

**RULES
OF
THE TENNESSEE DEPARTMENT OF HUMAN SERVICES
REHABILITATION SERVICES DIVISION**

**CHAPTER 1240-08-05
SERVICES TO INDIVIDUALS: RELATED PROVISIONS**

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1240-08-05-.01 ORDER OF SELECTION AND PRIORITY FOR SERVICES.

- (1) When VR is unable to provide the full range of VR services to all individuals who meet the basic requirements for eligibility, VR is required to implement an Order of Selection to be followed in prioritizing individuals who meet the basic requirements for eligibility for the provision of VR services. VR determines when and if an Order of Selection will be implemented.
- (2) When an Order of Selection is implemented, individuals previously determined eligible for VR services and receiving services under an IPE are not affected. An Order of Selection does not regulate the provision or authorization of diagnostic assessments.
- (3) After implementation of an Order of Selection, each individual who meets the basic requirements for eligibility will be placed into the highest category justified according to paragraph (4).
- (4) Disability Priority Categories and definitions for an Order of Selection are determined by VR and are based on the federal definition of an individual with a significant disability and are as follows, with the lowest numerical category being the highest priority that must be considered first for the provision of services:
 - (a) Disability Priority Category 1 - Most Significantly Disabled.
 - (b) Disability Priority Category 2 - Significantly Disabled.
 - (c) Disability Priority Category 3 - Not Significantly Disabled.
 - (d) Disability Priority Category 4 - Cannot be categorized into a higher Disability Priority Category.
- (5) An individual who is eligible to receive Supplemental Security Income (SSI) or Social Security Disability Insurance (SSDI) based on disability or blindness is presumed to be an individual who is Disability Priority Category 2 - Significantly Disabled.
- (6) VR determines which disability priority categories are open for the provision of services.
- (7) When an Order of Selection is implemented, those individuals who are placed into an open priority category may be served under an IPE. Those individuals who are placed in a closed

(Rule 1240-08-05-.01, continued)

priority category may not be served until the Order of Selection is lifted, the category is opened to provide services, or cases are released for the provision of services.

- (8) Individuals who are assigned a disability priority category that is closed, meaning services will not be provided, will be notified in writing and must be referred to other federal and state programs, including programs that are part of the one-stop service delivery system under the Workforce Innovation and Opportunity Act.
- (9) If VR will not continue to serve all individuals determined to be Disability Priority Category 1, services will be provided to new Disability Priority Category 1 individuals based upon date of application.
- (10) If VR is able to open a closed disability priority category or release cases to be provided services but is unable to serve all individuals in that category, services will be provided based upon the date of application.

Authority: T.C.A. §§ 4-5-202, 49-11-601, et seq., 71-1-104, and 71-1-105(a)(12); 29 U.S.C. §§ 720, et seq.; 34 C.F.R. §§ 361.5 and 361.36; and Executive Order No. 43 (1983). **Administrative History:** Original rule filed September 30, 1985; effective October 30, 1985. Amendment filed July 12, 2002; effective September 25, 2002. Repeal and new rule filed June 30, 2009; effective September 13, 2009. Amendments filed October 5, 2017; effective January 3, 2018. Amendments filed February 29, 2024; effective May 29, 2024.

1240-08-05-.02 FINANCIAL NEEDS ASSESSMENT.

- (1) VR will consider the financial need of each eligible individual in determining the extent of the individual's participation in the cost of services that require such participation.
- (2) A financial need assessment (FNA) is based on an individual's household income and financial circumstances, the number of individuals living in the household, allowed deductions, approved exceptions, and the current financial need level established by VR. The FNA will be conducted prior to development of an individual's IPE and annually thereafter or sooner if there are changes in an individual's financial circumstances.
 - (a) Household income includes the adjusted gross income (AGI) of the household contributors providing more than half of the individual's support as shown on the most recent completed joint or separate federal income tax returns regardless of whether the individual is claimed on the tax return or lives with the individuals; other individual and/or spouse income sources such as paycheck stubs, bank statements, business income receipts or fixed income deposits; and other income from household contributors other than the eligible individual such as SSA benefits, Families First benefits or other sources.
 - (b) Deductions include current out-of-pocket payments being made at the time the initial FNA or an annual financial need review is completed for non-reimbursed household medical or dental expenses; medical insurance premiums for which the individual is included in the coverage; court ordered obligations other than alimony; and post-secondary educational loans of the individual, not other household members.
 - (c) Exceptions to participating in the cost of services may include the amount of benefit for fixed income, payments for disability-related expenses, or similar financial circumstances.
- (3) Individuals who are determined to meet financial need are exempt from participating in the cost of most VR services using personal funds but are not exempt from applying for and using comparable services and benefits or from paying additional costs when services

