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CHAPTER 352.VOCATIONAL REHABILITATION SERVICES

Subchapter A. General Provisions

Sec. 352.001. Definitions

In this chapter:

- (1) "Direct services" means services provided to a client by a commission employee, including counseling, facilitating the purchase of services from a source other than the commission, and purchasing equipment and other items and providing other services necessary for the client to successfully complete a commission program.
- (2) "Direct services program" means a program operated by the commission through which direct services are provided.
- (3) "Individual with a disability" means an individual who has a physical impairment, including a visual impairment, or mental impairment that constitutes a substantial impediment to employment, but that is of a nature that rehabilitation services may be expected to enable the individual to engage in a gainful occupation.
- (4) "Maintenance" means money payments not exceeding the estimated cost of subsistence during vocational rehabilitation.
- (5) "Occupational license" means a license, permit, or other written authorization required by a governmental entity as a condition for engaging in an occupation.
- (6) "Physical restoration" means medical, surgical, or therapeutic treatment necessary to correct or substantially reduce a substantial impediment to employment of an individual with a disability within a reasonable period of time. The term includes medical, surgical, dental, and psychiatric treatment, nursing services, hospital care, convalescent home care, drugs, medical and surgical supplies, and prosthetic appliances. The term excludes treatment to cure acute or transitory conditions.
- (7) "Prosthetic appliance" means an artificial device necessary to support or replace a part of the body or to increase the acuity of a sensory organ.
- (8) "Rehabilitation training" means all necessary training provided to an individual with a disability to compensate for a substantial impediment to employment. The term includes manual, preconditioning, prevocational, vocational, and supplementary training and training to achieve broader and more lucrative skills and capacities.
- (9) "Substantial impediment to employment" means a physical or mental condition that obstructs or impairs, or if not corrected will probably obstruct or impair, an individual's performance in an occupation.

- (10) "Vocational rehabilitation" or "vocational rehabilitation services" means services that are provided directly by the commission or through a public or private agency and that the commission determines are necessary to compensate an individual with a disability for a substantial impediment to employment so that the individual may engage in a remunerative occupation. The terms include:
- (A) medical and vocational diagnosis;
 - (B) vocational guidance, counseling, and placement;
 - (C) rehabilitation training;
 - (D) physical restoration;
 - (E) transportation;
 - (F) occupational licenses;
 - (G) customary occupational tools and equipment;
 - (H) maintenance;
 - (I) training books and materials; and
 - (J) other goods and services for which the commission receives financial support under federal law.

Sec. 352.002. Purpose

It is the policy of this state to provide vocational rehabilitation services to eligible individuals with disabilities so that those individuals may prepare for and engage in a gainful occupation.

Sec. 352.003. Rehabilitation Council of Texas

- (a) The Rehabilitation Council of Texas operates in accordance with the federal Rehabilitation Act Amendments of 1992, Pub. L. No. 102-569, and the federal Rehabilitation Act Amendments of 1998, Pub. L. No. 105-220.
- (b) The Rehabilitation Council of Texas shall report to and advise the commission on the council's activities and the results of the council's work. For the purpose of performing its advisory functions, the council shall work with the commission, the executive director, and other commission staff.
- (c) The commission shall adopt rules for the administration of the council.

Sec. 352.004. Receipt and Disbursement of State and Federal Funds

- (a) The comptroller is custodian of federal funds received by the state to implement federal law relating to vocational rehabilitation.
- (b) The commission shall certify for disbursement funds available for the vocational rehabilitation program in accordance with regulations.
- (c) The comptroller shall disburse state and federal vocational rehabilitation funds on certification by the commission.

Sec. 352.005. Gifts, Donations, and Other Money

- (a) The commission shall deposit all money paid to the commission under this chapter in the state treasury. The money may be used only for the administration of this chapter.
- (b) The commission may receive and use gifts and donations for carrying out the purposes of this chapter. A person may not receive payment for solicitation of any funds.

