

## TITLE 22. SOCIAL SERVICES

### DEPARTMENT FOR AGING AND REHABILITATIVE SERVICES

#### Emergency Regulation

Title of Regulation: **22VAC30-20. Provision of Vocational Rehabilitation Services (amending 22VAC30-20-90).**

Statutory Authority: § 51.5-131 of the Code of Virginia.

Effective Dates: April 17, 2017, through October 16, 2018.

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Preamble:

*Section 2.2-4011 A of the Code of Virginia states that regulations that an agency finds are necessitated by an emergency situation may be adopted by an agency upon consultation with the Attorney General, and the necessity for the action is at the sole discretion of the Governor.*

*In the event that the Department for Aging and Rehabilitative Services cannot provide the full range of vocational rehabilitation services to all eligible individuals who apply for these services because of insufficient resources, an order of selection may be implemented to determine those persons to be provided services. Currently, the department uses the four priority categories set out in the regulation. The Rehabilitation Services Administration, the federal agency that regulates the state-federal vocational rehabilitation program, is requiring that the department reduce the number of priority categories based on a determination that the current priority categories II and III are not different enough to warrant two separate categories.*

*The amendment reduces the number of categories for order of selection to three by combining priority categories II and III.*

**22VAC30-20-90. Order of selection for services.**

A. In the event that the full range of vocational rehabilitation services cannot be provided to all eligible individuals who apply for services because of insufficient resources, an order of selection system may be implemented by the commissioner following consultation with the State Rehabilitation Council. The order of selection shall determine those persons to be provided services. It shall be the policy of the department to encourage referrals and applications of all persons with disabilities and, to the extent resources permit, provide services to all eligible persons.

The following order of selection is implemented when services cannot be provided to all eligible persons:

1. Persons eligible and presently receiving services under an individualized plan for employment;
2. Persons referred and needing diagnostic services to determine eligibility; and

3. Persons determined to be eligible for services, but not presently receiving services under an individualized plan for employment, shall be served according to the following order of priorities:

- a. Priority I. An individual with a most significant disability in accordance with the definition in 22VAC30-20-10;
- b. Priority II. An individual with a significant disability that results in a serious functional limitation ~~in two at least one functional capacities~~ capacity; and
- c. Priority III. ~~An individual with a significant disability that results in a serious functional limitation in one functional capacity; and~~
- d. ~~Priority IV.~~ Other persons determined to be disabled, in order of eligibility determination.

B. An order of selection shall not be based on any other factors, including (i) any duration of residency requirement, provided the individual is present in the state; (ii) type of disability; (iii) age, gender, race, color, or national origin; (iv) source of referral; (v) type of expected employment outcome; (vi) the need for specific services or anticipated cost of services required by the individual; or (vii) the income level of an individual or an individual's family.

C. In administering the order of selection, the department shall (i) implement the order of selection on a statewide basis; (ii) notify all eligible individuals of the priority categories in the order of selection, their assignment to a particular category and their right to appeal their category assignment; (iii) continue to provide all needed services to any eligible individual who has begun to receive services under an individualized plan for employment prior to the effective date of the order of selection, irrespective of the severity of the individual's disability; and (iv) ensure that its funding arrangements for providing services under the state plan, including third-party arrangements and awards under the establishment authority, are consistent with the order of selection. If any funding arrangements are inconsistent with the order of selection, the department shall renegotiate these funding arrangements so that they are consistent with the order of selection.

D. Consultation with the State Rehabilitation Council shall include (i) the need to establish an order of selection, including any reevaluation of the need; (ii) priority categories of the particular order of selection; (iii) criteria for determining individuals with the most significant disabilities; and (iv) administration of the order of selection.