

SYNOPSIS

Order of Selection (OOS) under the Rehabilitation Act: Lessons Learned From a Study of Federal and State Policy Frameworks

ORDER OF SELECTION STUDY REPORTS:

- *Executive Summary: A Description and Analysis of State Policy Frameworks Regarding Order of Selection Under Title I of the Rehabilitation Act*
- *A Description and Analysis of State Policy Frameworks Regarding Order of Selection Under Title I of the Rehabilitation Act*
- *A Compendium of State Policy Frameworks Regarding Order of Selection Under Title I of the Rehabilitation Act*

PREPARED FOR

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INTRODUCTION

Order of Selection Policy, In General

- State VR agency must implement Order of Selection (OOS) when it will not have sufficient resources to fully serve all eligible individuals.
- The VR Agency must first select individuals with the most significant disabilities.

Purpose of Policy Analysis

- Help inform policymakers and other stakeholders about the implementation of Order of Selection by conducting a comprehensive review of the federal and state policy frameworks.

Methodology

- Reviewed Federal Policy Framework
- Used common template to analyze policy framework for 40 states and DC
- Conducted thematic analysis of key components of OOS policy across all states and DC

Presentation Regarding Order of Selection

- Overview
- Establishment
- Implementation
- Administration

OVERVIEW OF THE ORDER OF SELECTION POLICY

Determining Whether to Establish An Order of Selection

- Standard—insufficient fiscal and/or personnel resources
- When decision made—prior to beginning of fiscal year
- Re-evaluation—when changed circumstances

Establishment of Order of Selection

- Consists of priority categories
- Those with the most significant disabilities selected first

Definition of “individual with a significant disability”

- Criteria:
 - Severe physical or mental impairment

- Serious limitations in one or more functional capacities in terms of an employment outcome
- Requires multiple vocational rehabilitation services over an extended period of time

Definition of “individual with a most significant disability”

- Defined by each State VR agency
- Agency uses criteria consistent with statutory definition of individual with a significant disability
- OOS must be based on refinement of the three criteria in definition
- No other factors can be used

Implementation of Order of Selection

- When State VR agency establishes but does not implement OOS, must continue to serve all eligible individuals
- State VR agency must close one or more priority categories when it experiences scarce resources and unable to serve all eligible individuals

Administration of Order of Selection

- IPE must be developed for those individuals to whom the state VR agency is able to provide services
- Information and referral system used for individuals on waiting list
- State Rehabilitation Council must be involved in determining OOS policy

ESTABLISHMENT OF ORDER OF SELECTION

Establishment of Priority Categories

- Federal policy—first priority given to individuals with the most significant disabilities.
- State implementation:
 - Three Priority Category System (28 states)
 - Four Priority Category System (8 states and DC)
 - More than four priority categories (4 states)

Individual with a significant disability

- Federal criteria:
 - Severe physical or mental impairment
 - Seriously limits one or more functional capacities in terms of employment outcome

- Requires multiple VR services
- over an extended period of time

Variation among States

- Functional limitations--most states use 1 or more functional limitation
- Multiple services--most states specify 2 or more services
- Extended period of time—most states use 6 months or more
- Some states include more than one priority category for individual with a significant disability and thus adopt multiple definitions with variations among the three factors

Individual with the most significant disability

- Order of selection based on refinement of criteria in the definition of individual with a significant disability
- No other factors may be used

Variation among States

- Functional limitations—
 - 11 states use 2 or more functional limitations
 - 22 states use 3 or more functional limitations and
 - 8 states use 4 or more functional limitations
- Multiple VR services—most states specify either 2 or 3 VR services
- Extended period of time—most states specify 6 months or more

Multiple VR Services

States include varying definitions of the term.

- Some states include reference to all services provided by a VR agency
- Other states include reference to “primary services” or “core services” or “main or major services” or “substantial services”
- Other states include references to specified services (e.g., counseling) and then refer to the inclusion of additional services
- Other states exclude specified services from being counted

Extended Period of Time

- Most states define extended period in terms of 6 months.
- There are some states that specify a different time period. For example:
 - Arkansas specifies 90 days or more
 - Iowa specifies 1 year
 - Alaska and Idaho specify 6 months as a benchmark rather than as an absolute number

Functional capacity areas

- Most states include the 7 categories identified in the federal regulations (mobility, communication, interpersonal skills, self-care, self-direction, work skills, and work tolerance)
- California and Nevada include 6 categories (they do not include self-direction)
- Georgia includes 14 categories, Indiana includes 9 categories and Louisiana includes 8 categories

Serious limitation in terms of employment

- States include varying definitions for the term “serious limitation” in terms of employment.
- Several states define the term as a reduction of one’s capacity to the degree that the individual requires services or accommodations not typically provided to others in order for the individual to work.
- Some states use criteria such as consistency (always or almost always limits the individual’s functioning) and substantiality (disability has a major, significant impact on functioning) and the individual cannot perform the activity or finds it very difficult to perform the activity.
- Other states use criteria such as “extremely or markedly limited to the extent that the functional capacity cannot be performed independently or can only perform the function with an aid or accommodation.
- Several states include specific definitions for each of the functional areas.

