

AMENDATORY SECTION (Amending WSR 19-21-149, filed 10/22/19, effective 1/1/20)

WAC 296-19A-040 What vocational rehabilitation services require authorization? (1) All vocational rehabilitation services must be preauthorized. For state fund claims, the department may make one or more of the following type of referrals: Vocational recovery; ability to work assessment ("AWA" or "assessment"); plan development; plan implementation; forensic services; or stand alone job analysis. Self-insurers may also make any of the listed referrals and/or provide any other services they consider appropriate to address priorities listed in RCW 51.32.095(~~((+2))~~) (3). Each referral is a separate authorization for vocational rehabilitation services.

(2) 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 19-21-149, filed 10/22/19, effective 1/1/20)

WAC 296-19A-050 What are vocational recovery services? (1) Vocational recovery services are intended to ensure appropriate support is provided to an industrially injured or ill worker so that they return to work, continue to work, or are enabled to become employable at gainful employment consistent with the priorities listed in RCW 51.32.095 (~~((+2))~~) (3) (a) through (g) with the highest priority given to returning a worker to employment:

- (a) Return to the previous job with the same employer;
- (b) Modification of the previous job with the same employer including transitional return to work;
- (c) A new job with the same employer in keeping with any limitations or restrictions;
- (d) Modification of a new job with the same employer including transitional return to work;
- (e) Modification of the previous job with a new employer;
- (f) A new job with a new employer or self-employment based upon transferable skills; and
- (g) Modification of a new job with a new employer.

(2) In each case referred to a vocational provider, the vocational recovery services include work disability prevention best practices identified by the department and periodically published through policy bulletins available from the department and recorded with the office of the code reviser. These best practice services include, but are not limited to, the following which must be addressed by the vocational provider prior to consideration of when and which of the priorities listed in subsection (1) of this section may be most appropriate for the worker:

- (a) Identify and, as appropriate, use their skills and professional judgment along with accessing available community resources that do not impose a cost on the department or injured worker to proactively address barriers that may interfere with or prevent the worker from returning to any work, including transitional or modified work;

(b) Assist the worker in identifying return to work goals and steps necessary to achieve those goals, including participation by the worker in optional skill enhancement training that may be authorized and paid for by the department or self-insured employer; and

(c) Assess the worker's potential preferred worker status, educating the worker and employer(s) on transitional and permanently modified work, the Washington stay at work program, and the preferred worker benefits, if appropriate.

(3) Vocational recovery services also include, but are not limited to, those described below specific to the priorities listed in RCW 51.32.095 ~~((+2+))~~ (3).

(a) When consistent with the worker's return to work goals (see subsection (2)(b) of this section), in evaluating the priorities listed in RCW 51.32.095 ~~((+2+))~~ (3)(a) through (d) which involve return to work with the same employer, the vocational provider will:

(i) Except for return to work at the previous job with the same employer, assist the worker with job readiness and job placement services, if applicable;

(ii) Plan and work with the worker, the employer, the attending provider, and the department or self-insured employer to identify and pursue possible return to work opportunities and any necessary job modifications and prejob accommodations, when applicable;

(iii) Work with the worker and the employer to develop job description(s) or job analysis(es) that include the physical demands necessary to perform the work. Vocational providers must use their professional judgment when determining whether a job description or job analysis is appropriate, except during an ability to work assessment as outlined in WAC 296-19A-065 during which job analyses are required;

(iv) Based on the job description or descriptions, obtain approval from the attending provider that the job or jobs are appropriate for the worker's accepted condition(s), when applicable;

(v) Assist the employer with an offer of employment, and assist with resolution of disagreements about job offers, if needed;

(vi) Assist the employer with accessing return to work incentives such as those offered through the Washington stay at work and preferred worker programs, when applicable;

(vii) Document all offers of employment and the worker's response;

(viii) Monitor any return to work and assist in resolving barriers or concerns of the employer and/or worker, when applicable.

