WSR 08-06-058, § 296-19A-065, filed 2/29/08, effective 3/31/08. Statutory Authority: RCW 51.04.020, 51.04.030, 51.32.095, 51.36.100, 51.36.110. WSR 03-11-009, § 296-19A-065, filed 5/12/03, effective 2/1/04.]

WAC 296-19A-070 What information must an assessment report include? (1) The assessment report must include information and evaluation of the worker's:

- (a) Age;
- (b) Education, including information about education level, courses or transcripts, licenses, and certifications or registrations that the worker may have obtained in the past;
- (c) Complete work history, addressing any gaps in employment;
- (d) Transferable skills and experience, whether obtained from prior employment, prior courses and training, prior vocational rehabilitation services or plans, or nonwork related activities such as hobbies and/or volunteer experience;
- (e) Physical and mental conditions proximately caused by the worker's injury or occupational disease, and the effect of those conditions on the worker's ability to work and/or benefit from vocational services;
- (f) Preexisting physical and mental conditions and the effect of those conditions on the worker's ability to work and/or benefit from vocational services;
- (g) Postinjury physical and mental conditions and the effect of those nonrelated conditions on the worker's ability to work and/or benefit from vocational services;

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- (h) Wage and employment pattern at the time of injury;
- (i) Barriers to employment, including whether the barriers can be removed and/or what is needed to address the barriers; and

(j) Labor market information as defined in WAC 296-19A-140.

(2) If the vocational rehabilitation provider cannot obtain one or more of the above categories of information, the provider must document in the report all efforts made to obtain the information and why the information could not be obtained.

(3) The report must address whether the worker can return to work in any capacity with the employer of injury or if the worker is employable at a new job with transferable skills.

(4) The assessment report must also include one of the following recommendations:

(a) **Able to work:** The worker is employable at gainful employment. The report must include:

(i) Whether the worker is employable with the employer of injury or current employer, or if not, a list of job possibilities for which the worker is qualified;

(ii) A medically approved job analysis for the job or jobs at which the worker is able to work. When this is not obtainable, medically approved physical capacities information regarding the worker's ability to perform the job may be used; and

(iii) Labor market information as defined in WAC 296-19A-140 supporting the vocational rehabilitation provider's recommendation. Labor market information is not necessary when the worker is medically released to work for their job of injury at their previous work pattern;

(b) **Further services appropriate:** Vocational rehabilitation services are necessary and likely to enable the worker to become employable at gainful employment. The report must include:

(i) The specific return to work possibilities investigated and the reasons why they were ruled out which may include labor market information as defined in WAC 296-19A-140;

(ii) An analysis explaining how vocational rehabilitation plan development services are likely to enable the worker to become employable at gainful employment. The analysis may include but is not limited to:

(A) Vocational evaluation that addresses the worker's ability to benefit from vocational rehabilitation services;

(B) Information regarding the worker's medical and/or psychological condition(s);

(C) Labor market survey that was conducted as defined in WAC 296-19A-140;

(D) A discussion of the worker's participation in vocational activities to date; and

(E) Any other relevant information.

(c) **Further services not appropriate:** The worker is not likely to benefit from vocational services. The report must include:

(i) An analysis explaining why vocational rehabilitation services are not appropriate;

(ii) Barriers identified that will make it unlikely the worker will benefit from vocational rehabilitation services, consistent with the requirements in WAC 296-19A-010(1);

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(iii) Medical, psychological or other vocationally relevant information; and

(iv) Labor market information as defined in WAC 296-19A-140 and other information, as necessary, supporting the vocational rehabilitation provider's recommendations.

(d) **Return to work:** The worker has returned to work. The report must specify and/or document attempts to obtain the following information:

- (i) A description of the job the worker returned to;
- (ii) The name of the employer;
- (iii) The date that the worker returned to work; and
- (iv) The worker's monthly wages.

(5) When the worker has returned to work to the job of injury or is medically released without restrictions, the vocational rehabilitation provider should complete the closing report. No other work should be performed without the prior authorization of the referral source.

[Statutory Authority: RCW 51.04.020, 51.04.030, 51.32.095, 51.32.099 and 51.32.0991 (2007 c 72). WSR 08-06-058, § 296-19A-070, filed 2/29/08, effective 3/31/08. Statutory Authority: RCW 51.04.020, 51.04.030, 51.32.095, 51.36.100, 51.36.110. WSR 03-11-009, § 296-19A-070, filed 5/12/03, effective 2/1/04; WSR 00-18-078, § 296-19A-070, filed 9/1/00, effective 6/1/01.]

WAC 296-19A-080 How often must written progress reports be submitted during assessment activities provided for state fund claims? (1) The vocational rehabilitation provider must submit a written progress report to the department, and upon request, to the employer and the worker or his or her representative, every thirty calendar days from the date of the electronic referral or upon request of the department.

(2) The written progress report must summarize progress during the most recent reporting period and include:

(a) A detailed explanation why the assessment report was not completed as of the date of the report;

(b) A summary of all activities taken in the past thirty days, including progress on previously recommended actions;

(c) Identification and analysis of any barriers preventing completion of the referral; and

(d) A description of the specific actions the provider intends to take to overcome barriers and the expected time frame to complete those actions.

[Statutory Authority: RCW 51.04.020, 51.04.030, 51.32.095, 51.32.099 and 51.32.0991 (2007 c 72). WSR 08-06-058, § 296-19A-080, filed 2/29/08, effective 3/31/08. Statutory Authority: RCW 51.04.020, 51.04.030, 51.32.095, 51.36.100, 51.36.110. WSR 03-22-030, § 296-19A-080, filed 10/28/03, effective 2/1/04; WSR 00-18-078, § 296-19A-080, filed 9/1/00, effective 6/1/01.]

WAC 296-19A-090 What are vocational rehabilitation plan development services? Vocational rehabilitation plan development services are authorized to obtain the vocational rehabilitation provider's assistance in producing a vocational rehabilitation plan for a worker. The vocational rehabilitation provider will work with the worker in the development of the plan. Covered services include, but are not limited to:

(1) An initial meeting between the assigned vocational rehabilitation provider and the worker.

The assigned vocational rehabilitation provider must meet with the worker in person and fully inform the worker of the return to work priorities set forth in RCW 51.32.095(2) and of his or her rights and responsibilities under the workers' compensation vocational system. The vocational rehabilitation provider must use tools provided by the department in order to document this requirement.

Exception: For out-of-state referrals, the counselor providing direct services to the worker may be considered the assigned vocational rehabilitation provider for purposes of this meeting.

The rights and responsibilities include but are not limited to:

(a) The responsibility of the worker and vocational rehabilitation provider to cooperate with the plan development process and to submit a plan within ninety calendar days;

(b) An explanation of the benefits available to the worker, including the right to choose to participate in retraining or elect option 2 benefits after a plan has been approved; and

(c) An explanation of the possible action the department or self-insured employer may take under RCW 51.32.110 and WAC 296-14-410 should the worker be determined to be noncooperative during the plan development process.

(2) Vocational counseling and occupational exploration;

(3) Identifying a potential job goal and estimating the training needs, resources, and expenses necessary to complete that goal;

(4) Vocational testing; and

(5) Coordinating with medical providers to obtain approval of job analyses and a release to participate in a vocational rehabilitation plan.

[Statutory Authority: RCW 51.04.020, 51.04.030, 51.32.095, 51.32.099 and 51.32.0991 (2007 c 72). WSR 08-06-058, § 296-19A-090, filed 2/29/08, effective 3/31/08. Statutory Authority: RCW 51.04.020, 51.04.030, 51.32.095, 51.36.100, 51.36.110. WSR 03-11-009, § 296-19A-090, filed 5/12/03, effective 2/1/04; WSR 00-18-078, § 296-19A-090, filed 9/1/00, effective 6/1/01.]

WAC 296-19A-092 When must plan development be completed? The vocational rehabilitation provider must submit the completed plan within ninety calendar days of the date the worker was notified by letter that plan development services were authorized. The ninety-day requirement may be extended only for good cause. The vocational rehabilitation provider must continue working on plan development while the department evaluates the extension request.

[Statutory Authority: RCW 51.04.020, 51.04.030, 51.32.095, 51.32.099 and 51.32.0991 (2007 c 72). WSR 08-06-058, § 296-19A-092, filed 2/29/08, effective 3/31/08.]

WAC 296-19A-094 How can a provider request an extension of time to complete plan development? (1) When the plan cannot be completed and submitted to the department within ninety calendar days (see WAC 296-19A-092), the vocational rehabilitation provider seeking an extension must submit a written request to the department for state fund claims or the self-insured employer. The vocational rehabilitation provider must continue working on plan development while the department evaluates the extension request.

(2) The written request for an extension must:

- (a) Explain why there is good cause for an extension, with supporting documentation;
- (b) Specify the number of additional calendar days requested to complete plan development; and
- (c) Identify any anticipated barriers to the completion of plan development.

[Statutory Authority: RCW 51.04.020, 51.04.030, 51.32.095, 51.32.099 and 51.32.0991 (2007 c 72). WSR 08-06-058, § 296-19A-094, filed 2/29/08, effective 3/31/08.]

WAC 296-19A-096 How will the department determine whether there is good cause to grant an extension of time? (1) The department will determine whether good cause exists on a case-by-case basis.

(2) The department will grant an extension of time for good cause when there is a significant delay in the plan development process and the cause is beyond the worker's or vocational rehabilitation provider's control.

Examples of causes that are beyond the worker's or provider's control include, but are not limited to:

- A death in the worker's immediate family. For purposes of this section, immediate family is defined as spouse, domestic partner, child, grandchild, sibling, parent or grandparent.
- Delays caused by documented changes in the worker's medical ability to participate in plan development.
- Information received by the vocational rehabilitation provider that impacts plan development and was not available when assessment services were provided.
- Documented delay in receipt of requested information from a medical provider relevant to developing the vocational plan.
- The impact of previously identified barriers to employment and/or retraining.

