

## **DEPARTMENT OF LABOR AND EMPLOYMENT**

### **Division of Vocational Rehabilitation**

#### **REHABILITATION SERVICES (STAFF MANUAL VOLUME 9)**

##### **7 CCR 1105-1**

*[Editor's Notes follow the text of the rules at the end of this CCR Document.]*

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### **9.100 VOCATIONAL REHABILITATION PROGRAM**

#### **9.101 LEGAL AND OPERATIONAL BASIS [Rev. eff. 3/17/17]**

The Department of Labor and Employment is the sole designated State agency that administers the vocational rehabilitation services program in Colorado, and the Division of Vocational Rehabilitation (DVR) is the sole designated State unit primarily concerned with the vocational rehabilitation of individuals with disabilities. Individuals with disabilities who receive services from DVR are referred to in general as "recipients" of services and include:

- A. Students with disabilities who are potentially eligible for vocational rehabilitation (VR) services for the purposes of Pre-Employment Transition Services
- B. Individuals who have applied to DVR
- C. Individuals who have been determined to be eligible for DVR services

##### **9.101.1 Blind and Low Vision Services (BLVS) [Rev. eff. 3/1/20]**

- A. DVR shall establish and maintain a specialized unit, BLVS, focused on providing services to individuals who are blind or have low vision. The BLVS unit shall have a dedicated manager reporting directly to the DVR Director, with oversight for personal adjustment training services, vocational rehabilitation services, the Business Enterprise Program (BEP), the Older Individuals Who are Blind (OIB) program, and other programs serving individuals who are blind or have low vision as appropriate.
- B. In addition to other performance metrics for which DVR is accountable, BLVS shall demonstrate success through timely eligibility determinations, timely plan development, employment, and earnings. For purposes of evaluating performance, Program Year 2018 (July 1, 2018 – June 30, 2019) will establish a baseline of performance and ongoing performance evaluation will consider the impact of overall economic conditions.
- C. BLVS shall conduct a minimum of biannual stakeholder meetings to ensure ongoing input from the community. Invited representatives shall include, but not be limited to:
  - 1. National Federation of the Blind of Colorado;
  - 2. American Council of the Blind of Colorado;
  - 3. Colorado Optometric Association;
  - 4. Colorado Center for the Blind;

5. Colorado School for the Deaf and Blind;
6. Anchor Center for Blind Children;
7. A Shared Vision;
8. BEP Operators;
9. Older Individuals Who are Blind Program Grantees;
10. BLVS Clients; and
11. The community at large.

**9.102 PERSONNEL STANDARDS [Rev. eff. 3/17/17]**

- A. Federal law requires state vocational rehabilitation agencies to establish qualified personnel standards and education and experience requirements for rehabilitation personnel, including rehabilitation counselors. DVR has established minimum qualifications through the Department of Personnel and Administration that are consistent with the minimum educational requirements established by the Commission on Rehabilitation Counselor Certification. Other positions within the rehabilitation counselor series such as orientation and mobility (O&M) specialists and vision rehabilitation therapists are also required to meet the minimum educational standards of appropriate national level certifying bodies. DVR shall ensure counselors providing services to individuals who are blind or have low vision have the necessary training and experience to support successful competitive integrated employment outcomes for this population.
- B. DVR shall take reasonable steps to ensure the safety of recipients of services and safeguard individuals from abuse or exploitation while participating in the VR program. As demonstrated by other state programs serving children, youth, and adults with disabilities, such steps shall include the requirement of criminal background checks for personnel engaged in direct care and services to, or accessing the confidential information of, this population.

**9.103 PROTECTION, USE, AND RELEASE OF PERSONAL INFORMATION [Eff. 4/1/13]**

**9.103.1 Confidential Information [Rev. eff. 3/17/17]**

All potentially eligible students and applicants (or their authorized representatives) shall be informed about DVR's need to collect personal information and the principal purposes for which DVR will use that information. Any information secured by or made available to DVR and/or its employees or representatives concerning referrals or recipients of the vocational rehabilitation program is considered confidential. Use of such information, current or stored, is limited to purposes directly connected to the administration of the Vocational Rehabilitation Program as identified in Sections 9.103.2 and 9.103.3 and is not to be otherwise disclosed, directly or indirectly. Individuals shall be notified of the confidential nature of their case records and the conditions for release of such information at the time of application or program involvement for a potentially eligible student with a disability.

**9.103.2 Release to Recipients [Rev. eff. 3/17/17]**

Information acquired or maintained by the Division of Vocational Rehabilitation (DVR) will be available upon written request, for inspecting and copying by a recipient or, as appropriate, the individual's representative, in accordance with the Colorado Open Records Act (Section 24 72-201, et. seq., C.R.S.), unless release of such information is prohibited by state or federal statutes, case law, or rules and regulations.

Medical, psychological, or other information which the counselor determines may be harmful to the individual shall not be released directly to the individual, rather such information shall be provided through a third party chosen by the individual. Any employee of DVR shall not disclose the information listed below to the recipient and/or his or her authorized representative:

- A. Social Security Administration (SSA) information except when requested by the Client Assistance Program on behalf of the recipient;
- B. Information from the U.S. Department of Veterans Affairs;
- C. Medical or psychological information when the service provider states in writing that disclosure to the individual is prohibited. Applicants and eligible individuals requesting such information shall be referred to the originating source of the information.

**9.103.3 Release to Other Programs or Authorities [Rev. eff. 3/17/17]**

- A. Confidential information may be released to other agencies or organizations when necessary for their program purposes only after DVR receives informed written consent from the recipient of DVR services or, if appropriate, the individual's representative, and under assurances that the agency or organization shall manage the information in a manner to safeguard its confidentiality in accordance with the confidentiality regulations governing vocational rehabilitation programs.
- B. Information may be released to other programs or authorities without a recipient's written authorization when:
  - 1. The information is directly connected with the administration of the Vocational Rehabilitation Program used only by persons officially connected with an audit or evaluation, and the final report contains no identifying information;
  - 2. Sharing of the information, including pertinent medical and other data received from SSA, is necessary to establish an individual's eligibility for rehabilitation services and/or for the provision of such services under an Individualized Plan for Employment (IPE);
  - 3. The information is required by federal law;
  - 4. The information is necessary to respond to an investigation in connection with law enforcement, fraud, or abuse, unless expressly prohibited by Federal or State laws or regulations, and in response to a judicial order;
  - 5. The information is necessary in order to protect the individual or others when the individual poses a threat to their own safety or to the safety of others;
  - 6. The information is requested by the Social Security Administration (SSA); or,
  - 7. The Director of the Division of Vocational Rehabilitation approves release to an organization or individual engaged in research.

## **9.104 RIGHTS TO REVIEW AND APPEAL**

### **9.104.1 Review of DVR Determinations [Rev. eff. 3/17/17]**

- A. A recipient who is dissatisfied with any determination made by the Division of Vocational Rehabilitation (DVR) that affects the provision of vocational rehabilitation services may request a review of that decision through an informal or formal process. The individual may also utilize the mediation process to resolve disputes. If appropriate, any request for review or mediation may be made through the individual's authorized representative.
- B. A recipient shall be notified, in writing, of their appeal rights, established procedures for review of determinations, and the availability of the Client Assistance Program each time the following occur:
  - 1. At the time of program involvement for a potentially eligible student with a disability;
  - 2. At the time of application for services;
  - 3. At the time of placement into an Order of Selection (OOS) priority for services category;
  - 4. At the time of Individualized Plan for Employment (IPE) development and any time the IPE is amended;
  - 5. Any time that DVR makes a decision to reduce, suspend or terminate planned services;
  - 6. At the time a case is closed for reasons of ineligibility; and,
  - 7. At the time a case is closed from a deferred services wait list.
- C. A recipient shall be responsible for their personal costs (including, but not limited to, legal representation and copying fees) associated with the individual's review, appeal or mediation unless otherwise ordered.
- D. An applicant's or eligible individual's appeal shall not result in suspension, reduction or termination of vocational rehabilitation services pending resolution of their appeal unless:
  - 1. A recipient or, if appropriate, the individual's representative requests a suspension, reduction or termination of services; or,
  - 2. There is evidence that fraud has occurred or that the vocational rehabilitation services were obtained through misrepresentation, collusion or criminal conduct.

### **9.104.2 Mediation of Disputes [Eff. 3/17/17]**

- A. An applicant or eligible individual may seek mediation by a qualified and impartial mediator as a means to resolve a dispute with the Division of Vocational Rehabilitation (DVR). The goal of mediation is to achieve consensus between the individual and DVR. The individual may bring an authorized representative to assist them during the mediation process.
  - 1. The request for mediation shall be submitted, in writing, to the DVR administrative office at any time during the review process and no later than the 60th day from the date the formal hearing is requested. The request shall identify the decision or action that is being disputed, why it is being disputed and what solution is requested. A qualified and impartial mediator arranged through the state shall be provided at no cost to the individual.

2. If the recipient requests mediation, DVR shall participate unless:
  - a. It is not possible to resolve the dispute without placing the Department in clear violation of state or federal law, rules, policy or the approved State Plan;
  - b. A mediated outcome is not possible based on documented evidence from previous experience with the individual concerning the issue under dispute;
  - c. The individual has committed acts of violence, has threatened acts of violence or has engaged in other forms of harassment against Department staff or any other individuals involved in the provision of vocational rehabilitation services; or,
  - d. The individual has failed to fulfill their responsibilities under a previous mediation agreement with DVR concerning the issue under dispute.
- B. DVR may seek mediation by a qualified and impartial mediator as a means to resolve a dispute with a recipient before the individual requests an informal review or a formal appeal if the individual agrees to participate.
- C. Mediation shall commence within twenty-one (21) days of the request for mediation and shall not delay conduct of the formal appeal unless both parties agree additional time is necessary.

Mediation is limited to a maximum of six (6) hours of mediation session(s) unless both parties and the mediator agree that additional hours may provide a resolution. Mediation shall be completed within one (1) calendar month of the initial request unless both parties and the impartial mediator agree that additional time is necessary.
- D. If mediation is successful, the consensus reached by both parties shall be documented in writing by the mediator and provided to both parties within seven (7) calendar days. Each party shall sign the agreement, which indicates agreement with its terms and a commitment to fulfill each party's respective responsibilities. If agreement on all issues is reached, the parties shall withdraw any pending informal review or formal appeal request. DVR shall not agree to any provision that it believes is contrary to state and federal law, rules, and policy or the approved State Plan.
- E. If mediation is not successful, the individual may initiate, or proceed with, an informal review or a formal appeal of the issue under dispute.
- F. Failure of the individual to honor their commitment under the terms of the mediation agreement shall void the mediation agreement.

#### **9.104.3 Informal Review [Rev. eff. 3/17/17]**

The recipient may request an informal review to resolve the issue(s) under dispute without mediation or conduct of a formal appeal. The informal resolution process will result in a decision by DVR regarding the issue under dispute. An individual shall not be required to go through an informal review prior to or instead of a formal appeal. An informal review shall be conducted within thirty (30) calendar days of the initial request unless both parties agree that additional time is necessary. Informal review shall not delay a formal appeal if one has been requested. If the informal review does not resolve the issue(s), and the formal appeal process has not been requested, the individual may request a formal appeal.

- A. Informal review begins with a request for the applicable DVR Supervisor to review a decision concerning the provision of vocational rehabilitation services.

- B. If the applicant or eligible individual is not satisfied with the decision made by the Supervisor, the applicant or eligible individual may take the next step and submit a written request for review to the Deputy of Field Services (or designee) to review the decision.

#### **9.104.4 Formal Appeal Process [Rev. eff. 3/17/17]**

An applicant or eligible individual may initiate a formal appeal regarding a determination to resolve the issue(s) under dispute without mediation or conduct of an informal review.

- A. A written request for a formal appeal must be submitted to the Colorado Department of Personnel and Administration, Office of Administrative Courts (OAC), within ninety (90) calendar days of the subject determination made by the DVR counselor or other DVR staff that affects a provision of pre-employment transition services or vocational rehabilitation services.
- B. The written request must be a statement detailing the basis of appeal, including a description of the determination made by DVR staff that the individual is appealing. The statement should include a description of what the individual wants from the appeal.
- C. A recipient and DVR may voluntarily participate in mediation through the OAC. Mediation may not be used to deny or delay an individual's right to pursue resolution of the dispute through the formal appeal process unless both parties agree that additional time is necessary for mediation.

