

**WAC 296-19A-010 Definitions. (1) What does it mean to say an injured worker is employable?**

(a) "Employable" means having the skills and training that are commonly and currently necessary in the labor market to be capable of performing and obtaining gainful employment on a reasonably continuous basis when considering the worker's:

- (i) Age, education, and experience;
- (ii) Preexisting physical and mental limitations; and
- (iii) Physical and mental limitations caused, at least in part, by the worker's industrial injury or occupational disease.

(b) Physical and/or mental conditions that arose after the industrial injury/occupational disease that were not caused or aggravated by the industrial injury/occupational disease are not considered in determining whether the worker is employable under the Industrial Insurance Act.

(c) If there are no physical or mental restrictions caused by the worker's industrial injury/occupational disease, the worker must be found employable under the Industrial Insurance Act.

**(2) What are vocational rehabilitation services?** Vocational rehabilitation services are those provided by a vocational rehabilitation provider and include, but are not limited to, the following:

(a) Gathering industrially injured or ill workers' work and/or education histories and physical capacities information;

(b) Assessing industrially injured or ill workers' employability;

(c) Developing, documenting, and writing vocational rehabilitation plans;

(d) Monitoring injured workers' progress during training;

(e) Writing progress reports;

(f) Analyzing and documenting the transferable skills of the injured worker and writing transferable skills analyses;

(g) Performing occupational research;

(h) Conducting labor market surveys and writing labor market survey reports;

(i) Conducting and writing job analyses;

(j) Communicating with industrially injured or ill workers, employers, physicians and others;

(k) Developing job modifications and work site modifications, as well as prejob accommodations, and writing reports for this work; ((and))

(l) All work done to obtain any job with any employer for injured workers referred for vocational rehabilitation services; and

(m) Providing the Option 2 vocational services listed in WAC 296-19A-631.

**(3) What is a vocational rehabilitation provider (provider)?** A provider is any person, firm, partnership, corporation, or other legal entity that provides vocational rehabilitation services to industrially injured or ill workers, pursuant to Title 51 RCW ((51.32.095)). A provider must meet the qualifications listed in WAC 296-19A-210.

**(4) What is an injured worker's labor market?** Generally, the worker's relevant labor market is the geographic area where the worker was last gainfully employed. The labor market must be within a reasonable commuting distance and be consistent with the industrially in-

jured or ill worker's physical and mental capacities. The exceptions to this rule are listed in the table below:

<b>When a worker:</b>	<b>Then the department:</b>
<ul style="list-style-type: none"> <li>• Relocates to a labor market other than at the time of injury and</li> <li>• Returns to work and</li> <li>• Suffers an aggravation of the work-related condition.</li> </ul>	<p>Uses the labor market where the industrially injured or ill worker worked at the time of the aggravation. This applies whether the department closed and reopened the claim or whether the claim remained open during the period of aggravation.</p>
<ul style="list-style-type: none"> <li>• Relocates after the industrial injury/illness or aggravation and</li> <li>• Now lives in a labor market with more employment opportunities than where the industrially injured or ill worker worked at the time of injury.</li> </ul>	<p>Uses the industrially injured or ill worker's current labor market. For example, an industrially injured or ill worker was injured in Forks but after the injury, moves to Tacoma. Provider would use Tacoma as the industrially injured or ill worker's labor market.</p>
<ul style="list-style-type: none"> <li>• Relocates to a labor market other than at the time of injury or onset of illness and</li> <li>• The move was proximately caused by the medical condition arising from the occupational injury or disease.</li> </ul>	<p>Uses the injured or ill worker's current labor market. For example, an industrially injured or ill worker moves to a drier climate due to an accepted asthma condition. Provider would use the labor market in the drier climate.</p>

(5) **What is a labor market survey (LMS)?** It is a survey of employers in an industrially injured or ill worker's labor market to obtain specific information (such as physical demands and qualifications) related to job possibilities.

