

VIRGINIA ACTS OF ASSEMBLY -- 2016 SESSION

CHAPTER 27

An Act to amend and reenact §§ 51.5-41, 51.5-120, 51.5-163, 51.5-164, and 51.5-172 through 51.5-176 of the Code of Virginia and to repeal § 51.5-165 of the Code of Virginia, relating to federal Rehabilitation Act and Older Americans Act.

[H 740]

Approved February 25, 2016

Be it enacted by the General Assembly of Virginia:

1. That §§ 51.5-41, 51.5-120, 51.5-163, 51.5-164, and 51.5-172 through 51.5-176 of the Code of Virginia are amended and reenacted as follows:

§ 51.5-41. Discrimination against otherwise qualified persons with disabilities by employers prohibited.

A. No employer shall discriminate in employment or promotion practices against an otherwise qualified person with a disability solely because of such disability. For the purposes of this section, an "otherwise qualified person with a disability" means a person qualified to perform the duties of a particular job or position and whose disability is unrelated to the person's ability to perform such duties or position or is unrelated to the person's qualifications for employment or promotion.

B. It is the policy of the Commonwealth that persons with disabilities shall be employed in the state service, the service of the political subdivisions of the Commonwealth, in the public schools, and in all other employment supported in whole or in part by public funds on the same terms and conditions as other persons unless it is shown that the particular disability prevents the performance of the work involved.

C. An employer shall make reasonable accommodation to the known physical and mental impairments of an otherwise qualified person with a disability, if necessary to assist such person in performing a particular job, unless the employer can demonstrate that the accommodation would impose an undue burden on the employer. For the purposes of this section, "mental impairment" does not include active alcoholism or current drug addiction and does not include any mental impairment, disease, or defect that has been successfully asserted by an individual as a defense to any criminal charge.

1. In determining whether an accommodation would constitute an undue burden upon the employer, the following shall be considered:

a. Hardship on the conduct of the employer's business, considering the nature of the employer's operation, including composition and structure of the employer's work force;

b. Size of the facility where employment occurs;

c. The nature and cost of the accommodations needed, taking into account alternate sources of funding or technical assistance included under ~~§§ 51.5-165 and~~ 51.5-173;

d. The possibility that the same accommodations may be used by other prospective employees;

e. Safety and health considerations of the person with a disability, other employees, and the public.

2. Notwithstanding the foregoing, any accommodation that would exceed \$500 in cost shall be rebuttably presumed to impose an undue burden upon any employer with fewer than 50 employees.

3. The employer has the right to choose among equally effective accommodations.

4. Nothing in this section shall require accommodations when the authority to make such accommodations is precluded under the terms of a lease or otherwise prohibited by statute, ordinance, or other regulation.

5. Building modifications made for the purposes of such reasonable accommodation may be made without requiring the remainder of the existing building to comply with the requirements of the Uniform Statewide Building Code.

D. Nothing in this section shall prohibit an employer from refusing to hire or promote, from disciplining, transferring, or discharging or taking any other personnel action pertaining to an applicant or an employee who, because of his disability, is unable to adequately perform his duties, or cannot perform such duties in a manner which would not endanger his health or safety or the health or safety of others. Nothing in this section shall subject an employer to any legal liability resulting from the refusal to employ or promote or from the discharge, transfer, discipline of, or the taking of any other personnel action pertaining to a person with a disability who, because of his disability, is unable to adequately perform his duties, or cannot perform such duties in a manner that would not endanger his health or safety or the health or safety of others.

E. Nothing in this section shall be construed as altering the provisions of the Virginia Minimum Wage Act (§ 40.1-28.8 et seq.).

F. This section shall not apply to employers covered by the federal Rehabilitation Act of 1973.

G. No employer who has hired any person because of the requirements of this section shall be liable

for any alleged negligence in such hiring.

§ 51.5-120. Cooperation of Department with other state departments.

A. The Department shall collaborate with the Department of Behavioral Health and Developmental Services in activities related to licensing providers of (i) services under the Individual and Families Developmental Disabilities Support Waiver, (ii) services under the Brain Injury Waiver, and (iii) residential services for individuals with brain injuries as defined in § 37.2-403. These activities include involving advocacy and consumer groups who represent persons with developmental disabilities or brain injuries in the regulatory process; training the Department of Behavioral Health and Developmental Services, local human rights committees, and the State Human Rights Committee on the unique needs and preferences of individuals with developmental disabilities or brain injuries; assisting in the development of regulatory requirements for such providers; and providing technical assistance in the regulatory process and in performing annual inspections and complaint investigations.

B. The Department shall collaborate with the Department of Social Services in activities related to the planning and provision of adult services pursuant to Article 4 (§ 51.5-144 et seq.), adult protective services pursuant to Article 5 (§ 51.5-148), and auxiliary grants pursuant to Article 9 (§ 51.5-159 et seq.).

