

**RHODE ISLAND GOVERNMENT REGISTER**

**PUBLIC NOTICE OF PROPOSED RULEMAKING**

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**AGENCY:** Department of Human Services

**DIVISION:** Office of Rehabilitation Services

**RULE IDENTIFIER:** 218-RICR-50-00-2 (ERLID 9769)

**REGULATION TITLE:** Services for the Blind and Visually Impaired – Social Service/Independent Living Units

**RULEMAKING ACTION:** Proposed Rulemaking

**TYPE OF FILING:** Adoption

**TIMETABLE FOR ACTION ON THE PROPOSED RULES:**

Date of Public Notice: 4/19/18

End of Comment Period: 5/18/18

**SUMMARY OF PROPOSED RULE:**

In accordance with the Administrative Procedures Act, the Department of Human Services is advertising for promulgation of the following amended DHS rules. This rule is being repealed, and reformatted into three parts in compliance with state and federal law and good practice.

In accordance with Rhode Island General Laws (RIGL) 42-35, notice is hereby given that the Department of Human Services, Office of Rehabilitation Services, proposes to

**REPEAL:** OFFICE OF REHABILITATION SERVICES POLICY MANUAL;

and **ADOPT** the following rules:

VOCATIONAL REHABILITATION PROGRAM REGULATIONS  
SERVICES FOR THE BLIND AND VISUALLY IMPAIRED - SOCIAL  
SERVICES/INDEPENDENT LIVING UNITS; AND  
BUSINESS ENTERPRISES PROGRAM REGULATIONS.

Summary of Proposed Changes:

Office of Rehabilitation Services Policy Manual – being repealed and reformatted into three sections.

**218-RICR-50-00-1 – Vocational Rehabilitation Program Regulations**

**1.4 Definitions**

Definitions section created to consolidate definitions throughout the regulation into one section.

**1.8 Order of Selection (OOS)/Waitlist**

Revisions include: the change in number of functional limitations an individual must have to be classified as Priority Category I.

#### 1.17.3 Post-Secondary Education and Vocational Rehabilitation Training

Revisions include: the expectation that eligible individuals utilize the “Promise Grant” while program is in effect; funding limits set and requirements shown for funding of tuition, room and board, and books, materials and tools. Other information carried over from Section 115.28 of ORS Policy Manual.

#### 1.17.9 Occupational Tools, Licenses, Equipment, Initial Stock and Supplies

New provision includes maximum dollar limit set, other information carried over from Section 115.20 of ORS Policy Manual.

#### 1.17.11 Transition and Pre-Employment Transition Services

Revisions include: providing requirements of Pre-Employment Transition Services based on the 2014 Workforce Innovation and Opportunity Act.

#### 1.17.13 Adaptive Housing Services

Language carried over from Section 115.26 of ORS Policy Manual with revisions detailing property requirements and stating ORS may establish maximum dollar limits for adaptive housing services.

#### 1.17.14 Motor Vehicle Modification Services

Language carried over from Section 115.23 of ORS Policy Manual with revisions detailing requirements for motor vehicle modifications, and stating ORS may establish maximum dollar limits for these services.

#### 1.17.15 Self-Employment Services

New section created to explain services available to clients in order to achieve self-employment as an employment outcome.

#### 1.19 Individuals in Extended Employment, 14(c), and Other Employment under Special Certificate Provisions of the Fair Labor Standards Act

New section created to explain the new limitations prohibiting employers from paying subminimum wage to persons with disabilities under section 14(c).

#### **218-RICR-50-00-2 – Services for the Blind and Visually Impaired – Social Services/Independent Living Services**

No new provisions, section reformatted and rephrased from Section 118.1 of ORS Policy Manual.

#### **218-RICR-50-00-3 – Business Enterprises Program Regulations**

No new provisions, section reformatted and carried over from Section 115.13 of ORS Policy Manual.

These proposed changes are available for public inspection on the RI Secretary of State website, (<http://sos.ri.gov/ProposedRules/>), the DHS website ([www.dhs.ri.gov](http://www.dhs.ri.gov)), the Office of Rehabilitation Services website ([www.ors.ri.gov/Proposed%20Rules.html](http://www.ors.ri.gov/Proposed%20Rules.html)) in person at 40 Fountain Street, Providence, RI, or requested by email at [Sharon.dipinto@ors.ri.gov](mailto:Sharon.dipinto@ors.ri.gov), or available in hard copy upon request by calling Sharon DiPinto at (401-462-7818 or 711).

