

referring to the proposed definition of post-employment services in § 361.5(b)(37). That definition incorporates the language in the 1992 Amendments regarding advancement in employment and individual choice. Finally, proposed paragraph (a)(18) of this section revises the paragraph in the existing regulations on rehabilitation engineering services, consistent with the 1992 Amendments, to provide for rehabilitation technology services.

*Section 361.49—Scope of Vocational Rehabilitation Services for Groups of Individuals With Disabilities*

This proposed section would consolidate provisions from several sections of the existing regulations, including the definition of vocational rehabilitation services for the benefit of groups of individuals in § 361.1(c) of the existing regulations and §§ 361.50, 361.51, 361.52, and 361.53 of the existing regulations. In addition, it would incorporate new requirements imposed by the 1992 Amendments, such as replacing the concept of the “establishment of a rehabilitation facility” with the concept of the “establishment, development, or improvement of a public or other nonprofit community rehabilitation program,” restricting the construction of a rehabilitation facility to special circumstances, and adding the newly authorized service of technical assistance and support services for businesses that are not subject to the Americans with Disabilities Act and are seeking to employ individuals with disabilities.

In response to public comment on the draft regulations, the Secretary proposes to amend paragraph (a)(5) of this section to clarify that the establishment of small business enterprises operated by individuals with the most severe disabilities under the State unit’s supervision includes vending facilities established under the Randolph-Sheppard program. In addition, the Secretary proposes to amend this paragraph to clarify that management services and supervision in support of a small business enterprise may be provided by the State unit beyond the initial establishment period of six months. The Secretary also proposes to clarify the draft regulations to state that initial stock and supplies and operational costs for small business enterprises may be provided only during the initial six-month establishment period. These changes are consistent with section 103(b)(1) of the Act, as well as with the Randolph-Sheppard Act and its implementing regulations in 34 CFR Part 395.

*Section 361.50—Written Policies Governing the Provision of Services*

This section contains material from paragraph (b) of § 361.42 of the existing regulations, which requires written State policies on the scope of vocational rehabilitation services for individuals, and § 361.44 of the existing regulations, which is the section on authorization of services. The Secretary proposes to require that a State unit have policies regarding the provision of services for groups of individuals with disabilities, as well as the availability of services for individuals with disabilities.

In the draft regulations, this proposed section incorporated new provisions, based on existing policy and subregulatory guidance, to clarify that no absolute caps or limits, in terms of location, cost, or duration, could be placed on the availability of services that would effectively deny an individual a necessary service. Although these provisions are maintained in the proposed regulations, some public commenters were concerned that insufficient emphasis was placed on the requirement that policies governing the provision of services must be designed to meet the rehabilitation needs of each individual served by the State unit. In response, the Secretary proposes to amend the regulations to specify that the policies required to be developed under this section must ensure that the provision of services is based on the individual’s rehabilitation needs as identified in the IWRP. As in the draft regulations, the proposed section would also prohibit State units from arbitrarily limiting the nature or scope of vocational rehabilitation services needed by any eligible individual to achieve an employment outcome.

Some commenters on the draft regulations opposed the ability of State units to establish preferences for in-State services on the basis that those preferences are inconsistent with principles of individual choice. In response, the Secretary proposes to amend the regulations to permit individuals to choose out-of-State services over in-State services. However, if an individual selects an out-of-State service at a higher cost than an in-State service, if either service would meet the individual’s rehabilitation needs, the designated State unit would be required to pay only an amount equal to the cost of the in-State service.

The draft regulations would have required State units to provide written authorization of services either before or at the same time as the purchase of services, except in emergency situations

when oral authorization, followed by prompt written confirmation, was permitted. In response to those commenters on the draft regulations who believed that the State unit should have greater flexibility in developing policies governing the authorization of services to individuals, the Secretary proposes to simplify the regulations to require State units to establish policies related to the timely authorization of services, including conditions under which verbal authorization can be given.

*Section 361.51—Written Standards for Facilities and Providers of Services*

This proposed section would incorporate § 361.45 of the existing regulations, would expand the requirement for standards to ensure accessibility of facilities, and would require new standards regarding qualified personnel and fraud, waste, and abuse, consistent with the 1992 Amendments.

In response to public comment on the draft regulations, the Secretary interprets the accessibility of facilities requirement broadly so as not to prevent any individual with a disability, including the multi-chemically disabled, from receiving services at a facility. In response to public comment, the Secretary also proposes to amend the qualified personnel requirements in paragraph (b)(1) of this section to reflect the personnel standards included in the State agency’s comprehensive system of personnel development under section 361.18(c).

*Section 361.52—Opportunity To Make Informed Choices Regarding the Selection of Services and Providers*

This proposed new section would implement section 12(e)(1) of the Act, which was added by the 1992 Amendments and requires the Secretary to promulgate regulations establishing criteria pertaining to the selection of vocational rehabilitation services and providers by an individual with a disability.

In response to public comment on the draft regulations, the Secretary proposes to amend this section of the regulations to clarify that the concept of informed choice applies to all aspects of the vocational rehabilitation process, including the selection of vocational goals, intermediate objectives, VR services, and service providers. This provision is closely related to the requirement in proposed § 361.46(a)(6) that the IWRP include a statement from the individual describing the manner in which the individual exercised informed choice in selecting among