

**DEPARTMENT OF VETERANS  
AFFAIRS**

**38 CFR Part 21**

**RIN 2900-AK90**

**Vocational Training for Certain  
Children of Vietnam Veterans—  
Covered Birth Defects and Spina Bifida**

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Proposed rule.

**SUMMARY:** This document proposes to establish regulations regarding provision of vocational training and rehabilitation for women Vietnam veterans' children with covered birth defects. It would revise the current regulations regarding vocational training and rehabilitation for Vietnam veterans' children suffering from spina bifida to also encompass vocational training and rehabilitation for women Vietnam veterans' children with certain other birth defects. This is necessary to provide vocational training and rehabilitation for such children in accordance with recently enacted legislation. Companion documents entitled "Monetary Allowances for Certain Children of Vietnam Veterans; Identification of Covered Birth Defects" (RIN 2900-AK67) and "Health Care for Certain Children of Vietnam Veterans—Covered Birth Defects and Spina Bifida" (RIN 2900-AK88) are set forth in the Proposed Rules section of this issue of the **Federal Register**.

**DATES:** Comments must be received by VA on or before February 1, 2002, except that comments on the information collection provisions in this document must be received on or before March 4, 2002.

**ADDRESSES:** Mail or hand deliver written comments to: Director, Office of Regulations Management (02D), Room 1154, 810 Vermont Ave., NW, Washington, DC 20420; or fax comments to (202) 273-9289; or e-mail comments to [OGCRegulations@mail.va.gov](mailto:OGCRegulations@mail.va.gov). Comments should indicate that they are submitted in response to "RIN 2900-AK90." All comments received will be available for public inspection in the Office of Regulations Management, Room 1158, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays). In addition, see the Paperwork Reduction Act heading under the **SUPPLEMENTARY INFORMATION** section of this preamble regarding submission of comments on the information collection provisions.

**FOR FURTHER INFORMATION CONTACT:** Charles A. Graffam, Consultant, Vocational Rehabilitation and

Employment Service (282), Department of Veterans Affairs, 810 Vermont Ave., NW, Washington, DC 20420; (202) 273-7410.

**SUPPLEMENTARY INFORMATION:** Prior to the enactment of Public Law 106-419 on November 1, 2000, the provisions of 38 U.S.C. chapter 18 only concerned benefits for children with spina bifida who were born to Vietnam veterans. Effective December 1, 2001, section 401 of Public Law 106-419 amends 38 U.S.C. chapter 18 to add benefits for women Vietnam veterans' children with certain birth defects (referred to below as "covered birth defects").

As amended, 38 U.S.C. chapter 18 provides for three separate types of benefits for women Vietnam veterans' children who suffer from covered birth defects as well as for Vietnam veterans' children who suffer from spina bifida: (1) Monthly monetary allowances for various disability levels; (2) provision of health care needed for the child's spina bifida or covered birth defects; and (3) provision of vocational training and rehabilitation.

This document proposes to amend VA's "Vocational Rehabilitation and Education" regulations (38 CFR part 21) by revising the regulations in part 21, subpart M (§§ 21.8010 through 21.8410) concerning the provision of vocational training and rehabilitation. These regulations currently only concern the provision of vocational training and rehabilitation for Vietnam veterans' children with spina bifida. This document proposes to revise the regulations by adding women Vietnam veterans' children with covered birth defects to the existing regulatory framework. The revisions would also correct the references to § 21.222 in § 21.8210 and to § 21.8020 in § 21.8082 and make other nonsubstantive changes for purposes of clarity. These would include amending § 21.8050(c) to clarify that VA does not provide for room and board for a vocational training program under part 21, subpart M, other than for a period of 30 days or less in a special rehabilitation facility for purposes of an extended evaluation or to improve and enhance vocational potential.

As a condition of eligibility for the provision of vocational training and rehabilitation under 38 U.S.C. 1814 for women Vietnam veterans' children with covered birth defects, it is proposed that the child must be an *individual* determined to have a *covered birth defect* under 38 CFR 3.815. (Definitions of the terms *individual* and *covered birth defect* and provisions concerning identification of covered birth defects are included in proposed § 3.815 set

forth in the companion document concerning monetary allowances and identification of covered birth defects (RIN 2900-AK67) published in the Proposed Rules section of this issue of the **Federal Register**.)

This proposed rule includes a definition of *eligible child* that describes a child for whom the statute authorizes VA to provide vocational training under this subpart. In the revised § 21.8282, "Termination of a vocational training program," we propose to add provisions that would be applicable if VA makes a determination that a child no longer has a covered birth defect.

By statute, a child would only be eligible for one program of vocational training under 38 U.S.C. chapter 18 (even if, for example, a child has spina bifida and one or more other covered birth defects). It is proposed to reflect this in § 21.8016.

It is proposed that a woman Vietnam veteran's child with covered birth defects receive testing and evaluative services, as needed, similar to the testing and services that VA offers a veteran for the purposes of evaluation for eligibility and entitlement under a vocational rehabilitation program under 38 U.S.C. chapter 31. These testing and evaluative services are appropriate for determining whether it is reasonably feasible for the child to achieve a vocational goal and to guide the child, parent, or guardian in choosing a vocational training program for the child. This already applies to vocational training and rehabilitation for Vietnam veterans' children with spina bifida.

It is proposed that an eligible child would receive vocational training program services and assistance under provisions that, under the 38 U.S.C. chapter 31 program, already apply to vocational training program services and assistance for eligible veterans with service-connected disabilities. In this regard, it is proposed that the following provisions of 38 CFR part 21, subpart A, would apply as set forth in the text portion of this document:

- § 21.35 concerning certain definitions and explanations (see proposed § 21.8010).
- § 21.250(a) and (b)(2), concerning provision of employment services, including the definition of job development; § 21.252 concerning job development and placement services; § 21.254 concerning supportive services; § 21.256 concerning incentives for employers; and §§ 21.257 and 21.258 concerning rehabilitation through self-employment, including special assistance for persons engaged in self-employment programs (see proposed § 21.8020).

- §§ 21.50(b)(5) and 21.53(b) and (d) concerning the scope and nature of an evaluation of the reasonable feasibility of achieving a vocational goal (see proposed § 21.8032).
- §§ 21.80, 21.84, and 21.88 concerning the requirements for an individualized written plan of vocational rehabilitation and its purposes, to include employment assistance; and §§ 21.92, 21.94 (a) through (d), and 21.96 concerning preparation of, changes to, and review of an individualized written plan of vocational rehabilitation (see proposed §§ 21.8080 and 21.8082).
- §§ 21.100 and 21.380 concerning counseling (see proposed § 21.8100).
- § 21.120 concerning vocational training; §§ 21.122 through 21.132 concerning types of allowable vocational training; and § 21.146 concerning independent instructor courses (see proposed § 21.8120).
- §§ 21.290 through 21.298 concerning course approval and facility selection (except that the provisions pertaining to use of facilities offering independent living services to evaluate independent living potential (see § 21.294(b)(1)(i)) and to provide a program of independent living services to individuals for whom an Individualized Independent Living Plan (IILP) has been developed (see § 21.294(b)(1)(ii)) do not apply, and provisions concerning authorization of independent living services as an incidental part of a plan (see § 21.294(b)(1)(iii)) apply, in a comparable manner as for veterans under the 38 U.S.C. chapter 31 program, only to the extent allowable under proposed § 21.8050 for an individualized written plan of vocational rehabilitation (see proposed §§ 21.8120 and 21.8286).
- § 21.142(a) and (b); § 21.144; § 21.146; § 21.148(a) and (c); § 21.150, other than paragraph (b); § 21.152, other than paragraph (b); § 21.154, other than paragraph (b); and § 21.156 concerning special rehabilitative services of the following types: adult basic education, vocational course in a sheltered workshop or rehabilitation facility, independent instructor course, tutorial assistance, reader service, interpreter service for the hearing impaired, special transportation assistance, and other vocationally oriented incidental services (see proposed § 21.8140).
- §§ 21.212 through 21.224 concerning supplies (however, the following provisions do not apply to this subpart: § 21.216(a)(3) concerning special modifications, including automobile adaptive equipment; § 21.220(a)(1) concerning advancements

from the 38 U.S.C. chapter 31 program revolving loan fund; and § 21.222(b)(1)(x) concerning release or repayment for independent living services program supplies) (see proposed § 21.8210).