(3) Noncooperation by a worker, pursuant to an order issued by the department under RCW 51.32.110 and WAC 296-14-410, is not good cause for granting an extension of time.

(4) If the department finds there is not good cause for the delay in submitting a vocational plan, the department may take action, including but not limited to:

- (a) Suspension of further vocational services if the worker has been found noncooperative under RCW 51.32.110 and WAC 296-14-410, until such noncooperative actions cease or have been cured.
- (b) Assignment of a new vocational provider.
- (c) Allowing the vocational rehabilitation provider to complete the referral with monitoring of further plan development services by the department or self-insured employer.

[Statutory Authority: RCW 51.04.020, 51.04.030, 51.32.095, 51.32.099 and 51.32.0991 (2007 c 72). WSR 08-06-058, § 296-19A-096, filed 2/29/08, effective 3/31/08.]

WAC 296-19A-098 How often must written progress reports be submitted when plan development services are provided for state fund claims? (1) The vocational rehabilitation provider must submit a written progress report to the department every thirty calendar days from the date of the electronic referral or upon request of the department.

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(2) The first progress report must document the assigned vocational rehabilitation provider met with the worker in person and fully informed the worker of the return to work priorities in RCW 51.32.095(2) and his or her rights and responsibilities.

(3) All progress reports must summarize progress during the most recent reporting period and include the following:

- (a) Description of the return to work goals explored, accepted or ruled out, including any jobs offered by the employer;
- (b) Review of the return to work priorities being addressed;
- (c) Summary of all actions taken, including progress on previously recommended actions;
- (d) Description of the worker's participation in vocational activities and compliance with the responsibilities in WAC 296-19A-030(4).
- (e) Identification and analysis of any barriers preventing completion of the referral; and
- (f) Description of the specific actions the vocational rehabilitation provider intends to take to overcome barriers and the expected time frame to complete those actions.

[Statutory Authority: RCW 51.04.020, 51.04.030, 51.32.095, 51.32.099 and 51.32.0991 (2007 c 72). WSR 08-06-058, § 296-19A-098, filed 2/29/08, effective 3/31/08.]

WAC 296-19A-100 What reports are required when vocational rehabilitation plan development services are completed? When plan development services are completed, the vocational rehabilitation provider must submit one of the following reports:

(1) **Vocational rehabilitation plan.** The vocational rehabilitation provider must address the return to work priorities listed in RCW 51.32.095(2) in the plan and explain why each preceding priority would not help the worker return to work. The vocational plan must also include the following information:

- (a) An assessment of the worker's skills and abilities considering the worker's:
 - (i) Physical capacities and mental status;
 - (ii) Aptitudes;
 - (iii) Transferable skills gained through prior work experience, education, training, hobbies, volunteer experience or other nonwork related activities;
- (b) Proposed occupational goal;
- (c) The services necessary to enable the worker to become employable in the labor market;
- (d) Labor market survey as defined in WAC 296-19A-140, supportive of the worker's employability upon plan completion;
- (e) Documentation of the time and costs required for completion of the plan;
- (f) A medically approved job analysis for the proposed retraining job goal;
- (g) A list of the skills the worker will acquire through retraining;
- (h) A description of the services that will be provided prior to completion of the plan that will assist the worker to successfully transition to gainful employment;
- (i) Any other information that may significantly affect the plan; and

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(j) An accountability agreement signed by the vocational rehabilitation provider and worker that:

(i) Acknowledges that the vocational rehabilitation provider and the worker have reviewed, understand and agree to the vocational rehabilitation plan;

(ii) Sets forth the vocational rehabilitation provider's and worker's responsibilities for the successful implementation and completion of the vocational rehabilitation plan;

(iii) Details expectations regarding progress, attendance, and other factors influencing completion of the plan; and

(iv) Acknowledges the worker understands that failure to comply with the agreed expectation will result in initiation of the process to suspend benefits in accordance with RCW 51.32.110 and WAC 296-14-410.

The vocational rehabilitation provider must use a statement approved by, or substantially similar to a statement used by, the department in order to document this agreement.

(2) **Closing report.** If the vocational rehabilitation provider has to stop plan development before a rehabilitation plan is approved, the vocational rehabilitation provider must submit a plan development closing report. The report must include:

(a) A list of the reasons the vocational rehabilitation provider cannot proceed with vocational rehabilitation plan development activities;

(b) Supporting documentation, such as: The goals that were researched, the job analyses that were developed, and/or labor market research as defined by WAC 296-19A-140 that was conducted; and

(c) An assessment addressing whether further vocational rehabilitation services may be necessary and likely to enable the worker to become employable.

[Statutory Authority: RCW 51.04.020, 51.04.030, 51.32.095, 51.32.099 and 51.32.0991 (2007 c 72). WSR 08-06-058, § 296-19A-100, filed 2/29/08, effective 3/31/08. Statutory Authority: RCW 51.04.020, 51.04.030, 51.32.095, 51.36.100, 51.36.110. WSR 03-11-009, § 296-19A-100, filed 5/12/03, effective 2/1/04; WSR 00-18-078, § 296-19A-100, filed 9/1/00, effective 6/1/01.]

WAC 296-19A-110 What are vocational rehabilitation plan implementation and monitoring services? Vocational rehabilitation plan implementation and monitoring services are those services a vocational rehabilitation provider provides to assist a worker to successfully complete a vocational rehabilitation plan. These services may include, but are not limited to, the following:

(1) Contacting the worker and, if necessary, the trainer or appropriate representative of the training program or school, at least every fourteen calendar days to:

(a) Confirm the worker has received all necessary equipment and supplies;

(b) Make sure the worker successfully enters and progresses in the vocational rehabilitation plan;

(c) Identify potential problems;

(d) Monitor the worker's progress; and

(e) Resolve any problems that might arise, or submit documentation regarding why it cannot be resolved;

(2) If the worker's plan was approved on or after July 31, 2015, reminding the worker, within two weeks before the completion of the first academic quarter or three months' training, of the worker's deadline to elect Option 2.

(3) Notifying the department or self-insured employer when the worker completes the plan;

(4) Assisting with job search assistance before the completion of the vocational rehabilitation plan and may include referral to community based organizations offering free resources for job search assistance such as resume writing and job seeking skills;

(5) Documenting the worker's acquisition of skills;

(6) Notifying the department if the plan needs to be terminated; and

(7) Obtaining preferred worker status for worker, if appropriate.

[Statutory Authority: RCW 51.04.020, 51.04.030, and 2015 c 137. WSR 16-03-060, § 296-19A-110, filed 1/19/16, effective 2/19/16. Statutory Authority: RCW 51.04.020, 51.04.030, 51.32.095, 51.32.099 and 51.32.0991 (2007 c 72). WSR 08-06-058, § 296-19A-110, filed 2/29/08, effective 3/31/08. Statutory Authority: RCW 51.04.020, 51.04.030, 51.32.095, 51.36.100, 51.36.110. WSR 03-11-009, § 296-19A-110, filed 5/12/03, effective 2/1/04; WSR 00-18-078, § 296-19A-110, filed 9/1/00, effective 6/1/01.]

WAC 296-19A-118 How often must written progress reports be submitted when plan implementation and monitoring services are provided for state fund claims?

(1) The vocational rehabilitation provider must submit a written progress report to the department every thirty calendar days from the date of the electronic referral or upon request of the department.

(2) All progress reports must summarize progress during the most recent reporting period and must include the following:

(a) A review of the worker's compliance with the accountability agreement and vocational rehabilitation plan, including any issues involving attendance, grades and progression;

(b) A list of the dates the vocational rehabilitation provider contacted the worker and training site;

(c) A description of the work-related skills the worker has acquired so far and a comparison with the vocational rehabilitation plan;

(d) A summary of all actions taken in the past thirty days, including progress on previously recommended actions;

(e) Identification and analysis of any barriers preventing completion of the plan and actions taken by the vocational rehabilitation provider to address those barriers; and

(f) A statement of whether the worker is progressing as expected and will complete the plan by the target end date.

[Statutory Authority: RCW 51.04.020, 51.04.030, 51.32.095, 51.32.099 and 51.32.0991 (2007 c 72). WSR 08-06-058, § 296-19A-118, filed 2/29/08, effective 3/31/08.]

WAC 296-19A-120 What reports are required when vocational rehabilitation plan implementation and monitoring services are completed? When plan implementation and monitoring services are completed, the vocational rehabilitation provider must submit a closing report with one of the following recommendations:

(1) **Plan successfully completed.** If the worker successfully completes the vocational rehabilitation plan, the closing report, at a minimum, must contain the following information:

(a) An assessment of the worker's employability status at the time of closure;

(b) A list of courses the worker completed and an assessment of the work-related skills acquired by the worker during the training plan;

(c) Whether the worker has returned to gainful employment. If so, list the job title, employer, return to work date, and monthly salary;

(d) A description of the barriers, if any, to the worker's ability to return to gainful employment; and

(e) A description of the job search assistance provided.

(2) **Plan not completed.** If the worker does not successfully complete the vocational rehabilitation plan, the closing report, at a minimum, must contain the following information:

(a) An explanation of why the vocational rehabilitation plan cannot be modified or completed;

(b) An assessment of the worker's employability status at the time the plan stopped;

(c) A list of the courses completed and an assessment of the work-related skills the worker acquired during the training plan;

(d) Whether the worker has returned to work. If so, list the job title, employer, return to work date, and monthly salary; and

(e) A description of any remaining barriers that may keep the worker from returning to work.

[Statutory Authority: RCW 51.04.020, 51.04.030, 51.32.095, 51.32.099 and 51.32.0991 (2007 c 72). WSR 08-06-058, § 296-19A-120, filed 2/29/08, effective 3/31/08. Statutory Authority: RCW 51.04.020, 51.04.030, 51.32.095, 51.36.100, 51.36.110. WSR 03-22-030, § 296-19A-120, filed 10/28/03, effective 2/1/04; WSR 00-18-078, § 296-19A-120, filed 9/1/00, effective 6/1/01.]

