

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7135 PCB EPC 09-04 Vocational Rehabilitation Programs

SPONSOR(S): Education Policy Council; Culp

TIED BILLS: IDEN./SIM. BILLS: SB 2274

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.:	Education Policy Council	11 Y, 0 N	Beagle	Cobb
1)				
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3)				
4)				
5)				

SUMMARY ANALYSIS

The bill revises statutory provisions governing vocational rehabilitation (VR) services to repeal obsolete provisions of law and to conform statute to the current requirements of, and terminology used in, federal law.

With regard to obsolete provisions, the bill:

- Repeals the Limiting Disabilities Program and removes statutory definitions related to the program. This program was established to authorize the Department of Education’s Division of Vocational Rehabilitation (DVR) to expand eligibility for VR services to individuals with disabilities who the state is not required to serve under federal law. It was never funded by the Legislature nor implemented by the DVR.
- Repeals provisions requiring the DVR to develop a five-year state plan for improving VR services via privatization. The plan was due in November of 2002 and was submitted in 2003.

To conform state statute to federal law, the bill:

- Replaces the term “Individualized Written Rehabilitation Program” with “Individualized Plan for Employment” (IPE). The IPE is the written plan that is required by federal law.
- Requires the DVR to place individuals with disabilities in “trial work experiences” before determining them ineligible for VR services. Florida law currently reflects the former federal requirement that an extended evaluation be conducted before ineligibility may be determined.
- Requires the DVR to refer individuals determined ineligible for VR services to certain federal or local programs for individuals with disabilities. State law does not reflect this federal law requirement.
- Conforms the state law definition of “personal assistance services” to the federal definition.
- Revises current Florida law that permits disclosure of VR records that *do not identify* VR clients for research purposes to conform to federal law that permits disclosure of VR records that contain personally identifying information for research, *evaluation, and audit* purposes. The bill also provides that such personally identifying information remains confidential and may not otherwise be disclosed to third parties.
- Replaces the term “severe” disability with the term “significant” disability. Federal law currently uses this term.

The bill does not appear to have a fiscal impact on state or local governments.

The bill takes effect upon becoming law.

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Vocational Rehabilitation

Vocational rehabilitation (VR) consists of various programs designed to foster the independence and employability of eligible individuals, including individuals with disabilities. VR services for individuals with disabilities are authorized and funded under Title I of the Federal Rehabilitation Act of 1973.¹

Agency oversight for such programs is provided by the Department of Education's (DOE) Division of Vocational Rehabilitation (DVR).²

Federal law requires each state to submit a state plan for VR services. The plan must describe the state's VR program and its plans and policies for delivering services. The state plan must be submitted annually to the U.S. Department of Education (USDOE). Federal VR funding is contingent on plan approval.³

Federal law establishes minimum eligibility requirements for state VR programs. States that receive federal VR funding must serve individuals with disabilities who meet the federal eligibility classification. A state may not use federal VR funding to serve individuals with disabilities who do not meet the federal eligibility classification.⁴

The State Vocational Rehabilitation Plan: Legislation enacted in 2002 required the DVR to develop a five-year state plan to address improvements to, and privatization of, VR services. The DVR was required to submit the plan to the Governor, the President of the Senate, and the Speaker of the House of Representatives by October 1, 2002.⁵ According to the DVR, issues arising from efforts to privatize its services caused it to be placed on "high-risk" status by the USDOE. The Legislature required this one-time plan to help it resolve these issues. Consequently, the plan was submitted, the issues were resolved, and the DVR came off "high risk" status in October of 2003.⁶

¹ 29 U.S.C. § 701 et seq.

² Part II, ch. 413, F.S.

³ 34 C.F.R. § 361.10.

⁴ 34 C.F.R. § 361.42(a).

⁵ Section 413.206, F.S.

⁶ Email from the Florida Department of Education, Division of Vocational Rehabilitation staff re: VR Technical Bill (Mar. 19, 2009 PM EST).

Effect of Change: The bill repeals s. 413.206, F.S., which required the DVR to submit a one-time five-year plan in November of 2002. Having fulfilled these requirements, this statute serves no purpose. The DVR submits an annual state plan pursuant to federal law requirements.

