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Revised AP Date: Fall 2010
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How to Use the Learning Modules:

The learning modules are designed to provide rehabilitation personnel with relevant, applicable knowledge pertaining to the rehabilitation process. The ultimate goal is to assure that all rehabilitation personnel are adequately trained and prepared to provide high quality rehabilitation services to people with disabilities.

These modules can be utilized in a variety of ways: new counselor training (individual study or with supervisor mentoring); professional development or refresher for current rehabilitation professionals; or CRC study guides.


Steps for Successful Completion:

Content for "Steps for Successful Completion" has been deleted as this section is no longer relevant with the conclusion of TACE 8 cooperative agreement between U.S. Department of Education and the University of Northern Colorado.

Proceed to page 8.
Rehabilitation History and Legislation

Rationale

It is important for rehabilitation counselors to know, understand, and to be able to apply the key pieces of legislation impacting rehabilitation services in the United States. Knowledge of legislation is important because it affects who is determined eligible for rehabilitation services, how rehabilitation services are provided, the rights of persons with disabilities in the rehabilitation process and in the work environment, and how rehabilitation services are evaluated. The counselor who has an understanding of previous and current legislation will be better able to meet the needs of customers requesting rehabilitation services.

Goal

- To provide an overview of the history and development of the public rehabilitation program in the United States

Learning Objectives

- To gain knowledge of the significant legislation impacting the development of the public rehabilitation program in the United States
- To understand how current laws affect the lives of and delivery of services to persons with disabilities

Topics Covered

- Early history of rehabilitation in the United States
- Key legislation from 1916 to the present effecting the development of rehabilitation programs
Introduction

Prior to the latter part of the 19th Century, the care of persons with disabilities rested primarily with the family and church related institutions such as monasteries and hospices. Due to limited medical knowledge and resources, rehabilitation opportunities or attempts were rare (Rubin & Roessler, 1995). Medical advances during the latter half of the century increased survival and opportunities for medical restoration for people either born with disabilities, who would have not survived previously, or for those who acquired disabilities as a result of accident or disease.

In many ways, the development of the rehabilitation movement in the United States is directly linked to the emergence of the industrial age and the consequences of World War I. The switch from a primary rural-agrarian to an urban-industrial society highlighted the need for vocational training for those moving from the family farm to the world of industry. The industrial age brought with it an increase in the number of high-risk jobs. Industrially injured workers had virtually no recourse. Lawsuits were extremely difficult to win and vocational rehabilitation programs and workers’ compensation laws did not yet exist.

Following World War I, many veterans returned from the battlefields with disabilities that left them unable to return to their previous occupations. The large number of veterans returning from the war with disabilities, along with a new realization by government officials that persons with disabilities could be vocationally rehabilitated, led to ground breaking legislation affecting the lives of persons with disabilities (Rubin & Roessler, 1995).

Rehabilitation Acts from 1916 - 1936

National Defense Act, 1916
The National Defense Act of 1916 provided an opportunity for soldiers to receive training to increase their military competence while in the military and to facilitate their return to civilian life. This Act recognized the country’s obligation to persons injured in service of their country. In many ways, the National Defense Act was the beginning of a congressional attitude toward rehabilitation which would result in the large national program of today (Bitter, 1984).

**Smith-Hughes Act, 1917**

The Smith-Hughes Act of 1917 was passed by the 64th Congress. Also known as Public Law 347, this law established the Federal-State program in vocational education. It created the Federal Board of Vocational Education with the authority and responsibility for vocational rehabilitation of disabled veterans (Corthell, 1988). In addition, the Act provided federal assistance grants in support of vocational education to the states on a matching basis (Bitter, 1984). The programs were directed at young people migrating from rural to urban areas. The Smith-Hughes Act became the model for subsequent federal-state cooperation in social service programs.

**Smith-Sears Veterans Rehabilitation Act, 1918**

The Smith-Sears Veterans Rehabilitation Act of 1918, also known as the Soldier Rehabilitation Act, established a program of vocational rehabilitation for soldiers disabled on active duty. The program was put under the administrative aegis of the Federal Board for Vocational Education. To be eligible for benefits, applicants for the program had to be unable, because of their disability, to engage “successfully” in “gainful employment.” The Smith-Hughes and Smith-Sears Acts effectively committed the federal government to the provision of services to disadvantaged and disabled persons.

**Smith-Fess Act, 1920**
The Smith-Fess Act of 1920, also known as the Vocational Rehabilitation Act, authorized the establishment of a state-federal vocational rehabilitation program for civilians. The Smith-Fess Act, Public Law 236, authorized limited services for individuals with physical disabilities. These services included vocational guidance, training, occupational adjustment, prostheses, and placement services, all of which had to be specifically linked to a vocational objective and could not include physical restoration or “socially oriented” rehabilitation. The Act included homemaking as a legitimate occupation (Bitter, 1984). Furthermore, it provided federal funds to states on a 50 - 50 matching basis which created a strong incentive for states to pass similar legislation (Rubin & Roessler, 1995).

**Social Security Act, 1935**

The Social Security Act of 1935 was the first permanent base for the federal vocational rehabilitation program (Bitter, 1984). It provided for continuous authorization, increased grants, and increased support from the federal government. It also allowed partial reimbursement by the federal government to the states for assistance given to those individuals with severe visual impairments. “In establishing the permanency of rehabilitation, Congress acknowledged vocational rehabilitation of persons with disabilities as ‘a matter of social justice, a permanent on-going public duty that should not depend on periodic determination of deservability’” (Rubin & Roessler, 1995, p. 30).

**Randolph-Sheppard Act, 1936**

The Randolph-Sheppard Act of 1936 authorized states to license qualified persons with severe visual impairments to operate vending stands in federal buildings. It also set the precedent for many states to make similar arrangements in state-owned buildings with assistance and supervision from a public agency (Bitter, 1984).
Vocational Rehabilitation Act Amendments

Vocational Rehabilitation Act Amendments, 1943

World War II resulted in significant growth of the rehabilitation movement (Rubin & Roessler, 1995). The war created an increased demand for industrial products necessary to maintain the war effort. At the same time, there was a severe labor shortage which afforded persons with disabilities an opportunity to enter the work force and to demonstrate to employers that the presence of a disability did not preclude effective job performance.

The Vocational Rehabilitation Act Amendments of 1943 supported the effort to get persons with disabilities into the work force and made changes in the federal-state program of rehabilitation. Vocational rehabilitation was defined to include any services necessary for a person with a disability to become employed (Bitter, 1984). Through the Vocational Rehabilitation Act Amendments, federal-state rehabilitation program services were extended to persons with mental retardation and mental illness. Additionally, the amendments expanded the types of physical restoration services that could be given to persons with physical disabilities. However, financial need was a major eligibility criterion for surgical care, hospital costs, and maintenance payments during the rehabilitation process. The amendments also fostered separate agencies for general rehabilitation and rehabilitation of persons with blindness to be monitored under one federal agency (Bitter, 1984).

Vocational Rehabilitation Act Amendments, 1954

The Vocational Rehabilitation Act Amendments of 1954 made three significant provisions for expanding services to individuals with mental retardation or mental illness: 1) research and demonstration grants, 2) extension and improvement grants, and 3) rehabilitation facility development (Rubin & Roessler, 1995). The long-range effect of Public Law 565 was to
increase the numbers of persons with mental illness or mental retardation served through the rehabilitation process.

