

WAC 296-19A-030 What are the responsibilities of the parties?

The attending health care provider, department, self-insured employer, employer, worker and vocational rehabilitation provider have the following responsibilities in assisting the worker to become employable at gainful employment:

(1) **Attending health care provider.** The attending health care provider must:

(a) Maintain open communication with the worker's assigned vocational rehabilitation provider and the referral source.

(b) Respond to any request for information which is necessary to evaluate a worker's:

(i) Ability to work;

(ii) Need for vocational services; and

(iii) Ability to participate in a vocational retraining plan.

(c) Do all that is possible to expedite the vocational rehabilitation process, including making an estimate of the physical or mental capacities that affect the worker's employability. If unable to provide an estimate, refer the worker for the appropriate consultation or evaluation.

(2) **Department.**

(a) **State fund claims.** For state fund claims, the department must:

(i) Obtain medical information required to initiate vocational rehabilitation services before a referral is made to a vocational rehabilitation provider.

(ii) Notify the chargeable employer(s), if any, at the time any referrals are made to a vocational rehabilitation provider.

(iii) Provide the vocational rehabilitation provider with access to all reports and any other relevant documentation generated during prior vocational rehabilitation services including plans that have been provided on any claim.

(iv) Review the assessment report and determine whether the worker is eligible for vocational rehabilitation plan development services.

(v) Notify all parties of the eligibility determination in writing. When the worker is eligible for plan development services, the notification letter must advise that the chargeable employer(s), if any, has fifteen calendar days from the date of the letter to make a valid return to work offer. However, should the employer attempt to make a valid return-to-work offer within the fifteen calendar days, the department may grant up to ten additional calendar days to modify the offer if it does not meet all of the requirements for approval.

(vi) Assign plan development services to the vocational rehabilitation provider that completed the assessment report unless the department decides the provider cannot complete the required report.

(vii) Review the submitted vocational rehabilitation plan within fifteen days of receipt at the department, and determine whether to approve or deny the plan.

(viii) Notify all parties of plan approval or denial in writing. Should the department fail to send a notification letter within fifteen calendar days of the date the report is received by the department, the plan is considered approved.

When a plan is approved, the notification must advise the worker that he or she (~~((has fifteen calendar days from the date of the notification letter to decline vocational services and elect option 2 benefits as defined in RCW 51.32.099))~~) can elect Option 2 at any point within the following time period:

- Beginning with the date of plan approval or the department's determination that a disputed plan is valid; and
- Ending the fifteenth day after completion of the first academic quarter or three months' training.

However, the department may approve an election submitted in writing within twenty-five days of the (~~((date the plan is approved or is determined valid following a dispute))~~) completion of the first academic quarter or three months' training if the worker provides a written explanation of why he or she was unable to submit the election of Option 2 benefits within fifteen days.

(b) **Self-insured claims.** For self-insured claims, the department must:

(i) Review the assessment report and determine whether the worker is eligible for vocational rehabilitation plan development services.

(ii) Notify all parties of the eligibility determination in writing.

When the worker is eligible for plan development services, the notification letter must advise the employer it has fifteen calendar days from the date of the letter to make a valid return to work offer; and

(iii) Review the submitted vocational rehabilitation plan within fifteen days of receipt at the department, and determine whether to approve or deny the plan.

(iv) Notify all parties of plan approval or denial in writing. Should the department fail to send a notification letter within fifteen calendar days of the date the report is received by the department, the plan is considered approved.

When a plan is approved, the notification letter must advise the worker that he or she (~~((has fifteen calendar days from the date of the letter to elect option 2 benefits as defined in RCW 51.32.099))~~) can elect Option 2 at any point within the following time period:

- Beginning with the date of plan approval or the department's determination that a disputed plan is valid; and
- Ending the fifteenth day after completion of the first academic quarter or three months' training.

However, the department may approve an election submitted in writing within twenty-five days of the (~~((date the plan is approved or is determined valid following a dispute))~~) completion of the first academic quarter or three months' training if the worker provides a written explanation of why he or she was unable to submit the election of Option 2 benefits within fifteen days.