WAC 296-19A-125 What is the purpose of forensic services? The department may make a referral for forensic services to obtain an independent and objective evaluation of the vocational rehabilitation components of a complex claim. The department will only authorize a forensic evaluation when previous vocational referrals have not resolved an injured worker's vocational issues, except when necessary to make a determination regarding whether a deceased worker was totally and permanently disabled at the time of death. The forensic evaluation shall define what additional services, if any, are necessary and likely to enable an industrially injured or ill worker to become employable at gainful employment. A forensic evaluation shall also include collecting information relevant to making a vocational recommendation, according to the provisions in WAC 296-19A-130.

[Statutory Authority: RCW 51.04.020, 51.04.030, 51.32.095, 51.36.100, 51.36.110. WSR 03-11-009, § 296-19A-125, filed 5/12/03, effective 2/1/04.]

WAC 296-19A-130 What are the requirements for a forensic evaluation? (1) A forensic evaluation constitutes an analysis of prior vocational services and the medical conditions of an injured worker, including pre and post injury, to determine whether any further vocational services are necessary and likely to enable the injured worker to become employable at gainful employment. Services that may be conducted in order to make a recommendation to the department may include, but are not limited to:

(a) Reviewing medical and vocational records;

(b) Obtaining, clarifying, and/or evaluating an industrially injured or ill worker's:

(i) Work and/or education history;

(ii) Skills, knowledge and aptitudes;

(iii) Physical capacities information related to the injury or other medical conditions;

(c) Identifying barriers to employment and possibilities for resolving the barriers;

(d) Identifying potential training needs and resources;

(e) Performing recommended services as needed to make a recommendation. These services may include conducting and writing job analyses, conducting labor market surveys, performing transferable skills analysis and performing occupational research.

(2) Recommendations must address the return to work priorities in RCW 51.32.095(2) and be documented by providing evidence of previous services and/or services performed under this referral.

(3) Development of a vocational rehabilitation plan is specifically precluded during a forensic evaluation.

(4) Any vocational provider that has provided any vocational rehabilitation services to the industrially injured or ill worker may not receive a referral for a forensic evaluation of that industrially injured or ill worker. Any vocational provider who begins a forensic evaluation cannot receive further vocational referrals for that worker.

[Statutory Authority: RCW 51.04.020, 51.04.030, 51.32.095, 51.36.100, 51.36.110. WSR 03-11-009, § 296-19A-130, filed 5/12/03, effective 2/1/04; WSR 00-18-078, § 296-19A-130, filed 9/1/00, effective 6/1/01.]

WAC 296-19A-135 What reports does the department require when forensic services are provided? A forensic evaluation requires thirty-day progress report(s) and a final report.

(1) Progress reports. Each progress report must include:

(a) A detailed explanation why the forensic referral was not completed as of the date of the report;

(b) A summary of all activities taken in the past thirty days, including progress on previously recommended actions;

(c) Identification and analysis of any barriers preventing completion of the referral; and

(d) A description of the specific actions the provider intends to take to overcome barriers and the expected time frame to complete those actions.

(2) Final report. The final report must include recommendations and a recommended outcome. The report must comprehensively evaluate the vocational and medical aspects of the claim so that the adjudicator can make an appropriate vocational decision. The vocational provider must designate an outcome in the closing report when the forensic evaluation is complete. The recommendations may include, but are not limited to:

(a) Able to work: The injured worker is employable at gainful employment. The report must include:

(i) Whether the worker is employable with the employer of injury or current employer, or if not, a list of job possibilities for which the worker is qualified;

(ii) A medically approved job analysis. When this is not obtainable, medically approved physical capacities informa-

tion supporting the worker's ability to perform the job may be used; and

(iii) Labor market information supporting the provider's recommendation. Labor market information is not necessary when the injured worker is medically released to work for their job of injury at their previous work pattern.

(b) Further services appropriate: Vocational rehabilitation services are necessary and likely to enable the injured worker to become employable at gainful employment. The report must include:

(i) An analysis demonstrating how vocational rehabilitation plan development services are necessary and likely to enable the injured worker to become employable at gainful employment.

(ii) The specific return to work possibilities investigated and the reasons why they were ruled out, including labor market information when necessary.

(c) Further services not appropriate: The injured worker is not likely to benefit from vocational services. The report must include:

(i) An analysis explaining why vocational services are not appropriate;

(ii) Identifying barriers that will make it unlikely the worker will benefit from vocational services, consistent with the requirements in WAC 296-19A-010(1);

(iii) Medical, labor market, and/or other information, as necessary, supporting the provider's recommendations.

(d) Return to work: The injured worker has returned to work. The report must specify and/or document attempts to obtain the following information:

(i) A description of the job the worker returned to;

(ii) The name of the employer;

(iii) The date that the worker returned to work;

(iv) The worker's monthly wages.

(e) Further clarification of medical issues is needed. The vocational rehabilitation provider will identify issues impacting the vocational rehabilitation process and requiring clarification.

[Statutory Authority: RCW 51.04.020, 51.04.030, 51.32.095, 51.36.100, 51.36.110. WSR 03-11-009, § 296-19A-135, filed 5/12/03, effective 2/1/04.]

WAC 296-19A-137 When can the department request a stand alone job analysis? The department can request a stand alone job analysis to analyze the requirements and characteristics of a job(s), an injured worker's ability to perform job functions and duties, and whether the injured worker requires further vocational rehabilitation services in order to become employable at gainful employment. Stand alone job analysis services are distinct services from any other referral type and may not be performed in conjunction with another referral for vocational rehabilitation services. A referral for a stand alone job analysis may be made at any time while the claim is open or in provisional status. The provider shall conduct an on-site job analysis whenever possible. Stand alone job analysis services must be completed and submitted to the department within fifteen calendar days of the referral assignment. The provider shall prepare a report addressing all elements set forth in WAC 296-19A-170.

[Statutory Authority: RCW 51.04.020, 51.04.030, 51.32.095, 51.36.100, 51.36.110. WSR 03-11-009, § 296-19A-137, filed 5/12/03, effective 7/1/03.]

(1/19/16)

VOCATIONAL REHABILITATION TOOLS

WAC 296-19A-140 What information must a provider include in a labor market survey? (1) The following information must be included in a labor market survey that is submitted to the department as documentation in support of a vocational recommendation. This information must be presented in the form of a summary report and accompanied by the results of the individual employer contacts:

(a) The specific job title surveyed and its DOT code. If the DOT code is not an accurate reflection/description of the job, then list the specific job surveyed, the occupational code and the source from which the occupational code was obtained;

(b) The name of the surveyor;

(c) A summary of all contacts and the dates of contact;

(d) A summary of whether or not the industrially injured or ill worker has the physical and mental/cognitive capacities to perform the job, based upon information from the attending physician or from a preponderance of medical information;

(e) A summary of whether the labor market matches the industrially injured or ill worker's work pattern;

(f) A summary of whether the labor market is considered positive or negative, as follows:

(i) If the labor market survey is conducted during an ability to work assessment, a labor market is considered positive if it shows that there are sufficient job opportunities in the worker's relevant labor market to enable the injured worker to become employable.

(ii) If the labor market is conducted during a plan development, a labor market is considered positive if it shows that jobs suitable for the injured worker for the proposed job goal exist in sufficient numbers to reasonably conclude that the worker will be employable at plan completion.

(g) Additional information may be presented in the summary, but only as a supplement to the labor market survey. Additional information may include, but is not limited to, published statistical data regarding occupations and projected job openings.

(2) The following information must be obtained from the individual employer contacts and submitted to the department with the summary report. If the information is not available, the VRC should document attempts made to obtain the information and why it was not available.

(a) The specific job title surveyed;

(b) All specific employer contacts, including their firm names, phone numbers, contact name and job title;

(c) Physical and mental/cognitive demands of the job in relation to the industrially injured or ill worker's physical and mental/cognitive capacities;

(d) Minimum hiring requirements and the skills and training commonly and currently necessary to be gainfully employed in the job;

(e) Work patterns;

(f) Number of positions per job title;

(g) Wage;

(h) Date of last hire;

- (i) Number of current openings; and
- (j) An indication of whether each contact was considered positive or negative. The provider must include specific documentation to support why a contact was positive or negative for the recommended occupation or proposed vocational goal.

[Statutory Authority: RCW 51.04.020, 51.04.030, 51.32.095, 51.36.100, 51.36.110. WSR 03-11-009, § 296-19A-140, filed 5/12/03, effective 2/1/04; WSR 00-18-078, § 296-19A-140, filed 9/1/00, effective 6/1/01.]

WAC 296-19A-170 What information must a provider include in a job analysis? When completing a job analysis, the vocational rehabilitation provider must:

(1) Include identifying information on each page. This information includes the worker's name and claim number, and the specific job title surveyed and its DOT code. If the DOT code is not an accurate reflection/description of the job, then list the specific job surveyed, the occupational code and the source from which the occupational code was obtained;

(2) Note the name of the vocational rehabilitation provider who completed the job analysis, where the provider completed the job analysis and the date of the job analysis. If the analysis is based on site specific information, include the employer name and employer contact person(s) name(s) with phone number(s);

(3) Describe the essential functions and all other tasks required to perform the job. Essential job functions are the basic, necessary, and integral parts of a job performed by a worker;

(4) List the tools and equipment required to do the job;

(5) Evaluate and describe the skills required to perform the job;

(6) Evaluate and describe the physical demands and their frequency required to perform the job, utilizing the physical demands listing consistent with the DOT. If the DOT does not represent an accurate reflection/description of the job, then list the specific job surveyed, the physical demands and the source from which the physical demands listing was obtained. The vocational rehabilitation provider should pay special attention to any job duties and physical demands that may be affected by the industrially injured or ill worker's condition;

(7) Describe, if pertinent, any environmental hazards encountered on the job;

(8) Describe possible modifications to the job for employer job offers or job modifications;

(9) A section for medical approval, signature, and comments; and

(10) The signature of the vocational rehabilitation provider presenting the job analysis for review and date signed.

