

On December 12, the Committee on Legal Services voted to not extend specific rules regarding Independent Living Services. In order to ensure that there is no lapse to the Independent Living Services rules, the Office of Independent Living Services, DVR/CDLE is seeking to promulgate revisions to the Independent Living Services (IL Services) rules that will not be extended as of May 15, 2018. This document identifies the reasons the IL Services rules will not be extended and the recommended rule revisions that will be promulgated to ensure proper IL Services rules.

To address these concerns in a timely and efficient manner, the Office is inviting key stakeholders to provide input and feedback on the recommended rule revisions prior to the solicitation being announced on the Secretary of State website.

Below are the rules expected to terminate on May 15, 2018 and recommended revisions:

Statement of noncompliance:

Section 8-85-103 (4), C.R.S., requires the Department of Labor and Employment to promulgate a rule for the block distribution of state money to independent living centers and specifies that the rule must include a base amount of at least \$600,000 plus other factors to adjust the base amount.

Rule 9.207.3 of the Division of Vocational Rehabilitation, regarding State Allocation for Delivery of Independent Living Services, sets forth a formula for calculating the distribution of state money to independent living centers but fails to specify the base amount to which the formula applies. **Because the Department failed to promulgate rules setting the base amount for the block distribution of state money to independent living centers as required by section 8-85-103 (4), C.R.S., we recommend that Rule 9.207.3 of the rules of the Division of Vocational Rehabilitation not be extended.**

Below is the rule as written:

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: $40\% \times (\text{County 16-64 Disability Population} / \text{State 1664 Disability Population})$*
- B. 2nd add the weighted score of: $20\% \times (\text{County 65+ Population} / \text{State 65+ Population})$*
- 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.

Recommended revision to be in compliance (Revision is stated in all caps below)

9.207.3 STATE ALLOCATION FOR DELIVERY OF INDEPENDENT LIVING SERVICES

A. THE BLOCK DISTRIBUTION OF STATE MONEYS TO INDEPENDENT LIVING CENTERS.

(A) A BASE AMOUNT OF NOT LESS THAN SIX HUNDRED THOUSAND DOLLARS; AND

(B) OTHER FACTORS AGREED TO BY THE INDEPENDENT LIVING CENTERS, WHICH MAY INCLUDE A PER CAPITA ADJUSTMENT, A PER COUNTY ADJUSTMENT, OR OTHER ADJUSTMENTS.

B. 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: $40\% \times (\text{County 16-64 Disability Population} / \text{State 1664 Disability Population})$
- B. 2nd add the weighted score of: $20\% \times (\text{County 65+ Population} / \text{State 65+ Population})$
- 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.

Statement of noncompliance:

Section 24-4-103 (12.5)(a), C.R.S., authorizes agencies to adopt rules that incorporate by reference a code or rule adopted by an agency of the United States if the rules meet requirements listed in the statute, including reference to the code or rule by citation and date. However, the Division of Vocational Rehabilitation's Rules 9.209, 9.209.1, and 9.209.2 A. incorporate specified federal laws and regulations in the Code of Federal Regulations by reference but do not reference the date of the regulations.

Because these rules conflict with the requirement in section 24-4-103 (12.5)(a), C.R.S., that federal laws and regulations incorporated by reference include a date, we recommend that Rules 9.209, 9.209.1, and 9.209.2A. of the rules of the Division of Vocational Rehabilitation not be extended.

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

With regards to enforcement proceedings, DVR/OIL 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 Labor and Employment, Division of Vocational Rehabilitation, Office of Independent Living, 633 17th Street, 15th Floor, Denver, CO 80202 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 CIL 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 IC.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 Labor and Employment, Division of Vocational Rehabilitation, Office of Independent Living, 633 17th Street, 15th Floor, Denver, CO 80202 or at any State Publication Depository Library.

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

A CIL'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 Labor and Employment, Division of Vocational Rehabilitation, Office of Independent Living, 633 17th Street, 15th Floor, Denver, CO 80202 or at any State Publication Depository Library.

Recommended revisions to be in compliance (Revision additions are stated in all CAPS and Bold, deletions are shown with strike through below)

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

With regards to enforcement proceedings, DVR/OILS shall comply with all federal rules and regulations, incorporated herein by reference, including **45 CFR 1329.7** ~~34 CFR 366.40, 366.41, 366.42, and 366.43.~~ **Any appeal will follow CFR 366.44, 366.45, and 366.46** **SEPTEMBER 1, 2017**. This rule does not contain any later editions of those parts. Copies of these regulations are available from: Colorado Department of Labor and Employment, Division of Vocational Rehabilitation, Office of Independent Living SERVICES, 633 17th Street, 15th Floor, Denver, CO 80202 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 CIL under the SILS program include federal funds administered by the Colorado Department of ~~Human Services~~ **LABOR AND EMPLOYMENT** 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 **45 CFR 1329.7** ~~34 IC.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)- **SEPTEMBER 1, 2017**. This rule does not contain any later editions of those parts. Copies of these regulations are available from: Colorado Department of Labor and Employment, Division of Vocational Rehabilitation, Office of Independent Living **SERVICES**, 633 17th Street, 15th Floor, Denver, CO 80202 or at any State Publication Depository Library.

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

A CIL's funds may be terminated for:

A. Failure to meet the requirements of 45 CFR 1329.7 ~~34 CFR 366.40 through 366.46~~ **SEPTEMBER 1, 2017**. This rule does not contain any later editions of those parts. Copies of these regulations are available from: Colorado Department of Labor and Employment, Division of Vocational Rehabilitation, Office of Independent Living **SERVICES**, 633 17th Street, 15th Floor, Denver, CO 80202 or at any State Publication Depository Library.