(b) When consistent with the worker's return to work goals (see subsection (2)(b) of this section), for the priorities listed in RCW 51.32.095 ~~((+2+))~~ (3)(e) through (g) which involve return to work at a job with a new employer, the vocational provider will:

(i) Assist the worker with job readiness and job placement services, and in identifying opportunities through WorkSource partners and other organizations that support return to work;

(ii) Assist the worker to develop a resume or work history as a tool to identify the worker's knowledge, skills, and interests;

(iii) Plan and work with the worker, the new employer, if applicable, the attending provider, and the department or self-insured employer on necessary job modifications and prejob accommodations;

(iv) Work with the worker and with the new employer, if applicable, to develop a job description that includes the physical demands necessary to perform the work;

(v) Based on the job description or descriptions, obtain medical approval from the worker's attending provider that the job or jobs are appropriate for the worker's accepted conditions;

(vi) Assist the new employer with an offer of employment, if needed;

(vii) Assist the new employer with accessing return to work incentives such as those offered through the preferred worker program, if applicable;

(viii) Document all offers of employment and the worker's response;

(ix) Monitor any return to work and assist in resolving barriers or concerns of the employer and/or worker, when applicable.

(4) To ensure appropriate assistance has been provided or offered to the worker so that they return to work, continue to work, or are enabled to become employable as outlined in subsections (2) and (3) of this section the vocational provider must document their efforts to provide the services outlined in subsection (3)(a)(i) through (viii) and (b)(i) through (ix) of this section, including offers of employment and the worker's response(s), prior to requesting a referral for an ability to work assessment as described in WAC 296-19A-065.

AMENDATORY SECTION (Amending WSR 19-21-149, filed 10/22/19, effective 1/1/20)

WAC 296-19A-065 What is an ability to work assessment? (1)

Workers may be referred to a vocational provider for assessment activities at the discretion of the department or self-insured employer to determine if a worker is eligible to receive vocational rehabilitation plan development services. Assessment activities will generally occur after all of the following:

(a) The vocational provider has applied the services outlined in WAC 296-19A-050 What are vocational recovery services?;

(b) The services did not result in a return to work or a valid job offer or offers; and

(c) The vocational provider has documented such efforts.

(2) During an ability to work assessment, the vocational provider will maintain regular communication with the worker, addressing the worker's concerns, assisting to resolve barriers, as appropriate, and updating them on assessment activities to include information requested and/or collected.

(3) Assessment activities may include, but are not limited to, the following:

(a) Documenting work restrictions;

(b) Performing job analyses;

(c) Evaluating the worker's ability to work at the job of injury or any other job including an assessment of the worker's transferable skills;

(d) Conducting labor market surveys as defined in WAC 296-19A-140;

(e) Evaluating the worker's ability to benefit from plan development services, including any and all vocational testing considered necessary to support a recommendation for retraining eligibility, if appropriate;

(f) Documenting a recommendation to the department or self-insured employer on whether the worker is employable at gainful employment, consistent with RCW 51.32.095 (~~((2))~~) (3)(a) through (g) or whether vocational plan development is both necessary and likely to make the worker employable at gainful employment;

(g) Assessing the worker's need for preferred worker status and when appropriate educating the worker on the preferred worker benefit; and

(h) If a worker indicates an interest in returning to work and, in the professional judgment of the vocational provider, the worker has the necessary skills and abilities to do so consistent with their medical restrictions, the vocational provider may provide those services listed in WAC 296-19A-050 as they deem appropriate.

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

WAC 296-19A-070 What information must an assessment report include? (1) The assessment report must include information and evaluation of the worker's:

(a) Age;

(b) Education, including information about education level, courses or transcripts, licenses, and certifications or registrations that the worker may have obtained in the past;

(c) Complete work history, addressing any gaps in employment;

(d) Transferable skills and experience, whether obtained from prior employment, prior courses and training, prior vocational rehabilitation services or plans, or nonwork related activities such as hobbies and/or volunteer experience;

(e) Skills gained through skill enhancement training pursuant to RCW 51.32.095(2);

(f) Physical and mental conditions proximately caused by the worker's injury or occupational disease, and the effect of those conditions on the worker's ability to work and/or benefit from vocational services;

~~((f))~~ (g) Preexisting physical and mental conditions and the effect of those conditions on the worker's ability to work and/or benefit from vocational services;

~~((g))~~ (h) Postinjury physical and mental conditions and the effect of those nonrelated conditions on the worker's ability to work and/or benefit from vocational services;

~~((h))~~ (i) Wage and employment pattern at the time of injury;

~~((i))~~ (j) Barriers to employment, including whether the barriers can be removed and/or what is needed to address the barriers; and

~~((j))~~ (k) Labor market information as defined in WAC 296-19A-140.

