Michigan Office of Administrative Hearings and Rules
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AGENCY REPORT TO THE JOINT COMMITEE ON ADMNINISTRATIVE RULES (JCAR)

1. Agency Information

Agency name:
Labor and Economic Opportunity

Division/Bureau/Office:
Michigan Rehabilitative Services

Name of person completing this form:
Christina Rea

Phone number of person completing this form:
517-247-9553

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Name of Department Regulatory Affairs Officer reviewing this form:
Thomas Shaver

2. Rule Set Information

MOAHR assigned rule set number:
2023-34 LE

Title of proposed rule set:
Vocational Rehabilitation

3. Purpose for the proposed rules and background:

The Michigan Rehabilitation Services (MRS) rules are being amended to update definitions to align with federal regulations and provide clarity, including to modify nondiscrimination statement, to update the agency's process for developing a fee schedule for standardized rates of payment, and to bring the rules into conformity with current practice regarding post-employment services.

4. Summary of proposed rules:

Michigan Rehabilitation Services (MRS) administrative rules are being amended to update definitions to align with federal regulations and provide clarity, modify the general requirements nondiscrimination statement, capture the agency's process for developing a fee schedule for standardized rates of payment, and to bring the rules into conformity with current practice regarding post-employment services.

5. List names of newspapers in which the notice of public hearing was published and publication dates:

Lansing State Journal on September 17th, 2023.
Oakland Press on September 20th, 2023.
Mining Journal on September 30th, 2023.

6. Date of publication of rules and notice of public hearing in Michigan Register:

10/15/2023

7. Date, time, and location of public hearing:

10/18/2023 01:00 PM at Conference Room A , 1048 Pierpont Street, Suite 6, Lansing, MI 48913

8. Provide the link the agency used to post the regulatory impact statement and cost-benefit analysis on its website:

https://ARS.apps.lara.state.mi.us/Transaction/RFRTransaction?TransactionID=1461

9. List of the name and title of agency representative(s) who attended the public hearing:

Tyler Gross, Policy Analyst, Michigan Rehabilitation Services.

10. Persons submitting comments of support:

There were no comments submitted in support.

11. Persons submitting comments of opposition:

John Sloat of the Client Assistance Program and Disability Rights Michigan.

12. Persons submitting other comments:

There were no additional comments submitted.

13. Identify any changes made to the proposed rules based on comments received during the public comment period:

	Name & Organization	Comments made at public hearing	Written Comments	Agency Rationale for Rule Change and Description of Change(s) Made	Rule number & citation changed
1	John Sloat Disability Rights Michigan The Client Assistance Program		"MRS is proposing amending its definition of the CAP. Neither the federal regulations concerning the State Vocational Rehabilitation Services Program, 34 C.F.R. § 361, nor the federal regulations concerning the CAP, 34 C.F.R. § 370, contain a	Rationale: MRS agrees with the commenter and accepts their recommended language for a definition of the Client Assistance Program (CAP) derived from 29 USC 732(a). Description of Changes: MRS replaced the previous definition of CAP with the definition	R 395.51(b) Note: all references in edits to R 395.51 sections refer to pre-edit labeling on the strike-bold version of updated rule language. This was done because many of the changes are on rules

			definition of the CAP. Arguably, MRS does not need to define the CAP – MRS could simply rescind the definition. If MRS nonetheless decides to define the CAP in the MRS Administrative Rules, its definition should more closely track the language in the Rehabilitation Act that creates the CAP. In our redline, the CAP has proposed a revised definition that closely tracks the language in the Rehabilitation Act at 29 U.S.C. 732(a)."	informed by 29 USC 732(a).	components that are to be rescinded and do not appear on the clean draft rules language.
2	John Sloat Disability Rights Michigan The Client Assistance Program		"MRS is proposing amendments to the definition of "Comparable services and benefits," but the proposed amendments do not sufficiently align the MRS Administrative Rules with the federal regulations.	Rationale: MRS agrees with the commenter that the placement of definitions for "Comparable services and benefits" and "Competitive integrated employment" should be swapped to preserve alphabetical order.	R 395.51(c-d)

