

**Testimony before the Joint Committee on Agency Rule Review
on proposed rule O.A.C. 3304-2-62(D)**

Ohio Legal Rights Service

Barbara S. Corner
Attorney-at-law

Mr. Chairman and members of the committee:

Ohio Legal Rights Service (OLRS) thanks you for the opportunity to provide testimony on proposed rule O.A.C. 3304-2-62. OLRS is the federally designated protection and advocacy system for Ohio. Additionally, OLRS is the designated Client Assistance Program (CAP). Pursuant to 29 USC Section 732, CAP is charged with providing assistance in informing and advising all clients of all available benefits under the Rehabilitation Act of 1973, as amended (29 USC § 701 et seq), which is contained in Section IV of the Workforce Investment Act.

The position of Ohio Legal Rights Service (OLRS) is that proposed O.A.C. 3304-2-62(D) exceeds the scope of the Rehabilitation Services Commission's (RSC) statutory authority to make rules.

RSC only has the authority to enact rules governing the vocational rehabilitation (VR) program if the rules are in conformity with the federal Rehabilitation Act. RSC is the sole state agency authorized to administer the federal vocational rehabilitation program in Ohio (O.R.C. 3304.16(D)). RSC must submit a state plan to the federal Rehabilitation Services Administration and that plan must provide assurances that it will administer the VR program in accordance with federal law. If the plan conflicts with federal law, then it can be rejected and RSC can lose its federal funds. 29 USC §§ 720(b), 721(a)(1)(A) and 727(c) and 34 CFR §§ 361.2, 361.3, 361.10 and 361.11.

Ohio law authorizes RSC to take necessary or appropriate action to comply with any requirements necessary to obtain federal funds in the maximum amount and most advantageous proportion possible (O.R.C. 3304.16(D), O.R.C. 3304.16(K)(5)). The Attorney General of the State of Ohio has interpreted these provisions to require that RSC revise its rules to comply with federal law even if such a revision would conflict with state law. Opinion No. 2000-014 2000, Ohio Op. Atty Gen. 80; 2000 Ohio Op. Atty Gen. No. 14 (copy attached).

In addition, virtually all of the rules in Chapter 2 of Section 3304 of the Ohio Administrative Code (Vocational Rehabilitation Program) contain the following language:

“This rule is designed to implement ‘Title IV of the Workforce Investment Act,’ which contains the 1998 amendments to ‘The Rehabilitation Act of 1973,’ and resulting regulations” (see e.g., O.A.C. 3304-2-21(C), 3304-2-54(J), 3304-2-56(D), 3304-2-58(J), 3304-2-61(E), and 3304-2-63(I)).

Clearly RSC's interpretation of its own authority is that it can only enact rules that are in compliance with the federal Rehabilitation Act.

Section (D) of the proposed rule conflicts with federal law. Federal law requires that all services including evaluation and assessment services and plan development be continued pending resolution of the appeal by a hearing officer, through mediation or through the informal process (29 USC 722(c)(7), 34 CFR 361.57(b)(4)). The proposed rule only mandates that services listed on an Individualized Plan for Employment (IPE) be provided until an appeal is resolved. OLRs apprised RSC of this concern in a January 20, 2009 letter containing OLRs' testimony on rules that were the subject of the January 20 public hearing (copy attached).

The enactment of Section (D) as it is currently written will have a negative impact on individuals seeking vocational rehabilitation services from RSC. If an individual disagrees with a decision about what type of assessment is needed to determine how his disability affects his ability to work, or who will do the assessment or payment for a training program, or if he needs a device to lessen the impact of his limitations on his ability to work and files an appeal, he will receive no further services until months later when the appeal is resolved. Federal law would require that other needed evaluations and the process to determine a vocational goal continue during the pendency of the appeal. When the appeal is resolved, then the other pieces needed to develop a plan would be in place and the plan could be quickly developed and signed. This avoids additional delays of perhaps months until the RSC consumer can become successfully employed and a taxpayer.

This matter can easily be resolved to bring Section (D) into compliance with federal law by modifying Section (D) as follows:

“If the consumer appeals a decision ~~after the IPE has been developed~~, RSC shall continue to provide the service vocational rehabilitation services including evaluation, assessment, IPE development and VR services listed on the IPE until the formal hearing decision is made or until the appeal is resolved informally. A service may be modified, suspended, or terminated without a formal hearing if the service was obtained through misrepresentation, fraud, collusion, or criminal conduct on the part of the consumer. An interruption or change in dates shall not be considered to be a suspension, a modification, or a termination of services.”

