

DEPARTMENT OF HUMAN SERVICES

Division of Rehabilitation

REHABILITATION SERVICES (STAFF MANUAL VOLUME 9)

12 CCR 2513-1

[Editor's Notes follow the text of the rules at the end of this CCR Document.]

Statement of Basis and Purpose, Fiscal Impact, and Specific Statutory Authority of Revisions Made to Rule Manual 9

A rewrite of staff manual Volume 9 (Rehabilitation) was finally adopted at the 12/6/85 State Board meeting, with an effective date of 2/1/86 (Document 10). Statement of Basis and Purpose, Fiscal Impact, and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of the State Board Administrator, Department of Social Services.

Revisions to sections 9.103.2, 9.201.2, were finally adopted at the 6/6/86 State Board meeting, with an effective date of 8/1/86 (Document 1). Statement of Basis and Purpose, Fiscal Impact, and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of the State Board Administrator, Department of Social Services.

Addition of sections 9.300 - 9.305.2 were finally adopted following publication at the 7/10/87 State Board meeting, with an effective date of 9/1/87 (Document 9). Statement of Basis and Purpose, Fiscal Impact, and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of the State Board Administrator, Department of Social Services.

Addition of sections 9.400 - 9.406.1 were finally adopted following publication at the 9/11/87 State Board meeting, with an effective date of 11/1/87 (Document 6). Statement of Basis and Purpose, Fiscal Impact, and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of the State Board Administrator, Department of Social Services.

Revisions to section 9.302 were finally adopted following publication at the 12/4/87 State Board meeting, with an effective date of 2/1/88 (Document 16). Statement of Basis and Purpose, Fiscal Impact, and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of the State Board Administrator, Department of Social Services.

Revisions to sections 9.400 - 9.406 were finally adopted following publication at the 3/4/88 State Board meeting (CSPR# 88 1 6 1), with an effective date of 5/1/88. Statement of Basis and Purpose, Fiscal Impact, and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of the State Board Administrator, Department of Social Services.

Revisions to section 9.402 were finally adopted following publication at the 11/4/88 State Board meeting (CSPR# 88 8 25 1), with an effective date of 1/1/89. Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of the State Board Liaison, Department of Social Services.

Addition of section 9.500 was adopted emergency at the 12/1/89 State Board meeting (CSPR# 89-11-7-2), with an effective date of 1/1/90. Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of the State Board Liaison, Department of Social Services.

Addition of section 9.500 was final adoption of emergency at the 1/5/90 State Board meeting (CSPR# 89-11-7-2), with an effective date of 1/1/90. Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of the State Board Liaison, Department of Social Services.

Reorganization and rewriting of Volume IX, sections 9.100 through 9.600, were finally adopted following publication at the 10/5/90 State Board meeting (CSPR# 90 5 1 1), with an effective date of 12/1/90. Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of the State Board Liaison, Department of Social Services.

Revisions to sections 9.500 and 9.900, were finally adopted following publication at the 3/8/91 State Board meeting (CSPR# 91-1-8-1), with an effective date of 5/1/91. This is a Rehabilitation Director rule. Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Office of the State Board Liaison, Department of Social Services.

Revisions to sections 9.104 through 9.108 were adopted emergency at the 2/5/93 State Board meeting (CSPR# 92-12-22-1), with an effective date of 3/1/93. Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the State Board Office, Department of Social Services.

Revisions to sections 9.104 through 9.108 were final adoption of emergency at the 3/5/93 State Board meeting (CSPR# 92-12-22-1), with an effective date of 3/1/93. Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the State Board Office, Department of Social Services.

Revisions to sections 9.101 through 9.109 were final adoption following publication at the 7/9/93 State Board meeting (CSPR# 93-4-19-2), with an effective date of 9/1/93. Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the State Board Office, Department of Social Services.

Rewrite of section 9.200 was final adoption following publication at the 8/6/99 State Board meeting (CSPR# 99-5-21-1), with an effective date of 10/1/99. Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Department of Human Services, Office of External Affairs.

Revisions to sections 9.200 through 9.252 were final adoption following publication at the 5/5/2000 State Board meeting (CSPR# 00-3-14-1), with an effective date of 7/1/2000. Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Department of Human Services, Office of Public Affairs.

Revisions to section 9.600 - 9.640 were final adoption following publication at the 12/7/2001 State Board meeting (CSPR# 01-5-22-1), with an effective date of 2/1/2002. Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Colorado Department of Human Services, Office of Performance Improvement, Boards and Commissions Division, State Board Administration.

Revisions to section 9.218 - 9.218.5 were final adoption following publication at the 2/7/2003 State Board meeting (Rule-making# 02-11-25-2), with an effective date of 4/1/2003. Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Colorado Department of Human Services, Office of Performance Improvement, Boards and Commissions Division, State Board Administration.

Revision to Section 9.200 "Table of Contents", deletion of Section 9.217.4, and revision to sections 9.218.2 and 9.218.3 were final adoption following publication at the 5/6/2005 State Board meeting (Rule-making# 05-1-21-1), with an effective date of 7/1/2005. Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Colorado Department of Human Services, Office of Performance Improvement, Boards and Commissions Division, State Board Administration.

Deletion of Sections 9.600 - 9.640 were final adoption following publication at the 9/7/2007 State Board meeting (Rule-making# 07-6-21-1), with an effective date of 11/1/2007. Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Colorado Department of Human Services, Office of Performance Improvement, Boards and Commissions Division, State Board Administration.

Re-write of Sections 9.400 through 9.414 and deletion of Sections 9.900 - 9.900.3 were adopted as final following publication at the 5/2/2008 State Board meeting, with an effective date of 7/1/2008 (Rule-making# 06-11-28-1). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rules. These materials are available for review by the public during normal working hours at the Colorado Department of Human Services, Boards and Commissions Division, State Board Administration.

Re-write of Sections 9.100 through 9.110.3 were adopted as final following publication at the 10/3/2008 State Board meeting, with an effective date of 12/1/2008 (Rule-making#08-5-30-1). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rules. These materials are available for review by the public during normal working hours at the Colorado Department of Human Services, Boards and Commissions Division, State Board Administration.

Revisions and repeals of Sections 9.100 through 9.110.3 were final adoption following publication at the 4/6/2012 State Board meeting, with an effective date of 6/1/2012 (Rule-making# 11-9-7-1). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rules. These materials are available for review by the public during normal working hours at the Colorado Department of Human Services, Division of Boards and Commissions, State Board Administration.

Revisions and repeals in Sections 9.200 through 9.221.3 were adopted as final following publication at the 5/4/2012 State Board meeting, with an effective date of 7/1/2012 (Rule-making# 11-9-7-2). Statement of Basis and Purpose and specific statutory authority for these revisions were incorporated by reference into the rules. These materials are available for review by the public during normal working hours at the Colorado Department of Human Services, Division of Boards and Commissions, State Board Administration.

Revisions to Sections 9.102 through 9.108.1 and 9.203 through 9.209.2 were final adoption following publication at the 2/1/2013 State Board meeting (Rule-making# 12-12-2-1), with an effective date of 4/1/2013. Statement of Basis and Purpose and specific statutory authority for these revisions were incorporate by reference into the rule. These materials are available for review by the public during normal working hours at the Colorado Department of Human Services, Office of Enterprise Partnerships, Division of Boards and Commissions, State Board Administration.

Revisions and additions to Sections 9.100 through 9.108.3 were final adoption following publication at the 8/8/2014 State Board meeting (Rule-making# 14-3-10-1), with an effective date of 10/1/2014. Statement of Basis and Purpose and specific statutory authority for these revisions were incorporate by reference into the rule. These materials are available for review by the public during normal working hours at the Colorado Department of Human Services, Office of Enterprise Partnerships, State Board Administration.

The rule is required by Senate Bill 15-240, which was signed into law on May 1, 2015. Under S.B. 15-240, the Centers for Independent Living (CILs) in Colorado are receiving additional funding allocations within two years. In State Fiscal Year (SFY) 2016 the funding will be increased by \$2,000,000. This is distributed with \$1,585,000 being allocated and disbursed to the CILs as base building funding, and the remaining \$415,000 to be disbursed according to the Funding Formula that the CILs created in October 2015 in accordance with S.B. 15-240. This additional \$2,000,000 will be added to the starting amount in SFY 2017 for a beginning amount of \$4,831,945; \$4,416,945 is base funding and \$415,000 is funding formula amount.

In SFY 2017 there will be additional funds allocated to the CILs. An additional \$2,000,000 is being appropriated to the CILs: \$1,585,000 being allocated and disbursed to the CILs as base building funding and the remaining \$415,000 added to the other \$415,000 in the funding formula designation. The final CILs appropriation will be \$6,831,945.

The rule outlines how the additional \$830,000 will be distributed to the CILs under the Funding Formula that the Centers agreed to in October 2015. The Centers agreed to a weighted formula that divides county disability population, plus county population, and land area by population to determine the funding amount for each county. The population data is obtained from the State Demography Office located in the Department of Local Affairs, Division of Local Government, and is updated annually. Data of the disability population comes from the five year estimate of the American Community Survey. This data will next be available for update in 2019.

The program will be meeting its fiduciary requirements by having this rule promulgated.

9.100 VOCATIONAL REHABILITATION PROGRAM

9.101 PERSONNEL STANDARDS [Rev. eff. 8/1/15]

Federal law requires state vocational rehabilitation agencies to establish qualified personnel standards for rehabilitation personnel, including rehabilitation counselors. Since Colorado does not have state-established standards for rehabilitation counselors, the state shall look to the national standards established by the Commission on Rehabilitation Counselor Certification (CRCC). Other positions within the rehabilitation counselor series such as vocational evaluators, orientation and mobility (O&M) specialists, and rehabilitation teachers are also required to meet the standards of appropriate certifying bodies.

9.102 PROTECTION, USE, AND RELEASE OF PERSONAL INFORMATION [Eff. 4/1/13]

9.102.1 Confidential Information [Eff. 4/1/13]

All applicants or their representatives shall be informed about DVR's need to collect personal information and the principal purposes for which DVR will use that information. Any information secured by or made available to DVR and/or its employees or representatives concerning referrals, applicants or eligible individuals of the vocational rehabilitation program is considered confidential. Use of such information, current or stored, is limited to purposes directly connected to the administration of the Vocational Rehabilitation Program as identified in Sections 9.102.2 and 9.102.3 and is not to be otherwise disclosed, directly or indirectly. Individuals shall be notified of the confidential nature of their case records and the conditions for release of such information at the time of application.

9.102.2 Release to Applicants or Eligible Individuals [Rev. eff. 10/1/14]

Information acquired or maintained by the Division of Vocational Rehabilitation (DVR) will be available upon written request, for inspecting and copying by an applicant or eligible individual or, as appropriate, the individual's representative, in accordance with the Colorado Open Records Act (Section 24 72-201, et. seq., C.R.S.), unless release of such information is prohibited by state or federal statutes, case law, or rules and regulations.