- § 21.262 concerning reimbursement for costs of training and rehabilitation facilities, supplies, and services (see proposed § 21.8260).
- §§ 21.60 and 21.62 concerning a medical consultant and the Vocational Rehabilitation Panel and § 21.310 concerning rate of pursuit measurement (see proposed § 21.8310).
- § 21.326 concerning the commencement and termination dates of a period of employment services (see proposed § 21.8320).
- §§ 21.362 and 21.364 concerning satisfactory conduct and cooperation (see proposed § 21.8360).
- § 21.154 concerning special transportation allowance; § 21.370 (however, the words “under § 21.282” in § 21.370(b)(2)(iii)(B) do not apply) and § 21.372 concerning intraregional and interregional travel at government expense; and § 21.376 concerning authorization of transportation services for evaluation or counseling (see proposed § 21.8370).
- § 21.380 concerning personnel qualification standards; §§ 21.412 and 21.414 (except § 21.414(c), (d), and (e)) concerning finality and revision of decisions; § 21.420 concerning notification that VA will provide as to findings, decisions, and appeal rights; and § 21.430 concerning accountability for authorization and payment of program costs for training and rehabilitation services (see proposed § 21.8380).

As set forth in the text portion of this document, these provisions appear to be appropriate to apply to the provision of vocational training and rehabilitation for women Vietnam veterans' children with covered birth defects. The same provisions apply to the provision of vocational training and rehabilitation for Vietnam veterans' children with spina bifida.

It is also proposed that VA officials will inform children who have covered birth defects about any vocational training and rehabilitation that may be available under other governmental and nongovernmental programs. This already applies to the provision of vocational training and rehabilitation for Vietnam veterans' children with spina bifida.

It is proposed that VA provide case management to assist the eligible child throughout a planned vocational training program. This would help to ensure that the child achieves the

maximum vocational benefit from the program. This already applies to the provision of vocational training and rehabilitation for Vietnam veterans' children with spina bifida.

#### Comment Period

We are providing, except for comments on the information collection provisions, a comment period of 30 days for this proposed rule due to the December 1, 2001, effective date of the new benefit programs enacted by section 401 of Public Law 106-419, the statutory requirement for a final rule prior to that date, and the need to have a final rule as soon as possible in order to avoid delay in the commencement of those benefits. We are providing for the information collections in this document a 60-day comment period pursuant to the Paperwork Reduction Act.

#### Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520), collections of information are set forth in the provisions of proposed §§ 21.8014 and 21.8370. Proposed § 21.8014 would amend the provisions prescribing the information to be submitted for an application for a Vietnam veteran's child suffering from spina bifida to participate in a VA vocational training program. Proposed § 21.8370 would permit a request for reimbursement for certain transportation costs and would require submission of supporting documentation to receive reimbursement. Although provisions in the current § 21.8016 previously had been approved by the Office of Management and Budget (OMB) as an information collection under control number 2900-0581, VA is not seeking reinstatement and is requesting OMB to discontinue that approval because, as currently in effect and as proposed to be revised, § 21.8016 affects fewer than 10 respondents annually. As required under section 3507(d) of the Act, VA has submitted a copy of this rulemaking action to the OMB for its review of the collections of information in this proposed rule.

OMB assigns a control number for each collection of information it approves. VA may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Comments on the collections of information contained in this proposed rule should be submitted to the Office of Management and Budget, Attention Desk Officer for the Department of Veterans Affairs, Office of Information

and Regulatory Affairs, Washington, DC 20503, with copies sent by mail or hand delivery to the Director, Office of Regulations Management (O2D), Department of Veterans Affairs, 810 Vermont Ave. NW, Room 1154, Washington, DC 20420; by fax to (202) 273-9289; or by e-mail to [OGCRegulations@mail.va.gov](mailto:OGCRegulations@mail.va.gov).

Comments should indicate that they are submitted in response to "RIN 2900-AK90." All written comments to VA will be available for public inspection in the Office of Regulations Management, Room 1158, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays).

*Title:* Application for Vocational Training Benefits—Certain Children of Vietnam Veterans.

*Summary of collection of information:* The provisions of proposed 38 CFR 21.8014 would extend to women Vietnam veteran's children with covered birth defects the requirement that is applicable to Vietnam veterans' children with spina bifida for submitting an application for vocational training to be considered for this benefit.

*Type of review:* Reinstatement with change of a previously approved collection for which approval has expired (OMB control number 2900-0579).

*Description of need for information and proposed use of information:* VA needs to know sufficient identifying information about the applicant and the applicant's natural parent who was a Vietnam veteran to be able to relate the claim to other existing VA records. The information collected allows the Vocational Rehabilitation and Employment (VR&E) Division to review the existing records and to set up an appointment for an applicant to meet with a VR&E staff member to evaluate the claim.

*Description of likely respondents:* Adult children with spina bifida or other covered birth defects, parents or guardians of minor or incompetent children with spina bifida or other covered birth defects, authorized representatives, or Members of Congress.

*Estimated number of respondents:* 50.

*Estimated frequency of responses:* Once.

*Estimated total annual reporting and recordkeeping burden:* 12.5 reporting burden hours. The total annual reporting burden is based on each respondent taking 15 minutes to write to VA indicating a desire to take part in a vocational training program and providing the necessary identifying information. Although there is no set

format for this application, the applicant must provide certain information to perfect the claim. There are no recordkeeping requirements.

*Estimated average burden per respondent:* 15 minutes.

*Title:* Request for Transportation Expense Reimbursement.

*Summary of collection of information:* The provisions of proposed 38 CFR 21.8370 would extend to women Vietnam veteran's children with covered birth defects the current requirement applicable to Vietnam veterans' children with spina bifida that a child receiving vocational training to request VA payment for travel expenses. VA must determine that the child would be unable to pursue training or employment or employment without this assistance. To obtain payment, the child must submit documentation showing the expenses of transportation.

*Type of review:* Reinstatement with change of a previously approved collection for which approval has expired (OMB control number 2900-0580).

*Description of need for information and proposed use of information:* A child must specifically request VA assistance with transportation expenses. This allows VA to investigate the child's situation to establish that the child would be unable to pursue training or employment without VA travel assistance. To receive payment, the child must provide supportive documentation of actual expenses incurred for the travel. This prevents VA from making payment erroneously or for fraudulently claimed travel.