[Statutory Authority: RCW 51.04.020, 51.04.030, 51.32.095, 51.36.100, 51.36.110. WSR 03-11-009, § 296-19A-170, filed 5/12/03, effective 2/1/04; WSR 00-18-078, § 296-19A-170, filed 9/1/00, effective 6/1/01.]

JOB MODIFICATION ASSISTANCE

WAC 296-19A-180 When may the department authorize job modifications? As provided for in section 13, chapter 63, Laws of 1982 (RCW 51.32.250), the supervisor or supervisor's designee, in his or her discretion, may authorize job modifications when the following criteria are met:

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- (1) The claim is open or in statutory pension status; and
- (2) Due to the restrictions related to the accepted industrial condition to the worker:

(a) Is in a light-duty job (graduated or transitional) and the modification is necessary to return the worker to the job of injury or a new job; or

(b) Is off work and the modification is necessary to return the worker to the job of injury or a new job; and

(3) An employer-employee relationship exists.

[Statutory Authority: RCW 51.04.020, 51.04.030, 51.32.095, 51.36.100, 51.36.110. WSR 03-11-009, § 296-19A-180, filed 5/12/03, effective 2/1/04; WSR 00-18-078, § 296-19A-180, filed 9/1/00, effective 6/1/01.]

WAC 296-19A-190 How much is available for job modification assistance? An amount not to exceed five thousand dollars from the department is available per worker per job or job site. If combined with prejob accommodations for the same return to work goal, the maximum combined benefit available for job modification and prejob accommodation is five thousand dollars. The employer may add to this amount with its own contribution.

[Statutory Authority: RCW 51.04.020, 51.04.030, 51.32.095, 51.36.100, 51.36.110. WSR 03-11-009, § 296-19A-190, filed 5/12/03, effective 2/1/04; WSR 00-18-078, § 296-19A-190, filed 9/1/00, effective 6/1/01.]

WAC 296-19A-191 When may the department authorize prejob accommodations? As provided for in RCW 51.32.095(4), the supervisor or the supervisor's designee, in his or her discretion, may authorize prejob accommodations when the following criteria are met:

(1) The claim is open or in statutory pension status; and

(2) The injured worker's attending doctor certifies that the prejob accommodations are medically necessary due to the effects of the accepted industrial condition; and

(3) The prejob accommodation is medically necessary to enable the industrially injured or ill worker to:

(a) Participate in an approved retraining program; or

(b) Perform the essential functions of a job or a return to work goal in which the worker is seeking employment consistent with a completed retraining plan or the recommendations of an ability to work assessment; and

(4) No employer-employee relationship exists.

[Statutory Authority: RCW 51.04.020, 51.04.030, 51.32.095, 51.36.100, 51.36.110. WSR 03-11-009, § 296-19A-191, filed 5/12/03, effective 2/1/04.]

WAC 296-19A-192 How much is available for prejob accommodations? An amount not to exceed five thousand dollars from the department is available per worker per claim. If combined with job modifications for the same return to work goal, the maximum combined benefit available for job modification and prejob accommodation is five thousand dollars.

[Statutory Authority: RCW 51.04.020, 51.04.030, 51.32.095, 51.36.100, 51.36.110. WSR 03-11-009, § 296-19A-192, filed 5/12/03, effective 2/1/04.]

WAC 296-19A-193 What documentation must be submitted to the department for prejob accommodations? (1) A vocational provider assisting the injured worker in applying for prejob accommodation assistance must submit to the department a prejob accommodation assistance

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application. Prejob accommodations assistance applications shall be submitted on a form prescribed by the department.

(2) The prejob accommodation assistance application shall include, but is not limited to:

- (a) A document supporting the need for prejob accommodation;
- (b) A description of the prejob accommodation;
- (c) An itemized account of each expense to be incurred in the prejob accommodation;
- (d) An ownership agreement;
- (e) Physician's certification of medical necessity.

[Statutory Authority: RCW 51.04.020, 51.04.030, 51.32.095, 51.36.100, 51.36.110. WSR 03-11-009, § 296-19A-193, filed 5/12/03, effective 2/1/04.]

WAC 296-19A-200 How does an employer apply for job modification assistance? (1) An employer requesting job modification assistance must submit to the department a job modification assistance application. A vocational provider may assist the employer with the application.

(2) The job modification assistance application shall include, but not be limited to:

- (a) A document supporting the need for job modification;
 - (b) A description of the job modification;
 - (c) An itemized account of each expense to be incurred in the job modification. Job modification assistance applications shall be submitted on a form prescribed by the department; and
 - (d) An ownership agreement.
- (3) The supervisor or supervisor's designee shall accept, reject or modify the job modification application within thirty days of receipt. Notification of the supervisor's acceptance, rejection, or modification shall be in writing.

[Statutory Authority: RCW 51.04.020, 51.04.030, 51.32.095, 51.36.100, 51.36.110. WSR 03-11-009, § 296-19A-200, filed 5/12/03, effective 2/1/04; WSR 00-18-078, § 296-19A-200, filed 9/1/00, effective 6/1/01.]

QUALIFICATIONS

WAC 296-19A-210 What are the qualifications to provide vocational rehabilitation services to industrially injured or ill workers? Provider community commentary, expert opinion and best practices suggest that there is a correlation between a higher quality level of vocational rehabilitation services and higher qualifications of vocational rehabilitation providers. To ensure the provision of the highest possible quality of vocational rehabilitation services, the department shall only issue a provider number to persons, firms, partnerships, corporations, and other legal entities that meet the following qualification requirements:

(1) Vocational rehabilitation counselor (VRC).

(a) VRCs not registered with the department and applying for a provider number with the department effective on or after December 1, 2000, must meet the following minimum qualifications:

Education Masters Degree	Experience 1 year full-time industrial insurance experience	Certification and CRC or CDMS or ABVE
OR		
Bachelors Degree	2 years full-time industrial insurance experience	and CRC or CDMS

CRC = Certified Rehabilitation Counselor

CDMS = Certified Disability Management Specialist

ABVE = American Board of Vocational Experts

(b) VRCs registered with the department as of November 30, 2000, will be required to meet the qualification criteria in (a) of this subsection no later than November 30, 2010.

(c) The VRC assigned to or directly receiving the referral from the referral source is responsible for all work performed by any vocational provider on that referral.

(2) VRC supervisor of interns (supervisor).

(a) The supervisor must meet the qualification requirements for a VRC in subsection (1)(a) and (b) of this section.

(b) The supervisor must provide proof of a total of five years full-time experience providing, evaluating, analyzing and/or assessing vocational services. For the purposes of this rule, "vocational services" are those defined in WAC 296-19A-010(2). At least three of the five years must be under Title 51 RCW.

(c) A maximum of thirty-six months in intern status may be counted toward the five years of experience needed to become a supervisor.

(d) Supervisors are expected to monitor and assist in the training and professional development of interns under their supervision, in order to ensure that interns develop the requisite knowledge and professional skills to become competent VRCs. A supervisor's responsibilities, include, but are not limited to:

- (i) Monitoring billing;
- (ii) Monitoring work;
- (iii) Monitoring professional behavior;
- (iv) Promoting professional development and assisting the intern in meeting the department's requirements to become a VRC; and
- (v) Communicating statute, rule and policy.

(3) Forensic services—In order to provide forensic services to the department, on or after the effective date of this rule, a VRC must provide proof of five years full-time experience providing direct vocational services to Washington state industrially injured or ill workers, and must possess a CRC or ABVE certification. Vocational providers previously approved to provide this service, under chapter 296-19A WAC, will retain that status.

(4) Intern.

(a) Interns not registered with the department and applying for a provider number with the department on or after December 1, 2000, must meet the following minimum qualifications:

Degree	Internship Length
Masters Degree in field acceptable to CRC or CDMS or ABVE	Equal to required experience to obtain CRC or CDMS or ABVE certification including at least 1 year working with industrially injured or ill workers.
OR	
Bachelors Degree in field acceptable by CDMS	Equal to required experience to obtain CDMS certification including at least 2 years working with industrially injured or ill workers.

(b) Interns not registered with the department and applying for a provider number with the department on or after December 1, 2000, must obtain one of the required VRC certifications within one year of completing their required internship. Interns will remain in internship status during this time frame.

(c) Interns registered with the department as of November 30, 2000, will be required to apply for a provider number with the department and may work as an intern until the end of their current internship. Upon completion of the internship the intern may submit an application to the department as a VRC. These providers must obtain one of the required VRC certifications by November 30, 2010.

(d) All interns are required to conform to Title 51 RCW, department rules, and department policies. All interns granted a provider number by the department must be supervised by a VRC supervisor.

(e) No person shall serve as an intern under these rules for more than seventy-two months of full-time experience, or its equivalent, working with industrially injured or ill workers. The intern must notify the department when there is a change in the status of an internship.

(5) Interns may not receive referrals directly from the department or self-insured employers. Interns may perform aspects of vocational rehabilitation services under the supervision of a VRC supervisor.

(6) Providers who receive or are assigned referrals must comply with all electronic security requirements in place for accessing department files.

(7) Providers registered with the department as of November 30, 2000, who do not meet the above qualification requirements within the ten-year period will no longer be eligible to provide vocational rehabilitation services to industrially injured or ill workers and the department will terminate their provider number(s).

(8) Business requirements.

(a) Providers must comply with all federal and state laws, regulations and other requirements with regard to business operations. In order to be eligible to receive referrals from the department, providers must satisfy the requirements set forth in this subsection in every service location in which they wish to operate.

(b) Providers must be covered by general liability insurance, automobile liability insurance, errors and omission insurance, malpractice insurance, and industrial insurance if required by Title 51 RCW.

(c) Providers must have services and facilities that provide injured workers a private and professionally suitable location in which to discuss vocational rehabilitation services

issues. In order to be eligible to receive referrals from the department, providers must satisfy the requirements set forth in this subsection in every service location in which they wish to operate.

(d) Providers must have telephone-answering capability during regular business hours, Monday through Friday. In order to be eligible to receive referrals from the department, providers must satisfy the requirements set forth in this subsection in every service location in which they wish to operate.