In accordance with R.I. General Laws § 42-35-2.8, an oral hearing will be granted if requested by twenty-five (25) persons, by an agency or by an association having at least twenty-five (25) members. A request for an oral hearing must be made within ten (10) days of this notice.

All interested parties are invited to submit written or oral comments concerning the proposed regulations by Friday, May 18, 2018 to Sharon DiPinto, Sr. Human Services Policy & Systems Specialist, Office of Rehabilitation Services, 40 Fountain Street, Providence, RI 02903, [Sharon.dipinto@ors.ri.gov](mailto:Sharon.dipinto@ors.ri.gov).

Date Notice was Posted: 04/19/2018

## **SUMMARY OF NON-TECHNICAL CHANGES**

### **PROPOSED REGULATION FOR ADOPTION**

218-RICR-50-00-2

Title 218 – DEPARTMENT OF HUMAN SERVICE

Chapter 20 – Office of Rehabilitation Services

Subchapter 00 – N/A

Part 2 – Services for the Blind & Visually Impaired (SBVI) / Social Services/Independent Living Units

This regulation is a consolidation (adoption with an associated repeal). ORS is repealing the ORS Policy Manual and replacing it with a new adoption, the sections are outlined below.

#### **2.1 Purpose**

Language is updated to show the requirements for implementation of the Independent Living Program based on Federal regulations, State statutes, and Department policy.

#### **2.2 Authority**

No new provisions, existing state statutes.

#### **2.3 Incorporated Materials**

No new provisions, federal regulations are now properly incorporated and enforceable pursuant to R.I. Gen. Laws § 42-35-3.2 in accordance with Secretary of State formatting guidelines.

#### **2.4 Definitions**

Definitions section created to consolidate definitions throughout the regulation into one section.

#### **2.5 Referrals and Applications**

No new provisions, section rephrased from Section 118.1 of ORS Policy Manual.

#### **2.6 Eligibility Requirements**

No new provisions, section rephrased from Section 118.1 of ORS Policy Manual.

#### **2.7 Types of Services Provided Without Regard to Financial Need**

No new provisions, section rephrased from Section 118.1 of ORS Policy Manual.

#### **2.8 Types of Services Provided Which Require Application of Financial Need Criteria**

No new provisions, section rephrased from Section 118.1 of ORS Policy Manual.

#### **2.9 Program Exit**

No new provisions, section rephrased from Section 118.1 of ORS Policy Manual.

#### **2.10 Review of Determinations (Mediations/Appeals)**

No new provisions, section rephrased from Section 118.1 of ORS Policy Manual.

#### **2.11 Newline**

No new provisions, section carried over from Section 118.3 of ORS Policy Manual.

**218-RICR-50-00-2**

## **TITLE 218 – DEPARTMENT OF HUMAN SERVICES**

### **CHAPTER 50 – OFFICE OF REHABILITATION SERVICES**

#### **SUBCHAPTER 00 - N/A**

PART 2 – Services for the Blind and Visually Impaired (SBVI) - Social Services/Independent Living Units

#### **2.1 PURPOSE**

- A. These rules establish the requirements for implementation of the Independent Living Program, based on the Title VII Part B of 29 U.S.C. § 701 et. seq. These regulations will:
1. define required information for application
  2. define eligibility requirements
  3. specify scope of services
  4. specify standards for continued eligibility
  5. specify mediation and appeals process for denial of services/ineligibility
  6. specify criteria for case closure
- B. Programs: The Office of Rehabilitation Services/Services for the Blind and Visually Impaired (SBVI) provides social services and independent living services to Rhode Island residents.

#### **2.2 AUTHORITY**

These rules and regulations are promulgated pursuant to R.I. Gen. Laws §§ 42-12-8 through 17 and 22; and 29 U.S.C. §§ 721-722.

#### **2.3 INCORPORATED MATERIALS**

- A. These regulations hereby adopt and incorporate the following, not including any further editions or amendments thereof and only to the extent that the provisions therein are not inconsistent with these regulations.
1. 34 C.F.R. § 367 (Independent Living Services for Older Blind) (2015).