Sec. 352.006. Misuse of Information

Except for purposes directly connected with the administration of the vocational rehabilitation program and according to commission rules, no person may solicit, disclose, receive, use, or knowingly permit the use of records or other information concerning an applicant for or recipient of vocational rehabilitation services that is directly or indirectly acquired by an officer or employee of the state or its political subdivisions in the course of the person's official duties.

Sec. 352.007. Criminal History Record Information

- (a) The commission may obtain criminal history record information from the Texas Department of Criminal Justice and the Texas Department of Public Safety if the criminal history records relate to:
 - (1) an applicant selected for employment with the commission whose potential duties include direct contact with clients to provide vocational rehabilitation services or other services under this subtitle;
 - (2) an applicant for vocational rehabilitation services or other services under this subtitle from the commission; or
 - (3) a client receiving vocational rehabilitation services or other services under this subtitle.
- (b) The Texas Department of Criminal Justice and the Texas Department of Public Safety on request shall supply to the commission criminal history record information relating to applicants selected for employment with the commission whose potential duties include direct

contact with clients to provide vocational rehabilitation services, applicants for vocational rehabilitation services from the commission, or vocational rehabilitation clients of the commission. The commission shall treat all criminal history record information as privileged and confidential and for commission use only.

- (c) The commission by rule shall establish criteria for denying a person's application for employment with the commission to provide vocational rehabilitation services based on criminal history record information obtained as authorized by this section.

Sec. 352.008. Hearings

An applicant for or recipient of vocational rehabilitation services who is aggrieved by an action or inaction under this chapter is entitled to a hearing by the commission in accordance with law.

Subchapter B. General Powers and Duties

Sec. 352.051. Vocational Rehabilitation Program for Individuals with Disabilities

- (a) The commission shall conduct a program to provide vocational rehabilitation services to eligible individuals with disabilities.
- (b) To achieve the purposes of the program, the commission may:
 - (1) cooperate with other public and private agencies in studying the problems involved in providing vocational rehabilitation and in establishing, developing, and providing necessary or desirable facilities and services;
 - (2) enter into reciprocal agreements with other states to provide vocational rehabilitation for the residents of the states concerned; and
 - (3) conduct research and compile statistics relating to the vocational rehabilitation of individuals with disabilities.

Sec. 352.052. Cooperation with Federal Government; Obtaining Federal Funds

- (a) The commission shall cooperate with the federal government to accomplish the purposes of federal laws relating to vocational rehabilitation for individuals with disabilities and closely related activities.
- (b) The commission shall negotiate agreements or plans with the federal government and shall use efficient methods of administration and comply with other conditions required to secure the full benefits of the federal laws. If the commission determines that a provision of state law precludes conformity with a federal requirement and limits federal financial support, the commission may waive or modify the state law to the extent necessary to obtain the full benefits of the federal law.

- (c) The commission may comply with any requirements necessary to obtain federal funds to be used for vocational rehabilitation services in the maximum amount and most advantageous proportion possible.

Sec. 352.053. Contracts for Service

- (a) The commission shall include in its contracts with service providers under this chapter provisions relating to:
 - (1) clearly defined and measurable program performance standards that directly relate to the service provided;
 - (2) clearly defined penalties for nonperformance of a contract term; and
 - (3) clearly specified accounting, reporting, and auditing requirements applicable to money received under the contract.
- (b) The commission shall monitor a service provider's performance under a contract for service under this chapter. In monitoring performance, the commission shall:
 - (1) use a risk-assessment methodology to institute statewide monitoring of contract compliance of service providers; and
 - (2) evaluate service providers based on clearly defined and measurable program performance objectives.

Sec. 352.054. Rates for Medical Services

- (a) The commission by rule shall adopt standards governing the determination of rates paid for medical services provided under this chapter. The rules must provide for an annual reevaluation of the rates.
- (b) The commission shall establish a schedule of rates based on the standards adopted under Subsection (a). In adopting the rate schedule, the commission shall:
 - (1) compare the proposed rate schedule to other cost-based and resource-based rates for medical services, including rates paid under Medicaid and the Medicare program; and
 - (2) for any rate adopted that exceeds the Medicaid or Medicare rate for the same or a similar service, document the reasons why the adopted rate reflects consideration of the best value, provider availability, and consumer choice.
- (c) The commission shall provide notice to interested persons and allow those persons to present comments before adopting the standards and schedule of rates under Subsections (a) and (b).

