

Dear Senators HEIDER, Souza, Jordan, and
Representatives WOOD, Packer, Chew:

The Legislative Services Office, Research and Legislation, has received the enclosed rules of the Office of the Governor - Commission for the Blind and Visually Impaired:
IDAPA 15.02.02 - Vocational Rehabilitation Services - Proposed Rule (Docket No. 15-0202-1701).

Pursuant to Section 67-454, Idaho Code, a meeting on the enclosed rules may be called by the cochairmen or by two (2) or more members of the subcommittee giving oral or written notice to Research and Legislation no later than fourteen (14) days after receipt of the rules' analysis from Legislative Services. The final date to call a meeting on the enclosed rules is no later than 09/29/2017. If a meeting is called, the subcommittee must hold the meeting within forty-two (42) days of receipt of the rules' analysis from Legislative Services. The final date to hold a meeting on the enclosed rules is 10/30/2017.

The germane joint subcommittee may request a statement of economic impact with respect to a proposed rule by notifying Research and Legislation. There is no time limit on requesting this statement, and it may be requested whether or not a meeting on the proposed rule is called or after a meeting has been held.

To notify Research and Legislation, call 334-4834, or send a written request to the address on the memorandum attached below.



Eric Milstead
Director

Legislative Services Office

Idaho State Legislature

Serving Idaho's Citizen Legislature

MEMORANDUM

TO: Rules Review Subcommittee of the Senate Health & Welfare Committee and the House Health & Welfare Committee

FROM: Senior Legislative Research Analyst - Elizabeth Bowen

DATE: September 12, 2017

SUBJECT: Office of the Governor - Commission for the Blind and Visually Impaired

IDAPA 15.02.02 - Vocational Rehabilitation Services - Proposed Rule (Docket No. 15-0202-1701)

The Commission for the Blind and Visually Impaired submits notice of proposed rulemaking at IDAPA 15.02.02. The proposed rule incorporates by reference the federal Workforce Innovation and Opportunity Act (WIOA), Public Law 113-128, and updates the existing rule in order to comply with WIOA and federal regulations. Changes include prioritized selection of certain individuals with disabilities for vocational rehabilitation services in the event that the Commission lacks funding or other resources to provide such services to all eligible individuals.

Negotiated rulemaking was conducted, and there is no anticipated negative fiscal impact on the state general fund. The Commission states that this rulemaking is authorized pursuant to Sections 67-5407 and 67-5408, Idaho Code.

cc: Office of the Governor - Commission for the Blind and Visually Impaired
Beth Cunningham

**IDAPA 15 – OFFICE OF THE GOVERNOR
IDAHO COMMISSION FOR THE BLIND AND VISUALLY IMPAIRED**

15.02.02 – VOCATIONAL REHABILITATION SERVICES

DOCKET NO. 15-0202-1701

NOTICE OF RULEMAKING – PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 67-5407(e) and 67-5408, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 20, 2017.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

DESCRIPTIVE SUMMARY: The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking:

ICBVI must implement new rules in order to maintain compliance with the Workforce Innovation and Opportunity Act (WIOA) by establishing an order of selection for federal funds received through the agency. ICBVI is also adding a definition for “Most Significant Disability” and updating other rules.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: N/A

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking: N/A

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the July 5, 2017 Idaho Administrative Bulletin, [Vol. 17-7, page 53](#).

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule:

On July 22, 2014, President Obama signed into law Public Law No. 113-128, the Workforce Innovation and Opportunity Act (WIOA). WIOA is the first legislative reform of the public workforce development system in more than 15 years. WIOA supersedes the Workforce Investment Act of 1998 (WIA). Title IV of WIOA includes amendments to the Rehabilitation Act of 1973, including amendments to Title I of the Rehabilitation Act, which authorizes funding for the State Vocational Rehabilitation (State VR) Program.