2. 34 C.F.R. Part 75 (Direct Grant Programs), with respect to grants under subpart B and D (2010).
3. 34 C.F.R. Part 76 (State-Administered Programs), with respect to grants under subpart E (2014).
4. 34 C.F.R. Part 77 (Definitions That Apply to Department Regulations) (2014).
5. 34 C.F.R. Part 79 (Intergovernmental Review of Department of Education Programs and Activities) (2014).
6. 34 C.F.R. Part 81 (General Education Provisions Act—Enforcement) (2014).
7. 34 C.F.R. Part 82 (New Restrictions on Lobbying) (2014).
8. 2 C.F.R. Part 180 (OMB Guidelines to Agencies on Debarment and Suspension (Nonprocurement)), as adopted at 2 C.F.R. Part 3485.
9. 2 C.F.R. Part 200 (Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards), as adopted at 2 C.F.R. Part 3474 (2014).

## **2.4 DEFINITIONS**

- A. For the purpose of these regulations, the following terms have the following meanings:
1. "Agency" means the Office of Rehabilitation Services/Services for the Blind and Visually Impaired (SBVI).
  2. "Applicant" means an individual who is referred or applies seeking services.
  3. "Deaf-Blindness" means there is the presence of both the following conditions:
    - a. Deafness - a physiological chronic hearing impairment so severe that most speech cannot be understood through the ear with optimum amplification. The speech discrimination score should be forty percent (40%) or less.
    - b. Blindness - Visual acuity does not exceed 20/200 in the better eye with correcting lenses, or visual acuity greater than 20/200, but the field of vision is constricted to twenty degrees (20°) or less.

4. "Legal blindness" means any person whose visual acuity is no greater than 20/200 in the better eye, with best correction, or one whose field of vision is restricted to the extent that the widest diameter subtends an angle no greater than twenty degrees (20°).
5. "State" means State of Rhode Island.
6. "Visually impaired" means one whose visual acuity is better than 20/200 but not better than 20/60 in the best eye with best correction, or whose visual impairment is both progressive and permanent.

## **2.5 REFERRALS AND APPLICATIONS**

- A. Referral and information requests submitted by individuals who are blind or visually impaired to the Office of Rehabilitation Services (ORS) will be processed upon receipt.
- B. Individuals who are not US Citizens must be able to prove they are legally able to work in the United States as determined by the U.S. Citizenship and Immigration Services.

## **2.6 ELIGIBILITY REQUIREMENTS**

- A. Any individual over the age of three (3) who is blind or visually impaired according to § 2.4 of this Part, Definitions, shown above, must have vision of 20/60 or less in the better eye, with best correction or a field loss of twenty degrees (20°).

## **2.7 TYPES OF SERVICES PROVIDED WITHOUT REGARD TO FINANCIAL NEED**

- A. Evaluation, diagnostic and related services;
- B. Referrals to rehabilitation teachers and mobility instructors for evaluation and instruction;
- C. Adjustment counseling and guidance for individuals and their families;
- D. Referrals to appropriate state and community agencies;
- E. Certification of status of legal blindness for various exemptions;
- F. Coordination with regional library services for the individuals who are blind and/or visually impaired (Talking Books);
- G. Educational planning for children.

## **2.8 TYPES OF SERVICES PROVIDED WHICH REQUIRE APPLICATION OF FINANCIAL NEED CRITERIA AND ARE CONTINGENT UPON AVAILABLE FUNDING**

- A. Purchased items such as visual aids, and adaptive equipment;
- B. Telecommunications, sensory, and other technological aids and devices; and
- C. Other support services as deemed necessary and appropriate.

## **2.9 PROGRAM EXIT**

- A. A case may be closed due to the individual's:
  - 1. Death;
  - 2. Moving out of state;
  - 3. Refusal of services;
  - 4. The goals and objectives in the individual's case plan have been achieved;
  - 5. Status is no longer legally blind or visually impaired; or **OR**
  - 6. Location unknown.
- B. A case may be deactivated for the following reasons because:
  - 1. The individual's case has been referred to SBVI/VR Unit;
  - 2. Funding for needed services is not available; or
  - 3. The individual's inability to benefit from services.