				Specifically, the MRS definition leaves out the parts of the federal regulation, 34 C.F.R. § 361.5(c)(8)(i), that define comparable services and benefits to be: 1) available at the time needed to ensure progress toward achieving the employment outcome and 2) commensurate to the services the individual would receive from MRS. In the experience of the CAP, MRS counselors and managers frequently invoke "comparable services and benefits" without recognizing these critical elements of the definition. MRS counselors and managers will suggest that a client simply look elsewhere for resources without attempting to determine if such resources actually exist, much less whether they will	MRS agrees with the commenter that adding "at the time needed to ensure the progress of the individual toward achieving the employment outcome in the individual's IPE and that are commensurate to the services" to the definition of "Comparable services and benefits" is supported by 34 CFR 361.5(c)(8)(i) MRS agrees with the commenter that "for the place of employment" should be added to the definition of "Competitive integrated employment" for consistency with 34 CFR 361.5(c)(9)(i)(A). MRS agrees with the commenter that adding the language "to the same extent that employees who are not individuals with disabilities and who are in comparable positions interact with these	

			be available at the time needed or whether they are commensurate to the service MRS would otherwise provide. In fact, this was one of the issues raised in a recent MRS hearing. MRS simply urged the eligible individual to seek other resources without helping the individual find any such resources, without regard to whether any such resources would be available at the time needed, and without regard to whether they would be commensurate with services MRS would otherwise provide. In fact, MRS suggested that the individual seek loans, which would plainly not be commensurate with MRS services. The silence of the MRS Administrative Rule on central aspects of the federal	persons." to be included in the definition of "Competitive integrated employment" is supported by federal regulations. Description of changes: MRS added "at the time needed to ensure the progress of the individual toward achieving the employment outcome in the individual's IPE and that are commensurate to the services" to the definition of "Comparable services and benefits" MRS swapped the placement of definitions for "Comparable services and benefits" and "Competitive integrated employment". MRS added "for the place of employment" to the definition of "Competitive integrated	

			regulations undoubtedly contributes to the problems the CAP has seen." ---------- "Please note that if the definitions are supposed to be in alphabetical order, "Comparable services and benefits" should come before "Competitive integrated employment." MRS is proposing amendments to the definition of "Competitive integrated employment," but the proposed amendments do not sufficiently align the MRS Administrative Rules with the federal regulations. The CAP is proposing adding "for the place of employment" at the end of R 395.51(c)(i)(A). This is the language used in the definition of "competitive	employment". MRS added "to the same extent that employees who are not individuals with disabilities and who are in comparable positions interact with these persons." to the definition of "Competitive integrated employment"		

			integrated employment" in the federal regulations at 34 C.F.R. § 361.5(c)(9)(i)(A). This clarification matters because the applicable minimum wage law may depend on the place of employment. The CAP is proposing substantial revisions to R 395.51(c)(ii) because the language that MRS is using: 1) conflicts with the federal regulations, and 2) is incoherent. The MRS language requires that the work is at a location where the employee interacts with other individuals who are not individuals with disabilities. This could be read as excluding work that does not involve interactions with individuals other than the employee's supervisor. This			

			is not what the federal regulations require. The problem is that the MRS language in the first sentence is missing language in the federal regulations that says, “to the same extent that employees who are not individuals with disabilities and who are in comparable positions interact with these persons.” In other words, MRS’s language requires that the work involves interaction with persons who do not have disabilities, whereas the federal regulations only require that the work involves the same level of such interaction that non-disabled employees in the same job would have. MRS cannot impose a more restrictive definition of “competitive integrated			

