

WSR 23-02-044
EMERGENCY RULES
DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Division of Vocational Rehabilitation)

[Filed December 30, 2022, 10:54 a.m., effective January 5, 2023]

Effective Date of Rule: January 5, 2023.

Purpose: This emergency [rule making] removes references in WAC to post-employment services provided by the division of vocational rehabilitation (DVR) as being available to the customer post exit. The department filed a CR-101 preproposal under WSR 22-12-030 to begin the permanent adoption process.

Citation of Rules Affected by this Order: Amending WAC 388-891A-0610 and 388-891A-0890.

Statutory Authority for Adoption: RCW 34.05.350 (1)(b), 74.29.020(8), and 74.29.050.

Under RCW 34.05.350 the agency for good cause finds that state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule.

Reasons for this Finding: DVR received guidance from the rehabilitation services administration (RSA) that clarifies RSA's interpretation of when vocational rehabilitation (VR) agencies may provide post-employment services under the Rehabilitation Act. RSA's interpretation is inconsistent with how Washington VR currently provides post-employment services and how it is defined in WAC. Provision of post-employment services is subject to receipt of federal funding. Continuing to apply WAC 388-891A-0610 and 388-891A-0890, as currently written, will place DVR out of compliance with federal guidance and could jeopardize its ability to receive federal funding. If DVR chose not to pursue an emergency rule, it could be interpreted to be in violation of RCW 74.29.050.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 2, Repealed 0.

Date Adopted: December 30, 2022.

Katherine I. Vasquez
Rules Coordinator

SHS-4925.1

AMENDATORY SECTION (Amending WSR 18-12-035, filed 5/29/18, effective 6/30/18)

WAC 388-891A-0610 How are individuals selected for services when DVR is operating under an order of selection? When DVR is operating under an order of selection, individuals are selected for services as follows:

(1) At the time you are determined eligible for VR services, a DVR counselor assigns you to a priority category based on the severity of your disability.

(2) The priority categories are defined in WAC 388-891A-0620 through 388-891A-0660.

(3) As resources become available for DVR to serve additional individuals, DVR selects names from the waiting list in the priority category being served at that time.

(4) Within a priority category, the date you applied for VR services determines the order in which you are selected from the waiting list.

(5) DVR may provide you specific services or equipment without requiring that you wait for services under an order of selection if:

(a) You are at immediate risk of losing your job in a competitive integrated setting for reasons related to your disability; and

(b) You require specific services or equipment in the very near future that will enable you to keep your job.

~~((6) If you have successfully achieved an employment outcome as described in WAC 388-891A-1310, are currently employed, and require post-employment services, you are not required to wait for services under an order of selection.))~~

[Statutory Authority: RCW 74.29.020(8) and 34 C.F.R., Parts 361, 363, 397. WSR 18-12-035, § 388-891A-0610, filed 5/29/18, effective 6/30/18.]

AMENDATORY SECTION (Amending WSR 18-12-035, filed 5/29/18, effective 6/30/18)

WAC 388-891A-0890 What are post-employment services? Post-employment services include one or more vocational rehabilitation services provided if:

(1) ~~((Your case was closed because y))~~ You achieved ~~((an))~~ employment ~~((outcome))~~;

(2) Your rehabilitation needs are limited in scope and duration; and

(3) You need post-employment services to maintain, advance in, or regain employment that is consistent with your unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice.

[Statutory Authority: RCW 74.29.020(8) and 34 C.F.R., Parts 361, 363, 397. WSR 18-12-035, § 388-891A-0890, filed 5/29/18, effective 6/30/18.]