#### **9.104.5 Formal Appeal before the Office of Administrative Courts [Rev. eff. 3/17/17]**

- A. When the Office of Administrative Courts (OAC) receives a request for a formal appeal, the OAC shall notify DVR and the Attorney General's Office, Labor and Employment Unit, that the request has been docketed and send a copy of the formal appeal request to DVR and the Attorney General's Office.
- B. A representative from the Attorney General's office, on behalf of DVR, shall serve a notice to set an informal pre-hearing conference within ten (10) calendar days of receipt of the formal appeal request from the OAC. The purpose of the informal pre-hearing conference shall be to:
  - 1. Identify the issues for appeal.
  - 2. Set a date for DVR to provide a written statement summarizing the background and history of services for the appeal.
  - 3. Set a date for a response from the appellant to respond to the summary and identify specific issues for the appeal. The appellant should identify specific remedies being sought, if known.
  - 4. Set the date for hearing within sixty (60) days, unless both parties agree that more time is needed and agree to extend beyond the sixty days.
  - 5. Set dates for an exchange of witness and exhibit list, as well as exchanging exhibits or other evidence.
- C. The Administrative Law Judge shall conduct the hearing within sixty (60) calendar days of an individual's request for formal appeal unless both parties agree additional time is necessary.
- D. The Administrative Law Judge shall conduct the hearing on formal appeal in accordance with the Administrative Procedure Act, Section 24-4-105, C.R.S. The rights of the parties include:

1. Each party shall have the right to present his or her case or defense by oral and documentary evidence, to submit rebuttal evidence, and to conduct cross-examination.
  2. Subject to these rights and requirements, where a hearing will be expedited and the interest of the parties will not be subsequently prejudiced thereby, the Administrative Law Judge may receive all or part of the evidence in written form or by oral stipulations.
  3. Hearings will be conducted at a site convenient to the appellant. A telephonic hearing may be conducted as an alternative to a face-to-face hearing if requested by either party. If either party requests a face-to-face hearing, the written request for a face-to-face hearing must be filed with the OAC and the other party at least ten (10) calendar days before the scheduled hearing.
- E. At the conclusion of the hearing, unless the Administrative Law Judge allows additional time to submit documentation, the Administrative Law Judge shall take the matter under advisement. After considering all the relevant evidence presented by the parties, the Administrative Law Judge shall render an initial decision.
- F. The initial decision shall uphold, modify or reverse DVR's determination affecting the provision of pre-employment transition services or vocational rehabilitation services to a recipient or the decision regarding eligibility for services.
- G. The initial decision shall be rendered within thirty (30) calendar days of the completion of the hearing.
- H. When an appellant fails to appear at a duly scheduled hearing, having been given proper notice, without having given timely advance notice to the Administrative Law Judge of acceptable good cause for inability to appear at the hearing at the time, date and place specified in the notice of hearing, then the appeal shall be considered abandoned and the Administrative Law Judge shall enter an initial decision dismissing appeal.

#### **9.104.6 Further Appeal [Eff. 3/17/17]**

- A. The initial decision rendered by the Administrative Law Judge shall become the final decision of the agency in absence of an exception filed by either party within thirty days after service of the initial decision, unless extended by the agency.
- B. If a timely exception to the initial decision is filed by the appellant, the agency shall issue a final decision and advise the individual of his/her right to seek judicial review in the State District Court, City and County of Denver.
- C. Any recipient who wishes to challenge the final agency decision may also bring a civil action for review of such decision (i.e. judicial review per CRS 24-4-105). The final agency decision shall be implemented pending the results of the review under a civil action. The civil action may be brought in any State court or in a district court of the United States, regardless of the amount in controversy. All records relating to the hearing shall be provided to the court in which the civil action shall be heard. Additional evidence may be provided upon request of the individual or the Director of DVR. The decision of the court and any relief granted as a result of the civil action shall be deemed final and binding.

#### **9.104.7 Grievance of Discrimination on the Basis of Disability [Eff. 3/02/19]**

An individual who believes they have experienced discrimination in violation of the Americans with Disabilities Act (ADA), Section 504 of the Rehabilitation Act of 1973, as amended, or the Colorado Anti-Discrimination Act (CADA) is entitled to due process and may file a grievance.

- A. Informal Resolution: An individual who believes they have experienced discrimination on the basis of disability may seek informal resolution by contacting the Deputy for Field Services, or their designee, as soon as possible to explain the concern and propose a solution. Informal review shall be conducted in a timely manner that shall not delay a formal grievance. If the informal review does not resolve the issue(s), and the formal grievance has not already been filed, the individual may seek resolution through the formal grievance procedures.
- B. Formal Grievance Procedures: An individual, or the individual's authorized representative, may initiate a formal grievance in lieu of seeking an informal resolution or if the informal resolution process did not satisfactorily resolve the concern.
1. Formal Written Complaint: A written complaint shall be considered when submitted to the ADA and Section 504 Coordinator of the Colorado Department of Labor and Employment within thirty (30) calendar days of the alleged offense or incident. The complaint shall include the name, address, and telephone number of the person filing the complaint; a description of the incident or alleged offense with as much information as possible; the date and location of the incident or alleged offense; and a proposed agency response that would resolve the issue(s) to the satisfaction of the complainant.  
  
Within thirty (30) calendar days of receipt of the complaint, the ADA and Section 504 Coordinator shall conduct an investigation of the circumstances involved. At the conclusion of the investigation, the ADA and Section 504 Coordinator shall respond in writing or, as appropriate, in a format accessible to the complainant, explaining the position of the Department.
  2. Additional Action: If the response of the written complaint by the ADA and Section 504 Coordinator does not satisfactorily resolve the concern, the complainant, or the complainant's authorized representative, may contact the Colorado Civil Rights Division (CCRD) or the United States Department of Education's Office of Civil Rights (OCR) within sixty (60) days of the Department's decision. An individual does not need to seek resolution through DVR's information resolution or written complaint processes prior to filing a discrimination complaint with CCRD or OCR. A complaint directly to CCRD must be filed within sixty (60) days of the alleged incident of discrimination. A complaint directly to OCR must be filed within 180 days of the alleged incident of discrimination.

## **9.105 APPLICATION AND ELIGIBILITY [Eff. 3/17/17]**

### **9.105.1 Application [Eff. 3/17/17]**

- A. An applicant is an individual who has applied for DVR services. Authorized representatives shall be involved in pertinent issues in the same manner as the applicant or client. DVR shall provide assistance and/or accommodations throughout the application process.

Application criteria for vocational rehabilitation services:

1. An individual or, as appropriate, the individual's authorized representative, signs and dates DVR's application for services; and
2. The individual is available to complete the assessment process; and
3. Information necessary to initiate the eligibility determination process is provided.



**9.105.2 Eligibility [Rev. eff. 3/17/17]**

- A. DVR will work with each applicant to obtain existing records and documents, and when necessary, conduct additional assessments needed to determine eligibility. The length of time between application and eligibility shall not exceed sixty (60) calendar days unless a period of trial work experience is required or exceptional and unforeseen circumstances beyond the agency's control preclude determining eligibility within sixty calendar days and the counselor and applicant agree to a specific extension of time.

Eligibility criteria for vocational rehabilitation services requires that:

1. The individual has a physical or mental impairment documented by qualified personnel. For purposes of this eligibility criteria, DVR considers "qualified personnel" to be individuals or practitioners that are licensed and regulated by the Colorado Department of Regulatory Agencies to determine the existence of an impairment for their specific area of medical or psychological practice, or who otherwise meet established state or national licensing and certification requirements for that area of practice. In addition, the Social Security Administration and education officials responsible for the public education of students with disabilities are considered by DVR to be qualified personnel for this eligibility criterion;
2. The impairment constitutes or results in a substantial impediment to employment that is consistent with the individual's abilities and capabilities;
3. The individual requires vocational rehabilitation services to prepare for, secure, retain, advance in, or regain employment consistent with their unique strengths, resources, priorities, concerns, abilities, capabilities, interests and informed choice; and,
4. The Division of Vocational Rehabilitation (DVR) presumes that an applicant who meets all other eligibility criteria can benefit in terms of an employment outcome from the provision of vocational rehabilitation services. If DVR questions whether the individual's disability is too severe for them to benefit from services in terms of an employment outcome, clear and convincing evidence shall be obtained through the provision of trial work experiences.

**B. Presumptive Eligibility**

An applicant who is determined to be eligible for Supplemental Security Income (SSI) and/or Social Security Disability Insurance (SSDI) benefits (based on their own disability, including blindness) is presumed to meet the eligibility requirements. Verification of eligibility for SSI/SSDI benefits is sufficient to establish that DVR eligibility criteria are met unless the presumption of benefit in terms of an employment outcome is questionable due to the severity of the disability(ies), which may require trial work experiences.

**9.106 SEVERITY OF DISABILITY [Rev. eff. 3/17/17]**

The assessment for determining eligibility and identifying vocational rehabilitation needs shall establish an individual's priority for services, based upon whether the individual's disability is most significant, significant, or an individual with a disability.

- A. An individual with a most significant disability is defined as an eligible individual (including presumptively eligible) who has a severe physical or mental impairment that seriously limits three or more functional capacities (communication, interpersonal skills, mobility, motor skills, self-care, self-direction, work skills, or work tolerance) in terms of an employment outcome; and, whose vocational rehabilitation can be expected to require the provision of two or more vocational rehabilitation services for at least five months.
- B. An individual with a significant disability is defined as an eligible individual who has been verified to be presumptively eligible or who has a severe physical or mental impairment that seriously limits one or two functional capacity areas (communication, interpersonal skills, mobility, motor skills, self-care, self-direction, work skills, or work tolerance) in terms of an employment outcome; and, whose vocational rehabilitation can be expected to require the provision of two or more vocational rehabilitation services for at least five months.
- C. An individual with a disability is defined as an eligible individual who does not meet the criteria for most significant or significant.

**9.107 PROVISION OF VOCATIONAL REHABILITATION SERVICES [Rev. eff. 3/17/17]**

- A. Pre-employment transition services must be made available statewide to all students with disabilities, regardless of whether the student has applied or been determined eligible for vocational rehabilitation services.
  - 1. Pre-employment transition services are:
    - a. Job exploration counseling;
    - b. Work-based learning experiences that are provided in an integrated environment in the community to the maximum extent possible;
    - c. Counseling on opportunities for enrollment in comprehensive transition or postsecondary educational programs and institutions of higher education;
    - d. Workplace readiness training to develop social skills and independent living; and
    - e. Instruction in self-advocacy, which may include peer mentoring.
- B. All other vocational rehabilitation services shall be provided to:
  - 1. Applicants to determine eligibility and severity of disability.
  - 2. Eligible individuals to determine a vocational goal and identify the nature and scope of the services necessary to reach that vocational goal.
  - 3. Under an Individualized Plan for Employment (IPE) to assist an individual in preparing for, securing, retaining, advancing in, or regaining an employment outcome.

Services shall be necessary, appropriate, and purchased at least possible cost. A service is considered necessary only if it is essential to assess an individual's eligibility and severity of disability, to establish the individual's vocational rehabilitation needs, to overcome or circumvent an identified vocational impediment(s), and to attain the individual's chosen employment outcome. A service is considered appropriate if it is of sufficient quality to fully meet the individual's particular needs and circumstances. Least possible cost is considered only after the determination of necessary and appropriate. All services shall be provided in the most integrated settings possible.

**9.107.1 Engagement and Contact [Rev. eff. 3/17/17]**

An effective vocational rehabilitation program requires the active participation of each eligible individual. A DVR staff member shall contact every eligible individual at least once every two months and document this in the client record.

**9.108 UTILIZATION OF REHABILITATION FUNDS**

**9.108.1 Expenditure of Rehabilitation Funds [Rev. eff. 9/30/2019]**

**A. Payment for Services**

Necessary and appropriate services provided to applicants and eligible individuals shall be procured at the least possible cost to the Division of Vocational Rehabilitation (DVR). All services and goods shall be authorized prior to, or at the initiation of, the delivery of the service or good unless the service record documents that prior written authorization is not possible. All goods shall be procured in compliance with state purchasing procedures.

**B. Estimation of Costs**

All completed Individualized Plans for Employment (IPE) shall contain estimates of anticipated agency costs and contributions for goods and services listed.