OLRS has discussed our position on this rule with RSC but we have been unable to resolve our differences.

Thank you for the opportunity to provide this testimony, and I will be happy to answer any questions the members of the Committee may have.

March 9, 2009



OFFICE OF THE ATTORNEY GENERAL OF THE STATE OF OHIO

OPINION No. 2000-014

2000 Ohio Op. Atty Gen. 80; 2000 Ohio Op. Atty Gen. No. 14; 2000 Ohio AG LEXIS 14

February 16, 2000

SYLLABUS:

[*1]

If the state plan developed and administered by the Rehabilitation Services Commission pursuant to the federal Rehabilitation Act of 1973 is to remain in compliance with federal requirements, then the Commission must amend 5 *Ohio Admin. Code 3304-2-63(C)(1)* to provide that a client may designate any person to receive on the client's behalf information that may be harmful to the client, and to require that, where a court has appointed a representative for the client, the information be released to the representative. Such amendment is not barred by *R.C. 1347.08(C)(1)*.

REQUEST BY:

Robert L. Rabe, Administrator
Ohio Rehabilitation Services Commission
400 E. Campus View Blvd., SW3
Columbus, OH 43235-4604

OPINION BY:

BETTY D. MONTGOMERY, Attorney General

OPINION:

You have requested an opinion whether 5 *Ohio Admin. Code 3304-2-63(C)(1)*, which addresses the release of client information kept by the Rehabilitation Services Commission (RSC), and *R.C. 1347.08*, as it relates to such release, are superseded by 34 *C.F.R. § 361.38 (1999)*.

In order to respond to your question, it is helpful to first examine the federal law under which 34 *C.F.R. § 361.38* was adopted. The Rehabilitation Act of 1973, 29 *U.S.C.S. §§ 701* [*2] -7961 (Supp. 1999), as amended, was enacted to empower persons with disabilities to maximize employment opportunities and achieve economic self-sufficiency, and to assist States in operating programs of vocational rehabilitation services for persons with disabilities. 29 *U.S.C.S. §§ 701, 720. See also 34 C.F.R. § 361.1 (1999)*. In order to be eligible to participate in programs under the Act, a State must submit to the federal Commissioner of the Rehabilitation Services Administration n1 a plan for vocational rehabilitation services that meets the requirements of federal law. 29 *U.S.C.S. § 721(a)(1)(A)*. *See also 34 C.F.R. §§ 361.2, 361.10*. Once the state plan is approved by the Commissioner, federal money is appropriated to the State to assist it in providing vocational rehabilitation services specified under the plan. 29 *U.S.C.S. § 720(b)*; 34 *C.F.R. § 361.3*. The Rehabilitation Services Commission is the sole state agency designated to administer the plan under the Act. *R.C. 3304.16(D)*. *See 29 U.S.C.S. § 721(a)(2)*.

n1 The Rehabilitation Services Administration is established in the Office of the Secretary of Education and is headed by a Commissioner. 29 *U.S.C.S. § 702*.

[*3]

Federal regulations mandate that the state plan "assure that the State agency ... will adopt and implement policies and procedures to safeguard the confidentiality of all personal information" of the agency's clients. 34 C.F.R. § 361.38(a)(1). See 1984 Op. Att'y Gen. No. 84-084 at 2-287 ("34 C.F.R. § 361.2 provides that, to be eligible for federal grants under Title I of that Act, a state must submit an approvable state plan. 34 C.F.R. § 361.49 [now § 361.38] n2 sets forth standards of confidentiality which such a plan must satisfy") (footnote added). See generally 29 U.S.C.S. § 721(a)(6); 34 C.F.R. § 361.12. Although client information must, as a general matter, be kept confidential, the plan must provide that the state agency shall make all information in a client's record accessible to the client, upon the client's written request. 34 C.F.R. § 361.38(c)(1). n3 In response to these federal mandates, RSC promulgated 5 Ohio Admin. Code 3304-2-63. See rule 3304-2-63(J) ("this rule is designed to implement federal regulations, 34 CFR, Parts 361.49 [now 361.38] and 363.6"). See also R.C. 3304.16(K)(3) (empowering the Commission to "adopt [*4] plans and methods of administration found necessary by the federal government for the efficient operation of any joint arrangements or the efficient application of any federal statutes"); R.C. 3304.16(K)(5) (authorizing the Commission to comply "with any requirements necessary to obtain federal funds in the maximum amount and most advantageous proportion possible").

n2 34 C.F.R. Part 361.49 was amended and renumbered 361.38 in 1997. See 60 Fed. Reg. 64486 (1995), 62 Fed. Reg. 6308 and 6351 (1997).

n3 Client records held by the Rehabilitation Services Commission (RSC) under the state vocational rehabilitation program are not public records. R.C. 3304.21; 1984 Op. Att'y Gen. No. 84-084; 1976 Op. Att'y Gen. No. 76-049. See R.C. 149.43.