*Description of likely respondents:* Children with spina bifida or other covered birth defects.

*Estimated number of respondents:* 40. Approximately half of the children who plan and enter a program will need VA financial support for their transportation expenses while in a program.

*Estimated frequency of responses:* Once for the initial request; monthly to obtain the travel reimbursement.

*Estimated total annual reporting and recordkeeping burden:* 50 reporting burden hours. Each respondent will require 15 minutes to prepare and submit the initial request ( $40 \times \frac{1}{4}$  hour = 10 hours). Each respondent will then require 5 minutes to copy and submit receipts for transportation expenses to obtain reimbursement ( $40 \times 12 \times \frac{1}{12}$  hour = 40 hours).

*Estimated average burden per respondent:* 1 hour and 15 minutes.

The Department considers comments by the public on proposed collections of information in—

- Evaluating whether the proposed collections of information are necessary for the proper performance of the functions of the Department, including whether the information will have practical utility;

- Evaluating the accuracy of the Department's estimate of the burden of the proposed collections of information, including the validity of the methodology and assumptions used;

- Enhancing the quality, usefulness, and clarity of the information to be collected; and

- Minimizing the burden of the collections of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

OMB is required to make a decision concerning the collections of information contained in this proposed rule between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment on the proposed regulations.

#### **Executive Order 12866**

This proposed rule has been reviewed by OMB under Executive Order 12866.

#### **Regulatory Flexibility Act**

The Secretary of Veterans Affairs hereby certifies that the adoption of the proposed rule would not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601-612. It is estimated that there are only 1,200 Vietnam veterans' children who suffer from spina bifida and women Vietnam veteran's children who suffer from spina bifida or other covered birth defects. They are widely dispersed geographically, and the services provided to them would not have a significant impact on any small businesses. Moreover, the institutions capable of providing appropriate services and vocational training to Vietnam veteran's children with covered birth defects or spina bifida are generally large capitalization facilities. Therefore, pursuant to 5 U.S.C. 605(b), this proposed rule is exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

#### **Catalog of Federal Domestic Assistance**

The Catalog of Federal Domestic Assistance program number for benefits

affected by this rule is 64.128. There is no Catalog of Federal Domestic Assistance program number for other benefits affected by this rule.

#### List of Subjects in 38 CFR Part 21

Administrative practice and procedure, Armed forces, Civil rights, Claims, Colleges and universities, Conflicts of interest, Defense Department, Education, Employment, Government contracts, Grant programs-education, Grant programs-veterans, Health care, Loan programs-education, Loan programs-veterans, Manpower training programs, Personnel training programs, Reporting and recordkeeping requirements, Schools, Travel and transportation expenses, Veterans, Vocational education, Vocational rehabilitation.

Approved: October 26, 2001.

**Anthony J. Principi,**

*Secretary of Veterans Affairs.*

For the reasons set forth in the preamble, 38 CFR part 21 is proposed to be amended as set forth below:

#### PART 21—VOCATIONAL REHABILITATION AND EDUCATION

1. In part 21, the heading of subpart M is revised to read as follows:

##### Subpart M—Vocational Training and Rehabilitation for Certain Children of Vietnam Veterans—Spina Bifida and Covered Birth Defects

2. The authority citation for part 21, subpart M is revised to read as follows:

**Authority:** 38 U.S.C. 101, 501, 512, 1151 note, 1802, 1804–1805, 1811, 1811 note, 1812, 1814, 1816, 1821–1824, 5112, unless otherwise noted.

3. Sections 21.8010 through 21.8410 are revised to read as follows:

#### General

##### § 21.8010 Definitions and abbreviations.

(a) *Program-specific definitions and abbreviations.* For the purposes of this subpart:

*Covered birth defect* means the same as defined at § 3.815(c)(3) of this title.

*Eligible child* means, as appropriate, either an *individual* as defined at § 3.814(c)(2) of this title who suffers from spina bifida, or an *individual* as defined at § 3.815(c)(2) of this title who has a covered birth defect other than a birth defect described in § 3.815(a)(2).

*Employment assistance* means employment counseling, placement and post-placement services, and personal and work adjustment training.

*Institution of higher education* has the same meaning that § 21.4200 provides

for the term *institution of higher learning*.

*Program of employment services* means the services an eligible child may receive if the child's entire program consists only of employment assistance.

*Program participant* means an eligible child who, following an evaluation in which VA finds the child's achievement of a vocational goal is reasonably feasible, elects to participate in a vocational training program under this subpart.

*Spina bifida* means the same as defined at § 3.814(c)(3) of this title.

*Vietnam veteran* means, in the case of a child suffering from spina bifida, the same as defined at § 3.814(c)(1) or § 3.815(c)(1) of this title and, in the case of a child with a covered birth defect, the same as defined at § 3.815(c)(1) of this title.

*Vocational training program* means the vocationally oriented training services, and assistance, including placement and post-placement services, and personal and work-adjustment training that VA finds necessary to enable the child to prepare for and participate in vocational training or employment. A vocational training program may include a program of education offered by an institution of higher education only if the program is predominantly vocational in content.

*VR&E* refers to the Vocational Rehabilitation and Employment activity (usually a division) in a Veterans Benefits Administration regional office, the staff members of that activity in the regional office or in outbased locations, and the services that activity provides.

(Authority: 38 U.S.C. 101, 1802, 1804, 1811–1812, 1814, 1821)

(b) *Other terms and abbreviations.* The following terms and abbreviations have the same meaning or explanation that § 21.35 provides:

- (1) CP (Counseling psychologist);
- (2) Program of education;
- (3) Rehabilitation facility;
- (4) School, educational institution, or institution;
- (5) Training establishment;
- (6) Vocational goal;
- (7) VRC (Vocational rehabilitation counselor);
- (8) VRS (Vocational rehabilitation specialist); and
- (9) Workshop.

(Authority: 38 U.S.C. 1804, 1811, 1814, 1821)

##### § 21.8012 Vocational training program for certain children of Vietnam veterans—spina bifida and covered birth defects.

VA will provide an evaluation to an eligible child to determine the child's potential for achieving a vocational goal.

If this evaluation establishes that it is feasible for the child to achieve a vocational goal, VA will provide the child with the vocational training, employment assistance, and other related rehabilitation services authorized by this subpart that VA finds the child needs to achieve a vocational goal, including employment.

(Authority: 38 U.S.C. 1804, 1812, 1814)

##### § 21.8014 Application.

(a) *Filing an application.* To participate in a vocational training program, the child of a Vietnam veteran (or the child's parent or guardian, an authorized representative, or a Member of Congress acting on behalf of the child) must file an application. An application is a request for an evaluation of the feasibility of the child's achievement of a vocational goal and, if a CP or VRC determines that achievement of a vocational goal is feasible, for participation in a vocational training program. The application may be in any form, but it must:

(1) Be in writing over the signature of the applicant or the person applying on the child's behalf;

(2) Provide the child's full name, address, and VA claim number, if any, and the parent Vietnam veteran's full name and Social Security number or VA claim number, if any; and

(3) Clearly identify the benefit sought.

(Authority: 38 U.S.C. 1804(a), 1822, 5101)

(b) *Time for filing.* For a child claiming eligibility based on having spina bifida, an application under this subpart may be filed at any time after September 30, 1997. For a child claiming eligibility based on a covered birth defect, an application under this subpart may be filed at any time after November 30, 2001.