(e) In order to receive referrals made by the department, providers must maintain or have access to equipment that can utilize the department's remote access system for transmitting vocational referrals.

(9) The department may assign a provider number to a vocational rehabilitation firm, partnership, corporation or other legal entity so long as substantial control over the daily management of the vocational rehabilitation firm, partnership, corporation or other legal entity is performed by a VRC that satisfies the qualifications set forth in this rule.

[Statutory Authority: RCW 51.04.020, 51.04.030, 51.32.095, 51.36.100, 51.36.110. WSR 04-08-045, § 296-19A-210, filed 3/31/04, effective 7/1/04; WSR 03-11-009, § 296-19A-210, filed 5/12/03, effective 2/1/04; WSR 00-18-078, § 296-19A-210, filed 9/1/00, effective 12/1/00.]

WAC 296-19A-220 Can a vocational rehabilitation provider deliver vocational rehabilitation services pursuant to RCW 51.32.095 without receiving a provider number from the department? No. The department may only issue provider numbers to persons, firms, partnerships, corporations and other legal entities that satisfy the qualification requirements in WAC 296-19A-210.

[Statutory Authority: RCW 51.04.020, 51.04.030, 51.32.095, 51.36.100, 51.36.110. WSR 00-18-078, § 296-19A-220, filed 9/1/00, effective 6/1/01.]

AUDITING AND OVERSIGHT

WAC 296-19A-230 Why does the department audit vocational rehabilitation providers? The department audits providers to:

(1) Ensure that the provider is providing services conforming to accepted standards of service;

(2) Ensure compliance with the Revised Code of Washington, the Washington Administrative Code, and department policies governing vocational rehabilitation services.

[Statutory Authority: RCW 51.04.020, 51.04.030, 51.32.095, 51.36.100, 51.36.110. WSR 00-18-078, § 296-19A-230, filed 9/1/00, effective 6/1/01.]

WAC 296-19A-240 What authority does the department have to audit vocational rehabilitation providers? The department has the authority to:

(1) Conduct audits of a provider, either for cause or at random;

(2) Conduct audits at a provider's place of business using copies and originals of all files and records maintained by the provider;

(3) Conduct audits away from a provider's place of business, using copies of all files and records supplied by the provider;

(4) Require a provider to submit legible copies of all files and records requested for audit;

(5) When the department requires the provider to submit copies of records and files to the department, the provider shall submit the requested material within thirty calendar days of the request;

(6) Inspect and audit all of the provider's vocational rehabilitation files and records relating to services delivered under Title 51 RCW;

(7) Inspect and audit a provider's documentation supporting charges billed for vocational rehabilitation services delivered.

[Statutory Authority: RCW 51.04.020, 51.04.030, 51.32.095, 51.36.100, 51.36.110. WSR 03-11-009, § 296-19A-240, filed 5/12/03, effective 2/1/04; WSR 00-18-078, § 296-19A-240, filed 9/1/00, effective 6/1/01.]

WAC 296-19A-245 What is the department's formal appeal process? For information regarding the formal appeals process refer to chapter 51.52 RCW.

[Statutory Authority: RCW 51.04.020, 51.04.030, 51.32.095, 51.36.100, 51.36.110. WSR 03-11-009, § 296-19A-245, filed 5/12/03, effective 2/1/04.]

WAC 296-19A-250 How much notice is the department required to give a vocational rehabilitation provider prior to an audit? The department will give ten working days' written notification to a provider before starting an audit.

[Statutory Authority: RCW 51.04.020, 51.04.030, 51.32.095, 51.36.100, 51.36.110. WSR 00-18-078, § 296-19A-250, filed 9/1/00, effective 6/1/01.]

WAC 296-19A-260 What are the possible consequences for a provider that does not comply with the RCWs, WACs, or department policies? The department may order corrective action(s) when it determines that a provider is not in compliance with department statute, rule, or written department policy. Possible corrective actions include, but are not limited to:

(1) Submission and implementation of a written corrective action by the provider showing how the provider will come into compliance;

(2) Recoupment of payments, plus interest, made to the provider;

(3) Requirement that the provider satisfactorily complete remedial education courses and/or other educational or training programs;

(4) Suspension or termination of a provider's provider number and ability to receive payment for vocational rehabilitation services rendered to industrially injured or ill workers under the Industrial Insurance Act;

(5) Rejection of a provider's application to provide vocational rehabilitation services to industrially injured or ill workers under the Industrial Insurance Act;

(6) Denial or rejection of a request for payment submitted by or on behalf of the provider;

(7) Placement of the provider on prepayment review status requiring the submission of supporting documents prior to payment;

(8) Assessment of penalties.

[Statutory Authority: RCW 51.04.020, 51.04.030, 51.32.095, 51.36.100, 51.36.110. WSR 03-11-009, § 296-19A-260, filed 5/12/03, effective 2/1/04; WSR 00-18-078, § 296-19A-260, filed 9/1/00, effective 6/1/01.]

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WAC 296-19A-270 In what situation(s) can the department take corrective action(s)? (1) Reasons the department can order corrective actions against a vocational rehabilitation provider include, but are not limited to, the following:

(a) Charging the department for services that do not contribute to the completion of a vocational referral, including, but not limited to:

(i) Preparation and submission of job analyses during plan development for jobs that are beyond the worker's documented or expected capacities and physical abilities as demonstrated by the medical information in the file at the time the job analysis was performed;

(ii) Preparation and submission of job analyses or labor market surveys during early intervention or assessment that are not supported by the injured worker's education, work history and/or transferable skills as demonstrated by the information in the file at the time the job analysis and/or labor market survey was performed;

(iii) Hand delivery of records when other less expensive means of delivery are reasonably appropriate and available;

(b) Commission of an act involving moral turpitude, dishonesty, or corruption relating to the provision of vocational rehabilitation services whether the act constitutes a crime or not;

(c) Misrepresentation or concealment of a material fact in obtaining a department provider number, or in response to any request for information about service delivery made by the department;

(d) Provision of vocational rehabilitation services without having a department provider number;

(e) Use of persons that do not possess a department provider number to deliver vocational rehabilitation services;

(f) Operation of a vocational firm, partnership, corporation, or other legal entity in violation of the business requirements set forth in RCW, WAC, or written department policy;

(g) Use of false, fraudulent, or misleading advertising;

(h) Commission of any incompetent or negligent action which presents the significant risk of resulting in harm to an industrially injured or ill worker, the referral source, or an employer;

(i) Submission of a false or misleading report or document as part of delivering vocational rehabilitation services;

(j) Failure to supervise a vocational rehabilitation intern in accordance with RCW, WAC, or written department policy;

(k) Failure to comply with any order issued by the department;

(l) Disclosure of confidential information on vocational rehabilitation services to a person who is not entitled to it;

(m) Unauthorized disclosure of confidential claim information, including, but not limited to, private health care information;

(n) Charges an industrially injured or ill worker or employer a fee for delivering vocational rehabilitation services on a referral from the referral source; and

(o) Bills an industrially injured or ill worker or state fund employer for providing services under the Industrial Insurance Act.

(2) The department can take corrective action(s) for other violations of RCW, WAC, or written department policy not specifically mentioned above.

[Statutory Authority: RCW 51.04.020, 51.04.030, 51.32.095, 51.36.100, 51.36.110. WSR 03-11-009, § 296-19A-270, filed 5/12/03, effective 2/1/04; WSR 00-18-078, § 296-19A-270, filed 9/1/00, effective 6/1/01.]

WAC 296-19A-310 Are vocational rehabilitation providers entitled to referrals from the department? The department or self-insured employer refers industrially injured or ill workers for vocational rehabilitation services at their sole discretion. No provider is entitled to referrals from the referral source.

[Statutory Authority: RCW 51.04.020, 51.04.030, 51.32.095, 51.36.100, 51.36.110. WSR 00-18-078, § 296-19A-310, filed 9/1/00, effective 6/1/01.]

WAC 296-19A-320 What other requirements are providers required to follow? By rendering vocational rehabilitation services to industrially injured or ill workers under RCW 51.32.095, the vocational rehabilitation provider agrees to comply with Title 51 RCW, chapters 296-19A and 296-15 WAC, and the department's fee schedule.

[Statutory Authority: RCW 51.04.020, 51.04.030, 51.32.095, 51.36.100, 51.36.110. WSR 00-18-078, § 296-19A-320, filed 9/1/00, effective 6/1/01.]

BILLING AND DOCUMENTATION SECTION

WAC 296-19A-330 How does a vocational rehabilitation provider receive payment for services? All providers must apply for and receive a provider number from the department in order to bill the department and get paid for providing vocational rehabilitation services to industrially injured or ill workers. More detailed billing instructions for vocational rehabilitation services are available from the department.

[Statutory Authority: RCW 51.04.020, 51.04.030, 51.32.095, 51.36.100, 51.36.110. WSR 00-18-078, § 296-19A-330, filed 9/1/00, effective 6/1/01.]

WAC 296-19A-340 For what services will the department not pay? The following services are considered overhead and the department will not pay for these services:

- (1) Administrative and supervisory salaries and related personnel expenses;
- (2) Office rent;
- (3) Depreciation;
- (4) Equipment purchase and rental;
- (5) Telephone expenses including long distance phone call charges;
- (6) Postage;
- (7) Shipping;
- (8) Expendable supplies;
- (9) Printing costs;
- (10) Copier costs;
- (11) Printing of fiche and department electronic files;
- (12) Maintenance and repair;
- (13) Taxes;
- (14) Automobile costs and maintenance;
- (15) Insurance;
- (16) Dues and subscriptions;
- (17) Vacation, sick leave, and other expenses of a similar nature;

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- (18) Internal staffing time;
- (19) Filing of material in case files;
- (20) Setting up files;
- (21) Activities associated with reports other than composing or dictating complete draft of the report (e.g., editing, filing, distribution, revising, typing, and mailing);
- (22) Generating and keeping internal recordkeeping forms;
- (23) Time spent on any administrative and clerical activity, including typing, copying, mailing, distributing, filing, payroll, recordkeeping, delivering mail, picking up mail;
- (24) Activities associated with counselor training, general discussion regarding office procedures, internal case file reviews by supervisors, meetings, and seminars;
- (25) Unanswered phone calls; and
- (26) Any other item or service not specifically identified and separately billable.