Although 34 C.F.R. § 361.38 provides generally for the release of information about a client directly to the client, it makes special provision for the release of medical, psychological, or other information that may be harmful to the [*5] client. Rule 3304-2-63 also addresses this eventuality, although in a manner that is not entirely consistent with the federal regulation. It is the relationship between the two regulations as they address the exception for harmful information that is the subject of your opinion request. n4

n4 The state regulation speaks in terms of information that is determined to have "a potentially adverse effect on the client," while the federal regulation addresses information that "may be harmful to the individual." It is assumed for purposes of this opinion that these phrases are synonymous.

As first promulgated, 34 C.F.R. § 361.49 (now § 361.38) read as follows:

(c) Release to involved individuals. (1) When requested in writing by the involved individual or his or her representative, the State unit must make all information in the case record accessible to the individual or release it to him or her or a representative in a timely manner. *Medical, psychological, or other information which the State unit believes may be harmful [*6] to the individual may not be released directly to the individual but must be provided through his or her representative, a physician or a licensed or certified psychologist;* (Emphasis added.)

See 1984 Op. Att'y Gen. No. 84-084 at 2-288.

In conformity with this regulation, RSC included in division (B) of rule 3304-2-63 a requirement that RSC release to a client information in the client's case record within fifteen days of request, providing in division (C)(1), however, that "any medical, psychological, or other information, determined by an RSC medical or psychological consultant to have a potentially adverse effect on the client, shall be released only to a physician or psychologist who is designated in writing by the client."

Although rule 3304-2-63(C)(1) was consistent with federal regulations when it was first promulgated, the Secretary of Education amended the exception for release of harmful information in 1997, n5 so that 34 C.F.R. § 361.38(c)(2) now reads n6:

Medical, psychological, or other information that the State unit determines may be harmful to the individual may not be released directly to the individual, but must be provided to the individual through [*7] a third party chosen by the individual, which may include, among others, an advocate, a family

member, or a qualified medical or mental health professional, unless a representative has been appointed by a court to represent the individual, in which case the information must be released to the court-appointed representative. (Emphasis added.)

n5 In the Notice of Proposed Rule-Making issued prior to the amendment of the section governing the release of harmful information, the Secretary called for "public comment on whether the provisions of this section are unduly burdensome or inconsistent with State laws governing the protection, use, or release of personal information." 60 Fed. Reg. 64486 (1995). No responses are reported as being received.

n6 You have questioned in your letter of request whether there is a statutory basis for the adoption of 34 C.F.R. § 361.38(c)(2). The statutes cited as the basis for promulgation of 34 C.F.R. § 361.38 include 29 U.S.C.S. § 721(a)(6)(A) which states that, "the State plan shall provide for such methods of administration as are found by the Commissioner [of the Rehabilitation Services Administration] to be necessary for the proper and efficient administration of the plan."

[*8]

Thus, federal law now entitles a client to designate, in effect, any person to receive on the client's behalf potentially harmful information n7, while state regulation restricts a client to designating either a physician or psychologist. Although rule 3304-2-63(C)(1) was consistent at the time it was promulgated with the federal regulation on the disclosure of harmful information, it has, with the amendment of 34 C.F.R. § 361.38, ceased to provide clients with those rights federal law requires the plan to provide.

n7 Although a client is, as a general matter, entitled under 34 C.F.R. § 361.38(c)(2) to designate any person to receive on the client's behalf potentially harmful information, the regulation does provide that, if a representative has been appointed by a court to represent the client, then the information must be released to the representative. See 62 Fed. Reg. 6323 (1997).