Medical, psychological or other information which the counselor determines may be harmful to the individual shall not be released directly to the individual, rather such information shall be provided through a third party chosen by the individual. Any employee of DVR shall not disclose the information listed below to the applicant or eligible individual and/or his or her authorized representative.

- A. Social Security Administration (SSA) information except when requested by the Client Assistance Program on behalf of the client;
- B. Information from the U.S. Department of Veterans Affairs;
- C. Medical or psychological information, when the service provider states in writing that disclosure to the individual is prohibited.

Applicants and eligible individuals requesting such information shall be referred to the originating source of the information.

9.102.3 Release to Other Programs or Authorities [Rev. eff. 10/1/14]

- A. Confidential information may be released to other agencies or organizations when necessary for their programs only after receiving informed written consent from the subject of the information and under assurances that the agency or organization shall manage the information in a manner to safeguard its confidentiality in accordance with the confidentiality regulations governing vocational rehabilitation programs.
- B. Information may be released to other programs or authorities without an applicant's or eligible individual's written authorization when:
 - 1. The information is directly connected with the administration of the Vocational Rehabilitation Program used only by persons officially connected with an audit or evaluation, and the final report contains no identifying information;
 - 2. Sharing of the information, including pertinent medical and other data received from SSA, is necessary to establish an individual's eligibility for rehabilitation services and/or for the provision of such services under an Individualized Plan for Employment (IPE);

3. The information is required by federal law;
4. The information is necessary to respond to a request from law enforcement, fraud, or abuse (except where expressly prohibited by federal regulations or state statutes or rules), and in response to judicial order;
5. The information is necessary in order to protect the individual or others when the individual poses a threat to his or her own safety or to the safety of others;
6. The information is requested by the Social Security Administration (SSA); or,
7. The Director of the Division of Vocational Rehabilitation approves release to an organization or individual engaged in research.

9.103 RIGHTS TO REVIEW AND APPEAL

9.103.1 Review of DVR Determinations [Rev. eff. 10/1/14]

- A. An applicant or eligible individual who is dissatisfied with any determination made by the Division of Vocational Rehabilitation (DVR) that affects the provision of vocational rehabilitation services may request a review of that decision through an informal or formal process. The applicant or eligible individual may also utilize the mediation process to resolve disputes. If appropriate, any request for review or mediation may be made through the individual's authorized representative.
- B. An applicant or eligible individual shall be notified, in writing, of his/her appeal rights, established procedures for review of determinations, and the availability of the Client Assistance Program each time the following occur:
 1. At the time of application for services;
 2. At the time of placement into an Order of Selection (OOS) priority for services category;
 3. At the time of Individualized Plan for Employment (IPE) development and any time the IPE is amended;
 4. Any time that DVR makes a decision to reduce, suspend or terminate planned services;
 5. At the time a case is closed for reasons of ineligibility; and,
 6. At the time a case is closed from a deferred services wait list.
- C. An applicant or eligible individual shall be responsible for his/her personal costs (including, but not limited to, legal representation and copying fees) associated with his/her review, appeal or mediation unless otherwise ordered.
- D. An applicant's or eligible individual's appeal shall not result in suspension, reduction or termination of vocational rehabilitation services pending resolution of his/her appeal unless:
 1. An applicant or eligible individual or, if appropriate, the individual's representative requests a suspension, reduction or termination of services; or,
 2. There is evidence that fraud has occurred or that the vocational rehabilitation services were obtained through misrepresentation, collusion or criminal conduct by the individual on the part of an applicant, eligible individual or the individual's representative.

9.103.2 Mediation of Disputes [Eff. 10/1/14]

- A. An applicant or eligible individual may seek mediation by a qualified and impartial mediator as a means to resolve a dispute with the Division of Vocational Rehabilitation (DVR). The goal of mediation is to achieve consensus between an applicant or eligible individual and DVR. The individual may bring an authorized representative to assist him/her during the mediation process.
1. The request for mediation shall be submitted, in writing, to the DVR administrative office at any time during the review process and no later than the 60th day from the date the formal hearing is requested. The request shall identify the decision or action that is being disputed, why it is being disputed and what solution is requested. A qualified and impartial mediator arranged through the state shall be provided at no cost to the applicant or individual.
 2. If the applicant or individual requests mediation, DVR shall participate unless:
 - a. It is not possible to resolve the dispute without placing the Department in clear violation of state or federal law, rules, policy or the approved State Plan;
 - b. A mediated outcome is not possible based on documented evidence from previous experience with the individual concerning the issue under dispute;
 - c. The individual has committed acts of violence, has threatened acts of violence or has engaged in other forms of harassment against Department staff or any other individuals involved in the provision of vocational rehabilitation services; or,
 - d. The individual has failed to fulfill his or her responsibilities under a previous mediation agreement with DVR concerning the issue under dispute.
- B. DVR may seek mediation by a qualified and impartial mediator as a means to resolve a dispute with an applicant or eligible individual before he/she requests an informal review or a formal appeal if the individual agrees to participate.
- C. Mediation shall commence within twenty-one (21) days of the request for mediation and shall not delay conduct of the formal appeal unless both parties agree additional time is necessary.
- Mediation is limited to a maximum of six (6) hours of mediation session(s) unless both parties and the mediator agree that additional hours may provide a resolution. Mediation shall be completed within one (1) calendar month of the initial request unless both parties and the impartial mediator agree that additional time is necessary.
- D. If mediation is successful, the consensus reached by both parties shall be documented in writing by the mediator and provided to both parties within seven (7) calendar days. Each party shall sign the agreement, which indicates agreement with its terms and a commitment to fulfill each party's respective responsibilities. If agreement on all issues is reached, the parties shall withdraw any pending informal review or formal appeal request. DVR shall not agree to any provision that it believes is contrary to state and federal law, rules, and policy or the approved State Plan.
- E. If mediation is not successful, the client may initiate, or proceed with, an informal review or a formal appeal of the issue under dispute.
- F. Failure of the applicant or eligible individual to honor his /her commitment under the terms of the mediation agreement shall void the mediation agreement.

9.103.3 Informal Review [Eff. 10/1/14]

The applicant or eligible individual may request an informal review to resolve the issue(s) under dispute without mediation or conduct of a formal appeal. The informal resolution process will result in a decision by DVR regarding the issue under dispute. An individual shall not be required to go through an informal review prior to or instead of a formal appeal. Informal review shall be conducted within thirty (30) calendar days of the initial request unless both parties agree that additional time is necessary. Informal review shall not delay a formal appeal if one has been requested. If the informal review does not resolve the issue(s), and the formal appeal process has not been requested, the individual may request a formal appeal.

- A. Informal review begins with a request for the applicable DVR Supervisor I to review a decision concerning the provision of vocational rehabilitation services.
- B. If the applicant or eligible individual is not satisfied with the decision made by the Supervisor I, the applicant or eligible individual may take the next step and submit a written request for review to the Deputy of Field Services (or designee) to review the decision.

9.103.4 Formal Appeal Process [Rev. eff. 10/1/14]

An applicant or eligible individual may initiate a formal appeal regarding a determination to resolve the issue(s) under dispute without mediation or conduct of an informal review.

- A. A written request for a formal appeal must be submitted to the Colorado Department of Personnel and Administration, Office of Administrative Courts (OAC), within ninety (90) calendar days of the subject determination made by the DVR counselor or other DVR staff that affects a provision of vocational rehabilitation services.
- B. The written request must be a statement detailing the basis of appeal, including a description of the determination made by DVR staff that the individual is appealing. The statement should include a description of what the individual wants from the appeal.
- C. An applicant or eligible individual and DVR may voluntarily participate in mediation through the OAC. Mediation may not be used to deny or delay an applicant's or eligible individual's right to pursue resolution of the dispute through the formal appeal process unless both parties agree that additional time is necessary for mediation.

9.103.5 Formal Appeal Before the Office of Administrative Courts [Rev. eff. 10/1/14]

- A. When the OAC receives a request for a formal appeal, the OAC shall notify DVR and the Attorney General's Office, Human Services Unit, that the request has been docketed and send a copy of the formal appeal request to DVR and the Attorney General's Office.
- B. DVR shall serve a notice to set an informal pre-hearing conference within ten (10) calendar days of receipt of the formal appeal request from the OAC. The purpose of the informal pre-hearing conference shall be to:
 - 1. Identify the issues for appeal.
 - 2. Set a date for DVR to provide a written statement summarizing the background and history of client services for the appeal.
 - 3. Set a date for a response from the appellant to respond to the summary and identify specific issues for the appeal. The appellant should identify specific remedies being sought, if known.

4. Set the date for hearing within sixty (60) days, unless both parties agree that more time is needed and agree to extend beyond the sixty days.
 5. Set dates for an exchange of witness and exhibit list, as well as exchanging exhibits or other evidence.
- C. The Administrative Law Judge shall conduct the hearing within sixty (60) calendar days of an applicant's or eligible individual's request for formal appeal unless both parties agree additional time is necessary.
- D. The Administrative Law Judge shall conduct the hearing on formal appeal in accordance with the Administrative Procedure Act, Section 24-4-105, C.R.S. The rights of the parties include:
1. Each party shall have the right to present his or her case or defense by oral and documentary evidence, to submit rebuttal evidence, and to conduct cross-examination.
 2. Subject to these rights and requirements, where a hearing will be expedited and the interest of the parties will not be subsequently prejudiced thereby, the Administrative Law Judge may receive all or part of the evidence in written form or by oral stipulations.
 3. Hearings will be conducted at a site convenient to the appellant. A telephonic hearing may be conducted as an alternative to a face-to-face hearing if requested by either party. If either party requests a face-to-face hearing, the written request for a face-to-face hearing must be filed with the OAC and the other party at least ten (10) calendar days before the scheduled hearing.
- E. At the conclusion of the hearing, unless the Administrative Law Judge allows additional time to submit documentation, the Administrative Law Judge shall take the matter under advisement. After considering all the relevant evidence presented by the parties, the Administrative Law Judge shall render an Initial Decision for review by the Colorado Department of Human Services, Office of Appeals.
- F. The Initial Decision shall uphold, modify or reverse DVR's determination affecting a provision of vocational rehabilitation services of an applicant or eligible individual or the eligibility for services.
- G. The initial decision shall be rendered within thirty (30) calendar days of the completion of the hearing.
- H. When an appellant fails to appear at a duly scheduled hearing, having been given proper notice, without having given timely advance notice to the Administrative Law Judge of acceptable good cause for inability to appear at the hearing at the time, date and place specified in the notice of hearing, then the appeal shall be considered abandoned and the Administrative Law Judge shall enter an Initial Decision dismissing appeal. In accordance with the procedures set forth in Section 9.103.6, the Office of Appeals may reinstate the appeal for good cause shown by the Appellant.

