

(5) Opportunities for individuals to visit or experience various work and service provider settings.

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(Authority: Sections 12(c), 101(a)(19), 102(b)(2)(B), and 102(d) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c), 721(a)(19), 722(b)(2)(B), and 722(d))

§ 361.53 Comparable services and benefits.

(a) *Determination of availability.* The vocational rehabilitation services portion of the Unified or Combined State Plan must assure that prior to providing an accommodation or auxiliary aid or service or any vocational rehabilitation services, except those services listed in paragraph (b) of this section, to an eligible individual or to members of the individual's family, the State unit must determine whether comparable services and benefits, as defined in § 361.5(c)(8), exist under any other program and whether those services and benefits are available to the individual unless such a determination would interrupt or delay—

(1) The progress of the individual toward achieving the employment outcome identified in the individualized plan for employment;

(2) An immediate job placement; or

(3) The provision of vocational rehabilitation services to any individual who is determined to be at extreme medical risk, based on medical evidence provided by an appropriate qualified medical professional.

(b) *Exempt services.* The following vocational rehabilitation services described in § 361.48(b) are exempt from a determination of the availability of comparable services and benefits under paragraph (a) of this section:

(1) Assessment for determining eligibility and vocational rehabilitation needs.

(2) Counseling and guidance, including information and support services to assist an individual in exercising informed choice.

(3) Referral and other services to secure needed services from other agencies, including other components of the statewide workforce development system, if those services are not available under this part.

(4) Job-related services, including job search and placement assistance, job retention services, follow-up services, and follow-along services.

(5) Rehabilitation technology, including telecommunications, sensory, and other technological aids and devices.

(6) Post-employment services consisting of the services listed under paragraphs (b)(1) through (5) of this section.

(c) *Provision of services.* (1) If comparable services or benefits exist under any other program and are available to the individual at the time needed to ensure the progress of the individual toward achieving the employment outcome in the individual's individualized plan for employment, the designated State unit must use those comparable services or benefits to meet, in whole or part, the costs of the vocational rehabilitation services.

(2) If comparable services or benefits exist under any other program, but are not available to the individual at the time needed to ensure the progress of the individual toward achieving the employment outcome specified in the individualized plan for employment, the designated State unit must provide vocational rehabilitation services until those comparable services and benefits become available.

(d) *Interagency coordination.* (1) The vocational rehabilitation services portion of the Unified or Combined State Plan must assure that the Governor, in consultation with the entity in the State responsible for the vocational rehabilitation program and other appropriate agencies, will ensure that an interagency agreement or other mechanism for interagency coordination takes effect between the designated State vocational rehabilitation unit and any appropriate public entity, including the State entity responsible for administering the State Medicaid program, a public institution of higher education, and a component of the statewide workforce development system, to ensure the provision of vocational rehabilitation services, and, if appropriate, accommodations or auxiliary aids and services, (other than those services listed in paragraph (b) of this section) that are included in the individualized plan for employment of

an eligible individual, including the provision of those vocational rehabilitation services (including, if appropriate, accommodations or auxiliary aids and services) during the pendency of any interagency dispute in accordance with the provisions of paragraph (d)(3)(iii) of this section.

(2) The Governor may meet the requirements of paragraph (d)(1) of this section through—

- (i) A State statute or regulation;
- (ii) A signed agreement between the respective officials of the public entities that clearly identifies the responsibilities of each public entity for the provision of the services; or
- (iii) Another appropriate mechanism as determined by the designated State vocational rehabilitation unit.

(3) The interagency agreement or other mechanism for interagency coordination must include the following:

(i) *Agency financial responsibility.* An identification of, or description of a method for defining, the financial responsibility of the designated State unit and other public entities for the provision of vocational rehabilitation services, and, if appropriate, accommodations or auxiliary aids and services other than those listed in paragraph (b) of this section and a provision stating the financial responsibility of the public entity for providing those services.

(ii) *Conditions, terms, and procedures of reimbursement.* Information specifying the conditions, terms, and procedures under which the designated State unit must be reimbursed by the other public entities for providing vocational rehabilitation services, and accommodations or auxiliary aids and services based on the terms of the interagency agreement or other mechanism for interagency coordination.