(3) **Employer.** The employer must:

(a) Assist the vocational rehabilitation provider in any way necessary to collect data regarding the worker's gainful employment at the time of the injury.

(b) Assist the vocational rehabilitation provider and attending health care provider to determine whether a job could be made available for employment of the worker.

(4) **Worker.** The worker must fully participate and cooperate in all aspects of their vocational services including determination of physical capacities, development of vocational goals, and implementa-

tion of the rehabilitation process. Examples include but are not limited to:

- Providing accurate and complete information regarding his or her work history and educational background.
- Attending all scheduled appointments.
- Cooperating with return to work efforts when it is determined return to work opportunities exist.
- Actively participating and cooperating in selecting a job goal when it is determined retraining is necessary.

(5) **Vocational rehabilitation provider.** In assisting the worker to become employable at gainful employment, the vocational rehabilitation provider must:

(a) Follow the priorities in RCW 51.32.095 and the requirements in this chapter. The highest priority is returning a worker to employment.

(b) For state fund claims, immediately inform the department orally if the worker:

- (i) Returns to work;
- (ii) Is released for work without restrictions;
- (iii) Returns to work and is unsuccessful; or
- (iv) Fails to cooperate.

Note: Written notification and documentation must follow oral notification within two working days.

(c) Identify all vocational rehabilitation counselors and interns who provided services in each reporting period.

(d) Provide copies of reports and attachments submitted to the referral source to the employer (if different than the referral source) and the worker or the worker's representative when requested.

(e) Prior to a determination of eligibility, work with the employer, if necessary, to develop job analyses for work the employer is offering or has available and provide other assistance necessary to facilitate return to work with the employer.

(f) When providing plan development services, the vocational rehabilitation provider should, whenever possible and appropriate, focus on identifying goals and occupations that are considered high demand in the workforce. High demand occupations, as determined by the employment security department, means the number of job openings in the labor market for the occupation or with the required skill set exceeds the supply of qualified workers.

(g) Should the employer choose to make a valid return to work offer within fifteen calendar days of the date of the notification letter approving plan development services, the vocational rehabilitation provider may provide assistance necessary to facilitate return to work with the employer. The department may approve up to an additional ten days for an employer to modify a job offer if it does not meet all of the requirements. When this occurs, the vocational rehabilitation provider may assist the employer in making the necessary modifications.

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

WAC 296-19A-110 What are vocational rehabilitation plan implementation and monitoring services? Vocational rehabilitation plan implementation and monitoring services are those services a vocational

rehabilitation provider provides to assist a worker to successfully complete a vocational rehabilitation plan. These services may include, but are not limited to, the following:

(1) Contacting the worker and, if necessary, the trainer or appropriate representative of the training program or school, at least every fourteen calendar days to:

(a) Confirm the worker has received all necessary equipment and supplies;

(b) Make sure the worker successfully enters and progresses in the vocational rehabilitation plan;

(c) Identify potential problems;

(d) Monitor the worker's progress; and

(e) Resolve any problems that might arise, or submit documentation regarding why it cannot be resolved;

(2) If the worker's plan was approved on or after July 31, 2015, reminding the worker, within two weeks before the completion of the first academic quarter or three months' training, of the worker's deadline to elect Option 2.

(3) Notifying the department or self-insured employer when the worker completes the plan;

~~((+3))~~ (4) Assisting with job search assistance before the completion of the vocational rehabilitation plan and may include referral to community based organizations offering free resources for job search assistance such as resume writing and job seeking skills;

~~((+4))~~ (5) Documenting the worker's acquisition of skills;

~~((+5))~~ (6) Notifying the department if the plan needs to be terminated; and

~~((+6))~~ (7) Obtaining preferred worker status for worker, if appropriate.

AMENDATORY SECTION (Amending WSR 11-23-070, filed 11/15/11, effective 12/16/11)

WAC 296-19A-600 How does an eligible injured worker elect vocational Option 2 benefits?