(Authority: 38 U.S.C. 1804, 1811, 1811 note, 1812, 1814, 1821)

##### § 21.8016 Nonduplication of benefits.

(a) *Election of benefits—chapter 35.* An eligible child may not receive benefits concurrently under 38 U.S.C. chapter 35 and under this subpart. If the child is eligible for both benefits, he or she must elect in writing which benefit to receive.

(Authority: 38 U.S.C. 1804(e)(1), 1814, 1824)

(b) *Reelections of benefits—chapter 35.* An eligible child receiving benefits under this subpart or under 38 U.S.C. chapter 35 may change his or her election at any time. A reelection between benefits under this subpart and under 38 U.S.C. chapter 35 must be prospective, however, and may not result in an eligible child receiving

benefits under both programs for the same period of training.

(Authority: 38 U.S.C. 1804(e)(1), 1814, 1824)

(c) *Length of benefits under multiple programs—chapter 35.* The aggregate period for which an eligible child may receive assistance under this subpart and under 38 U.S.C. chapter 35 together may not exceed 48 months of full-time training or the part-time equivalent.

(Authority: 38 U.S.C. 1804(e)(2), 1814)

(d) *Nonduplication of benefits under 38 U.S.C. 1804 and 1814.* An eligible child may only be provided one program of vocational training under this subpart.

(Authority: 38 U.S.C. 1804, 1814, 1824)

### Basic Entitlement Requirements

#### § 21.8020 Entitlement to vocational training and employment assistance.

(a) *Basic entitlement requirements.* Under this subpart, for an eligible child to receive vocational training, employment assistance, and related rehabilitation services and assistance to achieve a vocational goal (to include employment), the following requirements must be met:

(1) A CP or VRC must determine that achievement of a vocational goal by the child is reasonably feasible; and

(2) The child and VR&E staff members must work together to develop and then agree to an individualized written plan of vocational rehabilitation identifying the vocational goal and the means to achieve this goal.

(Authority: 38 U.S.C. 1804(b), 1814)

(b) *Services and assistance.* An eligible child may receive the services and assistance described in § 21.8050(a). The following sections in subpart A of this part apply to the provision of these services and assistance in a manner comparable to their application for a veteran under that subpart:

- (1) Section 21.250(a) and (b)(2);
- (2) Section 21.252;
- (3) Section 21.254;
- (4) Section 21.256 (not including paragraph (e)(2));
- (5) Section 21.257; and
- (6) Section 21.258.

(Authority: 38 U.S.C. 1804, 1814)

(c) *Requirements to receive employment services and assistance.* VA will provide employment services and assistance under paragraph (b) of this section only if the eligible child:

- (1) Has achieved a vocational objective;
- (2) Has voluntarily ceased vocational training under this subpart, but the case manager finds the child has attained sufficient skills to be employable; or

(3) VA determines during evaluation that the child already has the skills necessary for suitable employment and does not need additional training, but to secure suitable employment the child does need the employment assistance that paragraph (b) of this section describes.

(Authority: 38 U.S.C. 1804, 1814)

(d) *Additional employment services and assistance.* If an eligible child has received employment assistance and obtains a suitable job, but VA later finds the child needs additional employment services and assistance, VA may provide the child with these services and assistance if, and to the extent, the child has remaining program entitlement.

(Authority: 38 U.S.C. 1804, 1814)

(e) *Program entitlement usage.* (1) *Basic entitlement period.* An eligible child will be entitled to receive 24 months of full-time training, services, and assistance (including employment assistance) or the part-time equivalent, as part of a vocational training program.

(2) *Extension of basic entitlement period.* VA may extend the basic 24-month entitlement period, not to exceed another 24 months of full-time program participation, or the part-time equivalent, if VA determines that:

- (i) The extension is necessary for the child to achieve a vocational goal identified before the end of the basic 24-month entitlement period; and
- (ii) The child can achieve the vocational goal within the extended period.

(3) *Principles for charging entitlement.* VA will charge entitlement usage for training, services, or assistance (but not the initial evaluation, as described in § 21.8032) furnished to an eligible child under this subpart on the same basis as VA would charge for similar training, services, or assistance furnished a veteran in a vocational rehabilitation program under 38 U.S.C. chapter 31. VA may charge entitlement at a half-time, three-quarter-time, or full-time rate based upon the child's training time using the rate-of-pursuit criteria in § 21.8310. The provisions concerning reduced work tolerance under § 21.312, and those relating to less-than-half-time training under § 21.314, do not apply under this subpart.

(Authority: 38 U.S.C. 1804, 1814)

#### § 21.8022 Entry and reentry.

(a) *Date of program entry.* VA may not enter a child into a vocational training program or provide an evaluation or any training, services, or assistance under this subpart before the date VA first receives an application for a vocational

training program filed in accordance with § 21.8014.

(Authority: 38 U.S.C. 1151 note, 1804, 1811, 1811 note, 1812, 1814)

(b) *Reentry.* If an eligible child interrupts or ends pursuit of a vocational training program and VA subsequently allows the child to reenter the program, the date of reentrance will accord with the facts, but may not precede the date VA receives an application for the reentrance.

(Authority: 38 U.S.C. 1804, 1814, 1822)

### Evaluation

#### § 21.8030 Requirement for evaluation of child.

(a) *Children to be evaluated.* The VR&E Division will evaluate each child who:

- (1) Applies for a vocational training program; and
- (2) Has been determined to be an eligible child as defined in § 21.8010.

(Authority: 38 U.S.C. 1804(a), 1814)

(b) *Purpose of evaluation.* The evaluation has two purposes:

- (1) To ascertain whether achievement of a vocational goal by the child is reasonably feasible; and
- (2) If a vocational goal is reasonably feasible, to develop an individualized plan of integrated training, services, and assistance that the child needs to prepare for and participate in vocational training or employment.

(Authority: 38 U.S.C. 1804, 1814)

#### § 21.8032 Evaluations.

(a) *Scope and nature of evaluation.* The scope and nature of the evaluation under this program will be comparable to an evaluation of the reasonable feasibility of achieving a vocational goal for a veteran under 38 U.S.C. chapter 31 and §§ 21.50(b)(5) and 21.53(b) and (d).

(Authority: 38 U.S.C. 1804(a), 1814)

(b) *Specific services to determine the reasonable feasibility of achieving a vocational goal.* As a part of the evaluation of reasonable feasibility of achieving a vocational goal, VA may provide the following specific services, as appropriate:

- (1) Assessment of feasibility by a CP or VRC;
- (2) Review of feasibility assessment and of need for special services by the Vocational Rehabilitation Panel;
- (3) Provision of medical, testing, and other diagnostic services to ascertain the child's capacity for training and employment; and
- (4) Evaluation of employability by professional staff of an educational or

rehabilitation facility, for a period not to exceed 30 days.

(Authority: 38 U.S.C. 1804(a), 1814)

(c) *Responsibility for evaluation.* A CP or VRC will make all determinations as to the reasonable feasibility of achieving a vocational goal.

(Authority: 38 U.S.C. 1804(a), (b), 1814)

### Services and Assistance to Program Participants

#### § 21.8050 Scope of training, services, and assistance.

(a) *Allowable training, services, and assistance.* VA may provide to vocational training program participants:

(1) Vocationally oriented training, services, and assistance, to include:

(i) Training in an institution of higher education if the program is predominantly vocational; and

(ii) Tuition, fees, books, equipment, supplies, and handling charges.