**Vocational Rehabilitation Act Amendments, 1965**

The Vocational Rehabilitation Act Amendments of 1965 created a broader base of services to persons with disabilities, including persons with socially handicapping conditions such as deviant social behavior, alcoholism, lack of education, and prison records (Bitter, 1984). The 1965 Amendments also allowed extended client evaluation to determine whether there was a reasonable expectation that rehabilitation services would be appropriate in order for the person with a disability to become employable. “The intent was to allow rehabilitation counselors to take more risks in serving persons with vocational disabilities, thereby serving more people with severe disabilities” (Corthell, 1988, p. 3). Educational benefits were extended to a maximum of four years under the new legislation. Rubin & Roessler (1995) note that the 1965 Vocational Rehabilitation Act Amendments also mandated the following:

1. An increase to $3 of federal funds for each state dollar (this 75-25 ratio was further increased by legislation in 1968 to 80-20) and a doubling of the federal appropriation for the federal-state program.
2. Elimination of economic need as a prerequisite for the provision of any vocational rehabilitation services. States could, however, require economic-need tests for some services (i.e., training and physical restoration).
3. Provision of federal funds to help construct new rehabilitation centers and workshops (matching funds with the federal share ranging from one-third to two-thirds).
4. Provision of special statewide planning grants to help states develop service delivery systems that would reach all handicapped citizens in the state (p. 37). The Vocational Rehabilitation Act was again amended in
1967 to provide rehabilitation services for migratory workers, to eliminate the state residency requirement, and to support the construction and operation of the National Center for Deaf/Blind Youth and Adults.

**Vocational Rehabilitation Act Amendments, 1968**

Amendments to the Vocational Rehabilitation Act in 1968 added follow-up services for maintaining a person with a disability in employment and provided for services to family members. The amendments also included:

1. A change in the federal-state matching ratio for appropriations from 75/25 to 80/20;
2. Approval to expend funds for new construction of rehabilitation facilities;
3. Permission to amend state plans so one state agency could share funding and administration responsibility with another in carrying out a joint project; and
4. Authorization to provide vocational evaluation and work adjustment services to persons disadvantaged by reason of age, education, ethnicity, or other factors (Bitter, 1984).

**Rehabilitation Act, 1973**

The Rehabilitation Act of 1973, Public Law 112, came during a time of great social change and unrest. “In the 1970’s, a new force, the rapidly emerging disability consumer movement, exerted a significant influence on rehabilitation legislation” (Rubin & Roessler, 1995, p. 41). According to Rubin & Roessler (1984) persons with disabilities, inspired by the consumer rights movement of the 1960’s, learned that they did not have to be passive recipients of rehabilitation services.
The Rehabilitation Act of 1973 reflected five major themes. First, serve individuals with severe disabilities. The Act emphasized priority service for persons with the most severe disabilities and mandated state agencies to establish an order of selection that would place the most severely disabled person first for service as part of the state plan (Bitter, 1984).

Second, promote consumer involvement. Under the Rehabilitation Act of 1973, every client accepted for services was to participate with the counselor in the service planning process by completing an Individualized Written Rehabilitation Program (IWRP). The IWRP would specify the vocational goal and key supporting objectives, such as physical restoration, counseling, educational preparation, work adjustment, and vocational training. The IWRP also specified evaluation criteria for each objective.

Third, stress program evaluation. The Act called for the development of a set of standards by which the impact of rehabilitation services could be assessed. This mandate meant that state rehabilitation agencies would be held accountable for providing information on:

a. The percentage of the existing target population being served,
b. The timeliness and adequacy of their services,
c. The suitability of the employment in which clients were placed, and
d. Client satisfaction with rehabilitation services (Rubin & Roessler, 1995).

Fourth, provide support for research. The Rehabilitation Act of 1973 re-emphasized the need for rehabilitation research including both vocational and independent living emphases. The Act also promoted research on special disability groups such as persons with spinal cord injuries, end-stage renal disease, and deafness (Rubin & Roessler, 1995).
Fifth, advance the rights of persons with disabilities. The passage of the Civil Rights Act of 1964 and the Voting Rights Act of 1965 gave equal opportunity to minorities but failed to mention people with disabilities. “The exclusion of people with disabilities served to stimulate the advocates for the disabled toward pursuing national legislation that ensured their rights” (Corthell, 1988, p. 6). As a result, the disability community actively lobbied for the inclusion of civil rights provisions in the Rehabilitation Act of 1973. These provisions, found in Title V of the Act, included the following:

1. Section 501: Affirmative Action in Federal Hiring which mandated non-discrimination in the government’s own hiring practices;
2. Section 502: Accessibility which focused on the enforcement of standards set under the Architectural Barriers Act of 1968;
3. Section 503: Affirmative Action by Federal Contract Recipients which prohibited discrimination in employment on the basis of physical or mental disabilities on the part of businesses with federal contracts or their subcontractors;
4. Section 504: Equal Opportunities which prohibited discrimination on the basis of physical and mental disabilities in programs receiving federal funds (Corthell, 1988).

Rehabilitation Act Amendments, 1978


According to Bitter (1984) the major features of the amendments include the following:

1. Authorization of an annual increase in appropriations for the basic state grant program based on increases in the cost of living;
2. An increase in the minimum state allotment of funds to $3 million;
3. Authorization of a comprehensive program of independent living services for severely handicapped persons;
4. Authorization of community service employment programs for handicapped individuals;
5. Authorization of a National Institute of Handicapped Research; and
6. A change in the definition for developmental disabilities from a categorical one to a functional one for any disability occurring before age 22 (pp. 22-23).

The passage of the Rehabilitation Act Amendments of 1978 marked the emergence of the Independent Living movement. Independent living can be defined as “the ability of a person with a severe disability to participate actively in society, to work, to own a home, to raise a family, and to participate to the fullest extent possible in activities of daily living” (Corthell, 1988, p. 7). Additionally, independent living means “the ability to exert control over one’s life based on the choice of acceptable options to minimize reliance on others in making decisions and in performing everyday activities” (Corthell, 1988, p. 7).

1984 Amendments to the Rehabilitation Act

On February 22, 1984 the Client Assistance Program (CAP) was established as a mandatory program by Public Law 98-221, referred to as the 1984 Amendments of the Rehabilitation Act of 1973, as amended. The law states that each state and territory must operate a CAP as a condition for receiving payments from its allotment under Section 110 of the Act and that the Secretary of Education shall make grants to states to carry out Client Assistance Programs.

Under this legislation, CAPs would provide assistance in informing and advising all clients and client applicants of all available benefits under the Act, including assistance in
their relationship with projects, programs, and facilities providing legal, administrative, or other appropriate remedies to ensure the protection of the rights of individuals under the Act.

This new legislation expanded the role and scope of CAPs as presented in the Rehabilitation Act of 1973 and mandated the following activities to the CAPs:

- Helping clients or client applicants to understand rehabilitation services programs under the Act;
- Advising clients or client applicants of all benefits available to them through the rehabilitation programs authorized under the Act and related federal and state assistance programs; and advising clients or client applicants of their rights and responsibilities in connection with those benefits;
- Assisting clients and client applicants in their relationship with projects, programs, and facilities providing rehabilitation services under the Act;
- Helping clients or client applicants by pursuing, or assisting them in pursuing legal, administrative, and other available remedies when necessary to ensure the protection of their rights under the Act;
- Advising state and other agencies of identified problem areas in the delivery of rehabilitation services to individuals with disabilities and suggesting methods and means of improving agency performance; and
- Providing information to the public concerning the Client Assistance Program.

