

Chapter 7 Confidentiality, Order of Selection and Case File Documentation

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MVR Policy 7.1 Confidentiality

Applied Effective Date: 07/06/05

Last Edition Date: 12/27/02

Federal Authority: 34 CFR 361.38 Protection, Use, and Release of Personal Information.

State Authority: ARM 37.30.1301 CONFIDENTIAL INFORMATION

Policy Statement:

Montana Vocational Rehabilitation (MVR) shall safeguard the confidentiality of all personal information, including photographs and lists of names. MVR shall inform all consumers, applicants, or consumer representatives of the agency's need to collect certain personal information and policies governing use.

The MVR counselor shall explain to each consumer or applicant whether the provision of personal information is mandatory or voluntary and the effects of not providing requested information to the agency.

All consumer or applicant information acquired as part of the rehabilitation process shall remain the property of MVR. It is strictly confidential.

Consumer information shall be used only for purposes directly related to the administration of the MVR program. Exceptions to this are when it is:

1. Required by law or regulation.
2. In response to investigations in connection with law enforcement, fraud, or abuse except where expressly prohibited by federal or state laws or regulations.
3. In response to a judicial order.
4. To be used as protection for the individual or others when the individual poses a threat to his/her safety or to the safety of others.

Information containing identifiable personal information may not be shared with advisory or other bodies that do not have official responsibility for administration of the program.

Personal information may be released to an organization, agency or individual engaged in audit, evaluation, or research only for purposes directly connected with the administration of the MVR program. Staff shall consult with supervision prior to releasing personal information outside of the state unit for the purposes stated in this paragraph.

Information, which pertains to a consumer or applicant, shall not be released unless the counselor has documented that there is informed written consent from

the consumer or applicant to do so. This requires that the consumer or applicant has signed and dated a release of information form that:

- a. Designates the agency or person authorized to release the information;
- b. Specifically designates the parties to whom the information may be released;
- c. Designates the specific information to be released.

The consumer or applicant controls the release of his/her personal health information. With a signed and dated release from the consumer specifically requesting the release of their medical or psychological records, MVR may release that information to the party identified. When the originating party of the personal health information in the MVR case file is not MVR, the originating party's intentions regarding the disposition of the patient's health care information may not override the consumer or applicants request to release or forward the information.

An employee of MVR shall not testify in court or in an administrative hearing, nor release records for testimony, without the informed written consent or authorization of the individual, parent or guardian as applicable, unless served with an appropriate subpoena and/or ordered to do so by a judge or hearing officer. The counselor shall consult their supervisor and the department's legal office before taking any action in response to a court order, warrant, subpoena, or other similar document.

MVR staff requested to provide testimony may request legal advice through the department's legal office. All agency policies on confidentiality and informed written consent shall apply when an employee is asked to testify in court or in an administrative hearing or to release records. Consumers or applicants and, as appropriate, their representatives have the right to direct access to any personal information that MVR maintains except medical or psychological information determined by MVR to be potentially harmful to the individual. This information may not be directly released to the individual, but must be provided through a third party chosen by the individual, which may include, among others, an advocate, a family member, or a qualified medical or mental health professional, unless a representative has been appointed by a court in which case the information must be released to the court appointed representative.

An individual who believes information in the individual's record of services is inaccurate or misleading may request that MVR amend the information. If the information is not amended, the request of the individual must be documented in the record of services.

MVR Policy 7.2 Order of Selection

Applied Effective Date: 01/24/2014

Last Edition Date: 06/01/99

Federal Authority: 34 CFR 361.36 Ability to Serve all Eligible Individuals;
Order of Selection for Services.

State Authority: ARM 37.30.111 Order Of Selection

Policy Statement:

The Disability, Employment and Transitions Division (DETD) Administrator will determine if resources will be available to provide vocational rehabilitation services to all eligible individuals throughout the program year. If resources are not available, consistent with state and federal law and regulations, the Administrator will establish restrictions regarding the order in which eligible individuals may be served. Individuals with the most significant disabilities will be given first priority.

The order of selection shall not be based on any other factors, including:

- (1) Any duration of residency requirement, provided the individual is present in the State;
- (2) Type of disability;
- (3) Age, gender, race, color, or national origin;
- (4) Source of referral;
- (5) Type of expected employment outcome;
- (6) The need for specific services or anticipated cost of services required by an individual; or
- (7) The income level of an individual or an individual's family.

Exemptions

Services necessary for determination of eligibility, assessment of functional limitations, and post-employment services are exempted from order of selection (OOS). Once an individual has been moved into services from the waiting list, he/she cannot be moved back onto the waiting list. Individuals with the most significant disabilities will be given first priority.

Implementation and Operation of OOS

The VRB administration, in consultation with the VRB Council, will determine when OOS will be implemented and what priority categories may be served. VRB will continue to provide services to individuals currently receiving services as of the effective date the order of selection is implemented, until financial resources become available and the priority category is opened.

When OOS is in effect, counselors will continue to take applications and make eligibility determinations. VRB will provide all eligible individuals who do not meet the order of selection criteria with information about, and referral to, other federal or state programs (including other components of the statewide workforce investment system) that can assist them in preparing for, securing, retaining or regaining employment.

