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Rehabilitation Act: Summary of 1998 Reauthorization Legislation

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Summary

The Rehabilitation Act of 1973 authorizes multiple programs that support vocational rehabilitation (VR) services to help individuals with physical and mental disabilities become employable and achieve independence. The Act was reauthorized for 5 years through FY2003 by P.L. 105-220, the Workforce Investment Act of 1998 (WIA) (signed by President Clinton on August 7, 1998). FY2002 funding for the Act is \$2.9 billion. It is expected that Congress will review the Act for reauthorization in the 108th Congress. This report is being issued now as part of the preparation for that review.

The Act's major program, the federal-state vocational rehabilitation (VR) program under Title I, provides formula grant funds to states for VR services to assist persons with significant disabilities become employed. Title I represents 86.4% of the Act's total FY2002 funding. Persons are eligible for Title I VR services if they have a physical or mental impairment that results in a substantial impediment to employment.

In general, P.L. 105-220 simplified certain aspects of the vocational rehabilitation process for consumers, expanded consumer choice of services and rehabilitation providers, and coordinated the federal-state VR program with the workforce investment system created by the same law. (The workforce investment system is the Nation's primary job training program for unemployed or underemployed persons.) The law also required that individuals with disabilities are to be served not only by the VR program, but also through the workforce investment system. The law required VR consumers to be involved in their VR planning process, giving them more choice in the development of their individualized plans for employment (IPE). The IPE is a key document that establishes an individual's employment goals, and specifies the services he/she will receive and the service providers.

P.L. 105-220 simplified certain aspects of the eligibility determination process. For example, the law was changed so that an individual is *presumed* to be eligible for VR services if he/she is eligible for Social Security disability (SSDI) or supplemental security income (SSI). Under prior law, there was no presumptive eligibility provision. The law also allows state VR agencies to use existing, current information available from other programs to determine eligibility for VR services and to develop the IPE. Under other provisions, states are required to provide at least a minimum level of services to persons who otherwise would not be served. For such persons, the state is required to implement an information and referral system, including guidance services.

For information on funding for programs under the Act, see CRS Report *Rehabilitation Act: Programs and Funding* (forthcoming). This report will not be updated.

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Rehabilitation Act: Summary of 1998 Reauthorization Legislation

Introduction

The Rehabilitation Act of 1973 provides comprehensive vocational rehabilitation (VR) services designed to help individuals with physical and mental disabilities become employable and to facilitate independence and integration into society. Congress reauthorized the Rehabilitation Act of 1973 for 5 years through FY2003 as part of the Workforce Investment Act of 1998 (WIA) (P.L. 105-220, signed on August 7, 1998).¹ The Act is expected to be reviewed for reauthorization in the 108th Congress. Most of the Act's programs are administered by the Rehabilitation Services Administration (RSA) in the U.S. Department of Education (ED).

The Act was originally enacted in 1920 as a means of returning physically injured workers to their jobs. The program was expanded in 1943 to help meet the manpower shortage after the entry of the United States into World War II. Amendments in 1973 gave service priority to persons with severe disabilities if such persons had employment potential.

The 1978 amendments expanded the Act by adding a major new service category, comprehensive services for independent living, for persons with severe disabilities without current employment potential. Amendments in 1986 strengthened services to persons with severe disabilities by authorizing supported employment

¹The overall intent of P.L. 105-220, the Workforce Investment Act of 1998 (WIA) legislation was to consolidate, coordinate, and improve employment, training, literacy, and vocational rehabilitation programs through statewide and local workforce investment systems created by the Act. For information on WIA, see CRS Report 97-536, *Job Training Under the Workforce Investment Act: An Overview*, by Ann Lordeman.

The Senate approved the Conference Agreement on H.R. 1385 on July 29, 1998, and the House approved it on July 31, 1998. The House version of the bill was originally passed by the House on May 16, 1997, and the Senate version was passed by the Senate on May 5, 1998. The Senate bill incorporated the Rehabilitation Act Amendments of 1998. The Omnibus Consolidated Appropriations Act (P.L. 105-277, signed into law on October 21, 1998) included technical amendments to the Rehabilitation Act which changed citation references.