(Rule 1240-08-05-.02, continued)

chosen by the individual exceed the allowable fees established by VR. Individuals who are determined to meet financial need include individuals:

- (a) Whose household income, financial circumstances, number of individuals living in the household and deductions have been verified and documented and, based on the FNA conducted in accordance with VR policy, the financial need level is not exceeded;
 - (b) Who have been determined eligible for and verified and documented to be receiving SSI or SSDI benefits based on the individual's own disability or blindness; or
 - (c) Who have been determined eligible for and verified and documented to be receiving Families First cash benefits.
- (4) Individuals who are determined to be over financial need are required to participate in the cost of services subject to need unless an exception has been approved by VR. Individual participation in the cost of services cannot exceed the amount that the individual is over need.
- (5) VR may not apply a financial needs test, or require the financial participation of the individual as a condition for furnishing the following VR services:
- (a) Assessment for determining eligibility and priority except those non-assessment services that are provided to an individual with a significant disability during either an exploration of the individual's abilities, capabilities, and capacity to perform in work situations through the use of trial work experiences;
 - (b) Assessment for determining vocational rehabilitation needs;
 - (c) Vocational rehabilitation counseling and guidance;
 - (d) Referral and other similar services;
 - (e) Job-related services;
 - (f) Personal assistance services;
 - (g) Any auxiliary aid or service (e.g., interpreter services), reader services that an individual with a disability requires under section 504 of the Rehabilitation Act (29 U.S.C. 794) or the Americans with Disabilities Act (42 U.S.C. 12101, et seq.), or regulations implementing those laws, in order for the individual to participate in the VR program as authorized under this part; or
 - (h) If the individual in need of a service has been determined eligible for Social Security benefits under titles II or XVI of the Social Security Act.

Authority: T.C.A. §§ 4-5-202, 49-11-601, et seq., and 71-1-105(a)(12); 29 U.S.C. §§ 720, et seq.; and 34 C.F.R. § 361.54. **Administrative History:** Original rule filed September 30, 1985; effective October 30, 1985. Amendment filed July 12, 2002; effective September 25, 2002. Repeal and new rule filed June 30, 2009; effective September 13, 2009. New rule filed February 29, 2024; effective May 29, 2024.

1240-08-05-.03 COMPARABLE SERVICES AND BENEFITS AND SUBROGATION.

- (1) In determining what VR services are provided to an individual and the scope of such services, the VR Program will consider the availability of comparable services or benefits from other sources to pay, in whole or in part, the cost of VR services unless such a determination would interrupt or delay:

(Rule 1240-08-05-.03, continued)

- (a) The progress of the individual toward achieving the employment outcome identified in the IPE;
 - (b) An immediate job placement; or
 - (c) The provision of VR services to any individual who is determined to be at extreme medical risk, based on medical evidence provided by an appropriate qualified medical professional.
- (2) The following VR services are exempt from a determination of comparable services:
 - (a) Evaluation to determine eligibility, rehabilitation needs, or priority for services;
 - (b) Counseling, guidance, and referral services;
 - (c) Vocational and other training, including vocational adjustment training, books, tools, and other training materials not provided in institutions of higher education;
 - (d) Placement services;
 - (e) Rehabilitation engineering services; and
 - (f) Post-employment services consisting of the services listed in (a) through (e) above.
- (3) Vocational and other training services in institutions of higher education may not be paid for with funds under this part unless maximum efforts have been made by VR and the individual to secure grant assistance in whole or in part from other sources to pay for the training. Institutions of higher education include universities, colleges, community/junior colleges, vocational schools, technical institutes, or hospital schools of nursing. Comparable benefits include Pell Grants, Supplemental Educational Opportunity Grants, Tennessee Student Assistance Awards, Tennessee post-secondary education scholarships and awards administered by the Tennessee Student Assistance Corporation, and institutional grants, awards or scholarships, including fellowships or other awards. Comparable services and benefits do not include educational awards and scholarships based on merit except when an award or scholarship is earmarked to credit a student's account.
- (4) Federal and state educational grants awarded to an individual must be used to pay for educational expenses in accordance with appropriate federal, state and institutional guidelines.
- (5) Comparable services and benefits may also be available for individuals eligible for Medicare or Medicaid (TennCare), Children's Special Services, or private health insurance.
- (6) If comparable services or benefits are not available to pay for VR services at the time needed, VR may pay for services until those comparable services and benefits become available.
- (7) If, during the provision of services, comparable services or benefits become available or an individual's circumstances change in such a way as to impact entitlement, VR will determine the extent of entitlement and availability and the effect on payment for the services.
- (8) When an individual's comparable services or benefits for a service are exhausted, VR may pay for the cost the service.