To implement the changes to the Rehabilitation Act made by WIOA, the Secretary of Education amends the regulations governing the State VR program [34 CFR part 361] and the State Supported Employment Services Program [34 CFR part 363], administered by the Rehabilitation Services Administration (RSA), within the Office of Special Education and Rehabilitative Services. In addition, the Secretary of Education issues regulations in new 34 CFR part 397 that implement Section 511 of the Rehabilitation Act (Limitations on Use of Subminimum Wages).

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Mike Walsh at (208) 334-3220 ext. 110.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before September 27, 2017.

DATED this 31st day of July, 2017.

Mike Walsh, Rehabilitation Services Chief
Idaho Commission for the Blind and Visually Impaired
Phone: (208) 334-3220 ext. 110 / Fax: (208) 334-2963

341 W. Washington Street
P. O. Box 83720
Boise, ID 83720-0012

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 15-0202-1701
(Only Those Sections With Amendments Are Shown.)

000. LEGAL AUTHORITY.

This chapter is adopted in accordance with Sections 67-5407(e) and 67-5408, Idaho Code, and the Rehabilitation Act of 1973, as amended. (4-2-08)()

001. TITLE AND SCOPE.

These rules will be known as Idaho Commission for the Blind and Visually Impaired Rules, IDAPA 15.02.02, "Vocational Rehabilitation Services." The provisions of these rules establish procedures ~~and~~ requirements, and implement program changes necessitated by the Rehabilitation Act of 1973, as amended, which address the provisions of vocational rehabilitation services to the blind and visually impaired population of Idaho. (1-5-87)()

(BREAK IN CONTINUITY OF SECTIONS)

004. INCORPORATION BY REFERENCE.

The following federal laws and regulations are incorporated by reference into the rules of this chapter and copies are available at the Commission's office: (4-2-08)

01. 29 U.S.C. Section 701, et seq., Rehabilitation Act of 1973 as ~~A~~amended ~~in 1998~~ through Public Law 114-95, enacted December 10, 2015. (4-2-08)()

02. 34 CFR 361 and 363. (4-2-08)

03. Workforce Innovation and Opportunity Act (WIOA), Public Law 113-128, enacted July 22, 2014. ()

(BREAK IN CONTINUITY OF SECTIONS)

010. DEFINITIONS.

01. Blind or Visually Impaired. A person whose visual acuity with correcting lenses is not better than twenty/two hundred (20/200) in the better eye; or a person whose vision in the better eye is restricted to a field which subtends an angle of not greater than twenty (20) degrees; or a person who is functionally blind; or a person who is without any sight. (4-2-08)

02. Client. An individual who has applied for, or is determined to be eligible for, vocational rehabilitation services. (4-2-08)

03. Commission. The Idaho Commission for the Blind and Visually Impaired. (4-2-08)

04. Comprehensive Assessment. An assessment of the personality, interests, interpersonal skills, intelligence and related functional capacities, educational achievements, work experience, vocational aptitudes, personal and social adjustments, and employment opportunities of the individual and the medical, psychiatric, psychological, and other pertinent vocational, educational, cultural, social, recreational, and environmental factors that affect the employment and rehabilitation needs of the individual. An assessment also includes, to the degree needed, an appraisal of the patterns of work behavior of the individual and services needed for the individual to

acquire occupational skills and to develop work attitudes, work habits, work tolerance, and social and behavior patterns necessary for successful job performance, including the use of work in real job situations to assess and develop the capabilities of the individual to perform adequately in a work environment. (4-2-08)

05. Comparable Benefits or Services. Any benefit or service that exists under any other programs that is available to the client. Examples are, but not limited to, Pell Grants, Medicaid, Medicare, private health insurance, and medical indigence programs for medication. (4-2-08)

06. Designated State Unit. Idaho Commission for the Blind and Visually Impaired. (4-2-08)

07. Functionally Blind. A person with a visual impairment which constitutes or results in a substantial impediment to employment or substantially limits one (1) or more major life activities. This is determined by the vocational rehabilitation counselor, not a physician. (4-2-08)