Prior authorizations of appropriations for the Act expired at the end of FY1997. The Rehabilitation Act provides for a 1 year extension of Title I if the Act has not been reauthorized by the end of the authorization period in the law. Other programs under the Act are extended for 1 additional year under provisions of the General Education Provisions Act (GEPA), if they have not been reauthorized by the end of the authorization period.

services for persons unable to maintain competitive employment without special assistance. Amendments in 1992 reauthorized the Act for 5 years through FY1997. Among other things, these amendments streamlined the VR process for consumers, and made the eligibility determination process more efficient and timely.²

This report summarizes major provisions of the 1998 reauthorization legislation.³ Other legislation affecting Rehabilitation Act programs includes the Ticket to Work and Work Incentives Improvement Act of 1999 (P.L. 106-170). This legislation authorizes the Social Security Administration (SSA) to issue vouchers, or “tickets” to persons who receive federal Social Security disability insurance and supplemental security income (SSI) payments to use for payment to vocational rehabilitation providers of their choice. Recipients of tickets may choose state VR agencies or other public and private providers to provide them rehabilitation services. For more information on this legislation, see CRS Report RL31157, *Ticket to Work and Work Incentives Act of 1999: Implementation Status*.⁴

Background

The Act contains seven titles,⁵ which authorize funding for VR services to state agencies, a wide range of research, demonstration and training activities, independent living centers, protection and advocacy services, and the National Council on Disability, among other things. The Act also contains provisions (Section 504 of the Act) which prohibit discrimination on the basis of disability in any program or activity that receives federal financial assistance.

Most funding – nearly 90% – is for Title I of the Act which provides funds to state VR agencies.⁶ These agencies provide a wide range of services to assist persons with disabilities to enter or reenter the workforce. They are responsible for assessing each person’s need for VR services, providing counseling and assistance, and providing or arranging for other services, such as training, physical and mental

²Among other provisions, the 1992 law included amendments to establish a general presumption that persons with disabilities, including persons with severe disabilities, can benefit from VR services in terms of an employment outcome, unless the state VR agency can show evidence otherwise. This presumption allows some persons, who would not have otherwise been eligible, to enter the program. The amendments also required that eligibility for VR services be determined within 60 days of application; increased client choice of VR services; increased requirements for consumer control of rehabilitation policy and service delivery and for rehabilitation efforts on behalf of minority individuals.

³Regulations to implement the Title I 1998 legislation were published in the *Federal Register*, v. 66, no. 11, January 17, 2001. p. 4380, and *Federal Register*, v. 66, no. 14, January 22, 2001. p. 7250.

⁴Regulations to implement the ticket to work program were published in the *Federal Register*, v. 66, no. 249, December 28, 2001.

⁵For a detailed description of each title and funding, see CRS Report *Rehabilitation Act: Programs and Funding* (forthcoming).

⁶FY2002 funding is \$2.9 billion, of which \$2.5 billion is for Title I.

restoration, and job search assistance, to assist him/her achieve a specific employment outcome.

Under the law, state VR agencies are required to provide services to individuals who have a physical or mental impairment which results in a substantial impediment to employment and can benefit from VR services to obtain or regain employment. States must give priority to serving individuals with significant disabilities.⁷

The Act also authorizes a wide range of research, training, and demonstration activities, including authorization for the National Institute on Disability and Rehabilitation Research.

Other programs authorized by the Act include Title VII grants to states and private non-profit organizations to operate centers for independent living for persons with significant disabilities. Centers for independent living are consumer-controlled community-based organizations which provide a wide array of services to assist persons with significant disabilities maintain independent lives in the community. The balance of the Act's programs include authorization for grants for supported employment activities; employment projects with private industry; protection and advocacy programs; the National Council on Disability; the Architectural and Transportation Barriers Compliance Board; and program evaluation activities.

Latest Reauthorization (105th Congress)

The majority of provisions in P.L. 105-220 amended the Title I program of grants to states for VR services. In general, the law contained provisions to: simplify certain aspects of the vocational rehabilitation process for consumers; expand consumer choice; require that individuals with disabilities are to be served not only by the VR program, but also through the workforce investment system created by WIA; and coordinate the federal-state VR grant program authorized under Title I of the Act with the workforce investment system. The workforce investment system refers to coordinated statewide and local activities to increase employment, retention, earnings, and occupational skills of participating individuals. The workforce system is comprised of, among others, the Governor, state agencies, state and local elected officials, and representatives of the business community.

The following describes selected provisions of P.L. 105-220 relating to the Rehabilitation Act.

Streamlining the Vocational Rehabilitation Process. One of the objectives of the 1998 reauthorization legislation was to streamline and simplify the

⁷Individuals with significant disabilities are defined in the law as persons: who have a severe physical or mental impairment which seriously limits one or more functional capacities (such as mobility, communication, self-care, self-direction, interpersonal skills, work capabilities or work skills) related to employment; whose vocational rehabilitation can be expected to require services over an extended period of time; and who have a disability as determined by an assessment.