9.103.6 State Department Office of Appeals Functions [Rev. eff. 10/1/14]

- A. Review of the Initial Decision and hearing record and entry of the final agency decision shall be pursuant to State rules at Sections 3.850.72 - 3.850.73 (9 CCR 2503-8).
- B. Review shall be conducted by a state adjudicator in the Office of Appeals not directly involved in any prior review of DVR's determination affecting a provision of vocational rehabilitation services of an applicant or eligible individual.

- C. The Final Agency Decision shall advise an applicant or eligible individual of his/her right to seek judicial review in the State District Court, City and County of Denver, if the appellant had timely filed exceptions to the Initial Decision.
- D. If an applicant or eligible individual seeks judicial review of the Final Agency Decision, DVR shall be responsible for defending the final agency decision on judicial review.

9.104 ELIGIBILITY

9.104.1 Determination of Eligibility [Rev. eff. 10/1/14]

- A. An assessment shall be conducted with each applicant to determine eligibility.

Eligibility criteria for vocational rehabilitation services requires that:

1. The individual has a physical or mental impairment documented by qualified personnel. For purposes of this eligibility criteria, DVR considers "qualified personnel" to be individuals, practitioners or organizations that are licensed and regulated by the Colorado Department of Regulatory Agencies to determine the existence of an impairment for their specific area of medical or psychological practice, or who otherwise meet established state or national licensing and certification requirements for that area of practice. In addition, the Social Security Administration and education officials responsible for the public education of students with disabilities are considered by DVR to be qualified personnel for this eligibility criterion;
 2. The impairment constitutes or results in a substantial impediment to employment that is consistent with the individual's abilities and capabilities;
 3. The individual requires vocational rehabilitation services to prepare for, secure, retain or regain employment consistent with his/her unique strengths, resources, priorities, concerns, abilities, capabilities, interests and informed choice; and,
 4. The Division of Vocational Rehabilitation (DVR) presumes that an applicant who meets all other eligibility criteria can benefit in terms of an employment outcome from the provision of vocational rehabilitation services. If DVR questions whether the individual's disability is too severe for him/her to benefit from services, clear and convincing evidence shall be obtained through the provision of trial work experiences and/or extended evaluation. Evidence shall be documents and used to determine eligibility or ineligibility.
- B. The length of time between application and eligibility shall not exceed sixty (60) calendar days unless a period of trial work experience and/or extended evaluation is required or unless the counselor and applicant agree that exceptional circumstances beyond the agency's control preclude determining eligibility within sixty calendar days. Once eligibility is determined, the client shall be provided with an agency-approved letter to document his/her eligibility and assigned priority for services.

9.104.2 Presumptive Eligibility [Rev. eff. 10/1/14]

An applicant who is determined to be eligible for Supplemental Security Income (SSI) and/or Social Security Disability Insurance (SSDI) benefits (based on his/her own disability including blindness) is presumed to meet the eligibility requirements. Verification of eligibility for SSI/SSDI benefits is sufficient to establish that DVR eligibility criteria are met unless the presumption of benefit in terms of an employment outcome is questionable due to the severity of the disability(ies), which may require trial work experiences and/or extended evaluation.

9.104.3 Trial Work Experiences [Rev. eff. 10/1/14]

Prior to determining that an individual is ineligible because he/she does not meet the eligibility criteria at 9.104.1, A, 4, trial work experiences shall be provided. Trial work experiences shall provide an exploration of the individual's abilities, capabilities and capacity to perform in realistic work settings to determine whether or not there is clear and convincing evidence that an employment outcome is precluded by the severity of an individual's disability and an ineligibility decision is appropriate.

DVR shall develop a written plan to periodically assess the individual's abilities, capabilities, and capacity to perform in work situations through the use of trial work experiences, which shall be provided in the most integrated setting(s) possible, consistent with the informed choice and rehabilitation needs of the individual. The counselor and the individual shall jointly develop the plan for the trial work experiences.

Trial work experiences must be of sufficient variety and over a sufficient period of time to determine that:

- A. There is sufficient evidence to conclude that the individual can benefit from the provision of vocational rehabilitation services in terms of an employment outcome; or,
- B. There is clear and convincing evidence that the individual is incapable of benefiting from vocational rehabilitation services in terms of an employment outcome due to the severity of the individual's disability.

9.104.4 Extended Evaluation [Rev. eff. 10/1/14]

If an individual with a significant disability cannot take advantage of trial work experiences or if options for trial work experiences have been exhausted before the DVR counselor is able to determine eligibility or ineligibility, an extended evaluation shall be provided under a written extended evaluation plan. The service record must document the need for extended evaluation.

9.105 SEVERITY OF DISABILITY [Rev. eff. 10/1/14]

The assessment for determining eligibility and identifying vocational rehabilitation needs shall establish an individual's priority for services, based upon whether the individual's disability is most significant, significant, or neither.

- A. An individual with a most significant disability is one:
 - 1. Who has been verified to be presumptively eligible and who has a severe physical or mental impairment that seriously limits three or more functional capacities (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 the provision of two or more vocational rehabilitation services for at least five months; or,
 - 2. Who has a severe physical or mental impairment that seriously limits three or more functional capacities (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 the provision of two or more vocational rehabilitation services for at least five months.
- B. An individual with a significant disability is one:
 - 1. Who has been verified to be presumptively eligible; and/or,

2. Who has a severe physical or mental impairment that seriously limits one or two functional capacity areas (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 the provision of two or more vocational rehabilitation services for at least five months.

9.106 PROVISION OF VOCATIONAL REHABILITATION SERVICES [Rev. eff. 10/1/14]

Services shall be provided to:

- A. Applicants and eligible individuals to determine eligibility and severity of disability.
- B. Eligible individuals to determine a vocational goal and identify the nature and scope of the services necessary to reach that vocational goal.
- C. Under an Individualized Plan for Employment (IPE) to assist an individual in preparing for, securing, retaining, or regaining an employment outcome.

Services that are provided to applicants and eligible individuals shall be necessary, appropriate, and purchased at least possible cost. A service is considered necessary only if it is essential to assess an individual's eligibility and severity of disability, to establish his/her vocational rehabilitation needs, to overcome or circumvent an identified vocational impediment(s), and to attain the individual's chosen employment outcome. Once an IPE has been developed, services shall be provided in the most integrated settings as outlined on the IPE. A service is considered appropriate if it is of sufficient quality to fully meet the individual's particular needs and circumstances.

9.106.1 Contact [Eff. 10/1/14]

Every applicant and client shall be contacted by a DVR staff member at least once every thirty (30) days. The purpose of this contact is to promote an interactive process and ongoing case progress. A summary of the nature of this interaction shall be documented in the client record.

9.107 UTILIZATION OF REHABILITATION FUNDS

9.107.1 Expenditure of Rehabilitation Funds [Rev. eff. 10/1/14]

- A. Payment for Services

Necessary and appropriate services provided to applicants and eligible individuals shall be procured at the least possible cost to the Division of Vocational Rehabilitation (DVR). All services and goods shall be authorized prior to, or at the initiation of, the delivery of the service or good unless the service record documents that prior written authorization is not possible. All issued authorizations shall be printed and contained in the client record. All goods shall be procured in compliance with state purchasing procedures.

- B. Estimation of Costs

All completed Individualized Plans for Employment (IPE) shall contain estimates of anticipated agency costs and/or contributions for goods and services listed.

- C. Regardless of the vocation chosen, DVR excludes supporting a business that does not comply with all relevant state, federal, and local laws and regulations.

D. Fee Schedule

Services must be authorized and payments approved in accordance with current agency fee schedules. Fees exceeding the established maximum may be authorized and paid only when the specific service is not available at the established rate or when the service available at the established rate is not adequate to meet the individual's rehabilitation needs.

E. Maintenance Payments

Maintenance is monetary support provided to an individual for expenses, such as food and shelter, that are in excess of the individual's normal expenses that are created by participation in an assessment for determining eligibility and vocational rehabilitation needs or the individual's receipt of services under an IPE.

F. Payment for Transportation

Transportation is provided to an individual if necessary to participate in DVR services. Public transportation is encouraged unless the individual's impairment-related limitations prevent use of public transportation. If the individual chooses to use his/her own vehicle when public transportation is available and accessible, reimbursement for mileage may be provided up to the cost of public transportation.

To receive reimbursement, the individual or his/her driver shall have a valid driver's license, possess an active insurance policy to drive the automobile, and use an automobile that is appropriately licensed and registered. Appropriate documentation shall be provided to DVR to support the reimbursement is related to services necessary for eligibility determination or in connection with the provision of services.

G. Purchase of Technological Aids and Devices

Purchase of telecommunications, sensory, and other technological or assistive aids and devices requiring individualized prescriptions and fittings shall be allowable only when the prescriptions and fittings are performed by individuals licensed or certified in accordance with state laws.

H. Use of Supported Employment (Title VI -B) Funds

Supported employment funds may only be used for the implementation of rehabilitation programs for individuals with the most significant disabilities eligible for supported employment.

I. State Property

Goods purchased for use by an eligible individual in a training program, trade or business remain the property of the State of Colorado until successful closure from DVR occurs.

1. Issue of State Property. When such item(s) are issued to a client, written acknowledgment of receipt of the equipment, indicating state ownership, shall be obtained from the client.
2. Recovery of State Property. State property shall be recovered from clients upon termination of programs that do not result in successfully rehabilitated closures.
3. Re-Issue of State Property. Items recovered in accordance with this policy shall be retained in the field office to be re-issued to other individuals who may have need of such items.

9.107.2 Applicant or Eligible Individual Financial Participation [Rev. eff. 10/1/14]

Payment for most services or goods for individuals other than SSI/SSDI recipients is based upon the economic need of the individual and the finances of the family unit. DVR shall conduct a determination of the individual's economic need prior to the preparation and approval of an Individualized Plan for Employment, a Business Exploration Agreement, Trial Work Experience Plan or Extended Evaluation Plan whenever the plan contains a vocational rehabilitation service that is not specifically exempted from financial participation. An individual who receives Supplemental Security Income (SSI) or Social Security Disability Insurance (SSDI) is exempt from the determination of economic need and from participating financially in his/her rehabilitation plan.

- A. Re-determinations of the individual's economic need shall be conducted at least annually and within forty-five (45) days after any other time when the individual's financial circumstances change.
- B. All economic need determinations shall be documented and require an individual's proof of financial status. Documentation accepted as proof of financial status shall be defined in writing by DVR. The applicant or eligible individual shall provide proof of financial status unless the service record documents that there is no proof of financial status available and/or it cannot be obtained. If proof of financial status cannot be obtained, the statement of the applicant or eligible individual and/or member of his/her family shall establish data used to complete economic need determinations.
- C. The family unit consists of the applicant or eligible individual, the spouse of the individual, and any other persons whom the individual claims as a dependent for income tax purposes. When the individual is dependent upon his/her parents, the parents and persons for whom the parents are financially responsible shall be considered part of the family unit. An individual who is living with his/her parents is considered a dependent unless the parents have not claimed the individual as a dependent for income tax purposes for the tax year previous to the financial need determination and do not intend to claim the individual as a dependent in current and future years.