**Rehabilitation Act Amendments, 1986**

The Rehabilitation Act Amendments of 1986 contained a number of new mandates. “These mandates tended to reflect both advances in technology related to the needs of persons with disabilities and the need to either strengthen old programs or provide new programs directed at increasing the employability of persons with disabilities and their fuller participation in everyday life” (Rubin & Roessler, 1995, p. 75). The amendments added support for
rehabilitation engineering, individual client rights, Native American Indian rehabilitation services, and supported employment. Rehabilitation engineering was defined as a systematic application of technologies to help individuals with disabilities to overcome barriers in education, rehabilitation, and independent living (Corthell, 1988).

The Rehabilitation Act Amendments of 1986 also provided the groundwork for supported employment. Supported employment opportunities allowed persons with severe disabilities, not traditionally served by vocational rehabilitation services, to maintain employment with ongoing assistance from community agencies, job coaches, and/or other supportive personnel.

The Americans with Disabilities Act, 1990

On July 26, 1990, President Bush signed into law the Americans with Disabilities Act (ADA), Public Law 101-336. This Act gave citizens with disabilities civil rights and protections that had been granted to women and minorities under the Civil Rights Act of 1964 (Jenkins, Patterson, & Szymanski, 1992).

The passage of the ADA was strongly influenced by staggering information collected by Congress concerning the ways that persons with disabilities were segregated and discriminated against in society. On the basis of vast amounts of testimony on the experience of persons with disabilities in American society, Congress concluded the following in one of the opening sections (42 USC 12101) of the ADA:

1. Some 43,000,000 Americans have one or more physical or mental disabilities, and this number is increasing as the population as a whole is growing older.
2. Historically, society has tended to isolate and segregate individuals with disabilities, and, despite some improvements, such forms of discrimination against individuals with disabilities continue to be a serious and pervasive social problem.
3. Discrimination against individuals with disabilities persists in such critical areas as employment, housing, public accommodations, education, transportation, communication, recreation, institutionalization, health services, voting, and access to public services.

4. Unlike individuals who have experienced discrimination on the basis of race, color, sex, national origin, religion, age, individuals who have experienced discrimination on the basis of disability have often had no legal recourse to redress such discrimination.

5. Individuals with disabilities continually encounter various forms of discrimination, including outright intentional exclusion, the discriminatory effects of architectural, transportation, and communication barriers, over-protective rules and policies, failure to make modifications to existing facilities and practices, exclusionary qualification standards and criteria, segregation, and relegation to lesser services, programs, activities, benefits, jobs, or other opportunities.

6. Census data, national polls, and other studies have documented that people with disabilities, as a group, occupy an inferior status in our society, and are severely disadvantaged socially, vocationally, economically, and educationally.

7. Individuals with disabilities are a discrete and insular minority who have been faced with restrictions and limitations, subjected to a history of purposeful unequal treatment, and relegated to a position of political powerlessness in our society, based on characteristics that are beyond the control of such individuals and resulting from stereotypic assumptions not truly indicative of the individual ability of such individuals to participate in, and contribute to, society.

8. The Nation’s proper goals regarding individuals with disabilities are to assure equality of opportunity, full participation, independent living, and economic self-sufficiency for such individuals.

   The continuing existence of unfair and unnecessary discrimination and prejudice denies people with disabilities the opportunity to compete on an equal basis and to pursue
those opportunities for which our free society is justifiably famous, and costs the United
States billions of dollars in unnecessary expenses resulting from dependency and no
productivity. (Sec. 2.).

Under ADA, disability is defined as “(a) a physical or mental impairment that
substantially limits one or more of the major life activities of such an individual; (b) a record
of such an impairment; or (c) being regarded as having such an impairment” (Rubin &
Roessler, 1995,p. 86). This definition of disability includes people with HIV/AIDS. It also
includes individuals with a record of disability, such as those who have overcome mental
illnesses or drug or alcohol abuse problems, and those who are receiving treatment in
rehabilitation programs (Rubin & Roessler, 1995).

The ADA consists of five titles. The purpose of Title I is to ensure equal access to
employment opportunities for qualified individuals with a disability. Title II provides for the
prohibition of discrimination on the basis of disability in the programs and activities of state
and local governments. Title III prohibits discrimination on the basis of disability that would
prevent persons with disabilities from having full and equal access to goods and services
through businesses or facilities. Title IV provides for increased access to
telecommunications. Title V contains a number of miscellaneous provisions. The key
provisions and major stipulations of ADA are summarized in the following table, adapted from
(Jenkins et al. 1992, pp. 24-25).

The Americans with Disabilities Act Amendments of 2008

On September 25, 2008, President Bush signed into law The Americans with Disabilities Act
Amendment Act (ADAAA) of 2008. The ADAAA “revises the definition of ‘disability’ to more
broadly encompass impairments that substantially limit a major life activity. The amended
language also states that mitigating measures, including assistive devices, auxiliary aids,
accommodations, medical therapies and supplies (other than eyeglasses and contact lenses)
have no bearing in determining whether a disability qualifies under the law. Changes also clarify coverage of impairments that are episodic or in remission that substantially limit a major life activity when active” (United States Access Board, 2008, “The ADA Amendments Act of 2008”, para. 1).

The new law also amends the meaning of “disability” in the rehabilitation act of 1973, specifically, section 504. Some students who did not qualify under Section 504 in the past, or who were not eligible for services and supports under the Individuals with Disabilities Education ACT (IDEA) may now qualify under the 504 provisions. For students who are currently receiving services under Section 504 may now qualify for additional supports, services, auxiliary aids, and/or accommodations in public schools. Although the scope of “disability” has broadened considerably, the new law does not require the Department of Education to amend its section 504 regulations. This act went into effect January 1, 2009.
## Key Provisions of the Americans with Disabilities Act

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<th>PROVISION</th>
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<tr>
<td>Title I – Equal Employment Opportunity</td>
<td>Employers may not discriminate against an individual with a disability in hiring and promotion if the person is otherwise qualified of the job.</td>
<td>July 26, 1992, for employers with 25 or more employees.</td>
</tr>
<tr>
<td>Title I – Equal Employment Opportunity</td>
<td>Employers will need to provide reasonable accommodation, including job restructuring and modification if required, unless such accommodations impose undue hardship.</td>
<td>July 26, 1994, for employers with 15 or more employees</td>
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<tr>
<td>Title II – Public Service</td>
<td>State and local governments may not discriminate against qualified individuals with disabilities.</td>
<td>January 26, 1992</td>
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<td>Title II – Public Service</td>
<td>All Government facilities, services, and communications must be accessible.</td>
<td>January 26, 1992</td>
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<tr>
<td>Title II – Public Service</td>
<td>Transit authorities must provide comparable paratransit or special transportation to individuals with disabilities who cannot use fixed routes, unless undue burden would result.</td>
<td>January 26, 1992</td>
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<td>TITLE</td>
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<td>Title II – Public Service</td>
<td>New bus and train stations must be accessible</td>
<td>January 26, 1992</td>
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<tr>
<td>Title II – Public Service</td>
<td>New public buses must be accessible</td>
<td>Orders placed after August 26, 1990</td>
</tr>
<tr>
<td>Title II – Public Service</td>
<td>New rail cars must be accessible</td>
<td>Orders placed after August 26, 1990</td>
</tr>
<tr>
<td>Title II – Public Service</td>
<td>Existing rail systems must have one accessible car per train.</td>
<td>July 26, 1995</td>
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<tr>
<td>Title II – Public Service</td>
<td>Key stations in rapid, light and commuter rail systems must be made accessible.</td>
<td>July 26, 1993, with extensions up to 20 years for commuter rail and 30 years for rapid and light rail</td>
</tr>
<tr>
<td>Title II – Public Service</td>
<td>All existing Amtrak stations must be accessible</td>
<td>July 26, 2010</td>
</tr>
<tr>
<td>Title III – Privately Operated Public Accommodations</td>
<td>Restaurants, hotels, retail stores, and other private entities may not discriminate against individuals with disabilities.</td>
<td>January 26, 1992</td>
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<tr>
<td>Title III – Privately Operated Public Accommodations</td>
<td>Auxiliary aids and services must be provided unless undue burden would result.</td>
<td>January 26, 1992</td>
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<tr>
<td>TITLE</td>
<td>PROVISION</td>
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<tr>
<td>Title III – Privately Operated Accommodations</td>
<td>Physical barriers must be removed, or if such is not feasible, alternative methods of providing services must be offered if they are readily achievable.</td>
<td>January 26, 1992</td>
</tr>
<tr>
<td>Title III – Privately Operated Public Accommodations</td>
<td>All new construction and alteration of facilities must be accessible.</td>
<td>January 26, 1993</td>
</tr>
<tr>
<td>Title IV – Telecommunications</td>
<td>Telephone companies must offer telephone relay services to individuals who use telecommunication devices.</td>
<td>July 26, 1993</td>
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Rehabilitation Act Amendments, 1992