08. Maintenance. Monetary support provided to an individual for expenses, such as food, shelter, and clothing, that are in excess of the normal expenses of the individual and that are necessitated by the client's participation in an assessment for determining eligibility and vocational rehabilitation needs or the client's receipt of vocational rehabilitation services under an individualized plan for employment (34 CFR 361.5(35)). (4-2-08)

09. Most Significant Disability (MSD). Meets the criteria as Significant Disability as found in the Rehabilitation Act of 1973, as amended, and defined in 34 CFR 361.5(c)(29), and is further defined as: Having a severe physical, mental, cognitive, or sensory impairment which seriously limits three (3) or more functional capacities (such as mobility, communication, self-care, self-direction, interpersonal skills, work tolerance or work skills) in terms of an employment outcome, and whose vocational rehabilitation can be expected to require multiple vocational rehabilitation services over an extended period of time. ()

10. Vocational Rehabilitation Service or Services. Services that reduce the impact of functional limitations on the ability of a client to achieve an employment outcome. (4-2-08)

(BREAK IN CONTINUITY OF SECTIONS)

210. INDIVIDUAL PLAN FOR EMPLOYMENT.

For those clients determined eligible for vocational rehabilitation services, an IPE shall be developed between the client and their vocational rehabilitation counselor within ninety (90) days of eligibility determination, unless an extension is agreed to between the counselor and client, and documented in the case record. An approved IPE or IPE amendment must be signed by the client or the client's representative and appropriate Commission staff in order to be implemented. Services may be discontinued if the client fails to participate actively or does not make adequate progress toward plan completion. Prior to the IPE being written, a comprehensive assessment is required to evaluate the following components: (4-2-08)()

01. Employment Outcome. To determine the employment outcome that is selected by the client, with input from the vocational rehabilitation counselor, that is consistent with the client's unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice. (4-2-08)

a. Provisions of Community Rehabilitation Program Services. The Commission will purchase vocational rehabilitation services from community rehabilitation programs that are accredited by either the Commission on Accreditation of Rehabilitation Facilities (CARF), the Rehabilitation Accreditation Commission, or Rehabilitation Services Accreditation System. In conjunction with the client, the vocational rehabilitation counselor will determine which, if any, community rehabilitation program services are required for the client to achieve an employment outcome. (4-2-08)

02. Nature and Scope. To identify the nature and scope of the vocational rehabilitation services that the client needs to become employed. (4-2-08)

03. Planned Services. To determine how the planned services will assist the client in overcoming the

barriers to employment that were identified in the eligibility determination. (4-2-08)

04. Costs. The client must apply for and secure any Comparable Benefits or Services, participate in paying for any or all costs of the IPE services, and make a commitment to cooperate and follow through with the IPE and achieve an employment outcome. Clients receiving services wherein costs are incurred and who possess the financial resources to do so will be required to participate in the payment for assistance provided them. (4-2-08)

211. -- 299. (RESERVED)

300. PAYMENT POLICY.

01. Upper Limits. In order to ensure a reasonable cost to the Commission's vocational rehabilitation program for provision of certain enumerated services, and in accordance with 34 CFR 361.50, the Commission hereby establishes upper limits on dollar amounts it will contribute to clients for certain categories of services provided as part of an implemented IPE pursuant to Section 210 of these rules: (4-2-08)

a. Education expenses - public in-state institutions. (3-25-16)

i. Education expenses, including fees, tuition, and health insurance costs, for enrollment at public in-state institutions: ~~Ninety percent (90%) of the actual costs for~~ **Two (2)** semesters per federal fiscal year at the institution of enrollment. If the client receives any grant or scholarship (except merit based scholarships), it shall be applied first for tuition or fees and books and supplies, in that order, before any expenditure of funds by the Commission. ~~(3-25-16)~~ **()**

ii. The Commission may assist with an advanced degree based on the rehabilitation needs of the individual client, but only if the client is unable to achieve employment with an undergraduate degree. (3-25-16)