C. *The Department shall enter into cooperative agreements with the Department of Behavioral Health and Developmental Services, the Department of Medical Assistance Services, the Virginia Community College System, public institutions of higher education, and the Department of Education to identify the responsibilities of each public entity relating to the provision of vocational rehabilitation services as required by the federal Rehabilitation Act of 1973 (29 U.S.C. § 701 et seq.), as amended.*

§ 51.5-163. Centers for independent living.

A. Services provided through grants or contracts with centers for independent living pursuant to this article shall include:

1. Advocacy;
2. Peer counseling;
3. Independent living skills training; and
4. Information and referral; and

5. *Services that (i) facilitate the transition of individuals with significant disabilities from nursing homes and other institutions to home and community-based residences with the requisite supports and services, (ii) provide assistance to individuals with significant disabilities who are at risk of entering institutions so that the individuals may remain in the community, and (iii) facilitate the transition of youth with significant disabilities, who were eligible for individualized education programs under § 614(d) of the Individuals with Disabilities Education Act or who have completed their secondary education, to post-secondary life.*

Services may include other services deemed necessary by the local consumer base.

B. Centers for independent living funded in whole or in part by the Department shall be staffed by persons with disabilities who are trained in the philosophy of independent living. The majority of management staff shall include persons with disabilities.

§ 51.5-164. Statewide Independent Living Council created.

The Statewide Independent Living Council is hereby created to ~~plan, together with the Department, activities carried out under~~ develop and sign the Statewide Plan for Independent Living in accordance with Title VII of the federal Rehabilitation Act of 1973 (29 U.S.C. § 796 et seq.) and to ~~provide advice to the Department regarding such~~ perform other activities as provided in such Act. Membership and duties shall be constructed according to federal provisions. The Department shall provide staff support for the Council.

§ 51.5-172. Individualized plan for employment.

A written individualized plan for employment for each recipient of vocational rehabilitation services provided or funded by the Department, in whole or in part, shall be developed ~~within a reasonable time and as soon as possible, but not later than 90 days after the due date of the determination of eligibility, unless an extension is agreed to by the client, his parents or guardian, if appropriate, and the Department.~~ The plan shall be agreed to and signed by the client, his parents or guardian, if appropriate, and a qualified vocational rehabilitation counselor employed by the Department. ~~When the Department is operating under an order of selection, the plan shall be developed and implemented for individuals meeting the Department's order of selection criteria.~~ The plan shall be reviewed at least annually by the client, his parents or guardian, if appropriate, and the qualified vocational rehabilitation counselor.

§ 51.5-173. Services for individuals.

A. Vocational rehabilitation services provided by the Department shall address comprehensively the individual needs of each client to the maximum extent possible with resources available to the Department, through the following:

1. An assessment for determining eligibility and vocational needs by qualified personnel, including, if appropriate, an assessment by personnel skilled in rehabilitation technology;
2. Counseling and guidance, including information and support services to assist an individual in exercising informed choice, and referral necessary to help applicants or clients to secure needed services

from other agencies;

3. Diagnosis and treatment of physical or mental impairments, including:
 - a. Corrective surgery or therapeutic treatment necessary to correct or substantially modify a physical or mental condition that constitutes a substantial impediment to employment, but that is of such a nature that correction or modification may reasonably be expected to eliminate or reduce such impediment to employment within a reasonable length of time;
 - b. Necessary hospitalization in connection with surgery or treatment;
 - c. Prosthetic and orthotic devices;
 - d. Eyeglasses and visual services as prescribed by qualified personnel who meet state licensure laws and who are selected by the client;
 - e. Special services including transplantation and dialysis, artificial kidneys, and supplies necessary for the treatment of clients with end-stage renal disease; and
 - f. Diagnosis and treatment for mental and emotional disorders by qualified personnel who meet state licensure laws;
4. Vocational and other training services, including the provision of personal and vocational-adjustment services, books, tools, and other training materials, except that no training services provided at institutions of higher education shall be paid for with funds under this article unless maximum efforts have been made to secure grant assistance in whole or part from other funding sources;
5. Maintenance for additional costs incurred while participating in an assessment for determining eligibility and vocational rehabilitation needs or while receiving services under an individualized plan for employment;
6. Transportation, including adequate training in the use of public transportation vehicles and systems that is provided in connection with the provision of any other services described in this section and needed by the client to achieve an employment outcome;
7. Services to members of a client's family when such services are necessary to assist the client to achieve an employment outcome;
8. Interpreter services provided by qualified personnel for clients who are deaf or hard of hearing and reader services for clients determined to be blind, after an examination by qualified personnel who meet state licensure laws;
9. Rehabilitation technology, including telecommunications and sensory and other technological aids and devices;
10. Job-related services, including job search and assistance, job retention services, follow-up services, and follow-along services;
11. Specific post-employment services necessary to assist the client to retain, regain, or advance in employment;
12. Occupational licenses, tools, equipment, and initial stocks and supplies;
13. On-the-job or other related personal assistance services provided while a client is receiving other services described in this section;
14. Supported employment services which include providing a rehabilitation or other human services agency staff person to assist in job placement, job site training, and job follow-through for the disabled employee;
15. Technical assistance and other consultation services to conduct market analyses, develop business plans, and otherwise provide resources, to the extent such resources are authorized to be provided through the statewide workforce investment system, to eligible clients pursuing self-employment or telecommuting or establishing a small business operation as an employment outcome; ~~and~~
16. Transition services for students with disabilities that facilitate the *transition from school to post-secondary life, such as the achievement of the an employment outcome identified in the individualized plan for employment in competitive integrated employment or pre-employment transition services*;
17. *Customized employment for an individual with a significant disability in a competitive integrated setting that is based on the strengths, needs, interests, and abilities of the individual and the business needs of the employer; and*
18. *Encouragement of qualified individuals who are eligible to receive services to pursue advanced training in the fields of science, technology, engineering, mathematics (including computer science fields), medicine, law, or business.*