[Statutory Authority: RCW 51.04.020, 51.04.030, 51.32.095, 51.36.100, 51.36.110. WSR 00-18-078, § 296-19A-340, filed 9/1/00, effective 6/1/01.]

WAC 296-19A-350 What are the requirements for case notes? Vocational rehabilitation providers must maintain case notes. Case notes must:

- (1) Include the first and last name of the industrially injured or ill worker being served and the worker's claim number at the top of each page;
- (2) Include the first and last name of the vocational rehabilitation provider providing each service documented on each page;
- (3) Be kept in a claimant file corresponding to the reports, medical information, correspondence, and other materials that they provide documentation for;
- (4) Testing and other records with special confidentiality requirements may be kept in separate files;
- (5) Be legible;
- (6) Be in chronological order;
- (7) Record the date each service was provided month/month/day/year year;
- (8) For providers who bill for vocational services, include the amount of time, recorded in tenths of an hour, required to provide each service;
- (9) Describe each service sufficiently to allow the referral source to verify the purpose, level, type, and outcome of each service provided and substantiate the charges billed for them.

[Statutory Authority: RCW 51.04.020, 51.04.030, 51.32.095, 51.36.100, 51.36.110. WSR 03-11-009, § 296-19A-350, filed 5/12/03, effective 2/1/04; WSR 00-18-078, § 296-19A-350, filed 9/1/00, effective 6/1/01.]

WAC 296-19A-360 What are the requirements for bills submitted to the department? (1) Any bill a provider submits to the department must include the following information:

- (a) Worker's name;
- (b) Worker's claim number;
- (c) Vocational referral number;
- (d) Dates of service;
- (e) Place of service;
- (f) Type of service;
- (g) Appropriate procedure code(s);
- (h) Charge;

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- (i) Units of service;
- (j) Total bill charge;
- (k) The name and the department-assigned provider ID of the counselor or intern rendering the services;
- (l) Provider number of the payee;
- (m) Date of billing;
- (n) Submission of any supporting documentation required under other sections of this chapter.

(2) Itemize the bills on department approved forms. A vocational rehabilitation provider may transmit the bills electronically if the provider uses department file format specifications. If the provider uses any of the electronic transfer options, the provider must follow department instructions for electronic billing.

(3) The provider must bill using procedure codes, fees, and methods provided by the department. The department will publish codes, fees, and procedures and provide this information to all vocational rehabilitation providers receiving department referrals. The department will establish fees at regular intervals.

(4) Document all billed charges and justify the type, level and extent of services in the case notes. A provider's billed charges must be consistent with the services provided. The department may reduce, deny, or recoup payment whenever case notes fail to document billed charges or services provided.

(5) It is the vocational rehabilitation provider's responsibility to make sure the charges billed are complete and accurate, even if a third party is actually performing the billing.

(6) The vocational rehabilitation provider is encouraged to bill every two weeks. The department must receive bills within one year of the date of service to be eligible for payment.

[Statutory Authority: RCW 51.04.020, 51.04.030, 51.32.095, 51.36.100, 51.36.110. WSR 00-18-078, § 296-19A-360, filed 9/1/00, effective 6/1/01.]

WAC 296-19A-370 What are the procedures for adjustments to provider bills? (1) The department or self-insurer may adjust payment of charges when appropriate. The department or self-insurer must provide a written explanation of why they adjusted a billing or line item of a bill when they make any adjustment. In cases where the department is the referral source, it will not give the provider a written explanation if the department made the adjustment solely to conform to its maximum allowable fees.

(2) The department or self-insurer must receive any inquiries about a bill adjustment within ninety days from the date of payment to be considered. All provider inquiries must be in the required format.

[Statutory Authority: RCW 51.04.020, 51.04.030, 51.32.095, 51.36.100, 51.36.110. WSR 00-18-078, § 296-19A-370, filed 9/1/00, effective 6/1/01.]

WAC 296-19A-380 What are the procedures for rebilling? (1) If a provider does not receive payment or notification from the department within one hundred twenty days, he or she may rebill for services.

(2) Rebills should be identical to the original bill: Same charges, codes, and billing date.

[Statutory Authority: RCW 51.04.020, 51.04.030, 51.32.095, 51.36.100, 51.36.110. WSR 00-18-078, § 296-19A-380, filed 9/1/00, effective 6/1/01.]

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WAC 296-19A-390 What are the procedures for repayment of excess payment of charges? (1) When a vocational rehabilitation provider receives a payment to which that provider is not entitled, the provider must repay the excess amount, plus accrued interest, without regard to whether the excess payment occurred due to provider or department error or oversight.

(2) Interest accrues on excess payments at the rate of one percent per month or portion of a month beginning on the thirty-first day after payment was made. Where partial repayment on an excess payment is made, interest accrues on the remaining balance.

(3) The department reserves the option of either requesting the provider to remit the amount of excess payment and accrued interest to the department or offsetting excess payments and accrued interest against future payments due the provider.

[Statutory Authority: RCW 51.04.020, 51.04.030, 51.32.095, 51.36.100, 51.36.110. WSR 00-18-078, § 296-19A-390, filed 9/1/00, effective 6/1/01.]

WAC 296-19A-400 What records are vocational rehabilitation providers required to maintain? (1) A vocational rehabilitation provider must maintain adequate documentation in claimant-specific files to verify the level, type, and extent of the vocational rehabilitation services provided to and on behalf of industrially injured or ill workers.

(2) A vocational rehabilitation provider who requests payment from the referral source for vocational rehabilitation services must maintain all records necessary for the director's authorized auditors to audit the provision of services. Providers need to keep all records necessary to disclose the specific nature and extent of all services provided for an industrially injured or ill worker, along with the amounts billed to the department, for those services. Records must be maintained for audit purposes for a minimum of five years from the date of closure by the provider.

[Statutory Authority: RCW 51.04.020, 51.04.030, 51.32.095, 51.36.100, 51.36.110. WSR 03-11-009, § 296-19A-400, filed 5/12/03, effective 2/1/04; WSR 00-18-078, § 296-19A-400, filed 9/1/00, effective 6/1/01.]

VOCATIONAL DISPUTES

WAC 296-19A-410 What is the purpose of the department's vocational dispute process? The purpose is to avoid delays in vocational rehabilitation services by resolving disputes between industrially injured or ill workers, employers and the referral source.

[Statutory Authority: RCW 51.04.020, 51.04.030, 51.32.095, 51.36.100, 51.36.110. WSR 00-18-078, § 296-19A-410, filed 9/1/00, effective 6/1/01.]

WAC 296-19A-420 Who can dispute a vocational determination? The following parties are authorized to dispute a vocational determination made by the referral source:

- (1) An industrially injured or ill worker;
- (2) An employer; or
- (3) The representative of an industrially injured or ill worker or employer.

[Statutory Authority: RCW 51.04.020, 51.04.030, 51.32.095, 51.36.100, 51.36.110. WSR 00-18-078, § 296-19A-420, filed 9/1/00, effective 6/1/01.]

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WAC 296-19A-430 Can a vocational rehabilitation provider dispute a vocational determination? A vocational rehabilitation provider cannot dispute a vocational determination.

[Statutory Authority: RCW 51.04.020, 51.04.030, 51.32.095, 51.36.100, 51.36.110. WSR 00-18-078, § 296-19A-430, filed 9/1/00, effective 6/1/01.]

WAC 296-19A-440 What elements of a vocational determination may be disputed? (1) A finding that an industrially injured or ill worker is eligible for vocational rehabilitation services, or a finding that he or she is ineligible for vocational rehabilitation services, may be disputed.

(2) An approved vocational rehabilitation plan may also be disputed.

(3) An approved plan modification may also be disputed.

(4) A previously approved vocational rehabilitation plan may not be disputed through a plan modification dispute process.

[Statutory Authority: RCW 51.04.020, 51.04.030, 51.32.095, 51.36.100, 51.36.110. WSR 03-11-009, § 296-19A-440, filed 5/12/03, effective 2/1/04; WSR 00-18-078, § 296-19A-440, filed 9/1/00, effective 6/1/01.]

WAC 296-19A-450 What are the time frames for filing a dispute of a vocational determination with the department? The department must receive the written dispute within fifteen calendar days of receipt of notification to the worker or employer. The dispute must explain the reason(s) for the disagreement with the determination. The department may accept the dispute if it is not received within the fifteen-day period if there is a demonstrated good cause for the delay.

[Statutory Authority: RCW 51.04.020, 51.04.030, 51.32.095, 51.36.100, 51.36.110. WSR 00-18-078, § 296-19A-450, filed 9/1/00, effective 6/1/01.]

WAC 296-19A-460 What part of the department is charged with reviewing vocational disputes? The vocational dispute resolution office (VDRO) consultant reviews disputes of vocational determinations and makes a recommendation to the director, who makes a final decision. Disputes should be sent to the director, in care of the VDRO.

[Statutory Authority: RCW 51.04.020, 51.04.030, 51.32.095, 51.36.100, 51.36.110. WSR 00-18-078, § 296-19A-460, filed 9/1/00, effective 6/1/01.]

WAC 296-19A-470 What is the process for review of a vocational dispute? VDRO will review the written dispute and issue an acceptance letter, which will be sent to all parties. If the department does not accept your dispute, the letter will explain the reason(s) for the rejection. A copy of this letter, along with the written dispute, will be sent to all involved parties.

The director, at his or her sole discretion, will initiate a review of an accepted dispute to determine further action. If necessary, and at the discretion of the director, VDRO staff will contact the parties to attempt to resolve the dispute.

If the dispute is not resolved, the director in his or her sole discretion will take other action that he or she considers appropriate to protect the rights of the parties. The director will promptly inform all parties, in writing, of what action is taken.

