

RSA-911 Comments and Analysis

Comments received from Publication of the Notice of Proposed Information Collection for the Case Service Report (RSA-911) in the Federal Register on Monday, July 2, 2012, Page 39224

A total of 26 commenters responded to the Notice of Proposed Information Collection for the Case Service Record Report (Form RSA-911), published in the Federal Register on July 2, 2012, including the Council of State Administrators for Vocational Rehabilitation (CSAVR), the membership organization for all 80 vocational rehabilitation (VR) agencies. These commenters provided a total of 254 comments, 56 of which addressed the burden computations in terms of estimated hours and costs to the respondents associated with the submission of the revised form. The remaining 198 comments addressed the data elements contained in the revised RSA-911 and described in the accompanying Instruction Manual.

1. Burden and Cost Comments

Comment(s): All commenters suggested that RSA's estimates of burden to the responding VR agencies in terms of the hours of staff time and costs associated with the revised RSA-911 were not adequate and incomplete. Nineteen comments specifically stated that the burden estimates did not address the need to train counselor and other agency staff on inputting the new disability codes (ICD and DSM) and the other new data elements. The burden estimates did not include the hours and costs for system testing, and deployment of modified case processing software, and modifying agency reports.

Discussion: RSA agrees that the burden estimates did not account for all areas of activity that VR agencies will engage in as a result of the introduction of the proposed revisions to the RSA-911, including the training of counselor and other staff, the updating of existing case records, the completion of new case records and the reprogramming of case management and other record-keeping systems. RSA agrees with the commenters that the staff time and costs related to these necessary activities may be significant. However, as instructed by the Office of Management and Budget, the computations of estimated burden prepared in response to Item 12 of the Supporting Statement and included in the Paperwork Reduction Statement found on the RSA-911 are to account only for the hours and costs to the respondents for the retrieval of data from their records and systems needed for completion of the form and its submission to RSA. These computations are not to include one-time costs associated with the provision of training to staff regarding the revisions to the form and instructions and the updating of existing case records with the revised data elements; nor should the computations take into consideration the ongoing costs related to the development and maintenance of case records, as such activities are deemed to be customary business practices. Nonetheless, RSA did include in its original computations the time required by staff to obtain the data pertaining to the new or revised data elements, such as that related to primary/secondary disabilities, increasing the burden to each VR agency from 45 hours to 81.25. In addition, based on the comments received, RSA has reconsidered its original estimate associated with the reprogramming of VR agency case management systems necessitated by the revisions to the RSA-911, increasing the estimate to a total of \$900,000 for all VR agencies (see Supporting Statement, Item 13).

Change(s): RSA made no changes to the estimate of burden to the responding VR agencies related to the collection of data and the submission of the RSA-911 (Supporting Statement, Item 12); however, it revised the estimated burden associated with the reprogramming of VR agency case management systems in light of the comments received (Supporting Statement, Item 13).

2. General Comments (those that apply to more than one data element of the RSA-911)

2.1 Use of Decimals

Comment(s): Eleven comments addressed the use of decimals in the proposed RSA-911, recommending that RSA not require the use of decimals wherever possible.

Discussion: RSA agrees with the commenters that decimals are not needed for the purpose of reporting data elements on the RSA-911. Although more accurate hourly wage information is indicated by the use of decimal data types for “Weekly Earnings at Closure” and “Hours Worked in a Week at Closure,” it is less burdensome to the agencies to use the integer data type consistently throughout the RSA-911.

Change(s): All data elements specified as decimal data types for the reporting of dollar amounts and the number of hours were changed to whole integer data types.

2.2 Inconsistencies in the use of blanks, asterisks, or “0”

Comment(s): Seventeen comments identified inconsistencies in the use of blanks, asterisks, or “0” for the purpose of reporting unknown data or that which does not pertain to the individual. One comment suggested that asterisks be used to show that an agency did not have the data for a particular field.

Discussion: RSA agrees that there were inconsistencies in the treatment of unknown data or data that is not applicable to the individual.

Change(s): RSA identified the inconsistencies and is requiring that the data elements specified be left blank if data is unknown or not applicable, and is revising the instructions to so indicate. For certain data elements, the code “0” continues to be necessary in instances where it indicates a valid coding option. Additionally, the proposed RSA-911 will not allow for the use of asterisks.

2.3 Avoid reordering codes within data elements

Comment(s): Eleven comments requested that RSA add new coding options at the end of data elements or justify when new coding options were added in the middle of a current data element. Examples of data elements with new coding options affected by the change include Source of Referral, Level of Education Obtained at Application and Closure, Significant Disability, and Reason for Closure. Three comments requested that RSA arrange the codes to match the flow of the VR process.

Discussion: RSA agrees with the commenters regarding the programming difficulties caused by reordering coding options.

Change(s): RSA reordered the coding options so that any new coding options follow the order contained in the previous RSA-911, except for the data elements “Education at Application and Closure,” where coding options 0 through 4 and 7 have not changed. Coding option 2 (Extended Employment) was eliminated from Employment Status at Closure. In the Reason for Closure data element, code option 3 (Refused services or further services) and code option 7 (Failure to cooperate) were eliminated and combined into code option 15 (No longer interested in receiving services or further services); code option 5 (Individual in institution) was eliminated and broken out into code option 16 (Individual is incarcerated in a prison or jail) and code option 17 (Individual in institution other than a prison or jail).