## **2.10 REVIEW OF DETERMINATIONS (MEDIATION/APPEALS)**

- A. Applicants and eligible individuals, or as appropriate, the individual's parent, guardian, or representative, hereinafter referred to as "individual with a disability", are advised of her/his rights in accordance with 34 C.F.R. § 361.57, incorporated above.
- B. These rights include a review of determinations about eligibility for the Social Services/Independent Living Program and/or the provision of specific services to the applicant or individual with a disability. Information about the Client Assistance Program (CAP), administrative reconsideration, mediation, and informal appeals hearing are shared with applicants and eligible individuals.
- C. The applicant or eligible individual must be advised of her/his appeal rights:



1. When s/he applies for services;
  2. Upon reduction, suspension, or cessation of services for the individual.
- D. The applicant or eligible individual must be informed about the following options for review:
1. Informal Administrative Review - an informal process for resolving a request for review without conducting mediation or a formal hearing where the Administrator reviews the case. Must take place within fifteen (15) days of the request. The decision is rendered orally at the review.
  2. Mediation - in accordance with 34 C.F.R. § 361.57(b)(5)(d), incorporated above, mediation allows an applicant or eligible individual to resolve disputes involving determinations made by ORS that affect the provision of services by providing evidence and other information supporting their position, whenever a request is made for an impartial due process hearing. Individual may have representation by counsel or other advocate during this process. Must be held within fifteen (15) days of the request.
    - a. Discussions that occur during the mediation process must be kept confidential and may not be used as evidence in any subsequent due process hearings or civil proceedings, and the parties may be required to sign a confidentiality pledge prior to the commencement of the process.
    - b. A written mediation agreement is developed with assistance of the impartial mediator, and signed by all parties. A copy is sent to both parties.
  3. Impartial Due Process Hearing - a hearing conducted by an Impartial Hearing Officer that must be held within sixty (60) days of the applicant's or eligible individual's request for review of a determination made by ORS unless informal resolution or mediation agreement is achieved prior to the sixtieth (60th) day, or all parties agree to specific extension of time. An applicant or eligible individual can at this time present evidence and other information supporting their position, and present witnesses. Individual may have representation by counsel or other advocate during this process. A written decision, including the findings of fact and the grounds for the decision, will be sent to both parties within thirty (30) days of the completion of the Hearing.
  4. Director's Option to Review Impartial Hearing Officers' Decision - Either party may request a review of the decision of the Impartial Hearing Officer (IHO) within twenty (20) days after the decision. If neither party requests this review, the decision of the hearing officer becomes the final decision of the agency on the twenty-first (21st) day after the decision is issued. The reviewing official will not overturn or modify the decision of the IHO, or

part of the decision that supports the position of the applicant or eligible individual, unless the reviewing official concludes, based on clear and convincing evidence, that the decision of the IHO is clearly erroneous.

5. Judicial Review - any party who disagrees with the findings and decision after a Director's Review of the Impartial Hearing Officers' Decision has the right to bring a civil action with respect to the matter of the dispute.
- E. The individual must submit a "Request for Mediation/Impartial Due Process Hearing" (ORS-121) within thirty (30) days of the date on the denial letter from the Social Services/Independent Living program to initiate any of these reviews.
- F. A hearing request may be denied or dismissed when it is determined that it has been abandoned. Abandonment may occur when, without good cause, an applicant or individual with a disability fails to appear at a hearing.

## **2.11 NEWSLINE**

- A. SBVI must administer and promote a program to provide telephone access to the text of newspaper programs to residents who are blind, deaf/blind, visually impaired or reading impaired with a single party telephone line.
- B. Applications for NEWSLINE will be processed by SBVI, which will determine eligibility for this program. Individuals registered for the service utilize a telephone line to access the toll-free telephone number.
- C. Eligibility Requirements
  1. Persons who live in the state of Rhode Island.; and
  2. Persons whose visual acuity, as determined by competent authority, is 20/60 or worse in the better eye with corrective lenses, or whose widest diameter of visual field is not greater than twenty (20) degrees; or
  3. Persons certified by a competent authority as having a reading disability resulting from an organic dysfunction of sufficient severity to prevent their reading printed material in a normal manner.