VR process for consumers of services. The legislation built upon related provisions that were enacted in the 1992 reauthorization of the Act. The 1992 amendments included provisions to make the eligibility process more efficient and timely, and to make it easier for state vocational rehabilitation counselors to accept persons for service. Many VR consumers continued to advocate additional ways to streamline the rehabilitation process. This interest was reflected in a number of provisions in P.L. 105-220, including simplifying certain aspects of the eligibility determination process, and changing the way in which a consumer's VR services are planned. These provisions are described below.

Presumptive Eligibility by Recipients of SSDI and SSI; Simplifying Eligibility Determinations. P.L. 105-220 changed prior law to require that an individual is presumed to be eligible for VR services if he/she is eligible for cash payments under the Social Security disability (SSDI) or supplemental security income (SSI) programs. Under prior law, there was no presumptive eligibility provision. The Joint Explanatory Statement of the Committee of Conference stipulated that this provision does not create an absolute entitlement to VR services. In order to receive VR services, an individual must also require services to prepare for, secure, retain, or regain employment. The Statement also indicated that the presumption of eligibility is only the first step in an overall evaluation of whether or not an individual will receive VR services, and that an individual must demonstrate his/her desire to work in order to receive services. Receipt of services is also contingent upon availability of funds, consistent with state policies.⁸

Another provision designed to ease the eligibility determination process reduced the need for development of new eligibility documentation. The law allowed state VR agencies to use existing, current information available from other programs to determine eligibility for VR services and to develop the *individualized plan for employment* (IPE), a key element in the development and planning of rehabilitation goals and services for consumers. The eligibility determination process may include information used by education agency officials and the Social Security Administration (SSA), and information provided by the individual and his/her family, among other sources.

VR Consumers' Rehabilitation Services Plans. After VR counselors determine an individual's eligibility and assess his/her vocational rehabilitation needs, the next step is to develop a written document that sets forth the individual's employment goals. Under the 1998 law, each individual eligible for VR services must have an IPE.

During the reauthorization process, some observers asserted that the planning process used by state VR counselors on behalf of clients was too cumbersome and unnecessary for all consumers, and involved expenditure of VR counselors' time that could otherwise be spent on other responsibilities. In addition, there was ongoing concern about expanding client involvement in the rehabilitation process. Observers indicated that some consumers may need only limited assistance, not long-term

⁸Joint Explanatory Statement of the Committee of Conference on H.R. 1385. *Congressional Record*, July 29, 1998. p. H6693.

intensive planning and intervention, and can identify what services they want without going through an extensive planning process with VR counselors.

P.L. 105-220 responded to these concerns by requiring that consumers be more involved in their VR planning process, and that they have more choice in the development of their IPEs. Specifically, the law required that eligible individuals exercise informed choice in selecting an employment outcome, services that they will receive, service providers, and methods to procure services. The law also required that the state VR agency provide consumers with options for developing the IPE, including information on the availability of assistance from a VR counselor in developing all or part of the IPE, but it allowed consumers to determine the extent of VR counselor assistance. The Joint Explanatory Statement of the Committee of Conference on H.R. 1385 stated that “[t]he Conferees expect that these changes will fundamentally change the role of the client-counselor relationship, and that in many cases counselors will serve more as facilitators of plan development.”⁹

P.L. 105-220 added certain other new provisions related to the IPE. It required that the IPE provide for timelines in achievement of employment outcomes, and required it to be amended, as necessary, by the consumer, in collaboration with the counselor, when there are substantive changes in goals, services, or providers. It also required that the IPE identify the need for extended services by persons with the most significant¹⁰ disabilities who are in supported employment.

The law retained many requirements related to the IPE that were required by the prior law. For example, it retained a requirement that the plan be written. The law continued to require that the plan identify a consumer’s employment goals/outcomes, consistent with his/her unique strengths, resources, priorities, concerns, abilities, and capabilities, and informed choice; services to be provided; providers and methods to procure providers; and rights and remedies available to the consumer, among other things.

Information and Referral Services for Persons Not Served under a State’s Order of Selection Criteria. Under the law, states that cannot serve all individuals who are eligible for services must establish an *order of selection* process. Order of selection refers to a process whereby a state establishes criteria to serve *first* those eligible individuals with the most significant disabilities. Each state sets up its order of selection criteria in accordance with certain federal regulatory requirements. Under prior law, persons who did not meet a state’s criteria may not receive any vocational rehabilitation services.