**C. Regardless of the vocation chosen, DVR excludes supporting a business that does not comply with all relevant state, federal, and local laws and regulations.**

**D. Fee Schedule**

Services must be authorized and payments approved in accordance with current agency fee schedules. Fees exceeding the established maximum may be authorized and paid only when the specific service is not available at the established rate or when the service available at the established rate is not adequate to meet the individual's rehabilitation needs.

**E. Provider Standards**

Vocational goods and services are purchased only from providers who meet minimum standards and possess sufficient knowledge of disability and disability-related barriers to effectively meet the needs of recipients of DVR services. Minimum standards are identified in DVR's fee schedule.

1. DVR shall take reasonable steps to ensure the safety of recipients of services and safeguard individuals from abuse or exploitation while participating in the VR program and interacting with providers of services purchased by DVR. DVR shall establish and maintain policies and procedures specifying the manner in which criminal background checks will be utilized prior to registering providers or approving contracts which will require direct contact with recipients of services or access to confidential information.
2. Additional training and certification requirements apply to Supported Employment service providers.
  - a. Supported Employment service providers shall possess either a nationally recognized Supported Employment certification (Certification) approved by the Department of Health Care Policy and Financing (HCPF) and DVR or complete a nationally recognized training certificate (Training Certificate) approved by HCPF and DVR. Approved Certifications and Training Certificates shall align with the following core competencies:

- i. Core values and principles of Supported Employment. These include the priority of employment for all working-age persons with disabilities, and the belief that all people are capable of full participation in employment and community life. These values and principles are essential to successfully providing Supported Employment services.
  - ii. Person-centered process. The process identifies the strengths, preferences, needs (clinical and support), and desired outcomes of the individual and individually identified goals and preferences related to relationships, community participation, employment, income and savings, healthcare and wellness, and education. The Person-centered approach includes working with a team where the individual chooses the people involved on the team and receives necessary information and support to ensure he or she is able to direct the process to the maximum extent possible; effective communication; and appropriate assessment.
  - iii. Individualized career assessment and planning. This process is used to determine the individual's strengths, needs, and interests to support career exploration and leads to effective career planning, including the consideration of necessary accommodations and benefits planning.
  - iv. Individualized job development. Identifying and creating individualized competitive integrated employment opportunities for individuals with significant disabilities, which meet the needs of both the employer and the individual. This competency includes negotiation of necessary disability accommodations.
  - v. Individualized job coaching. Providing necessary workplace supports to individuals with significant disabilities to ensure success in competitive integrated employment and resulting in a reduction in the need for paid workplace supports over time.
- b. Supported Employment service providers employed by a provider agency or registered as a vendor with DVR on or before July 1, 2019, shall obtain Certification or a Training Certificate no later than July 1, 2024.
- c. Supported Employment service providers hired by a provider agency or registered as a vendor with DVR after July 1, 2024, shall obtain Certification or a Training Certificate within two years of employment.
  - i. Beginning July 1, 2024, Supported Employment service providers who are not fully qualified shall receive supervision from a Supported Employment service provider who is fully qualified (Supervisor) until he or she becomes fully qualified.
  - ii. Supervision shall include, at a minimum, one-on-one meetings (in person or virtually) between the Supported Employment service provider and the Supervisor at least twice each month, and onsite job shadowing at least twice each year (12 month period of time).
- d. Supported Employment service providers obtaining Certification and/or Training Certificate shall be eligible to receive reimbursement for the training and/or Certification costs, as applicable. Reimbursement is limited to \$300 per Certification and \$1,200 per Training Certificate. Reimbursement amounts are inclusive of all associated costs, such as registration fees, travel, and wages.

- i. Supported Employment service providers seeking reimbursement for Training Certificate and/or Certification costs shall obtain pre-approval and request reimbursement from HCPF in accordance with 10 CCR 25.5-10 §8.500.14.H.

**F. Payment for Transportation**

Transportation is provided to an individual if necessary to participate in DVR services. Public transportation is encouraged unless the individual's impairment-related limitations prevent use of public transportation. If the individual chooses to use their own vehicle when public transportation is available and accessible, reimbursement for mileage may be provided up to the cost of public transportation.

To receive reimbursement, the individual or the individual's driver shall have a valid driver's license, possess an active insurance policy to drive the automobile, and use an automobile that is appropriately licensed and registered. Appropriate documentation shall be provided to DVR to support the reimbursement is related to services necessary for eligibility determination or in connection with the provision of services.

**G. State Property**

Goods purchased for use by an eligible individual in a training program, trade, or business remain the property of the State of Colorado until successful closure from DVR occurs. DVR may choose to recover purchased equipment per established policy and/or procedure.

**9.108.2 Applicant or Eligible Individual Financial Participation [Rev. eff. 3/17/17]**

Payment for most services or goods for individuals other than SSI/SSDI recipients is based upon the economic need of the individual and the finances of the family unit. DVR shall conduct a determination of the individual's economic need prior to the preparation and approval of an Individualized Plan for Employment or a Business Exploration Agreement whenever the plan contains a vocational rehabilitation service that is not specifically exempted from financial participation. An individual who receives Supplemental Security Income (SSI) or Social Security Disability Insurance (SSDI) is exempt from the determination of economic need and from participating financially in their rehabilitation plan.

- A. Re-determinations of the individual's economic need shall be conducted within forty-five (45) days of a change to the individual's financial circumstances.
- B. All economic need determinations shall be documented and require an individual's proof of financial status. Documentation accepted as proof of financial status shall be defined in writing by DVR. The applicant or eligible individual shall provide proof of financial status unless the service record documents that there is no proof of financial status available and/or it cannot be obtained. If proof of financial status cannot be obtained, the statement of the applicant or eligible individual and/or member of his/her family shall establish data used to complete economic need determinations.
- C. The family unit consists of the applicant or eligible individual, the spouse of the individual, and any other persons whom the individual claims as a dependent for income tax purposes. When the individual is dependent upon their parents, the parents and persons for whom the parents are financially responsible shall be considered part of the family unit. An individual who is living with his/her parents is considered a dependent unless the parents have not claimed the individual as a dependent for income tax purposes for the tax year previous to the financial need determination and do not intend to claim the individual as a dependent in current and future years.

Exceptions to the family unit may occur if the service record documents a clear indication that the individual is not receiving financial support from the family unit. When this occurs, he/she may be considered his/her own family unit regardless of dependent status for income tax purposes.

- D. The financial need analysis shall determine economic need and consider income and net resources as well as the allowable monthly deductions of the entire family unit. Standardized allowances for normal living costs are determined by the size of the family unit.
- E. Financial participation of the individual or completion of a financial need analysis is not required for the following vocational rehabilitation services:
  - 1. Diagnostic and related assessment services that are required to determine eligibility and vocational rehabilitation needs, including transportation necessary to obtain the assessment.
  - 2. Vocational rehabilitation counseling and guidance;
  - 3. Referral services;
  - 4. Professional fees to providers of vocational adjustment and personal adjustment training, independent living skills training, job coaching, on-the-job training, job seeking skills training, training in the use of rehabilitation technology, and business consultation services provided through a Business Exploration Agreement;
  - 5. Interpreter services and note-taking services for individuals who are deaf;
  - 6. Reader services and note-taking services for individuals who are blind;
  - 7. Personal assistance services;
  - 8. Auxiliary aids needed for an individual with a disability to participate in the vocational rehabilitation program;
  - 9. Job-related services;
  - 10. Occupational goods & services;
  - 11. Self-Employment goods & services;
  - 12. Any service or good furnished to an individual for whom the DVR counselor has evidence of current eligibility for SSI and/or SSDI benefits for disability or blindness; and
  - 13. Pre-employment transition services.

#### **9.109 CASE CLOSURE [Rev. eff. 3/17/17]**

The DVR counselor may close a case record for an applicant or eligible individual when it is determined vocational rehabilitation services are no longer necessary or appropriate for the individual to achieve an employment outcome. The case record of an individual who receives services that lead to an employment outcome shall be closed when the individual achieves the criteria for successful closure. If it is determined that an applicant is ineligible for services or the individual receiving services is no longer eligible for services, the case record shall be closed.

## **9.110 REGULATORY CITATION [Eff. 3/17/17]**

9.100 is developed in accordance with 34 CFR 361 (August 2016). No amendments or later editions are incorporated. Copies are available for purchase at the Government Bookstore, Federal Office Building, 1961 Stout Street, Denver, Colorado 80294. A copy is available for inspection during regular business hours at the Colorado Department of Labor and Employment, Division of Vocational Rehabilitation, Office of the Director, 633 17th Street, Suite 1501, Denver, Colorado 80205; or any state publications depository library.

## **9.200 INDEPENDENT LIVING (IL) SERVICES**

### **9.201 GENERAL PROVISIONS**

The purpose of the program authorized by Title 8, Article 85, INDEPENDENT LIVING SERVICES, Colorado Revised Statutes, is to promote a philosophy of independent living (IL), including consumer control, peer support, self-help, self-determination, equal access, individual and system advocacy, and transitions to maximize the leadership, empowerment, independence, and productivity of individuals with significant disabilities, and to promote and maximize the integration and full inclusion of individuals with significant disabilities into the mainstream of American society.

### **9.202 DEFINITIONS**

“CIL” means a Center for Independent Living.

“Code of Federal Regulations” means Code of Federal Regulations, Title 2 – Grants and Agreements, Subtitle A – Office of Management and Budget Guidance for Grants and Agreements, Chapter II – Office of Management and Budget Guidance, Part 200 – Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards ([http://www.ecfr.gov/cgi-bin/textidx?tpl=/ecfrbrowse/Title02/2cfr200\\_main\\_02.tpl](http://www.ecfr.gov/cgi-bin/textidx?tpl=/ecfrbrowse/Title02/2cfr200_main_02.tpl))

“Consumer Service Record (CSR)” means a complete record which includes eligibility determination, intake information, a signed Independent Living Plan (ILP) or waiver, specific goals, a description of services, Client Assistance Program (CAP) information, a confidentiality agreement, a grievance policy, and a record of whether goals were achieved.

“Director” means the Director of the Division of Vocational Rehabilitation.

“DVR” means the Division of Vocational Rehabilitation.

“Federal Act” means Title VII of the Federal Rehabilitation Act of 1973, as amended and codified in 29 U.S.C. 71 1(c) and Section 796. This rule does not contain any later editions of those parts. Copies of these regulations are available from: Colorado Department of Labor and Employment, Division of Vocational Rehabilitation, Office of Independent Living, 633 17th Street, 15th Floor, Denver, CO 80202 or at any State Publication Depository Library.

“Network” means the Network of Certified Colorado Centers for Independent Living.

“OIL” means the Office of Independent Living Services

“Provider association” means the Association of Colorado Centers for Independent Living (ACCIL).

“Service area” means the community, county, or groups of counties a CIL serves.

“SILC” means Statewide Independent Living Council.

“SILS” means State Independent Living Services Program, in accordance with 34 CFR 365.1. No later editions are incorporated. Copies of these federal regulations are available from the Colorado Department of Labor and Employment, Division of Vocational Rehabilitation, Office of Independent Living, 633 17th Street, 15th Floor, Denver, CO 80202 or at any State Publication Depository Library.

“State” means the State of Colorado.

“Verification team” means a team designated by the Director, which consists of DVR/OIL Staff and a representative of the CILs network.

### **9.203 SERVICES PROVIDED**

- A. Independent living services includes the independent living core services which consist of information and referral services, IL skills training, peer counseling, (including cross-disability peer counseling), individual and systems advocacy; and transition services; and
- B. Other services, such as:
  - 1. Counseling services, including psychological, psychotherapeutic, and related services;
  - 2. Services related to securing housing or shelter, including services related to community group living, that are supportive of the purposes of the federal Act, and adaptive housing services, including appropriate accommodations to and modifications of any space used to serve, or to be occupied by, individuals with significant disabilities;
  - 3. Rehabilitation technology;
  - 4. Mobility training;
  - 5. Services and training for individuals with cognitive and sensory disabilities, including life skills training and interpreter and reader services;
  - 6. Personal assistance services, including attendant care and the training of personnel providing these services;
  - 7. Surveys, directories, and other activities to identify appropriate housing, recreation opportunities, and accessible transportation, and other support services;
  - 8. Consumer information programs on rehabilitation and IL services available under the Federal Act, especially for minorities and other individual with significant disabilities who have traditionally been unserved or underserved by programs under the Federal Act;
  - 9. Education and training necessary for living in a community and participation in community activities;
  - 10. Supported living;
  - 11. Transportation, including referral and assistance for transportation;
  - 12. Physical rehabilitation;
  - 13. Therapeutic treatment;
  - 14. Provision of needed prostheses and other appliances and devices;



15. Individual and group social and recreational services;
16. Training to develop skills specifically designed for youths who are individuals with significant disabilities to promote self-awareness and esteem, develop advocacy and self-empowerment skills, and explore career options;
17. Services for children;
18. Services under other federal, state, or local programs designed to provide resources, training, counseling, or other assistance of substantial benefit in enhancing the independence, productivity, and quality of life of individuals with significant disabilities;
19. Appropriate preventive services to decrease the need of individuals with significant disabilities assisted under the Federal Act for similar services in the future;
20. Community awareness programs to enhance the understanding and integration into society of individuals with significant disabilities; and,
21. Any other services that may be necessary to improve the ability of an individual with a significant disability to function, continue functioning, or move toward functioning independently in the family or community or to continue in employment and that are not inconsistent with any other provisions of the Federal Act.