You have stated that RSC has not followed 34 C.F.R. § 361.38 nor amended its own rule to conform to the [*9] federal regulation because of the language of R.C. 1347.08(C)(1). R.C. Chapter 1347 governs generally the maintenance of personal information systems by governmental agencies. Individuals who are the subject of information maintained by a public agency are entitled under R.C. Chapter 1347 to inspect that information. R.C. 1347.08(A)(2). However, R.C. 1347.08(C)(1) provides the following exception:

A state or local agency, upon request, shall disclose medical, psychiatric, or psychological information to a person who is the subject of the information or to the person's legal guardian, unless a physician, psychiatrist, or psychologist determines for the agency that the disclosure of the information is likely to have an adverse effect on the person, in which case the information shall be released to a physician, psychiatrist, or psychologist who is designated by the person or by the person's legal guardian.

Thus, rule 3304-2-63(C)(1), as it now reads, is consistent with R.C. 1347.08(C)(1). This does not mean, however, that RSC is barred by R.C. 1347.08(C)(1) from amending its rule to comply with federal law. Not only has RSC been statutorily empowered to carry out the federal Rehabilitation [*10] Act of 1973, under which 34 C.F.R. § 361.38 was promulgated, R.C. 3304.16(D), it has also been specifically empowered to "adopt plans and methods of administration found necessary by the federal government for the efficient operation of any joint arrangements or the efficient application of any federal statutes," R.C. 3304.16(K)(3), and to comply "with any requirements necessary to obtain federal funds in the maximum amount and most advantageous proportion possible," R.C. 3304.16(K)(5). These statutory powers constitute sufficient authority for RSC to promulgate a rule, in conformance with federal law, which varies from the general provisions of R.C. 1347.08. See 1981 Op. Att'y Gen. No. 81-074 at 2-296 ("an administrator's statutory determinations may properly be dependent on considerations of federal funding"). See also *Warm v. City of Cincinnati*, 57 Ohio App. 43, 51, 11 N.E.2d 281, 284 (Hamilton County 1937) (holding that the State, which contracted to receive and use a grant of federal funds with which to eliminate a grade crossing subject to certain conditions, should "in good conscience ... perform its part of the bargain" which [*11] is that wages and hours on the project be controlled by the President and the work be inspected by federal officers).

Therefore, *R.C. 1347.08* does not preclude RSC from amending rule 3304-2-63(C)(1) to enable a client to choose any person, not only a physician or psychologist, to receive information that may be harmful to the client, in compliance with 34 C.F.R. § 361.38(c)(2).

In adopting 34 C.F.R. § 361.38, the Secretary of Education specifically made clear that, "the individual's right under paragraph (c)(2) of this section to choose the person to whom harmful information is released supersedes any conflicting State confidentiality policy developed under paragraph (a)(1) that designates a specific individual to receive harmful information (e.g., medical professional)." 62 Fed. Reg. 6323 (1997). Indeed, as it now reads, rule 3304-2-63 is internally inconsistent since division (J) of the rule states that the rule is "designed to implement federal regulations," including what is now 34 C.F.R. Part 361. See 1981 Op. Att'y Gen. No. 81-074 (a metropolitan housing authority may, in order to qualify for federal funds, enter into a loan agreement with the [*12] federal government agreeing to retain a definition that coincides with the definition established by a federal agency, even though the federal agency's definition may change during the life of the loan). RSC's inaction is also inconsistent with the Commission's duties under *R.C. 3304.16(K)(3)* and (5) to "adopt plans and methods of administration found necessary by the federal government for the efficient operation of any joint arrangements or the efficient application of any federal statutes," and to comply "with any requirements necessary to obtain federal funds in the maximum amount and most advantageous proportion possible."

It is, therefore, my opinion, and you are advised that if the state plan developed and administered by the Rehabilitation Services Commission pursuant to the federal Rehabilitation Act of 1973 is to remain in compliance with federal requirements, then the Commission must amend 5 *Ohio Admin. Code 3304-2-63(C)(1)* to provide that a client may designate any person to receive on the client's behalf information that may be harmful to the client, and to require that, where a court has appointed a representative for the client, the information be released to the representative. [*13] Such amendment is not barred by *R.C. 1347.08(C)(1)*.

Legal Topics:

For related research and practice materials, see the following legal topics:

Civil Rights Law Protection of Disabled Persons Rehabilitation Act General Overview Healthcare Law Business Administration & Organization General Overview Healthcare Law Treatment General Overview



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for people with disabilities

January 20, 2009

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Dear Mr. Connelly:

This letter is to submit the Ohio Legal Rights Service (OLRS) written testimony to the rules that are the subject of the January 20, 2009 public hearing.