(Rule 1240-08-05-.03, continued)

- (9) When VR funds are expended on behalf of an eligible individual for goods or services that a third party is or becomes legally obligated to pay in compensation for an accident or injury which caused or contributed to the vocational rehabilitation eligibility, VR may exercise the right of recovery of such funds through subrogation. By accepting or receiving VR funds to pay the cost of goods and services, the individual is deemed to have agreed to and authorized such subrogation.

Authority: T.C.A. §§ 4-5-202, 49-11-601, et seq., 71-1-104, 71-1-105(a)(12), and 71-1-123; 29 U.S.C. §§ 720, et seq.; 34 C.F.R. § 361.53; and Executive Order No.43 (1983). **Administrative History:** Original rule filed September 30, 1985; effective October 30, 1985. Amendment filed July 12, 2002; effective September 25, 2002. Repeal and new rule filed June 30, 2009; effective September 13, 2009. Amendments filed October 5, 2017; effective January 3, 2018. Amendments filed February 29, 2024; effective May 29, 2024.

1240-08-05-.04 PROTECTION, USE, AND RELEASE OF PERSONAL INFORMATION.

- (1) All information of individuals applying for or receiving services given or made available to VR employees, in the course of the administration of the VR Program, is confidential. Confidentiality extends to electronic information, photographs, lists of names, and personal identifiable information.
- (2) The use of such information and records is limited to purposes directly connected with the administration of the VR Program.
- (3) Information is not to be disclosed directly or indirectly, other than in the administration of the VR Program, unless the informed consent of the individual has been obtained in writing.
- (4) Upon the individual's written request, VR must release all information in the individual's record to the individual or the individual's representative, except that medical, psychological or other information deemed harmful to the individual will only be released to the individual through a designated third party. If the information comes from a separate entity, VR must follow the conditions for release of such information established by that entity.
- (5) VR may release personal identifiable information to another agency or organization, in accordance with an individual's written agreement, for its program purposes only to the extent that the information may be released to the involved individual or the individual's representative and only to the extent that the other agency or organization demonstrates that the information requested is necessary for its program.
- (6) VR may release information to an individual or organization engaged in research when the purpose is directly connected with the administration of the VR Program, and only after the individual or organization has furnished satisfactory assurances that the information shall be used only for the purpose it was provided, and:
 - (a) It shall not be released to persons not connected with the study under consideration, and
 - (b) The final product of the research shall not reveal any information that may identify any person who did not provide written consent to release the information.
- (7) Reports, surveys, case studies, research projects, and other information released to entities/organizations and individuals by counselors and other VR personnel may contain statistical information and data essential to the advancement of the program, but no information identifiable with any individual shall be included without the written consent of that individual.

(Rule 1240-08-05-.04, continued)

(8) Release of Personal Identifiable Information.

- (a) VR may release personal identifiable information to an organization, state entity, or individual engaged in an audit, evaluation, or research for purposes directly connected with the administration of the VR Program, or for purposes that would significantly improve the quality of life for applicants and eligible individuals, and only if the organization, entity, or individual assures that:
 - 1. The information will be used only for the purposes for which it is being provided;
 - 2. The information will be released only to individuals officially connected with the audit, evaluation, or research;
 - 3. The information will not be released to the involved individual, but will be managed in a manner to safeguard confidentiality; and
 - 4. The final product will not reveal any personal identifying information without the informed written consent of the involved individual or the individual's representative.
 - (b) Personal identifiable information will be released in response to investigations in connection with law enforcement, fraud, or abuse, unless expressly prohibited by federal or state laws or regulations, or in response to an order issued by a judge, magistrate, or other authorized judicial officer.
 - (c) Personal identifiable information may be released in order to protect the individual or others if the individual poses a threat to his or her safety or to the safety of others.
- (9) All documents containing information about the individual and possessed by the Division or VR are property of the Division.
- (10) An individual who believes that information in the record is inaccurate or misleading may request that the record be amended. If the information is not amended, the request for amendment must be documented in the record.
- (11) VR employees, contractors, service providers, cooperating agencies, and interested persons must secure all customer information in appropriate locations that is overseen by qualified personnel.
- (12) The Division may charge a reasonable fee for providing copies of records for purposes other than those of the VR Program in accordance with the rules of the Department at Chapter 1240-09 and state law.