(iii) *Interagency disputes.* Information specifying procedures for resolving interagency disputes under the interagency agreement or other mechanism for interagency coordination, including procedures under which the designated State unit may initiate proceedings to secure reimbursement from other public entities or otherwise implement the provisions of the agreement or mechanism.

(iv) *Procedures for coordination of services.* Information specifying policies and procedures for public entities to determine and identify interagency coordination responsibilities of each public entity to promote the coordination and timely delivery of vocational rehabilitation services, and accommodations or auxiliary aids and services, other than those listed in paragraph (b) of this section.

(e) *Responsibilities under other law.* (1) If a public entity (other than the designated State unit) is obligated under Federal law (such as the Americans with Disabilities Act, section 504 of the Act, or section 188 of the Workforce Innovation and Opportunity Act) or State law, or assigned responsibility under State policy or an interagency agreement established under this section, to provide or pay for any services considered to be vocational rehabilitation services (*e.g.*, interpreter services under §361.48(j)), and, if appropriate, accommodations or auxiliary aids and services other than those services listed in paragraph (b) of this section, the public entity must fulfill that obligation or responsibility through—

(i) The terms of the interagency agreement or other requirements of this section;

(ii) Providing or paying for the service directly or by contract; or

(iii) Other arrangement.

(2) If a public entity other than the designated State unit fails to provide or pay for vocational rehabilitation services, and, if appropriate, accommodations or auxiliary aids and services for an eligible individual as established under this section, the designated State unit must provide or pay for those services to the individual and may claim reimbursement for the services from the public entity that failed to provide or pay for those services. The public entity must reimburse the designated State unit pursuant to the terms of the interagency agreement or other mechanism described in paragraph (d) of this section in accordance with the procedures established in the

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agreement or mechanism pursuant to paragraph (d)(3)(ii) of this section.

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(Authority: Sections 12(c) and 101(a)(8) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 721(a)(8))

§ 361.54 Participation of individuals in cost of services based on financial need.

(a) *No Federal requirement.* There is no Federal requirement that the financial need of individuals be considered in the provision of vocational rehabilitation services.

(b) *State unit requirements.* (1) The State unit may choose to consider the financial need of eligible individuals or individuals who are receiving services through trial work experiences under § 361.42(e) for purposes of determining the extent of their participation in the costs of vocational rehabilitation services, other than those services identified in paragraph (b)(3) of this section.

(2) If the State unit chooses to consider financial need—

(i) It must maintain written policies—

(A) Explaining the method for determining the financial need of an eligible individual; and

(B) Specifying the types of vocational rehabilitation services for which the unit has established a financial needs test;

(ii) The policies must be applied uniformly to all individuals in similar circumstances;

(iii) The policies may require different levels of need for different geographic regions in the State, but must be applied uniformly to all individuals within each geographic region; and

(iv) The policies must ensure that the level of an individual's participation in the cost of vocational rehabilitation services is—

(A) Reasonable;

(B) Based on the individual's financial need, including consideration of any disability-related expenses paid by the individual; and

(C) Not so high as to effectively deny the individual a necessary service.

(3) The designated State unit may not apply a financial needs test, or re-

quire the financial participation of the individual—

(i) As a condition for furnishing the following vocational rehabilitation services:

(A) Assessment for determining eligibility and priority for services under § 361.48(b)(1), 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 under § 361.42(e).

(B) Assessment for determining vocational rehabilitation needs under § 361.48(b)(2).

(C) Vocational rehabilitation counseling and guidance under § 361.48(b)(3).

(D) Referral and other services under § 361.48(b)(4).

(E) Job-related services under § 361.48(b)(12).

(F) Personal assistance services under § 361.48(b)(14).

(G) Any auxiliary aid or service (*e.g.*, interpreter services under § 361.48(b)(10), reader services under § 361.48(b)(11)) that an individual with a disability requires under section 504 of the 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 vocational rehabilitation program as authorized under this part; or

(ii) As a condition for furnishing any vocational rehabilitation service if the individual in need of the service has been determined eligible for Social Security benefits under titles II or XVI of the Social Security Act.

(Authority: Section 12(c) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c))

§ 361.55 Semi-annual and annual review of individuals in extended employment and other employment under special certificate provisions of the Fair Labor Standards Act.

(a) The vocational rehabilitation services portion of the Unified or Combined State Plan must assure that the designated State unit conducts a semi-annual review and reevaluation for the first two years of such employment and annually thereafter, in accordance