

CHAPTER 850. VOCATIONAL REHABILITATION SERVICES ADMINISTRATIVE RULES AND PROCEDURES

PROPOSED RULES TO BE PUBLISHED IN THE *TEXAS REGISTER*. THIS DOCUMENT WILL HAVE NO SUBSTANTIVE CHANGES BUT IS SUBJECT TO FORMATTING CHANGES AS REQUIRED BY THE OFFICE OF THE SECRETARY OF STATE.

ON **MAY 21, 2024**, THE TEXAS WORKFORCE COMMISSION PROPOSED THE RULES BELOW WITH PREAMBLE TO BE SUBMITTED TO THE *TEXAS REGISTER*.

Estimated Publication Date of the Proposal in the *Texas Register*: **June 7, 2024**
Estimated End of Comment Period: **July 18, 2024**

The Texas Workforce Commission (TWC) proposes the repeal of the following section of Chapter 850, relating to Vocational Rehabilitation Services Administrative Rules and Procedures:

Subchapter A. Vocational Rehabilitation General Rules, §850.11

TWC proposes the following new section to Chapter 850, relating to Vocational Rehabilitation Services Administrative Rules and Procedures:

Subchapter A. Vocational Rehabilitation General Rules, §850.11

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

The purpose of the proposed Chapter 850 rule change is to clarify TWC's Vocational Rehabilitation Division's (VRD) Comprehensive System of Personnel Development (CSPD) standards for Qualified Vocational Rehabilitation Counselors (QVRCs) in accordance with 34 Code of Federal Regulations (CFR) §361.18, relating to vocational rehabilitation personnel development.

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

(Note: Minor editorial changes are made that do not change the meaning of the rules and, therefore, are not discussed in the Explanation of Individual Provisions.)

SUBCHAPTER A. VOCATIONAL REHABILITATION GENERAL RULES

TWC proposes the following amendments to Subchapter A:

§850.11. Qualified Vocational Rehabilitation Counselor

Section 850.11 is repealed and added as new to clarify requirements for QVRCs.

The current rule language in §850.11(a) - (f) is repealed and proposed as new in new §850.11 with the updated QVRC requirements. The current rule language is added throughout new §850.11(e) - (j), except for current §850.11(d) because the rule language is no longer applicable.

The repealed rule language in §850.11(e) is added into two subsections in new §850.11 as follows:

- The rule language regarding the time period for completing the graduate education requirements is added into new §850.11(e).
- The rule language regarding transcript reviews and confirming certifications is moved from repealed §850.11(e) to new §850.11(f).

Additionally, the repealed rule language in current §850.11(a) and (f) is moved, with modifications, to new §850.11(g) and (j), respectively, to align with and clarify the updated QVRC requirements. New §850.11(a) clarifies that VRD develops and maintains the CSPD standards.

New §850.11(b) specifies what is needed for staff to be classified as a QVRC.

New §850.11(c) specifies what staff must do to be qualified to perform non-delegable duties.

New §850.11(d) specifies the minimum education and experience standards required to be hired as a VR counselor.

New §850.11(e) specifies the graduate education requirements that must be completed within seven years from completion of the initial training year.

New §850.11(f) specifies that VRD must conduct transcript reviews and/or confirm certifications to determine compliance with standards, coursework, and graduate education requirements.

New §850.11(g) is the rule language that was repealed from current §850.11(a), with modifications, to align with and clarify the updated QVRC requirements.

New §850.11(h) relating to QVRC financial assistance is the rule language that was repealed from current §850.11(b).

New §850.11(i) relating to the requirements for applying for QVRC program assistance is the rule language that was repealed from current §850.11(c).

New §850.11(j) is the rule language that was repealed from current §850.11(f), with modifications, to align with and clarify the updated QVRC requirements.

PART III. IMPACT STATEMENTS

Chris Nelson, Chief Financial Officer, has determined that for each year of the first five years the rules will be in effect, the following statements will apply:

There are no additional estimated costs to the state and to local governments expected as a result of enforcing or administering the rules.

There are no estimated cost reductions to the state and to local governments as a result of enforcing or administering the rules.

There are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the rules.

There are no foreseeable implications relating to costs or revenue of the state or local governments as a result of enforcing or administering the rules.

There are no anticipated economic costs to individuals required to comply with the rules.

There is no anticipated adverse economic impact on small businesses, microbusinesses, or rural communities as a result of enforcing or administering the rules.

Based on the analyses required by Texas Government Code §2001.024, TWC has determined that the requirement to repeal or amend a rule, as required by Texas Government Code §2001.0045, does not apply to this rulemaking.

