

LEGAL NOTICE

Arkansas Rehabilitation Services (ARS) – Department of Career Education is informing the public that the ARS Establishment Policy draft is available for review and input. Interested parties are encouraged to submit comments in writing concerning this policy. Copies of the policy are available at the local offices of Arkansas Rehabilitation Services and the Central Office. The policy is also available on the ARS website at <http://ace.arkansas.gov>.

The public comment period begins on October 16, 2012 at 8:00 a.m. and ends on November 14, 2012 at 3:30 p.m. A public hearing will be held October 23, 2012 from 10:30 a.m. – 11:30 a.m. at the ARS Central Office, 525 W. Capitol Ave, Little Rock, AR 72201; telephone 501-296-1600. Accommodations and accessible formats are available. Three days advance notice is requested, but not required, for accommodations or accessible formats. Please forward comments or requests for accommodations or accessible formats to Lisa Kelley, 525 W. Capitol Avenue, Little Rock, AR 72201 or call 501-683-3346.

Summary of the Rule

Department: Department of Career Education

Division: Arkansas Rehabilitation Services Division

New Rule: Department of Career Education, Rehabilitation Services Division ARS Establishment Policy

Effective Date: December 15, 2012

Summary:

This policy will govern ARS in the establishment, development, and improvement of Community Rehabilitation Programs to provide VR services.

The federal regulation and/or statute citation:

Section 103(b)(2)(A), of the Rehabilitation Act of 1973, as Amended – 34 CFR 361.49(a)(1), 34 CFR 361.5 (v)(18)(ii) and (v).

Appendix C

Facility Programs

ARS Establishment Policy

Establishment Defined

Establishment, development, or improvement of a public or nonprofit community rehabilitation program means:

The establishment of a facility for a public or non-profit community rehabilitation program (as defined in 34 CFR 361.5(b)(18) to provide vocational rehabilitation (VR) services to applicants or eligible individuals. 34 CFR 361.5(b)(17)(i).

Establishment Authority

Section 103(b)(2)(A) of the Rehabilitation Act of 1973, as amended and 34 CFR 361.49(a)(1) authorize the use of VR funds to support “The establishment, development, or improvement of community rehabilitation programs (CRP), including, under special circumstances, the construction of a facility. Such programs shall be used to provide services that promote integration and competitive employment.” The authority is used to provide financial support to community rehabilitation programs to establish or develop service programs, or improve them and to increase their effectiveness in providing VR services to applicants or eligible individuals.

In serving groups of individuals with disabilities, ARS is authorized to establish, develop, or improve a public or private CRP, pursuant to section 103(b)(2)(A) of the Rehabilitation Act and 34 CFR 361.49(a)(1). ARS is permitted under the VR program to alter or remodel a CRP and install fixed or movable equipment, as necessary, to establish, develop, or improve the facility for a CRP (34 CFR 361.5(b)(18)(ii) and (v)).

Community Rehabilitation Program

Section 7(5) of the Rehabilitation Act of 1973, as amended and 34 CFR 361.5(b)(9) defines CRP as a program that provides directly or facilitates the provision of one or more VR services to individuals with disabilities to enable those individuals to maximize their opportunities for employment, including career advancement.

Vocational Rehabilitation Services

Vocational rehabilitation (VR) services are those services provided to an individual pursuant to an Individualized Plan for Employment in accordance with 34 CFR 361.48 or to groups of individuals with disabilities in accordance with 34 CFR 361.49 (section 103 of the Rehabilitation Act of 1973, as amended and 34 CFR 361.5(b)(58)). Section 111(a)(1) of the Rehabilitation Act of 1973, as amended and 34 CFR 361.3 require that VR funds be used solely for the provision of VR services or for the administration of the VR program.

Establishment Activities

The need for establishment, development or improvement of a CRP must be determined through the ARS Comprehensive Statewide Needs Assessment (CSNA). Plans to establish, develop and improve CRPs through establishment activities must be included in the ARS State Plan in the following attachments, if applicable:

- CSNA (Attachment 4.11(a))
- State Goals and Priorities (Attachment 4.11(c)(1))
- State's Strategies (Attachment 4.11(d))
- Cooperative Agreements with Private Nonprofit Organizations (Attachment 4.8(b)(3))
- Arrangements and Cooperative Agreements for the Provision of Supported Employment Services (Attachment 4.8(b)(4))
- Evaluation and Report of Progress (as the project moves forward) (Attachment 4.11(e)(2))

Comprehensive Statewide Needs Assessment

ARS and the State Rehabilitation Council conduct the Comprehensive Statewide Needs Assessment (CSNA) every three (3) years, or update the CSNA as needed. ARS and the rehabilitation council conduct the CSNA for the purpose of describing the rehabilitation service needs of individuals with disabilities residing within the state. The CSNA must include an assessment of the need to establish, develop, or improve community rehabilitation programs (CRPs) within the state (34 CFR 361.29(a)(1)(ii)). Any update to the CSNA is required to be reported to the Rehabilitation Services Administration (34 CFR 361.29 (ii)(2)).

The CSNA particularly focuses on the vocational rehabilitation services needs of:

- Individuals with the most significant disabilities, including their need for supported employment services;
- Individuals with disabilities who are minorities;
- Individuals with disabilities who have been unserved or underserved by the vocational rehabilitation program; and
- Individuals with disabilities served through other components of the statewide workforce investment system.

Expenditures

Other expenditures are permitted if related to establishment, development, or improvement of a CRP that are necessary to: Make the program functional or increase its effectiveness in providing VR services to applicants or eligible individuals, but are not ongoing operating expenses of the program. 34 CFR 361.5(b)(17)(iii).