2.4 Allow use of asterisks for new data elements and codes prior to the implementation of the revised RSA-911

Comment(s): Eleven comments requested that an asterisk or a blank be allowed for proposed data element codes for those cases opened prior to the implementation of the revised RSA-911 because of the counselor time needed to retrieve required information and completion of the current RSA-911.

Discussion: While RSA agrees that there is an extra burden placed on the agencies in collecting new/revised data on proposed and existing data elements, it is necessary that RSA have the most up-to-date and consistent information to manage the VR program, including the conduct of its monitoring activities.

Change(s): In an effort to ease some of the burden, RSA has identified certain data elements that will not require updating for cases open prior to the implementation of the revised RSA-911, but only for new cases: Source of Referral, Significance of Disability, and Monthly Public Support Amount at Application.

2.5 Use of primary, secondary, and tertiary indicators is confusing

Comment(s): Nine comments referred to the use of Primary, Secondary, and Tertiary indicators as confusing and unclear, specifically in data elements 18, 19, and 20 – “Involvement with Other Agencies and Services at Application” and in data element codes for “Services Provided and Costs for Purchased Services – (5-7) Services Provided as Comparable Services and Benefits.”

Discussion: RSA agrees that the use of primary, secondary, and tertiary indicators is unnecessarily complicated and that there is no significant benefit in identifying the order of importance for these data element.

Change(s): RSA will combine data elements 18, 19, and 20 – “Involvement with Other Agencies and Services at Application” into one data element. Likewise, RSA will combine “Services Provided and Costs for Purchased Services – (5-7) Services Provided as Comparable

Services and Benefits,” providing the opportunity to identify as many as three agencies from which the individual was actively receiving services or funds at application, or to identify as many as three comparable benefit service providers without attaching an order of importance or economic significance.

2.6 Services-General

Comment(s): One commenter suggested that any examples included in the RSA-911 instructions to provide guidance to VR agencies be removed if the examples are not in the Rehabilitation Act of 1973, as amended (the Act) or its implementing regulations.

Discussion: The services or products listed or referenced in the Act and its implementing regulations are not intended to be all-inclusive of all services or products that can be provided to individuals. Specifically, 34 CFR 361.48(t) includes the provision of, “other goods and services determined necessary for the individual with a disability to achieve an employment outcome.” The RSA-911 instructions include examples to provide clarification to VR agencies for the purposes of coding services and goods under the appropriate category for consistency. Most of the examples of services and goods included in the RSA-911 instructions have been taken directly from the federal regulations, including the definitions of “maintenance,” transportation,” and other services found at 34 CFR 361.5(b).

Changes: None

3. Specific Data Element Comments

3.1 Race

Comment(s): Three comments requested that a race category be added for someone of Middle Eastern or North African descent, noting that these races are increasing in some states and that without the ability to identify the population, needs cannot be identified and assessed properly.

Discussion: RSA is using the OMB-required coding used for race and ethnicity as published in the Federal Register October 30, 1997, also known as Statistical Policy Directive No. 15, Race and Ethnic Standards for Federal Statistics and Administrative Reporting.

Change(s): None

3.2 Veteran Status

Comment(s): Two commenters felt that the proposed RSA-911 instructions required counselors to document veteran status and that the added language attempting to define “active service” was confusing and unnecessarily complicated.

Discussion: RSA agrees that the language used in the proposed instructions for this data element was confusing and could lead to misinterpretation of the reporting requirement.

Change(s): RSA remove the last sentence of the data element description contained in the instructions for the revised RSA-911; consequently, the language contained in the current RSA-911 instructions remains unchanged.

3.3 Involvement with Other Agencies and Services at Application

Comment(s): Four comments specifically found the language “associated with” to indicate consumer Involvement with Other Agencies and Services at Application in the proposed RSA-911 instructions vague and unclear. One commenter stated that an interpretation of the meaning of “association with” can vary widely.

Discussion: RSA agrees that the term “associated with” is vague and needs to be clarified. The information requested for the data element will be used to identify partner programs that provide services to consumers. Faith-based organizations were omitted and should be included in the list.

Change(s): RSA added language to the instructions to indicate that the intention of the data element is to identify service providers and funding sources with which individuals have active cases or from which they are receiving funds at application.

3.4 Level of Education Attained at Application

Comment(s): Seven comments noted that a distinction should be made between “Special Education Certificate of Completion/Diploma or in Attendance” and “High School Diploma / GED” so that the status can be reported separately, rather than merged together.

Discussion: RSA agrees with the commenters that a code for the attainment of a special education certificate, as it appears in the current RSA-911, should be included in the revised version.

Change(s): RSA reinstated the coding option for “Special Education certificate of completion/diploma or in attendance.”

3.5 Living Arrangement at Application

Comment(s): One commenter mentioned the possible difficulties in breaking out “Halfway House” into three different coding options (Halfway House – corrections, - mental health, - substance abuse). The commenter explained that, from the individual’s perspective, it may be difficult to distinguish between the three different coding options. Additionally, the commenter mentioned the distinction between the three could prove problematic in situations where an organization is serving individuals from all three types of halfway houses.

Discussion: RSA agrees with the commenter that adding additional coding options for Halfway House may be confusing and problematic.

Change(s): RSA combined the three Halfway House coding options into one as is used in the current RSA-911.

3.6 Comments on Primary and Secondary Disabilities (Primary Disability – Physical Impairment, Primary Disability – Mental Impairment, Secondary Disability – Physical Impairment, and Secondary Disability – Mental Impairment)

Comment(s): Fifteen comments expressed concern that VR counselors are not qualified to make a diagnosis, assign an International Classification of Disease (ICD) or Diagnostic and Statistical Manual of Mental Disorders (DSM) code, or that special licensure or certification would be required to assign ICD or DSM codes. Fourteen comments also expressed a related concern that the use of disability codes based on the ICD and DSM formats would require purchase of medical consulting services for the purpose of assigning disability codes.