Exception to the family unit may occur if the service record documents a clear indication that the individual is not receiving financial support from the family unit. When this occurs, he/she may be considered his/her own family unit regardless of dependent status for income tax purposes.

- D. The financial need analysis shall determine economic need and consider income and net resources as well as the allowable monthly deductions of the entire family unit. Standardized allowances for normal living costs are determined by the size of the family unit.
- E. Financial participation of the individual or completion of a financial need analysis is not required for the following vocational rehabilitation services:
 - 1. Assessment services to determine eligibility and vocational rehabilitation needs, except for services that are considered supportive and goods and services which are provided under a Trial Work Experience Plan or an Extended Evaluation Plan;
 - 2. Vocational rehabilitation counseling and guidance;
 - 3. Referral services;
 - 4. Professional fees to providers of vocational adjustment and personal adjustment training, independent living skills training, job coaching, on-the-job training and job seeking skills training;
 - 5. Interpreter services and note-taking services for individuals who are deaf;

6. Reader services and note-taking services for individuals who are blind;
7. Personal assistance services;
8. Auxiliary aids needed for an individual with a disability to participate in the vocational rehabilitation program;
9. Job-related services; and,
10. Any service or good furnished to an individual for whom the DVR counselor has evidence of current eligibility for SSI and/or SSDI benefits for disability or blindness.

9.108 CASE CLOSURE [Rev. eff. 10/1/14]

The DVR counselor may close a service record for an applicant or eligible individual for any of the reasons found in Sections 9.108.1 through 9.108.3.

9.108.1 Successful Closure Criteria [Eff. 10/1/14]

The case record of an individual who receives services that lead to an employment outcome shall be closed when the individual achieves the criteria for successful closure.

9.108.2 Ineligibility Closure Reasons [Eff. 10/1/14]

If it is determined that an applicant is ineligible for services or the individual receiving services is no longer eligible for services, the case record shall be closed.

9.108.3 Other Closure [Eff. 10/1/14]

Case records may be closed for other reasons, in accordance with 34 CFR Part 361.43 (January 2001). No amendments or later editions are incorporated. Copies are available for purchase at the Government Bookstore, Federal Office Building, 1961 Stout Street, Denver, Colorado 80294. A copy is available for inspection during regular business hours at the Colorado Department of Human Services, Division of Vocational Rehabilitation, Office of the Director, 1575 Sherman Street, Denver, Colorado 80203-1714; or any state publications depository library.

Other reasons include, but are not limited to, when the individual:

- A. Is no longer interested in services;
- B. Is unavailable for services;
- C. Violates an agency safety or service delivery policy;
- D. Is employed in a non-integrated setting; or,
- E. Is employed and receiving less than minimum wage.

9.200 INDEPENDENT LIVING (IL) SERVICES

9.201 GENERAL PROVISIONS [Rev. eff. 7/1/12]

The purpose of the program authorized by Title 26, Article 8.1, Colorado Revised Statutes, is to promote a philosophy of independent living (IL), including consumer control, peer support, self-help, self-determination, equal access, and individual and system advocacy, to maximize the leadership, empowerment, independence, and productivity of individuals with significant disabilities, and to promote and maximize the integration and full inclusion of individuals with significant disabilities into the mainstream of American society.

9.202 DEFINITIONS [Rev. eff. 7/1/12]

“CIL” means a Center for Independent Living.

“ConsumerService Record (CSR)” means a complete record which includes eligibility determination, intake information, a signed Independent Living Plan (ILP) or waiver, specific goals, a description of services, Client Assistance Program (CAP) information, a confidentiality agreement, a grievance policy, and a record of whether goals were achieved.

“Director” means the Director of the Division of Vocational Rehabilitation.

“DVR” means the Division of Vocational Rehabilitation.

EDGAR means the federal Education Department General Administrative Regulations found in 34 C.F.R. Parts 74, 75, 76, 77, 79, 80, 81, 82, 85 and 86. This rule does not contain any later editions of those Parts. Copies of these regulations are available from: Colorado Department of Human Services, Division of Vocational Rehabilitation, 1575 Sherman Street, Denver, Colorado 80203, or at any State Publication Depository Library.

“Federal Act” means Title VII of the Federal Rehabilitation Act of 1973, as amended and codified in 29 U.S.C. 71 1(c) and Section 796. This rule does not contain any later editions of those parts. Copies of these regulations are available from: Colorado Department of Human Services, Division of Vocational Rehabilitation, 1575 Sherman Street, Denver, Colorado 80203; or at any State Publication Depository Library.

“Provider association” means the Association of Colorado Centers for Independent Living (ACCIL).

“Service area” means the community, county, or groups of counties a center serves.

“SILC” means Statewide Independent Living Council.

“SILS” means State Independent Living Services Program, in accordance with 34 CFR 365.1. No later editions are incorporated. Copies of these federal regulations are available from the Colorado Department of Human Services, Division of Vocational Rehabilitation, 1575 Sherman Street, Denver, Colorado 80203; or at any State Publication Depository Library.

“State” means the State of Colorado.

“Verification team” means a team designated by the director, which consists of DVR staff and other persons, including representatives of the SILC and the provider association.

9.203 SERVICES PROVIDED

- A. Independent living services includes the independent living core services which consist of information and referral services, IL skills training, peer counseling, (including cross-disability peer counseling), and individual and systems advocacy; and,
- B. Other services, such as:
1. Counseling services, including psychological, psychotherapeutic, and related services;
 2. Services related to securing housing or shelter, including services related to community group living, that are supportive of the purposes of the federal Act, and adaptive housing services, including appropriate accommodations to and modifications of any space used to serve, or to be occupied by, individuals with significant disabilities;
 3. Rehabilitation technology;
 4. Mobility training;
 5. Services and training for individuals with cognitive and sensory disabilities, including life skills training and interpreter and reader services;
 6. Personal assistance services, including attendant care and the training of personnel providing these services;
 7. Surveys, directories, and other activities to identify appropriate housing, recreation opportunities, and accessible transportation, and other support services;
 8. Consumer information programs on rehabilitation and IL services available under the federal Act, especially for minorities and other individual with significant disabilities who have traditionally been unserved or underserved by programs under the federal Act;
 9. Education and training necessary for living in a community and participation in community activities;
 10. Supported living;
 11. Transportation, including referral and assistance for transportation;
 12. Physical rehabilitation;
 13. Therapeutic treatment;
 14. Provision of needed prostheses and other appliances and devices;
 15. Individual and group social and recreational services;
 16. Training to develop skills specifically designed for youths who are individuals with significant disabilities to promote self-awareness and esteem, develop advocacy and self-empowerment skills, and explore career options;
 17. Services for children;

18. Services under other federal, state, or local programs designed to provide resources, training, counseling, or other assistance of substantial benefit in enhancing the independence, productivity, and quality of life of individuals with significant disabilities:
19. Appropriate preventive services to decrease the need of individuals with significant disabilities assisted under the Federal Act for similar services in the future;
20. Community awareness programs to enhance the understanding and integration into society of individuals with significant disabilities; and,
21. Any other services that may be necessary to improve the ability of an individual with a significant disability to function, continue functioning, or move toward functioning independently in the family or community or to continue in employment and that are not inconsistent with any other provisions of the Federal Act.

9.203.1 DISCONTINUATION OF SERVICES [Eff. 4/1/13]

Section 51 of 34 CFR 364 under the authority of 29 U.S.C. 796-796f-5 which do not include amendments to or editions of said regulations later than August 15, 1994, provides requirements for determinations of eligibility or ineligibility, in accordance with all parts, incorporated herein by reference. Copies of these regulations are available from: Colorado Department of Human Services, Division of Vocational Rehabilitation, 1575 Sherman Street, Denver, Colorado 80203; or at any State Publication Depository Library.

A center shall discontinue Independent Living (IL) services to an individual if the individual is no longer eligible to receive IL services. An individual is no longer eligible to receive IL services when the delivery of IL services will no longer improve the individual's ability to function, ability to continue functioning, or move toward functioning independently in the community. If the center intends to discontinue services to an individual receiving IL services under an IL plan or an individual receiving services after they have waived their right to a plan, the center shall follow the requirements that apply to determinations of ineligibility and review of ineligibility determinations.

9.203.2 APPEAL PROCEDURES [Eff. 4/1/13]

Section 58 of 34 CFR 364 requires each center to establish consumer appeal procedures; Section 30 of CFR 364 requires each center to provide notice of the Client Assistance Project in accordance with all parts, under the authority of 29 U.S.C. 796-796f-5 which do not include amendments to or editions of said regulations later than August 15, 1994 of those parts and incorporated herein by reference. Copies of these regulations are available from: Colorado Department of Human Services, Division of Vocational Rehabilitation, 1575 Sherman Street, Denver, Colorado 80203; or at any State Publication Depository Library

- A. Each center must establish policies and procedures that an individual may use to obtain review of decisions made by the center concerning the individual's request for IL services or the provision of IL services to the individuals; and,
- B. Use formats that are accessible to inform each individual who seeks or is receiving IL services from the center about the procedures required by paragraph A of this section;
- C. Establish policies and procedures that require that the individual is notified of the Client Assistance Program (CAP);
- D. Establish a policy that the center shall continue services to the consumer while the decision is being reviewed, unless continuation of services is deemed harmful to the consumer or otherwise.

9.203.3 APPLICATION, CERTIFICATION AND RE-CERTIFICATION OF CENTERS [Eff. 4/1/13]

A. Application Process

An organization that intends to become an Independent Living Center must apply to the Director of the Division of Vocational Rehabilitation to become certified as a center and eligible for funding under the SILS program.

- B. For an organization that DVR previously certified to operate as a certified center or was de-certified, the organization must provide to DVR evidence that it is currently operating in accordance with all parts, incorporated herein by reference, of Title VII, Section 725 of the Federal Act, as defined in 34 CFR 366.60 under the authority of 20 U.S.C. 796f-4 and 34 CFR 366.63 under the authority of 29 U.S.C. 711(c), 796d-1(b), and 796f-4, which do not include amendments to or editions of said regulations later than August 1, 1995 of those parts and incorporated herein by reference. Copies of these regulations are available from: Colorado Department of Human Services, Division of Vocational Rehabilitation, 1575 Sherman Street, Denver, Colorado 80203; or at any State Publication Depository Library.