OLRS is the federally designated protection and advocacy system for Ohio. OLRS is also the designated Client Assistance Program (CAP). Pursuant to 29 USC Section 732, CAP is charged with providing assistance in informing and advising all clients and client applicants of all available benefits under the Rehabilitation Act of 1973, as amended (29 USC Sec. 701 et seq).

OLRS will discuss each rule upon which we will comment in the order they appear in the Ohio Administrative Code. Please note specifically that OLRS believes that proposed OAC 3304-2-52(I) (consumer contribution) and OAC 3304-2-61(D) (continued services during the pendency of an appeal) are not in compliance with federal law.

OAC 3304-2-51 Vocational rehabilitation program.

Section (D) should define timely eligibility to be within sixty (60) days of applying for services as required by 29 USC 722 (a)(6). It should also state the time limit for developing an Individualized Plan for Employment (IPE). OLRS is aware that RSC has a policy regarding time lines for developing an IPE. Consumers have been asked to sign waivers of the time line for developing an IPE and this time line should therefore be in a rule.

The rule should state that RSC shall collaborate with partners to assist in implementing the vocational rehabilitation program as required by 29 USC 721(a)(8), 34 CFR 361.53(d), 34 CFR 363.11(e), and 34 CFR 363.50.

Section (E) should be amended to state that for consumers with cognitive impairments the appropriate mode of communication might be to have the notices written in plain language. This acknowledges RSC's affirmative duty to simplify these notices so as to effectively communicate with consumers as required by section 504 of the Rehabilitation Act and Title II of the Americans with Disabilities Act.

OAC 3304-2-52 Least cost, use of comparable benefits, consumer contribution, and fees for services.

Section (G) should be eliminated because it conflicts with the federal requirement that RSC have flexible procurement policies that permit a consumer to exercise informed choice at every stage of the process including choosing service providers 29 USC 722(d).

Section (H) should be amended to include that if comparable services or benefits exist under any other program, but are not available to the individual at the time needed to ensure the progress of the individual toward achieving the employment outcome in the individual's IPE, RSC must provide vocational rehabilitation services until those comparable services and benefits become available 34 CFR 361.53(c)(2).

Section (I) is a clear violation of federal law and should be redrafted to comply with 34 CFR 361.54(b). In *Mosholder v. Ohio Rehab. Serv. Comm.* (1991), 75 Ohio App. 3d 134, 136, 598 N.E.2d 1271, the Court of Appeals for the Tenth District determined that the language of this rule in effect at that time, "A client shall be expected to pay for services to the extent possible." violated the federal regulations that required that if RSC chose to consider the financial need of an eligible individual it had to adopt written policies explaining the method for determining the financial need of an eligible individual; and specifying the types of vocational rehabilitation services for which it has established a financial needs test (*Mosholder* at 136-37). Except for OAC 3304-2-58(H), Ohio does not maintain any written policies covering the determination of financial need, nor does Ohio specify the type of vocational rehabilitation services for which a financial needs test is necessary.

In these trying economic times it is understandable that RSC wishes to be fiscally responsible and compel individuals to help with the cost of their vocational rehabilitation services if they can afford to do it. However, federal law clearly requires that it adopt rules that comply with 34 CFR 361.54(b)(2). These rules must exempt social security beneficiaries from the financial needs test and assure that the test is applied uniformly to all consumers.

Section (J) should include the criteria under which the Bureau Director or his designee will determine to grant exceptions to this rule and the method for requesting such exceptions.

OAC 3304-2-54 Eligibility for services, assessment, and trial work experiences.

Section (A)(4) should include the federal language that trial work experiences must be of sufficient variety and over a sufficient period of time to determine the eligibility of the individual as stated in 29 USC 722(a)(2)(B).

The definition of employment outcome in Section (A)(5) should be expanded to include self-employment, telecommuting or business ownership to comply with 29 USC 705(11)(C). This section should also specifically state that an employment outcome includes career advancement 29 U.S.C. 723(a)(18).

The Department of Education has issued a policy directive to clarify that the goal of vocational rehabilitation services is no longer to place an individual in an entry level job but the job must be at the level of the person's abilities, capabilities and informed choice which includes career advancement or upward mobility (RSA PD 97 04, August 19, 1997).

OLRS has encountered several situations where RSC staff were confused as to whether an applicant who was employed and needed services to obtain a better job was eligible for vocational rehabilitation services and this should be clarified in this rule.

OAC 3304-2-56 Conditions for providing services; and the individualized plan for employment (IPE).