b. Education expenses - private in-state institutions. (3-25-16)

i. Education expenses, including fees, tuition, and health insurance costs, for enrollment at Idaho private in-state colleges, private in-state vocational technical schools, private in-state universities, and other private in-state education and training institutions and including enrollment in summer school: ~~Ninety percent (90%) of actual costs for~~ **Two (2)** semesters per federal fiscal year up to an amount not to exceed actual costs per federal fiscal year at a public Idaho college or university. If the client receives any grant or scholarship (except merit based scholarships), it shall be applied first for tuition or fees and books and supplies, in that order, before any expenditure of funds by the Commission. ~~(3-25-16)~~ **()**

ii. The Commission may assist with an advanced degree based on the rehabilitation needs of the individual client, but only if the client is unable to achieve employment with an undergraduate degree. (3-25-16)

c. Education expenses - out-of-state institutions. Education expenses, including fees and tuition, for enrollment at out-of-state colleges, universities, vocational technical schools, and other education and training institutions, and including enrollment in summer school: ~~Ninety percent (90%) of actual costs for~~ **Two (2)** semesters per federal fiscal year up to an amount not to exceed actual costs per federal fiscal year that would be incurred at a public Idaho college ~~or~~ **university, or other in-state education or training program**. If the client receives any grant or scholarship (except merit based scholarships), it shall be applied first for tuition or fees and books and supplies, in that order, before any expenditure of funds by the Commission. ~~(3-25-16)~~ **()**

i. If the client must attend an out-of-state institution because the course of study is not offered within the state of Idaho, the Commission, at its discretion may pay the "usual and customary" charges for fees and tuition up to the established limits. (4-2-08)

ii. If the course of study is offered in-state, but because of the additional costs caused by the accommodation for disability, it would be more cost effective for the Commission to have the client attend the out-of-state educational institution, the Commission, at its discretion, may pay the usual and customary fees and tuition charges for the out-of-state educational institution up to the established limit. (4-2-08)

iii. If the client chooses to attend an out-of-state institution even though the course of study or training program is offered within the state of Idaho, the Commission will only pay an amount equal to the maximum cost for fees and tuition, up to the established limit, at the in-state-institution offering the course of study or training program that is closest geographically to the Commission regional office assisting the client. (4-2-08)()

d. Books and supplies. Actual costs of required books and supplies, including expenditures for books and supplies required for attendance of summer school. If the client receives any grant or scholarship (except merit based scholarships), it shall be applied first for tuition or fees, books and supplies, in this order, before any expenditure of funds by the Commission. (3-25-16)

e. Medical exams including written report. (4-2-08)

i. Specialist exam by M.D.: To be paid at specialist's rate not to exceed three hundred dollars (\$300) maximum, plus actual cost of related procedures (e.g., x-rays). (3-25-16)

ii. Psychological exam by licensed psychologist: Two hundred fifty dollars (\$250) plus actual cost of psychometric tests. (3-25-16)

iii. Ophthalmologist/Optomtrist exam: Three hundred dollars (\$300) plus actual cost of visual field exam or other necessary tests. (3-25-16)

(1) Low vision exam: To be paid at specialist's rate not to exceed two hundred dollars (\$200). (3-25-16)

(2) Follow-up low vision consultation: ~~Sixty-five~~ Not to exceed one hundred dollars (~~\$65~~100). (3-25-16)()

