

**WSR 23-15-044**  
**EXPEDITED RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
(Division of Vocational Rehabilitation)  
[Filed July 12, 2023, 2:43 p.m.]

Title of Rule and Other Identifying Information: Amending references in WAC 388-891A-0610 and 388-891A-0890 addressing post-employment services.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The division of vocational rehabilitation (DVR) received recent guidance from the rehabilitation services administration (RSA) that clarifies RSA's interpretation of when vocational rehabilitation agencies may provide post-employment services under the Rehabilitation Act. RSA's interpretation is inconsistent with how DVR was providing post-employment services prior to filing emergency rule WSR 23-10-044, which modified how the service is defined in WAC. Provision of post-employment services is subject to receipt of federal funding and continuing to apply WAC as written will place DVR out of compliance with federal guidance and could jeopardize its ability to receive federal funding. DVR is pursuing a rule change to stay in compliance with RCW 74.29.050. The attorney general's office, client assistance program, and the Washington state rehabilitation council have been consulted and support DVR's reasons for the rule making.

Reasons Supporting Proposal: Updating the rule will ensure DVR is in compliance with the RSA's guidance regarding the provision of post-employment services after employment has been achieved but before the individual is reported as having exited the vocational rehabilitation program.

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

Statute Being Implemented: 34 C.F.R. 361.5 (c)(41).

Rule is necessary because of federal law, [no further information supplied by agency].

Name of Proponent: Department of social and health services, governmental.

Name of Agency Personnel Responsible for Drafting: Mari Heusman, 4565 7th Avenue S.E., Lacey, WA 98504, 360-280-2044; Implementation and Enforcement: Cassi Villegas, 4565 7th Avenue S.E., Lacey, WA 98504, 360-764-0731.

This notice meets the following criteria to use the expedited adoption process for these rules:

Content is explicitly and specifically dictated by statute.

Explanation of the Reason the Agency Believes the Expedited Rule-Making Process is Appropriate: Amendments to WAC 388-891A-0610 and 388-891A-0890 incorporate language interpreted from explicit federal guidance, which falls under RCW 34.05.353(4), thus DVR believes the expedited rule-making process is appropriate.

NOTICE

THIS RULE IS BEING PROPOSED UNDER AN EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THIS USE OF THE EXPEDITED RULE-MAKING PROCESS, YOU MUST EX-

PRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO Katherine I. Vasquez, Rules Coordinator, Department of Social and Health Services, 1115 Washington Street S.E., Olympia, WA 98504, phone 360-664-6097, fax 360-664-6185, email DSHSRPAURulesCoordinator@dshs.wa.gov, AND RECEIVED BY 5:00 p.m. on September 18, 2023.

July 12, 2023  
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.]