(6) **What is a job analysis (JA)?** It is the gathering, evaluating, and recording of accurate, objective data about the characteristics of a particular job.

(7) **What is a transferable skill?** Transferable skills are any combination of learned or demonstrated behavior, education, training, work traits, and work-related skills that can be readily applied by the worker. They are skills that are interchangeable among different jobs and workplaces. Nonwork-related talents or skills that are both demonstrated and applicable may also be considered.

(8) **What is a transferable skills analysis?** It is a systematic study of the transferable skill or skills a worker has demonstrated to see if that skill set makes him/her employable.

(9) **What are job modifications?** Job modifications are adjustments or alterations made to the way a job is performed to accommodate the restrictions imposed by an industrial injury or occupational disease. The purpose of job modification benefits is to encourage employers to modify jobs to retain or hire injured workers. Job modifications are used when an employer-employee relationship exists, and they may include worksite adjustment; job restructuring; and/or tools, equipment or appliances.

(10) **What are prejob accommodations?** Prejob accommodations are adjustments or alterations made to the way a job is performed to accommodate the restrictions imposed by an industrial injury or occupational disease. The purpose of prejob accommodation benefits is to make it possible for the worker to perform the essential functions of a job. Accommodations are used when an industrially injured or ill worker is engaged in a vocational rehabilitation plan or in a job search, and they may include tools, equipment or appliances.

AMENDATORY SECTION (Amending WSR 08-06-058, filed 2/29/08, effective 3/31/08)

**WAC 296-19A-040 What vocational rehabilitation services require authorization?** All vocational rehabilitation services must be preauthorized. For state fund claims, the department may make one or more of the following type of referrals: Early intervention; ability to work assessment ("AWA" or "assessment"); plan development; plan implementation; forensic services; or stand alone job analysis. Each referral is a separate authorization for vocational rehabilitation services. Option 2 vocational services are considered authorized for state fund and self-insured claims once the department accepts the worker's election of Option 2. However, the services can only be provided upon request from the worker to the vocational provider.

AMENDATORY SECTION (Amending WSR 08-06-058, filed 2/29/08, effective 3/31/08)

**WAC 296-19A-120 What reports are required when vocational rehabilitation plan implementation and monitoring services are completed?** When plan implementation and monitoring services are completed, the vocational rehabilitation provider must submit a closing report with one of the following recommendations:

(1) **Plan successfully completed.** If the worker successfully completes the vocational rehabilitation plan, the closing report, at a minimum, must contain the following information:

(a) An assessment of the worker's employability status at the time of closure;

(b) A list of courses the worker completed and an assessment of the work-related skills acquired by the worker during the training plan;

(c) Whether the worker has returned to gainful employment. If so, list the job title, employer, return to work date, and monthly salary;

(d) A description of the barriers, if any, to the worker's ability to return to gainful employment; and

(e) A description of the job search assistance provided.

(2) **Plan not completed, Option 2 not elected.** If the worker does not successfully complete the vocational rehabilitation plan, the closing report, at a minimum, must contain the following information:

(a) An explanation of why the vocational rehabilitation plan cannot be modified or completed;

- (b) An assessment of the worker's employability status at the time the plan stopped;
- (c) A list of the courses completed and an assessment of the work-related skills the worker acquired during the training plan;
- (d) Whether the worker has returned to work. If so, list the job title, employer, return to work date, and monthly salary; and
- (e) A description of any remaining barriers that may keep the worker from returning to work.

(3) Plan not completed, Option 2 elected. When the vocational rehabilitation provider is notified that the worker elected Option 2 before completing the vocational rehabilitation plan, the closing report must contain:

- (a) The approved retraining goal.
- (b) The date the worker started the retraining.
- (c) An outline of work-related skills the worker acquired during the training plan, if any.
- (d) An outline of discussion with the worker about Option 2.
- (e) Whether the worker has withdrawn from courses.