The Rehabilitation Act Amendments of 1992 included a “restatement of the priority placed on employment outcomes for people with disabilities, a continuing commitment to independent living services, and a strengthening of client involvement in the entire rehabilitation process from individual program development to overall direction of agency programming” (Rubin & Roessler, 1995, p. 77). The provisions of the 1992 Amendments include a strong emphasis on client rights, particularly informed consent and choice. The amendments require that the individual or appropriate representative be provided a copy of the IWRP and any amendments, and that all amendments or revisions do not take effect until agreed upon in writing by the individual or the appropriate representative. Under the new law, the proposed time standard for which an individual shall maintain employment was increased from 60 to
90 days in order to be considered to have achieved an employment outcome (Code of Federal Regulations, 34 CFR, Part 361.56).

The amendments supported previous eligibility criteria for rehabilitation services but they do enable each state to establish an order of selection for those services. In addition, the 1992 Amendments authorized research and development funds, expanded access to rehabilitation services for individuals through enhancing inter-agency collaboration, and supported increased access to services for minority clients.

A new requirement set forth in the Rehabilitation Act Amendments of 1992 was the establishment of the State Rehabilitation Advisory Council. The law stipulates requirements for membership, appointment, length of term, and council operation. The law also states that a majority of council members shall be individuals with disabilities. The three primary functions performed by the council include:

1. Review, analyze and advise the state rehabilitation unit regarding the performance of its duties, especially with regard to eligibility, order of selection, and the extent, scope, and effectiveness of services.
2. At the discretion of the state unit, assist in the preparation of applications, plans, and amendments to plans, reports, needs assessments, and evaluations.
3. Conduct, review, and analyze studies of consumer satisfaction with agency functions and services (Rehabilitation Act Amendments of 1992, Sec. 105).

Another significant component of the Rehabilitation Act Amendments of 1992 was the requirement for a comprehensive system of personnel development (CSPD) to describe the procedures and activities to be undertaken by the rehabilitation agency to ensure an adequate supply of qualified rehabilitation personnel (Rehabilitation Act Amendments of
1992, Sec 101 (7) (A), (B)). One of the new CSPD requirements was the establishment and maintenance of standards to ensure adequate preparation and training of staff. Another CSPD requirement called for the agency to outline the steps to be taken to hire or retrain personnel so that personnel meet appropriate professional requirements. This particular piece of legislation has and will continue to have dramatic impact upon rehabilitation hiring policy and practice. Interestingly, the regulations for the 1992 Amendments were not released until February 1997.

The status of and opportunities for Americans with disabilities have changed dramatically since the early days of the rehabilitation movement. The passage of key pieces of legislation has improved, for the most part, the lives of persons with disabilities. However, Rubin and Roessler (1995) view the future for Americans with disabilities with guarded optimism, saying, “A major question at this point in time is whether the ADA will be enforced with sufficient vigor to make a major difference in the extent that persons with disabilities are integrated in American society” (p. 102).

Rehabilitation Act Amendments of 1998

On August 7, 1998, President Clinton signed into law The Rehabilitation Act Amendments of 1998 as part of the Workforce Investment Act (WIA) of 1998, thus amending and extending for five years, the authorization of the Rehabilitation Act of 1973 (the Act). The Amendments placed emphasis on:

- Expanding the exercise of informed choice by individuals with disabilities;
- Streamlining administrative procedures to improve program efficiency and access to services;
- Increasing opportunities for high quality employment outcomes;
- Increasing reporting requirements of state agencies while reducing state plan assurances and eliminating some requirements such as strategic plans.
• Ensuring due process;
• Linking the VR program to a state’s workforce investment system (RSA-IM-98-20, p. 2);
• Using a trial work experience in all instances where an individual is considered to be ineligible for services because of the severity of disability;
• Adding a new requirement that individuals who are receiving SSI or SSDI will be presumed eligible for vocational rehabilitation services;
• Renaming the Individualized Written Rehabilitation Program (IWRP) to the Individualized Plan for Employment (IPE) and modifying the eligible individual’s collaborative role in the plan development process;
• Renaming the State Rehabilitation Advisory Council (SRAC) to the State Rehabilitation Council (SRC), expanding the council membership requirements, and changing the Council’s role from advisory to one of partnership with the Designated State Unit (DSU) in developing program goals and priorities, and evaluating program effectiveness (RSA-IM-98-20).

One of the most notable changes to the VR system made in the 1998 Amendments is the renaming of the Individualized Written Rehabilitation Plan (IWRP) to the Individualized Plan for Employment (IPE) to further emphasize the focus of the VR program in employment. The IPE includes new provisions “to both enhance the collaborative relationships between the eligible individual and the qualified vocational rehabilitation counselor with respect to the development, implementation and evaluation of the IPE and to support the exercise of informed choice of the individual in the selection of the IPE’s employment outcome, specific services, service providers, and the methods to procure services” (RSA-IM-98-23, 1998, p. 3). Changes are also made with respect to IPE content and implementation.

A second major change made by the 1998 Amendments is the simplification of eligibility determinations by establishing presumptive eligibility for disabled individuals, who are recipients of Supplementary Security Income (SSI) or beneficiaries of Social Security
Disability Insurance (SSDI) payments, and who intend to achieve an employment outcome. “While this provision does not establish an entitlement to VR services for SSI and SSDI beneficiaries, it does recognize that these individuals have already been determined by the stringent criteria applied by the Social Security Administration to be among the most severely disabled individuals who apply for VR services” (RSA-IM-98-20, 1998, p. 4).

The 1998 Amendments also eliminate the need for an extended evaluation prior to determining that an individual with a significant (severe) disability was ineligible for VR services. The Amendments replace that requirement with the provision for the use of trial work experiences, including on-the-job supports and/or training, before the State VR agency can determine that an individual cannot benefit from VR services due to the severity of the individual's disability (RSM-IM-98-20, 1998).

Finally, the 1998 Amendments consolidate into one place all provisions related to choice and require that policies and procedures be established to ensure that individual choice is exercised throughout the rehabilitation process and that appropriate accommodations are in place to facilitate the choice requirement (RSM-IM-98-23, 1998, p. 6).
Final Regulations Implementing the 1998 Rehabilitation Act
Amendments, 2001

On January 17, 2001 the 34 CFR part 361 Final Regulations implementing the 1998 Amendments to the Rehabilitation Act were released. These regulations made several significant changes in the operation of the State Vocational Rehabilitation Services Program. A summary of the major changes follows.