(2) If the vocational rehabilitation provider cannot obtain one or more of the above categories of information, the provider must document in the report all efforts made to obtain the information and why the information could not be obtained.

(3) The report must address whether the worker can return to work in any capacity with the employer of injury or if the worker is employable at a new job with transferable skills.

(4) The assessment report must also include one of the following recommendations:

(a) **Able to work:** The worker is employable at gainful employment. The report must include:

(i) Whether the worker is employable with the employer of injury or current employer, or if not, a list of job possibilities for which the worker is qualified;

(ii) A medically approved job analysis for the job or jobs at which the worker is able to work. When this is not obtainable, medically approved physical capacities information regarding the worker's ability to perform the job may be used; and

(iii) Labor market information as defined in WAC 296-19A-140 supporting the vocational rehabilitation provider's recommendation. Labor market information is not necessary when the worker is medically released to work for their job of injury at their previous work pattern;

(b) **Further services appropriate:** Vocational rehabilitation services are necessary and likely to enable the worker to become employable at gainful employment. The report must include:

(i) The specific return to work possibilities investigated and the reasons why they were ruled out which may include labor market information as defined in WAC 296-19A-140;

(ii) An analysis explaining how vocational rehabilitation plan development services are likely to enable the worker to become employable at gainful employment. The analysis may include but is not limited to:

(A) Vocational evaluation that addresses the worker's ability to benefit from vocational rehabilitation services;

(B) Information regarding the worker's medical and/or psychological condition(s);

(C) Labor market survey that was conducted as defined in WAC 296-19A-140;

(D) A discussion of the worker's participation in vocational activities to date; and

(E) Any other relevant information.

(c) **Further services not appropriate:** The worker is not likely to benefit from vocational services. The report must include:

(i) An analysis explaining why vocational rehabilitation services are not appropriate;

(ii) Barriers identified that will make it unlikely the worker will benefit from vocational rehabilitation services, consistent with the requirements in WAC 296-19A-010(1);

(iii) Medical, psychological or other vocationally relevant information; and

(iv) Labor market information as defined in WAC 296-19A-140 and other information, as necessary, supporting the vocational rehabilitation provider's recommendations.

(d) **Return to work:** The worker has returned to work. The report must specify and/or document attempts to obtain the following information:

(i) A description of the job the worker returned to;

(ii) The name of the employer;

(iii) The date that the worker returned to work; and

(iv) The worker's monthly wages.

(5) When the worker has returned to work to the job of injury or is medically released without restrictions, the vocational rehabilitation provider should complete the closing report. No other work should be performed without the prior authorization of the referral source.

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

WAC 296-19A-090 What are vocational rehabilitation plan development services? Vocational rehabilitation plan development services are authorized to obtain the vocational rehabilitation provider's assistance in producing a vocational rehabilitation plan for a worker. The vocational rehabilitation provider will work with the worker in the development of the plan. Covered services include, but are not limited to:

(1) An initial meeting between the assigned vocational rehabilitation provider and the worker.

The assigned vocational rehabilitation provider must meet with the worker in person and fully inform the worker of the return to work priorities set forth in RCW 51.32.095(~~((+2))~~) (3) and of his or her rights and responsibilities under the workers' compensation vocational system. The vocational rehabilitation provider must use tools provided by the department in order to document this requirement.

Exception: For out-of-state referrals, the counselor providing direct services to the worker may be considered the assigned vocational rehabilitation provider for purposes of this meeting.

The rights and responsibilities include but are not limited to:

(a) The responsibility of the worker and vocational rehabilitation provider to cooperate with the plan development process and to submit a plan within (~~(ninety)~~) 90 calendar days;

(b) An explanation of the benefits available to the worker, including the right to choose to participate in retraining or elect option 2 benefits after a plan has been approved; and

(c) An explanation of the possible action the department or self-insured employer may take under RCW 51.32.110 and WAC 296-14-410 should the worker be determined to be noncooperative during the plan development process.

(2) Vocational counseling and occupational exploration;

(3) Identifying a potential job goal and estimating the training needs, resources, and expenses necessary to complete that goal;

(4) Vocational testing; and

(5) Coordinating with medical providers to obtain approval of job analyses and a release to participate in a vocational rehabilitation plan.