#### **9.203.1 DISCONTINUATION OF SERVICES [Eff. 4/1/13]**

Section 51 of 34 CFR 364 under the authority of 29 U.S.C. 796-796f-5 which do not include amendments to or editions of said regulations later than August 15, 1994, provides requirements for determinations of eligibility or ineligibility, in accordance with all parts, incorporated herein by reference. Copies of these regulations are available from: Colorado Department of Labor and Employment, Division of Vocational Rehabilitation, Office of Independent Living, 633 17th Street, 15th Floor, Denver, CO 80202 or at any State Publication Depository Library.

A CIL shall discontinue Independent Living (IL) services to an individual if the individual is no longer eligible to receive IL services. An individual is no longer eligible to receive IL services when the delivery of IL services will no longer improve the individual's ability to function, ability to continue functioning, or move toward functioning independently in the community. If the CIL intends to discontinue services to an individual receiving IL services under an IL plan or an individual receiving services after they have waived their right to a plan, the CIL shall follow the requirements that apply to determinations of ineligibility and review of ineligibility determinations.

#### **9.203.2 APPEAL PROCEDURES [Eff. 4/1/13]**

Section 58 of 34 CFR 364 requires each CIL to establish consumer appeal procedures; Section 30 of CFR 364 requires each center to provide notice of the Client Assistance Project in accordance with all parts, under the authority of 29 U.S.C. 796-796f-5 which do not include amendments to or editions of said regulations later than August 15, 1994 of those parts and incorporated herein by reference. Copies of these regulations are available from: Colorado Department of Labor and Employment, Division of Vocational Rehabilitation, Office of Independent Living, 633 17th Street, 15th Floor, Denver, CO 80202 or at any State Publication Depository Library

- A. Each CIL must establish policies and procedures that an individual may use to obtain review of decisions made by the CIL concerning the individual's request for IL services or the provision of IL services to the individuals; and,

- B. Use formats that are accessible to inform each individual who seeks or is receiving IL services from the center about the procedures required by paragraph A of this section;
- C. Establish policies and procedures that require that the individual is notified of the Client Assistance Program (CAP);
- D. Establish a policy that the center shall continue services to the consumer while the decision is being reviewed, unless continuation of services is deemed harmful to the consumer or otherwise.

**9.203.3 APPLICATION, CERTIFICATION AND RE-CERTIFICATION OF CENTERS [Eff. 4/1/13]**

**A. Application Process**

An organization that intends to become a Center for Independent Living must apply to the Director of the Division of Vocational Rehabilitation to become certified as a CIL and eligible for funding under the SILS program.

- B. For an organization that DVR previously certified to operate as a certified CIL or was decertified, the organization must provide to DVR/OIL evidence that it is currently operating in accordance with all parts, incorporated herein by reference, of Title VII, Section 725 of the Federal Act, as defined in 34 CFR 366.60 under the authority of 20 U.S.C. 796f-4 and 34 CFR 366.63 under the authority of 29 U.S.C. 711(c), 796d-1(b), and 796f-4, which do not include amendments to or editions of said regulations later than August 1, 1995 of those parts and incorporated herein by reference. Copies of these regulations are available from: Colorado Department of Labor and Employment, Division of Vocational Rehabilitation, Office of Independent Living, 633 17th Street, 15th Floor, Denver, CO 80202 or at any State Publication Depository Library.

**C. Requirements of Certification and Re-Certification**

The organization must comply with the standards and assurances for independent living in accordance with all parts, incorporated herein by reference, of Title VII, Section 725 of the Federal Act, the center evaluation standards in accordance with all parts, incorporated herein by reference of 34 CFR 366.60, under the authority of 20 U.S.C. 796f-4 and 34 CFR 366.63 under the authority of 29 U.S.C. 711(c), 796d-1(b), and 796f-4, which do not include amendments to or editions of said regulations later than August 1, 1995 of those parts. Copies of these regulations are available from: Colorado Department of Labor and Employment, Division of Vocational Rehabilitation, Office of Independent Living, 633 17th Street, 15th Floor, Denver, CO 80202 or at any State Publication Depository Library. Prior to certifying an organization as a center, DVR/OIL may conduct on-site verification procedures based on the evaluation standards previously cited and may include verifying the accuracy of the information in the organization's annual report. If DVR/OIL determines that the organization qualifies to operate as a center, DVR/OIL shall provide written certification for up to thirty-six months from the date of the on-site verification.

**9.203.4 CERTIFICATION OF CENTERS AND VERIFICATION OF INFORMATION [Eff. 4/1/13]**

- A. DVR/OIL shall verify the accuracy of the information in the CIL's annual performance report through information obtained by a Verification Team during an onsite review in locations that a CIL operates. A Verification Team will evaluate a CIL at least once every thirty-six months to determine certification status.
- B. The Verification Team will notify the CIL at least ten working days prior to the verification team's onsite evaluation. DVR/OIL reserves the right to monitor all or part of the evaluation standards. Included in the notification to CILs will be a list of evaluation standards.

- C. Minimal compliance means that the CIL provides at least one type of evidence for each evaluation standard. The DVR Verification Team obtains evidence to verify the accuracy of the information in the annual performance report and establish minimal compliance, as outlined in 34 CFR 366.60 under the authority of 20 U.S.C. 796f-4 which does not include amendments to or editions of said regulations later than August 15, 1994, and incorporated herein by reference, and with DVR contracts and procedures. Copies of these regulations are available from: Colorado Department of Labor and Employment, Division of Vocational Rehabilitation, Office of Independent Living, 633 17th Street, 15th Floor, Denver, CO 80202 or at any State Publication Depository Library.
- D. The CIL must comply with the evaluation standards defined in 34 CFR 366.60 to 366.63 under the authority of and all parts, incorporated herein by reference incorporated herein by reference of 34 CFR 366.60, under the authority of 20 U.S.C. 796f-4 and 34 CFR 366.63 under the authority of 29 U.S.C. 711(c), 796d-1(b), and 796f-4 which do not include amendments to or editions of said regulations later than August 1, 1995 of those parts. Copies of these federal regulations are available from the Colorado Department of Labor and Employment, Division of Vocational Rehabilitation, Office of Independent Living, 633 17th Street, 15th Floor, Denver, CO 80202 or at any State Publication Depository Library.

Prior to certifying an organization as a CIL DVR/OIL may verify the accuracy of the information in the organization's annual performance report following the on-site verification process outlined in this section and a DVR/OIL procedural. If DVR/OIL determines that the organization qualifies to operate as a CIL, DVR/OIL shall provide a written certification. DVR/OIL may certify an organization for up to thirty-six months from the date of the on-site verification.

- E. DVR/OIL may conduct additional on site evaluation visits, without prior notification, if the Verification Team needs additional documentation or information in regards to compliance indicators.

**9.204 (NONE) [Rev. eff. 4/1/13]**

**9.205 ASSURANCE TO RECEIVE FUNDING UNDER THE SILS PROGRAM [Rev. eff. 4/1/13]**

- A. To be eligible for funding under the SILS program, an eligible agency shall comply with all parts, incorporated herein by reference, of Title VII, Section 725, 34 CFR 366.60, under the authority of 20 U.S.C. 796f-4 and 34 CFR 366.63 under the authority of 29 U.S.C. 711(C), 796D-1(B), and 796F-4, which do not include amendments to or later editions of regulations later than August 1, 1995 of those parts. Copies of these regulations are available from: Colorado Department of Labor and Employment, Division of Vocational Rehabilitation, Office of Independent Living, 633 17th Street, 15th Floor, Denver, CO 80202 or at any State Publication Depository Library.
- B. A CIL must obtain an annual independent fiscal audit conducted by a certified public accountant and provide documentation that demonstrates the CILs' board of directors' review of the CILs monthly financial statements.
- C. A CIL must comply with all state and federal contract requirements in terms of proper financial reporting, accountability, transparency and documentation; and agree to the terms and conditions of such contract. Funds allocated under the SILS program must only be used to provide Independent Living services or to pay associated costs, as described in the contract exhibits.

**9.206 PAYMENT TO CILS [Rev. eff. 4/1/13]**

- A. A CIL may invoice DVR/OIL according to specific requirements in a contract or procedures set forth by DVR/OIL. To receive payment, a CIL must have all supporting documentation for services and allowable costs and be able to provide documentation of such record if requested.

- B. A CIL must adhere to contract requirements in order to receive payment for services provided.

**9.207 ALLOCATION OF FUNDS FOR SILS [Rev. eff. 4/1/13]**

**9.207.1 STATE ALLOCATION [Rev. eff. 4/1/13]**

The State shall allocate funds to CILs that participate in the SILS program. Funds to be allocated include funds appropriated in both Federal and State appropriations. The allocation represents the maximum amount of funds that a CIL may be reimbursed under the SILS program. DVR/OIL shall set forth specific procedures that allocate funds to all eligible CILs.

The allocation of funding to CILs is subject to periodic review by the Independent Living Allocations Committee. A review of allocations will:

- A. Align with the State Plan for Independent Living (SPIL); or,
- B. Occur if there is a change in the number of CILs eligible to receive funding.
- C. DVR/OIL reserves the right to evaluate and/or change the allocation of funding if special, unforeseen, circumstances occur.

**9.207.2 INDEPENDENT LIVING ALLOCATIONS COMMITTEE [Rev. eff. 4/1/13]**

- A. The SILC, CIL Network, and DVR shall participate in an Independent Living Allocation Committee. The Chairperson of the SILC shall make the appointment of two members who are advocates for individuals with disabilities and are not affiliated with CILs. The CILs Network shall appoint two individuals. The Director of DVR will appoint two individuals. The total number of allocation committee members shall equal six, two from each group.
- B. The Independent Living Allocations Committee will work to establish criteria for allocating funds from the State General Fund for Independent Living and Federal Part B funds.
- C. All funding formulas submitted by the allocation committee shall be in compliance with State fiscal rules and regulations, current Federal and State laws and regulations, including annotations and footnotes in appropriations, and the State Plan for Independent Living.
- D. DVR/OIL will ensure that the Independent Living Allocations Committee participates in any change of funding allocation that is in DVR/OIL procedures. The final decision of how to allocate funds is the responsibility of DVR/OIL.

**9.207.3 STATE ALLOCATION FOR DELIVERY OF INDEPENDENT LIVING SERVICES**

- A. The Block Distribution of state moneys to independent living centers.
  - (A) A base amount of not less than six hundred thousand dollars; and
  - (B) Other factors agreed to by the independent living centers, which may include a per capita adjustment, a per county adjustment, or other adjustments.
- B. Certified Centers for Independent Living will be allocated General Funds in addition to their base amount of General Funds with a weighted formula that divides County disability population, plus County population, and Land Area by population to determine for each County. The resulting figure is the amount which each CIL will receive.

Specific calculations of the formula are:

- A. 1st assign each Colorado County a score of:  $40\% \times (\text{County 16-64 Disability Population} / \text{State 1664 Disability Population})$
- B. 2nd add the weighted score of:  $20\% \times (\text{County 65+ Population} / \text{State 65+ Population})$
- C. 3rd add the weighted score of:  $40\% \times (\text{County Quantile Average of Land Area} / \text{Population})$
- D. 4th multiply this score of each County by the available funds;
- E. 5th divide it by 100.
- F. 6th sum up all the County scores from within each CIL's catchment area.

CILS whose catchment areas share a County shall report to the Department, how they will allocate County scores between them. If these CILS do not reach an agreement, the Department shall determine and document the allocation of County scores between the CILS.