((Within)) (1) If the worker's plan was approved prior to July 31, 2015, the worker has up to fifteen days ((of)) from the approval of a retraining plan or the department's determination that a disputed plan is valid((, the worker)) to submit((s)) to the department or ((self-insurer)) self-insured employer the retraining plan option election form indicating they ((select)) elect Option 2 and choose not to participate in their retraining plan. ((However,))

(2) If the worker's plan was approved on or after July 31, 2015, the worker can elect Option 2 at any point within the following time period:

- Beginning with the date of plan approval or the department's determination that a disputed plan is valid; and

- Ending the fifteenth day after completion of the first academic quarter or three months' training.

(a) To elect Option 2, the worker submits to the department or self-insured employer the retraining plan option election form indicating they elect Option 2 and choose not to participate, or continue participating, in their retraining plan.

(b) Wherever the time for electing Option 2 is referenced in chapter 296-19A WAC, if the school or training program does not use an academic quarter system, the three-month time period applies; however, if the worker's vocational retraining plan is less than three months in duration, the worker's last day to elect Option 2 is the day before the plan ends. The worker cannot elect Option 2 after the plan is completed.

(3) The department may approve an Option 2 ((selection)) election submitted within twenty-five calendar days if the worker provides a written explanation establishing that he or she was unable to submit his or her election within the fifteen calendar days specified in subsections (1) and (2) of this section.

(4) If no completed and signed retraining plan option election form is received, the worker must participate in the approved Option 1 retraining plan.

((This)) (5) The worker's election of Option 2 means the worker's claim will be closed, and the worker will receive the vocational Option 2 award and access to the Option 2 training funds.

AMENDATORY SECTION (Amending WSR 10-07-054, filed 3/12/10, effective 4/12/10)

WAC 296-19A-610 What is a vocational Option 2 award? ((This))

(1) If the worker's plan was approved prior to July 31, 2015, the vocational Option 2 award is equivalent to six months of temporary total disability compensation.

(2) If the worker's plan was approved on or after July 31, 2015, the vocational Option 2 award is equivalent to nine months of temporary total disability compensation.

(3) The vocational Option 2 award is based on the worker's monthly compensation rate on the date the Option 2 benefit is granted. The award will be paid to the worker in biweekly payments until the award is paid in full.

(4) Whenever the biweekly payments are made over a period that includes July 1, the amount of the payment(s) will include any cost-of-living adjustment.

(5) The temporary total disability amount used will not include any adjustments for the worker's receipt of Social Security benefits.

(6) The department or (~~self-insurer~~) self-insured employer will deduct any overpayments owed from the vocational Option 2 award.

AMENDATORY SECTION (Amending WSR 10-07-054, filed 3/12/10, effective 4/12/10)

WAC 296-19A-620 What are the vocational Option 2 training funds?

(1) These training funds are available to the worker, upon application to the department or (~~self-insurer~~) self-insured employer, for a period of five years following the date of the department's order confirming the worker's Option 2 election.

(2) The funds can be used to participate in any training through an accredited, licensed, or department-approved training program or institution.

(~~Training fund amounts are based on tuition rates in effect on the date the worker's plan is approved.~~) (3) The worker can use the training funds for tuition, books, fees, supplies, equipment, and tools. In addition, if the worker's plan was approved on or after July 31, 2015, the worker can use up to ten percent of the training funds for vocational counseling and job placement services.

(4) Eligible workers are notified of the training fund amount (~~available to them~~) by department order issued at the time of their Option 2 election.

NEW SECTION

WAC 296-19A-625 What if an eligible worker elects Option 2 after starting the retraining plan?

(1) If the worker's plan was approved on or after July 31, 2015, the worker can elect Option 2 at any point within the following time period:

- Beginning with the date of plan approval or the department's determination that a disputed plan is valid; and
- Ending the fifteenth day after completion of the first academic quarter or three months' training.

(2) However, if the worker specified in subsection (1) of this section elects Option 2 after starting the Option 1 retraining plan the following will occur:

(a) The training funds will be reduced by the amount of tuition and related charges expended during the Option 1 retraining plan; and

(b) The nine-month vocational Option 2 award will be reduced by the amount the worker was paid for time-loss days starting with the

first date of Option 1 retraining through the date the department received the worker's Option 2 election.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 296-19A-630 Can a worker change their option election?