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

WAC 296-19A-098 How often must written progress reports be submitted when plan development services are provided for state fund claims?

(1) The vocational rehabilitation provider must submit a written progress report to the department every (~~(thirty)~~) 30 calendar days from the date of the electronic referral or upon request of the department.

(2) The first progress report must document the assigned vocational rehabilitation provider met with the worker in person and fully informed the worker of the return to work priorities in RCW 51.32.095(~~((+2))~~) (3) and his or her rights and responsibilities.

(3) All progress reports must summarize progress during the most recent reporting period and include the following:

(a) Description of the return to work goals explored, accepted or ruled out, including any jobs offered by the employer;

(b) Review of the return to work priorities being addressed;

(c) Summary of all actions taken, including progress on previously recommended actions;

(d) Description of the worker's participation in vocational activities and compliance with the responsibilities in WAC 296-19A-030(4).

(e) Identification and analysis of any barriers preventing completion of the referral; and

(f) Description of the specific actions the vocational rehabilitation provider intends to take to overcome barriers and the expected time frame to complete those actions.

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

WAC 296-19A-100 What reports are required when vocational rehabilitation plan development services are completed? When plan development services are completed, the vocational rehabilitation provider must submit one of the following reports:

(1) **Vocational rehabilitation plan.** The vocational rehabilitation provider must address the return to work priorities listed in RCW 51.32.095((2)) (3) in the plan and explain why each preceding priority would not help the worker return to work. The vocational plan must also include the following information:

(a) An assessment of the worker's skills and abilities considering the worker's:

(i) Physical capacities and mental status;

(ii) Aptitudes;

(iii) Transferable skills gained through prior work experience, education, training, hobbies, volunteer experience or other nonwork related activities;

(iv) Skills gained through skill enhancement training pursuant to RCW 51.32.095(2);

(b) Proposed occupational goal;

(c) The services necessary to enable the worker to become employable in the labor market;

(d) Labor market survey as defined in WAC 296-19A-140, supportive of the worker's employability upon plan completion;

(e) Documentation of the time and costs required for completion of the plan;

(f) A medically approved job analysis for the proposed retraining job goal;

(g) A list of the skills the worker will acquire through retraining;

(h) A description of the services that will be provided prior to completion of the plan that will assist the worker to successfully transition to gainful employment;

(i) Any other information that may significantly affect the plan;

and

(j) An accountability agreement signed by the vocational rehabilitation provider and worker that:

(i) Acknowledges that the vocational rehabilitation provider and the worker have reviewed, understand and agree to the vocational rehabilitation plan;

(ii) Sets forth the vocational rehabilitation provider's and worker's responsibilities for the successful implementation and completion of the vocational rehabilitation plan;

(iii) Details expectations regarding progress, attendance, and other factors influencing completion of the plan; and

(iv) Acknowledges the worker understands that failure to comply with the agreed expectation will result in initiation of the process to suspend benefits in accordance with RCW 51.32.110 and WAC 296-14-410.

The vocational rehabilitation provider must use a statement approved by, or substantially similar to a statement used by, the department in order to document this agreement.

(2) **Closing report.** If the vocational rehabilitation provider has to stop plan development before a rehabilitation plan is approved, the vocational rehabilitation provider must submit a plan development closing report. The report must include:

(a) A list of the reasons the vocational rehabilitation provider cannot proceed with vocational rehabilitation plan development activities;

(b) Supporting documentation, such as: The goals that were researched, the job analyses that were developed, and/or labor market research as defined by WAC 296-19A-140 that was conducted; and

(c) An assessment addressing whether further vocational rehabilitation services may be necessary and likely to enable the worker to become employable.

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

WAC 296-19A-130 What are the requirements for a forensic evaluation?

(1) A forensic evaluation constitutes an analysis of prior vocational services and the medical conditions of an injured worker, including pre and post injury, to determine whether any further vocational services are necessary and likely to enable the injured worker to become employable at gainful employment. Services that may be conducted in order to make a recommendation to the department may include, but are not limited to:

(a) Reviewing medical and vocational records;

(b) Obtaining, clarifying, and/or evaluating an industrially injured or ill worker's:

(i) Work and/or education history;

(ii) Skills, knowledge and aptitudes;

(iii) Physical capacities information related to the injury or other medical conditions;

(c) Identifying barriers to employment and possibilities for resolving the barriers;

(d) Identifying potential training needs and resources;

(e) Performing recommended services as needed to make a recommendation. These services may include conducting and writing job analy-

ses, conducting labor market surveys, performing transferable skills analysis and performing occupational research.

(2) Recommendations must address the return to work priorities in RCW 51.32.095(~~(+2)~~) (3) and be documented by providing evidence of previous services and/or services performed under this referral.

(3) Development of a vocational rehabilitation plan is specifically precluded during a forensic evaluation.

(4) Any vocational provider that has provided any vocational rehabilitation services to the industrially injured or ill worker may not receive a referral for a forensic evaluation of that industrially injured or ill worker. Any vocational provider who begins a forensic evaluation cannot receive further vocational referrals for that worker.

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

WAC 296-19A-190 How much is available for job modification assistance? An amount not to exceed (~~(five thousand dollars)~~) \$10,000 from the department is available per worker per job or job site. If combined with prejob accommodations for the same return to work goal, the maximum combined benefit available for job modification and prejob accommodation is (~~(five thousand dollars)~~) \$10,000. The employer may add to this amount with its own contribution.

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

WAC 296-19A-191 When may the department authorize prejob accommodations? As provided for in RCW 51.32.095(~~(+4)~~) (7), the supervisor or the supervisor's designee, in his or her discretion, may authorize prejob accommodations when the following criteria are met:

(1) The claim is open or in statutory pension status; and

(2) The injured worker's attending doctor certifies that the prejob accommodations are medically necessary due to the effects of the accepted industrial condition; and

(3) The prejob accommodation is medically necessary to enable the industrially injured or ill worker to:

(a) Participate in an approved retraining program; or

(b) Perform the essential functions of a job or a return to work goal in which the worker is seeking employment consistent with a completed retraining plan or the recommendations of an ability to work assessment; and

(4) No employer-employee relationship exists.

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

WAC 296-19A-192 How much is available for prejob accommodations?

An amount not to exceed (~~five thousand dollars~~) \$10,000 from the department is available per worker per claim. If combined with job modifications for the same return to work goal, the maximum combined benefit available for job modification and prejob accommodation is (~~five thousand dollars~~) \$10,000.

AMENDATORY SECTION (Amending WSR 09-24-108, filed 12/2/09, effective 1/2/10)

WAC 296-19A-570 What factors will the department consider when deciding whether to approve a nonaccredited or unlicensed training provider for Washington injured workers?

The department will consider all of the information received from the training provider in its application for a provider number, including documents provided pursuant to WAC 296-19A-560. The department will review this information to ensure that the training provider provides services that are consistent with chapter 296-19A WAC and RCW (~~(51.32.099)~~) 51.32.096. Furthermore, the department will consider the following factors:

(1) Whether the training provider adequately supervises its instructors to ensure that they are qualified and provide appropriate training and instruction.

(2) Whether any students have been injured as a result of the training provider's failure to use adequate safety protocols.

(3) Whether any complaints have been filed by current or former students against the training provider or any of its instructors, and, if so, whether any of these complaints have merit.

(4) Whether the training provider or any of its instructors have ever been convicted of a crime, and, if so, the nature of the crime.

(5) Whether there is any other information indicating the training provider does not provide services to its students in a manner consistent with the objectives of chapter 296-19A WAC or RCW (~~(51.32.099)~~) 51.32.096.

(6) In addition training providers preparing students for employment must address the following factors:

(a) Whether any of the training provider's programs allow a student to obtain an educational or occupational credential awarded upon successful completion of program, and, if so, the type of credential(s) awarded;

(b) Whether any of the training provider's programs have clearly identified program objectives, such as information regarding specific job titles the student will qualify for on completion of training, and the projected wages and benefits of those jobs;

(c) Training provider's job placement rate, including job title, wages, and benefits obtained by graduates; and

(d) Whether the program achieved at least a (~~(thirty)~~) 30 percent completion rate and a (~~(fifty)~~) 50 percent job placement rate in the three quarters following graduation for the most recent fiscal year.

AMENDATORY SECTION (Amending WSR 17-19-089, filed 9/19/17, effective 10/20/17)

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 election. Exception: A worker may elect Option 1 when the Option 2 election has been rescinded as provided by RCW 51.32.096 (~~(+4+)~~) (5)(b).