#### **9.208 RECORDS [Rev. eff. 4/1/13]**

In addition to complying with applicable EDGAR record keeping requirements, centers that receive financial assistance from the SILS program will maintain records that fully disclose and document:

- A. The amount and disposition by the center of that funding;
- B. The total cost of the IL services;
- C. The amount of that portion of the cost of the IL services supplied by other sources; and,
- D. Compliance with regulations pertaining to the SILS program; and,
  - 1. Records that the Director, Division of Vocational Rehabilitation or the Secretary of the Federal Department of Health and Human Services determines to be appropriate to facilitate an effective audit.
  - 2. Access to Records

For the purpose of conducting audits, examinations, compliance reviews and verification of information in the annual performance report, centers that receive funding from the SILS program will provide access to the Director, the Secretary of the federal Department of Education, and the Comptroller General, or any of their duly authorized representatives, to these records; and,

- a. Any other books, documents, papers, and records of the recipients that are pertinent to the financial assistance received to provide IL services; and,
- b. All consumer service records for individuals served with funds received from the SILS program, including names, addresses, and records of evaluation included in those consumer service records.

**9.209 EVALUATION OF CENTERS: ENFORCEMENT PROCEEDINGS [Rev. eff. 7/1/12]**

With regards to enforcement proceedings, DVR/OILS shall comply with all federal rules and regulations, incorporated herein by reference, including 45 CFR 1329.7 September 1, 2017. This rule does not contain any later editions of those parts. Copies of these regulations are available from: Colorado Department of Labor and Employment, Division of Vocational Rehabilitation, Office of Independent Living SERVICES, 633 17th Street, 15th Floor, Denver, CO 80202 or at any State Publications Depository Library.

**9.209.1 Modification of Enforcement Proceedings [Rev. eff. 7/1/12]**

If the funds received by the CIL under the SILS program include federal funds administered by the Colorado Department of Labor and Employment in accordance with, and incorporated herein by reference, Section 723 Title VII of the Federal Act, as defined in Section 9.202, the enforcement procedures required by 45 CFR 1329.7 under the authority of 29 U.S.C. Section 711(c) and 796F-2 (g) and (i), as defined in Section 9.202, will be included in enforcement proceedings with respect to the Section 723 federal funds only, as defined in Section 9.202 (Federal Act) September 1, 2017. This rule does not contain any later editions of those parts. Copies of these regulations are available from: Colorado Department of Labor and Employment, Division of Vocational Rehabilitation, Office of Independent Living Services, 633 17th Street, 15th Floor, Denver, CO 80202 or at any State Publication Depository Library.

**9.209.2 TERMINATION OF FUNDS [Rev. eff. 4/1/13]**

A CIL's funds may be terminated for:

- A. Failure to meet the requirements of 45 CFR 1329.7 September 1, 2017. This rule does not contain any later editions of those parts. Copies of these regulations are available from: Colorado Department of Labor and Employment, Division of Vocational Rehabilitation, Office of Independent Living Services, 633 17th Street, 15th Floor, Denver, CO 80202 or at any State Publication Depository Library.
- B. Failure to meet contract requirements within the statement of work and its exhibits including, but not limited to, general and special provisions.
- C. A decision to terminate funding will also terminate the organization's certification as a center. Refer to Section 9.203.3 for clarification on re-certification.

**9.400 BUSINESS ENTERPRISE PROGRAM [Rev. eff. 7/1/08]**

AUTHORITY:

20 U.S.C. § 107 et seq.

34 CFR Part 395 et seq.

8-84-201, C.R.S. et seq.

9 CCR 2503-1 § 3.850.72 - 3.850.73

6 CCR 1010-2 § 2-201

The purpose of the Colorado Business Enterprise Program is to provide blind persons with remunerative employment, enlarging the economic opportunities of the blind, and stimulating the blind to greater efforts in striving to make themselves self-supporting.

Colorado may implement a mission and vision statement, which may evolve with the era.

Colorado shall approach any gaps in information in 8-84-201, C.R.S. et seq. by applying the interpretation and intent (in federal buildings) of 20 U.S.C. § 107 et seq. and 34 CFR Part 395 et seq. to State, private, and other property.

The Colorado Business Enterprise Program carries out the Colorado State Licensing Agency responsibilities, under the Division of Vocational Rehabilitation, as applied for in accordance with 34 CFR Part 395.2.

#### **9.400.1 Definitions [Rev. eff. 7/1/08]**

The Colorado Business Enterprise Program recognizes the terms as defined in 34 CFR Part 395.1. Additional terms are defined as follows:

“Active Participation” means an ongoing process of negotiations and collaboration between the State Licensing Agency and the Committee of Licensed Blind Operators to participate in major administrative decisions and policy and Program development decisions affecting the overall administration of the Program.

“Bad Debt” means a Debt that is 30 days or more past due and does not have an associated, accepted, repayment plan.

“Blind Operator” means all Program Participants, including Licensed Blind Operators, Certified Blind Operators, and Trainees.

“Blind Operator Agreement” means a contract or other legal document executed between a Blind Operator and the State Licensing Agency, delineating the arrangement accepted by both parties, identifying all rights and obligations specific to the operation of a Business Enterprise Location as subcontracted to any awarded Blind Operator.

“Business Enterprise Location” is considered to be one-in-the-same as “Vending facility” as defined in 34 CFR Part 395.1 and includes vending machines as defined in this §, and other business as described in C.R.S. 8-84-201, including like Business Enterprise Locations being managed by Certified Blind Operators prior to licensure.

“Colorado Elected Committee” means the State Committee of Blind Vendors per 34 CFR Part 395.14 and/or Committee of Blind Vendors per 20 U.S.C § 107 b-1.

“Debt” means an obligation or liability to pay an amount of money due.

“Individual Business Enterprise Location” means the entire identity and complete parameters that are established by the State Licensing Agency for a single Business Enterprise Location, which may be established and reestablished at the State Licensing Agency's discretion when it is in the best interest of The Business Enterprise Program.

“Licensed Blind Operator” means a “vendor” as defined in 34 CFR Part 395.1(aa), regardless of status of award of an active Business Enterprise Location.

“State Licensing Agency” means the Business Enterprise Program, housed within the Division of Vocational Rehabilitation Services, which administers the Randolph-Sheppard Vending Facility Program and issues licenses to blind persons in accordance with 34 CFR Part 395.2.

“Unassigned vending machine income” is considered to be one-in-the-same as “Vending machine income” as defined in 34 CFR Part 395.1 and is income that accrues to the State Licensing Agency from commissions that vending or other companies pay on proceeds where there is no on-site Blind Operator. This applies to vending machines, commission income (CRS 8-84-205) and other businesses operated on Federal, State, or other property.

“Vending machine” is considered to be one-in-the-same as “Vending machine” as defined in 34 CFR Part 395.1 and includes all types of automated vending equipment which dispenses goods or services, automated teller machines or similar, or such equipment which provides recreational or other services.

“Vending machine income” is considered to be one-in-the-same as “Vending machine income” as defined in 34 CFR Part 395.1, except that it applies to income that accrues to a Blind Operator, or the State Licensing Agency.

“Vendor Debt” means a Debt found to be legitimately owed by the Blind Operator to an industry vendor (i.e. food or beverage manufacturer or distributor, or other vendor to the Blind Operator).

#### **9.401 ELIGIBILITY [Rev. eff. 7/1/08]**

Pursuant to 20 U.S.C. § 107a.(b) and 34 CFR Part 395.7, in selecting persons to be Blind Operators of the Business Enterprise Program, preference shall be given to persons who are in need of employment and who have been determined to be:

- A. Blind as defined by 20 U.S.C. § 107e and 8-84-202(1), C.R.S.;
- B. Citizens of the United States;
- C. Able to successfully pass all State and Federal background investigations;
- D. Free from infectious diseases as defined by the Department of Public Health and Environment for food handling (6 CCR 1010-2, § 2-201);
- E. Free from any felony conviction or pattern of misdemeanor convictions;
- F. Successful in the completion of Business Enterprise Program Training Program;
- G. Reasonably possess the physical and mental aptitude to successfully manage a Business Enterprise Location as deemed by the State Licensing Agency and further defined in policy;
- H. Eighteen (18) years of age or older; and,
- I. In possession of a high school diploma or GED.
- J. The State Licensing Agency may develop policy prescribing methods which verify that eligibility standards are met through the entire period that a participant is granted licensure, to include initial and subsequent eligibility verification.

#### **9.402 LICENSURE AND LEVELS OF BLIND OPERATORS [Rev. eff. 7/1/08]**

This Part is administered in accordance with 20 U.S.C. § 107b and 34 CFR Part 395.7.

- A. The State Licensing Agency shall provide for the issuance of licenses for an indefinite period. Licenses are subject to Probation, Suspension, or Termination.



- B. Upon satisfactory completion of training and subsequently operating an awarded Business Enterprise Location for ninety (90) calendar days, an evaluation will be conducted by the State Licensing Agency to determine whether the applicant is qualified for the award of a license, or if the applicant must continue training, or if it is the recommendation that the applicant seek another occupation.
- C. The award of a license by the State Licensing Agency is contingent upon stabilized operation of a Business Enterprise Location for a minimum of ninety (90) calendar days and is determined to be successful jointly by the State Licensing Agency and Division of Vocational Rehabilitation delegates.

**Description of status differentiation among Blind Operators.**

- A. "Trainee" means a blind person who has been accepted into the Business Enterprise Program and is participating in the formal Business Enterprise Program training course, including any preliminary training offered through the Division of Vocational Rehabilitation, but are not yet certified. Trainees are:
  - 1. Clients of the Division of Vocational Rehabilitation and are subject to all rights and obligations as such.
  - 2. Not eligible for any benefits afforded to Licensed Blind Operators, financial, legal, or otherwise.
- B. "Certified Blind Operator" means a Trainee who has successfully completed the formal Business Enterprise Program training course and has been certified to manage a Business Enterprise Location, prior to licensure. Certified Blind Operators are:
  - 1. Clients of the Division of Vocational Rehabilitation and are subject to all rights and obligations as such.
  - 2. Not eligible for any benefits afforded to Licensed Blind Operators, financial, legal, or otherwise.
  - 3. Eligible to bid on available Business Enterprise Locations and apply for associated beginning operating cash loan.
- C. "Licensed Blind Operator" means a blind person who has been awarded a license by the State Licensing Agency. Licensed Blind Operators whose licenses are not in a probationary, suspended, or terminated status are:
  - 1. Protected by all rights and benefits afforded to Blind Operators in accordance with the Federal Randolph-Sheppard Act, 20 U.S.C. § 107 et seq., and implementing regulations, 34 CFR 395 et. seq.
  - 2. Eligible:
    - a. To apply for beginning operating cash loan associated with an awarded Business Enterprise Location
    - b. To bid on available Business Enterprise Location
    - c. To run for Colorado Elected Committee membership
    - d. To apply for fair minimum return

- e. For grievance and appeal rights in accordance with § 9.413
  - f. For any health, medical, or retirement benefits as adopted by the body
  - g. For quarterly unassigned vending machine income disbursement
  - h. To be a voting member of the body of Blind Operators
- D. “Blind Operator” means any participant of The Business Enterprise Program at any stage identified above.
- E. “Probationary License Status” means a License that is associated with a SMART action plan, or other corrective action plan, and the associated Licensed Blind Operator activities are being closely monitored for progression. This temporary status is assigned when a Licensed Blind Operator must work with their assigned Business Consultant to fulfill prescribed requirements, or face additional consequences. Licensed Blind Operators who are in a Probationary License Status:
  - 1. Are protected by all rights and benefits afforded to Blind Operators in accordance with the Federal Randolph-Sheppard Act, 20 U.S.C. § 107 et seq., and implementing regulations, 34 CFR 395 et. seq.
  - 2. Retain the same rights and eligibility as a Licensed Blind Operator as described in § 9.402 – 3, with the exception that they
  - 3. Are not eligible to bid on an available Business Enterprise Location or run for Colorado Elected Committee membership if the reason they are on probation is because of bad Debt owed to the Business Enterprise Program
- F. “Suspended License Status” means a Licensed that is associate with a Blind Operator who must return to training and fulfill additional requirements in order to return to a Licensed Blind Operator or Probationary License Status. Licensed Blind Operators who are in a Suspended License Status:
  - 1. Are protected by all rights and benefits afforded to Blind Operators in accordance with the Federal Randolph-Sheppard Act, 20 U.S.C. § 107 et seq., and implementing regulations, 34 CFR 395 et. seq.
  - 2. Do not have any of the same rights and eligibility as a Licensed Blind Operator as described in § 9.402 – 3, with the exception that they
  - 3. Do retain grievance and appeal rights in accordance with § 9.413
- G. “Terminated License Status” means a Blind Operator who has had their license completely revoked, cancelled, or otherwise separated. Licensed Blind Operators who are in a Terminated License Status:
  - 1. Are protected by all rights and benefits afforded to Blind Operators in accordance with the Federal Randolph-Sheppard Act, 20 U.S.C. § 107 et seq., and implementing regulations, 34 CFR 395 et. seq. for a full 30 calendar days after termination, if no appeal is in progress.
  - 2. Do not have any of the same rights and eligibility as a Licensed Blind Operator as described in § 9.402 – 3, with the exception that they

3. Do retain grievance and appeal rights in accordance with § 9.413
4. May not receive quarterly unassigned vending machine income disbursement
5. May not bid on available Business Enterprise Locations
6. May not serve on the Colorado Elected Committee
7. May utilize grievance and appeals processes

The State Licensing Agency shall be free to develop other levels of distinction or classes of licensing. Issuance and conditions of licenses.