			employment" than the one found in the federal regulations. MRS has included the language missing from the first sentence of this paragraph in the second sentence, but the language does not belong in this sentence. The second sentence in this paragraph does not make any sense."		
3	John Sloat Disability Rights Michigan The Client Assistance Program		"MRS is proposing rescinding R 395.83, but the proposed amendments do not sufficiently align the MRS Administrative Rules with the federal regulations. While the existing MRS Administrative Rules concerning post-employment services are flawed and should be rescinded, the federal regulations provide that an	Rationale: Given that R 395.71(h) still utilizes the term "post-employment services", MRS agrees with the commenter that providing a definition for the term in 395.51 is warranted. Description of Change: MRS has updated the proposed rule language to include a definition of "post-employment services" that is consistent with 34 CFR 361.46(c).	R 395.51(j) (j) is the newly added definition for post-employment services.

			IPE must contain, as necessary, statements concerning an eligible individual's need for post-employment services. MRS's proposed amendments leave only one reference to post-employment services in the Administrative Rules, at R 395.71(h) ("Required components of IPE") ("As determined to be necessary, a statement of projected need for post-employment services.") Because there are no other references to "post-employment services" in the revised MRS Administrative Rules, a person reading the MRS Administrative Rules will not know what post-employment services are.			

			One way to address this would be to add the definition of "Post-employment services" from the federal regulations, 34 C.F.R. § 361.46 (c), to the MRS Administrative Rule definitions. An appropriate version of the definition would be: "Post-employment services means one or more vocational rehabilitation services that are provided subsequent to the achievement of an employment outcome and that are necessary for an individual to maintain, regain, or advance in employment, consistent with the individual's unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice." (This proposed		

			definition is derived from 34 C.F.R. § 361.5(c)(41).)"		
4	John Sloat Disability Rights Michigan The Client Assistance Program		"MRS is not proposing any amendments to the definition of "employment outcome," but the current MRS definition is not aligned with the federal regulations. The "employment outcome" is a central concept in the Rehabilitation Act and the federal regulations. 34 C.F.R. § 361.5(c)(15). Every eligible individual is required to have an individualized plan for employment ("IPE") and that IPE must be designed to achieve a specific employment outcome. Under the federal regulations, the employment outcome is, in turn, defined as entering, advancing in, or retaining competitive	Rationale: MRS agrees with the commenter that inclusion of the language "advancing in" and replacing "competitive employment in the integrated labor market" with "competitive integrated employment" is consistent with post-2014 Department of Education guidance. Description of change: MRS has included the language "advancing in" and replaced "competitive employment in the integrated labor market" with "competitive integrated employment" in the definition for "Employment outcome"	R 395.51(f)

			integrated employment (a definition in the MRS rules discussed earlier in these comments). The current MRS definition of "employment outcome" is fairly close to the definition that existed in the federal regulations in 2014. However, the United States Department of Education amended the definition in 2016 to implement changes to the Rehabilitation Act as amended by the Workforce Innovation and Opportunity Act. State Vocational Rehabilitation Services Program, 81 Fed. Reg. 55,630 (Aug. 19, 2016). It appears that the definition in the MRS Administrative Rules has never been amended to reflect these changes. One of the			

			important 2016 amendments to the definition was the addition of the words "advancing in." As the Department of Education explained in the Federal Register when publishing the final amendment, the vocational rehabilitation program is not intended solely to place individuals in entry-level jobs, but rather to assist them to obtain employment that is appropriate given their unique strengths, resources, priorities, concerns, abilities, capabilities, and informed choice. State Vocational Rehabilitation Services Program, 81 Fed. Reg. 55,671-72 (Aug. 19, 2016). Part of MRS's purpose is to assist eligible individuals to advance in their careers. But MRS's definition		

			of “employment outcome” has not been amended in the past seven years to add this important “advancing in” language. The absence of the “advancing in” language in this definition ties directly to the problems discussed below with respect to definitions (h), (m), (p), (q), (r), and MRS Administrative Rule R 395.65 (“Individuals employed at intake”). Another crucial amendment to the definition was the addition of the term “competitive integrated employment.” This term is arguably one of the central foundations of the Rehabilitation Act , and this term is an essential aspect of the definition of the employment outcome. But the current MRS			

			Administrative Rules do not use this term in their definition of "employment outcome." The use of the phrase "competitive employment in the integrated labor market" is not a substitute for using the defined term "competitive integrated employment," which contains very specific requirements. The CAP is also putting the reference to customized employment, self-employment, telecommuting, or business ownership into a parenthetical after "competitive integrated employment," which mirrors the definition in the federal regulations. 34 C.F.R. § 361.5(c)(15). Written this way, it is clear that these are types of competitive integrated employment."		