P.L. 105-220 directed states to provide at least a minimum level of services to persons who otherwise would not be served because they are too far down on the state list for order of selection. That is, while it retained a requirement for order of selection, the law specified what assistance persons *not* served under order of

⁹Joint Explanatory Statement of the Committee of Conference on H.R. 1385. *Congressional Record*, July 29, 1998. p. H6693.

¹⁰Prior law referred to persons with “severe” disabilities; P.L. 105-220 changed this to refer to persons with “significant” disabilities throughout the law.

selection criteria will receive from the state VR agency. For such persons, states are required to implement an information and referral system. The system is required to provide *information and guidance* to assist these individuals in preparing for, securing, retaining, or regaining employment. In addition, states are required to refer these individuals to other federal and state programs, including components of the statewide workforce investment system established by P.L. 105-220 best suited to meet their needs, among other things.

The Joint Explanatory Statement of the Committee of Conference indicated that individuals with disabilities who do not meet the VR agency's order of selection criteria are also to be served by the statewide workforce investment system. It stated as follows:

The Conferees intend to alleviate the backlog of eligible individuals who do not receive services from the state vocational rehabilitation program because they do not meet the state's order of selection criteria. Many of these individuals do not receive services from the state workforce system and are inappropriately referred back to the state vocational rehabilitation program because they have a disability. The Conferees expect that through the changes made throughout the Conference agreement in integrating the state workforce system, states will serve individuals with disabilities throughout the entire state workforce system, not only through [the] state vocational rehabilitation program.¹¹

Consumer Choice. Enhancement of consumer choice is an important goal in providing VR services. During the reauthorization process, advocates asserted that the more freedom a client has to choose his or her own options for employment and training, and to participate in development of vocational goals, the better the chances of a positive employment outcome. The issues surrounding expanded consumer choice were addressed by a number of 1992 amendments to the Act.¹²

P.L. 105-220 expanded on the 1992 amendments to place more emphasis on consumer choice. First, as discussed above, the law required state VR agencies to give consumers more responsibility for the development of their VR plans. In addition, it required that the state VR agency develop and implement written policies and procedures on informed choice. These policies and procedures must address ways to inform each applicant and eligible individual about opportunities available to exercise informed choice. Policies must also address consumers' decisions on assessment, selection of employment goals, rehabilitation services to achieve their goals, methods to procure services, and providers of services.

Coordination of the State VR Program with Other Federal Employment Programs. P.L. 105-220 linked the state's VR program with the

¹¹Joint Explanatory Statement of the Committee of Conference on H.R. 1385. *Congressional Record*, July 29, 1998. p H6692.

¹²Among other things, these included requirements that the rehabilitation counselor and the consumer jointly develop, agree upon, and sign his/her individualized employment plan, and that it be developed in accordance with a consumer's unique strengths, resources, priorities, concerns, abilities and capabilities.

statewide workforce investment system created by WIA. Specifically, the law included as one of the purposes of the Rehabilitation Act to assist states in operating statewide programs of vocational rehabilitation which are integral parts of statewide workforce investment systems.

In addition, the legislation required the state VR agency to enter into cooperative agreements with other entities that are components of the statewide workforce investment system. Cooperative agreements may provide for use of customer service features, such as common intake and referral procedures; customer data bases, resource information and human service hotlines; staff training aimed at promoting participation by persons with disabilities in workforce investment; use of information and financial management systems that link all components to other electronic networks; and other cooperative networks that facilitate job placement.¹³

Interagency Agreements and Responsibility for Payment for VR Services. P.L. 105-220 required the Governor to ensure that interagency agreements are in effect between the state VR agency and other public agencies, including the state Medicaid program and public institutions of higher education. The purpose of these agreements is to assure that services under an IPE will be provided to individuals with disabilities, to clarify financial responsibility of public agencies to provide these services, and to specify the conditions, terms and procedures under which the VR agency will be reimbursed by other public agencies for VR services, among other things. The law also stipulated that if other agencies are obligated to pay for VR services, and fail to do so, VR agencies may claim reimbursement from such agencies. However, the Joint Explanatory Statement also referred to the responsibilities of public institutions of higher education under provisions of the Americans with Disabilities Act, as follows:

The Conferees recognize that colleges and universities already have a responsibility to provide certain services under the Americans with Disabilities Act (ADA). The Conferees encourage State vocational rehabilitation agencies and public institutions of higher education, in developing interagency agreements, to consider the requirements of the ADA and other laws as well as agreements that may currently be in place.¹⁴

The Statement also cautioned that state VR agencies are not to interpret the interagency agreement provisions as shifting the obligation for paying for specific VR services to colleges and universities.