**9.402.1 Property Right [Rev. eff. 7/1/08]**

A license shall not create any property right for the licensee to whom it is issued and shall be deemed only to inform the public and other interested parties that the licensee has successfully earned licensure as described herein.

**9.402.2 Enforcement, Removal, and Termination of a License [Rev. eff. 7/1/08]**

The enforced removal of any Blind Operator from a Business Enterprise Location may occur prior to licensure or be in conjunction with the Suspension or Termination of a license and will be managed in accordance with written policies of the program.

Individuals committing illegal acts may also be subject to civil or criminal penalties.

A license issued to a Blind Operator for the operation of a Business Enterprise Location may be placed on probation, suspension, or terminated when:

- A. If the Licensed Blind Operator does not abide by any part of these Rules or provisions covered by Blind Operator Agreement, including all obligations and Debt.
- B. The Blind Operator Agreement has not been fully executed or is no longer in effect.
- C. The State Licensing Agency finds that the Business Enterprise Location is not being managed in accordance with the laws, rules and regulations, the terms and conditions governing the Blind Operator Agreement, contract or applicable permit terms for the particular Business Enterprise Location, or other written agreement with the Blind Operator.
- D. Program Eligibility, as delineated in section 9.401, is no longer met, including if there is proof of improvement of vision so that the Blind Operator no longer meets the definition of blindness, for which the State Licensing Agency may require proof periodically and by vendors selected according to Colorado, department, and division procurement rules and source selection methods.
- E. There is an extended illness with medically documented diagnosis of prolonged incapacity of the Licensed Blind Operator to manage the Business Enterprise Location in a manner consistent with the needs of the Business Enterprise Location or other available Business Enterprise Locations in the Business Enterprise Program. The Blind Operator may return to The Business Enterprise Program if they provides documentation that their physician deems improved physical condition that they may "return to work" and the State Licensing Agency is in agreement.
- F. The Licensed Blind Operator withdraws from The Business Enterprise Program by notice to The Business Enterprise Program.

- G. A Licensed Blind Operator elects not to accept any Business Enterprise Location and fail to request for an available Business Enterprise Location to be put out for bid, and then successfully bid on it. They will be considered to have a Terminated License after ninety (90) calendar days and all program re-entry rules and practices shall apply.
- H. Falsification of records by the Blind Operator, as validated by the State Licensing Agency or other State entity, will result in the Termination or Suspension of a License without placing the Blind Operator on probation.

### **Program Re-entry**

When any former Licensed Blind Operator requests to return to The Business Enterprise Program, they must:

- A. Meet all eligibility requirements in § 9.401
- B. Be free of bad Debt to the Business Enterprise Program
- C. Be free of bad Debt to industry vendors which may impact their success in managing a Business Enterprise Location
- D. Be subject to existing application and review process for new applicants
- E. Be required to fulfill training as prescribed by the State Licensing Agency, in order to become re-certified and licensed

### **9.403 COLORADO ELECTED COMMITTEE: ELECTION AND PURPOSE OF A COMMITTEE OF LICENSED BLIND OPERATORS**

This entire Part is managed in accordance with 20 U.S.C. § 107b-1 and 34 CFR Part 395.14.

The Colorado Elected Committee is not regulated by the Governor's Office of Boards and Commissions or equivalent and is provided in accordance with 20 U.S.C. § 107b-1 through the State Licensing Agency, with Active Participation by the Colorado Elected Committee.

The Colorado Elected Committee bylaws are developed by the entire body of Blind Operators, with oversight and acceptance by the State Licensing Agency.

#### **9.403.1 Elections [Rev. eff. 7/1/08]**

The State Licensing Agency shall provide for an election among the Licensed Blind Operators to establish a committee that, to the extent possible, will be representative of:

- A. All Business Enterprise Location types
- B. All areas of the State

Members shall be elected to serve a two-year term.

Participation by any Blind Operator in any election shall not be conditioned upon the payment of dues or any other fees in accordance with 34 CFR Part 395.14(a). Dues or fees do not mean Debt or bad Debt.

#### **9.403.2 Purpose of the Colorado Elected Committee [Rev. eff. 7/1/08]**

The Colorado Elected Committee shall perform the following functions:

- A. The Colorado Elected Committee is responsible for Active Participation with the State Licensing Agency and perform functions in accordance with 20 U.S.C. §107b-1(3) and 34 CFR Part 395.7(c), 395.9, 395.14 et. seq., and 395.36(a), as defined in these rules, §9.400.1 related to:
  - 1. *Major* administrative decisions, to include:
    - a. Setting out the method for determining budget line items for expenditure of set-aside (these rules, § 9.411.2).
  - 2. Policy, to include those in accordance with these rules, §9.404 which govern the Blind Operators':
    - a. Duties
    - b. Supervision
    - c. Transfer and promotion
    - d. Financial participation
  - 3. Program development decisions *which affect the overall administration* of the State's Business Enterprise program, to include:
    - a. Development and administration of a State system for the transfer and promotion of Blind Operators
    - b. Development of training and retraining programs for Blind Operators
- B. Receive and transmit to the State Licensing Agency grievances at the request of Licensed Blind Operators and serve as advocates for such Licensed Blind Operators in connection with such grievances;
- C. Sponsor, with the assistance of the State Licensing Agency, meetings and instructional conferences for Blind Operators within the State.

**9.404 RESPONSIBILITIES [Rev. eff. 7/1/08]**

**STATE LICENSING AGENCY**

The State Licensing Agency must act as prescribed in 20 U.S.C. § 107 et seq. and 34 CFR Part 395 et seq. and responsibilities are further delineated as follows and in policy.

The State Licensing Agency shall have the ultimate responsibility for the Business Enterprise Program. When the State Licensing Agency does not adopt written recommendations of the Colorado Elected Committee, it shall notify the Colorado Elected Committee. The State Licensing Agency will maintain operational procedures to secure the day to day function of the State Licensing Agency.

The following are responsibilities of the State Licensing Agency: The State Licensing Agency shall:

- A. Cooperate with the Federal Secretary of Education in applying the requirements of the Randolph-Sheppard Act in a uniform manner (20 U.S.C. § 107 et seq.)

- B. Take effective action to carry out full responsibility for the supervision and collaborative management of each Business Enterprise Location in the program in accordance with its established rules and regulations, this part, and the terms and conditions governing the contracts, agreements, permits and Blind Operator Agreements. This includes the removal of a Blind Operator from their awarded Business Enterprise Location, Probation, Suspension, or Termination of Licenses in accordance with § 9.402.2.
- C. Take diligent action to enforce Blind Operator responsibilities, performance, and overall mission compliance to include systematic analysis of financial and other performance through evaluations and/or audits.
- D. Submit promptly to the Secretary of Education for approval a description of any changes in
  - 1. The legal authority of the State Licensing Agency,
  - 2. Its rules and regulations,
  - 3. Blind Operator Agreements,
  - 4. Schedules for the setting aside of funds,
  - 5. Contractual arrangements for the furnishing of services by a nominee,
  - 6. Arrangements for carrying general liability and product liability insurance, and
  - 7. Any other matters which form a part of the application (34 CFR Parts 395.2 and 395.3);
- E. Survey sites in order to identify whether they are satisfactory for a Business Enterprise Location in accordance with 20 U.S.C. § 107a(d) and provide a waiver to the agency which has a non-satisfactory site, limiting the term and defining the conditions of the waiver.
- F. Provide and train on documents provided upon request to any Blind Operator at any time.
- G. Submit to an arbitration panel those grievances of any Licensed Blind Operator unresolved after a full evidentiary hearing in accordance with 20 U.S.C. §§ 107b(6) and 107d-1(a), upon written receipt of such request by the Licensed Blind Operator or their representative.
- H. For each Business Enterprise Location and for the entire Business Enterprise Program, adopt accounting procedures and maintain financial and other records in a manner necessary to provide detail as is sufficient to
  - 1. Enable evaluation of performance and
  - 2. Comply with Secretary of Education requirements
- I. Provide financial reporting relevant to Business Enterprise Program on at least a quarterly and annual basis, pursuant to 20 U.S.C. § 1071b-1.1.
- J. Protect and manage all State Assets assigned to the Business Enterprise Program including purchase, transition, and tracking.
- K. Only use set-aside funds for appropriate purposes, as identified in 20 U.S.C. § 1071b-3 and 34 CFR Part 395.8(c), and manage set-aside in accordance with these rules §9.405.
- L. Notify Blind Operators of the set-aside schedule in accordance with these rule § 9.405.2.

- M. Ensure any training services related to any Blind Operator, which have been incorporated into the standardized or individualized training curriculum, are provided to Blind Operators as vocational rehabilitation services under the Rehabilitation Act of 1973 (Pub. L. 93-112), as amended. This is not limited to, but includes personal and vocational adjustment, books, tools, and other training materials.
- N. Ensure the opportunity for Active Participation in accordance with these rules §9.403.
- O. Attempt to resolve day to day problems with Permit on-site official informally with awarded Blind Operator of the Individual Business Enterprise Location (34 CFR Part 395.36(a)).
- P. Be solely authorized to initiate repair calls.
- Q. Further establish in writing and maintain policies which have been developed with the Active Participation in accordance with § 9.403.2 of these rules.
- R. Establish additional procedures as necessary to assure that rules and policies have been explained to each Blind Operator.
- S. Determine procedures through an internal document.

**The following are responsibilities of the Blind Operator. The Blind Operator Shall:**

- A. Not assume duties exclusive to the State Licensing Agency as listed in these Rules, § 9.404.
- B. Conduct all business in a just and truthful manner.
- C. Be responsive to communications received through modern means in order to responsibly manage business. For example, electronic mail, delivered mail, phone recordings, and other methods reasonably accessible to the blind.
- D. Notify Business Enterprise Program of
  - 1. Any litigations in which they is a party defendant in a case that involves any services provided as a result of participation in the Business Enterprise Program.
  - 2. Complaints of alleged violations or legal issues that could jeopardize a Business Enterprise Location permit or agreement with property management, or jeopardize Business Enterprise Program's priority under the Randolph-Sheppard Act.
  - 3. Facility and personal emergency and contact information, especially for legal correspondence
  - 4. Preferred electronic and hard-copy reading format.
- E. Submit a request for a full evidentiary hearing in accordance with these rules, § 9.413, or after such hearing, file a complaint with the Secretary in order to initiate an arbitration panel *if so desired*, in accordance with 20 U.S.C. § 107d-1(a);

**BLIND OPERATORS WHO ARE ASSIGNED/AWARDED BUSINESS ENTERPRISE LOCATION/S SHALL:**

- A. Abide by all rules and regulations and program policies governing the operation of the Business Enterprise Location.