I. NEW AND REVISED DEFINITIONS

Revised definitions, related to the workforce and vocational rehabilitation services programs, were added under 34 CFR 361.5. Newly amended terms included “local workforce investment board,” “state workforce investment board,” “statewide workforce investment system,” “fair hearing board,” “physical or mental impairment,” and “qualified and impartial mediator.”

The January 22, 2001 34 CFR part 361 addition to the State Vocational Rehabilitation Services program regulations provided additional requirements related to the terms “employment outcome,” and “extended employment.”

Employment Outcome was defined in 34 CFR 361.5 as “with respect to an individual, entering or retaining full-time, or if appropriate, part-time competitive employment in the integrated labor market, supported employment, or any other type of employment in an integrated setting, including self-employment, telecommuting, or business ownership, that is consistent with an individual’s strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice.”
**Extended Employment** was defined as “work in a non-integrated or sheltered setting for a public or private nonprofit agency or organization that provides compensation in accordance with the Fair Labor Standards Act.”

These new definitions eliminated the “sheltered or extended employment” options as a successful rehabilitation outcome. In addition, the regulations added the requirement for State VR Program referral to local extended employment providers, an individual with a disability who makes an informed choice to pursue extended employment as an employment goal.

It further stipulated that before making the referral, the State VR Program must:

1. Explain that the rehabilitation purpose is to assist individuals to achieve an employment outcome in an integrated setting;
2. Provide the individual with information about other employment options including vocational rehabilitation services in integrated settings;
3. Inform the individual that vocational rehabilitation services can be provided to eligible individuals in extended employment to train or prepare them for employment in an integrated setting;
4. Inform the individual that if he or she chooses not to pursue integrated employment, he or she can seek services from the designated State VR Program at a later date, if at that time, he or she chooses to pursue employment in an integrated setting; and
5. Refer the individual to the Social Security Administration (SSA) to obtain information regarding the individual’s ability to work while receiving SSA benefits (34 CFR 361.37).

**II. CHANGES TO THE VOCATIONAL REHABILITATION SERVICES PROGRAM**
The regulations set forth a number of revisions and new requirements. These changes and additions included:

A. STREAMLINED STATE PLAN REQUIREMENTS: (34 CFR 361.10)

Many non-statutory State plan requirements were deleted including purely regulatory State plan requirements. In addition, three options for submitting the VR state plan in conjunction with related Workforce Investments Act (WIA) provisions were specified, and a limited number of new State plan requirements were added by the 1998 Amendments.

B. STATE REHABILITATION COUNCIL (SRC): (34 CFR 361.17)

New requirements for SRC operations were as follows:

- Membership was expanded to include a representative of directors of American Indian VR projects (in states that have projects), at least one representative of the State Special Education Agency, and at least one representative of the State Workforce Investment Board.
- Clarified the role of the designated State VR program Director as ex-officio and non-voting member.
- Exempted CAP and American Indian VR projects from the two-term limitation.
- Requires the Council to consult with the State Workforce Investment Board, and
- Requires Council, in partnership with the State VR program, to develop, agree to, and review State goals and priorities, evaluate the effectiveness of the VR program, and submit progress reports to the Secretary.

C. COORDINATION WITH EDUCATION: (34 CFR 361.22)

- The Regulations require coordination between VR and Special Education where VR agencies are to develop an Individualized Plan for Employment (IPE) on a VR eligible student as soon as possible before the student leaves the school setting; and
• The VR agency is to assist special education programs with early transition planning and in developing IPE’s without determining whether the student is VR eligible or developing an IPE.

D. ORDER OF SELECTION: (34 CFR 361.36)

The regulations added the requirement that individuals who do not meet the State’s order of selection criteria for receiving services be provided access to the State VR Program’s information and referral system.

E. INFORMATION AND REFERRAL: (34 CFR 361.37)

The regulations add several new criteria for the VR information and referral program including procedures for referring individuals to the components of the statewide workforce system best suited to meet the individual’s employment needs.

The State VR Program is also required to refer individuals who choose extended employment to local providers of extended employment services. Prior to referral the State VR Program must provide information to the individual regarding the VR program, integrated employment options, and circumstances in which the individual may return for VR services to pursue an integrated employment outcome.

F. ASSESSMENT FOR DETERMINING ELIGIBILITY AND PRIORITY FOR SERVICES: (34 CFR 361.42)

1. Eligibility Determinations:

The regulations under paragraph (2)(1) specifies that qualified personnel must determine the existence of an impairment and whether the impairment results in a substantial impediment to employment. It also requires that a qualified VR counselor, employed by the State VR Program must determine whether the individual requires VR services to achieve an employment outcome.
2. **Presumed Eligibility for SSI Recipients and SSDI Beneficiaries:**

Paragraph (a) (3) of the regulations specifies that recipients and beneficiaries are presumed to be eligible for VR services since they have satisfied stringent assessments by SSA. It also stipulates that the State Rehabilitation program must verify the applicant's eligibility for SSI and/or SSDI benefits. An additional requirement specifies that an individual’s completion of the VR application process demonstrates the individual’s intent to achieve an employment outcome. Finally, the regulations clarify that the new requirements for recipients and beneficiaries do not create entitlement to VR services.

3. **Trial Work Experiences: (34 CFR 361.42 (e)):**

If the VR Program believes that an applicant is incapable of benefiting from VR services in terms of an employment outcome due to the severity of the individual’s disability, trial work experiences in real work settings must be provided by the State VR Program to determine whether or not there is clear and convincing evidence to support such a determination. In providing the trial work experience the State VR Program must provide the following:

- Develop a plan for assessing an individual’s ability to perform in realistic work settings;
- Trial work must occur in the most integrated setting possible, consistent with the informed choice of the individual;
- Trial work experiences may include supported employment, on-the-job training or other experiences using realistic work settings;
- Trial work experiences must offer sufficient variety over a sufficient period of time for the State VR Programs to determine (a) that there is sufficient evidence to conclude that the individual can benefit in terms of an employment outcome, or (b) there is clear and convincing evidence the individual is incapable of benefiting from VR services in terms of an employment outcome due to the severity of the individual’s disability.
G. DEVELOPMENT OF THE INDIVIDUALIZED PLAN FOR EMPLOYMENT (IPE): (34 CFR 361.45, 46)

Several changes to the IPE requirements were made in the regulations.

Changes made with respect to development of the IPE specified:

- That the eligible individual has expanded options for developing the IPE:
  
  without assistance;
  
  with assistance of a qualified VR counselor, who may not be employed by the State VR Program; or
  
  with assistance from additional resources outside the State VR Program;

- That the State VR Program must provide specific information regarding the IPE development process and options to the individual;

- That opportunities of individual informed choice should be exercised in the selection of the employment settings and the setting where VR services are provided;

- That the requirements for a long-term vocational goal and intermediate objective were removed; and

- That the IPE and any amendments do not take effect until agreed to and signed by the eligible individual.

H. INFORMED CHOICE: (34 CFR 361.52)

The regulations emphasized the requirement that applicants and eligible individuals must be able to exercise informed choice throughout the rehabilitation process.