P.L. 105-220 also addressed interagency agreements with state public school systems. State VR agencies are required to develop plans and policies that provide for the transition of students with disabilities from public schools to vocational

¹³In the markup of S. 1579 by the Senate Committee on Labor and Human Resources on February 4, 1998, Senator DeWine indicated that while the VR program is to be linked to the workforce investment system, funds appropriated for the VR program are not to be compromised or diverted to other workforce populations.

¹⁴Joint Explanatory Statement of the Committee of Conference on H.R. 1385. *Congressional Record*, July 29, 1998. p. H6692.

rehabilitation services. The 1998 law added a provision requiring the state VR agency to develop a formal interagency agreement with the state education agency that, at a minimum, provides for consultation and technical assistance between these agencies regarding transition planning for students with disabilities, procedures for determining state lead agencies responsible for transition services, and procedures for outreach to students with disabilities who may need transition to VR services.

The Joint Explanatory Statement stipulated that state VR agencies are not to interpret these new interagency agreement provisions with state educational agencies to mean that payment for specific transition services will be shifted to state educational agencies. The Statement indicated that state VR agencies are still responsible for paying for transition services.¹⁵

Reporting on Program Outcomes. P.L. 105-220 added several new state reporting requirements. These included reporting data on the number of persons who do not have significant disabilities and who receive information and referral services, as described above. Also, the state is required to report on the number of persons who, after VR participation, were employed 6 months and 12 months after securing or regaining employment. RSA regulations issued before passage of P.L. 105-220 defined a VR case “closed successfully” if the person is employed for 90 days after termination of VR services. (Regulations issued since passage of the law essentially retain the same requirement, but refer to “employment outcome maintained.”)¹⁶ Therefore, under the prior law, there was no need to follow a person for a longer period for reporting purposes.

Other outcome data to be collected include: reasons for an individual’s termination of VR services without achieving an employment objective; earnings at the time of application and termination of VR services; and information necessary to determine the success of the state in meeting state performance measures established under the Workforce Investment Act of 1998, as well as standards and indicators for evaluating the VR program established by the Commissioner of RSA.

Other Selected Provisions. Other provisions of P.L. 105-220 eliminated a number of state plan requirements and required the state VR agency and the State Rehabilitation Council to jointly conduct and report on a comprehensive needs assessment of the state VR program every 3 years.

The new law also made a number of changes to the Act’s training, research, and demonstration programs. For example, the law now requires the National Institute on Disability and Rehabilitation Research (NIDRR) to publish in the *Federal Register* a 5-year plan that outlines rehabilitation research, training, and demonstration priorities.¹⁷

¹⁵Joint Explanatory Statement of the Committee of Conference on H.R. 1385. *Congressional Record*. July 29, 1998. p. H6693.

¹⁶34CFR361.56.

¹⁷The NIDRR long-range plan was published in May 2000. *Long-Range Plan 1999-2003*. (continued...)

P.L. 105-220 repealed Title VIII, Special Demonstration and Training Projects, but moved authority for projects that were previously funded under that title to Title III, Professional Development and Special Projects and Demonstrations. Title III now contains authority for the following programs: personnel training, including projects to support academic degree training; programs that grant academic certifications, and in-service training of rehabilitation personnel; grants to historically black colleges and universities; grants for training of interpreters for persons who are deaf or hard of hearing, and who are deaf-blind; and grants to train personnel of the workforce investment systems in working with persons with disabilities among other things.

Title III also includes authority for various demonstration programs, including projects to demonstrate ways to increase client choice in the rehabilitation process; parent information and training programs to assist parents of children with disabilities to work more effectively with rehabilitation professionals; and projects to train rehabilitation personnel for braille training (these programs were formerly authorized under Title VIII). Title III retains authority for programs for migrant and seasonal farmworkers, and special recreational services, such as leisure education, 4-H activities, music and construction of facilities for aquatic rehabilitation.

Amendments to the Helen Keller Center Act. P.L 105-220 reauthorized the Helen Keller National Center Act for 5 years through FY2003. It also authorized the Center to establish and maintain a registry of deaf-blind individuals in the field offices of the National Center. Persons who are deaf-blind may choose to have their name placed on the registry.

Authorization Levels and Effective Date. The law established “such sums as may be necessary” for all programs under the Act. The effective date is the date of enactment, August 7, 1998.

¹⁷(...continued)

Office of Special Education and Rehabilitation Services, NIDRR, U.S. Department of Education. [<http://www.ed.gov>]