(2) Employment assistance including:

(i) Vocational, psychological, employment, and personal adjustment counseling;

(ii) Services to place the individual in suitable employment and post-placement services necessary to ensure satisfactory adjustment in employment; and

(iii) Personal adjustment and work adjustment training.

(3) Vocationally oriented independent living services only to the extent that the services are indispensable to the achievement of the vocational goal and do not constitute a significant portion of the services to be provided.

(4) Other vocationally oriented services and assistance of the kind VA provides veterans under the 38 U.S.C. chapter 31 program, except as paragraph (c) of this section provides, that VA determines the program participant needs to prepare for and take part in vocational training or in employment.

(Authority: 38 U.S.C. 1804(c), 1814)

(b) *Vocational training program.* VA will provide either directly or by contract, agreement, or arrangement with another entity, and at no cost to the beneficiary, the vocationally oriented training, other services, and assistance that VA approves for the individual child's program under this subpart. Authorization and payment for approved services will be made in a comparable manner to that VA provides for veterans under the 38 U.S.C. chapter 31 program.

(Authority: 38 U.S.C. 1804(c), 1814)

(c) *Prohibited services and assistance.* VA may not provide to a vocational training program participant any:

(1) Loan;

(2) Subsistence allowance;

(3) Automobile adaptive equipment;

(4) Training at an institution of higher education in a program of education that is not predominantly vocational in content;

(5) Employment adjustment allowance;

(6) Room and board (other than for a period of 30 days or less in a special rehabilitation facility either for purposes of an extended evaluation or to improve and enhance vocational potential);

(7) Independent living services, except those that are incidental to the pursuit of the vocational training program.

(Authority: 38 U.S.C. 1804(c), 1814)

#### Duration of Vocational Training

##### § 21.8070 Basic duration of a vocational training program.

(a) *Basic duration of a vocational training program.* The duration of a vocational training program, as paragraphs (e)(1) and (e)(2) of § 21.8020 provide, may not exceed 24 months of full-time training, services, and assistance or the part-time equivalent, except as § 21.8072 allows.

(Authority: 38 U.S.C. 1804(d), 1814)

(b) *Responsibility for estimating the duration of a vocational training program.* While preparing the individualized written plan of vocational rehabilitation, the CP or VRC will estimate the time the child needs to complete a vocational training program.

(Authority: 38 U.S.C. 1804(c), 1814)

(c) *Duration and scope of training must meet general requirements for entry into the selected occupation.* The child will receive training, services, and assistance, as § 21.8120 describes, for a period that VA determines the child needs to reach the level employers generally recognize as necessary for entry into employment in a suitable occupational objective.

(Authority: 38 U.S.C. 1804(c), 1814)

(d) *Approval of training beyond the entry level.* To qualify for employment in a particular occupation, the child may need training that exceeds the amount a person generally needs for employment in that occupation. VA will provide the necessary additional training under one or more of the following conditions:

(1) Training requirements for employment in the child's vocational goal in the area where the child lives or

will seek employment exceed those job seekers generally need for that type of employment;

(2) The child is preparing for a type of employment in which he or she will be at a definite disadvantage in competing with nondisabled persons and the additional training will offset the competitive disadvantage;

(3) The choice of a feasible occupation is limited, and additional training will enhance the child's employability in one of the feasible occupations; or

(4) The number of employment opportunities within a feasible occupation is restricted.

(Authority: 38 U.S.C. 1804(c), 1814)

(e) *Estimating the duration of the training period.* In estimating the length of the training period the eligible child needs, the CP or VRC must determine that:

(1) The proposed vocational training would not normally require a person without a disability more than 24 months of full-time pursuit, or the part-time equivalent, for successful completion; and

(2) The program of training and other services the child needs, based upon VA's evaluation, will not exceed 24 months or the part-time equivalent. In calculating the proposed program's length, the CP or VRC will follow the procedures in § 21.8074(a).

(Authority: 38 U.S.C. 1804(d), 1814)

(f) *Required selection of an appropriate vocational goal.* If the total period the child would require for completion of an initial vocational training program in paragraph (e) of this section is more than 24 months, or the part-time equivalent, the CP or VRC must work with the child to select another suitable initial vocational goal.

(Authority: 38 U.S.C. 1804(d)(2), 1814)

##### § 21.8072 Authorizing training, services, and assistance beyond the initial individualized written plan of vocational rehabilitation.

(a) *Extension of the duration of a vocational training program.* VA may authorize an extension of a vocational training program when necessary to provide additional training, services, and assistance to enable the child to achieve the vocational or employment goal identified before the end of the child's basic entitlement period, as stated in the individualized written plan of vocational rehabilitation under § 21.8080. A change from one occupational objective to another in the same field or occupational family meets the criterion for prior identification in the individualized written plan of vocational rehabilitation.

(Authority: 38 U.S.C. 1804(d)(2), (e)(2), 1814)

(b) *Extensions for prior participants in the program.* (1) Except as paragraph (b)(2) of this section provides, VA may authorize additional training, limited to the use of remaining program entitlement including any allowable extension, for an eligible child who previously participated in vocational training under this subpart. The additional training must:

(i) Be designed to enable the child to complete the prior vocational goal or a different vocational goal; and

(ii) Meet the same provisions as apply to training for new participants.

(2) An eligible child who has previously achieved a vocational goal in a vocational training program under this subpart may not receive additional training under paragraph (b)(1) of this section unless a CP or VRC sets aside the child's achievement of that vocational goal under § 21.8284.

(Authority: 38 U.S.C. 1804(b) through (e), 1814)

(c) *Responsibility for authorizing a program extension.* A CP or VRC may approve extensions of the vocational training program the child is pursuing up to the maximum program limit of 48 months if the CP or VRC determines that the child needs the additional time to successfully complete training and obtain employment, and the following conditions are met:

(1) The child has completed more than half of the planned training; and

(2) The child is making satisfactory progress.

(Authority: 38 U.S.C. 1804(d)(2), 1814)

#### **§ 21.8074 Computing the period for vocational training program participation.**

(a) *Computing the participation period.* To compute the number of months and days of an eligible child's participation in a vocational training program:

(1) Count the number of actual months and days of the child's:

(i) Pursuit of vocational education or training;

(ii) Receipt of extended evaluation-type services and training, or services and training to enable the child to prepare for vocational training or employment, if a veteran in a 38 U.S.C. chapter 31 program would have received a subsistence allowance while receiving the same type of services and training; and

(iii) Receipt of employment and post-employment services (any period of employment or post-employment services is considered full-time program pursuit).

(2) Do not count:

(i) The initial evaluation period;

(ii) Any period before the child enters a vocational training program under this subpart;

(iii) Days of authorized leave; and

(iv) Other periods during which the child does not pursue training, such as periods between terms.

(3) Convert part-time training periods to full-time equivalents.

(4) Total the months and days under paragraphs (a)(1) and (a)(3) of this section. This sum is the period of the child's participation in the program.

(Authority: 38 U.S.C. 1804(d), 1814)

(b) *Consistency with principles for charging entitlement.* Computation of the program participation period under this section will be consistent with the principles for charging entitlement under § 21.8020.