I. FINANCIAL NEEDS TESTS: (34 CFR 361.54)
The list of services exempted from the State financial needs test was expanded to include interpreter services for individuals who are deaf or hard of hearing, reader services for individuals who are blind, personal assistance services, auxiliary aids or services, and any service afforded an individual under Section 504 of the Rehabilitation Act or the Americans with Disabilities Act (ADA), in order for the individual to participate in the VR program. An additional requirement prohibits the State VR Program from applying financial needs tests to individuals receiving SSI or SSDI.

**J. DUE PROCESS AND MEDIATION: (34 CFR 361.57)**

Under this section, State VR Programs are required to establish mediation procedures to resolve disputes in a timelier and less confrontational manner, and to reduce the number of formal, adversarial hearings. Other segments of this section include:

- Prohibits use of mediation as a means to deny or delay an individual’s right to a hearing;
- Allows mediators to terminate mediation;
- Extends the time period in which a hearing must be conducted from 45 to 60 days from the individual’s request for a review of a State VR Program decision;
- Provides States the option of developing administrative review procedures where individuals can seek review of hearing officer decisions by a State agency (not the State VR Program) or the Office of the Governor; and
- Adds a statutory requirement that parties to disputes regarding the provision of VR services may challenge the final agency decision in civil court.

**The Ticket to Work and Work Incentives Improvement Act of 1999 and The 2001 Final Regulations Implementing the Ticket to Work and Self-Sufficiency Program**
**Background:**

The Ticket to Work and Work Incentives Improvement Act (TWWIIA) of 1999 was passed by Congress which authorized the Ticket to Work program to provide Social Security program beneficiaries with disabilities with expanded options to access employment services, vocational rehabilitation services, or other support services. Under this program the Social Security Administration (SSA) will pay providers of those services after the beneficiaries achieve specified levels of work.

Impetus for this legislation was created by a number of issues surrounding the employment of individuals with disabilities. Three primary issues of concern were:

- A National Organization on Disability/Harris Survey of 1998 found that only 29 percent of individuals with disabilities were employed full or part-time.
- The number of individuals receiving Social Security disability benefits rose 80 percent from calendar year 1980 to calendar year 1999.
- A Government Accounting Office study determined that less than one percent of Social Security Disability Insurance (SSDI) and Supplemental Security Income (SSI) beneficiaries leave the Social Security and SSI rolls each year as a result of paid employment and of those that leave, about one third return for benefits within three years (Ticket to Work Regulations, 2001, p. 2).

On December 28, 2001 the Ticket to Work and Self-Sufficiency Program (Ticket to Work program) regulations took effect. The regulations are intended to expand the options available for Social Security disability beneficiaries and disabled or blind SSI beneficiaries to access vocational rehabilitation (VR) services, employment services, and other support services necessary for beneficiaries to obtain, regain or maintain employment that reduces their dependency on cash benefits.
In addition, the regulations are intended to remove some of the disincentives beneficiaries face when they attempt to work or increase their work effort if they are already working (Ticket to Work Regulations, 2001, p. 2).

**Purpose: TWWIIA Act of 1999:**

Major purposes of the TWWIIA Act of 1999 are identified to:

- Provide health care and employment preparation and placement services to individuals with disabilities that will enable those individuals to reduce their dependence on cash benefit programs;
- Encourage states to adopt the option of allowing individuals with disabilities to purchase Medicaid coverage that is necessary to enable such individuals to maintain employment;
- Provide individuals with disabilities the option of maintaining Medicare coverage while working; and
- Establish a “Ticket to Work and Self-Sufficiency Program” that allows Social Security disability and disabled or blind SSI beneficiaries to seek employment support services needed to obtain, regain or maintain employment and reduce their dependence on cash benefit programs.

In addition, the Ticket to Work program is designed to expand the universe of service providers available to individuals with disabilities who are seeking employment services, vocational rehabilitation services, and other support services to assist them in obtaining, regaining, and maintaining self-supporting employment (Ticket to Work Regulations, 2001, p. 3).

Under the Ticket to Work program, tickets are mailed to Social Security disability beneficiaries and disabled and blind SSI beneficiaries. Each beneficiary has the option of using his or her ticket to obtain services from a provider known as an employment network.
(EN). The beneficiary chooses the EN, and the EN provides employment, vocational rehabilitation services, and other support services to assist the beneficiary in obtaining, regaining and maintaining self-supporting employment. Beneficiaries may also take their ticket to their State vocational rehabilitation agency for services.

**Other Features:**

Other important features of the TWWIIA Act of 1999 are outlined in the SSA Fact Sheet on the TWWIIA Act of 1999. These features include:

1. **Expanded Availability of Health Care Services:**

   Started October 1, 2000, the law expands Medicaid and Medicare coverage to more people with disabilities who work. States may provide Medicaid coverage to more people who are still working. States also may permit working individuals with income above 250 percent of the federal poverty level to purchase Medicaid coverage. This provision creates an experiment in which medical assistance will be provided to workers with impairments who are not yet too disabled to work. In addition, a Medicaid Infrastructure Grant program is available to support State efforts to increase employment options for people with disabilities.

   The law also expands Medicare coverage to people with disabilities who work. It extends part a premium-free coverage for four-and-a-half years beyond the current limit (39 months) for most Social Security disability beneficiaries who work. To apply for the expanded coverage, the beneficiary must have exceeded the current limit.

2. ** Expedited Reinstatement of Benefits:**
Ever since January 1, 2001, when a person’s Social Security or SSI disability benefits have ended because of earnings from work, he or she is able to request reinstatement of benefits, including Medicare and Medicaid, if applicable, without filing a new application.

Beneficiaries must be unable to work because of their medical condition. They must file the request for reinstatement with Social Security within 60 months from the month their benefits are terminated. In addition, they may receive temporary benefits - as well as Medicare or Medicaid - for up to six months while their case is being reviewed. If they are found not disabled, these benefits would not be considered an overpayment.

3. **Deferral of Medical Disability Reviews:**

Ever since January 1, 2001, an individual who is “using a ticket” will not be subject to regularly scheduled continuing disability medical reviews. However, benefits can still be terminated if earnings are above the limits. Since January 1, 2002, Social Security disability beneficiaries who have been reviewing benefits for at least 24 months will not be reviewed solely because of work activity. However, regularly scheduled medical reviews can still be performed and, again, benefits terminated if earnings are above the limits.

4. **Work Incentives Outreach Program:**

The law directs Social Security to establish a community-based work incentives planning and assistance program to disseminate accurate information about work incentives and to give beneficiaries more choice. Social Security has established a program of cooperative agreements and contracts to provide benefits planning and assistance to all Social Security disability beneficiaries, including information about the
The law also directs Social Security to establish a corps of work incentives specialists within Social Security offices. These specialists, which SSA calls Employment Support Representatives or ESRs, provide timely and accurate information about SSA's employment support programs for beneficiaries with disabilities who want to work.

5. **Protection and Advocacy:**

The law authorizes Social Security to make payment to protection and advocacy systems established in each state to provide information, advice and other services to disability beneficiaries.

**Goals:**

General goals of the Ticket to Work program are identified as follows:

- To enhance the range of choices available to beneficiaries when they are seeking employment services, VR services or other support services to obtain, regain or maintain self-supporting employment;
- To remove several disincentives to employment faced by beneficiaries with disabilities;
- To increase beneficiaries access to public and private providers to obtain employment services, VR Services and other support services; and
- To increase the number of beneficiaries who increase their work effort and leave the Social Security or SSI disability rolls due to income from employment (Ticket to Work Regulations, 2001, p. 6).