Sec. 352.055. Contract Payment

The commission shall base payment under a contract for vocational rehabilitation services on outcome-based performance standards defined in the contract.

Sec. 352.056. Contracts for Adaptive Technology

The commission shall include in a contract under this chapter with a supplier of adaptive technology equipment provisions that require the supplier to provide training for clients receiving the adaptive technology equipment.

Sec. 352.057. Loans for Visual Aids

- (a) The commission may establish a program to make loans to finance the purchase of technological aids for individuals with visual impairments. Interest on the loans may not exceed 10 percent per year.
- (b) The commission may adopt rules to administer the loan program.

Sec. 352.058. Subrogation

- (a) By providing a person rehabilitation services, including medical care services, under this subchapter, the commission is subrogated to the person's right of recovery from:
 - (1) personal insurance;
 - (2) another person for personal injury caused by the other person's negligence or wrongdoing; or
 - (3) any other source.
- (b) The commission's right of subrogation is limited to the cost of the services provided.
- (c) The commission may totally or partially waive the commission's right of subrogation when the commission finds that enforcement would tend to defeat the purpose of rehabilitation.
- (d) The commission may adopt rules for the enforcement of the commission's right of subrogation.

Sec. 352.059. Work Incentives and Supplemental Security Income (SSI)

The commission shall employ a person at the commission's central office to:

- (1) train counselors to understand and use work incentives; and

- (2) review cases to ensure that commission clients are informed of the availability of and assisted in obtaining work incentives and Supplemental Security Income (SSI) (42 U.S.C. Section 1381 et seq.).

Subchapter C. Provision of and Eligibility for Vocational Rehabilitation Services

Sec. 352.101. Integration of Vocational Rehabilitation Programs

- (a) Not later than October 1, 2017, and subject to federal approval, the commission shall integrate into a single vocational rehabilitation program the following programs that are operated under the federal Rehabilitation Act of 1973 (29 U.S.C. Sections 720 through 751):
 - (1) the vocational rehabilitation program for individuals with visual impairments; and
 - (2) the vocational rehabilitation program for individuals with other disabilities.
- (b) Not later than October 1, 2017, to facilitate the integration of the vocational rehabilitation programs identified in Subsection (a), the commission shall at a minimum:
 - (1) reorganize the commission's vocational rehabilitation services in order to provide services based on an individual's functional need instead of an individual's type of disability;
 - (2) develop a plan to support specialization of vocational rehabilitation counselors in serving different client populations, including sufficient specialization in individuals with visual impairments to maintain expertise in serving that population;
 - (3) redesign performance measures for the provision of vocational rehabilitation services;
 - (4) consolidate policies for the provision of vocational rehabilitation services; and
 - (5) recommend the adoption of any rules necessary to implement this section.
- (c) This section expires September 1, 2019.

Sec. 352.102. Eligibility for Vocational Rehabilitation Services

The commission shall provide vocational rehabilitation services to individuals with disabilities eligible for those services under federal law.

Sec. 352.103. Provision of Vocational Rehabilitation Services

- (a) The commission by rule shall establish and maintain guidelines for providing vocational rehabilitation services that are consistent with state and federal laws and that include:

- (1) a system of organization for the delivery of vocational rehabilitation services statewide;
 - (2) eligibility requirements for vocational rehabilitation services;
 - (3) requirements for the rehabilitation planning process;
 - (4) the types of services that may be provided to a client through a vocational rehabilitation program; and
 - (5) requirements for client participation in the costs of vocational rehabilitation services, including documentation that a client has sought benefits for which the client is eligible from sources other than the commission and that may assist the client in obtaining vocational rehabilitation goods or services.
- (b) The commission shall annually assess the effectiveness of the state's vocational rehabilitation program.