(Authority: 38 U.S.C. 1804(d), 1814)

#### **Individualized Written Plan of Vocational Rehabilitation**

##### **§ 21.8080 Requirement for an individualized written plan of vocational rehabilitation.**

(a) *General.* A CP or VRC will work in consultation with each child for whom a vocational goal is feasible to develop an individualized written plan of vocational rehabilitation services and assistance to meet the child's vocational training needs. The CP or VRC will develop this individualized written plan of vocational rehabilitation in a manner comparable to the rules governing the development of an individualized written rehabilitation plan (IWRP) for a veteran for 38 U.S.C. chapter 31 purposes, as §§ 21.80, 21.84, 21.88, 21.90, 21.92, 21.94 (a) through (d), and 21.96 provide.

(Authority: 38 U.S.C. 1804(b), 1814)

(b) *Selecting the type of training to include in the individualized written plan of vocational rehabilitation.* If training is necessary, the CP or VRC will explore a range of possibilities, to include paid and unpaid on-job training, institutional training, and a combination of on-job and institutional training to accomplish the goals of the program. Generally, an eligible child's program should include on-job training, or a combination of on-job and institutional training, when this training:

(1) Is available;

(2) Is as suitable as using only institutional training for accomplishing the goals of the program; and

(3) Will meet the child's vocational training program needs.

(Authority: 38 U.S.C. 1804(b), (c), 1814)

##### **§ 21.8082 Inability of child to complete individualized written plan of vocational rehabilitation or achieve vocational goal.**

(a) *Inability to timely complete an individualized written plan of vocational rehabilitation or achieve identified goal.* After a vocational training program has begun, the VR&E case manager may determine that the eligible child cannot complete the vocational training program described in the child's individualized written plan of vocational rehabilitation within the time limits of the individualized written plan of vocational rehabilitation or cannot achieve the child's identified vocational goal. Subject to paragraph (b) of this section, VR&E may assist the child in revising or selecting a new individualized written plan of vocational rehabilitation or goal.

(b) *Allowable changes in the individualized written plan of vocational rehabilitation or goal.* Any change in the eligible child's individualized written plan of vocational rehabilitation or vocational goal is subject to the child's continuing eligibility under the vocational training program and the provisions governing duration of a vocational training program in §§ 21.8020(e) and 21.8070 through 21.8074.

(Authority: 38 U.S.C. 1804(d), 1804(e), 1814)

(c) *Change in the individualized written plan of vocational rehabilitation or vocational goal.* (1) The individualized written plan of vocational rehabilitation or vocational goal may be changed under the same conditions as provided for a veteran under § 21.94 (a) through (d), and subject to § 21.8070 (d) through (f), if:

(i) The CP or VRC determines that achievement of a vocational goal is still reasonably feasible and that the new individualized written plan of vocational rehabilitation or goal is necessary to enable the eligible child to prepare for and participate in vocational training or employment; and

(ii) Reentrance is authorized under § 21.8284 in a case when the child has completed a vocational training program under this subpart.

(2) A CP or VRC may approve a change of vocational goal from one field or occupational family to another field or occupational family if the child can achieve the new goal:

(i) Before the end of the basic 24-month entitlement period that

§ 21.8020(e)(1) describes; or

(ii) Before the end of any allowable extension under §§ 21.8020(e)(2) and 21.8072 if the new vocational goal in

another field or occupational family was identified during the basic 24-month entitlement period.

(3) A change from one occupational objective to another in the same field or occupational family does not change the planned vocational goal.

(4) The child must have sufficient remaining entitlement to pursue the new individualized written plan of vocational rehabilitation or goal, as § 21.8020 provides.

(Authority: 38 U.S.C. 1804(d), 1814)

(d) *Assistance if child terminates planned program before completion.* If the eligible child elects to terminate the planned vocational training program, he or she will receive the assistance that § 21.80(d) provides in identifying other resources through which to secure the desired training or employment.

(Authority: 38 U.S.C. 1804(c), 1814)

### Counseling

#### § 21.8100 Counseling.

An eligible child requesting or receiving services and assistance under this subpart will receive professional counseling by VR&E and other qualified VA staff members, and by contract counseling providers, as necessary, in a manner comparable to VA's provision of these services to veterans under the 38 U.S.C. chapter 31 program, as §§ 21.100 and 21.380 provide.

(Authority: 38 U.S.C. 1803(c)(8), 1804(c), 1814)

### Vocational Training, Services, and Assistance

#### § 21.8120 Vocational training, services, and assistance.

(a) *Purposes.* An eligible child may receive training, services, and assistance to enable the child to prepare for and participate in vocational training or employment.

(Authority: 38 U.S.C. 1804(b), (c), 1814)

(b) *Training permitted.* VA and the child will select vocationally oriented courses of study and training, completion of which usually results in a diploma, certificate, degree, qualification for licensure, or direct placement in employment. The educational and training services to be provided include:

(1) Remedial, deficiency, and refresher training; and

(2) Training that leads to an identifiable vocational goal. Under this program, VA may authorize all forms of programs that §§ 21.122 through 21.132 describe. This includes education and training programs in institutions of higher education. VA may authorize the

education and training at an undergraduate or graduate degree level, only if the degree program is predominantly vocational in nature. For an eligible child to participate in a graduate degree program, the graduate degree must be a requirement for entry into the child's vocational goal. For example, a master's degree is required to engage in social work. The program of training is predominantly vocational in content if the majority of the instruction provides the technical skills and knowledge employers generally regard as specific to, and required for, entry into the child's vocational goal.

(c) *Cost of education and training services.* The CP or VRC will consider the cost of training in selecting a facility when:

(1) There is more than one facility in the area in which the child resides that:

(i) Meets the requirements for approval under §§ 21.290 through 21.298 (except as provided by § 21.8286(b)),

(ii) Can provide the training, services and other supportive assistance the child's individualized written plan of vocational rehabilitation specifies, and

(iii) Is within reasonable commuting distance; or

(2) The child wishes to train at a suitable facility in another area, even though a suitable facility in the area where the child lives can provide the training. In considering the costs of providing training in this case, VA will use the provisions of § 21.120 (except 21.120(a)(3)), § 21.370 (however, the words "under § 21.282" in § 21.370(b)(2)(iii)(B) do not apply), and § 21.372 in a manner comparable to that for veterans under the 38 U.S.C. chapter 31 program.

(Authority: 38 U.S.C. 1804(b), (c), 1814)

(d) *Accessible courses not locally available.* If suitable vocational training courses are not available in the area in which the child lives, or if they are available but not accessible to the child, VA may make other arrangements. These arrangements may include, but are not limited to:

(1) Transportation of the child, but not the child's family, personal effects, or household belongings, to another area where necessary services are available; or

(2) Use of an individual instructor to provide necessary training in a manner comparable to that for veterans under the 38 U.S.C. chapter 31 program, as § 21.146 describes.

(Authority: 38 U.S.C. 1804(b), (c), 1814)

### Evaluation and Improvement of Vocational Potential

#### § 21.8140 Evaluation and improvement of vocational potential.

(a) *General.* A CP or VRC may use the services that paragraph (d) of this section describes to:

(1) Evaluate vocational training and employment potential;

(2) Provide a basis for planning:

(i) A program of services and assistance to improve the eligible child's preparation for vocational training and employment; or

(ii) A vocational training program;

(3) Reevaluate the vocational training feasibility of an eligible child participating in a vocational training program; and

(4) Remediate deficiencies in the child's basic capabilities, skills, or knowledge to give the child the ability to participate in vocational training or employment.

