

SGA means substantial gainful activity performed by an individual as defined in §§ 404.1571 through 404.1575 or § 404.1584 of this subpart.

State means any of the 50 States of the United States, the Commonwealth of Puerto Rico, the District of Columbia, the Virgin Islands, or Guam. It includes the State VR agency.

Trust Funds means the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund.

Vocational rehabilitation services has the meaning assigned to it under title I of the Rehabilitation Act of 1973.

VR agency means an agency of the State which has been designated by the State to provide vocational rehabilitation services under title I of the Rehabilitation Act of 1973.

Waiting period means a five consecutive calendar month period throughout which an individual must be under a disability and which must be served before disability benefits can be paid (see § 404.315(d)).

We, us and our refer to the Social Security Administration (SSA).

[48 FR 6293, Feb. 10, 1983, as amended at 55 FR 8454, Mar. 8, 1990; 59 FR 11912, Mar. 15, 1994; 62 FR 38452, July 18, 1997; 68 FR 40123, July 7, 2003]

§ 404.2104 Participation by State VR agencies or alternate participants.

(a) *General.* In order to participate in the payment program under this subpart through its VR agency(ies), a State must have a plan which meets the requirements of title I of the Rehabilitation Act of 1973, as amended. An alternate participant must have a similar plan and otherwise qualify under § 404.2106.

(b) *Participation by States.* (1) The opportunity to participate through its VR agency(ies) with respect to disability beneficiaries in the State will be offered first to the State in accordance with paragraph (c) of this section, unless the State has notified us in advance under paragraph (e)(1) of this section of its decision not to participate or to limit such participation.

(2) A State with one or more approved VR agencies may choose to limit participation of those agencies to a certain class(es) of disability bene-

ficiaries. For example, a State with separate VR agencies for the blind and disabled may choose to limit participation to the VR agency for the blind. In such a case, we would give the State, through its VR agency for the blind, the opportunity to participate with respect to blind disability beneficiaries in the State in accordance with paragraph (d) of this section. We would arrange for VR services for non-blind disability beneficiaries in the State through an alternate participant(s). A State that chooses to limit participation of its VR agency(ies) must notify us in advance under paragraph (e)(1) of this section of its decision to limit such participation.

(3) If a State chooses to participate by using a State agency other than a VR agency with a plan for VR services approved under title I of the Rehabilitation Act of 1973, as amended, that State agency may participate only as an alternate participant.

(c) *Opportunity for participation through State VR agencies.* (1) Unless a State has decided not to participate or to limit participation, we will give the State the opportunity to participate through its VR agency(ies) with respect to disability beneficiaries in the State by referring such beneficiaries first to the State VR agency(ies) for necessary VR services. A State, through its VR agency(ies), may participate with respect to any beneficiary so referred by accepting the beneficiary as a client for VR services or placing the beneficiary into an extended evaluation process and notifying us under paragraph (c)(2) of this section of such acceptance or placement.

(2)(i) In order for the State to participate with respect to a disability beneficiary whom we referred to a State VR agency, the State VR agency must notify the appropriate Regional Commissioner (SSA) in writing or through electronic notification of its decision either to accept the beneficiary as a client for VR services or to place the beneficiary into an extended evaluation process. The notice must be received by the appropriate Regional Commissioner (SSA) no later than the close of the fourth month following the

month in which we referred the beneficiary to the State VR agency. If we do not receive such notice with respect to a beneficiary whom we referred to the State VR agency, we may arrange for VR services for that beneficiary through an alternate participant.

(ii) In any case in which a State VR agency notifies the appropriate Regional Commissioner (SSA) in writing within the stated time period under paragraph (c)(2)(i) of this section of its decision to place the beneficiary into an extended evaluation process, the State VR agency also must notify that Regional Commissioner in writing upon completion of the evaluation of its decision whether or not to accept the beneficiary as a client for VR services. If we receive a notice of a decision by the State VR agency to accept the beneficiary as a client for VR services following the completion of the extended evaluation, the State may continue to participate with respect to such beneficiary. If we receive a notice of a decision by the State VR agency not to accept the beneficiary as a client for VR services following the completion of the extended evaluation, we may arrange for VR services for that beneficiary through an alternate participant.

(d) *Opportunity for limited participation through State VR agencies.* If a State has decided under paragraph (e)(1) of this section to limit participation of its VR agency(ies) to a certain class(es) of disability beneficiaries in the State, we will give the State the opportunity to participate with respect to such class(es) of disability beneficiaries by referring such beneficiaries first to the State VR agency(ies) for necessary VR services. The State, through its VR agency(ies), may participate with respect to any beneficiary so referred by accepting the beneficiary as a client for VR services or placing the beneficiary into an extended evaluation process and notifying us under paragraph (c)(2) of this section of such acceptance or placement.

(e) *Decision of a State not to participate or to limit participation.* (1) A State may choose not to participate through its VR agency(ies) with respect to any disability beneficiaries in the State, or it

may choose to limit participation of its VR agency(ies) to a certain class(es) of disability beneficiaries in the State. A State which decides not to participate or to limit participation must provide advance written notice of that decision to the appropriate Regional Commissioner (SSA). Unless a State specifies a later month, a decision not to participate or to limit participation will be effective beginning with the third month following the month in which the notice of the decision is received by the appropriate Regional Commissioner (SSA). The notice of the State decision must be submitted by an official authorized to act for the State for this purpose. A State must provide to the appropriate Regional Commissioner (SSA) an opinion from the State's Attorney General verifying the authority of the official who sent the notice to act for the State. This opinion will not be necessary if the notice is signed by the Governor of the State.

(2)(i) If a State has decided not to participate through its VR agency(ies), we may arrange for VR services through an alternate participant(s) for disability beneficiaries in the State.

(ii) If a State has decided to limit participation of its VR agency(ies) to a certain class(es) of disability beneficiaries, we may arrange for VR services through an alternate participant(s) for the class(es) of disability beneficiaries in the State excluded from the scope of the State's participation.

(3) A State which has decided not to participate or to limit participation may participate later through its VR agency(ies) in accordance with paragraph (c) of this section, provided that such participation will not conflict with any previous commitment which we may have made to an alternate participant(s) under paragraph (e)(2) of this section. A State which decides to resume participation under paragraph (c) of this section must provide advance written notice of that decision to the appropriate Regional Commissioner (SSA). Unless a commitment to an alternate participant(s) requires otherwise, a decision of a State to resume participation under paragraph (c) of this section will be effective beginning with the third month following

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the month in which the notice of the decision is received by the appropriate Regional Commissioner (SSA) or, if later, with a month specified by the State. The notice of the State decision must be submitted by an official authorized to act for the State as explained in paragraph (e)(1) of this section.

(f) *Use of alternate participants.* The Commissioner, by written agreement or contract, may arrange for VR services through an alternate participant(s) for any disability beneficiary in the State with respect to whom the State is unwilling to participate through its VR agency(ies). In such a case, we may refer the beneficiary to such alternate participant for necessary VR services. The Commissioner will find that a State is unwilling to participate with respect to any of the following disability beneficiaries in that State:

(1) A disability beneficiary whom we referred to a State VR agency under paragraph (c) or (d) of this section if we do not receive a notice within the stated time period under paragraph (c)(2)(i) of this section of a decision by the VR agency either to accept the beneficiary as a client for VR services or to place the beneficiary into an extended evaluation process;

(2) A disability beneficiary with respect to whom we receive a notice under paragraph (c)(2)(ii) of this section of a decision by the VR agency not to accept the beneficiary as a client for VR services following the completion of the extended evaluation;

(3) The class(es) of disability beneficiaries excluded from the scope of the State's participation if the State has decided to limit participation of its VR agency(ies); and

(4) All disability beneficiaries in the State if the State has decided not to participate through its VR agency(ies).

[59 FR 11912, Mar. 15, 1994]

§ 404.2106 Basic qualifications for alternate participants.

(a) *General.* We may arrange for VR services through an alternate participant by written agreement or contract as explained in § 404.2104(f). An alternate participant may be a public or private agency, organization, institution

or individual (that is, any entity whether for-profit or not-for-profit), other than a State VR agency.

(1) An alternate participant must—

(i) Be licensed, certified, accredited, or registered, as appropriate, to provide VR services in the State in which it provides services; and

(ii) Under the terms of the written contract or agreement, have a plan similar to the State plan described in § 404.2104(a) which shall govern the provision of VR services to individuals.

(2) We will not use as an alternate participant any agency, organization, institution, or individual—

(i) Whose license, accreditation, certification, or registration is suspended or revoked for reasons concerning professional competence or conduct or financial integrity;

(ii) Who has surrendered such license, accreditation, certification, or registration pending a final determination of a formal disciplinary proceeding; or

(iii) Who is precluded from Federal procurement or nonprocurement programs.

(b) *Standards for the provision of VR services.* An alternate participant's plan must provide, among other things, that the provision of VR services to individuals will meet certain minimum standards, including, but not limited to, the following:

(1) All medical and related health services furnished will be prescribed by, or provided under the formal supervision of, persons licensed to prescribe or supervise the provision of these services in the State;

(2) Only qualified personnel and rehabilitation facilities will be used to furnish VR services; and

(3) No personnel or rehabilitation facility described in paragraph (a)(2) (i), (ii), or (iii) of this section will be used to provide VR services.

[59 FR 11914, Mar. 15, 1994]

PAYMENT PROVISIONS

§ 404.2108 Requirements for payment.

(a) The State VR agency or alternate participant must file a claim for payment in each individual case within the time periods specified in § 404.2116;