[Statutory Authority: RCW 51.04.020, 51.04.030, 51.32.095, 51.36.100, 51.36.110. WSR 00-18-078, § 296-19A-470, filed 9/1/00, effective 6/1/01.]

[Ch. 296-19A WAC p. 18]

NONACCREDITED AND UNLICENSED TRAINING PROVIDERS

WAC 296-19A-500 Definitions. (1) "Training provider" means any entity offering education in any form or manner for the purpose of instructing, training, or providing knowledge or skills.

(2) "Accredited" means the training provider has been approved by the state agency responsible for regulating degree granting institutions, or an accreditation body recognized by the secretary of the Department of Education, or the Commission on Accrediting Rehabilitation Facilities, or a public educational institution.

(3) "Licensed" means the training provider is regulated, licensed or approved by the state agency that regulates vocational education, or under any occupational licensing act, or a federal or local government agency, or the Washington state apprenticeship training council.

[Statutory Authority: RCW 51.04.020, 51.04.030, 51.32.095, 51.32.099, and 2007 c 72. WSR 09-24-108, § 296-19A-500, filed 12/2/09, effective 1/2/10.]

WAC 296-19A-510 What training programs can the department approve and issue a provider account number to? The department can approve and issue a provider account number to:

(1) An accredited training program or provider.

(2) A licensed training program or provider.

(3) An apprenticeship program approved through the Washington state apprenticeship training council.

(4) A training provider listed on the Washington state Workforce Training and Education Coordinating Board's Eligible Training Provider List or a list from a similar agency in another state.

(5) Other nonaccredited or unlicensed programs approved by the department. Nonaccredited or unlicensed programs must file a separate application for approval by the department before a provider number can be issued.

[Statutory Authority: RCW 51.04.020, 51.04.030, 51.32.095, 51.32.099, and 2007 c 72. WSR 09-24-108, § 296-19A-510, filed 12/2/09, effective 1/2/10.]

WAC 296-19A-520 What are the requirements for providing training services to Washington injured workers? (1) A training provider must be approved by the department and receive a provider number to be eligible to provide training services or to receive payment for services.

(2) All training providers must:

(a) Comply with all federal and state laws, regulations, and other requirements governing their business operations;

(b) Have an admission policy allowing all qualified members of the general population to be candidates for admission;

(c) Conform to the department's orders, rules, and policies, if any;

(d) Maintain accreditation or training provider licensing, when applicable.

(3) In addition training providers that provide services within the state of Washington must:

(a) Possess a master business license from the Washington state department of licensing;

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(b) Register with the Washington state department of revenue;

(c) Possess a charter from the Washington secretary of state's office if operating a limited partnership or corporation; and

(d) Comply with local ordinances governing businesses within the city or county where they will operate.

(4) In addition training providers providing services outside the state of Washington must comply with all regulatory requirements and local ordinances within the state, city and county where they will operate.

[Statutory Authority: RCW 51.04.020, 51.04.030, 51.32.095, 51.32.099, and 2007 c 72. WSR 09-24-108, § 296-19A-520, filed 12/2/09, effective 1/2/10.]

WAC 296-19A-530 What ownership and financial information must a nonaccredited or unlicensed training provider submit as part of the application to provide training services to Washington injured workers? Application must include the following information attested by the training provider's chief administrative officer:

(1) An identification of owners, shareholders, and directors:

(a) The complete legal name, current telephone number, and current mailing address of the owner;

(b) The form of ownership; e.g., sole proprietorship, partnership, limited partnership, or corporation;

(c) Names, addresses, phone numbers, birth dates, and prior training provider affiliations, if any, of all individuals with ten percent or more ownership interest;

(d) A training provider that is a corporation or subsidiary of another corporation must submit:

(i) Current evidence that the corporation is registered with the Washington secretary of state's office; and

(ii) The name, address and telephone number of the corporation's registered agent.

(e) "Ownership" means:

(i) In the case of a training provider owned by an individual, that individual;

(ii) In the case of a training provider owned by a partnership, all full, silent and limited partners having ten percent or more ownership interest; and

(iii) In the case of a training provider owned by a corporation, the corporation, each corporate director, officer, and each shareholder owning shares of issued and outstanding stock aggregating at least ten percent of the total of the issued and outstanding shares.

(f) By written notice to the department, training providers under common ownership may designate a single location as the principal facility for recordkeeping.

(2) Financial statement. The training provider must submit information reflecting its financial status at the close of its most recent fiscal year demonstrating the provider has sufficient financial resources to fulfill its commitments to students.

(3) Financial references.

(a) The training provider must submit the names of at least one bank or other financial institution and two other entities that the department may consult as financial references.

(b) A statement must be included authorizing the department to obtain financial information from the references.

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(c) For new training providers that have not operated another business during the past year, a recent credit report from Equifax, Experian, Trans Union or another credit rating firm recognized by the U.S. Department of Commerce.

(4) A program that is part of a publicly funded entity; e.g., city, state, county or federal, is exempt from financial disclosure requirements.

[Statutory Authority: RCW 51.04.020, 51.04.030, 51.32.095, 51.32.099, and 2007 c 72. WSR 09-24-108, § 296-19A-530, filed 12/2/09, effective 1/2/10.]

WAC 296-19A-540 How long must a nonaccredited or unlicensed training provider be in operation before applying to provide services to Washington injured workers? A nonaccredited or unlicensed training provider exempt from any other applicable state licensing requirement must provide proof of continuous operation for at least two years prior to the date of application.

Exception: A program that is part of a publicly funded entity; e.g., city, state, county or federal, is exempt from the two-year requirement.

[Statutory Authority: RCW 51.04.020, 51.04.030, 51.32.095, 51.32.099, and 2007 c 72. WSR 09-24-108, § 296-19A-540, filed 12/2/09, effective 1/2/10.]

WAC 296-19A-550 When must an approved nonaccredited or unlicensed training provider reapply in order to continue providing services to Washington injured workers? An approved nonaccredited or unlicensed training provider must reapply two years after the date of the most recent application to the department.

[Statutory Authority: RCW 51.04.020, 51.04.030, 51.32.095, 51.32.099, and 2007 c 72. WSR 09-24-108, § 296-19A-550, filed 12/2/09, effective 1/2/10.]

WAC 296-19A-560 What documentation does the department require from a nonaccredited or unlicensed training provider in order to be considered for approval to provide training to Washington injured workers? When a nonaccredited or unlicensed training provider seeks a provider number from the department, the provider must give the department all the following documentation, or its request will be denied:

(1) A copy of the training provider's catalog. The training provider must publish a catalog or brochure that explains its operations and requirements. The catalog must be current, comprehensive, and accurate.

(2) A copy of the training provider's enrollment agreement/contract. An enrollment agreement is any agreement that creates a binding obligation to purchase a course of instruction from a training provider.

(3) A description of the instruction program including:

(a) The number of clock hours of instruction, the method of instruction (e.g., correspondence, classroom, lab, computer assisted), and the average length of time required for successful completion;

(b) If instruction is calculated in credit hours, a description of the contact hour formula applied by the training provider; i.e., the number of contact hours applicable to each quarter or semester credit hour of lecture, laboratory/practicum, and/or internship/externship;

(c) For distance education training providers, the instructional sequences as described in the number of lessons.

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"Distance education" means education provided by written correspondence or any electronic medium for students who are enrolled in a private vocational school in pursuit of an identified occupational objective, but are not attending classes at an approved site or training establishment.

(4) A document outlining the scope and sequence of courses or programs required to achieve the educational objective.

(5) A copy of the training provider's admission procedures, including policies describing all prerequisites needed by entering students to successfully complete the programs of study.

(6) Documentation indicating the total cost of training for each program, including registration fees, if any, tuition, books, supplies, equipment, laboratory usage, special clothing, student activities, insurance and all other charges and expenses necessary for the completion of the program.

(7) A copy of the training provider's cancellation and refund policy including:

(a) Cancellation before the training start date;

(b) Cancellation within thirty days of the start date; and

(c) Interruptions in service due to staffing or other reasons.

(8) The training calendar, including hours of operation, holidays, enrollment periods, and the start and end dates of terms, courses, or programs.

(9) An accurate description of the training provider's facilities and equipment available for student use, the maximum or usual class size and the average student/teacher ratio.

(10) The names and qualifications of faculty.

(11) A copy of the training provider's policy on standards of progress required including:

(a) A definition of the grading system;

(b) The minimum grades considered satisfactory;

(c) Conditions for interruption for unsatisfactory progress;

(d) A description of the probationary period, if any, allowed by the training provider;

(e) Conditions for reentrance for students dismissed for unsatisfactory progress; and

(f) A statement that a progress report will be given to the student.

(12) The training provider's policy towards student conduct, including causes for dismissal and conditions for readmission.

(13) The training provider's policy on leave, absences, class cuts, makeup work, tardiness, and interruptions for unsatisfactory attendance.

(14) Training providers that prepare students for obtaining employment, documentation of the training provider's completion rate and job placement rate, including the title, wages, and benefits obtained by graduates.

[Statutory Authority: RCW 51.04.020, 51.04.030, 51.32.095, 51.32.099, and 2007 c 72. WSR 09-24-108, § 296-19A-560, filed 12/2/09, effective 1/2/10.]

WAC 296-19A-570 What factors will the department consider when deciding whether to approve a nonaccredited or unlicensed training provider for Washington injured workers? The department will consider all of the information received from the training provider in its application for a provider number, including documents provided

pursuant to WAC 296-19A-560. The department will review this information to ensure that the training provider provides services that are consistent with chapter 296-19A WAC and RCW 51.32.099. Furthermore, the department will consider the following factors:

(1) Whether the training provider adequately supervises its instructors to ensure that they are qualified and provide appropriate training and instruction.

(2) Whether any students have been injured as a result of the training provider's failure to use adequate safety protocols.

(3) Whether any complaints have been filed by current or former students against the training provider or any of its instructors, and, if so, whether any of these complaints have merit.

(4) Whether the training provider or any of its instructors have ever been convicted of a crime, and, if so, the nature of the crime.