(Authority: 38 U.S.C. 1804(b), 1814)

(b) *Periods when evaluation and improvement services may be provided.* A CP or VRC may authorize the services described in paragraph (d) of this section, except those in paragraph (d)(4) of this section, for delivery during:

(1) An initial or extended evaluation; or

(2) Pursuit of a vocational training program.

(Authority: 38 U.S.C. 1804(c), 1814)

(c) *Duration of services.* The duration of services needed to improve vocational training and employment potential, furnished on a full-time basis either as a preliminary part or all of a vocational training program, may not exceed 9 months. If VA furnishes these services on a less than full-time basis, the duration will be for the period necessary, but may not exceed the equivalent of 9 months of full-time training.

(Authority: 38 U.S.C. 1804(c), 1814)

(d) *Scope of services.* Evaluation and improvement services include:

(1) Diagnostic services;

(2) Personal and work adjustment training;

(3) Referral for medical care and treatment for the spina bifida, covered birth defects, or related conditions;

(4) Vocationally oriented independent living services indispensable to pursuing a vocational training program;

(5) Language training, speech and voice correction, training in ambulation, and one-hand typewriting;

(6) Orientation, adjustment, mobility and related services; and

(7) Other appropriate services to assist the child in functioning in the proposed training or work environment.  
(Authority: 38 U.S.C. 1804(c), 1814)

(e) *Applicability of chapter 31 rules on special rehabilitation services.* The provisions of § 21.140 do not apply to this subpart. Subject to the provisions of this subpart, the following provisions apply to the vocational training program under this subpart in a manner comparable to that for veterans under the 38 U.S.C. chapter 31 program: § 21.142(a) and (b); § 21.144; § 21.146; § 21.148(a) and (c); § 21.150 other than paragraph (b); § 21.152 other than paragraph (b); § 21.154 other than paragraph (b); and § 21.156.

(Authority: 38 U.S.C. 1804(c), 1814)

### Supplies

#### § 21.8210 Supplies.

(a) *Purpose of furnishing supplies.* VA will provide the child with the supplies that the child needs to pursue training, to obtain and maintain employment, and otherwise to achieve the goal of his or her vocational training program.

(Authority: 38 U.S.C. 1804(c), 1814)

(b) *Types of supplies.* VA may provide books, tools, and other supplies and equipment that VA determines are necessary for the child's vocational training program and are required by similarly circumstanced veterans pursuing such training under 38 U.S.C. chapter 31.

(Authority: 38 U.S.C. 1804(c), 1814)

(c) *Periods during which VA may furnish supplies.* VA may provide supplies to an eligible child receiving:

- (1) An initial or extended evaluation;
- (2) Vocational training, services, and assistance to reach the point of employability; or
- (3) Employment services.

(Authority: 38 U.S.C. 1804(c), 1814)

(d) *Other rules.* The provisions of §§ 21.212 through 21.224 apply to children pursuing a vocational training program under this subpart in a comparable manner as VA provides supplies to veterans under 38 U.S.C. chapter 31, except the following portions:

- (1) Section 21.216(a)(3) pertaining to special modifications, including automobile adaptive equipment;
- (2) Section 21.220(a)(1) pertaining to advancements from the revolving fund loan;
- (3) Section 21.222(b)(1)(x) pertaining to discontinuance from an independent living services program.

(Authority: 38 U.S.C. 1804(c), 1814)

### Program Costs

#### § 21.8260 Training, services, and assistance costs.

The provisions of § 21.262 pertaining to reimbursement for training and other program costs apply, in a comparable manner as provided under the 38 U.S.C. chapter 31 program for veterans, to payments to facilities, vendors, and other providers for training, supplies, and other services they deliver under this subpart.

(Authority: 38 U.S.C. 1804(c), 1814)

#### Vocational Training Program Entrance, Termination, and Resources

#### § 21.8280 Effective date of induction into a vocational training program.

Subject to the limitations in § 21.8022, the date an eligible child is inducted into a vocational training program will be the date the child first begins to receive training, services, or assistance under an individualized written plan of vocational rehabilitation.

(Authority: 38 U.S.C. 1804(c), (d), 1814)

#### § 21.8282 Termination of a vocational training program.

A case manager may terminate a vocational training program under this subpart for cause, including lack of cooperation, failure to pursue the individualized written plan of vocational rehabilitation, fraud, administrative error, or finding that the child no longer has a covered birth defect. An eligible child for whom a vocational goal is reasonably feasible remains eligible for the program subject to the rules of this subpart unless the child's eligibility for or entitlement to a vocational training program under this subpart resulted from fraud or administrative error or unless VA finds the child no longer has a covered birth defect. The effective date of termination will be the earliest of the following applicable dates:

(a) *Fraud.* If an eligible child establishes eligibility for or entitlement to benefits under this subpart through fraud, VA will terminate the award of vocational training and rehabilitation as of the date VA first began to pay benefits.

(b) *Administrative error.* If an eligible child who is not entitled to benefits under this subpart receives those benefits through VA administrative error, VA will terminate the award of benefits as of the first day of the calendar month beginning at least 60 days after notifying the child of the proposed termination. This 60-day period may not result in the entrance of the child into a new quarter, semester,

or other term of training unless VA has already obligated payment for the training.

(c) *Change in status as an eligible child with a covered birth defect.* If VA finds that a child no longer has a covered birth defect, VA will terminate the award of benefits effective the last day of the month in which such determination becomes final.

(d) *Lack of cooperation or failure to pursue individualized written plan of vocational rehabilitation.* If reasonable VR&E efforts to motivate an eligible child do not resolve a lack of cooperation or failure to pursue an individualized written plan of vocational rehabilitation, VA will terminate the award of benefits as of the first day of the calendar month beginning at least 60 days after notifying the child of the proposed termination. This 60-day period may not result in the entrance of the child into a new quarter, semester, or other term of training. VA will deobligate payment for training in the new quarter, semester, or other term of training.

(Authority: 38 U.S.C. 1804, 1814)

#### § 21.8284 Additional vocational training.

VA may provide an additional period of training or services under a vocational training program to an eligible child who has completed training for a vocational goal and/or been suitably employed under this subpart, if the child is otherwise eligible and has remaining program entitlement as provided in § 21.8072(b), only under one of the following conditions:

(a) Current facts, including any relevant medical findings, establish that the child's disability has worsened to the extent that he or she can no longer perform the duties of the occupation which was the child's vocational goal under this subpart;

(b) The occupation that was the child's vocational goal under this subpart is now unsuitable;

(c) The vocational training program services and assistance the child originally received are now inadequate to make the child employable in the occupation which he or she sought to achieve;

(d) Experience has demonstrated that VA should not reasonably have expected employment in the objective or field for which the child received vocational training program services and assistance; or

(e) Technological change that occurred after the child achieved a vocational goal under this subpart now prevents the child from:

- (1) Performing the duties of the occupation for which VA provided

training, services, or assistance, or in a related occupation; or

(2) Securing employment in the occupation for which VA provided training, services, or assistance, or in a related occupation.

(Authority: 38 U.S.C. 1804(c), 1814)

**§ 21.8286 Training resources.**

(a) *Applicable 38 U.S.C. chapter 31 resource provisions.* The provisions of § 21.146 and §§ 21.290 through 21.298 apply to children pursuing a vocational training program under this subpart in a comparable manner as for veterans under the 38 U.S.C. chapter 31 program, except as paragraph (b) of this section specifies.