C. Requirements of Certification and Re-Certification

The organization must comply with the standards and assurances for independent living in accordance with all parts, incorporated herein by reference, of Title VII, Section 725 of the Federal Act, the center evaluation standards in accordance with all parts, incorporated herein by reference of 34 CFR 366.60, under the authority of 20 U.S.C. 796f-4 and 34 CFR 366.63 under the authority of 29 U.S.C. 711(c), 796d-1(b), and 796f-4, which do not include amendments to or editions of said regulations later than August 1, 1995 of those parts. Copies of these regulations are available from: Colorado Department of Human Services, Division of Vocational Rehabilitation, 1575 Sherman Street, Denver, Colorado 80203; or at any State Publication Depository Library. Prior to certifying an organization as a center, DVR may conduct on-site verification procedures based on the evaluation standards previously cited and may include verifying the accuracy of the information in the organization's annual report. If DVR determines that the organization qualifies to operate as a center, DVR shall provide written certification for up to thirty-six months from the date of the on-site verification.

9.203.4 CERTIFICATION OF CENTERS AND VERIFICATION OF INFORMATION [Eff. 4/1/13]

- A. DVR shall verify the accuracy of the information in the center's annual performance report through information obtained by a Verification Team during an onsite review in locations that a CIL operates. A Verification Team will evaluate a center at least once every thirty-six months to determine certification status.
- B. The Verification Team will notify the center at least ten working days prior to the verification team's onsite evaluation. DVR reserves the right to monitor all or part of the evaluation standards. Included in the notification to CILS will be a list of evaluation standards.
- C. Minimal compliance means that the center provides at least one type of evidence for each evaluation standard. The DVR Verification Team obtains evidence to verify the accuracy of the information in the annual performance report and establish minimal compliance, as outlined in 34 CFR 366.60 under the authority of 20 U.S.C. 796f-4 which does not include amendments to or editions of said regulations later than August 15, 1994, and incorporated herein by reference, and with DVR contracts and procedures. Copies of these regulations are available from: Colorado Department of Human Services, Division of Vocational Rehabilitation, 1575 Sherman Street, Denver, Colorado 80203; or at any State Publication Depository Library.

- D. The CIL must comply with the evaluation standards defined in 34 CFR 366.60 to 366.63 under the authority of and all parts, incorporated herein by reference incorporated herein by reference of 34 CFR 366.60, under the authority of 20 U.S.C. 796f-4 and 34 CFR 366.63 under the authority of 29 U.S.C. 711(c), 796d-1(b), and 796f-4. which do not include amendments to or editions of said regulations later than August 1, 1995 of those parts. Copies of these federal regulations are available from the Colorado Department of Human Services, Division of Vocational Rehabilitation, 1575 Sherman Street, Denver, Colorado 80203; or at any State Publication Depository Library.

Prior to certifying an organization as a center, DVR may verify the accuracy of the information in the organization's annual performance report following the on-site verification process outlined in this section and a DVR procedural. If DVR determines that the organization qualifies to operate as a center, DVR shall provide a written certification. DVR may certify an organization for up to thirty-six months from the date of the on-site verification. Specific application information can be found in (whatever number is assigned to the Application and Certification of Centers Section).

- E. DVR may conduct additional on site evaluation visits, without prior notification, if the Verification Team needs additional documentation or information in regards to compliance indicators.

9.204 (NONE) [Rev. eff. 4/1/13]

9.205 ASSURANCE TO RECEIVE FUNDING UNDER THE SILS PROGRAM [Rev. eff. 4/1/13]

- A. To be eligible for funding under the SILS program, an eligible agency shall comply with all parts, incorporated herein by reference, of Title VII, Section 725, 34 CFR 366.60, under the authority of 20 U.S.C. 796f-4 and 34 CFR 366.63 under the authority of 29 U.S.C. 711(C), 796D-1(B), and 796F-4, which do not include amendments to or later editions of regulations later than August 1, 1995 of those parts. Copies of these regulations are available from: Colorado Department of Human Services, Division of Vocational Rehabilitation, 1575 Sherman Street, Denver, Colorado 80203; or at any State Publication Depository Library.
- B. A CIL must obtain an annual independent fiscal audit conducted by a certified public accountant and provide documentation that demonstrates the centers' board of directors' review of the CILs monthly financial statements.
- C. A CIL must comply with all state and federal contract requirements in terms of proper financial reporting, accountability, transparency and documentation; and agree to the terms and conditions of such contract. Funds allocated under the SILS program must only be used to provide Independent Living services or to pay associated costs, as described in the contract exhibits.

9.206 PAYMENT TO CILS [Rev. eff. 4/1/13]

- A. A CIL may invoice DVR according to specific requirements in a contract or procedures set forth by DVR. To receive payment, a CIL must have all supporting documentation for services and allowable costs and be able to provide documentation of such record if requested.
- B. A CIL must adhere to contract requirements in order to receive payment for services provided.

9.207 ALLOCATION OF FUNDS FOR SILS [Rev. eff. 4/1/13]

9.207.1 STATE ALLOCATION [Rev. eff. 4/1/13]

The State shall allocate funds to centers that participate in the SILS program. Funds to be allocated include funds appropriated in both federal and state appropriations. The allocation represents the maximum amount of funds that a center may be reimbursed under the SILS program. DVR shall set forth specific procedures that allocate funds to all eligible CILs.

The allocation of funding to CILs is subject to periodic review by the Independent Living Allocations Committee. A review of allocations will:

- A. Align with the State Plan for Independent Living (SPIL); or,
- B. Occur if there is a change in the number of CILs eligible to receive funding.
- C. DVR reserves the right to evaluate and/or change the allocation of funding if special, unforeseen, circumstances occur.

9.207.2 INDEPENDENT LIVING ALLOCATIONS COMMITTEE [Rev. eff. 4/1/13]

- A. The SILC, provider association, and DVR shall participate in an Independent Living Allocation Committee. The Chairperson of the SILC shall make the appointment of two members who are advocates for individuals with disabilities and are not affiliated with CILs. The provider association shall appoint two individuals and the Director of DVR will appoint two individuals. The total number of allocation committee members shall equal six, two from each group.
- B. The Independent Living Allocations Committee will work to establish criteria for allocating funds from the State General Fund for Independent Living and federal funds.
- C. All funding formulas submitted by the allocation committee shall be in compliance with State fiscal rules and regulations, current Federal and State laws and regulations, including annotations and footnotes in appropriations, and the State Plan for Independent Living.
- D. DVR will ensure that the Independent Living Allocations Committee participates in any change of funding allocation that is in DVR procedures. The final decision of how to allocate funds is the responsibility of DVR.

9.207.3 STATE ALLOCATION FOR DELIVERY OF INDEPENDENT LIVING SERVICES

Certified Centers for Independent Living will be allocated General Funds in addition to their base amount of General Funds with a weighted formula that divides County disability population, plus County population, and Land Area by population to determine for each County. The resulting figure is the amount which each CIL will receive.

Specific calculations of the formula are:

- A. 1st assign each Colorado County a score of: $40\% \times (\text{County } 16-64 \text{ Disability Population} / \text{State } 16-64 \text{ Disability Population})$
- B. 2nd add the weighted score of: $20\% \times (\text{County } 65+ \text{ Population} / \text{State } 65+ \text{ Population})$
- C. 3rd add the weighted score of: $40\% \times (\text{County Quantile Average of Land Area} / \text{Population})$
- D. 4th multiply this score of each County by the available funds;
- E. 5th divide it by 100.
- F. 6th sum up all the County scores from within each CIL's catchment area.

CILS whose catchment areas share a County shall report to the Department, how they will allocate County scores between them. If these CILS do not reach an agreement, the Department shall determine and document the allocation of County scores between the CILS.

9.208 RECORDS [Rev. eff. 4/1/13]

In addition to complying with applicable EDGAR record keeping requirements, centers that receive financial assistance from the SILS program will maintain records that fully disclose and document:

- A. The amount and disposition by the center of that funding;
- B. The total cost of the IL services;
- C. The amount of that portion of the cost of the IL services supplied by other sources; and,
- D. Compliance with regulations pertaining to the SILS program; and,
 - 1. Records that the Director, Division of Vocational Rehabilitation or the Secretary of the federal Department of Education determines to be appropriate to facilitate an effective audit.
 - 2. Access to Records

For the purpose of conducting audits, examinations, compliance reviews and verification of information in the annual performance report, centers that receive funding from the SILS program will provide access to the Director, the Secretary of the federal Department of Education, and the Comptroller General, or any of their duly authorized representatives, to these records; and,

- a. Any other books, documents, papers, and records of the recipients that are pertinent to the financial assistance received to provide IL services; and,
- b. All consumer service records for individuals served with funds received from the SILS program, including names, addresses, and records of evaluation included in those consumer service records.

9.209 EVALUATION OF CENTERS: ENFORCEMENT PROCEEDINGS [Rev. eff. 7/1/12]

With regards to enforcement proceedings, DVR shall comply with all federal rules and regulations, incorporated herein by reference, including 34 CFR 366.40, 366.41, 366.42, and 366.43. Any appeal will follow CFR 366.44, 366.45, and 366.46. This rule does not contain any later editions of those parts. Copies of these regulations are available from: Colorado Department of Human Services, Division of Vocational Rehabilitation, 1575 Sherman Street, Denver, Colorado 80203; or at any State Publications Depository Library.

9.209.1 Modification of Enforcement Proceedings [Rev. eff. 7/1/12]

If the funds received by the center under the SILS program include federal funds administered by the Colorado Department of Human Services in accordance with, and incorporated herein by reference, Section 723 Title VII of the Federal Act, as defined in Section 9.202, the enforcement procedures required by 34 C.F.R. 366.40 through 366.46 under the authority of 29 U.S.C. Section 711(c) and 796F-2 (g) and (i), as defined in Section 9.202, will be included in enforcement proceedings with respect to the Section 723 federal funds only, as defined in Section 9.202 (Federal Act). This rule does not contain any later editions of those parts. Copies of these regulations are available from: Colorado Department of Human Services, Division of Vocational Rehabilitation, 1575 Sherman Street, Denver, Colorado 80203; or at any State Publication Depository Library.

9.209.2 TERMINATION OF FUNDS [Rev. eff. 4/1/13]

A center's funds may be terminated for:

- A. Failure to meet the requirements of 34 CFR 366.40 through 366.46. This rule does not contain any later editions of those parts. Copies of these regulations are available from: Colorado Department of Human Services, Division of Vocational Rehabilitation, 1575 Sherman Street, Denver, Colorado 80203; or at any State Publication Depository Library.
- B. Failure to meet contract requirements within the statement of work and its exhibits including, but not limited to, general and special provisions.
- C. A decision to terminate funding will also terminate the organization's certification as a center. Refer to Section 9.203.3 for clarification on re-certification.

9.400 BUSINESS ENTERPRISE PROGRAM (BEP) [Rev. eff. 7/1/08]

The purpose of the Business Enterprise Program is to provide individuals who are blind with remunerative employment, ever enlarging business opportunities, and ongoing empowerment with a greater effort toward self sufficiency, and a commitment to cooperation, excellence, and a positive public image.