Acceptable and Unacceptable Factors

- Federal policy—Acceptable factors (apply criteria equitably); unacceptable factors (e.g., residency duration, type of disability, age, gender, source of referral, type of expected outcome, income level, need for specific services/anticipated cost).
- State implementation—States generally include or incorporate by reference the factors set out in the federal policy framework in guidelines or state regulations.
 - California, Nevada, and Minnesota add “sexual orientation” to the list
 - Alaska, Colorado, Idaho, Iowa, Minnesota, and Virginia specify that external factors (such as geographical location, poor public transportation, or lack of training) may not be used as the basis for determining whether an individual has a functional limitation

Ranking Individuals within a Priority (Waiting Lists)

- Federal Policy—Okay to use equitable and reasonable factors such as date of application.
- State implementation—All of the **states** adopt the individual’s date of application as an equitable and reasonable factor for ranking individuals within a priority (waiting list).
- Some states explain that individuals are taken off the waiting list in the same manner (e.g., Iowa).

IMPLEMENTATION OF ORDER OF SELECTION

Statewide Basis

- Federal policy
 - Same priority categories closed in all State VR agency offices
 - Notify all eligible individuals of priority status and right to appeal assignment
- All the states adopt the statewide policy

Authority to Open and Close Priority Categories, as Needed

- Federal policy
 - Authority to open and close priority categories, as needed
 - Authority to establish but not implement
- State implementation—The states have adopted policies that reflect the federal policy framework.

Continuation of Services

- Federal policy—Authority to open and close priority categories as long as continuity of services to all individuals selected for services is assured
- State implementation—All of the **states** include the policy regarding continuation of services

Funding Arrangements-Contributions

- Federal policy—contributions may be earmarked for particular services and certain types of disabilities; but contributions must be used in a manner consistent with state's order of selection.
- State implementation [e.g., Arizona, Iowa, Michigan, Tennessee, West Virginia]

ADMINISTRATION OF ORDER OF SELECTION

Assessment for Determining Eligibility and Priority for Services

- Federal policies—conduct of assessment, including determining priority for services
- State implementation—states have developed comprehensive policies, procedures, manuals and checklists for conducting assessments for determining priority for services.

Notification of Eligible Individuals

- Under the federal policy framework, the State VR agency must notify all eligible individuals of the priority categories in a state's Order of Selection, their assignment to a particular category, and their right to appeal their category assignment.

- States provide notification to eligible individuals consistent with the federal policy framework.

Responsibilities to Individuals Who Meet Open Categories Under OOS

- Federal policy—must receive assessment and full range of services
- State implementation—the states all include the policy specified in the federal policy framework.

Responsibilities to Individuals Who Do Not Meet Open Categories Under OOS

- Federal policy—access to information and referral system
- State implementation—The state policies generally restate the policies set out in the federal policy framework

Maintenance of Records

- Federal Policy
 - The individual's service record must include documentation on the nature and scope of information and referral services provided to the individual and documentation on the referral itself
 - The designated state unit must maintain for each applicant and eligible individual a record of services that includes, to the extent pertinent, documentation supporting a determination that an individual is an individual with a significant disability or an individual with the most significant disability.
- The states have adopted policies consistent with the federal policy framework.

Monitoring and Oversight

- State Implementation: California, Oregon, and Utah have adopted specific policies requiring the VR agency to review at least annually the order of selection for all eligible individuals in priority categories, including those being served and those on the waiting list.
- In California, the review must be conducted to assure that services are being provided on a statewide basis and the determination of priority category does not bar or discriminate against any eligible individual based on proscribed factors.
- If the Department's review discloses the order of selection is barring or discriminating against any eligible individuals based on inappropriate factors, the Department must remedy that situation by promulgating emergency regulations within 90 days.

Role of State Rehabilitation Council

- Under the federal policy framework, the designated state unit must consult with the State Rehabilitation Council regarding the—
 - Need to establish an order of selection, including any reevaluations of the need;
 - Priority categories of the particular order of selection;

- Criteria for determining individuals with the most significant disabilities; and
- Administration of the order of selection.
- All of the states have adopted this policy.