(5) Whether there is any other information indicating the training provider does not provide services to its students in a manner consistent with the objectives of chapter 296-19A WAC or RCW 51.32.099.

(6) In addition training providers preparing students for employment must address the following factors:

(a) Whether any of the training provider's programs allow a student to obtain an educational or occupational credential awarded upon successful completion of program, and, if so, the type of credential(s) awarded;

(b) Whether any of the training provider's programs have clearly identified program objectives, such as information regarding specific job titles the student will qualify for on completion of training, and the projected wages and benefits of those jobs;

(c) Training provider's job placement rate, including job title, wages, and benefits obtained by graduates; and

(d) Whether the program achieved at least a thirty percent completion rate and a fifty percent job placement rate in the three quarters following graduation for the most recent fiscal year.

[Statutory Authority: RCW 51.04.020, 51.04.030, 51.32.095, 51.32.099, and 2007 c 72. WSR 09-24-108, § 296-19A-570, filed 12/2/09, effective 1/2/10.]

WAC 296-19A-580 When must a nonaccredited or unlicensed training provider conform to the requirements of chapter 296-19A WAC? (1) A nonaccredited or unlicensed training provider without a current department provider number must be approved by the department and receive a provider number in order to train Washington injured workers.

(2) A nonaccredited or unlicensed training provider who already has a department provider number must reapply for and receive approval by the department before June 30, 2010, in order to continue training Washington injured workers.

(3) A nonaccredited or unlicensed training provider must first obtain licensure or approval by the appropriate state agency and submit documentation of this licensure or approval when applying to the department to become a provider.

(4) A nonaccredited or unlicensed training provider exempt from the Washington state workforce training and education coordinating board licensure requirements must

submit documentation of the exemption before an application can be reviewed.

[Statutory Authority: RCW 51.04.020, 51.04.030, 51.32.095, 51.32.099, and 2007 c 72. WSR 09-24-108, § 296-19A-580, filed 12/2/09, effective 1/2/10.]

WAC 296-19A-590 What criteria must training providers meet to maintain provider status? (1) All accredited or licensed training providers with a department provider number must maintain their accreditation or licensure status.

(2) All approved nonaccredited or unlicensed training providers with department provider numbers must conform to all requirements in chapter 296-19A WAC, on an ongoing basis.

(3) Failure to maintain accreditation, licensure, or conformance to the requirements of chapter 296-19A WAC may result in termination of the provider number.

(4) Programs that prepare students for employment must maintain at least a thirty percent completion rate and fifty percent placement rate in jobs for which training was provided during the three quarters following graduation during the most recent fiscal year, July 1 through June 30.

The department may consider and grant exceptions based on unusual cause or circumstances.

[Statutory Authority: RCW 51.04.020, 51.04.030, 51.32.095, 51.32.099, and 2007 c 72. WSR 09-24-108, § 296-19A-590, filed 12/2/09, effective 1/2/10.]

OPTION 2 BENEFITS

WAC 296-19A-600 How does an eligible injured worker elect vocational Option 2 benefits? (1) If the worker's plan was approved prior to July 31, 2015, the worker has up to fifteen days from the approval of a retraining plan or the department's determination that a disputed plan is valid to submit to the department or self-insured employer the retraining plan option election form indicating they elect Option 2 and choose not to participate in their retraining plan.

(2) If the worker's plan was approved on or after July 31, 2015, the worker can elect Option 2 at any point within the following time period:

- Beginning with the date of plan approval or the department's determination that a disputed plan is valid; and
- Ending the fifteenth day after completion of the first academic quarter or three months' training.

(a) To elect Option 2, the worker submits to the department or self-insured employer the retraining plan option election form indicating they elect Option 2 and choose not to participate, or continue participating, in their retraining plan.

(b) Wherever the time for electing Option 2 is referenced in chapter 296-19A WAC, if the school or training program does not use an academic quarter system, the three-month time period applies; however, if the worker's vocational retraining plan is less than three months in duration, the worker's last day to elect Option 2 is the day before the plan ends. The worker cannot elect Option 2 after the plan is completed.

(3) The department may approve an Option 2 election submitted within twenty-five calendar days if the worker provides a written explanation establishing that he or she was unable to submit his or her election within the fifteen calendar days specified in subsections (1) and (2) of this section.

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(4) If no completed and signed retraining plan option election form is received, the worker must participate in the approved Option 1 retraining plan.

(5) The worker's election of Option 2 means the worker's claim will be closed, and the worker will receive the vocational Option 2 award and access to the Option 2 training funds.

[Statutory Authority: RCW 51.04.020, 51.04.030, and 2015 c 137. WSR 16-03-060, § 296-19A-600, filed 1/19/16, effective 2/19/16. Statutory Authority: Chapter 51.32 RCW. WSR 11-23-070, § 296-19A-600, filed 11/15/11, effective 12/16/11. Statutory Authority: RCW 51.04.020, 51.04.030, 51.32.095, 51.32.099 and 51.32.0991 (2007 c 72). WSR 10-07-054, § 296-19A-600, filed 3/12/10, effective 4/12/10.]

WAC 296-19A-610 What is a vocational Option 2 award? (1) If the worker's plan was approved prior to July 31, 2015, the vocational Option 2 award is equivalent to six months of temporary total disability compensation.

(2) If the worker's plan was approved on or after July 31, 2015, the vocational Option 2 award is equivalent to nine months of temporary total disability compensation.

(3) The vocational Option 2 award is based on the worker's monthly compensation rate on the date the Option 2 benefit is granted. The award will be paid to the worker in biweekly payments until the award is paid in full.

(4) Whenever the biweekly payments are made over a period that includes July 1, the amount of the payment(s) will include any cost-of-living adjustment.

(5) The temporary total disability amount used will not include any adjustments for the worker's receipt of Social Security benefits.

(6) The department or self-insured employer will deduct any overpayments owed from the vocational Option 2 award.

[Statutory Authority: RCW 51.04.020, 51.04.030, and 2015 c 137. WSR 16-03-060, § 296-19A-610, filed 1/19/16, effective 2/19/16. Statutory Authority: RCW 51.04.020, 51.04.030, 51.32.095, 51.32.099 and 51.32.0991 (2007 c 72). WSR 10-07-054, § 296-19A-610, filed 3/12/10, effective 4/12/10.]

WAC 296-19A-620 What are the vocational Option 2 training funds? (1) These training funds are available to the worker, upon application to the department or self-insured employer, for a period of five years following the date of the department's order confirming the worker's Option 2 election.

(2) The funds can be used to participate in any training through an accredited, licensed, or department-approved training program or institution.

(3) The worker can use the training funds for tuition, books, fees, supplies, equipment, and tools. In addition, if the worker's plan was approved on or after July 31, 2015, the worker can use up to ten percent of the training funds for vocational counseling and job placement services.

(4) Eligible workers are notified of the training fund amount by department order issued at the time of their Option 2 election.

[Statutory Authority: RCW 51.04.020, 51.04.030, and 2015 c 137. WSR 16-03-060, § 296-19A-620, filed 1/19/16, effective 2/19/16. Statutory Authority: RCW 51.04.020, 51.04.030, 51.32.095, 51.32.099 and 51.32.0991 (2007 c 72). WSR 10-07-054, § 296-19A-620, filed 3/12/10, effective 4/12/10.]

WAC 296-19A-625 What if an eligible worker elects Option 2 after starting the retraining plan? (1) If the worker's plan was approved on or after July 31, 2015, the

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worker can elect Option 2 at any point within the following time period:

- Beginning with the date of plan approval or the department's determination that a disputed plan is valid; and
- Ending the fifteenth day after completion of the first academic quarter or three months' training.

(2) However, if the worker specified in subsection (1) of this section elects Option 2 after starting the Option 1 retraining plan the following will occur:

(a) The training funds will be reduced by the amount of tuition and related charges expended during the Option 1 retraining plan; and

(b) The nine-month vocational Option 2 award will be reduced by the amount the worker was paid for time-loss days starting with the first date of Option 1 retraining through the date the department received the worker's Option 2 election.

[Statutory Authority: RCW 51.04.020, 51.04.030, and 2015 c 137. WSR 16-03-060, § 296-19A-625, filed 1/19/16, effective 2/19/16.]

WAC 296-19A-640 What costs cannot be paid from the vocational Option 2 training funds? Training funds cannot be used for ergonomic equipment, prejob accommodations, job modifications, on-the-job training, self-employment, lodging or transportation.

[Statutory Authority: RCW 51.04.020, 51.04.030, 51.32.095, 51.32.099 and 51.32.0991 (2007 c 72). WSR 10-07-054, § 296-19A-640, filed 3/12/10, effective 4/12/10.]

WAC 296-19A-650 Is the vocational Option 2 award paid if the worker is confined in an institution and under sentence? No. The department or self-insured employer will pay the balance of the Option 2 award when notified in writing the worker is no longer confined and under sentence.

[Statutory Authority: RCW 51.04.020, 51.04.030, 51.32.095, 51.32.099 and 51.32.0991 (2007 c 72). WSR 10-07-054, § 296-19A-650, filed 3/12/10, effective 4/12/10.]

WAC 296-19A-660 Can a worker use the vocational Option 2 training funds if confined in an institution and under sentence? Yes. Vocational Option 2 training funds are available to the worker, upon application to the department or self-insurer.

[Statutory Authority: RCW 51.04.020, 51.04.030, 51.32.095, 51.32.099 and 51.32.0991 (2007 c 72). WSR 10-07-054, § 296-19A-660, filed 3/12/10, effective 4/12/10.]

WAC 296-19A-670 If a worker dies while receiving the vocational Option 2 award, will the award be paid to the worker's beneficiaries or estate? No. The vocational Option 2 award is not payable to the worker's beneficiaries or estate.

[Statutory Authority: RCW 51.04.020, 51.04.030, 51.32.095, 51.32.099 and 51.32.0991 (2007 c 72). WSR 10-07-054, § 296-19A-670, filed 3/12/10, effective 4/12/10.]