9.400.1 Definitions [Rev. eff. 7/1/08]

Terms, unless otherwise indicated in these BEP rules, are defined as follows:

"Active participation" means an ongoing process of negotiations between the State licensing agency and the Committee of Licensed Blind Vendors to achieve joint planning and approval of program policies, standards and procedures affecting the overall operation of the vending facilities program, prior to their implementation by the State licensing agency. The implementation of agreed-upon policies, standards and procedures affecting the overall operation of the vending facilities program, shall be subject to review by the Committee of Licensed Blind Vendors. The State licensing agency bears final authority and responsibility for the administration and operation of the Business Enterprise Program including final approval of program policies, standards, and procedures affecting the program.

"Business enterprise" means the automatic vending machines, cafeterias, snack bars, car service, shelters, counters, and such other appropriate auxiliary equipment which may be operated by blind vendors and which is necessary for the sale of newspapers, periodicals, confections, tobacco products, foods, beverages, and other articles or services dispensed automatically or manually and prepared on or off the premises in accordance with all applicable health laws, and includes the vending or exchange of changes for any lottery authorized by State law and conducted by an agency of the State within such State, including like locations being operated by operators in a training status prior to licensure.

"Cafeteria" means a food dispensing facility capable of providing a broad variety of prepared foods and beverages, including hot meals, primarily through the use of a line where the customer serves himself from displayed selections. A cafeteria may be fully automatic or some limited waiter or waitress service may be available and provided within a cafeteria and table or booth seating facilities are always provided.

"Debt" means an obligation or liability to pay when due.

"Direct competition" means the presence and operation of a vending machine or another business which is on the same premises or in close proximity to a business enterprise, especially if it vends or sells anything normally sold by a business enterprise, and if it is so located that it attracts customers who would otherwise patronize the business enterprise.

“Individual location” means identities and parameters that are established by the State licensing agency, and may be defined and redefined at the State licensing agency’s discretion when it is in the best interest of the program.

- A. “Business enterprise”, “location”, “site”, and “vending facility” may be used interchangeably within this document.
- B. A vending route is considered to be a location for the purposes of this document.
- C. In the case of a contracting arrangement, wherein the contract encompasses an entire campus, base or installation, the State licensing agency will change the definition of the location as defined in the Federal or State contract.
- D. An individual location may only be assigned to one blind vendor, unless the State licensing agency approves another written arrangement. Only the assigned blind vendor may have a financial interest in a location.

“Licensed blind vendor” means a blind person licensed by the State licensing agency to operate a vending facility on federal, state or other property.

“Management services” means oversight, inspection, quality control, consultation, accounting, regulating, in-service training, and other related services provided on a systematic basis.

“Operate a vending facility” means managing a business enterprise on Federal, State or other property. “Operate” and “manage” shall be used interchangeably.

“State Licensing Agency” means the Business Enterprise Program in the Division of Vocational Rehabilitation Services, which administers the Program and issues licenses to blind persons for the operation of business enterprises on Federal, State or other property.

“Trainee” means a blind person who is participating in the formal Business Enterprise Program training course or has successfully completed the formal Business Enterprise Program training course and has been certified to operate a business enterprise in a training status prior to licensure.

“Unassigned vending machine income” means income that accrues to the State licensing agency from commissions that vending companies pay on proceeds from vending machines on Federal, State and other property in which there is no on-site blind vendor.

“Vending facility” means automatic vending machines, cafeterias, snack bars, cart services, shelters, counters, and such other appropriate auxiliary equipment which may be operated by blind licensees and which is necessary for the sale of newspapers, periodicals, confections, tobacco products, foods, beverages, and other articles or services dispensed automatically or manually and prepared on or off the premises in accordance with all applicable health laws, and including the vending or exchange of chances for any lottery authorized by State law and conducted by an agency of a State within such State.

“Vending machine” means, for the purpose of assigning vending machine income, a coin, currency, or credit card operated machine which dispenses articles or provides recreational or other services.

“Vending machine income” means receipts, other than those of a blind operator, from vending machines operated on Federal, State or other property, after deduction of the cost of goods sold, including reasonable service and maintenance costs in accordance with customary business practices of commercial vending concerns, where the machines are operated, serviced, or maintained by or with the approval of a department, agency, or instrumentality of the United States or the State of Colorado; or commissions paid, other than to a blind operator, by a commercial vending concern which operates, services, and maintains vending machines on Federal, State or other property, for, or with the approval of a department, agency, or instrumentality of the United States or State of Colorado.

9.401 ELIGIBILITY [Rev. eff. 7/1/08]

In selecting persons to be operators of the Business Enterprise Program, preference shall be given to persons who are in need of employment and who have been determined to be:

- A. Blind as defined by Section 26-8.5-101(1), C.R.S.;
- B. Citizens of the United States;
- C. Able to successfully pass all State and Federal background investigations;
- D. Free from infectious diseases as defined by the Department of Public Health and Environment for food handling (6 CCR 1010-2, Section 2-201);
- E. Free from any felony conviction or pattern of misdemeanor convictions;
- F. Successful in the completion of Business Enterprise Program Training Program;
- G. Qualified to operate a business enterprise, either as a blind vendor in a training status or as a licensed blind vendor, as deemed by the State licensing agency;
- H. Eighteen (18) years of age or older; and,
- I. In possession of a high school diploma or GED.

9.402 LICENSURE OF BLIND OPERATORS [Rev. eff. 7/1/08]

The State licensing agency shall be free to develop levels of distinction or classes of licensing. Issuance and conditions of licenses:

- A. The State licensing agency shall provide for the issuance of licenses for an indefinite period but subject to suspension or termination.
- B. The State licensing agency shall further establish in writing and maintain policies which have been developed with the active participation of the State Committee of Blind Vendors and which govern the duties, supervision, transfer, promotion, and financial participation of the vendors. The State licensing agency shall also establish procedures to assure that such policies have been explained to each blind vendor.
- C. Licensing is also contingent upon stabilized employment for a minimum of ninety (90) calendar days and determined to be successful jointly by the State licensing agency and the Division of Vocational Rehabilitation counselor. Upon completion of ninety (90) calendar days, an evaluation will be conducted by the State licensing agency to determine if the applicant is eligible for a license or must continue training.

9.402.1 Property Right [Rev. eff. 7/1/08]

A license shall not create any property right for the licensee to whom it is issued and shall be deemed only to inform the public and other interested parties that the licensee has successfully completed the required Program training and is qualified and authorized to operate a business enterprise in the State of Colorado.

9.402.2 Termination of a License [Rev. eff. 7/1/08]

Any license issued to a blind vendor for the operation of a business enterprise may be terminated when:

- A. The State licensing agency finds that the business enterprise is not being operated in accordance with the rules and regulations, the terms and conditions governing the facility agreement, contract or Federal permit for the particular location, or the written agreement with the licensed blind vendor.
- B. There is proof of improvement of vision so that the operator no longer meets the definition of blindness, for which the State licensing agency may require proof at any time.
- C. There is an extended illness with medically-documented diagnosis of prolonged incapacity of the licensed blind vendor to operate the business enterprise in a manner consistent with the needs of the location or other available locations in the Business Enterprise Program. The blind vendor may return to the program if he/she provides documentation that his/her physician deems improved physical condition that he/she may return to work and the State licensing agency is in agreement.
- D. The licensed blind operator withdraws from the program by notice to the program; the blind vendor cannot return to the program until all debt have been satisfied and his/her return has been evaluated and approved by the State licensing agency. He/she may regain a license upon the application for and review by the State licensing agency.
- E. The licensed blind vendor fails to appear and manage, or arrange for management of, the location without prior written notification to the State licensing agency and approved by the State licensing agency.
- F. If the licensed blind vendor does not abide by provisions covered by Operator Agreement, including all obligations and debt.
- G. The Operator Agreement is no longer in effect.
- H. A licensed blind vendor elects not to submit for or operate any available location. He/she will be considered to have lost the license after ninety (90) calendar days and be evaluated by the State licensing agency and the Business Enterprise Program trainer before a license may be reinstated as a licensed blind vendor.
- I. The licensed blind vendor is convicted of a felony or pattern of misdemeanors and/or fails to self-report a felony or misdemeanor arrest or charge.
- J. The licensed blind vendor displays violence, threats, harassment, intimidation, or other disruptive behavior. Individuals committing such acts may also be subject to criminal penalties.

9.403 ELECTION, ORGANIZATION, AND FUNCTIONS OF A COMMITTEE OF LICENSED BLIND VENDORS

9.403.1 Elections [Rev. eff. 7/1/08]

The State licensing agency shall provide for an election among the licensed blind vendors to establish a committee that will be representative of licensed blind vendors/trainees in all areas of the State. Members shall be elected to serve a two-year term. The election shall be to replace or re-elect those members who have served for two years.

The State licensing agency shall provide for the election of a State Committee of Licensed Blind Vendors which, to the extent possible, shall be fully representative of all blind vendors in the State of Colorado Business Enterprise Program on the basis of such factors as geography and vending facility type with a goal of providing for proportional representation of licensed blind vendors/trainees on Federal, State, and other property. Participation by any licensed blind vendor/trainee in any election shall not be conditioned upon the payment of dues or any other fees.

9.403.2 Purpose of the Committee of Licensed Blind Vendors [Rev. eff. 7/1/08]

The State Committee of Licensed Blind Vendors shall perform the following functions:

- A. Actively participate with the State licensing agency in major administrative decisions and policy and program development decisions affecting the overall administration of the State's vending facility program;
- B. Receive and transmit to the State licensing agency grievances at the request of blind vendors and serve as advocates for such vendors in connection with such grievances;
- C. Actively participate with the State licensing agency in the development and administration of a State system for the transfer and promotion of blind vendors;
- D. Actively participate with the State licensing agency in the development of training and retraining programs for blind vendors; and,
- E. Sponsor, with the assistance of the State licensing agency, meetings and instructional conferences for blind vendors within the State.

9.404 STATE LICENSING AGENCY RESPONSIBILITY [Rev. eff. 7/1/08]

The State licensing agency shall have the ultimate responsibility for the Business Enterprise Program. If the State licensing agency does not adopt written positions of the Committee of Licensed Blind Vendors, it shall notify the Committee of Licensed Blind Vendors. The State licensing agency will maintain operational procedures to secure the day to day function of the State licensing agency.