The Limiting Disabilities Program: In 1990, the Legislature established s. 413.70, F.S., the Limiting Disabilities Program. The purpose of this program is to expand VR service eligibility under the state program to individuals whom the state is not required to serve under federal law.⁷ Section 413.73, F.S., requires the DVR to establish an assistance program to identify such individuals for services offered by it or another agency. Program elements include a toll-free information and referral hotline, coordinated referral and follow-up, and programs for educating the public and agencies regarding referrals and services. DVR must report referral and follow-up data to the Governor, President of the Senate, and Speaker of the House.⁸

Section 413.72, F.S., establishes the eligibility requirements for the Limiting Disabilities Program. Individuals seeking such services must document that they have a limiting disability verified by appropriate diagnostic procedures. Because federal VR funding may not be used to serve individuals who do not meet the federal eligibility classification, the Limiting Disabilities Program was to be funded by the state. It was never funded by the Legislature nor implemented by the DVR. No person has ever been served by the program.⁹

Effect of Change: The bill repeals ss. 413.70, 413.72, and 413.73, F.S., relating to the Limiting Disabilities Program, as such program was never funded or implemented. The bill also amends s. 413.20, F.S., to delete the definitions of “limiting disability,” “program,” “rehabilitation,” “rehabilitation service,” and “transitional living facility.” Such definitions relate only to the repealed program.

Conforming Changes

Current Florida law contains several inconsistencies with federal law governing VR services. Most of these inconsistencies relate back to the 1998 congressional amendments to the Rehabilitation Act.¹⁰ These amendments made several changes to VR terminology and program requirements. Florida law has not since been amended to conform with changes.

Individualized Plan for Employment: The 1998 amendments renamed the Individualized Written Rehabilitation Program (IWRP) as the Individualized Plan for Employment (IPE). An IPE is a written plan that prescribes the VR services to be provided to, and employment outcome to be achieved by, the individual. It must be reviewed annually.¹¹ While Florida law governing such plans is substantively similar to federal law, it still reflects the term “IWRP,” not the current term “IPE.”¹²

Effect of Change: The bill amends s. 413.30(5), F.S., to replace several obsolete references to IWRPs with the current term “IPE.” It also amends s. 413.20(27), F.S., which defines “supported employment services,” to replace a reference to IWRPs with the term IPE.

Trial Work Experiences: Under Florida and federal law, individuals with disabilities are presumed eligible for VR services. Prior to the 1998 amendments to federal law, state VR agencies were required to conduct an extended evaluation prior to determining that a person is ineligible for VR services. The 1998 amendments eliminated the extended evaluation.¹³

Under federal law, if a state cannot readily determine whether VR services will or will not benefit an individual, it must use “trial work experiences” to determine their eligibility for, and the appropriateness of, VR services. The state must assess the severity of the individual’s disability in relation to his or her work related abilities. Trial work experiences must be of sufficient variety and duration to accurately

⁷ Section 413.70, F.S.

⁸ Section 413.73, F.S.

⁹ Florida Department of Education, *Legislative Bill Analysis for SB 2274* (2009).

¹⁰ The Workforce Investment Act of 1998, Pub. L. No. 105-220, 112 Stat. 936.

¹¹ 34 C.F.R. § 361.45; § 413.30(5), F.S.

¹² Section 413.30(5), F.S.

¹³ 34 C.F.R. § 361.42(a)(2); § 413.30(4), F.S.

assess service eligibility. Individuals may be placed in supported employment, on-the-job training, and other appropriate work experiences. A state must find clear and convincing evidence that VR services will not benefit the individual before denying them services.¹⁴ Florida law still reflects the outdated “extended evaluation process.” It requires the DVR to conduct the evaluation for up to 18 months.¹⁵

Effect of Change: The bill amends s. 413.30(3), F.S., to require the DVR to use trial work experiences before denying eligibility for VR services. Trial work experiences may include supported employment, on-the-job training, or other work experiences. It also provides that the DVR may conduct an extended evaluation, under the following limited circumstances, before denying eligibility for VR services: (a) when the individual cannot take advantage of trial work experiences; or (b) when options for trial work experiences have been exhausted.

Required Referrals: Federal law sets forth specific procedures that a state must follow when it determines that an individual is ineligible for VR services. Depending on the reason for denying service eligibility, a state must refer such individuals to:

- Programs that are part of the one-stop delivery system under the Workforce Investment Act, which are for individuals who are determined to have less severe impediments to employment than those served by VR programs. Such services typically include wheelchair access, transportation, and equipment related accommodations; or
- Locally established programs that serve individuals who are determined to be too severely disabled to benefit from VR services.¹⁶

Florida law does not reflect this federally required exit referral procedure.¹⁷

Effect of Change: The bill amends s. 413.30(6), F.S., to require the DVR to refer individuals who have been determined ineligible for VR services, i.e., incapable of achieving an employment outcome, to other Workforce Investment Act programs or local extended employment providers. The bill’s provisions are identical to the federal requirement.