AMENDATORY SECTION (Amending WSR 00-18-078, filed 9/1/00, effective 6/1/01)

**WAC 296-19A-320 What other requirements are providers required to follow?** By rendering vocational rehabilitation services to industrially injured or ill workers under Title 51 RCW ((51.32.095)), the vocational rehabilitation provider agrees to comply with Title 51 RCW, chapters 296-19A and 296-15 WAC, and the department's fee schedule.

AMENDATORY SECTION (Amending WSR 03-11-009, filed 5/12/03, effective 2/1/04)

**WAC 296-19A-350 What are the requirements for case notes?** Vocational rehabilitation providers must maintain case notes. Case notes must:

- (1) Include the first and last name of the industrially injured or ill worker being served and the worker's claim number at the top of each page;
- (2) Include the first and last name of the vocational rehabilitation provider providing each service documented on each page;
- (3) Be kept in a claimant file corresponding to the reports, medical information, correspondence, and other materials that they provide documentation for;
- (4) Testing and other records with special confidentiality requirements may be kept in separate files;
- (5) Be legible;
- (6) Be in chronological order;
- (7) Record the date each service was provided month month/day day/year year;
- (8) For providers who bill for vocational services, include the amount of time, recorded in tenths of an hour, required to provide each service;

(9) Describe each service sufficiently to allow the ((referral source)) department or self-insured employer to verify the purpose, level, type, and outcome of each service provided and substantiate the charges billed for them.

AMENDATORY SECTION (Amending WSR 03-11-009, filed 5/12/03, effective 2/1/04)

**WAC 296-19A-400 What records are vocational rehabilitation providers required to maintain?** (1) A vocational rehabilitation provider must maintain adequate documentation in claimant-specific files to verify the level, type, and extent of the vocational rehabilitation services provided to and on behalf of industrially injured or ill workers.

(2) A vocational rehabilitation provider who requests payment from the ((referral source)) department or self-insured employer for vocational rehabilitation services must maintain all records necessary for the director's authorized auditors to audit the provision of services. Providers need to keep all records necessary to disclose the specific nature and extent of all services provided for an industrially injured or ill worker, along with the amounts billed to the department, for those services. Records must be maintained for audit purposes for a minimum of five years from the date of closure by the provider, or, in the case of Option 2 vocational services, for a minimum of five years from the last date of service.

NEW SECTION

**WAC 296-19A-627 If the worker has more than one open claim and is approved for vocational retraining, can the worker pick Option 1 on one claim and Option 2 on the other?** No. If a worker has more than one open claim and is found to be eligible for plan development services based on the effects of all injuries or illnesses related to the claim(s), the assigned vocational provider will develop one plan for the worker that takes into account the restrictions caused by all of the worker's accepted conditions. Once the department approves that plan, the worker will be given an option election form that allows the worker to choose to perform the plan that was developed for the worker (Option 1) or to choose Option 2. The worker's election of an option on that form will apply to all the claims under which the retraining plan was developed, regardless of whether the claim(s) are state fund or covered under a self-insured employer.

NEW SECTION

**WAC 296-19A-629 After the worker has elected Option 2, can the worker elect Option 1?** No. The worker cannot elect Option 1 after the department has issued the order confirming the worker's Option 2 elec-

tion. Exception: A worker may elect Option 1 when the Option 2 election has been rescinded as provided by RCW 51.32.096 (4)(b).

NEW SECTION

**WAC 296-19A-631 What are Option 2 vocational counseling and job placement services?** (1) Option 2 allows workers access to training funds for self-directed training plans. Up to ten percent of the worker's available training funds may be used for vocational counseling and job placement services if both the following are true:

- (a) The worker's plan was approved on or after July 31, 2015; and
- (b) The department has granted Option 2 benefits to the worker.

(2) For the purposes of this section, Option 2 vocational counseling services may include, but are not limited to:

(a) Help in accessing available community services to assist the worker with reentering the workforce.