Authority: T.C.A. §§ 4-5-202, 49-11-601, et seq., 71-1-104, and 71-1-105(a)(12); 29 U.S.C. §§ 720, et seq.; 34 C.F.R. § 361.38; and Executive Order No. 43 (1983). **Administrative History:** Original rule filed September 30, 1985; effective October 30, 1985. Amendment filed July 12, 2002; effective September 25, 2002. Repeal and new rule filed June 30, 2009; effective September 13, 2009. Amendments filed October 5, 2017; effective January 3, 2018. Amendments filed February 29, 2024; effective May 29, 2024.

1240-08-05-.05 AUXILIARY AIDS AND SERVICES.

- (1) A public accommodation may be necessary to ensure that no individual with a disability can be excluded, denied services, segregated or otherwise treated differently than other individuals because of the absence of auxiliary aids and services, unless the accommodation would fundamentally alter the nature of the goods, services, facilities, privileges, advantages,

(Rule 1240-08-05-.05, continued)

or accommodations being offered or would result in an undue burden, i.e., significant difficulty or expense. The term "auxiliary aids and services" includes:

- (a) Qualified interpreters, notetakers, computer-aided transcription services, written materials, foreign language interpreters, telephone handset amplifiers, assistive listening devices, assistive listening systems, telephones compatible with hearing aids, closed caption decoders, open and closed captioning, telecommunications devices for deaf persons (TDD's), videotext displays, or other effective methods of making aurally delivered materials available to individuals with hearing impairments;
 - (b) Qualified readers, taped texts, audio recordings, brailled materials, large print materials, or other effective methods of making visually delivered materials available to individuals with visual impairments;
 - (c) Acquisition or modification of equipment or devices; and
 - (d) Other similar services and actions.
- (2) VR will not assume the responsibility of other programs or vendors, such as post-secondary training institutions, community rehabilitation programs, physicians, psychologists, and placement agencies for providing auxiliary aids and services for public accommodation requirements.

Authority: T.C.A. §§ 4-5-202, 49-11-601, et seq., 49-11-701, et seq., 49-11-801, et seq., 71-1-104, and 71-1-105(a)(12); 29 U.S.C. §§ 720, et seq.; 28 CFR 36.303; 34 C.F.R. § 361.5; and Executive Order No. 43 (1983). **Administrative History:** Original rule filed September 30, 1985; effective October 30, 1985. Amendment filed July 12, 2002; effective September 25, 2002. Repeal and new rule filed June 30, 2009; effective September 13, 2009. Repeal filed October 5, 2017; effective January 3, 2018. New rule filed February 29, 2024; effective May 29, 2024.

1240-08-05-.06 RIGHT TO ADMINISTRATIVE REVIEW, MEDIATION, AND FAIR HEARING.

- (1) VR will provide timely due process for applicants or recipients of services or, as appropriate, their representatives who may be dissatisfied with any determination made by VR that affects the provision of VR services.
- (2) Due process may include an informal administrative review by appropriate VR supervisory staff, mediation by a qualified Mediator, or fair hearing by an Impartial Hearing Officer.
- (3) VR must provide written notice in accordance with VR requirements of due process to individuals, including their representatives when appropriate, and potentially eligible students with disabilities referred for pre-employment transition services:
 - (a) At the time the individual applies for VR services or at the first meeting for potentially eligible students with disabilities;
 - (b) At the time the individual is assigned to a priority category, if VR has established an order of selection;
 - (c) At the time the IPE is developed; and
 - (d) Whenever VR services for an individual are reduced, suspended, or terminated.
- (4) The request for a review of a determination made by VR that affects the provision of VR services may be either oral, written or on-line. The request must be made no later than thirty

(Rule 1240-08-05-.06, continued)