**Expected Benefits:**
Ticket to Work program benefits include:

- A substantial savings for the Federal and State governments resulting from an increase in the number of beneficiaries leaving Social Security and SSI disability rolls due to work earnings;
- Some individuals will secure work with employers who offer group health insurance coverage;
- Earned income should increase tax receipts while reducing Social Security and SSI benefits, food stamps, rent subsidies, and certain veterans benefits; and
- Improved employment rates of individuals with disabilities should increase the independence of such individuals and strengthen our workforce and communities (Ticket to Work Regulations, 2002, p. 6).

Implementation:

The law requires that the Ticket to Work program be implemented in graduated phases at select phase-in sites. This is to permit a thorough evaluation of the program and ensure the most effective methods are in place for full implementation of the program. The Ticket to Work program should be available in every state not later than 2004. The program will be implemented in three phases:


*Phase II:* In phase II, tickets were issued during late 2002, in the following states: Alaska, Arkansas, Connecticut, Georgia, Indiana, Kansas, Kentucky, Louisiana, Michigan, Mississippi, Missouri, Montana, Nevada, New Hampshire, New Jersey, New Mexico, North Dakota, South Dakota, Tennessee and Virginia, and in the District of Columbia.
Phase III: During the third phase, which begins in August 2003, tickets were distributed in the following states: Alabama, California, Hawaii, Idaho, Maine, Maryland, Minnesota, Nebraska, North Carolina, Ohio, Pennsylvania, Rhode Island, Texas, Utah, Washington, West Virginia, and Wyoming as well as in American Samoa, Guam, the Northern Mariana Islands, Puerto Rico and the Virgin Islands (Porter & Baird, 2002, pp. 5-6).

Key Program Components/Definitions:

Ticket to Work regulations (2001) define and describe a number of key components. Some of these definitions and components are summarized as follows:

Program Manager (PM):

SSA conducted a competitive bidding process to select an organization to serve as program manager (PM) for the ticket program. The MAXIMUS Corporation was selected to perform this role which is to assist SSA in administrating the Ticket to Work Program. The PM recruits and recommends Employment Networks (ENs); ensures that adequate choices of services are made available to beneficiaries; assures that payment to ENs is warranted; facilitates beneficiary access to ENs; ensures the availability of adequate services; ensures that an adequate number of ENs is available; and ensures that each beneficiary under the program has reasonable access to employment services, VR services, and other support services.

Employment Network:

An Employment Network (EN) is any qualified agency or instrumentality of a state or a private entity that has entered into an agreement with SSA under the Ticket to Work Program. ENs assume the responsibility for the coordination and delivery of employment services, vocational rehabilitation services and other support services to beneficiaries who have assigned their ticket to that EN. Several agencies can join together to form an EN.
**Ticket:**

A ticket is a document that provides evidence of SSA’s agreement to pay an EN, or State VR agency that is holding a beneficiaries ticket, for the provision of employment services, vocational rehabilitation services, or other support services.

**Eligibility for Tickets:**

The Ticket to Work regulations state that individuals are eligible to receive a ticket in a month in which the following criteria are met:

1. The Individual is an SSDI beneficiary in current pay status for monthly cash benefits between age 18 and 64;
2. The individual is a SSI recipient between age 18 and 64 who is eligible for SSI under the disability standard for adults and is in current pay status for monthly cash benefits;
3. The individual has a permanent impairment (no medical improvement diary); or
4. The individual has a nonpermanent impairment (with a medical improvement expected diary) and has undergone at least one continuing disability review. The Ticket regulations also describe requirements set forth for eligibility exclusions, ticket use, ticket assignment, ticket withdrawal, new tickets, ticket reassignment, effective period of ticket, and ticket termination. Requirements for timely progress are also outlined in the regulations.

**State VR Agency Participation:**

State VR agencies are required to participate in the Ticket to Work program if they wish to receive SSA payments for serving disabled beneficiaries who are issued a ticket. There are two ways that a State VR agency can participate in the Ticket program. They are:

- On a case-by-case basis where the State VR agency participates as an Employment Network; or
To participate under the cost reimbursement system (Porter & Baird, 2002, p. 19).

Payment Options:

The Ticket regulations permit the State VR agency to choose whether it will operate under the Outcome Payment System or the Milestone Payment System when it functions as an EN. The elected payment system will be used by the State VR agency on any case for which it chooses to function as an EN. State VR agencies also have a third option where they may choose on a case-by-case basis to seek payment under its elected EN payment system or under the cost reimbursement payment system.

Reporting to Program Manager:

State VR agencies must report to the PM at various junctures in the service delivery process including:

- Ticket assignment forms must be sent to the PM for every beneficiary who deposits a ticket with the State VR agency;
- Periodic reports will be provided (at least annually) on specific outcomes achieved and services provided or secured for beneficiaries served, where the State VR agency is serving as an EN;
- Periodic reports related to the assessment of a beneficiary’s timely progress toward self employment;
- Submission of data required for the initial 24 - month review and subsequent 12 - month reviews;
- Submission of claims for outcome payments and outcome milestone payments; and
- Submission of claims for cost-reimbursement.

Ticket Status Verification:
The State VR agency must contact the PM on every disabled beneficiary to determine if he or she has a ticket, and if that ticket is available for assignment. If the beneficiary’s ticket has not been assigned to another EN, the following steps are followed:

1. The beneficiary and the State VR agency develop and sign an individualized plan for employment (IPE);
2. The State VR agency submits the following to the PM with signatures of both the beneficiary and State VR agency representative:
   - A statement that the beneficiary has decided to assign the ticket to the State VR agency and that an IPE has been agreed to and signed by the beneficiary and the State VR agency representative;
   - A statement of the beneficiaries goal outlined in the IPE; and
   - A statement of the State VR agency’s selection of the payment system (either cost reimbursement or the previously selected EN payment system) for that beneficiary (Porter & Baird, 2002, p. 30).

Serving Current VR Agency Consumers:

As the Ticket to Work Program is implemented, current State VR program consumers who are beneficiaries will be receiving tickets. If a beneficiary, who is receiving services under an IPE, has a ticket for assignment and decides to assign the ticket to the State VR agency, the VR agency will send to the PM a completed Ticket Assignment Form, with signatures of both the beneficiary and the State VR agency representative.

State VR Agency - Employment Network Agreements:

An agreement between an EN and the State VR agency must be in place before the EN can refer a beneficiary it is serving to the State VR agency. The agreement should be broadbased and apply to all beneficiaries who may be referred by the EN to the State VR
agency. In some instances individual agreements may be developed to meet the needs of a single beneficiary. The criteria for the agreement are as follows:

- The agreement must be in writing and signed by the VR agency and the EN prior to the referral of any beneficiary to the State VR agency;
- The EN must submit a copy of the agreement to the Program Manager; and
- The agreement should state the terms and conditions under which the State VR agency will provide services to the beneficiary when the beneficiary is referred by the EN for services. Information examples may include:
  - Referral and information sharing procedures that will assist in service provision;
  - A description of the financial responsibilities of each party to the agreement;
  - The terms and procedures under which the EN will pay the State VR agency for services provided; and

**Referrals Outside an Agreement:**

Should an EN refer a beneficiary to a State VR agency without having an agreement in place, the State VR agency should:

- Contact the EN to discuss the need to establish an agreement; and
- If the State VR agency and EN are not able to negotiate acceptable terms for an agreement, the State VR agency should notify the PM that an attempted referral was made. In turn, the PM will contact the EN to explain that a referral cannot be made unless an agreement is in place (Porter & Baird, 2002, p. 21).