Discussion:

Assignment of an ICD or DSM code is not synonymous with the diagnosis of a condition. The assignment of ICD codes is normally performed by medical coders who have varying degrees of training and certification that are typically not equivalent to the education and qualifications required by the comprehensive systems of personnel development established by VR agencies pursuant to Section 101(a)(7) of the Rehabilitation Act and its implementing regulations at 34 CFR 361.18. The assignment of codes is based on the review of the physician's diagnostic narrative and diagnostic conclusion in the medical record and is a coding, rather than the diagnostic process. Payers (insurance companies, Medicaid and Medicare, etc.) currently require ICD-9 and DSM-IV TR codes for billing purposes. Payers will be converting to ICD-10 and DSM-V soon. These codes are (or will soon be) commonly available in records from medical and psychological sources. The state VR agency should specifically request the diagnostic codes as part of the medical records request sent to the medical provider(s). However, in circumstances where current ICD-10 or DSM-V codes are not available, due to either the age of the medical records or the failure of the medical provider to include them, the VR counselors can review the diagnostic narrative and assign an ICD or DSM code for data collection purposes.

VR counselors currently review the diagnostic narrative in the medical record and assign an appropriate RSA disability code based on their professional judgment and training in medical aspects of disability. Under the new ICD/DSM based coding structure, the counselor will utilize the same level of professional judgment and training to review the diagnostic narrative in the medical record and assign suitable ICD and/or DSM codes for data collection and reporting, rather than diagnostic purposes.

When ICD-10 and DSM-V codes become commonly available, the VR counselor will be able to copy the code into the 911 without having to make a judgement about the code. This may make selecting the diagnostic code easier in many cases, and increase the reliability of this data element.

NOTE: In those instances where the medical record does not include a specific diagnosis or diagnostic conclusion in the medical records, the state VR agency must obtain a

diagnosis or diagnostic conclusion from a qualified provider. VR counselors are not qualified to make diagnostic conclusions regarding medical or psychiatric conditions. This does not constitute a change from current practice. If the medical records contain a diagnosis by an appropriate qualified individual, the VR counselor can then use professional judgement to select the appropriate code.

Change(s): None

Comment(s): Nine comments expressed concern that the large number of potential ICD and DSM codes would require extensive coding and would require additional time for the determination of eligibility.

Discussion: Unlike the current RSA disability code list, the ICD and DSM codes utilize a classification system that makes assignment of a code much more objective and systematic. The structure of these two classification systems also allow for fast and efficient identification of a suitable code with fewer errors. The use of ICD and DSM codes also will eliminate the need for the counselor to make decisions as to how to aggregate specific disabilities to fit within a much smaller number of available RSA codes.

The ICD and DSM codes will create no additional delay in eligibility compared to the current system. In both cases, disability codes cannot be assigned absent adequate medical documentation of the presence of a disability. The attainment and review of adequate medical documentation for the purpose of determining eligibility is distinct from the process of assigning codes for the purpose of reporting data on the RSA-911. See also the first set of comments in this section.

Change(s): None

Comment(s): Seven comments expressed concern that the assignment of ICD/DSM codes would delay presumptive eligibility, explaining that currently presumptive eligibility can be determined based on a payment stub, SSA letter, ticket to work or similar non-medical documentation, and that ICD/DSM-based disability coding would require additional medical records.

Discussion: Currently, VR counselors may proceed with presumptive eligibility in the absence of medical records. However when this occurs, it is imperative that the medical records be obtained in a timely manner from either the Social Security Administration or from the individual's medical provider(s). This information is vital to the counselor's understanding of an individual's disability, limitations and capabilities and to ensure the timely and effective development of the individualized plan for employment (IPE). This activity is separate from assignment of a disability code; however, the same records required for the determination of eligibility and/or the development of the IPE can then be used for assignment of a disability code. In addition, the assignment of a disability code under the current system requires access to the individual's medical records to ensure accurate code assignment. The change from RSA disability codes to ICD and DSM codes does not change the need to obtain and review medical records or the general process of assigning a code, nor the process of determining presumptive eligibility followed by medical record acquisition.

Change(s): None

Comment(s): Five commenters expressed concern that the use of ICD and DSM-based disability codes reflects an older medical model of rehabilitation that has since transformed into the current model, which takes into account the individual's functional capacity, rather than limitations, and emphasizes efficient service delivery to enable the individual to achieve employment. One commenter also stated that requiring VR staff to assign an ICD code to all cases would remove the requirement to document the very information required to perform the counselor function of determining the impairment. A commenter also opined that VR counselors have been trained to be experts in determining impairment, and expressed the concern that changing these critical elements of reporting appears to circumvent the role of the counselor as set forth in the Rehabilitation Act.

Discussion: The regulations found at 34 CFR 361.42(a)(1)(i-iii) specify that qualified personnel must make the determination that a physical or mental impairment is present and the impairment(s) constitute an impediment to employment. The qualified VR counselor must then determine whether the individual has significant work limitations as a result of those impairments and whether the individual requires VR services to prepare for, secure, retain or regain employment consistent with the applicant's unique strengths, resources, priorities, concerns, abilities, capabilities, interests and informed choice. The change from RSA's current disability codes to ICD and DSM-based disability codes does not alter the current regulations or impact sound case practices in eligibility determination or service delivery.