Sec. 352.104. Training and Supervision of Counselors

- (a) The commission shall provide specific guidance to vocational rehabilitation counselors in:
- (1) selecting vocational objectives according to a client's skills, experience, and knowledge;
 - (2) documenting a client's impediment to employment;
 - (3) selecting rehabilitation services that are reasonable and necessary to achieve a client's vocational objective;
 - (4) measuring client progress toward the vocational objective, including the documented, periodic evaluation of the client's rehabilitation and participation; and
 - (5) determining eligibility of employed and unemployed applicants for rehabilitation services using criteria defined by commission rule to document whether a client is substantially underemployed or at risk of losing employment.
- (b) The commission by rule shall require monitoring and oversight of vocational rehabilitation counselor performance and decision making in accordance with this section.

Sec. 352.105. Specialized Training for Certain Employees

- (a) The commission shall establish and require employee participation in a specialized training program for certain employees, including vocational rehabilitation transition specialists and transition counselors, whose duties involve assisting youth with disabilities to transition to post-schooling activities, services for adults, or community living.

- (b) The training program must provide employees with information regarding:
 - (1) supports and services available from health and human services agencies, as defined by Section 531.001, Government Code, for:
 - (A) youth with disabilities who are transitioning into post-schooling activities, services for adults, or community living; and
 - (B) adults with disabilities.
 - (2) community resources available to improve the quality of life for:
 - (A) youth with disabilities who are transitioning into post-schooling activities, services for adults, or community living; and
 - (B) adults with disabilities; and
 - (3) other available resources that may remove transitional barriers for youth with disabilities who are transitioning into post-schooling activities, services for adults, or community living.
- (c) In developing the training program required by this section, the commission shall collaborate with health and human services agencies, as defined by Section 531.001, Government Code, as necessary.

Sec. 352.106. Payment of Shift Differentials

The commission by rule may develop and implement policies allowing shift differentials to be paid to employees in the vocational rehabilitation program under this chapter.

Sec. 352.107. Client Orientation Materials

The commission shall develop and distribute at intake client orientation materials for the vocational rehabilitation program that include information on the commission's decision-making criteria.

Sec. 352.108. Coordination with Texas Education Agency

- (a) For purposes of this section, "transition services" means services provided to students with disabilities to assist the students in making the transition from secondary school to postsecondary education programs or competitive integrated employment.
- (b) The commission and the Texas Education Agency shall collaborate to develop a mechanism to identify the areas of the state with the greatest needs for transition services for students with disabilities. The mechanism must account for the commission's limited resources and a school district's needs, including:

- (1) the school district's resources for special education;
 - (2) the number of students with disabilities in the school district; and
 - (3) other factors that the commission and the Texas Education Agency consider important.
- (c) The commission and the Texas Education Agency shall update the mechanism developed under Subsection (b) on a periodic basis.
- (d) The commission shall develop uniform, statewide policies for transition services that include:
- (1) the goal that a transition counselor initiate contact with a student approximately three years before the student is expected to graduate from high school;
 - (2) the minimum level of services to be provided to a student at the time that a transition counselor initiates contact with the student;
 - (3) standards, based on the mechanism developed under Subsection (b), for assigning a transition counselor to a school that ensure consistency among regions but that are not too restrictive;
 - (4) expectations for transition counselors to develop relationships with school personnel, including the employee designated to serve as the school district's designee on transition and employment services under Section 29.011(b), Education Code; and
 - (5) expectations for regional commission staff to work with education service center representatives on a regular basis to identify areas of greatest need and to discuss local strategies for coordination between transition counselors and schools.
- (e) The commission and the Texas Education Agency shall enter into a memorandum of understanding to comply with the policies under this section and to improve coordination between the agencies. The memorandum of understanding must include:
- (1) strategies to better inform transition clients, clients' families, and school personnel regarding the commission's available services and contact information for commission transition counselors; and
 - (2) a process to be used by the commission and the Texas Education Agency to develop and update the mechanism used to identify students who may need services.
- (f) On or after September 1, 2016, but not later than September 1, 2017:
- (1) the commission and the Texas Education Agency shall develop the mechanism required in Subsection (b) and enter into the memorandum of understanding required in Subsection (e); and

- (2) the commission shall develop the policies described in Subsection (d).
- (g) Subsection (f) and this subsection expire September 1, 2018.