**Dispute Resolution:**
When dispute resolution procedures are contained within an agreement, those procedures should be used. When dispute resolution procedures are not contained in an agreement, applicable State law or administrative procedures should be used. If neither of these applies, the EN or State VR agency may request that the Program Manager recommend a solution (Porter & Baird, 2002, p. 21).

**Disputes Between Beneficiaries and State VR Agencies:**

Disputes between beneficiaries and State VR agencies will be resolved in accordance with the procedures outlined in the Rehabilitation Act of 1973, as amended. The Rehabilitation Act requires the State VR agency to provide a description of available Client Assistance Services, authorized under the Rehabilitation Act, to each person seeking or receiving services. It also provides the opportunity to resolve disputes using formal mediation services or the impartial hearing process in section 102 (c) (Porter & Baird, 2002, p. 29).

**The Olmstead Decision**

Reference Olmstead (V.L.C., 119 S.Ct.2176 (1999)):

In 1999 the U.S. Supreme Court rendered a decision that provided the legal framework for government program efforts to enable individuals with disabilities to live in the most integrated setting appropriate to their needs. The Court's Olmstead decision challenges government programs to develop more opportunities for individuals with disabilities through more accessible systems of cost-effective community-based services.

This decision confirms the ideal that no one should have to live in an institution or a nursing home if they can live in the community with the right support. The goal is to integrate people with disabilities into the social mainstream, promote equality of opportunity, and maximize individual choice.
**Background:**

The Olmstead case was brought by two Georgia women whose disabilities include mental retardation and mental illness. Both individuals lived in state-operated institutions, despite the fact that their treatment professionals had determined that they could be appropriately served in a community setting. The plaintiffs asserted that continued institutionalization was a violation of their right under the ADA to live in the most integrated setting appropriate (HHS Letter, p. 1, 2000).

**Implications:**

The Olmstead decision interpreted Title II of the ADA and its implementing regulation, which oblige states to administer their services, programs, and activities “in the most integrated setting appropriate to the needs of qualified individuals with disabilities” (28 CFR 35.130 (d)).

Under the Court’s decision, states are required to provide community-based services for persons with disabilities who would otherwise be entitled to institutional services when: a) the state’s treatment professionals determine that such placement is appropriate; b) the affected persons do not oppose such treatment; and c) the placement can be reasonably accommodated, taking into account the resources available to the state and the needs of others who are receiving state-supported disability services (HHS letter, pp.1-2, 2000).

Another implication is that the integration requirement applies to all individuals with disabilities protected from discrimination by Title II of the ADA. Although Olmstead involved two individuals with mental disabilities, the scope of the ADA is not limited to only such individuals, nor is the scope of Olmstead limited to Medicaid beneficiaries or to services financed by the Medicaid program.
The requirement to provide services in the most integrated setting appropriate applies not only to individuals already in institutional settings but to those being assessed for possible institutionalization (HHS letter, pp. 2-3, 2000).

As qualified persons with disabilities are integrated into community living as a result of the Olmstead decision, the demand for various community support services will increase. Each state and community is significantly challenged to plan and prepare to meet the need.

The Medicaid Community-based Attendant Services and Supports Act of 2001

(MiCASSA)

The MiCASSA Act of 2001 is a highly significant piece of legislation that provides individuals real choice in long term care options and by ending institutional bias. MiCASSA allows individuals eligible for Nursing Facilities Services or Intermediate Care Facility Services for the Mentally Retarded, the opportunity to choose instead a new alternative, “Community-based Attendant Services and Supports.” The Medicaid money follows the individual.

The legislation also provides enhanced match and grants for the transition to Real Choice before October 2005. MiCASSA offers states financial assistance to reform their long term service and support system to provide services in the most integrated system (ADAPT Summary, p. 1, 2001).

MiCASSA Bill Specifics:

A MiCASSA bill summary has been developed by the ADAPT organization (ADAPT Summary, pp. 1-2, 2001). A few key provisions of this legislation are listed below:
1. Provides community-based attendant services and supports
2. Provides consumer training to utilize attendant services
3. Requires services to be provided in the most integrated setting
4. Allows consumers to choose among various services delivery models and providers
5. Allows for representatives to assist consumers who are unable to direct their own care
6. Allows use of unlicensed health-related function providers if allowed by state law
7. Covers transition costs from a nursing facility or ICF-MR to a home setting
8. To enhance employment potential, states may waive income limitations for individuals whose income exceeds institutional income limitations.
9. Provides for quality assurance programs to promote consumer control and satisfaction
10. Provides systems change initiative grants to states to promote transition from institution dominated services systems to a system of community-based supports (ADAPT Summary, pp. 1-2, 2001).

The MiCASSA legislation has potential implications for the vocational rehabilitation program through the referral of transitioned individuals who may be able to pursue employment.
Case Studies and Considerations

Please respond in writing to the following case scenario and discuss your answers with your supervisor. In your response identify the legislation that most impacts this situation and why.
If you were the counselor, what would you do?

Case 1

Your new client, Doug, reveals that he was recently fired from his place of employment, after 12 years of service, because he has AIDS. He tells you that his work history is excellent and that most of the time he is able to complete his job duties successfully. However, occasionally he is too ill to go into work. He also needs a flexible schedule in order to accommodate his many visits to the doctor, his appointments to have lab work completed, and to receive weekly treatments for AIDS.

Case 2

Your client, Susan, has severe cerebral palsy. Despite her many physical limitations, she is very intelligent and wants to go to college. Her first choice is a university out-of-state that does not have well developed services or accessibility for students with disabilities. As the counselor, you are concerned about the additional costs of out-of-state tuition, the lack of special services, and campus accessibility at this university. You are also concerned about the lack of immediate social and emotional support, since Susan has no friends or family near the university.

Case 3

Your client, Tiffany, who has a severe mental illness and a seizure disorder, has been working in a sheltered work shop setting for two years. Her work performance for the past four months has shown remarkable improvement. Work performance reports show
improvement in productivity, social skills and in medical management of her condition. Workshop staff reports that she is a strong candidate for integrated, competitive community employment. However, in discussing this option with Tiffany, she states a preference to remain in the sheltered workshop employment setting. What would you do?
Case Study Considerations

Case 1

Key points to consider:

1. Persons with HIV or AIDS are covered under the Americans with Disabilities Act.
2. It would be important to find out if Doug’s employer knew that he has AIDS or if Doug was fired because of unexplained absences from work and a decrease in productivity due to illness. If an employer is unaware of a disability, then the employer is not responsible for providing reasonable accommodation. Once aware, then there is an obligation to provide reasonable accommodation.
3. The counselor needs to inform Doug that he is protected under ADA and entitled to “reasonable accommodation.” In this case, reasonable accommodation may include a flexible work schedule or an option to work part-time.
4. Consider a referral for legal assistance.

Case 2

Key points to consider:

1. As the counselor, it is your duty to provide informed choice as emphasized in the Rehabilitation Act Amendments of 1992. You would definitely point out the potential problems and barriers that she may encounter due to her selection, but you cannot keep her from applying to the University of her Choice.
2. As the counselor, it is your duty to provide your assessment of her needs and services required in order to be successful in college, but you cannot force her to accept those services.

Case 3
Key points to consider:

1. Applicants and eligible consumers have the right to exercise informed choice throughout the rehabilitation process. (34 CFR 361.52)
2. Employment outcome criteria have been changed where sheltered or extended employment options are no longer considered a successful employment outcome. (34 CFR 361.5 (16))
3. Consideration of extended or sheltered employment or case closure in response to a client’s decision to not seek employment in an integrated competitive labor market setting.
4. Information and referral to provide the individual with information about options and make referrals as appropriate.
References


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