Change(s): None

Comment(s): One commenter suggested that the use of ICD and DSM codes could be time-consuming and possibly confusing when more than one diagnosis is present in the case file. The ultimate selection by the counselor will often be a judgment call and may not capture the intent of the information being sought.

Discussion: RSA acknowledges the potential for multiple diagnoses that may each present one or more impediments to employment to appear in the medical record of an individual served by the VR program. In these cases, qualified VR counselors should rely on their professional training, experience and judgment to determine which of the potentially many diagnoses should be coded as primary and secondary, in terms of the resulting work limitations and barriers to employment. While the current disability codes can result in an aggregation of multiple diagnoses that reduces the need for the counselor to make such decisions, the change from the current disability codes to ICD and DSM codes does not substantially change this role of the qualified VR counselor.

Change(s): None

Comment(s): Three commenters expressed concern that the requirement to use ICD and DSM-based disability codes is not consistent with the regulations at 34 CFR 361.5(b)(6)(ii)(B)(1).

Discussion: The regulations found at 34 CFR 361.5(b)(6)(ii)(B)(1) require the use of “existing information obtained for the purposes of determining the eligibility of the individual and assigning priority for an order of selection” , to the maximum extent possible, when conducting assessment for eligibility and rehabilitation needs. As discussed with prior comments in this section, the VR counselor must obtain sufficient medical and psychological information to establish a diagnosis made by a qualified individual. The use of ICD and DSM-based disability codes will not require additional medical records beyond what is already required for the determination of eligibility and the identification of service needs to be addressed in the IPE.

Change(s): None

Comment(s): Four commenters expressed concern that ICD and DSM codes are not always readily available in the medical record. Ten comments also expressed concern that re-creating and collecting this data would interrupt the rehabilitation process for individuals who already have been determined eligible, would be cost prohibitive and that conversion of existing RSA disability codes to the new ICD and DSM format would be time consuming and problematic. These commenters suggested that if the disability code changes are adopted, collection of these data elements should be required only for cases that are opened after implementation of the proposed RSA- 911 form.

Discussion: RSA agrees that ICD, and to a much lesser extent DSM codes, may not be present in the medical records obtained by the VR agency. In addition, with the upcoming change to the ICD-10 and DSM-V, agencies will, as a consequence, receive records over the next few years that may have current diagnostic information that is coded in the older ICD-9 and DSM-IV-TR formats. Consequently, if the older codes are present, the counselor will have to determine a current ICD-10 or DSM-V code. Consistent with prior discussion of coding requirements, RSA does not consider the assignment of ICD-10 or DSM-V codes to be beyond the scope or ability of a qualified VR counselor. Furthermore, the identification of ICD/DSM codes associated with case records open prior to the implementation of the revised RSA-911, or the conversion of ICD-9 and DSM-IV-TR codes to ICD-10 and DSM-V codes, may be accomplished at any point prior to case closure, thus spreading out the burden of identifying current ICD/DSM codes over time as each open case approaches closure.

Change(s): None

Comment(s): Three commenters expressed concern that counselors selecting a code that is an approximation of the diagnosis could create an ethical dilemma and expose the agency to liability for inclusion of incorrect codes in the case service record.

Discussion: Counselors must currently collect medical and psychological information that includes a diagnosis or diagnostic conclusion made by appropriate qualified individuals, and then select a code from the very restrictive list of current RSA disability codes. The current process requires aggregation of the disability code which must be mapped to the far smaller list of current RSA disability codes. The resulting presence of an aggregated disability code in the service record is more likely to convey misinformation to the reader of the case service record, than would an ICD or DSM code that is only partially correct. In addition, ICD codes have been

required for billing purposes since 1996, are in common use and have the benefit of commonly understood definitions and inclusion criteria. The use of more precise disability codes sharing commonality with ICD and DSM coding systems will result in more accurate identification and tracking of disability data.

Change(s): None

Comment(s): Seven comments expressed concern that the ICD and DSM code systems could be updated causing additional agency expense.

Discussion: The ICD-9 is currently in the process of being replaced by the ICD-10 and is scheduled to occur in October 2013. Similarly, the DSM-IV-TR will be replaced by the DSM-V in May 2013. The evolution of major changes has historically been very slow in both these coding systems. The ICD-9 has been in place since 1979 and the DSM-IV was last revised in 2000. Consequently, RSA does not envision that major changes resulting in additional agency expense will occur for the next several years. Making disability code changes at this time will allow states to make only a single change in the RSA-911 coding structure. In addition, the ICD-10 is designed to allow for future expansion without invalidating prior codes, and without disrupting the overall ICD-10 structure layout and alphanumeric position.

Change(s): None

Comment(s): Three commenters recommended expansion of the current RSA disability codes, rather than using ICD and DSM-based disability codes.

Discussion: Expanding the disability codes currently in the RSA-911 would not better enable RSA to develop, maintain and share comparative data with other partner programs and agencies regarding the nature and scope of persons with disabilities served by the VR program.

Change(s): None

Comment(s): One commenter expressed concern regarding the granting of access to these coding systems, stating that licensing information from the ICD website indicates users must obtain written permission from the World Health Organization (WHO) to use the coding system within an application.

