

## **EXECUTIVE SUMMARY**

# **A DESCRIPTION AND ANALYSIS OF STATE POLICY FRAMEWORKS REGARDING ORDER OF SELECTION UNDER TITLE I OF THE REHABILITATION ACT**

**Report Prepared for**

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## **I. PURPOSES OF THE POLICY ANALYSIS**

The purpose of this paper is to describe the key policy elements included in the order of selection requirement and then analyze how the various states address each element. It is my expectation that this paper will help inform policymakers and other stakeholders about the OOS federal policy framework and policies currently used by states. It is not the purpose of this policy analysis to determine or judge the merits of any particular state policy and thus the descriptions of state policies included in this paper should not be construed as constituting “best practices” among State VR programs.

For purposes of this paper, I reviewed policies frameworks in 40 states plus the District of Columbia (Washington, D.C.) that reported to CSAVR and me that they have in place an order of selection policy. A separate paper—*A Compendium of State Policy Frameworks Regarding Order of Selection Under Title I of the Rehabilitation Act* includes descriptions of these 41 policy frameworks.

## **II. OVERVIEW—FEDERAL ORDER OF SELECTION POLICY FRAMEWORK**

The Vocational Rehabilitation (VR) program authorized under Title I of the Rehabilitation Act of 1973, as amended, is a microcosm of the quintessential U.S. social policy dilemma: should resources be devoted to serving those “most in need” or those “most able to benefit”? With respect to the VR program, Congress has made a clear choice—a State VR agency must implement an “order of selection” when it anticipates that it will not have sufficient fiscal and/or personnel resources to fully serve all individuals eligible for vocational rehabilitation services. Under an order of selection, individuals with the most significant disabilities are selected first for the provision of VR services.

Below is an overview of the order of selection policy.

A State VR agency is required to implement an order of selection when it anticipates that it will not have sufficient fiscal and/or personnel resources to fully serve all eligible individuals. [Section 101(a)(5)(A) of the Rehabilitation Act of 1973 (Act) and 34 CFR 361.36(a)(1)] The decision to establish and implement an order of selection must be made prior to the beginning of each fiscal year and reevaluated whenever changed circumstances indicate that the agency’s resources are not sufficient to fully serve all eligible individuals. [34 CFR 361.36(c)]

An order of selection consists of priority categories to which eligible individuals are assigned based on the significance of their disability. [34 CFR 361.36(d)(1)] Under an order of selection, individuals with the most significant disabilities are selected first for the provision of vocational rehabilitation services. [Section 101(a)(5)(C) of the Act and 34 CFR 361.36(a)(3)(iv)(A)] An

“individual with a significant disability” is defined in *Section 7(21)(A) of the Act and 34 CFR 361.5(b)(31)* as an individual with a disability –

- Who has a severe physical or mental impairment which seriously limits one 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;
- Whose vocational rehabilitation can be expected to require multiple vocational rehabilitation services over an extended period of time; and
- Who has one or more listed physical or mental disabilities or another disability or combination of disabilities determined on the basis of an assessment for determining eligibility and vocational rehabilitation needs to cause comparable substantial functional limitation.

An “individual with a most significant disability” is defined by each State VR agency, using criteria consistent with the statutory definition of “individual with a significant disability.” [*Section 101(a)(5)(C) and 34 CFR 361.36(a)(3)(iv)(A)*] The order of selection must be based on a refinement of the three criteria in the definition of “individual with a significant disability.” [*34 CFR 361.36(d)(1)*] No other factors, including type of disability, referral source, and income, can be used to determine significance of disability or assignment to a priority category. [*34 CFR 361.36(d)(2)*]

If a State VR agency establishes an order of selection, but does not implement the order at the beginning of the fiscal year, it must continue to serve all eligible individuals or it must implement the order by closing one or more priority categories. State VR agencies that are experiencing scarce resources may have one, some, or all priority categories closed. [*34 CFR 361.36(c)(3)*]

In a state operating under an order of selection, the individualized plan for employment (IPE) will be developed and implemented only for those eligible individuals to whom the State VR agency is able to provide services. Thus, an IPE will not be developed for individuals on waiting lists. [*Section 101(a)(9)(A) of the Act and 34 CFR 361.45(a)(1)*] Eligible individuals who do not meet the State VR agency’s order of selection criteria, i.e., individuals on waiting lists, must be provided with access to the services available through the agency’s information and referral system. [*Section 101(a)(5)(D) of the Act and 34 CFR 361.37*]

### **III. STATE POLICY FRAMEWORKS RELATING TO KEY ELEMENTS OF ORDER OF SELECTION**

#### **A. Determination of Whether to Establish an Order of Selection.**

The federal policy framework specifies that a State VR agency is required to implement an order of selection when it anticipates that it will not have sufficient fiscal and/or personnel resources to fully serve all eligible individuals. [*Section 101(a)(5)(A) of the Rehabilitation Act of 1973 (Act) and 34 CFR 361.36(a)(1)*] The decision to establish and implement an order of selection must be made prior to the beginning of each fiscal year and reevaluated whenever changed circumstances

indicate that the agency's resources are not sufficient to fully serve all eligible individuals. [34 CFR 361.36(c)]