The following are responsibilities of the State licensing agency: The State licensing agency shall:

- A. Cooperate with the Secretary of Education in applying the requirements of the Randolph-Sheppard Act in a uniform manner (20 USC 107 – no amendments or later editions are incorporated. A copy is available for inspection at the Colorado Department of Human Services, Division of Vocational Rehabilitation, Office of the Director, 1575 Sherman Street, Denver, Colorado 80203; or any state publications depository library);
- B. Take effective action, including the termination of licenses, to carry out full responsibility for the supervision and management of each vending facility in its program in accordance with its established rules and regulations, this part, and the terms and conditions governing the permit;

- C. Submit promptly to the Secretary of Education for approval a description of any changes in the legal authority of the State licensing agency, its rules and regulations, blind vendor agreements, schedules for the setting aside of funds, contractual arrangements for the furnishing of services by a nominee, arrangements for carrying general liability and product liability insurance, and any other matters which form a part of the application;
- D. If it intends to set aside, or cause to be set aside, funds from the net proceeds of the operation of vending facilities, obtain a prior determination by the Secretary of Education that the amount of such funds to be set aside is reasonable;
- E. Establish policies against discrimination of any licensed blind vendor/trainee on the basis of sex, age, physical or mental impairment, creed, color, national origin, or political affiliation;
- F. Furnish each licensed blind vendor/trainee a copy of the rules and regulations and a description of the arrangements for providing services, and take adequate steps to assure that each vendor understands the provisions of the permit and any agreement under which he/she operates, as evidenced by his/her signature;
- G. Submit to an arbitration panel those grievances of any licensed blind vendor unresolved after a full evidentiary hearing;
- H. Adopt accounting procedures and maintain financial records in a manner necessary to provide for each vending facility and for the State's vending facility program a classification of financial transactions in such detail as is sufficient to enable evaluation of performance; and,
- I. Maintain records and make reports in such form and containing such information as the Secretary of Education may require, make such records available for audit purposes, and comply with such provisions as the Secretary of Education may find necessary to assure the correctness and verification of such reports.

9.405 SET-ASIDE FUND [Rev. eff. 7/1/08]

A set-aside fund shall be established. Set-aside may also be used in the State of Colorado for suitable site development.

- A. The State licensing agency shall establish in writing the extent to which funds are to be set aside or caused to be set aside from the net proceeds of the operation of the vending facilities and, to the extent applicable, from vending machine income in an amount determined by the Secretary of Education to be reasonable pursuant to 34 CFR 395.3(a)(11)(iv). No amendments or later editions are incorporated. A copy is available for inspection at the Colorado Department of Human Services, Division of Vocational Rehabilitation, Office of the Director, 1575 Sherman Street, Denver, Colorado 80203; or any state publications depository library.
- B. Funds may be set aside under paragraph A, above, of this section only for the purposes of:
 - 1. Maintenance and replacement of equipment;
 - 2. The purchase of new equipment;
 - 3. Management services;
 - 4. Assuring a fair minimum of return to vendors; or,

5. The establishment and maintenance of retirement or pension funds, health insurance contributions, and provision for paid sick leave and vacation time, if it is so determined by a majority vote of blind vendors licensed by the State licensing agency, after such agency provides to each such vendor information on all matters relevant to such proposed purposes.
- C. The State licensing agency shall:
1. Further set out the method of determining the charge for each of the above purposes listed in this section, which will be determined with the active participation of the State Committee of Licensed Blind Vendors and which will be designed to prevent, so far as is practicable, a greater charge for any purpose than is reasonably required for that purpose.
 2. Maintain adequate records to support the reasonableness of the charges for each of the purposes listed in this section, including any reserves necessary to assure that such purposes can be achieved on a consistent basis.

9.405.1 Set-Aside Assessment [Rev. eff. 7/1/08]

- A. The set-aside assessment (or administrative fee) is a charge levied against the net proceeds of each vending facility, which represents a certain percentage of the net proceeds realized as a result of the facility's operation.

The blind vendor is responsible for the payment to the agency of this assessment each month.

- B. Net proceeds are determined from net sales, less merchandise cost and other allowable business expenses, plus commissions, vending machine income remitted to the licensed blind vendor, and rebates and bonuses paid to the licensed blind vendor.

The amount of set-aside assessment may not be deducted as an expense in computing net proceeds.

- C. The percentage of net proceeds to be paid to the agency by each blind vendor is predicated upon a schedule negotiated between the State licensing agency and the Committee of Licensed Blind Vendors, determined to be sufficient for the operation of the Business Enterprise Program, while at the same time allowing for the retention of reasonable reserves by the State licensing agency. In no event shall any negotiated schedule exceed a maximum of thirteen percent (13%), nor shall any new schedule be implemented without the approval of the U.S. Rehabilitation Services Administration.

9.405.2 Schedule [Rev. eff. 7/1/08]

In accordance with current accounting schedule, operators shall remit payments plus business expenses determined reasonable at the discretion of the State licensing agency.

9.406 FINANCIAL REPORTING [Rev. eff. 7/1/08]

- A. Each vending facility blind operator must file with the agency a monthly financial report of his/her business operation.
1. The report (turn-in) and the payment of set-aside assessments currently due the State licensing agency shall be determined according to the Operator Agreement.

2. If the State licensing agency's technology permits, the blind vendor may be afforded the opportunity to file his/her reports and pay fees on-line according to the deadline provided in the Operator Agreement.
 3. Each blind vendor must maintain and provide itemization and documentation according to the Operator Agreement.
- B. Falsification of records by the blind vendor, as validated by the State licensing agency or other State entity, will result in the termination of a blind vendor license without placing the blind vendor on probation.
- C. Only the assigned licensed blind vendor/trainee for a location may have an economic interest in that location. No employee of the State licensing agency, its contractors or subcontractors, or other licensed blind vendor/trainee shall have any personal or economic interest whatsoever in the location, unless covered or superseded by a separate written agreement with the State licensing agency.
- D. Each licensed blind vendor/trainee shall be permitted access to all financial data of the State licensing agency relevant to the operation of the Business Enterprise Program, including alternative formats and media acceptable to the licensed blind vendor/trainee and in compliance with current HIPAA and Division of Vocational Rehabilitation rules.

9.407 VENDING MACHINE INCOME [Rev. eff. 7/1/08]

The State licensing agency will have the right to negotiate with other State agencies regarding the sharing of commission proceeds from vending machines on State property (Section 26-8.5-100 through 26-8.5-107, C.R.S.). Unassigned vending machine income will be disbursed only after determined by the State licensing agency that the licensed blind vendor/trainee is debt free to the program. All unassigned vending machine income disbursement will be applied to past due or existing debt. Distribution and use of income from vending machines on Federal, State, and other property is as follows:

- A. Vending machine income from vending machines on Federal, State, or other property, which has been disbursed to the State licensing agency by a property managing department, agency, or instrumentality of the United States shall accrue to each licensed blind vendor/trainee operating a vending facility on such Federal property in each State in an amount not to exceed the average net income of the total number of licensed blind vendor/trainees within such State, as determined each fiscal year on the basis of each prior year's operation, except that vending machine income shall not accrue to any blind vendor in any amount exceeding the average net income of the total number of licensed blind vendor/trainees in the United States.
- B. No licensed blind vendor/trainee shall receive less vending machine income than he/she was receiving during the calendar year prior to January 1, 1974, as a direct result of any limitation imposed on such income under this paragraph. No limitation shall be imposed on income from vending machines, combined to create a vending facility, when such facility is maintained, serviced, or operated by a licensed blind vendor/trainee. Vending machine income disbursed by a property managing department, agency or instrumentality of the United States to a State licensing agency in excess of the amounts eligible to accrue to licensed blind vendor/trainees in accordance with this paragraph shall be retained by the appropriate State licensing agency.

- C. The State licensing agency shall disburse vending machine income to licensed blind vendor/trainees within the State on at least a quarterly basis. Vending machine income which is retained under paragraph A of this section by a State licensing agency shall be used by such agency for the establishment and maintenance of retirement or pension plans, for health insurance contributions, and for the provision of paid sick leave and vacation time for blind vendors in such State, if it is so determined by a majority vote of blind vendors licensed by the State licensing agency, after such agency has provided to each such vendor information on all matters relevant to such purposes. Any vending machine income not necessary for such purposes shall be used by the State licensing agency for the maintenance and replacement of equipment, the purchase of new equipment, management services, and assuring a fair minimum return to vendors. Any assessment charged to blind vendors by a State licensing agency shall be reduced pro rata in an amount equal to the total of such remaining vending machine income.

9.408 POLICY AND PROCEDURES [Rev. eff. 7/1/08]

The State licensing agency determines procedures through an internal policy manual.

9.409 LICENSED BLIND AGREEMENTS, RESPONSIBILITIES, AND LOCATION

9.409.1 Operator Agreement [Rev. eff. 7/1/08]

- A. The licensed blind vendor and the State licensing agency shall enter into an agreement concerning operation of a vending facility.
- B. The Operator Agreement will:
1. Identify the individual location/vending facility;
 2. Define the nature, scope and, responsibilities of the licensed blind vendor concerning operation of a specified vending facility;
 3. Define management services offered by the State licensing agency;
 4. Identify allowable business expenses.

C. Execution of the Operator Agreement

The Operator Agreement must be signed prior to the blind vendor's acceptance of an individual location/vending facility. A blind vendor's failure to execute the operator's agreement, within the allotted time period designated by the State licensing agency, shall result in the blind vendor surrendering his/her opportunity to manage the individual location/vending facility for which the agreement was prepared. A new agreement must be signed each time the blind vendor accepts the opportunity to manage an individual location/vending facility, whether permanent or temporary.

D. Expiration of Operator Agreement

The Operator Agreement will expire annually. The Operator Agreement may be renegotiated prior to expiration.

9.409.2 Location Transfer and Promotion [Rev. eff. 7/1/08]

The promotion of a blind vendor to a new location will be through a selection procedure established by the State licensing agency with participation of the Committee of Blind Vendors.

A blind vendor shall be transferred from his/her assigned location only when the transfer will directly benefit the blind vendor or will be in the best interest of the Business Enterprise Program, giving preference to the blind vendor having demonstrated the most ability in management of a business enterprise. If there should be two or more blind vendors with equal qualifications, then the blind vendor with the greater amount of seniority shall be awarded the location.

- A. A location may be temporarily transferred for ninety (90) days or until such time that the location is made available. The 90 days can be extended with good cause at the discretion of the State licensing agency when the transfer is in the best interest of the Business Enterprise Program. The State licensing agency will establish policies and procedures for temporary locations. The State licensing agency will adopt and use as criteria the transfer and promotion policies established by the State licensing agency with the participation of blind vendors.
- B. Unless otherwise determined by the State licensing agency, when a new location has been awarded to a blind vendor, he/she may not maintain their former location beyond ninety (90) calendar days. If the previous location is put out for the selection process and no qualified operators respond, the blind vendor may assume it thereafter in increments of ninety (90) calendar days. After each ninety (90) calendar days, the location may be reviewed to be put out for the selection process.