Discussion: ICD and DSM codes are frequently present in the medical record obtained by VR agencies and, if not, can be requested from the provider making the diagnosis. This may be necessary for cases already in existence at the time of implementation of the revised RSA-911, but can be accomplished at any point prior to case closure as stated in response to comments above. However, RSA anticipates that some state agencies may desire to include the ICD-10 and DSM code look up systems within their case management systems, which may be costly to develop and maintain. In the absence of a resident code look up system in the case management system, ICD-10 code books are available at low cost and a web search will reveal free on-line ICD-10 code look up systems currently available that can be used to find a code based on the narrative diagnosis found in the medical record.

Change(s): None

Comment(s): Seven comments suggested that the time it would take counselors to use the ICD and/or DSM is very time consuming and codes are hard to find, with the result that counselors will be spending significant time trying to find disability codes. Ten comments suggested that extensive training will be required for counselors to identify suitable ICD and DSM codes.

Discussion: RSA agrees that some training to update knowledge and skills may be necessary to implement the use of these codes. RSA does not, however, believe that the training will be any more extensive than training in medical or psychological aspects of disability or in training offerings that could be made available through continuing education resources. In addition, there will likely be online and continuing education classes available for many groups of personnel who work with these codes, as these codes are implemented in 2013. VR Counselors have had exposure to versions of the DSM, and moved from one version to the next with a reasonable amount of additional training. The ICD-10 uses an index format and will require minimal training for a qualified counselor to achieve the initial ability to find a suitable code. Proficiency will rapidly increase with regular use.

Change(s): None

Comment(s): One commenter stated the ICD codes do not relate to the differences between nor the potential counseling, service, and employment needs of Deaf, Deaf-Blind, Hard of Hearing, and Late-Deafened populations. ICD coding would negate identification of individual consumers as Deaf or Deaf-Blind or Hard of Hearing or Late-Deafened. It would not allow for identifying which of these sub-populations are served, underserved, or correctly assigned to counselors with appropriate communication skills.

Discussion: RSA concurs with this observation. The ICD-10 contains a great deal of specificity on deafness, hearing loss, blindness and vision loss, but is not as specific regarding age of onset or Deaf-Blind conditions, such as ushers syndrome.

Change(s): RSA added data elements for Sensory/Communicative Impairment Types with the same one-digit code as in the current RSA-911.

Comment(s): Three comments were received from agencies concerned about the conversion from one set of disability codes to the other and the need for crosswalks between old and new disability codes. One commenter pointed out the problematic nature of creating a crosswalk disaggregating the current small number of disability codes to the much larger number of ICD and DSM-based disability codes.

A commenter noted that it could be extremely time consuming for the end user to correct old disability codes until all current files are converted to the required ICD and DSM coding structure.

Ten commenters suggested that the new disability codes be used for new cases only, and one of the commenters suggested that if existing cases must be conformed to the new coding structure, RSA will need to create a crosswalk to convert old cases. The alternative is for each state to interpret the old coding structure into the new coding structure, resulting in inconsistent coding across the agencies.

Discussion: RSA does not believe it is possible or practical to create a crosswalk from the current codes used in the RSA-911 to the ICD/DSM-based codes, as the process would invalidate the disability code data for both old and new cases for a period of years until the vast majority of existing cases were closed. RSA agrees that time would be required to refer to the case record and the medical information contained within it in order to recode the case with current ICD/DSM-based codes. However, this recoding can be accomplished at any point prior to case closure. RSA acknowledges that there would be some burden involved in this process, but that the impact on counselor and other staff over the life of each case would be minimal. In the absence of this approach, agencies would be required to work with two separate concurrent coding systems until all existing cases were closed, potentially creating greater expense than converting the codes in existing cases as the counselors work with or close each case.

Change(s): None

Following is the web address for the ICD codes:

<http://www.icd10data.com/ICD10CM/Index>

3.7 Significant Disability

Comment(s): Two comments requested that RSA clearly define “most significantly disabled,” stating that VR agencies vary in their definitions and the data subsequently would not be accurate without a uniform definition used by all VR agencies.

Discussion: RSA agrees with the comments that the data obtained for “most significantly disabled” will vary as a result of the differing definitions used by agencies. However, pursuant to Section 101(a)(5) of the Rehabilitation Act and regulations at 34 CFR 361.36, VR agencies, not RSA, must establish the criteria by which individuals are considered to be most significantly disabled and these criteria must be based on a refinement of the elements used in the definition of an “individual with a significant disability” found at Section 7(21) of the Rehabilitation Act and 34 CFR 361.5(b)(31). Currently, RSA is unable to determine how many consumers in the highest category of priority for service are served by State agencies. The code will capture those individuals agencies classify as most significantly disabled, while recognizing that differences exist among the individuals classified in this category.

Change(s): RSA added language to the instructions for this data element clarifying that the code designation is based on the agency’s definition of “most significantly disabled.” The language now reads “Enter a one-digit code to indicate whether the individual was considered a person with a significant disability or a most significant disability (as defined by agency criteria) at any time during his/her VR program.”

3.8 Monthly Public Support Amount at Application

Comment(s): One commenter requested clarification on the definition within the data element “Monthly Public Support Amount at Application.” The commenter stated that there was confusion if Social Security retirement benefits were included in Social Security Income (SSI) for the Aged, Blind or Disabled, or was included in Social Security Disability Insurance (SSDI), and stated that it should be separated from these two. This comment also pertained to the coding of an individual’s primary source of support at the time of case closure. The commenter suggested removing these two categories of individuals from data element 38, justifying that the retirement benefits the individual receives do not affect his or her VR program.

Discussion: RSA agrees that confusion could occur if retirement benefits from the Social Security Administration (SSA) were included as a part of monthly public support amount at application and has revised the instruction to the RSA-911 as shown below.