(b) Assistance in developing a training plan.

(c) Coaching and guidance as requested by the worker.

(d) Interests and skills assessment, if the worker requests or agrees such is needed to reach the worker's training or employment goals.

(e) Other services directly related to vocational counseling, such as job readiness and interview practice.

(3) For the purposes of this section, Option 2 job placement services may include, but are not limited to:

(a) Help in developing an action plan for return to work.

(b) Job development, including contacting potential employers on the worker's behalf.

(c) Job search assistance.

(d) Job application assistance.

(e) Help in obtaining employment as a preferred worker, if certified, up to and including educating the employer on preferred worker incentives.

(f) Other services directly related to job placement, such as targeted resume development and referral to community resources such as WorkSource.

NEW SECTION

**WAC 296-19A-633 Who can deliver Option 2 vocational counseling and job placement services?** (1) A vocational rehabilitation counselor who meets the qualifications in WAC 296-19A-210(1) and obtains a provider number issued by the department can deliver Option 2 vocational counseling and job placement services. Interns cannot deliver Option 2 vocational counseling and job placement services.

(2) A public sector organization that provides such services, such as WorkSource.

NEW SECTION

**WAC 296-19A-635 Who pays the vocational provider for Option 2 vocational counseling and job placement services?** (1) The department or self-insured employer will pay for appropriately submitted billings from the worker's Option 2 training fund, within the following limits:

(a) The total of all payments for all Option 2 vocational counseling and job placement services will not exceed ten percent of the worker's maximum Option 2 training fund, nor will the payment or payments for Option 2 vocational counseling and job placement services exceed the remaining balance of the worker's maximum Option 2 training fund at the time payment is made; and

(b) Vocational services must be provided within five years following the date of the department's order confirming the worker's Option 2 election.

(2) The training fund is expended in the order of bills received by the department or self-insured employer. For example, if the worker's maximum Option 2 training fund was seventeen thousand five hundred dollars, and if the worker had not used any of those funds, the worker would have one thousand seven hundred fifty dollars to spend on vocational counseling and job placement services. However, if the worker used all but six hundred dollars out of the Option 2 training fund for training expenses before bills were received for vocational services, the amount available for vocational services would be six hundred dollars.

(3) The vocational provider must charge for services as outlined in the department's current vocational services medical aid rules and fee schedules.

(4) In addition to the services listed in WAC 296-19A-340, the department or self-insured employer will not pay for vocational travel or wait time.

(5) Under no circumstance may the vocational provider bill the worker directly for services.

NEW SECTION

**WAC 296-19A-637 How are vocational counseling and job placement services delivered?** (1) Beginning the date Option 2 benefits are granted, the worker can enlist the services of a qualified vocational rehabilitation provider.

(a) The worker and vocational provider must create a service agreement focused on the worker's goals. The agreement must clearly state:

(i) The worker's vocational goals.

(ii) The list of planned vocational services.

(iii) The worker's and vocational provider's responsibilities in fulfilling the agreement.

(iv) The total estimated hours and cost of planned services.

(b) Both the worker and the vocational provider must sign the agreement.

(2) At the end of each meeting with the worker the vocational provider must complete the department's Option 2 vocational services report form, listing updates since the previous report including:

(a) Names and provider numbers of all providers rendering services;

(b) Services delivered;

(c) Progress, including goals reached;

(d) Next steps; and

(e) Service hours and costs.

(3) Both the vocational provider and worker must sign each report form to verify it is correct and acceptable, and then the vocational provider must give a copy to the worker and send a copy to the department or self-insured employer.

(4) The vocational provider may not bill the department or the self-insured employer for the completion of the Option 2 vocational services report form.

(5) The worker may switch to a different qualified vocational provider any time during the five-year Option 2 training period if there are enough training funds left of the ten percent allowed to spend on Option 2 vocational services.