9.410 BLIND VENDOR INDEBTEDNESS TO THE BUSINESS ENTERPRISE PROGRAM [Rev. eff. 7/1/08]

A present or past blind vendor's indebtedness to the Business Enterprise Program, which becomes past due, shall include any and all collection charges, attorney fees, court costs and all expenditures directly or indirectly incurred due to that debt. The blind vendor agrees to pay any and all debt on time. If a debt to the State licensing agency is thirty (30) days past due, the State licensing agency may refer the past due amount to collections in accordance with Colorado Department of Personnel and Administration, Office of the Executive Director, Accounts Receivable Collections Administrative Rule 1.37. If an account is referred to collections, the State licensing agency will have the right to immediately remove the blind vendor from the assigned location(s). Failure to meet payment deadlines allows the State licensing agency to offset monies due to blind vendor against existing debt without the prior approval of the blind vendor.

Unassigned vending machine income is disbursed only after it has been determined that the blind vendor is in good standing, not in arrears to the program. Otherwise, all unassigned vending machine income will be applied to debt.

9.411 EQUIPMENT AND INITIAL MERCHANDISE INVENTORY

9.411.1 Furnishing Equipment and Initial Merchandise Inventory [Rev. eff. 7/1/08]

All furnishing of equipment and initial merchandise inventory will be subject to availability of funds.

- A. The State licensing agency will furnish an adequate initial stock of merchandise for resale, and other related inventory items for the successful initial operation of the business enterprise for trainees or newly established locations.

- B. The State licensing agency shall purchase or cause to be furnished suitable equipment, utensils, and supplies for initial operation, and shall provide for the maintenance and repair of such equipment for each particular business enterprise. The State licensing agency shall replace (or cause to be replaced) worn-out or obsolete equipment as required to assure the continued successful operation of the business enterprise.
- C. The blind vendor shall be responsible for routine day to day care of the equipment and items considered disposable by the State licensing agency.
- D. The State licensing agency is solely authorized to initiate repair calls. Any expenses incurred due to blind vendor origination of repair calls will be the responsibility of that blind vendor, unless individual negotiations have been made.
- E. The State licensing agency may require the blind vendor to conduct a physical inventory of all merchandise and supplies; schedule to be determined by the State licensing agency.

9.411.2 Right, Title to, and Interest in Business Enterprise Equipment and Merchandise Inventory [Rev. eff. 7/1/08]

The right, title to, and interest in all Business Enterprise equipment shall be held by the Business Enterprise Program of the State of Colorado with the exception of operator ownership. The State licensing agency shall also retain equity in the merchandise inventory of each business enterprise equal to the value of the merchandise inventory initially furnished by the State licensing agency.

Each fiscal year, upon receiving funding, the State licensing agency shall notify the Committee of Licensed Blind Vendors in order to designate a representative subcommittee to collaborate with the State licensing agency in order to establish the amount of equipment expenditures. No blind vendor on the committee may advocate for his/her own location.

9.412 TRAINING PROGRAM [Rev. eff. 7/1/08]

A training program shall be afforded to prospective blind vendors to qualify them to operate a business enterprise in accordance with accepted business practices. Furthermore, additional training or retraining for improving management abilities for all blind vendors shall be provided by the State licensing agency with the cooperation of the Division of Rehabilitation Services.

All training programs for the Business Enterprise Program will be in accordance with Federal rules and regulations. Trainees must complete established training programs within a twelve (12) month period, unless special circumstances are approved by the State licensing agency. Upon completion of the training program, the State licensing agency may assign the trainee any location deemed to be suitable to the abilities of the trainee. The State licensing agency, in collaboration with the elected Committee of Licensed Blind Vendors, shall establish and make available mandatory continuing education.

9.413 RIGHTS OF APPEAL AND FORMAL APPEAL PROCESS

9.413.1 RIGHT OF APPEAL [Rev. eff. 7/1/08]

- A. A licensed blind vendor who is dissatisfied with any determination made by the Business Enterprise Program staff that affects a provision of Business Enterprise Program services may request a formal appeal.
- B. A licensed blind vendor, upon successful completion of Business Enterprise Program training, shall be notified of his/her appeal rights.

- C. A licensed blind vendor is responsible for costs associated with his/her appeal unless otherwise ordered.

9.413.2 Formal Appeal Process [Rev. eff. 7/1/08]

- A. A written request for a formal appeal must be submitted to the Colorado Department of Personnel and Administration, Office of Administrative Courts (OAC) within ninety (90) calendar days of the subject determination made by the Business Enterprise Program staff that affects a provision of Business Enterprise Program services.
- B. The written request must be a statement detailing the basis of appeal, including a description of the subject determination made by the Business Enterprise Program staff that affects a provision of Business Enterprise Program services and specify what relief is requested.
- C. When a licensed blind vendor requests a formal appeal, the Business Enterprise Program is authorized to enter into settlement negotiations with the appellant as part of the litigation process in the interest of making every effort to resolve disputes at the lowest possible level.
- D. A licensed blind vendor and the Business Enterprise Program may voluntarily participate in mediation through the OAC. Mediation may not be used to deny or delay a licensed blind vendor's right to pursue resolution of the dispute through the formal appeal process unless both parties agree that additional time is necessary for mediation.

9.413.3 FORMAL APPEAL BEFORE THE OFFICE OF ADMINISTRATIVE COURTS [Rev. eff. 7/1/08]

- A. When the OAC receives a request for a formal appeal, the OAC shall notify the business enterprise program that the request has been docketed and send a copy of the formal appeal request to the Business Enterprise Program.
- B. The Business Enterprise Program shall serve a Notice to Set an Informal Pre-hearing Conference within ten (10) calendar days of receipt of the formal appeal request from the OAC. The purpose of the informal pre-hearing conference shall be to:
1. Set the date by which the Business Enterprise Program shall provide to the licensed blind vendor and to the OAC the specific incidents supporting Business Enterprise Program's determination that affects a provision of business enterprise program services;
 2. Set the date by which the licensed blind vendor shall provide a response to Business Enterprise Program's notice of specific incidents supporting the Business Enterprise Program's determination;
 3. Set within the time period specified in paragraph D of this section, the case for hearing on the merits; and,
 4. Arrange for expedited discovery schedules, motion dates, and pre-hearing conferences as necessary.
- C. If a licensed blind vendor fails to provide, within the prescribed time, a response to the Business Enterprise Program's notice of specific incidents supporting the Business Enterprise Program's determination, the OAC shall deem the formal appeal to have been abandoned by a licensed blind vendor and render an initial decision dismissing the formal appeal. In accordance with the procedures set forth in Section 9.413.4, the Office of Appeals may reinstate the formal appeal for good cause shown by a licensed blind vendor.

- D. The Administrative Law Judge shall conduct the hearing within sixty (60) calendar days of a licensed blind vendor's request for formal appeal unless both parties agree additional time is necessary.
- E. The Administrative Law Judge shall conduct the hearing on formal appeal in accordance with the Administrative Procedure Act, Section 24-4-105, C.R.S. The rights of the parties include:
 - 1. Each party shall have the right to present his or her case or defense by oral and documentary evidence, to submit rebuttal evidence, and to conduct cross-examination.
 - 2. Subject to these rights and requirements, where a hearing will be expedited and the interests of the parties will not be subsequently prejudiced thereby, the Administrative Law Judge may receive all or part of the evidence in written form or by oral stipulations.
 - 3. A telephonic hearing may be conducted as an alternative to a face-to-face hearing unless either party requests a face-to-face hearing in writing. The written request for a face-to-face hearing must be filed with the OAC and the other party at least ten (10) calendar days before the scheduled hearing.
- F. At the conclusion of the hearing, unless the Administrative Law Judge allows additional time to submit documentation, the Administrative Law Judge shall take the matter under advisement. After considering all the relevant evidence presented by the parties, the Administrative Law Judge shall render an Initial Decision for review by the Colorado Department of Human Services, Office of Appeals.
- G. The Initial Decision shall uphold, modify or reverse the Business Enterprise Program's determination affecting a provision of Business Enterprise Program services of a licensed blind vendor.
- H. The Initial Decision shall be rendered within thirty (30) calendar days of the completion of the hearing.
- I. When an appellant fails to appear at a duly scheduled hearing, having been given proper notice, without having given timely advance notice to the Administrative Law Judge of acceptable good cause for inability to appear at the hearing at the time, date and place specified in the notice of hearing, then the appeal shall be considered abandoned and the Administrative Law Judge shall enter an Initial Decision Dismissing Appeal. In accordance with the procedures set forth below, the Office of Appeals may reinstate the appeal for good cause shown by the Appellant.

9.413.4 STATE DEPARTMENT, OFFICE OF APPEALS FUNCTIONS [Rev. eff. 7/1/08]

- A. Review of the Initial Decision and hearing record, and entry of the Final Agency Decision, shall be pursuant to State rules at Sections 3.850.72 - 3.850.73 (9 CCR 2503-1).
- B. Review shall be conducted by a State adjudicator in the Office of Appeals not directly involved in any prior review of the Business Enterprise Program's determination affecting a provision of Business Enterprise Program services of a licensed blind vendor.
- C. If a licensed blind vendor is dissatisfied with the decision rendered after a full evidentiary hearing, he/she may request, within thirty (30) work days of his or her receipt of such decision, that an arbitration panel be convened by filing a complaint with the Secretary of the Department of Education, authorized by Section 5(a) of the Randolph-Sheppard Act and 34 CFR, Section 395.13(a). No amendments or later editions are incorporated. A copy is available for inspection at the Colorado Department of Human Services, Division of Vocational Rehabilitation, Office of the Director, 1575 Sherman Street, Denver, Colorado 80203; or any state publications library.

- D. The Final Agency Decision shall advise a licensed blind vendor of his/her right to seek judicial review in the State District Court, City and County of Denver, if the appellant had timely filed exceptions to the Initial Decision.
- E. If a licensed blind vendor seeks judicial review of the Final Agency Decision, the Business Enterprise Program shall be responsible for defending the Final Agency Decision on judicial review.

9.414 CONFIDENTIALITY [Rev. eff. 7/1/08]

All information concerning licensed blind vendors/trainees given or made available to the State licensing agency, its representatives, or its employees shall be held to be confidential in accordance with Vocational Rehabilitation services and HIPAA rules and regulations.

9.500 - 9.900 (None)

Editor's Notes

History

Section 9.600 repealed eff. 11/01/2007.
Section 9.400 eff. 07/01/2008; Repealed 9.900 eff. 07/01/2008.
Section 9.100 eff. 12/01/2008.
Sections SB&P, 9.100 eff. 06/01/2012.
Sections SB&P, 9.200 eff. 07/01/2012.
Sections SB&P, 9.102-9.108, 9.203.1-9.208, 9.209.2 eff. 04/01/2013.
Sections SB&P, 9.100 eff. 10/01/2014.
Sections SB&P, 9.207.3 eff. 05/01/2016.