The first sentence should be amended to state that the consumer will receive counseling and guidance and support services to enable the individual to exercise informed choice as required by 34 CFR 361.48(c).

Section (B) should contain a definition of the "timely manner" for IPE development as explained previously.

Section (B)(1)(a) should eliminate "for consumers in supported employment, a minimum, weekly work goal that maximizes the consumer's vocational potential at the time of transition to extended services." Federal law still defines an employment outcome for an individual in supported employment as being competitive employment in the integrated labor market. 34 CFR 361.5(b)(16 and (53)), 34 CFR 361.46(a)(1).

Section (1)(b) should include a statement that the IPE is to contain all the vocational rehabilitation services needed by the consumer to reach the employment outcome regardless of the source of payment for the service. OLRs has observed that many plans only contain the services paid for by RSC and other needed services such as therapy, transportation, interview clothes, following a diabetic or other treatment plan, etc. are often not listed. 29 USC 722(b)(2)(B) and (3)(B). Vocational Rehabilitation Services are defined as any services needed by the individual to achieve the employment outcome 29 USC 723(a), 34 CFR 361.48(t).

Additionally this section should be expanded to include the IPE requirements for an individual in supported employment as listed in 34 CFR 361.48(b). It is both OLRs and the Rehabilitation Services Administration's (RSA) observation that RSC is either under utilizing or under reporting the number of consumers who are in supported employment. Including all the federal requirements for an IPE for individuals in supported employment will hopefully eliminate this problem.

OAC 3304-2-59 Services.

OLRS suggests that in the interests of clarity this section be renamed "Vocational rehabilitation services" instead of "Services".

This rule should be revised to include all of the vocational rehabilitation services that are listed in 34 CFR 361.48 that must be included in the state plan. The following services listed in that regulation should be added to this rule:

- (c) vocational counseling and guidance
- (d) referral and other services necessary to assist applicants and eligible individuals to secure needed services from other agencies
- (f) vocational and other training services including books, tools and other training material
- (m) supported employment

Section (B)(7) should include supplies as well as occupational licenses to conform to federal law 34 CFR 361.48(p).

Section (C) should be revised to include a waiver to the prohibition on the purchase of vehicles to conform to the federal prohibition against any absolute limit on a vocational rehabilitation service 34 CFR 361.50(a).

OAC 3304-2-62 Consumer appeals.

Section (D) is not in conformity with federal law. Federal law requires that all services including evaluation and assessment services and plan development be continued pending resolution of the appeal by a hearing officer, through mediation or through the informal process 29 USC 722 (c)(7), 34 CFR 361.57(b)(4).

OAC 3304-2-67 Home Modifications.

Section (A) should be redrafted to replace "acceptable" employment outcome with the employment outcome listed on the Individualized Plan for Employment. Federal law does not provide any basis for distinguishing between an "acceptable" employment outcome and the one listed on an IPE

The last sentence of Section (A) "Home modifications should be regarded as being provided only when not providing them would make it impossible for the consumer to reach the employment outcome." should be deleted. Federal law requires that RSC provide whatever vocational rehabilitation services are necessary for an individual to reach the employment outcome that is consistent with the strengths, resources, priorities, concerns, abilities, capabilities, interests,

and informed choice of the individual, 29 USC 722(b)(3), 29 USC 723(a). If the individual needs the home modifications to reach the employment outcome, then R.S.C. has an obligation to provide it.

Section (J) should be amended to eliminate the provision that the consumer is responsible for upgrading any building code violations because federal law defines vocational rehabilitation services as any services needed to enable the individual to reach his employment outcome 29 USC 723(a), 34 CFR 361.48(t).

Section (L) should include a provision for a waiver because federal law requires that the policies not have any arbitrary limits on the nature and scope of vocational rehabilitation services 34 CFR 361.50(a)

Conclusion.

OLRS urges the Commissioners to revise the rules as outlined above. The Rehabilitation Act does permit RSC to adopt measures to address its fiscal constraints. The methods that may be adopted and conform to federal law are: an order of selection; a financial needs test that would encompass consumer contribution in a fair and equitable manner; and limits on specific vocational rehabilitation services as long as adequate provisions for waivers are incorporated into the rules. The proposed rules are not in compliance with the measures that are permitted by federal law.

OLRS would be happy to meet with RSC staff to discuss our comments and help draft language that conforms with federal law. Please contact me to schedule such a meeting. Thank you for this opportunity to comment on the rules.

Sincerely,



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