VRB will notify each individual determined eligible, in writing of:

- (A) The priority categories;
 - (B) The individual's assignment to a particular priority category classification;
 - (C) Any reclassification of priority category assignment due to changes in the individual's circumstances, or due to any misclassifications
 - (D) The individual's right to appeal the category assignment; and
 - (E) The availability of assistance from the Client Assistance Program.
- Individuals on the OOS waiting list will be contacted at least once in the first 180 days after being placed on the waiting list, and every 180 days thereafter.

Priority Category Classifications

Each individual found eligible for vocational rehabilitation services will be assigned to one of the following categories:

- **Priority Category One:** Eligible individual(s) with a **most significant disability** that results in serious functional limitations in three or more functional capacities, and who will require multiple services over an extended period of time (12 months or more),
- **Priority Category Two:** Eligible individual(s) with a **significant disability** that results in serious functional limitations in one or more functional capacities, and who will require multiple services over an extended period of time (12 months or more),

OR

The individual is a recipient of Social Security Disability Benefits (SSDI) or Supplemental Security Income (SSI) as a result of disability or blindness who is presumed to be eligible for VR services and an individual with a significant disability.

- **Priority Category Three:** All other eligible Individuals with disabilities.

Order for the Provision of Vocational Rehabilitation Services

1. All individuals within a higher priority category will be served before any individual in the next lowest priority category.
2. When OOS categories are opened, either partially or entirely, individuals on the waiting list will be served in chronological order based on date of the application.

Priority Category Classification

- The Disability Level Order (DLO) certification form must be completed prior to or at the time of determining eligibility.
- If OOS is called, eligible applicants will either go on the waiting list (status 04) or into services (status 10) depending on the category they are assigned to, and whether that category is open or closed at the time the eligibility decision is made.
- **Presumptive eligibility:** Presumptive eligibilities are considered to be significantly disabled (Priority 2). When priority category 2 is closed, the counselor will have 60 days to gather information on presumptive applicants to determine if the client's disability is considered "most significant," prior to moving the client out of applicant status (status 02) into a service status (status 04 or status 10).

Classification Changes

An individual's classification can be changed. The Regional Manager and/or Counselor Supervisor must approve any change to the initial classification.

Right to Appeal Priority Classification

The individual has the right to appeal his/her assigned category. Upon the outcome of the appeal the individual will be notified in writing, or in an accessible format, of their reclassification to a higher category or denial for change.

Serious Limitations in Functional Capacities Due to a Disability

"Serious Limitations" means that a physical or mental impairment (based upon medical, psychological, vocational, educational, communication, and other related factors) hinders an individual from preparing for, entering into, engaging in, or retaining employment consistent with the individual's abilities and capabilities.

Mobility - Refers to the ability to move from place to place, inside and outside the home, to the degree necessary to get and keep a job.

Communication - refers to the physical, cognitive and psychological ability to exchange information effectively when participating in work

- **Note:** Individuals who require an interpreter will be considered Most Significant, Priority 1.

Self-care - refers to the skills necessary to fulfill basic needs such as those related to health, safety, food preparation and nutrition, hygiene and grooming, and money management.

Self-Direction – refers to the ability to regulate behavior in a purposeful and predictable way to the degree necessary to get and keep a job.

Interpersonal Skills - refers to the ability to establish and maintain positive interpersonal relationships to the degree necessary to prepare for, secure and keep a job.

Work Tolerance – refers to the ability to carry out required physical and cognitive work tasks in an efficient and effective manner over a sustained period of time.

Work Skills – refers to the specific job skills required to carry out work functions as well as the capacity for an individual to benefit from training in these work functions.

- **Note:** Individuals who require long-term support will be considered Most Significant, Priority 1.

Motor Skills – refers to the purposeful movement and control of the body and its members to achieve specific results to the degree necessary to get and keep a job.

Individuals not ready to Proceed with IPE Development upon Referral from the OOS Waiting list

If a VRB counselor contacts an individual to initiate services and he/she is not ready to begin working with VRB, the VR counselor needs to help the individual make an informed decision about how to proceed. VRB cannot 'hold' a spot on the waiting list nor can an individual be put back at the top of the list. The VRB counselor needs to discuss the reasons the individual is not ready to proceed and whether a reasonable time frame can be agreed upon to resolve the issues. The VRB counselor and individual make plans to proceed with vocational planning and IPE development within a reasonable time period (90 days) or to close the case. In some cases, closing the case and submitting a new application at later date may be the most appropriate.

Post-Employment Services

OOS does not impact or alter the provision of post-employment services. Post-employment services are considered an amendment of the IPE, and therefore, an individual who needs post-employment services is not required to meet the

highest priority category currently being served under an OOS nor is the individuals required to wait for services.

If the VRB counselor determines that substantial services are needed a new application is completed subject to OOS.

STATUS 04 – OOS WAITING LIST

Definition

A consumer in Status 04 is one who has been determined eligible for VRB services, but does not meet the agency's order of selection priorities, and therefore, must wait for services to be provided.