- B. Impress upon their employees the importance of these Rules and the Blind Operator Agreement and shall be responsible for the actions of their employees concerning relative to the Business Enterprise Program.
- C. Actively engage in the management of the Business Enterprise Location.
- D. Be available for all necessary visits to the facility and cannot assign, delegate, or subcontract the totality of the Blind Operator duties to subcontractors or any other third party.
- E. Appear and manage, or arrange for the management of, the Business Enterprise Location, or request an exception in writing, and receive, prior approval by the State Licensing Agency and approved by the State Licensing Agency.
- F. Provide excellent service to the facility and its customers, maintain a professional appearance, and act in a professional manner while managing a Business Enterprise Program facility, or engaging in related activities.
- G. Perform within any contract, permit, or agreement, as authorized or required by the Business Enterprise Location's property management, franchise agreement, management services agreement, state interagency agreement, or other. The Blind Operator will actively initiate full understanding of such terms and conditions and will communicate any developments which may have a negative impact on professional relationships, the Business Enterprise Location, the reputation of Business Enterprise Program, or the reputation of the Body of Blind Operators.
- H. Not engage in any conduct that is detrimental to Business Enterprise Program's interest in the Business Enterprise Location, its statutory priority, its permits or agreements, or its equipment or other inventory.
- I. Be responsible and financially liable for the accurate and proper reporting of all
  - 1. Sales transacted through the Business Enterprise Location
  - 2. Business Enterprise Program assets entrusted to the Blind Operator
- J. Ensure compliance with all laws applicable in the operation of the associated business at all times.
- K. Not engage in or permit harassment, violent behavior, threat of violent behavior, intimidation, or other disruptive behavior directed towards another Blind Operator, Business Enterprise Program staff member, subordinate, client, customer, or property. Possession of weapons is prohibited in or on any state or federal facility, including in vehicles.
- L. Self-report any felony or misdemeanor arrest or charge.
- M. Comply with the provisions of CRS 8-17.5-101 et seq. and shall not knowingly employ or contract with an illegal alien to perform work or enter into a contract with a subcontractor that knowingly employs or contracts with an illegal alien.
- N. Acquire and maintain all appropriate records and business licenses applicable to the Business Enterprise Location.
- O. Allow Business Enterprise Program, the State, the federal government, access to perform semi-annual evaluations, audits and/or inspections of records at any time, to assure compliance with the State or federal government's rules and regulations or to evaluate the Blind Operator's performance.



- P. Comply with all reasonable requests made in the course of an investigation by the Colorado Department of Labor and Employment
- Q. Furnish and give access to all documents and reports for business operations at the Business Enterprise Location, which are required by State or Federal governments.
- R. Implement, or assist in the implementation of, the necessary systems, methods and controls for tracking, monitoring, and reporting of vending machine sales.
- S. Acquire merchandise, utensils, and consumables as determined by Business Enterprise Program to be sufficient to satisfactorily maintain the facility (beyond initial inventory), in accordance with the Business Enterprise Program Inventory Policy and Process and with CRS § 24-30 202.4 regarding State Collections.
- T. Not neglect, abuse, or relocate State owned equipment and manage it according to manufacturer recommendations.
- U. Be responsible for the payment of required business licenses, business insurances, communications products, and consumable inventory (beyond initial inventory), and business needs not otherwise provided for.
- V. Submit, in accordance with the prescribed schedule and method per these rules §§ 9.405.2 and 9.406
  - 1. The standardized monthly financial turn-in Report ("Turn-in") to the Business Enterprise Program.
  - 2. The set-aside payment to the Business Enterprise Program per these rules.
  - 3. Timely payments to repay the services established by Business Enterprise Program on behalf of the Blind Operator.
  - 4. Items which must be returned upon the transition out of the Business Enterprise Location according to the Blind Operator Agreement.
- W. Pay all Debts associated with participation in the Business Enterprise Program (including to vendors of the facility/business operation), timely.
- X. Give a minimum 30 day notice to the Business Enterprise Program of intention to vacate or discontinue managing the awarded/assigned Business Enterprise Location on a daily business.
- Y. Understand that if they vacate, discontinue managing, or are the subject of an enforced removal, they may be held responsible for costs incurred as a result of the transition.
- Z. Vacate facilities in an acceptable condition, conducive to an immediate transition between Blind Operators with no closure time required solely due to the physical condition of the Business Enterprise Location.

**9.405 SET-ASIDE FUND [Rev. eff. 7/1/08]**

A set-aside fund shall be established and managed, pursuant to 20 U.S.C. § 107b(3) and 34 CFR Part 395.3(a)(11)(iv) and 395.9(a).

- A. Pursuant to 34 CFR Part 395.9(b), set-aside funds may expended only for the purposes of:

1. Maintenance and replacement of equipment;
  2. Purchase of new equipment;
  3. Management services;
  4. Assuring a fair minimum of return to Licensed Blind Operators; or,
  5. Retirement or pension plans, health insurance, and other specified benefits after a vote of the entire body
- B. The State Licensing Agency shall:
1. Utilize the Colorado, department, and division procurement rules and source selection methods in order to prevent a greater charge for any purpose than is reasonably required for that purpose.
  2. Maintain adequate records to support the reasonableness of the charges for each of the purposes listed in this §, including any reserves necessary to assure that such purposes can be achieved on a consistent basis.

**9.405.1 Set-Aside Assessment [Rev. eff. 7/1/08]**

- A. The set-aside assessment (or administrative fee) is a charge levied against the net proceeds of each Business Enterprise Location, which represents a certain percentage of the net proceeds realized as a result of the facility's operation.
- B. The Blind Operator is responsible for the payment of this assessment to the State Licensing Agency each month.
- C. Net proceeds are determined from net sales, less merchandise cost and other allowable business expenses, plus commissions, vending machine income remitted to the Licensed Blind Operator, and rebates and bonuses paid to the Licensed Blind Operator.
- D. The amount of set-aside assessment may not be deducted as an expense in computing net proceeds.
- E. The set-aside (percentage of net proceeds) to be paid to the State Licensing Agency by each Blind Operator is predicated upon a schedule negotiated between the State Licensing Agency and the Colorado Elected Committee, and determined to be sufficient for the operation of the State Licensing Agency. The set-aside schedule must
1. Allow for the retention of reasonable reserves by the State Licensing Agency.
  2. Not exceed a maximum of thirteen percent (13%) per Business Enterprise Location
  3. Be approved by the U.S. Rehabilitation Services Administration prior to implementation

**9.405.2 Schedule [Rev. eff. 7/1/08]**

In accordance with current accounting schedule, Blind Operators shall remit payments plus business expenses determined reasonable at the discretion of the State Licensing Agency, as reasonably notified.

**9.406 FINANCIAL REPORTING [Rev. eff. 7/1/08]**

- A. Each Blind Operator who is awarded a Business Enterprise Location must file with the agency a monthly financial report of their business operation.
- B. The report (turn-in) and the payment of set-aside assessments currently due the State Licensing Agency shall be determined according to written policy.
- C. If the State Licensing Agency's technology permits, the Blind Operator may be afforded the opportunity to file their reports and pay fees on-line according to the deadline in written policy.
- D. Each Blind Operator must maintain and provide itemization and documentation according to the Blind Operator Agreement.
- E. Only the assigned Blind Operator for a Business Enterprise Location, or Blind Operator designee, may have an economic interest in that Business Enterprise Location. No employee of the State Licensing Agency, its contractors or subcontractors, or other Blind Operator shall have any personal or economic interest whatsoever in the Business Enterprise Location. Notwithstanding the foregoing, economic interest may be held by an authorized third party, as signified by a separate written agreement with the State Licensing Agency.
- F. Each Blind Operator shall be permitted access to all financial data of the State Licensing Agency relevant to the operation of the Business Enterprise Program, including reasonable alternative formats and media acceptable to the Blind Operator and in compliance with current HIPAA and Division of Vocational Rehabilitation rules (34 CFR Part 395.12).

**9.407 UNASSIGNED VENDING MACHINE INCOME [Rev. eff. 7/1/08]**

Unassigned vending machine income shall be accrued and disbursed in accordance with 20 U.S.C. § 107d-3. Colorado applies references to "federal" in the Code to State and other Business Enterprise Locations as well.

- A. Unassigned vending machine income shall be disbursed to each Licensed Blind Operator in accordance with policy, which shall observe:
  - 1. The disbursement of unassigned vending machine income to each individual Licensed Blind Operators shall be in an amount not to exceed the average net income of the total number of Blind Operators within Colorado or average net income of the total number of Blind Operators in the United States. Excess unassigned vending machine income, per this § shall be retained by the State Licensing Agency.
  - 2. The State Licensing Agency shall disburse unassigned vending machine income to Blind Operator within the State on at least a quarterly basis.
  - 3. Any unassigned vending machine income not necessary for such purposes shall be used by the State Licensing Agency in accordance with 34 CFR Part 395.9(b) and these Rules §9.405.
  - 4. Any assessment charged to Blind Operators by a State Licensing Agency shall be reduced pro rata in an amount equal to the total of such remaining unassigned vending machine income.
  - 5. Distributions are based on unassigned vending machine income, accounted for and managed collectively from every type of Business Enterprise Location and collectively from federal, State, and other property types.

- B. Individual Blind Operators shall only receive disbursement after it has been determined by the State Licensing Agency that the Blind Operator is in good standing and free of bad Debt to the Business Enterprise Program.
- C. All unassigned vending machine income disbursement
  - 1. Shall be calculated so that the final total disbursed has been offset by any set-aside due on the gross commission income of each Blind Operator.
  - 2. May be applied to existing Debt of a Blind Operator.
  - 3. Shall be applied to existing bad Debt of any Blind Operator.

**9.409 BLIND OPERATOR AGREEMENTS, RESPONSIBILITIES, AND BUSINESS ENTERPRISE LOCATION [Rev. eff. 7/1/08]**

**9.409.1 Blind Operator Agreement [Rev. eff. 7/1/08]**

- A. Each Blind Operator and the State shall enter into an agreement concerning operation of any Business Enterprise Location.
- B. The agreement shall not be effective until signed by the Blind Operator and the delegated authority on behalf of the State of Colorado.
- C. The execution of such agreement must occur for each Blind Operator in each Business Enterprise Location, prior to any Blind Operator performance or transition into such Business Enterprise Location.
- D. The State Licensing Agency may develop further policy governing agreements for true emergency transitions, as approved by the Colorado Department of Labor and Employment, Procurement and Contracts Services Division.
- E. Unless otherwise specified within governing Laws, Regulations, or these Rules, the State of Colorado views all Blind Operators as contractors for the purpose of carrying out any executed contract or agreement, including for the enforcement of rights and obligations.
- F. The Blind Operator Agreement will:
  - 1. Identify each party's full legal name, business address, and legal notification address.
  - 2. Identify the transition in/start date.
  - 3. Identify the Individual Business Enterprise Location;
  - 4. Define the nature, scope and, responsibilities of the Blind Operator concerning the operation of the Individual Business Enterprise Location;
  - 5. Describe management services offered by the State Licensing Agency and direct to resources which further define;
  - 6. Identify allowable business expenses in accordance with § 9.405.1.
  - 7. Identify items which must be returned upon the transition out of the Business Enterprise Location.

**G. Execution of the Blind Operator Agreement**

The Blind Operator Agreement must be signed prior to the Blind Operator's acceptance of an Individual Business Enterprise Location. A Blind Operator's failure to execute the Blind Operator's agreement, within the allotted time period designated by the State Licensing Agency, shall result in the Blind Operator surrendering their opportunity to manage the Individual Business Enterprise Location for which the agreement was prepared. A new agreement must be signed each time the Blind Operator accepts the opportunity to manage any Individual Business Enterprise Location, whether permanent or temporary.

Signature of the Blind Operator Agreement signifies their receipt of all information necessary to fully understand their responsibilities at the respective Business Enterprise Location, in compliance with 34 CFR Part 395.3(a)(11)(vi).

The Blind Operator Agreement will expire annually or periodically in accordance with the written policies of the program. The Blind Operator Agreement may be renegotiated prior to expiration.

**9.409.2 Business Enterprise Location Transfer and Promotion [Rev. eff. 7/1/08]**

This rule is written in accordance with §9.403.2 of these rules.

The transfer or promotion of a Blind Operator to a new Business Enterprise Location will be through a Transfer and Promotion process, policy, or procedure, which will include provisions for:

- A. Definitions specific to transfer and promotion, if applicable.
- B. Temporary Business Enterprise Location management and prescribed minimum or maximum period of time.
- C. Length of time a Blind Operator may maintain their former Business Enterprise Location upon award of a new permanent Business Enterprise Location.

A Blind Operator shall be transferred to a Business Enterprise Location, or from their assigned Business Enterprise Location only when the transfer will directly benefit the Blind Operator or will be in the best interest of the Business Enterprise Program, giving preference to the Blind Operator having demonstrated the most ability in management of a Business Enterprise Location.

For the purposes of this Section, the following may each be considered to be Individual Business Enterprise Location.