The states implement this provision through varying approaches ranging from statements in the state plan (e.g., Virginia and Wisconsin) to actual provisions in official state regulations (e.g., Ohio and California). Michigan established a work group to determine “red flags/indicators to determine how the State VR agency would know if the state is approaching an order of selection. Red flags are indicators that require interventions to correct. Triggers would be insufficient money or staff to provide assessment or IPE services anywhere in the state that cannot be rectified by a shift in staff, resources, or other means.

## **B. Establishment of Priority Categories**

The federal policy framework explains that establishing an order of selection for services provides an organized and equitable method for State VR agencies to serve individuals with disabilities if it is anticipated that the agency will not have enough fiscal or personnel resources to serve all eligible persons. [ORDER OF SELECTION/ABILITY TO SERVE ALL REVIEW GUIDE, RSA Monitoring Module (FY 2003) at page 5] Under the order of selection requirements, first priority for services is given to individuals with the most significant disabilities. [Section 101(a)(5)(C) of the Act and 34 CFR 361.36(a)] Individuals are determined to be “individuals with the most significant disabilities” in accordance with criteria established by the State VR agency. [Section 101(a)(5)(C) of the Act and 34 CFR 361.36(a)(3)]

Twenty-eight (28) states use a three priority category system for establishing an order of selection; nine (9) states, including Washington, DC (Arkansas, Illinois, Indiana, Minnesota, Oregon, Tennessee, West Virginia, Virginia and Washington D.C.) use a four priority category system; and four (4) states (Georgia, Kentucky, Louisiana, and North Carolina) use a priority category system that provides for more than four categories.

With respect to those states that use **three** priority categories, the categories generally are as follows:

Priority Category 1: Eligible individuals determined to have a **most significant disability**.

Priority Category 2: Eligible individuals determined to have a **significant disability**.

Priority Category 3: All **other eligible individuals** determined to have a disability.

With respect to those states that use **four** priority categories, states use more than one priority under either “most significant disability”, “significant disability”, or “other eligible individuals”. For example, Indiana uses individuals with the most significant disabilities that result in a serious limitation in three or more functional capacities; individuals with a significant disability that results in a serious limitation in two functional capacities; individuals with a significant disability that results in a serious limitation in one functional capacity, and individuals who do not satisfy the requirements for the other three categories.

With respect to states that use **more than four** priority categories: Georgia uses 7 categories (two categories for most significant disability, two categories for significant disability, and then the remainder). Louisiana uses 5 categories (two categories for most significant disability, 2 categories for significant disabilities, and 1 category for those who do not meet categories 1-4. North Carolina uses 6 categories (two categories for most significant disability, two categories for significant disability, and two categories for other). Kentucky uses 6 categories (one category for most significant disability, three categories for significant disability, and two categories for other eligible individuals with disabilities).

## **C. Terminology**

### **1. Eligible individual.**

According to the federal legal framework, an “eligible individual” means an applicant for vocational rehabilitation services who meets the following eligibility requirements. The designated state unit’s determination of an applicant’s eligibility for vocational rehabilitation services must be based only on the following requirements [34 CFR 361.42(a)]:

- A determination by qualified personnel that the applicant has a physical or mental impairment;
- A determination by qualified personnel that the applicant’s physical or mental impairment constitutes or results in a substantial impediment to employment for the applicant.
- A determination by a qualified vocational rehabilitation counselor employed by the designated state unit that the applicant requires vocational rehabilitation services to prepare for, secure, retain, or regain employment consistent with the applicant’s unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice.
- A presumption that the applicant can benefit in terms of an employment outcome from the provision of vocational rehabilitation services.

In general, the states use and then adopt the federal definition of “eligible individual.”

### **2. Individual with a disability.**

According to the federal policy framework, an individual with a disability means an individual—

- Who has a physical or mental impairment;
- Whose impairment constitutes or result in substantial impediments to employment; and
- Who can benefit in terms of an employment outcome from the provision of vocational rehabilitation services. [34 CFR 361.5(b)(28)]

The term “**substantial impediment to employment**” used in the definition of “individual with a disability” means a physical or mental impairment (in light of attendant medical, psychological,

vocational, educational, communication, and other related factors) that hinders an individual from preparing for, entering into, engaging in, or retaining employment consistent with an individual's abilities and capabilities. [34 CFR 361.5(b)(52)]

The term “**employment outcome**” used in the definition of “individual with a disability” means, with respect to an individual, entering or retaining full-time or, if appropriate, part-time competitive employment, in the integrated labor market; supported employment, or any other type of employment in an integrated setting, including self-employment, telecommuting, or business ownership, that is consistent with an individual's strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice. [34 CFR 361.5(b)(16)]

In general, the states adopt the federal definition of “individual with a disability”.

### **3. Individual with a significant disability.**

According to the federal policy framework, an “individual with a significant disability” means an individual with a disability—

- Who has a severe physical or mental impairment which seriously limits one 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;
- Whose vocational rehabilitation can be expected to require multiple vocational rehabilitation services over an extended period of time; and
- Who has one or more listed physical or mental disabilities or another disability or combination of disabilities determined on the basis of an assessment for determining eligibility and vocational rehabilitation needs to cause comparable substantial functional limitation. [34 CFR 361.5(b)(31)]

Individuals who are receiving SSI and SSDI benefits as a result of having been determined by the Social Security Administration to be disabled or blind are considered to be at least “individuals with significant disabilities” [Section 102(a)(3)(A) of the Act and 34 CFR 361.42(a)(3)] and should be evaluated to determine whether they meet the state's criteria for “individuals with the most significant disabilities”. There is no statutory authority for assigning a special priority category for individuals receiving SSI and SSDI benefits or for selecting these individuals before other individuals with most significant or significant disabilities.

Under the federal policy framework, in developing a definition for the term “individual with a significant disability,” the criteria that may be refined by the State VR agency include:

- the number and degree of functional limitations in terms of an employment outcome (an impairment seriously limits one or more functional capacities),
- the number of vocational rehabilitation services needed (whose vocational rehabilitation can be expected to require multiple vocational services), and

- the amount of time needed for the VR services (over an extended period of time).

An agency may also establish functional capacities in addition to the seven capacity areas listed in the definition of “individual with a significant disability.” In addition, the state agencies may develop definitions for terms such as “severe” physical or mental impairment that “seriously” limits one of more functional capacities”.

Most states include a single category for “individuals with significant disabilities” and thus include a single definition using the following categories—limitations in functional capacity (most states use 1 functional limitation), need for multiple services (most states use 2 or more) and the amount of time needed over an extended period of time (most states use 6 months or more). However, there are a number of states (e.g., Georgia, Indiana, Kentucky, Louisiana, North Carolina, Minnesota, and Virginia) that include more than one priority category for “individuals with significant disabilities” and thus adopt multiple definitions with variations in terms of functional areas, multiple services, and/or extended period of time.

#### **4. Individual with the most significant disability.**

According to the federal policy framework, the State VR agency’s definition for “individuals with the most significant disabilities” and its descriptions of its priority categories must meet the requirements of *34 CFR 361.36(d)*:

- the order of selection must be based on a refinement of the three criteria in the definition of “individual with a significant disability” and
- no other factors may be used.

In other words, in developing a definition for the term “individual with the most significant disability,” the criteria that may be refined by the State VR agency include:

- the number and degree of functional limitations in terms of an employment outcome (an impairment seriously limits one or more functional capacities),
- the number of vocational rehabilitation services needed (whose vocational rehabilitation can be expected to require multiple vocational services), and
- the amount of time needed for the VR services (over an extended period of time).

There is a degree of variation among the states with respect to the definition of the term “individual with the most significant disability,” particularly with respect to the number of functional limitations that must exist. With respect to the number of functional limitations, eleven (11) states use 2 or more functional limitations, twenty-two (22) states use 3 or more functional limitations, and eight (8) states use 4 or more functional limitations. With respect to the number of vocational rehabilitation services needed, most states specify either 2 or 3 or more services; however it should be noted that there is a degree of variation regarding how the term multiple services is defined. [See discussion below under definition of “multiple services]. With respect to the criteria “over an extended period of time” most states specify 6 months or more.

[See the Appendix for a chart describing the variation among the states with respect to the definition of the term “individual with the most significant disability.”]

## **5. Multiple vocational rehabilitation services.**

The states include varying definitions of the term. Some States include reference to all services; other States include reference to “primary services,” “core services,” “main or major services” “substantial services” or reference to specified services in addition to other categories of services and exclude certain other services from being counted e.g., support services.

For example, Colorado includes two or more **core** vocational services. In identifying the number of core services, the DVR counselor does not count those services which are supportive to another service, such as transportation and maintenance, and would not be provided if not to support a necessary core service. **Core vocational rehabilitation services** includes all vocational rehabilitation services other than supportive services (maintenance, transportation, services to family members, and personal assistance services); services secondary to core vocational rehabilitation services, such as training materials and supplies when training is being provided as a core vocational rehabilitation service; or, generalized counseling, guidance, and placement which are provided during the vocational rehabilitation process in connection with the provision of vocational rehabilitation services but are not identified as a needed vocational rehabilitation service on the IPE.

Kansas specifies that “multiple services” means more than one service as listed on the IPE. Support services (maintenance, transportation, and services to family members) may not be counted toward multiple services. Routine counseling and guidance to facilitate participation in the VR process may not be counted toward multiple services. Significant services which are not provided by RS but which are related to the disability and employment outcome, and which are essential to the accomplishment of the IPE may be counted toward multiple services.

Oklahoma specifies that “multiple services” means the counseling and guidance provided as a routine part of case management plus two or more VR services. Comparable benefits and/or services can count toward meeting the definition of multiple services. Services routinely provided as a package do not count as multiple services for the purpose of determining the presence of a significant disability, even if two or more services are included in the package.

## **6. 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 from the date services are initiated, Colorado specifies at least 5 months, Iowa specifies 1 year, Kansas specifies at least 4 months, and West Virginia specifies 6 months for significant disability and 9 months for most significant disability. Also, several states (e.g., Alaska and Idaho) specify a number of months as a benchmark rather than as an absolute number.



## **7. Functional capacity areas.**

Most of the states include the 7 categories identified in the federal regulations (i.e., mobility, communication, interpersonal skills, self-care, self-direction, work skills, and work tolerance). California and Nevada include 6 categories i.e., they do not include self-direction. Georgia includes 14 categories (ambulation, breathing, cognition, communication, endurance/work tolerance, hearing, interpersonal skills, mobility, self-care, self-direction, speech, upper-lower extremity functioning, vision, and work skills). Indiana includes 9 functional areas (cognitive and learning skills, communication, interpersonal skills, mobility, motor skills, self care, self direction, work skills, and work tolerance). Louisiana includes 8 functional capacity areas (adds motor skills to the federal list).

Several states include definitions for each functional capacity area. Definitions may specify what is included and in some states what is not included as well as examples. (See e.g., Colorado, Connecticut, Florida, Illinois, Louisiana, Maryland, Minnesota, Nebraska, Pennsylvania, South Dakota).

Several states have developed comprehensive manuals and guides related to the functional capacity areas (e.g., Florida, Iowa, and Minnesota) and checklists (e.g., Georgia, Massachusetts).

## **8. Serious limitation in terms of employment.**

Several states include varying definitions for the term “serious limitations” 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 of serious limitation for each of the functional areas. Some states define the term by including external factors that may not be considered in determining a serious limitation.

Below are examples.

California defines the term to mean a reduction of one’s capacity to perform, due to severe physical or mental impairment, to the degree that the individual requires services or accommodations in order for the individual to work or be a fully functioning member of the community.

Illinois: The rehabilitation counselor or instructor shall use the criteria of consistency and substantiality when evaluating the degree of limitation to functional capacity. “Consistency”

means that the individual's disability always or almost always limits the individual's functioning. "Substantiality" means the individual's disability has a major, significant impact on functioning and that the individual cannot perform the activity or finds it very difficult to perform the activity.

Oregon specifies that considering the consumer's current accommodations in place, a "serious functional limitation" is indicated when the consumer cannot perform function due to disability, the function is related to work, and is something general working population can do at work.

Several states include distinct definitions for the term "serious functional limitation" applicable to each of the seven functional areas (e.g., Alaska, Maryland, Michigan, Minnesota, Oregon, and Nevada).

#### **D. Acceptable and Unacceptable Factors.**

As explained above, under the federal policy framework, State VR agencies may develop definitions for terms such as "severe" physical or mental impairment that "seriously" limits one of more functional capacities". In establishing the additional criteria, the State VR agency must:

- Apply the criteria equitably to all eligible individuals;
- Ensure consistency with the three criteria in the definition of "individual with a significant disability"; and
- Meet all other program requirements. *[ORDER OF SELECTION/ABILITY TO SERVE ALL REVIEW GUIDE, RSA Monitoring Module (FY 2003) at page 6]*

The federal policy framework also specifies that an order of selection may not be based on any other factors, including:

- a) Any duration of residency requirement, provided the individual is presently in the state;
- b) Type of disability;
- c) Age, gender, race, color, or national origin;
- d) Source of referral;
- e) Type of expected employment outcome;
- f) The need for specific services or anticipated cost of services required by an individual; or
- g) The income level of an individual or the individual's family. *[34 CFR 361.36(d)(2)]*

Most states include or incorporate by reference factors set out in the federal policy framework. California, Nevada, and Minnesota add "sexual orientation" to the list. Minnesota also adds "status with regard to public assistance". Nevada also adds "ancestry" and "marital status." In addition, Colorado and Maryland include acceptable and unacceptable factors under each of the seven functional areas. Several states such as Alaska, Colorado, Idaho, Iowa, Minnesota, and Virginia also specify that for purposes of determining whether an individual has a significant disability under order of selection, while serious functional limitations may result from or be

compounded by external factors such as geographical location, poor public transportation, or lack of training, these factors are not a basis for determining that an individual has a serious functional limitation.

#### **E. Ranking Individuals within a Priority (Waiting Lists).**

Under the federal policy framework, a State VR agency can establish a policy for ranking individuals within a priority category. The policy should be based on use of an equitable and reasonable factor, such as the individual's date of application. This provides a method for selecting individuals from a waiting list for a priority category when the agency has enough resources to serve some, but not all, individuals in that priority category. *[ORDER OF SELECTION/ABILITY TO SERVE ALL REVIEW GUIDE, RSA Monitoring Module (FY 2003) at page 6]*

The states with a policy 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., Colorado and Iowa). Several states define the term "application date." For example, in Delaware the term means the date that a person signs the DVR application for services and meets with the assigned counselor.

#### **F. Statewide Basis.**

Under the federal policy framework, implementing an order of selection on a statewide basis means that, within the state, the same priority categories are closed in all State VR agency offices. State VR agencies must notify all eligible individuals of their priority category assignment and their right to appeal the assignment. *[ORDER OF SELECTION/ABILITY TO SERVE ALL REVIEW GUIDE, RSA Monitoring Module (FY 2003) at page 10]*

All of the states explain that the order of selection must be implemented on a statewide basis. For example, Michigan policy explains that waiting lists are developed on a statewide basis for eligible individuals, regardless of location, based on their significance of disability priority order, and on the date of application. The order of selection is managed centrally.

#### **G. Authority to Open and Close Priority Categories, as Needed.**

Under the federal policy framework, State VR agencies have the authority to open and close priority categories as needed, so long as the order of the categories is maintained and continuity of services to all individuals selected for services is assured. In determining whether to open priority categories, an agency should ensure that sufficient resources are available throughout the year to serve individuals in higher priority categories. *[ORDER OF SELECTION/ABILITY TO SERVE ALL REVIEW GUIDE, RSA Monitoring Module (FY 2003) at page 10]*

A State VR agency that establishes an order of selection but does not implement the order by keeping all priority categories open, must continue to be able to provide the full range of services, as appropriate, or it must implement the order of selection by closing one or more

priority categories. [34 CFR 361.36(c)(3)] In other words, a state agency that is operating on an order of selection with all priority categories open must meet the same requirements as an agency that did not establish an order of selection or must close one or more categories. [ORDER OF SELECTION/ABILITY TO SERVE ALL REVIEW GUIDE, RSA Monitoring Module (FY 2003) at page 16]

In general, state policies reflect the federal policy framework. For example, West Virginia specifies that the VR director has the authority to open and close priority categories as needed, so long as the order of the categories is maintained, continuity of services to all individuals selected for services is assured.

## **H. Continuation of Services.**

As explained above, under the federal policy framework, State VR agencies have the authority to open and close priority categories as needed, so long as the order of the categories is maintained and continuity of services to all individuals selected for services is assured. [ORDER OF SELECTION/ABILITY TO SERVE ALL REVIEW GUIDE, RSA Monitoring Module (FY 2003) at page 10]

In general, states reiterate federal policy regarding continuation of services. For example:

California specifies that upon implementation of the order of selection for vocational rehabilitation services, individuals whose IPE was written and signed prior to implementation of an order of selection shall continue to receive services, including additional services subsequently identified as necessary to complete their IPE. Individuals who were determined eligible prior to implementation, but for whom the IPEs have not been written and signed, shall be assigned to a priority category.

A number of states also specifically explain that postemployment services must continue. For example, Alaska specifies that OOS does not impact or alter the provision of post-employment services. Post employment services are considered an amendment of the IPE, and therefore, an individual who needs post employment services is not required to meet the highest priority category currently being served under an OOS nor is the individuals required to wait for services.

## **I. Funding Arrangements.**

Under the federal policy framework, with respect to funding arrangements, contributions may be earmarked for providing particular services (e.g., rehabilitation technology) serving individuals with certain types of disabilities (e.g., individuals who are blind). The contributions however must be used in a manner consistent with the state's order of selection, if applicable. Similarly, contributions may be earmarked to provide services to special groups that state and federal law permits (e.g., students with disabilities who are receiving special education services so long as the contributions are used in a manner consistent with the state's order of selection, if applicable. [See example following 34 CFR 361.60, 66 Fed. Reg. at page 4414 (January 17, 2001)] In other words, an agency that receives third-party funding to serve individuals from a particular disability group or referral source may not serve any of those individuals that fall outside of the priority categories being served under the order of selection and must renegotiate any funding arrangements that are not consistent with the order of selection requirements. [ORDER OF

*SELECTION/ABILITY TO SERVE ALL REVIEW GUIDE, RSA Monitoring Module (FY 2003) at page 10]*

Several states include specific reference to third party funding arrangements. For example, Michigan explains that any third party funding arrangements must be consistent with the order of selection. If cooperative agreements are not consistent with order of selection, they must be re-negotiated. In Arizona all clients of the Arizona VR program, regardless of funding source, are subject to the restrictions and requirements of the OOS. Kansas will ensure that it's funding arrangements, including grants, contracts, or cooperative agreements, are implemented consistent with the OOS.