(Authority: 38 U.S.C. 1804(c), 1814)

(b) *Limitations.* The provisions of § 21.294(b)(1)(i) and (b)(1)(ii) pertaining to independent living services do not apply to this subpart. The provisions of § 21.294(b)(1)(iii) pertaining to authorization of independent living services as a part of an individualized written plan of vocational rehabilitation apply to children under this subpart in a comparable manner as for veterans under the 38 U.S.C. chapter 31 program only to the extent § 21.8050 allows.

(Authority: 38 U.S.C. 1804(c), 1814)

**Rate of Pursuit**

**§ 21.8310 Rate of pursuit.**

(a) *General requirements.* VA will approve an eligible child's pursuit of a vocational training program at a rate consistent with his or her ability to successfully pursue training, considering:

- (1) Effects of his or her disability;
  - (2) Family responsibilities;
  - (3) Travel;
  - (4) Reasonable adjustment to training;
- and
- (5) Other circumstances affecting the child's ability to pursue training.

(Authority: 38 U.S.C. 1804(c), 1814)

(b) *Continuous pursuit.* An eligible child should pursue a program of vocational training with as little interruption as necessary, considering the factors in paragraph (a) of this section.

(Authority: 38 U.S.C. 1804(c), 1814)

(c) *Responsibility for determining the rate of pursuit.* VR&E staff members will consult with the child when determining the rate and continuity of pursuit of a vocational training program. These staff members will also confer with the medical consultant and the Vocational Rehabilitation Panel described in §§ 21.60 and 21.62, as

necessary. This rate and continuity of pursuit determination will occur during development of the individualized written plan of vocational rehabilitation, but may change later, as necessary to enable the child to complete training.

(Authority: 38 U.S.C. 1804(c), 1814)

(d) *Measurement of training time used.* VA will measure the rate of pursuit in a comparable manner to rate of pursuit measurement under § 21.310 for veterans under the 38 U.S.C. chapter 31 program.

(Authority: 38 U.S.C. 1804(c), 1814)

**Authorization of Services**

**§ 21.8320 Authorization of services.**

The provisions of § 21.326, pertaining to the commencement and termination dates of a period of employment services, apply to children under this subpart in a manner comparable to that provided for veterans under the 38 U.S.C. chapter 31 program. References in that section to an individualized employment assistance plan or IEAP are considered as referring to the child's individualized written plan of vocational rehabilitation under this subpart.

(Authority: 38 U.S.C. 1804(c), 1814)

**Leaves of Absence**

**§ 21.8340 Leaves of absence.**

(a) *Purpose of leave of absence.* The purpose of the leave system is to enable the child to maintain his or her status as an active program participant.

(Authority: 38 U.S.C. 1804(c), 1814)

(b) *Basis for leave of absence.* The VR&E case manager may grant the child leaves of absence for periods during which the child fails to pursue a vocational training program. For prolonged periods of absence, the VR&E case manager may approve leaves of absence only if the case manager determines the child is unable to pursue a vocational training program through no fault of the child.

(Authority: 38 U.S.C. 1804(c), 1814)

(c) *Effect on entitlement.* During a leave of absence, the running of the basic 24-month period of entitlement, plus any extensions thereto, shall be suspended until the child resumes the program.

(Authority: 38 U.S.C. 1804(c), 1814)

**Satisfactory Conduct and Cooperation**

**§ 21.8360 Satisfactory conduct and cooperation.**

The provisions for satisfactory conduct and cooperation in §§ 21.362 and 21.364, except as otherwise

provided in this section, apply to children under this subpart in a manner comparable to the way they apply to veterans under the 38 U.S.C. chapter 31 program. If an eligible child fails to meet these requirements for satisfactory conduct or cooperation, the VR&E case manager will terminate the child's vocational training program. VA will not grant an eligible child reentrance to a vocational training program unless the reasons for unsatisfactory conduct or cooperation have been removed.

(Authority: 38 U.S.C. 1804(c), 1814)

**Transportation Services**

**§ 21.8370 Authorization of transportation services.**

(a) *General.* VA will authorize transportation services necessary for an eligible child to pursue a vocational training program. The sections in subpart A of this part that are referred to in this paragraph apply to children under this subpart in a manner comparable to the way they apply to veterans under the 38 U.S.C. chapter 31 program. Transportation services include:

- (1) Transportation for evaluation or counseling under § 21.376;
- (2) Intraregional travel under § 21.370 (except that assurance that the child meets all basic requirements for induction into training will be determined without regard to the provisions of § 21.282) and interregional travel under § 21.372;
- (3) Special transportation allowance under § 21.154; and
- (4) Commuting to and from training and while seeking employment, subject to paragraphs (c) and (d) of this section.

(Authority: 38 U.S.C. 1804(c), 1814)

(b) *Reimbursement.* For transportation services that VA authorizes, VA will normally pay in arrears and in the same manner as tuition, fees, and other services under this program.

(Authority: 38 U.S.C. 1804(c), 1814)

(c) *Payment for commuting expenses for training and seeking employment.* VA may pay for transportation during the period of vocational training and the first 3 months the child receives employment services. VA may reimburse the child's costs, not to exceed \$200 per month, of commuting to and from training and seeking employment if he or she requests this assistance and VA determines, after careful examination of the child's situation and subject to the limitations in paragraph (d) of this section, that the child would be unable to pursue training or employment without this assistance. VA may:

(1) Reimburse the facility at which the child is training if the facility provided transportation or related services; or

(2) Reimburse the child for his or her actual commuting expense if the child paid for the transportation.

(Authority: 38 U.S.C. 1804(c), 1814)

(d) *Limitations.* Payment of commuting expenses under paragraph (a)(4) of this section may not be made for any period when the child:

(1) Is gainfully employed;

(2) Is eligible for, and entitled to, payment of commuting costs through other VA and non-VA programs; or

(3) Can commute to school with family, friends, or fellow students.

(Authority: 38 U.S.C. 1804(c), 1814)

(e) *Documentation.* VA must receive supportive documentation with each

request for reimbursement. The individualized written plan of vocational rehabilitation will specify whether VA will pay monthly or at a longer interval.

(Authority: 38 U.S.C. 1804(c), 1814)

(f) *Nonduplication.* An eligible child eligible for reimbursement of transportation services both under this section and under § 21.154 will receive only the benefit under § 21.154.

(Authority: 38 U.S.C. 1804(c), 1814)

#### **Additional Applicable Regulations**

##### **§ 21.8380 Additional applicable regulations.**

The following regulations are applicable to children in this program in a manner comparable to that provided for veterans under the 38 U.S.C. chapter

31 program: §§ 21.380, 21.412, 21.414 (except paragraphs (c), (d), and (e)), 21.420, and 21.430.

(Authority: 38 U.S.C. 1804, 1814, 5112)

#### **Delegation of Authority**

##### **§ 21.8410 Delegation of authority.**

The Secretary delegates authority for making findings and decisions under 38 U.S.C. 1804 and 1814 and the applicable regulations, precedents, and instructions for the program under this subpart to the Under Secretary for Benefits and to VR&E supervisory or non-supervisory staff members.

(Authority: 38 U.S.C. 512(a), 1804, 1814)

[FR Doc. 01-31675 Filed 12-31-01; 8:45 am]

**BILLING CODE 8320-01-P**