B. Written standards shall be established by the Commissioner detailing the scope and nature of each vocational rehabilitation service authorized herein, the conditions, criteria and procedures under which each service may be provided, and the use of entitlements and other benefits to access these services, when appropriate.

C. In providing the foregoing services, the Department shall determine whether comparable services and benefits are available under any other program unless such a determination would interrupt or delay the progress of the client toward achieving the employment outcome identified in the individualized plan for employment, an immediate job placement, or the provision of such service to any client at extreme

medical risk.

§ 51.5-174. Services for groups.

Vocational rehabilitation services provided by the Department for the benefit of groups shall include, to the maximum extent possible with the resources available to the Department:

1. The establishment, development, or improvement of community rehabilitation programs, *which shall be used to provide services under this section that promote integration into the community and prepare individuals with disabilities for competitive integrated employment, including supported employment and customized employment;*

2. ~~The provision of other services that promise to contribute significantly to rehabilitation of a group of clients but that are not directly related to the individualized plan for employment of any one client~~ *Transition services to youth with disabilities and students with disabilities, for which a vocational rehabilitation counselor works in concert with educational agencies, providers of job training programs, providers of services under the Medicaid program pursuant to Title XIX of the federal Social Security Act (42 U.S.C. § 1396 et seq.), entities designated by the Department to provide services for individuals with developmental disabilities, centers for independent living, housing and transportation authorities, workforce development systems, businesses, and employers;*

3. The use of telecommunications systems, including telephone, television, satellite, radio, and other similar systems that have the potential for substantially improving delivery methods of activities described in this section and developing appropriate programming to meet the particular needs of individuals with disabilities;

4. ~~Technical assistance and support services to businesses that are not subject to Title I of the Americans With Disabilities Act of 1990 (42 U.S.C. § 12111 et seq.) seeking to employ individuals with disabilities; and~~

5. ~~Consultative~~ *Consultation* and technical assistance services to assist *state and local* educational agencies in planning for the transition of students with disabilities from school to ~~post-school activities~~ *post-secondary life*, including employment;

6. *The establishment, development, or improvement of assistive technology demonstration, loan, reutilization, or financing programs in coordination with activities authorized by the Assistive Technology Act of 1968 (29 U.S.C. § 3001 et seq.) to promote access to assistive technology for individuals with disabilities and employers; and*

7. *Support, including tuition where appropriate, for advanced training in the fields of science, technology, engineering, mathematics (including computer science fields), medicine, law, or business, consistent with the requirements in § 103 of the federal Rehabilitation Act of 1973 (29 U.S.C. § 701 et seq.).*

§ 51.5-175. Case closure in extended employment.

~~When any part of the written individualized plan for employment of a client of the Department includes services in a community rehabilitation program (CRP), that portion of the plan shall be developed jointly with the rehabilitation counselor, a qualified staff member of the CRP, and the client, and, when appropriate, his parents or guardian. Factors to be considered shall include, but not be limited to, proposed activities, activity schedule, and the impact of the activity on the welfare of the client, the client's family, and his community.~~

~~When a case is closed upon a client's placement in extended employment in a CRP community rehabilitation program or any other employment under § 14(c) of the Fair Labor Standards Act (29 U.S.C. § 214(c)), the case shall be reviewed by the Department, with the cooperation of the CRP, within 12 months of case closure semiannually for two years after the start of employment, and annually thereafter, to determine the interests, priorities, and needs of the individual with respect to competitive integrated employment or training for competitive employment.~~

§ 51.5-176. Participation by clients in cost of services.

The Commissioner shall adopt written standards for determining the extent to which clients shall be responsible for the cost of vocational rehabilitation services provided or funded by the Department. However, the provision of the following services by the Department shall not be conditioned on the client's or applicant's ability to pay for the cost of those services: (i) evaluation of rehabilitation potential, except for vocational services other than those of a diagnostic nature which are provided under an ~~extended~~ evaluation of rehabilitation potential; (ii) counseling, guidance, and referral services; and (iii) placement and follow-up. The Department shall maximize financial participation of persons receiving services and shall maximize reimbursement from responsible ~~third party~~ *third-party* payors.

2. That § 51.5-165 of the Code of Virginia is repealed.