Personal Assistance Services: Both Florida and federal law define the term “personal assistance services” to mean:

- “A range of services, provided by one or more persons, designed to assist an individual with a disability to perform daily living activities on or off the job that the individual would typically perform if the individual did not have a disability. Such services shall be designed to increase the individual’s control in life and ability to perform everyday activities on or off the job.”¹⁸

However, the federal regulation adds that:

- “The services must be necessary to the achievement of an employment outcome and may be provided only while the individual is receiving other VR services. The services may include training in managing, supervising, and directing personal assistance services.”¹⁹

Florida law defining “personal assistance services” does not include this additional provision.²⁰

Effect of Change: The bill amends s. 413.20(18), F.S., which defines “personal assistance services,” to add the omitted federal provision.

¹⁴ See 34 C.F.R. § 361.42(e); § 413.30(3), F.S.

¹⁵ Section 413.30(3), F.S.

¹⁶ 34 U.S.C. § 361.43(d).

¹⁷ Section 413.30(6), F.S.

¹⁸ 34 C.F.R. § 361.5(b)(39); § 413.20(18), F.S.

¹⁹ 34 C.F.R. § 361.5(b)(39).

²⁰ Section 413.20(18), F.S.

Client Records: Under Florida and federal law, all public records related to VR clients or applicants are privileged, confidential, and exempt from public records disclosure requirements. State law authorizes the disclosure of records that *do not identify* clients or applicants for research purposes and requires the director of DVR to approve such disclosure.²¹

Federal law authorizes release of records that *contain personal information* for audit, evaluation, and research purposes. Such information may be released only for purposes directly related to program administration or improvements. States must require the recipient of the information to assure that the information will: (a) be used only for authorized purposes; (b) be released only to authorized individuals; (c) not be released to the program participant; (d) be managed to safeguard confidentiality; and (e) not reveal personally identifying information in its final product or report without informed written consent of the participant. It does not require that the state VR agency director approve such disclosure.²²

Effect of Change: The bill amends s. 413.341(1)(b), F.S., to authorize the disclosure of records that contain personally identifying information in the same manner as federal law, i.e., the bill authorizes such disclosure for the purposes of research, evaluations, and audits. It retains the requirement that the disclosure be approved by the DVR Director and provides that personally identifying information remains privileged, confidential, and exempt and may not be released to third parties.

Significant Disabilities: Under current federal law, individuals who have “significant” disabilities may be eligible for VR services. State law refers to individuals who have “severe” disabilities.

Effect of Change: Sections 413.20(12), (26), and (27), 413.30(2) and (7), 413.371, 413.39, 413.393, and 413.40, F.S. are amended to reflect the current federal term, “significant disability.”

B. SECTION DIRECTORY:

Section 1.: Amending s. 413.20, F.S.; deleting definitions related to the Limiting Disabilities Program; revising definitions to comply with federal law.

Section 2.: Repealing s. 413.206, F.S.

Section 3.: Amending s. 413.30, F.S.; updating statutory provisions to comply with federal law; requiring the DVR to implement trial work experiences in determining ineligibility for VR services; revising process for determining ineligibility for services; requiring development of written service plan; requiring DVR to make referrals.

Section 4.: Amending s. 413.341, F.S.; authorizing release of certain records.

Section 5.: Amending s. 413.371, F.S.; updating statutory terminology.

Section 6.: Amending s. 413.39, F.S.; updating statutory terminology.

Section 7.: Amending s. 413.393, F.S.; updating statutory terminology.

Section 8.: Amending s. 413.40, F.S.; updating statutory terminology.

Section 9.: Repealing ss. 414.70, 413.72, and 413.73, F.S.

Section 10.: Providing that the bill takes effect upon becoming law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

²¹ Section 413.341(1)(b), F.S.

²² 34 C.F.R. § 361.38(d).

1. Revenues:

The bill does not appear to have a fiscal impact on state revenues.

2. Expenditures:

The bill does not appear to have a fiscal impact on state expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not appear to have a fiscal impact on local revenues.

2. Expenditures:

The bill does not appear to have a fiscal impact on local expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill does not appear to have a direct economic impact on the private sector.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to: require counties or municipalities to spend funds or take an action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of a state tax sharing with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES