

Order of Selection: Lessons Learned From a Study of Federal and Selected State Policy Frameworks

**Presented by:
Robert “Bobby” Silverstein**

December 12, 2008



Overview

Summary of Report Prepared for:

The Rehabilitation Research and Training Center On Vocational Rehabilitation

<http://www.communityinclusion.org/>

Report Prepared by:

Robert “Bobby” Silverstein

Bobby.Silverstein@ppsv.com

In Partnership with:

The Council of State Administrators of Vocational Rehabilitation <http://www.rehabnetwork.org>

Introduction

Order of Selection Policy, In General

- State VR agency must implement Order of Selection (OOS) when it will not have sufficient resources to fully serve all eligible individuals.
- The VR Agency must first select individuals with the most significant disabilities.

Introduction

Purpose of Policy Analysis

- Help inform policymakers and other stakeholders about the implementation of Order of Selection by:
- Conducting comprehensive review of the federal policy framework
- Conducting comprehensive review of selected state policy frameworks

Introduction

Selection of States

- Eight states selected based on national survey and pre-determined criteria.
- States selected were California, Iowa, Massachusetts, Michigan, Tennessee, Virginia, West Virginia, and Wisconsin.

Introduction

Methodology

- Reviewed Federal Policy Framework
- Used common template to analyze policy framework for each of the eight states
- Conducted thematic analysis of key components of OOS policy across eight states

Introduction

Presentation Regarding Order of Selection

- Overview
- Establishment
- Implementation
- Administration

Overview of the Order of Selection Policy

Overview of the Order of Selection Policy

Determining Whether to Establish An Order of Selection

- Standard
- When decision must be made
- Re-evaluation

Overview of the Order of Selection Policy

Establishment of Order of Selection

- Consists of priority categories
- Those with the most significant disabilities selected first

Overview of the Order of Selection Policy

Definition of “individual with a significant disability”

Criteria:

- Severe physical or mental impairment
- Serious limitations in one or more functional capacities in terms of an employment outcome
- Requires multiple vocational rehabilitation services over an extended period of time

Overview of the Order of Selection Policy

Definition of “individual with a most significant disability”

- Defined by each State VR agency
- Agency uses criteria consistent with statutory definition of individual with a significant disability
- OOS must be based on refinement of the three criteria in definition
- No other factors can be used

Overview of the Order of Selection Policy

Implementation of Order of Selection

- When State VR agency establishes but does not implement
- Closing of priority categories

Overview of the Order of Selection Policy

Administration of Order of Selection

- Development of IPE for those individuals to whom state is able to provide services.
- Information and referral system used for individuals on waiting list.
- Role of State Rehabilitation Council.

Establishment of Order of Selection

Establishment of Order of Selection

Establishment of Priority Categories

- Federal policy—first priority given to individuals with the most significant disabilities.
- State implementation:
 - Three Priority Category System (California, Iowa, Massachusetts, Michigan and Wisconsin)
 - Four Priority Category System (Tennessee, West Virginia, Virginia)

Establishment of Order of Selection

Individual with a significant disability

Federal criteria:

- Severe physical or mental impairment
- Number and degree of functional limitations in terms of employment outcome
- Number of (multiple) vocational rehabilitation services needed
- Amount of time needed (over an extended period of time)

Establishment of Order of Selection

Variations among states in defining “individual with a significant disability” or “significantly

STATE	FUNCTIONAL CAPACITY	MULTIPLE SERVICES	EXTENDED PERIOD
California	At least 1	2 or more	More than 6 mos.
Iowa	1 or more	More than 1	More than 1 year
Massachusetts	At least 1		No less than 6 mos.
Michigan	1 or more	More than 2	At least 6 mos.
Tennessee	At least 1	2 or more	Longer than 6 mos.
Virginia	1 or more	2 or more	Longer than 6 mos.
West Virginia	1 or more	2 or more	6 mos. or more
Wisconsin	1 or more	2 or more	6 mos. or more

Establishment of Order of Selection

Individual with the most significant disability

- Order of selection based on refinement of criteria in the definition of individual with a significant disability
- No other factors may be used

Establishment of Order of Selection

Variations among states in defining “individual with the most significant disability” or “most significantly disabled” are included in the following chart.

STATE	FUNCTIONAL CAPACITY	MULTIPLE SERVICES	EXTENDED PERIOD
California	At least 4 areas	2 or more	More than 6 mos.
Iowa	*3 or more	More than 1 service	Longer than 1 year
Massachusetts	3 or more	2 or more separate and distinct	Not less than 6 mos.
Michigan	2 or more	More than 2	At least 6 mos.
Tennessee	2 or more	2 or more	6 mos. or more
Virginia	3 or more	2 or more	6 mos. or more
West Virginia	2 or more	2 or more	9 mos. or more
Wisconsin	3 or more	2 or more	6 mos. or more

Establishment of Order of Selection

Functional capacity areas

- State implementation—all of the states except California include the 7 categories identified in the federal regulations (i.e., mobility, communication, interpersonal skills, mobility, self-care, self-direction, work skills, and work tolerance). California does not include self-direction.
- No state included additional functional capacity areas.

Establishment of Order of Selection

- Several states include comprehensive definitions for each functional capacity area and required documentation (see e.g., Tennessee).
- Several states have developed comprehensive manuals related to functional capacity areas (e.g., Iowa) and checklist (e.g., Massachusetts).

Establishment of Order of Selection

Multiple vocational rehabilitation services

State implementation—The states include varying definitions of the term.

- California
- Iowa
- Massachusetts
- Tennessee
- Wisconsin
- Virginia
- West Virginia

Establishment of Order of Selection

Serious limitation in terms of employment

State implementation—several states included definitions for the term “serious limitations” in terms of employment.

- California
- Iowa
- Michigan
- Tennessee
- Virginia

Establishment of Order of Selection

Acceptable and Unacceptable Factors

- **Federal policy**—Acceptable factors and unacceptable factors
- **State implementation**—Several states include or incorporate by reference the factors set out in the federal policy framework in guidelines or state regulations. California adds “sexual orientation” to the list.

Establishment of Order of Selection

Ranking Individuals within a Priority (Waiting Lists)

- Federal Policy—Okay to use equitable and reasonable factors such as date of application.
- State implementation—All of the **states** adopt the individual's date of application as an equitable and reasonable factor for ranking individuals within a priority (waiting list).
- Some states explain that individuals are taken off the waiting list in the same manner (e.g., Iowa).

Implementation of Order of Selection

Implementation of Order of Selection

Statewide Basis

- Federal policy
 - Same priority categories closed in all State VR agency offices
 - Notify all eligible individuals of priority status and right to appeal assignment

Implementation of Order of Selection

Statewide Basis

State implementation—All of the **states** explain that the order of selection must be implemented on a statewide basis. For example, Michigan policy explains that waiting lists are developed on a statewide basis for eligible individuals, regardless of location, based on their significance of disability priority order, and on the date of application. The order of selection is managed centrally.

Implementation of Order of Selection

Authority to Open and Close Priority Categories, as Needed

Federal policy

- Authority to open and close priority categories, as needed
- Authority to establish but not implement

Implementation of Order of Selection

Authority to Open and Close Priority Categories, as Needed

State implementation—The states have adopted policies that reflect the federal policy framework.

- West Virginia
- Iowa

Implementation of Order of Selection

Continuation of Services

- Federal policy—Authority to open and close priority categories as long as continuity of services to all individuals selected for services is assured.
- State implementation—All of the **states** include the policy regarding continuation of services. (California example).

Implementation of Order of Selection

Funding Arrangements-Contributions

- Federal policy—earmarks for particular services and particular groups but must be used in a manner consistent with state's order of selection.
- State Implementation [e.g. Michigan, Iowa, Tennessee, West Virginia]

Administration of Order of Selection

Administration of Order of Selection

Assessment for Determining Eligibility and Priority for Services

- Federal policies—conduct of assessment, including determining priority for services

Administration of Order of Selection

Assessment for Determining Eligibility and Priority for Services

State implementation—states have developed comprehensive policies, procedures, manuals and checklists for conducting assessments for determining priority for services.

Administration of Order of Selection

Notification of Eligible Individuals

- Under the federal policy framework, the State VR agency must notify all eligible individuals of the priority categories in a state's Order of Selection, their assignment to a particular category, and their right to appeal their category assignment. [*34 CFR 361.36(e)(2)*]
- States provide notification to eligible individuals consistent with the federal policy framework.

Administration of Order of Selection

Responsibilities to Individuals Who Meet Open Categories Under OOS

- Federal policy—must receive assessment and full range of services
- State implementation—the states all include the policy specified in the federal policy framework. (e.g. Michigan, Massachusetts)

Administration of Order of Selection

Responsibilities to Individuals Who Do Not Meet Open Categories Under OOS

- Federal policy—access to information and referral system
- State implementation—The state policies generally restate the policies set out in the federal policy framework (see e.g., Tennessee and West Virginia)
- Additional State Policies (Iowa, Michigan, Virginia)

Administration of Order of Selection

Case Closure and Maintenance of Records Federal Policy

- The individual's service record must include documentation on the nature and scope of information and referral services provided by the State VR agency to the individual and documentation on the referral itself [34 CFR 361.47(a)(13)].
- The designated state unit must maintain for each applicant and eligible individual a record of services that includes, to the extent pertinent, documentation supporting a determination that an individual is an individual with a significant disability or an individual with the most significant disability. [34 CFR 361.47]

The states have adopted policies consistent with the federal policy framework.

Administration of Order of Selection

Monitoring and Oversight

- **State Implementation:** California has adopted specific policy requiring the VR agency to review at least annually the order of selection for all eligible individuals in priority categories, including those being served and those on the waiting list.
- The review must be conducted to assure that services are being provided on a statewide basis and the determination of priority category does not bar or discriminate against any eligible individual based on proscribed factors.
- If the Department's review discloses the order of selection is barring or discriminating against any eligible individuals based on inappropriate factors, the Department must remedy that situation by promulgating emergency regulations within 90 days.

Administration of Order of Selection

Role of State Rehabilitation Council

Under the federal policy framework, the designated state unit must consult with the State Rehabilitation Council regarding the—

- Need to establish an order of selection, including any reevaluations of the need;
- Priority categories of the particular order of selection;
- Criteria for determining individuals with the most significant disabilities; and
- Administration of the order of selection. [34 CFR 361.17(h) and 34 CFR 361.36(f)]

Administration of Order of Selection

Role of the State Rehabilitation Council State Implementation:

- All of the states have adopted policies consistent with the federal policy framework. For example, Tennessee policy reiterates verbatim the policy in the federal regulations.

TACE Center: Region IV

Toll-free: (866) 518-7750 [voice/tty]

Fax: (404) 541-9002

Web: TACEsoutheast.org

My TACE Portal: TACEsoutheast.org/myportal

Email: tacesoutheast@law.syr.edu

Disclaimer

*This presentation was developed by the **TACE Center: Region IV ©2009** with funds from the U.S. Department of Education, Rehabilitation Services Administration (RSA) under the priority of Technical Assistance and Continuing Education Projects (TACE) – Grant #H264A080021. However, the contents of this presentation do not necessarily represent the policy of the RSA and you should not assume endorsement by the Federal Government [34 CFR 75.620 (b)].*

Copyright information

This work is the property of the TACE Center: Region IV.

Permission is granted for this material to be shared for non-commercial, educational purposes, provided that this copyright statement appears on the reproduced materials and notice is given that the copying is by permission of the authors. To disseminate otherwise or to republish requires written permission from the authors.