(3) Eye report: Twenty-five dollars (\$25). (4-2-08)

iv. Eye glasses or contact lenses: Two hundred dollars (\$200) frame costs and the usual and customary cost for lenses and contact lenses. Twelve hundred dollars (\$1,200) for biotics. (3-25-16)

v. Audiologist exam: To be paid at specialists rate not to exceed two hundred dollars (\$200). (3-25-16)

vi. Physical exam (general basic medical): Two hundred dollars (\$200) plus actual cost of additional procedures and tests. (3-25-16)

f. Psychotherapy/Counseling sessions: Up to one hundred dollars (\$100) per hour and up to ten (10) sessions. Exceptions may be made by Rehabilitation Services Chief. (3-25-16)

g. Medication and medical supplies (including diabetic supplies): Three hundred dollars (\$300) per month for up to three (3) months, during which client must apply for reduced cost or free medication programs provided by drug companies or other sources of comparable benefits, including Medicaid, Medicare Part D, or other insurance. After the expiration of the three (3) month period, the commission will pay the state Medicaid rate for medication and medical supplies. (3-25-16)

h. Dental work, including but not limited to cleaning, fillings, extractions, crowns, and dentures: One thousand dollars (\$1,000) per case. (3-25-16)

i. Transportation. (4-2-08)

i. Public conveyance (bus, van, airfare): Actual cost. (4-2-08)

ii. Transportation services associated with personal vehicle usage with or without personal driver: Two hundred dollars (\$200) per month within a twenty (20) mile radius (in-town commuting) and three hundred dollars (\$300) per month for commuting from greater than a twenty (20) mile radius (out-of-town commuting).

- Exceptions can be approved by the Rehabilitation Services Chief. (3-25-16)
- iii. ICBVI may reimburse for state mileage rate for client transportation services or may reimburse for the actual cost of gasoline. (3-25-16)
 - iv. Cab subsidy programs (Scrip) must be used by clients where available. (4-2-08)
 - j. Maintenance: Three thousand dollars (\$3,000) per federal fiscal year and no more than five hundred dollars (\$500) per month. There is no limit on the number of months a client can receive maintenance up to the three thousand dollar (\$3,000) limit per federal fiscal year. These maximums also apply to room and board for post secondary education and to any rent payments. (3-29-12)
 - i. The Commission will not pay maintenance for basic living expenses incurred by a client that are not directly related to the client's participation in an IPE for vocational rehabilitation services. (4-2-08)
 - ii. If a client is participating in the Assessment and Training Center (ATC) and is not commuting to ATC for training, the maximum per month is three hundred dollars (\$300) for maintenance up to the three thousand dollars (\$3,000) per federal fiscal year. Over three hundred dollars (\$300) a month or three thousand dollars (\$3,000) per fiscal year requires approval from the VR Services Chief. Maintenance will not be paid during the ATC breaks. (3-29-12)
 - k. Copy fees: Twenty dollars (\$20) for obtaining a copy of any report or other record from an outside agency or entity required by the Commission in order to determine a client's eligibility or otherwise provide vocational rehabilitation services. (3-25-16)
 - l. Tools and equipment: Two thousand dollars (\$2,000) per case depending on employment goal. Value of tools and equipment provided to client from existing Commission inventory will count towards the two thousand dollar (\$2,000) limit. If there is a change in client's employment outcome, the client shall return the original tools and equipment to the Commission. The Commission will not provide or purchase additional tools or equipment for the client for any new employment outcome until the original tools and equipment have been returned to the Commission. (3-25-16)
 - m. On-the-Job training fees: ~~Three~~ **Five** thousand dollars (~~\$3~~**5**,000). (~~4-2-08~~)()
 - n. Computers including hardware and software: Two thousand dollars (\$2,000) per case. If the Commission determines that a change in computers is necessary, as appropriate, the client shall return the original computer to the Commission. The Commission will not provide or purchase a new or different computer for the client until the original computer has been returned. (3-25-16)
 - o. Self-employment plans: Three thousand dollars (\$3,000), to include tools and equipment, excluding adaptive technology and computers. (3-25-16)
 - p. Child care: Three hundred dollars (\$300) per child per month. The client shall apply and use Department of Health and Welfare child care funding as a comparable benefit before any expenditure of Commission funds towards IPE related child care. (4-2-08)
 - q. Vehicle purchase: The Commission may provide finances to modify and/or repair an already owned vehicle to make it accessible for the client's use under the following circumstances: (3-25-16)
 - i. The cost of the modification and/or repair cannot exceed the current Blue Book fair trade in value of the vehicle; (3-25-16)
 - ii. The client must maintain insurance on the vehicle for replacement cost; (3-25-16)
 - iii. The Commission can aid in the purchase of a used vehicle or utility trailer as long as they are a part of the approved self-employment plan or a part of the Business Enterprise Program. (3-25-16)