#### **J. Assessment for Determining Eligibility and Priority for Services.**

In order to determine whether an individual is eligible for vocational rehabilitation services and the individual's priority under an order of selection for services (if the state is operating under an order of selection), the designated state unit must conduct an assessment for determining eligibility and priority for services. The VR counselor determines the significance of the individual's disability and the individual's priority for services based on a review of the data developed to make the eligibility determination and an assessment of additional data, to the extent necessary. [34 CFR 361.42(g)] If the designated state unit is operating under an order of selection for services, the state unit must base its priority assignments on a review of the data that was developed to make the eligibility determination and an assessment of additional data, to the extent necessary. [34 CFR 361.42(g)]

Determinations made by officials of other agencies, such as the Social Security Administration and education officials, can be used to assist the VR counselor in determining the extent of the individual's disability and the extent to which an individual meets one or more of the agency's criteria for the various priority categories. [Section 102(a)(4)(B) of the Act and 34 CFR 361.42(d)] To assure consistency in applying agency criteria to individuals, the agency may need to develop guidance materials and provide training for VR counselors. [ORDER OF SELECTION/ABILITY TO SERVE ALL REVIEW GUIDE, RSA Monitoring Module (FY 2003) at page 6]

A number of States have developed comprehensive policies, procedures, manuals and checklists for conducting assessments for determining priority for services.

Alaska uses *The Significance of Disability Certificate*, the *Significance of Disability—Functional Limitations Worksheet*, and the *Significance of Disability Certificate*.

Idaho uses the *SD/MSD Checklist* but explains that the Checklist is a form used to support the determination; however, and is not sufficient enough documentation to adequately describe the individual's limitations by itself.

Iowa has developed the *Preliminary Assessment for Determining Eligibility and Waiting list Placement*.

Massachusetts uses the *Order of Selection Functional Capacities Checklist*.

Michigan uses the *Disability Priority—Serious Limitations Job Aid*.

Minnesota uses guidance materials that specifies for each of the functional areas specific criteria for determining whether a limitation is “serious.” The guidance materials include for each of the functional areas an overall definition, a definition for serious limitation, and a checklist of needs, limitations.

Oregon uses *Functional Limitation Guidelines* that define serious limitation in each of the seven functional capacity areas and specify the documentation required as well as a nonexhaustive list of limitation in capacities.

Pennsylvania recently revised its policies to include comprehensive specifications for each functional area that includes a definition for each functional area, identifies possible assessment strategies for verifying functional limitations, and describes possible impact of various disability-related impacts on the individual’s ability to perform in an employment setting.

South Dakota uses a comprehensive manual and checklist for conducting assessments, including specification of assessment strategies and what can and cannot be considered.

Tennessee adopted policies that specify specific documentation requirements for each of the seven functional capacity areas.

Virginia adopted policies on documentation requirements for each type of disability and a checklist with descriptions to assist counselors in determining serious functional limitations.

Wisconsin developed a policy that highlights special issues in eligibility determinations and order of selection category placements e.g., temporary disabilities, cyclic disability, progressive disability, legacy of disability, and transition without significant work history.

## **K. 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. [34 CFR 361.36(e)(2)]

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

Washington (state) has developed a comprehensive notification policy that includes, among other things, purpose of contact, methods of contact (e.g., letter, email, telephone, other mutually agreed upon method), and frequency of required contact.

Most states e.g., Iowa, Minnesota, Missouri, Virginia and Wisconsin have developed model Order of Selection letters for use by rehabilitation counselors.

## **L. Responsibilities to Individuals Who Meet Open Categories Under OOS.**

Under the federal policy framework, the state plan must assure that an IPE is developed and implemented in a timely manner for each individual determined eligible for vocational rehabilitation services, or if the designated state unit is operating under an order of selection, for each eligible individual whom the state unit is able to provide services. [34 CFR 361.45(a)] The designated state unit must conduct an assessment for determining vocational rehabilitation needs, if appropriate, for each eligible individual, or, if the state is operating under an order of selection, for each eligible individual to whom the state is able to provide services. The purpose of the assessment is to determine the employment outcome, and the nature and scope of vocational rehabilitation services to be included in the IPE. [34 CFR 361.45(b)]

The states all include the policy specified in the federal policy framework. For example, Michigan specifies that customers served under an IPE must be able to obtain a full range of services. Regulations do not permit provision of partial services, for example, only placement services. Massachusetts policy specifies that vocational rehabilitation services to individuals for whom an IPE has been developed, agreed to, and approved will not be affected until such time as their IPE is terminated for reasons other than achievement of the employment objectives or available funds have been exhausted.

