# PART A, CHAPTER 9: SUBROGATION

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| **Policy Number** | **Authority** | **Scope** | **Effective Date** |
| Part A, Chapter 9 | 34 CFR [§361.53(a)](https://www.ecfr.gov/current/title-34/part-361#p-361.53(a)), and Texas Labor Code [§352.058](https://statutes.capitol.texas.gov/Docs/LA/htm/LA.352.htm) | All TWC-VR staff | 9/3/2024 |

## PURPOSE

In accordance with the authority (Federal and State) listed above, this policy is issued by the Texas Workforce Commission Vocational Rehabilitation Division (TWC-VR). Adherence to these rules and regulations issued under the Rehabilitation Act of 1973, as amended by Title IV of the Workforce Innovation and Opportunity Act (WIOA), supports Texans with disabilities in gaining, maintaining, and advancing in competitive integrated employment (CIE).

Specifically, the purpose of this policy and these procedures is to ensure adherence to subrogation within TWC-VR.

## DEFINITIONS

Social Security Disability Insurance (SSDI): Financial assistance to individuals who are unable to work due to a significant disability. Designed as a safety net for workers who have paid into the Social Security system through payroll taxes, SSDI benefits are based on an individual's work history and earnings record.

Subrogation: A process in which TWC-VR recovers all or part of the costs of services provided to customers as a result of a customer being injured in an accident that was somebody else’s fault and recovering monetary damages in a lawsuit or insurance settlement.

Supplemental Security Income (SSI): Needs-based disability benefits paid to disabled individuals who have limited income and resources. Disability benefits under SSI include 1) Childhood SSI (for those under age 18) and 2) SSI Adult Disabled/Blind (for those age 18 to 65).

## POLICY

### General Overview

In accordance with the Texas Labor Code, TWC-VR may be subrogated to the customer's right of recovery when TWC-VR pays for rehabilitation or medical care services for a customer. In other words, TWC-VR is put in the customer's place and assumes the customer's right of recovery from—

* Personal insurance;
* Another person for personal injury caused by the other individual's negligence or wrongdoing; or
* Any other source.

TWC-VR's right of subrogation is limited to the cost of the services provided to the customer. For example, TWC-VR pays for rehabilitation or medical services made necessary by a motor vehicle accident, and the customer later receives a court judgment or insurance settlement for the accident. TWC-VR is entitled to be reimbursed out of the proceeds of the settlement or judgment for the services provided to the customer.

TWC-VR can waive, totally or partially, TWC-VR's subrogation interest when it is found that enforcement will likely defeat the purpose of the customer's rehabilitation.

### Office of General Counsel (OGC)

OGC provides all legal support and representation regarding subrogation. Within OGC, the subrogation coordinator—

* Helps identify cases that are appropriate for subrogation;
* Begins efforts to recover costs when OGC is notified of a subrogation case; and
* Communicates with Counselors and private attorneys to facilitate reimbursement.

### Comparable Services and Benefits in Subrogation

TWC-VR funds can be used before a settlement or judgment is reached in a workers' compensation or liability case when funds are not available at the time needed to ensure the customer's progress toward the employment goal, so it is not delayed.

## PROCEDURES

### Subrogation Inquiries

When completing or updating the Personal Information page in ReHabWorks (RHW), or at any other appropriate time during the rehabilitation process (e.g., Individualized Plan for Employment [IPE] amendment), the VR Counselor must ask the customer whether they have retained an attorney for any issues associated with an injury.

If the customer confirms that they have retained an attorney, then it is presumed that there is a pending claim or litigation and the VR Counselor must ascertain whether TWC-VR may pursue subrogation.

### Types of Subrogation

When the customer has retained an attorney or there is an injury-related lawsuit pending, the VR Counselor reviews the following scenarios with the customer to determine whether a *Subrogation Report (VR3500)* should be completed:

* A customer is bringing claims or suing another party for personal injury caused by the other party's negligence or wrongdoing, and when TWC-VR has expended, or will expend, funds for rehabilitation services due to the negligence or wrongdoing;
* A customer was injured on the job, but there is no workers' compensation coverage, and the customer has filed a liability claim or lawsuit; and
* The Texas Department of Insurance, Division of Workers' Compensation, has denied the customer's claim, and the customer is appealing the denial either to the Texas Department of Insurance, Division of Workers' Compensation, or in court, and TWC-VR has provided or will provide diagnostic or restorative services related to the injury.

TWC-VR does not pursue subrogation when any of the following are true:

* The Texas Department of Insurance, Division of Workers' Compensation, is paying or will pay for the customer's medical expenses;
* When the customer is applying for Supplemental Security Income (SSI) or Social Security Disability Insurance (SSDI) benefits;
* When TWC-VR has expended no funds and expects to spend no funds; and
* When TWC-VR expenditures in on-the-job injury cases include no medical costs relating to the original injury.

### Subrogation Process

When TWC-VR has determined it may be entitled to pursue subrogation, the following steps are required by TWC-VR staff to ensure that OGC is notified of the pending subrogation case in a timely manner:

1. Steps and communications related to the pending or final subrogation must be documented in RHW as case notes;
2. Complete *VR3500*;
3. Enter "yes" in the "lawsuit pending" section of the RHW Personal Information page;
4. Send the completed form to OGC (email, fax, mail):

**TWC OGC**

Attention: Legal Assistant

101 East 15th Street, Room 608

Austin, Texas 78778

Tel: (512) 936-3511

Fax: (512) 463-1426

Email: [subrogation@twc.texas.gov](mailto:subrogation@twc.texas.gov)

1. Include copy of *VR3500* in the customer's paper case file.

If the customer has questions about the subrogation process that the VR Counselor cannot answer, TWC-VR staff can escalate those questions through their chain of management to OGC for additional guidance and support.

OGC’s recovery process begins when funds that are recoverable have been encumbered. TWC-VR staff are not required to track a subrogated case at this point.

## APPROVALS & CONSULTATIONS

There are no approvals or consultations for this policy and these procedures.

**REVIEW**

The Policy Planning and Statewide Initiatives Team, or designee, is responsible for reviewing this policy and these procedures and will update the Document History log if necessary.

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| **Date** | **Type** | **Change Description** |
| 9/3/2024 | New | VRSM Policy and Procedure Rewrite |