Information and Referral

To provide individuals with accurate VRB information and guidance, which may include counseling and referral for job placement, the VRB counselor provides advice and guidance about how the individual might proceed, explains referral sources available, and offers to initiate a referral to another program, if appropriate. These interactions occur in the course of other activities, such as completing the application, intake and eligibility determination. The VRB counselor will not establish an on-going counseling relationship regarding Information and Referral

When to Move Out of Status 04

A consumer is moved out of Status 04 and into Status 10 when the agency has the resources to provide the needed services, or the case is closed Status 38 which indicates services will not be provided for whatever reason.

MVR Policy 7.3 Case File Documentation

Applied Effective Date: 12/27/02

Last Edition Date: 6/ 1/1999

Federal Authority: 34 CFR 361.47 **Record of Services**

State Authority: ARM 37.30.102 Vocational Rehabilitation Policy:
Incorporation by Reference of Federal and State Authority

Policy Statement:

MVR shall maintain a case file for each applicant and consumer that contains all required documentation. The rationales for any decision to provide, alter, or deny services shall be documented in the case record.

MVR Procedure 7.1 HIPAA Procedure Memo

Applied Effective Date: 05/31/01

Last Edition Date: 05/31/01

Montana Vocational Rehabilitation will implement the following policies and procedures in order to comply with the Department's Health Insurance Portability and Accountability Act (HIPAA) requirements. These forms, policies and procedures are focused on the management of confidential information. While Vocational Rehabilitation agencies are not viewed by the Rehabilitation Services Administration of the Federal Department of Education as being obligated to conform to HIPAA standards for the purposes of administering a VR program, the Department of Public Health and Human Services has implemented related policies to which we must conform.

1. The MVR Privacy Policy is a new policy and form for the Division. Consumers must be provided this Policy statement during intake and the signed copy must be placed in the file. The consumer may request a copy of the policy. For consumers who are in the active caseload, the procedure will be for counselors to present this information either prior to obtaining the next release of information or at the next annual review of IPE. This form must be offered to be re-signed every three years while a case is open.
2. The MVR Authorization For Release Of Personal Information is revised to comply with department policy as well. Department policy also requires the following changes in our procedures for using this form:
 - a. The form requires an expiration date. The expiration date may not exceed 30 months from the date of consumer signature. The expiration date is 6 months from signature if this field is left blank.
 - b. The consumer must be offered a copy of their Authorization.
 - c. The Release form contains a new section which allows the consumer to revoke the Authorization.
3. Under certain limited circumstances, the Department may require you to note disclosures of file information in a Disclosure Log. The disclosure log must be kept in the case file. Because the circumstances in which we must log disclosures are so limited the agency will initiate a Disclosure log in a file only when a disclosure is made that requires a logged entry. This will result in most MVR files not having disclosure logs. The absence of a disclosure log means by default, no disclosure of information occurred that obligate a logged entry.
 - a. The following written and oral communications are not PHI and therefore not required to be recorded in the disclosure log:
 - i. Treatment communications with providers of MVR services conducted for the purposes of determination of eligibility,

assessment of rehabilitation need, Individualized Plan for Employment (IPE) development, and the provision of services under an IPE.

- ii. Payment required in the provision of benefits, including eligibility, billing, prior authorization, and utilization review.
- iii. Healthcare Operations: business and management activities related to quality assurance, audit, fraud and abuse and legal services.
- iv. Disclosures made under a valid authorization for such disclosure.

In the absence of an MVR Authorization to Release Information the following kinds of disclosures will be required to be logged in the MVR Disclosure log:

- b. Information to a public health official (other than staff employed for public health functions) such as the reporting of disease or injury.
 - c. Information in response to mandatory child or elder abuse reporting laws (other than protective services staff who respond to such report) to an entity authorized by law to receive the abuse report.
 - d. Information from an individual's record in response to an audit or review (whether financial or quality of care or other audit or review) of a provider or contractor.
 - e. Information from an individual's records in relation to licensing or regulation or certification of a provider or licensee or entity involved in the care or services of the individual.
 - f. Information about an individual that is ordered to be disclosed pursuant to a court order in a court case or other legal proceeding - include a copy of the court order with the accounting.
 - g. Information about an individual provided to law enforcement officials pursuant to a court order – include a copy of the court order with the accounting.
 - h. Information about an individual provided by MVR staff to avert a serious threat to health or safety of a person.
4. Business Associate agreements are required for organizations that perform work related to DPHHS's role as a covered entity. Community Rehabilitation Programs, Mental Health Centers, Independent Living Centers, HRDC's, Medical and Psychological Clinics are all self standing service providers that perform services for MVR clients through fee for service agreements, but who do not carry out elements of the MVR administrative role. The organizations listed above are not considered for the purposes of HIPAA, Business Associates of MVR, and we need not enter into a Business Associate arrangement with them. We may however inform them that we comply with HIPAA requirements as they pertain to the Protected Health Information of the Department of Public Health and Human Services.
5. All authorizations, privacy policy notices and disclosure logs are to be maintained in the case file together. The authorizations must be

maintained in a time chronological order by expiration date to allow for the timely management of authorization renewal as necessary.