The acquisition of an existing building and, if necessary, the land in connection with the acquisition is permitted, if the building has been completed in all aspects for a least one

(1) year prior to the date of the acquisition and the Federal share of the cost of acquisition is not more than \$300,000. 34 CFR 361.5(b)(18)(i).

The remodeling or alteration of an existing building is permitted, provided the estimated cost of remodeling or alteration does not exceed the appraised value of the existing building. 34 CFR 361.5(b)(18)(i)

The expansion of an existing building is permitted provided that:

- The existing building is complete in all respects;
- The total size in square footage of the expanded building, notwithstanding the number of expansions, is not greater than twice the size of the existing building;
- The expansion is joined structurally to the existing building and does not constitute a separate building; and
- The costs of the expansion do not exceed the appraised value of the existing building. 34 CFR 361.5(b)(18)(iii)

Other expenditures allowed:

- Architect's fees, site survey, and soil investigation, if necessary in connection with the acquisition, remodeling, alteration, or expansion of an existing building; and
- The acquisition of fixed or movable equipment, including the cost of installation of the equipment, if necessary to establish, develop, or improve a community rehabilitation program. 34 CFR 361.5(b)(18)(iv) and (v)

Financial Impact

- The non-federal share of an establishment project is 21.3 percent. 34 CFR 361.60(a)(1)
- The match may be made, in whole or in part, by the state VR agency or contributions by private entities (private organizations, agencies, individuals). 34 CFR 361.60(b)(3)(i)
- Contributions from private entities used to meet the non-federal share of an establishment project must be deposited in the account of the state agency in accordance with state law. 34 CFR 361.60(b)(3)

Allowable Costs

- The federal share of the cost of acquiring a building that is to be used for community rehabilitation program purposes cannot exceed \$300,000.
- Acquisition includes land and is subject to the \$300,000 Federal Fund Participation limitation.
- Remodeling or alteration costs of an existing building provided that the estimated cost does not exceed the appraised value of the building.
- The expansion of an existing building, provided that the existing building is complete in all respects; and the total square footage of the expanded building is not greater than twice the size of the existing building.

- The expansion of an existing building, provided that the expansion is joined structurally to the existing building; and the costs of expansion do not exceed appraised value of the existing building.
- Architect’s fees, site survey, soil investigation. (If necessary in conjunction with the acquisition, remodeling, alteration, or expansion of an existing building)
- Fixed or moveable equipment, including the cost of installation of the equipment. (If necessary to establish, develop, or improve a community rehabilitation program) 34 CFR 361.5(b)(18)(i) - (iii)

Staffing

- Federal financial participation is limited to a total of 48 months.
- The total percentage of costs in which the federal government will participate is reduced each year during the 4-year period.
- Staffing limit is imposed to preserve the amount of funds available to ARS for providing services to eligible individuals, while preserving ARS’s authority to expend VR funds to support necessary development or expansion of community rehabilitation facilities.
- If necessary to establish, develop or improve a CRP to serve applicants or eligible individuals, funding for staffing is permitted for a period of four (4) years, with financial participation available at the applicable matching rate for the following levels of staffing costs. 34 CFR 361.5(b)(17)(ii)

Staffing Costs

Year 1	100%
Year 2	75%
Year 3	60%
Year 4	45%

State Purchasing Requirements

ARS must comply with all State of Arkansas purchasing requirements including solicitation of bids, if applicable, in the provision of establishment activities.

Affect of Costs on Maintenance of Effort

Non-Federal expenditures incurred for the establishment, development, or improvement of a facility for a CRP are exempt from the calculation of the State’s maintenance of effort requirement pursuant to 34 CFR 361.62(b).

Pursuant to section 111(a)(2)(B) of the Rehabilitation Act and 34 CFR 361.62, a State must ensure that non-Federal expenditures under the VR State plan for any given fiscal year must equal or exceed the non-Federal expenditures from two years prior to that year. For example, non-Federal expenditures incurred in FY 2013 would have to equal or exceed the agency’s non-Federal expenditures incurred in FY 2011. Costs classified as administrative costs count towards the maintenance of effort requirement; however,

costs classified as the establishment, development, or improvement of a facility for a CRP do not count towards the maintenance of effort requirement.

Required Pre-Planning Activities

- The need for the establishment activities must be identified in the approved Comprehensive Statewide Needs Assessment jointly developed and agreed to by ARS and the State Rehabilitation Council and approved by the ARS Commissioner. 34 CFR 361.29(a)(1) 34 CFR 361.13
- The development of goals and strategies related to the establishment activities must be included and discussed in the ARS State Plan. 34 CFR 361.29(c)(1) and (d)(3)
- The establishment, development, or improvement of a public or other nonprofit community rehabilitation program that is used to provide vocational rehabilitation services must promote integration and competitive employment. 34 CFR 361.49
- ARS must ensure that it satisfies all pre-planning requirements before engaging in these activities.
- ARS also must ensure that it monitors all establishment expenditures to ensure compliance with Federal requirements pursuant to 34 CFR 80.40(a).
- ARS will only consider requests to use establishment activities to develop a CRP if the needs for particular VR services are identified in the Comprehensive Statewide Needs Assessment (CSNA) and unavailable through other programs including the Arkansas Career Training Institute (ACTI). If the need for a VR service is identified, ARS will first determine if ACTI programs can be adapted to provide the service. If a VR need is identified in the CSNA and unavailable through other programs or ACTI or ACTI programs cannot be adapted to provide the services, then ARS will advertise for Request for Proposals. Unsolicited proposals will not be considered for establishment activities to provide the establishment, development, or improvement of a public or other nonprofit community rehabilitation program.