Takings Impact Assessment

Under Texas Government Code, §2007.002(5), "taking" means a governmental action that affects private real property, in whole or in part or temporarily or permanently, in a manner that requires the governmental entity to compensate the private real property owner as provided by the Fifth and Fourteenth Amendments to the US Constitution or the Texas Constitution, §17 or §19, Article I, or restricts or limits the owner's right to the property that would otherwise exist in the absence of the governmental action, and is the producing cause of a reduction of at least 25 percent in the market value of the affected private real property, determined by comparing the market value of the property as if the governmental action is not in effect and the market value of the property determined as if the governmental action is in effect. TWC completed a Takings Impact Assessment for the proposed rulemaking action under Texas Government Code, §2007.043. The primary purpose of this proposed rulemaking action, as discussed elsewhere in this preamble, is to clarify requirements for QVRCs.

The proposed rulemaking action will not create any additional burden on private real property or affect private real property in a manner that would require compensation to private real property owners under the US Constitution or the Texas Constitution. The proposal also will not affect private real property in a manner that restricts or limits an owner's right to the property that would otherwise exist in the absence of the governmental action. Therefore, the proposed rulemaking will not cause a taking under Texas Government Code, Chapter 2007.

Government Growth Impact Statement

TWC has determined that during the first five years the rules will be in effect, they:

- will not create or eliminate a government program;
- will not require the creation or elimination of employee positions;
- will not require an increase or decrease in future legislative appropriations to TWC;
- will not require an increase or decrease in fees paid to TWC;
- will not create a new regulation;
- will not expand, limit, or eliminate an existing regulation;
- will not change the number of individuals subject to the rules; and

--will not positively or adversely affect the state's economy.

Economic Impact Statement and Regulatory Flexibility Analysis

TWC has determined that the rules will not have an adverse economic impact on small businesses or rural communities, as the proposed rules place no requirements on small businesses or rural communities.

Mariana Vega, Director, Labor Market Information, has determined that there is not a significant negative impact upon employment conditions in the state as a result of the rules.

Cheryl Fuller, Director, Vocational Rehabilitation Division, has determined that for each year of the first five years the rules are in effect, the public benefit anticipated as a result of enforcing the proposed rules will be to ensure Vocational Rehabilitation Counselors are sufficiently trained and prepared to effectively serve Texans with disabilities.

TWC hereby certifies that the proposal has been reviewed by legal counsel and found to be within TWC's legal authority to adopt.

PART IV. COORDINATION ACTIVITIES

The proposed rule amendments to Chapter 850 have been reviewed by the Rehabilitation Council of Texas (RCT) in accordance with 34 CFR §§361.16 - 361.18.

PART V. PUBLIC COMMENTS

Comments on the proposed rules may be submitted to TWCPolicyComments@twc.texas.gov and must be received no later than July 8, 2024.

PART VI. STATUTORY AUTHORITY

The rules are proposed under:

- Texas Labor Code §352.103(a), which provides TWC with the specific authority to establish rules for providing vocational rehabilitation services;
- Texas Labor Code §352.104(b), which provides TWC with the specific authority to establish rules for monitoring and oversight of VR counselor performance and decision making; and
- Texas Labor Code §301.0015(a)(6), which provides TWC with the general authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities.

The proposed rules relate to Title 4, Texas Labor Code, particularly Chapter 352.

CHAPTER 850. VOCATIONAL REHABILITATION SERVICES ADMINISTRATIVE
RULES AND PROCEDURES

SUBCHAPTER A. VOCATIONAL REHABILITATION GENERAL RULES

~~§850.11. Qualified Vocational Rehabilitation Counselor.~~

- ~~(a) The Vocational Rehabilitation Division (VRD) helps vocational rehabilitation (VR) counselors to meet the Comprehensive System of Personnel Development (CSPD) standard, as set forth in 34 Code of Federal Regulations §361.18, by making funds available through the Qualified Vocational Rehabilitation Counselor (QVRC) program for the required graduate education except when:~~
- ~~(1) unforeseen circumstances occur that may restrict or prohibit the funding; or~~
 - ~~(2) VRD management discontinues a VR counselor's participation in the program in the best interests of VRD.~~
- ~~(b) The VRD director or designee must approve QVRC financial assistance. This financial assistance is contingent on:~~
- ~~(1) funding;~~
 - ~~(2) VRD management approval; and~~
 - ~~(3) compliance with qualifications for participation.~~
- ~~(c) Qualifications for participation in the QVRC program require that VR counselors and transition VR counselors applying for assistance must:~~
- ~~(1) have completed the initial training year;~~
 - ~~(2) be meeting or exceeding job performance expectations;~~
 - ~~(3) obtain the appropriate approvals to pursue a graduate degree or prescribed coursework;~~
 - ~~(4) apply for Rehabilitation Services Administration scholarship and university stipend funding, if applicable; and~~
 - ~~(5) be accepted by the appropriate institution of higher education.~~
- ~~(d) A VR counselor who meets the CSPD standard is considered a QVRC.~~
- ~~(e) A VR counselor is expected to meet the CSPD standard within seven years from completion of the initial training year. VRD must conduct transcript reviews and/or confirm certifications to determine compliance with standards or to outline~~