r. Physical, Occupational, and Speech Therapy: The Commission may cover one hundred dollars (\$100) per session at maximum of ten (10) sessions per case. Exceptions can be made by rehabilitation Services Chief. (3-25-16)

02. **Exclusion of Surgery.** The Commission does not provide funds for a client's surgery when the surgery is the only service required for the client to achieve an employment outcome or otherwise return to work. (3-25-16)

03. **Authorization to Purchase.** When purchasing services from a vendor, the Commission requires a written authorization be issued prior to, or on the beginning date of, service. If services are provided without an approved written authorization to purchase, the Commission reserves the right to refuse payment on the vendor's invoice. Verbal authorization for a service may only be given by the Rehabilitation Services Chief or the Commission Administrator. If a client fails to show up for an appointment, the client shall be responsible for payment of any charges resulting from the client's failure to show up for the appointment. (3-25-16)

04. **Exception Policy.** Any and all exceptions to the upper limits established by Subsection 300.01 of these rules will be reviewed on an individual case basis, and require approval by the Rehabilitation Services Chief of the Commission. (3-25-16)

(BREAK IN CONTINUITY OF SECTIONS)

356. ORDER OF SELECTION.

01. **Prioritizing Services.** In the event that ICBVI lacks the personnel or financial resources to provide the full range of VR services to all eligible individuals, the following Order of Selection (OOS) will be used to prioritize service provisions. Students with disabilities, as defined by 34 CFR 361.5(c)(51), who received pre-employment transition services prior to eligibility determination and assignment to a priority category shall continue to receive such services. All clients who have an Individualized Plan for Employment (IPE) will continue to be served. Priority will be given to eligible individuals as follows: ()

a. **Priority 1. Eligible individuals with the Most Significant Disabilities (MSD).** ()

b. **Priority 2. Eligible individuals with Significant Disabilities (SD).** ()

c. **Priority 3. All other eligible individuals with Disabilities (D).** ()

02. **Inability to Serve.** If ICBVI cannot serve all eligible individuals within a priority category, individuals will be released from the statewide waitlist based on priority category and date of application. ()

03. **Exemption.** Employed individuals, who are eligible for VR services and require immediate equipment or services to maintain their employment, are exempt from the Order of Selection policy, as authorized in the Rehabilitation Act, as amended by WIOA, 34 CFR 361.36(a)(3)(v). ()

~~356~~7. -- 999. (RESERVED)

INCORPORATION BY REFERENCE SYNOPSIS

In compliance with Section 67-5223(4), Idaho Code, the following is a synopsis of the differences between the materials previously incorporated by reference in this rule that are currently of full force and effect and newly revised or amended versions of these same materials that are being proposed for incorporation by reference under this rulemaking.

The following agency of the state of Idaho has prepared this synopsis as part of the proposed rulemaking for the chapter cited here under the docket number specified:

IDAHO COMMISSION FOR THE BLIND AND VISUALLY IMPAIRED IDAPA 15.02.02 – Vocational Rehabilitation Services Proposed Rulemaking - Docket No. 15-0202-1701

On July 22, 2014, President Obama signed into law Public Law No. 113-128, the Workforce Innovation and Opportunity Act (WIOA). WIOA is the first legislative reform of the public workforce development system in more than 15 years. WIOA supersedes the Workforce Investment Act of 1998 (WIA). Title IV of WIOA includes amendments to the Rehabilitation Act of 1973, including amendments to Title I of the Rehabilitation Act, which authorizes funding for the State Vocational Rehabilitation (State VR) Program.

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