- (30) calendar days after the date of notification of a determination by VR. This includes a determination made as the result of an Informal Administrative Review or Mediation.
- (5) Unless otherwise requested by the individual or, as appropriate, the individual's representative, the default method for review will be by Informal Administrative Review.
 - (6) The VR Director must approve mediation and the availability of a qualified Mediator.
 - (7) Reviews requested by individuals, including their representatives when appropriate, must be conducted timely in accordance with VR requirements, including reporting to an individual or, as appropriate, the individual's representative the outcome of the review.
 - (8) VR may not institute a suspension, reduction, or termination of VR services being provided to an applicant or recipient, including evaluation and assessment services and IPE development, pending a resolution through mediation, pending a decision by a hearing officer, or reviewing official, or pending informal resolution under this section unless the individual or, in appropriate cases, the individual's representative, requests a suspension, reduction, or termination of services, or VR has evidence that the services have been obtained through misrepresentation, fraud, collusion, or criminal conduct on the part of the individual or the individual's representative.
 - (9) An individual or, as appropriate, the individual's representative, may request a fair hearing by an Impartial Hearing Officer at any time during an informal administrative review or mediation or no later than thirty (30) calendar days after the date of notification of a determination of an informal administrative review or mediation.
 - (10) An individual has the right to be represented by legal counsel or other representative and the right to submit evidence and other supporting information.
 - (11) Review made by an Impartial Hearing Officer is conducted in accordance with the requirements of the Division of Appeals and Hearings.

Authority: T.C.A. §§ 4-5-202, 4-5-301, et seq., 49-11-601, et seq., and 71-1-105(a)(12); 29 U.S.C. §§ 720, et seq.; and 34 C.F.R. §§ 361.5, 361.13, and 361.57. **Administrative History:** New rule filed February 29, 2024; effective May 29, 2024.

1240-08-05-.07 TENNESSEE REHABILITATION CENTER AT SMYRNA.

- (1) The Tennessee Rehabilitation Center at Smyrna (TRCS) is a statewide comprehensive rehabilitation and training center for applicants and eligible individuals receiving services from the Division's VR Program.
- (2) TRCS is a day and residential facility that provides services including, but not limited to, vocational training and counseling, rehabilitation services, wellness management services, and pre-employment transition services for students with disabilities.
- (3) Vocational training and counseling are provided at TRCS for a variety of vocational areas that lead to a certificate, credential, or industry certification and achievement of an employment outcome.
- (4) Rehabilitation services provides supports based on an individual's disability and rehabilitation need that may include cognitive, behavioral, sensory, physical and occupational, and recreation therapies.
- (5) Wellness management services provides management for an individual's medical and psychological needs due to the individual's disability.

(Rule 1240-08-05-.07, continued)

- (6) Pre-employment transition services are provided for students with disabilities in accordance with the student's need for such services.

Authority: T.C.A. §§ 4-5-202, 49-11-601, et seq., 71-1-104, and 71-1-105(a)(12); 29 U.S.C. §§ 720, et seq.; 34 C.F.R. §§ 361.38 and 361.51; and Executive Order No. 43 (1983). **Administrative History:** Original rule filed September 30, 1985; effective October 30, 1985. Amendment filed July 12, 2002; effective September 25, 2002. Repeal and new rule filed June 30, 2009; effective September 13, 2009. Amendments filed October 5, 2017; effective January 3, 2018. Rule was previously numbered 1240-08-05-.06 but was renumbered 1240-08-05-.07 with the introduction of a new rule 1240-08-05-.06 filed February 29, 2024; effective May 29, 2024. Amendments filed February 29, 2024; effective May 29, 2024.

1240-08-05-.08 COMMUNITY VR SERVICES.

- (1) Community VR services for applicants and eligible individuals to prepare for and achieve competitive integrated employment and pre-employment transition services for students with disabilities are provided by the VR Community Services Unit (CSU). Services include, but are not limited to, individualized pre-plan assessments, career readiness services, individualized services based on rehabilitation need, and pre-employment transition services for students with disabilities that consists of information or activities regarding potential employment, post-secondary training, and self-advocacy.
- (2) Services are provided in accordance with the individual's rehabilitation needs.
- (3) The CSU maintains standards for the provision of services.
- (4) The CSU may also offer services to employers including, but not limited to, marketability, recruitment, industry outsourcing, internships, and services to injured workers.

Authority: T.C.A. §§ 4-5-202, 49-11-601, et seq., 49-11-701, et seq., 71-1-104, and 71-1-105(a)(12); 29 U.S.C. §§ 720, et seq.; 34 C.F.R. § 361.51; and Executive Order No. 43 (1983). **Administrative History:** Original rule filed September 30, 1985; effective October 30, 1985. Amendment filed July 12, 2002; effective September 25, 2002. Repeal and new rule filed June 30, 2009; effective September 13, 2009. Amendments filed October 5, 2017; effective January 3, 2018. Rule was previously numbered 1240-08-05-.07 but was renumbered 1240-08-05-.08 with the introduction of a new rule 1240-08-05-.06 filed February 29, 2024; effective May 29, 2024. Amendments filed February 29, 2024; effective May 29, 2024.