~~coursework to be completed by the VR counselor.~~

~~(f) A VR counselor is expected to pay all costs or expenses:~~

~~(1) associated with the college application, admission, and GRE exam (reimbursement of one GRE exam is allowed);~~

~~(2) related to tuition, fees, and books for any coursework that must be repeated because of failure to successfully complete; and~~

~~(3) related to completing work necessary to remove any grade of "I" (Incomplete) within three months, unless there are valid reasons (for example, serious illness, or university regulations to the contrary).~~

§850.11. Qualified Vocational Rehabilitation Counselor.

(a) The Vocational Rehabilitation Division (VRD) develops and maintains a Comprehensive System of Personnel Development (CSPD). This system includes procedures to ensure VRD maintains an adequate supply of qualified personnel, referred to as Qualified Vocational Rehabilitation Counselors (QVRCs).

(b) To classify as a QVRC, staff must meet specific state requirements related to education and experience. Standards for QVRCs serve as an internal control to ensure staff are sufficiently trained and prepared to effectively serve Texans with disabilities.

(c) VR counselors are considered qualified to perform non-delegable duties upon meeting the minimum initial standards for hire, successful completion of required training, and an initial probationary period that allows demonstration of performance. The minimum initial standards for hire are aligned with 34 CFR §361.18(c)(1)(ii)(A) and the State of Texas VR Counselor Classification Schedule.

(d) Minimum initial standards for hire as a VR counselor include the following education and experience requirements:

(1) A bachelor's degree in a field of study reasonably related to vocational rehabilitation, to indicate a level of competency and skill demonstrating basic preparation in a field of study such as vocational rehabilitation counseling, social work, psychology, disability studies, business administration, human resources, special education, supported employment, customized employment, economics, or another field that reasonably prepares individuals to work with customers and employers; and

(2) Demonstrated paid or unpaid experience, for not less than one year, consisting of:

- (A) Direct work with individuals with disabilities in a setting such as an independent living center;
 - (B) Direct service or advocacy activities that provide such individual with experience and skills in working with individuals with disabilities; or
 - (C) Direct experience in competitive integrated employment environments as an employer, as a small business owner or operator, or in self-employment, or other experience in human resources or recruitment, or experience in supervising employees, training, or other activities.
- (e) Within seven years from completion of the initial training year, a VR counselor is expected to achieve one or more of the following graduate education requirements:
 - (1) A master's degree in rehabilitation counseling or clinical rehabilitation counseling;
 - (2) A master's degree in counseling or a counseling-related field with required completion of specified coursework identified by the VR division;
 - (3) A master's, specialist, or doctoral degree in specific majors with required specified coursework identified by the Agency's VR division;
 - (4) A current certified rehabilitation counselor (CRC) certificate from the Commission on Rehabilitation Counselor Certification (CRCC); or
 - (5) Current licensure for a licensed professional counselor (LPC).
- (f) VRD must conduct transcript reviews and/or confirm certifications to determine compliance with standards or to outline coursework to be completed by the VR counselor to meet graduate education requirements.
- (g) VRD helps VR counselors to advance as QVRCs by making funds available through the Qualified Vocational Rehabilitation Counselor (QVRC) program for the required graduate education except when:
 - (1) unforeseen circumstances occur that may restrict or prohibit the funding; or
 - (2) VRD management discontinues a VR counselor's participation in the program in the best interests of VRD.
- (h) The VRD director or designee must approve QVRC financial assistance. This financial assistance is contingent on:
 - (1) funding;

- (2) VRD management approval; and
- (3) compliance with qualifications for participation.
- (i) Qualifications for participation in the QVRC program require that VR counselors and transition VR counselors applying for assistance must:
 - (1) have completed the initial training year;
 - (2) be meeting or exceeding job performance expectations;
 - (3) obtain the appropriate approvals to pursue a graduate degree or prescribed coursework;
 - (4) apply for Rehabilitation Services Administration scholarship and university stipend funding, if applicable; and
 - (5) be accepted by an appropriate institution of higher education.
- (j) A VR counselor participating in the QVRC program is expected to pay all costs or expenses:
 - (1) associated with the college application, admission, and GRE exam (reimbursement of one GRE exam is allowed);
 - (2) related to tuition, fees, and books for any coursework that must be repeated because of failure to successfully complete; and
 - (3) related to completing work necessary to remove any grade of "I" (Incomplete) unless compelling reasons exist and payment is approved by the VR division director or designee (for example, serious illness, or university regulations to the contrary).