#### **M. Responsibilities to Individuals Who Do Not Meet Open Categories Under OOS.**

Under the federal policy framework, agencies implementing an order of selection must ensure that an eligible individual who does not meet the criteria for the open categories of the order of selection has access to services provided under the information and referral system. [Section 101(a)(5)(D) of the Act and 34 CFR 361.36(a)(3)(iv)] Information and referral services include: (a) providing vocational rehabilitation information and guidance to assist individuals in achieving employment; and (b) appropriately referring individuals to other federal and state programs, including other statewide workforce investment programs, that are best suited to meet the individual's specific employment needs [Section 101(a)(20)(A) of the Act and 34 CFR 361.37].

When making a referral, the agency must provide the individual with:

- A notice of the referral;
- Information about a specific point of contact within the program to which the individual is being referred; and
- Information and advice about the most suitable services for assisting the individual to prepare for, secure, retain, or regain employment. [Section 101(a)(20)(B)(ii) of the Act and 34 CFR 361.37(b)(2)]

As part of its reporting under section 101(a)(10)(c)(ii)(I) of the Act and 34 CFR 361.37, agencies must report annually on the number of eligible individuals who received information and referral services (not under an IPE) because they did not meet the order of selection criteria.

The states generally restate the policies set out in the federal policy framework. Oregon includes a comprehensive description of the I&R services that must be provided, including the provision

of counseling and guidance for referrals and job placement. Oregon also has a specific policy on youth in transition.

Virginia policy specifies that while a case is in “Delayed” status, counselors are limited to providing only additional diagnostic, assessment, and evaluation services need to re-evaluate the priority category assignment. If needed to access diagnostic services, the counselor may provide support services (transportation, child care, personal assistance services) and interpreters for the deaf. Any services not allowed by the previous sentence are prohibited. Virginia exempts post-employment services.

#### **N. Maintenance of Records.**

Under the federal policy framework, the individual’s service record must include documentation on the nature and scope of information and referral services provided by the State VR agency to the individual and documentation on the referral itself. [34 CFR 361.47(a)(13)] 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. [34 CFR 361.47]

The states have adopted policies consistent with the federal policy framework.

#### **O. Monitoring and Oversight.**

California, Oregon, and Utah have adopted specific policies requiring the VR agency to monitor eligibility and priority determinations. For example, in California, a review is conducted at least annually with respect to order of selection for all eligible individuals in priority categories, including those being served and those on the waiting list. 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.

#### **P. Role of State Rehabilitation Council.**

Under the federal policy framework, the designated state unit must consult with the State Rehabilitation Council regarding the:

- (1) Need to establish an order of selection, including any reevaluations of the need;
- (2) Priority categories of the particular order of selection;
- (3) Criteria for determining individuals with the most significant disabilities; and
- (4) Administration of the order of selection. [34 CFR 361.17(h) and 34 CFR 361.36(f)]

All of the states have adopted policies consistent with the federal policy framework.



**APPENDIX:  
INDIVIDUAL WITH THE MOST SIGNIFICANT DISABILITY**

<b>State</b>	<b>Functional Capacity</b>	<b>Multiple Services</b>	<b>Extended Period</b>
Alaska	3 or more	Multiple services	6 months or more*
Arizona	3 or more	2 or more	6 months or more with 90 days follow up
Arkansas	2 or more	2 or more	
California	At least 4 areas	2 or more	More than 6 months
Colorado	3 or more	2 or more	At least 5 months
Connecticut	3 or more*	1 or more in addition to guidance and counseling	6 months or more
Delaware	3 or more	At least 1 primary in addition to counseling, guidance, and placement	6 months or more
Florida	3 or more	3 or more primary services	At least 12 months
Georgia	2 or more	2 or more	At least 2 services over at least 6 months (A); at least 1 services over at least 6 months (B)
Idaho	3 or more	Multiple services	6 months**
Illinois	3 or more**	2 or more in addition to routine services	At least 6 months
Indiana	3 or more	2 or more	9 months or longer
Iowa	3 or more***	More than 1 service	Longer than 1 year
Kansas	2 or more	More than 1	At least 4 months
Kentucky	4 or more****	Multiple services one of which assumed to be rehab counseling and guidance. At least 1 additional service expected to continue over extended period of time.	Over an extended period
Louisiana	#1: 4 or more #2: 3 or more	Multiple services	Over an extended period
Maine	4 or more	2 or more	Over an extended period
Maryland	3 or more*****	At least 2	6 months or more
Massachusetts	3 or more	2 or more separate and distinct	Not less than 6 months
Michigan	2 or more	More than 2	At least 6 months
Minnesota	3 or more	Multiple services	Over an extended period of time
Mississippi	2 or more	Multiple services	Over an extended period
Missouri	3 or more	Multiple services	Over an extended period
Nebraska	2 or more*****	Multiple services	Over an extended period
Nevada	At least 4	2 or more	More than 6 months
New York	3 or more	See footnote	6 months or more
North Carolina	#1: 4 #2: 3	2 or more core services	9 months or requires permanent PAS, rehabilitation technology or extended services
Ohio	3 or more	2 or more	Over an extended period
Oklahoma	3 or more	Guidance and counseling plus 2 or more VR services	At least 6 months
Oregon	#1: 3 or more #2: 2	2 or more	Extended period of time***
Pennsylvania	3 or more	Multiple services	Over an extended period
Rhode Island	3 or more	2 or more	6 months or more
South Dakota	2 or more	3 or more	6 months or more
Tennessee	2 or more	2 or more	6 months or more
Utah	2 or more	3 or more	6 months or more
Vermont	2 or more	Guidance and counseling plus one other service	6 months or more
Virginia	3 or more	2 or more	6 months or more
Washington (state)	4 or more	2 or more	12 months
Washington, DC	4 or more	2 or more	6 months or more
West Virginia	2 or more	2 or more	9 months or more
Wisconsin	3 or more	2 or more	6 months or more

