

**RULES  
OF  
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 CATEGORIES.**

- (1) The purpose of the Order of Selection is to provide an organized method of serving selected groups of individuals if resources are not available to serve all eligible individuals who apply. The Division director shall determine when and if the Order of Selection will be implemented. Individuals previously declared eligible for vocational rehabilitation services and receiving services under an Individualized Plan for Employment (IPE) are not affected when the Order of Selection is implemented. The Order of Selection shall not regulate the provision or authorization of diagnostic evaluations or post-employment services.
- (2) An eligible individual in a closed priority category must be referred to other federal and state programs, including other components of the Workforce Investment System.
- (3) After implementation of an Order of Selection, each individual determined eligible for services must be placed into a priority category with consideration of the following:
  - (a) Each eligible individual will be placed into the highest category justified, according to the provisions in paragraph (4).
  - (b) A rationale for the priority will be documented in each individual's case record.
  - (c) An eligible individual may be placed into a higher priority category as circumstances justify the reclassification; however, individuals will not be reclassified into a lower priority category once services are developed in an IPE and agreed to by the individual by obtaining his or her signature.
  - (d) Each eligible individual who is assigned a priority category that is closed will be notified in writing.
  - (e) If the Division of Rehabilitation Services cannot continue to serve all new cases in Priority Category 1, services will be provided to new Priority Category 1 cases based upon date of application.
  - (f) If the Division is able to open a closed priority category but is unable to serve all eligible individuals on the waiting list, services will be provided based upon the date of application.
- (4) The Order of Selection Priority Categories is as follows; the lowest numerical category is the highest priority:
  - (a) Category I:

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

Eligible individuals who have the most significant disabilities.

(b) Category II:

Eligible individuals who have significant disabilities.

(c) Category III:

Eligible individuals who do not have significant disabilities, but whose vocational rehabilitation is expected to require multiple vocational rehabilitation services.

(d) Category IV:

Eligible individuals who do not have significant disabilities who cannot be classified into a higher priority category.

(5) An individual who receives SSI or SSDI based on disability or blindness is presumed to be an individual with a significant disability.

(6) 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 priority category may not be served until the Order of Selection is lifted.

(7) Definitions of terms in an Order of Selection:

(a) "Order of Selection" means an organized equitable method for serving individuals when all eligible individuals who apply cannot be served due to limited funds.

(b) "Priority Category" means the classification of eligible individuals according to priority for receipt of vocational rehabilitation services under an Order of Selection.

(c) "Significant Disability" means an individual's disability meets the three (3) following criteria:

1. The individual has a severe physical or mental disability which seriously limits at least one functional capacity (such as mobility, communication, self-care, self-direction, interpersonal skills, work tolerance, or work skills) in terms of an employment outcome;
2. The individual's vocational rehabilitation can be expected to require multiple vocational rehabilitation services over an extended period of time; and
3. The individual has one or more physical or mental disabilities resulting from amputation, arthritis, autism, blindness, burn injury, cancer, cerebral palsy, cystic fibrosis, deafness, head injury, heart disease, hemiplegia, hemophilia, respiratory or pulmonary dysfunction, mental retardation, mental illness, multiple sclerosis, muscular dystrophy, musculo-skeletal disorders, neurological disorders (including stroke and epilepsy), spinal cord conditions (including paraplegia and quadriplegia), sickle cell anemia, specific learning disability, end-stage renal disease, or another disability or combination of disabilities determined on the basis of an assessment for determining eligibility and vocational rehabilitation needs to cause comparable substantial functional limitation.

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

- (d) "Most Significant Disability" means an individual's disability meets the criteria for significant disability in (c) but has a physical or mental disability that seriously limits two (2) or more functional capacities.
- (e) "Non-Significant Disability" means an individual's disability does not meet the criteria for significant disability or the criteria for most significant disability.
- (f) "Multiple Vocational Rehabilitation Services" means two (2) or more major vocational rehabilitation services, i.e. physical or mental restoration, training, counseling and guidance, or placement. Excluded are support services such as transportation, maintenance, and the routine counseling and guidance that should take place in every case.
- (g) "Extended Period of Time" means six (6) months or more from the date services are initiated.

**Authority:** T.C.A. §§4-5-202; 71-1-104; 71-1-105(12); 49-11-601 et seq.; 29 U.S.C. §§ 720 et seq.; 34 C.F.R. §§ 361.5; 361.36; Executive Order No. 43. **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.

#### **1240-08-05-.02 RESERVED FOR FUTURE USE.**

**Authority:** T.C.A. §§4-5-202; 71-5-105(12). **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.

#### **1240-08-05-.03 CONSIDERATION OF COMPARABLE SERVICES OR BENEFITS AND SUBROGATION.**

- (1) In determining what services are provided to an individual and the scope of such services, the Division of Rehabilitation Services will consider the availability of comparable services from other sources. If comparable services exist, they must be used to meet, in whole or in part, the cost of rehabilitation services. Such services to be considered must be adequate, timely, and not delay services to an individual who is at extreme medical risk.
- (2) 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 the state entity 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 do not include awards and scholarships based on merit.
- (3) When the eligible individual is entitled to money or benefits in compensation for an accident which caused or contributed to the vocational rehabilitation eligibility, the entity requires reimbursement for the cost of rehabilitation services, except as exempt by law.
- (4) When DRS funds are expended on behalf of an individual for goods or services that a third party is or becomes legally obligated to pay, the Division is subrogated to the rights of the individual to receive such payment. By accepting or receiving such DRS funds, the individual is deemed to have agreed to and authorized such subrogation.
- (5) The following services are exempt from a determination of comparable services:
  - (a) Evaluation to determine eligibility, rehabilitation needs, or priority for services;

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

- (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;
- (f) Post-employment services consisting of the services listed in (a) through (e) above.

**Authority:** T.C.A. §§4-5-202; 71-1-104; 71-1-105(12); 71-1-123; 49-11-601 et seq.; 29 U.S.C. §§ 720 et seq.; 34 C.F.R. § 361.53; Executive Order No.43. **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.

#### 1240-08-05-.04 CONFIDENTIALITY.

- (1) All information as to personal facts involving individuals applying for or receiving services given or made available to DRS employees, in the course of the administration of the vocational rehabilitation program, is confidential. Confidentiality extends to electronic information, photographs, and lists of names.
- (2) The use of such information and records is limited to purposes directly connected with the administration of the vocational rehabilitation program.
- (3) Information is not to be disclosed directly or indirectly, other than in the administration of the vocational rehabilitation program, unless the informed consent of the individual has been obtained in writing.
- (4) The Division of Rehabilitation Services shall, upon the individual's written request, 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, the state must follow the conditions for release of such information established by that entity.
- (5) DRS may release confidential information, including medical and psychological data, without the written consent of the individual when the person or entity receiving the information is providing a DRS-sponsored service to the individual and provides assurances that:
  - (a) The confidential nature of the information shall be preserved;
  - (b) The information is used for the purpose for which it was made available; and
  - (c) The use of the information is related to the purpose and functions of the entity to which it is given.
- (6) DRS may release information to an individual or organization engaged in research when the purpose is directly connected with the administration of the state vocational rehabilitation 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

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

- (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 DRS 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.
- (8) Release of Personal Information.
  - (a) DRS may release personal information to an organization, state entity, or individual engaged in audit, evaluation, or research for purposes directly connected with the administration of the vocational rehabilitation 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 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 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 are property of the Division of Rehabilitation Services.
- (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) The Division may charge a reasonable fee for providing copies of records for purposes other than those of the rehabilitation program in accordance with the rules of the Department at Chapter 1240-09 and state law.

**Authority:** T.C.A. §§4-5-202; 71-1-104; 71-1-105(12); 49-11-601 et seq.; 29 U.S.C. §§ 720 et seq.; 34 C.F.R. §§ 361.38; Executive Order No. 43. **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.

**1240-08-05-.05 REVIEW OF EXTENDED EMPLOYMENT IN REHABILITATION FACILITIES.**

DRS annually reviews and reevaluates the status of individuals with a disability served under the vocational rehabilitation program who have entered extended employment within a community rehabilitation program or in any other employment setting in which the individual is compensated in accordance with section 14(c) of the Fair Labor Standards Act codified at 29 U.S.C.A. § 214. These reviews are conducted for two (2) years after the individual achieves the employment outcome and thereafter, if requested by the individual or the individual's representative, to determine the interests, priorities and needs of the individual with respect to competitive employment or training for competitive employment.

**Authority:** T.C.A. §§4-5-202; 71-1-104; 71-1-105(12); 49-11-601 et seq.; 29 U.S.C. § 214; 29 U.S.C. §§ 720 et seq.; 34 C.F.R. § 361.55; 29 C.F.R. § 525 et seq.; Executive Order No. 43. **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.

**1240-08-05-.06 TENNESSEE REHABILITATION CENTER.**

- (1) The Tennessee Rehabilitation Center is a statewide comprehensive rehabilitation and training center for individuals receiving services from the Division of Rehabilitation Services. The residential facility provides services including, but not limited to, physical and occupational therapy, medical services, vocational evaluation, personal and social evaluation, personal adjustment training, work adjustment training, vocational training, and counseling.
- (2) Generally, referrals to the Center will consist of applicants or eligible individuals from the Division of Rehabilitation Services. The DRS counselor is responsible for initiating referrals to the Center. The counselor will complete a TRC application form and send it with the referral information to the TRC Admissions Office. The Admissions Office staff reviews the referral information and makes a decision to accept or deny the application or to request further information.
- (3) Eligibility Criteria.

Clients eligible for admission to programs of services at the Tennessee Rehabilitation Center must:

- (a) Be medically and emotionally stable,
- (b) Pose no threat to self or others,
- (c) Not require one-to-one supervision,
- (d) Be able to adjust to a group living experience, and
- (e) Have needs for services that existing staff and facilities can meet.

**Authority:** T.C.A. §§4-5-202; 71-1-104; 71-1-105(12); 49-11-601 et seq.; 29 U.S.C. §§ 720 et seq.; 34 C.F.R. § 361.51; Executive Order No. 43. **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.

**1240-08-05-.07 COMMUNITY TENNESSEE REHABILITATION CENTERS.**

- (1) The Community Tennessee Rehabilitation Centers are comprised of centers in rural areas that provide an array of services including, but not limited to, comprehensive vocational evaluation, employee development services, and community employment service.
- (2) Generally, referrals are made by the vocational rehabilitation counselor and consist of applicants or eligible individuals from the Division of Rehabilitation Services.
- (3) Applicants or eligible individuals referred must:
  - (a) Be medically and emotionally stable,
  - (b) Pose no threat to self or others,
  - (c) Not require one-to-one supervision,
  - (d) Be able to adjust to a group training/work environment, and
  - (e) Have needs for services that existing staff and facilities can meet.
- (4) The Community Tennessee Rehabilitation Centers 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; 71-1-104; 71-1-105(12); 49-11-601 et seq.; 49-11-701 et seq.; 29 U.S.C. §§ 720 et seq.; 34 C.F.R. § 361.51; Executive Order No. 43. **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.