- A. A vending route
- B. Premises as defined by legal agreement - wherein the agreement premises encompass an entire campus, base, installation, or other pairing/clustering of physical sites, the State Licensing Agency may change the established parameters of the Individual Business Enterprise Location to reflect the entire premises as defined in the Federal or State contract.

No limitation shall be imposed on vending machine income, combined to create a Business Enterprise Location, when such facility is maintained, serviced, or managed by a Blind Operator.

An Individual Business Enterprise Location shall only be assigned to one Blind Operator, unless the State Licensing Agency approves an exception through written documentation.

**9.410 BLIND OPERATOR INDEBTEDNESS [Rev. eff. 7/1/08]**

Blind operators participating in the Business Enterprise Program must pay any and all Debt on time. A present or past Blind Operator's indebtedness to the Business Enterprise Program that becomes past due shall include any and all collection charges, attorney fees, court costs and all expenditures directly or indirectly incurred due to that Debt.

It is solely the responsibility of the Blind Operator to pay their Debt. If it becomes necessary for the Business Enterprise Program to become an intermediary to satisfy vendor Debt:

- A. The State Licensing Agency will put the Blind Operator license on probation, suspension, or termination.
- B. The State will pay the Debt.
- C. The State will invoice the Blind Operator for the full amount of Debts paid to the Vendors.
- D. An administrative fee will be added to the invoice and the Debt will become the Blind Operator's Debt to the State, which will be managed as bad Debt in accordance with this § 9.410 and § 9.407.

These actions in this § 9.410 may also be initiated if any Blind Operator:

- A. Acts independently of the State in order to assume responsibilities of the State, including but not limited to authorizations or requests which are the duty of a State Licensing Agency staff member as identified in these rules section 9.404.
- B. Vacates the Business Enterprise Location in an unsatisfactory manner, per these rules section 9.404.

State agencies refer all Debt to State Collections, once the payment becomes 30 days past due and no payment arrangement is agreed upon, in accordance with CRS § 24-30 202.4. The State Licensing Agency may refer any bad Debt amount to collections in accordance with Colorado Department of Personnel and Administration, Office of the Executive Director, Accounts Receivable Collections Administrative Rule 1.37.

**Impact of Bad Debt Owed to the Business Enterprise Program**

If a Blind Operator is referred to collections for Bad Debt:

- A. The State Licensing Agency has the right to remove the Blind Operator from any assigned/awarded Business Enterprise Location(s).
- B. Monies due to Blind Operator shall be offset against existing bad Debt, without the prior approval of the Blind Operator. This includes quarterly unassigned vending machine income disbursements in accordance with § 9.407.
- C. The Blind Operator is not eligible to bid on an available Business Enterprise Location.
- D. The Blind Operator is not eligible to run for Colorado Elected Committee membership. If they are already on the Colorado Elected Committee, it will be managed by policy or on a case by case basis if none exists.

**9.411 EQUIPMENT AND INITIAL MERCHANDISE INVENTORY [Rev. eff. 7/1/08]**

**9.411.1 Furnishing Equipment and Initial Merchandise Inventory [Rev. eff. 7/1/08]**

All furnishing of equipment and initial merchandise inventory will be managed in accordance with 20 U.S.C. § 107b-2, 34 CFR Parts 395.3 and 395.6, and subject to availability of funds. Policies, procedures, and processes may be written to further identify methods for the management of State equipment and consumable inventory establishment and transfer.

- A. The State Licensing Agency will furnish an adequate initial stock of merchandise for resale, and other related inventory items for the successful initial operation of the Business Enterprise Location for newly established Business Enterprise Locations and for incoming Blind Operators in established Business Enterprise Locations previously managed by another Blind Operator or program operated stands.
- B. The State Licensing Agency shall purchase or cause to be furnished suitable equipment, utensils, and supplies for initial operation; and shall provide for the maintenance and repair of equipment and replacement of worn out or obsolete equipment for each Individual Business Enterprise Location as required to assure its continued successful operation.
- C. The Blind Operator shall be responsible for routine day to day care of the equipment and items considered disposable by the State Licensing Agency.
- D. The State Licensing Agency may require the Blind Operator to conduct a physical inventory of all merchandise and supplies; schedule to be determined by the State Licensing Agency.

**9.411.2 Right, Title to, and Interest in Business Enterprise Location Equipment and Merchandise Inventory [Rev. eff. 7/1/08]**

The right, title to, and interest and equity in all Business Enterprise Location equipment shall be held by the Business Enterprise Program of the State of Colorado with the exception of Blind Operator ownership per 34 CFR Part 395.6.

In order to satisfy these rules § 9.403.2(a)1(a), Each fiscal year, in anticipation of receiving spending authority, the State Licensing Agency shall seek Active Participation from the Colorado Elected Committee in order to designate a representative subcommittee to collaborate with the State Licensing Agency in order to establish the amount of equipment expenditures.

All resulting decisions are contingent upon receipt of actual funding and spending authority and are subject to applicable procurement rules and regulations.

**9.412 TRAINING PROGRAM [Rev. eff. 7/1/08]**

This Part is written pursuant to 20 U.S.C. § 107d-4, 34 CFR Part 395.11, and these rules §§ 9.403.2(3)(b) and 9.404, to achieve maximum vocational potential through the Division of Vocational Rehabilitation.

A training program shall be afforded to Trainees to certify them to manage a Business Enterprise Location in accordance with accepted business practices. After any necessary personal and vocational adjustment training, Trainees must complete established training programs within a twelve (12) month period, unless special circumstances are approved by the State Licensing Agency. Upon completion of the training program, the State Licensing Agency may assign the Trainee any Business Enterprise Location deemed to be suitable to the abilities of the Trainee, or the Trainee may participate in the transfer and promotion process, with the potential to compete and be awarded a Business Enterprise Location. The State Licensing Agency may develop policy to encourage, promote, or make mandatory continuing education and/or upward mobility.

Training and curriculum shall include the following to Blind Operators with the capacity to operate a vending facility, as needed.

- A. Personal and vocational adjustment
- B. Training:
  - 1. All aspects of a Business Enterprise Location
  - 2. On the job
  - 3. Upward mobility
  - 4. Post-employment
- C. Training materials
- D. Follow-along services

Prior to becoming Certified, each Trainee shall be provided a hard or electronic copy of or link to:

- A. 20 U.S.C. § 107 et seq.
- B. 34 CFR Part 395 et seq.
- C. 8-84-201, C.R.S. et seq.
- D. These rules
- E. The standardized Blind Operator Agreement

A description of the arrangements for providing services and training on each of these documents shall be provided through classroom training and associated documentation, which shall include a signed acknowledgement.

#### **9.413 RIGHTS OF APPEAL AND FORMAL APPEAL PROCESS [Rev. eff. 7/1/08]**

Trainees and Certified Blind Operators may seek council of a Colorado Elected Committee member for a grievance in accordance with these Rules, § 9.403.2(b) and shall refer to the DVR Policy Manual for any mediation, informal appeal, or formal appeal of a State Licensing Agency decision.

Licensed Blind Operators whose license is in any status, who wish to pursue a grievance or appeal, shall act in accordance with the following.

##### **9.413.1 Right of Appeal [Rev. eff. 7/1/08]**

- A. A Licensed Blind Operator who is dissatisfied with any determination made by the Business Enterprise Program staff and/or Division of Vocational Rehabilitation agency representative, which concerns the provision of Business Enterprise Program services, may request a:
  - 1. Grievance in accordance with these Rules, § 9.403.2(b) and/or;
  - 2. An informal review in accordance with this § 9.413 et seq. and/or;
  - 3. A formal appeal in accordance with this § 9.413 et seq.



B. A Licensed Blind Operator is responsible for costs associated with their appeal.

C. NOTIFICATION OF RIGHTS TO REVIEW AND REQUEST MEDIATION

All Blind Operators through the Business Enterprise Program training, shall be notified of Licensed Blind Operator appeal rights.

D. PROVISION OF BUSINESS ENTERPRISE PROGRAM SERVICE(S) DURING REVIEWS AND MEDIATION

When a review request is made, all Business Enterprise Program services being provided under a current plan shall continue as specified until the review and/or appeal is completed, unless an Licensed Blind Operator or, as appropriate, the individual's representative requests a suspension, reduction, or termination of services, or if there is a risk to public safety or stability of The Business Enterprise Program. If the disputed service(s) and/or good(s) was obtained through proven misrepresentation, fraud, collusion, or criminal conduct by the individual or the individual's representative, the good or service shall be terminated immediately.

E. ADDITIONAL SERVICES DURING APPEALS

When an informal review or formal appeal request concerns an issue which may impact determination of ineligibility for Business Enterprise Program services and/or Transfer and Promotion, new or additional service(s) or good(s) shall not be provided.

F. DOCUMENTATION OF REVIEWS AND MEDIATION

The Blind Operator record shall contain documentation concerning actions and decisions relating to requests by Blind Operators for an informal review or formal appeal of Business Enterprise Program staff determinations.

G. INFORMAL REVIEW

The Licensed Blind Operator may request an informal review by the Program Manager in order to resolve the issue(s) under dispute with or without the conduct of a formal appeal. Informal review begins with a request for the Program Manager to review a decision concerning the provision of Business Enterprise Program services. If the individual is not satisfied with the decision made by the Program Manager, the individual may then submit a written request for review to the Blind and Low Vision Services Manager to review the decision. Informal review shall be conducted in a timely manner that shall not delay a formal appeal and within thirty (30) days of the initial request unless both parties agree that additional time is necessary. If the informal review does not resolve the issue(s), and the formal appeal process has not been requested, the individual may request a formal appeal.

When a formal appeal has been requested and the informal review does not resolve the dispute within the time established through mutual agreement, the formal appeal shall be conducted within the time frames outlined for the formal appeal process. An individual is not required to go through an informal review prior to or instead of a formal appeal.

H. FORMAL APPEAL: FULL EVIDENTIARY HEARING

1. This is written pursuant to 20 U.S.C. § 107d-1 and 34 CFR Part 395.13.
2. An individual, or, as appropriate, his or her authorized representative, may initiate a formal appeal regarding Business Enterprise Program staff determinations by requesting an impartial due process hearing with an administrative law judge (ALJ).

3. The request shall be submitted, in writing, to the Colorado Department of Personnel and Administration, Office of Administrative Courts within ninety (90) calendar days of the decision that affects provision of a Business Enterprise Program service. The written request shall be a statement identifying the basis of the appeal, including a description of the determination made by the Business Enterprise Program staff that the individual is appealing. The statement should include a description of what the individual wants from the appeal.
4. **Hearing Timelines**

A hearing shall be held within sixty (60) calendar days of the informal pre-hearing conference, unless both parties agree additional time is necessary for good cause. There may be situations when a time extension is necessary to allow either party or the administrative law judge sufficient time to prepare for the hearing following an informal review. Even at those times, all parties must agree to the extension.
5. **Additional Evidence and Witnesses**

The individual, or, as appropriate, his or her authorized representative may present additional evidence, information, and witnesses to support the individual's position during the hearing.
6. **Findings and Decision**

The administrative law judge shall render a decision and provide a written report of the findings and the grounds for this decision to the individual, or, as appropriate, his or her authorized representative, and the Business Enterprise Program within thirty (30) calendar days of completion of the hearing.
7. **Federal Arbitration**

The State Licensing Agency or the Licensed Blind Operator who wishes to challenge the final decision made by the administrative law judge may submit a request for review of such decision to the Secretary of Education pursuant to and 20 U.S.C. § 107d-2 and 34 CFR Part 395.13. The final decision of the administrative law judge shall be implemented pending the results of the review of the Secretary of Education.

#### **9.414 CONFIDENTIALITY [Rev. eff. 7/1/08]**

The Business Enterprise Program shares business and logistical information as it is operationally required. As an eligibility program, it is considered common knowledge and is openly shared that participants are legally blind, along with meeting all other eligibility requirements.

The Business Enterprise Program shall develop further policy or process for the effective and consistent management of information.

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#### **Editor's Notes**

##### **History**

Entire rule recodified from 12 CCR 2513-1 eff. 03/17/2017.

Rules 9.207.3, 9.209, 9.209.1, 9.209.2 A eff. 03/30/2018.

Rule 9.100 eff. 03/02/2019.

Rule 9.108.1 E.2 eff. 09/30/2019.

Rules 9.101.1, 9.102 A eff. 03/01/2020.

Rules 9.103.3-9.108.2 eff. 11/30/2022.