## **Footnotes Regarding Functional Capacity**

\*Connecticut: as an alternative to the 3 or more functional limitations, the state includes the following criteria: “will require significant ongoing disability-related services on the job in order to maintain employment following case closure with the bureau.”

\*\*Illinois most significant category is 3 or more; very significant disability in two or more functional capacities.

\*\*\*Iowa: Prior to March 2009, Iowa included the following policy: “In addition to serious limits in 3 or more functional capacities, Iowa includes an additional criteria—if an individual is seriously limited in **one** functional area to the degree it caused him/her to lose a job, to have never worked, or to only be able to work intermittently (due to the disability), then the individual is considered to have one of the most significantly disabling conditions and is considered an individual with the most significant disability.” This policy was repealed, effective March 2009 in response to concerns raised by RSA. Iowa was told to remove reference to how the limitation impacted employment; the definition may only consider functional limitations and the need for services.

\*\*\*\*Kentucky: An individual who has a most significant disability is an individual who has a significant disability and requires intensive long term support to facilitate the performance of work activities on or off the job which would typically be performed independently if the individual did not have the disability or has limitations in four or more areas of major functional capacities. Long-term support may include but is not limited to the need for: a personal care attendant, supported employment or a disability related case manager. An eligible individual with a significant disability who requires long-term support as defined above meets the definition of most significant disability regardless of how many areas of major functional capacities have limitations. Individuals with a significant disability who do not require long term support are considered most significantly disabled if they have limitations in four or more areas of major life functioning, if in the professional judgment of the counselor, such limitations constitute a most significant disability.

\*\*\*\*\*Maryland:

- a. An individual with a "most significant" disability is an individual who is available and willing to participate in the DORS Vocational Rehabilitation program and meets the definition of significant disability (see [Section 503.01](#)) and has a disability which seriously affects **three (3)** or more functional capacities (see [Section 503.01](#)).
- b. Individuals who automatically meet the definition of individual with a significant disability (see [VR Priority Guide](#)) may also meet the definition of individual with a most significant disability, if **three** capacities are seriously affected.

- c. Refer to the [VR Priority Guide](#) for disabilities/circumstances which are considered to automatically meet the definition of individual with a most significant disability.
- d. Individuals who are eligible for long-term supports of DDA or MHA and are pursuing competitive or supported employment are presumed to be individuals with a most significant disability. (See [Section 501.01\(d\)](#).)
- e. Staff is required to enter in the first text box on the Eligibility Determination page of **AWARE** a description of the justification of the priority category of Most Significant Disability. Staff shall either:
  - 1. Indicate the disability and state that it is "automatic" according to the [VR Priority Guide](#); or
  - 2. State how at least three capacities checked on the list on the Eligibility Determination page are **seriously affected** by the disability.

\*\*\*\*\*Nebraska: does not include reference to individual with the most significant disability but rather makes reference to an eligible individual who, among other things, has a severe physical or mental impairment that results in a low or very low rating in two or more functional areas.

#### **Footnotes Regarding Extended Period of Time**

\*Alaska's policy specifies that the VR agency has not specifically defined the number of months constituting "extended period of time." The VR counselor must consider each person's circumstances to determine the estimated length of time required to deliver needed services. Six months may be used as a general guideline for an "extended period of time", but should not be applied as an absolute minimum.

\*\*Idaho's policy specifies that no specific time frame for "extended period of time" is defined in statute or regulation. The VR counselor must consider each participant's unique circumstances to determine whether the needed services can reasonably be expected to require an extended period of time. For this purpose, 6 months may be used as a general benchmark but may not be applied as an absolute limit since each individual's circumstances must be uniquely considered.

\*\*\*Oregon's policy specifies that it is presumed that if the individual requires substantial services due to the severity of disability, these services will be required over an extended period of time. Therefore, counselors are not asked to consider exact length of time specific services may be needed unless it is clear that the services required are brief, in which case it is possible that the functional capacity limitations and priority level must be reassessed.