Change(s): RSA deleted reference to the reporting of retirement and survivor benefits from the instructions for the RSA-911 and has made a similar change to the instructions for the reporting of “Monthly Public Support at Closure.”

3.9 Medical Insurance at Application

Comment(s): Eight comments requested clarification on the data elements “Medical Insurance Coverage at Application and at Closure.” Four comments specified confusion about how to report this information for individuals who are young adults or youth receiving insurance through parents. Additionally, two comments reflected confusion over how to code individuals receiving services who are covered under a spouse.

Discussion: RSA agrees that the language should be clarified to better explain how to code individuals covered by their parent’s or spouse’s health insurance.

Change(s): RSA added language in the instructions to the RSA-911 under the code 45 “Private Insurance through Other Means” to indicate that “individuals receiving benefits through their parent/family member’s insurance plan should use this code.”

3.10 Dates of Extended Evaluation/Trial Work Experience

Comment(s): Five comments requested clarification on the instructions relating to the start and end dates of “Dates of Extended Evaluation.” The instructions refer to both “Trial Work Experience” and “Extended Evaluation” within the description of this data element. However, commenters indicated confusion in the case where an individual engaged in both Trial work experience and Extended evaluation, asking which start and end dates should be used for this field.

One commenter pointed out that if an individual participated in both trial work experiences and extended evaluation sequentially, it would not be possible to capture the dates for each service since both statuses are listed together.

Another commenter asked if reporting the end date for extended evaluation would be necessary since the eligibility date, wait list date and closure date for an individual is currently reported on the RSA-911, thus making this element redundant.

One commenter requested the definition for trial work experience and extended evaluation be provided to ensure continuity across all agencies.

Discussion: RSA appreciates the commenters' concerns that an individual participating in a trial work experience may require an extended evaluation. RSA will make the necessary changes to allow for the reporting of each status separately to address this concern.

Pursuant to 34 CFR 361.43, a VR agency can make a determination that an individual receiving services under an IPE is ineligible for VR services. Prior to the determination that an individual with a disability is incapable of benefiting from VR services in terms of an employment outcome due to the severity of the individual's disability, the VR agency must conduct a trial work experience, or in limited circumstances, if the individual cannot take advantage of a trial work experience, he or she should participate in an extended evaluation (34 CFR 361.42(e)(1) and 361.42(f)(1)). As a result of these requirements and that to obtain clear and convincing evidence prior to determining that an individual is too significantly disabled to benefit from the provision of VR services, trial work experiences can take place at any time in the rehabilitation process. Therefore, it is necessary to capture the start and end dates of both trial work experiences and extended evaluations.

The RSA-911 instructions are not intended to provide the statutory or regulatory definitions of VR terms. Instead, they define the fields and data that must be reported. All users should reference the Act and its implementing regulations for further clarification on trial work experience and extended evaluation.

Change(s): RSA modified the RSA-911 instructions to include trial work experiences in addition to extended evaluation. An additional reporting element was added to this section to allow VR agencies to report the start and end date for trial work experience, along with those for extended evaluation, so each element can be reported independently.

3.11 Supported Employment Goal

Comment(s): One commenter indicated that the following language "For individuals whose employment goal was supported employment in their IPE at some point in the VR process" was not correct because determining eligibility is part of the VR process yet supported employment as an employment outcome is not necessarily determined until the development of an IPE.

Discussion: RSA agrees with the commenter that the language should be changed.

Change(s): RSA changed the language in the instructions for the RSA-911 to: “For individuals who had an employment goal of supported employment in their IPE at some point during their rehabilitation and received supported employment services under the plan, indicate when the supported employment goal was included in the IPE.”

3.12 Services Provided and Costs for Purchased Services

Comment(s): Ten comments expressed confusion over the language in the RSA-911 instructions describing the data element “Services Provided and Costs for Purchased Services”. One commenter stated it was unclear if the funds for purchased services included VR grant Title I only, other sources of match, or if the funds also included program income. Additionally, three comments stated that the RSA-911 instructions did not appear to provide for services that were purchased by the state VR agencies and paid for by both the state VR agencies and a comparable benefit. One commenter requested clarification regarding the reason for tracking the use of supported employment funds provided under Title VI-B of the Rehabilitation Act separately.

Discussion: RSA agrees that the language used under the seven categories (codes) for “Services Provided and Costs for Purchased Services” was confusing. Sources of Title I funds would include state and other recipient matching funds as well as VR program income used for VR program purposes. RSA has determined to capture the use of funds provided under Title VI-B separately to better evaluate the uses of these supplemental funds for the provision of VR services to individuals with the most significant disabilities.

Change(s): RSA clarified the language contained in the instructions to the RSA-911 under “Services Provided” and “Costs for Purchased Services” by deleting, expanding, and generally re-crafting the language used.

3.13 Services Provided as Comparable Services and Benefits – Primary and Secondary

Comment(s): One commenter expressed concern that the identification of comparable benefits at the time an IPE is developed would be challenging, making reporting inaccurate. Two commenters stated if an authorization is not developed for a particular service or no payment is necessary, the data would not be captured thus making reporting difficult. One commenter reported if counselors calculated this data at the time of closure, it would be time consuming and create an unnecessary burden for the counselors and the VR agency. Finally, a commenter stated the regulations do not define ranked levels of comparable benefits, resulting in the collection of inaccurate data.

Fifteen comments expressed concern regarding the additional burden associated with the identification of services not funded by the VR agency, but instead through a comparable benefit or service provider.

Discussion: Section 101(a)(8) of the Rehabilitation Act and regulations at 34 CFR 361.53 require the utilization of comparable services and benefits prior to the provision of VR services with VR program funds, with the exceptions noted at 34 CFR 361.53(b). VR agencies must determine if any comparable services or benefits exist and are available prior to the provision of

services, unless such determination would interrupt or delay the progress of the individual, an immediate job placement or if the individual is determined to be at extreme medical risk (361.53(a)(1)-(3)). When developing an IPE, VR agencies are required to identify the terms and conditions needed to achieve an employment outcome including the responsibilities of other entities as the result of arrangements made pursuant to the comparable services or benefits (Section 102(b) of the Rehabilitation Act; 34 CFR 361.46(a)(6)). Any service necessary to achieve an employment outcome, regardless if the service is funded by the VR agency, the consumer, or one or more providers of comparable services or benefits, must be included on the individual's IPE along with the source of its funding (34 CFR 361.46(a)(2)).

Currently, all VR services identified as necessary in the individual's IPE to achieve an employment outcome should be reported on the RSA-911. The revisions to the RSA-911 instructions do not result in any additional burden to the VR agencies, but rather clarify the data RSA collects through the existing form.

Change(s): None

3.14 Graduate College or University Training and Four-Year College or University Training

Comment(s): Two commenters indicated the proposed definition of Graduate College or University Training overlaps with other definitions within the training such as Four-Year College or University Training. The commenters stated that both training services may result in the completion of "...a certificate or other recognized educational credential." The commenters stated that for clarification purposes RSA needs to stipulate which certificates or programs could be included under the particular training service.

Discussion: RSA agrees with the comment regarding overlap of Graduate College or University Training with a four-Year College or University Training.

Change(s): RSA revised the language describing these data elements in RSA-911 instructions to clarify the distinction between Graduate College or University Training and Four-Year College or University Training, as follows: "Full-time or part-time training leading to a degree recognized as being beyond a baccalaureate degree, generally recognized as Master of Science, Arts (M.S. or M.A.), Educational Specialist (Ed.S.) or Doctor of Philosophy (Ph.D.) or Doctor of Jurisprudence (J.D.). In some cases, this may be post-graduate or post-doctoral residencies or specialty training required to become proficient in a specialty in addition to the acquisition of a graduate degree. Such training would be provided by a college or university."

3.15 On-the-job Supports and On-the-job supports - SE

Comment(s): One commenter requested replacing the acronym SE with supported employment and to change the phrase "time-limited" with "short-term".

Discussion: RSA agrees with the requested changes.

Change(s): The changes were made in the RSA-911 instructions.

3.16 Rehabilitation Technology

Comment(s): One commenter expressed concern that the current description of the term “rehabilitation technology” included in the RSA-911 instructions exceeds the definition found at 34 CFR 361.5(b). Specifically, the commenter believes the regulations do not consider hearing aids or wheelchairs to be rehabilitation technology and such items may be more closely aligned with the definition of “physical and mental restoration” found at 34 CFR 361.5(b)(40)(vii). The commenter further stated it was the understanding of the agency that such products could be defined, at times as rehabilitation technology under the certain circumstances, but not in every case. The commenter believes listing these specific examples would lead staff to conclude the device defines rehabilitation technology, as opposed to the need to address the barriers for individuals with disabilities, and should be defined by the agency depending upon the circumstances.

Discussion: The definition included in the RSA-911 instructions was developed from Section 7(30) of the Act, the definition found at 34 CFR 361.5(b)(45), and the language found at 34 CFR 361.48(q). The definition of “rehabilitation technology” at 34 CFR 361.5(b)(45) includes the terms rehabilitation engineering, assistive technology devices and assistive technology services. The definitions for these terms have been incorporated into the definition for rehabilitation technology found within the instructions for the RSA-911.

RSA specifically included the examples of hearing aids, low vision aids and wheelchairs within the instructions to provide VR agencies clarification and consistency on this subject. As the commenter pointed out, the manner in which VR agencies report the provisions of these devices varies not only from agency to agency, but has been reported differently within the same agency depending upon the circumstances. RSA believes it necessary to include these particular examples to ensure agencies are reporting the provision of rehabilitation technology consistently.

RSA determined devices such as wheelchairs and hearing aids, although not specifically defined under the Rehabilitation Act or its implementing regulations, are consistent with the definition for assistive technology devices at 361.5(b)(7). Assistive technology devices are defined as any equipment that is used to increase, maintain or improve the functional capacity of an individual with a disability. Furthermore, rehabilitation technology is defined at 361.48(q) as any technology aid and device, including sensory devices that are used to address the barriers confronted by individuals with disabilities. RSA believes devices such as wheelchairs and hearing aids fully meet the intent and definition of rehabilitation technology when examining the purpose and use of each of these devices.

Changes: None

3.17 Customized Employment Services

Comment(s): Nine commenters requested clarification on the new service “customized employment services.” One commenter felt the agency’s ability to verify the key component of

employer negotiation would be difficult to verify and track within its case management system. In addition, the commenter made the statement that based on the description of this service contained in the instructions to the RSA-911, any contact a counselor made with an employer that included “negotiation” could be classified as customized employment.

Two commenters asked why an individual eligible to receive services is required to be significantly disabled, as required by the description in the instructions, and does this mean individuals with disabilities who are eligible for services, but not significantly disabled, cannot participate in this service.

One commenter felt the definition of customized employment is open to interpretation and may not be consistently reported by the VR agencies. This and another commenter stated that agencies may find it difficult to report the provision of this service appropriately because it is similar to and appears to overlap with other services, such as “Job Placement Assistance,” “On-the-Job Supports,” “job placement” and “supported employment.”

One commenter stated “customized employment” is not a service defined in the Rehabilitation Act, or discussed in the federal regulations, and, therefore, VR agencies should not be required to report the provision of this service through the RSA-911.

Four commenters requested clarification on the difference between customized employment and supported employment. One commenter asked if both customized employment and supported employment services can be provided to the same individual, and if so, could supported employment funds be used.

Discussion: Customized employment is a service that is currently provided by VR agencies and other Federal and State programs. Although components of customized employment can include job placement assistance and on-the-job training, the service is a distinct, separate service distinguished by negotiations with an employer to create a position for an individual with a disability that would otherwise not be available. Negotiations with an employer, as described in the RSA-911 instructions, can include developing current unidentified and unmet needs of the employer and the needs of the employee; developing a set of job duties or tasks; developing a work schedule, including determining the hours to be worked; determining a job location; developing a job arrangement, such as job carving, job sharing, or a split schedule; or determining the specifics of supervision. These negotiations are designed to meet the needs of both the individual and the employer, resulting in a successful outcome that otherwise may not be achieved.

Since negotiation for a particular position is essential for customize employment, this activity must be documented, though not necessarily performed, by the counselor. This activity may be provided by a community provider, another state or federal agency, or even the eligible individual.

The identification of the services required by an individual to achieve his or her employment goal is based on that individual’s specific disability-related and vocational needs (Section 103(a) of the Rehabilitation Act and 34 CFR 361.48). In light of the comments, RSA recognizes that

some individuals with non-significant disabilities might require customized employment services to address their disability and vocational needs. Consequently, the reference to individuals with significant disabilities has been removed from the description of this service category in the instructions to the RSA-911. However, in most instances, those individuals who require the specific services that comprise the category of customized employment will be persons with significant disabilities.

RSA disagrees with the commenter's statement that customized employment is the same or similar to supported employment. Although supported employment funds, or Title VI-b funds, may be used for this service if the individual has been determined eligible and has a supported employment goal identified on their IPE, supported employment services require ongoing support services and the identification of long-term supports, typically through a provider, to maintain employment. In addition, supported employment services are to be provided to individuals with the most significant disabilities. It is possible that an individual can receive customized employment and supported employment services, assuming the individual meets the requirements for supported employment pursuant to Section 7(35) of the Act and 34 CFR 361.5(b)(53).

RSA recognizes that the term "customized employment" is not specifically referenced in the Rehabilitation Act or its implementing regulations. However, the Act does not specify all VR services that can be provided to eligible individuals and permits VR agencies to deliver other services determined necessary for the individual to achieve employment (Section 103(a) of the Rehabilitation Act; 34 CFR 361.48(t)).

Changes: The reference to "individuals with significant disabilities" has been removed from the description of the data element "customized employment services" contained in the RSA-911 Instruction Manual.

3.18 Elements summarized as Jobs, earnings, and hours at closure (Number of Job/Occupations at Closure, Weekly Earnings at Closure, Hours Worked in a Week at Closure)

Comment(s): Five commenters expressed concern regarding the inability of VR agencies to report data on multiple jobs obtained by the individual, if he or she achieves an employment outcome with more than one employer at the time of case closure, as proposed in the revised RSA-911 and its instructions. These commenters stated that individuals with disabilities may find it necessary to obtain more than one employment outcome, particularly in a poor economy. In addition, two commenters were concerned that the inability to report multiple employment outcomes for the same individual, along with the wages earned and hours worked in connection with them, could affect the performance of the VR agencies on standards and indicators, including Indicator 1.5, which measures the average hourly wage at closure for individuals with disabilities who achieved an employment outcome compared to the average state hourly wage.

Discussion: The information collected through the RSA-911 regarding the individual's employment outcome has been designed to be consistent with the Rehabilitation Act and its implementing regulations. VR agencies must develop an IPE designed to achieve a specific

employment outcome consistent with the individual's unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice (34 CFR 361.45(b)(2)). Prior to closing the case record for an individual who has achieved an employment outcome, the employment secured must be consistent with the goal identified on the individual's IPE (34 CFR 361.56(a)).

RSA recognizes that an individual may find it necessary to secure employment outside of the rehabilitation process for living expenses not covered by the VR program. In addition, an individual who secures employment at an entry level consistent with his or her rehabilitation goal may earn a wage not sufficient to support him or herself and may find it necessary to accept other part-time work. As a result, the individual may be employed in a secondary job unrelated to the employment goal specified on the IPE for the purpose of supplementing his or her income. In either case, if the job is not related to the individual's employment goal, as defined on the IPE, this employment, along with the wages earned and the hours worked, should not be reported. However, RSA also recognizes that the individual can obtain more than one job that is consistent with the employment goal specified on the IPE and agrees that under such circumstances the VR agency should report the multiple outcomes, along with the wages and hours associated with them.

RSA believes any effect the revised instructions may have on the performance of VR agencies, including that on standards and indicators, is outweighed by ensuring that, consistent with VR program regulations, they report only employment outcomes, including the wages earned and hours worked, that resulted from the VR services provided to assist the individual to achieve the employment identified on the IPE.

Change(s): RSA has modified the instructions pertaining to the reporting of employment outcomes, wages earned and hours worked to permit VR agencies to report data for more than one employment outcome, if each is consistent with the individual's vocational goal as documented on the IPE.