MCL 24.242 and 24.245

5	John Sloat Disability Rights Michigan The Client Assistance Program		MRS is not proposing any amendments to the definition of "individualized plan for employment," but the current MRS definition is not aligned with the federal regulations. The federal regulations do not contain a definition of the "individualized plan for employment." Instead, the federal regulations contain two extensive sections: Development of the individualized plan for employment, 34 C.F.R. § 361.45, and Content of the individualized plan for employment, 34 C.F.R. § 361.46. As noted above, the individualized plan for employment or "IPE," is central to the provision of vocational rehabilitation services under the Rehabilitation	Rationale: MRS agrees with the commenter that cross referencing to the full description of "IPE" as elaborated on in R 395.67 – R. 395.71 is a preferred definition to the truncated definition as established in current MRS rules. Description of Change: MRS has cross referenced to the full description of "IPE" as elaborated on in R 395.67 – R 395.71.	R 395.51(g)

			Act. The problem with MRS's definition is that it does not begin to capture the extensive requirements applicable to the development and content of an IPE. For example, the federal regulations provide that an IPE must contain a description of the criteria that will be used to evaluate progress toward achievement of the employment outcome. 34 C.F.R. § 361.46 (a)(6). But someone reading the definition in the MRS Administrative Rules would have no idea that this is true. While the MRS Administrative Rules also contain sections on the development and content of an IPE, the problem is that this truncated definition is so incomplete that it arguably serves no purpose and			

			someone who did not read the rules carefully enough might fundamentally misunderstand what an IPE involves. In addition, MRS's definition of "IPE" repeatedly uses the term "Employment goal," which is not a defined term in either the federal regulations or the MRS Administrative Rules. If MRS continues to believe it is appropriate to try to define "individualized plan for employment," it would be far better to use the defined term "employment outcome," thereby more closely aligning the MRS Administrative Rules with the federal regulations and making the MRS Administrative Rules more internally			

			coherent. For the reasons set forth above, the CAP proposes that MRS amends this rule to simply be a cross-reference to the MRS Administrative Rules concerning the IPE."		
6	John Sloat Disability Rights Michigan The Client Assistance Program		"MRS is proposing amendments to the definitions of "Job in jeopardy" and "Seasonal employment," but the proposed amendments do not sufficiently align the MRS Administrative Rules with the federal regulations. The definitions above ((h), (m), (p), (q), and (r)) should be rescinded from the MRS Administrative Rules because these definitions only relate to MRS Administrative Rule R 395.65 ("Individuals employed at intake") and this rule should be	Rationale: MRS agrees with the commenter that R 395.65 and all associated definitions used exclusively in R 395.65 ("Job in jeopardy", "seasonal employment", "temporary employment", "underemployment", and "Unsteady employment") should be rescinded to comply with federal regulations and thanks the commenter for bringing this to our attention during public comment. Description of Change: MRS has updated proposed rule language to rescind R 395.65 and all associated	R 395.51(h); R 395.51(l); R 395.51(o); R 395.51(p); R 395.51(q); R 395.65 Note: all references in this item refer to pre-edit labeling on the strike-bold version of updated rule language.

			rescinded because all parts of this rule have been prohibited under the federal regulations since 2016. State Vocational Rehabilitation Services Program, 81 Fed. Reg. 55,672-73 (Aug. 19, 2016). As noted above, in 2016 – seven years ago – the United States Department of Education amended the federal regulations. One of these amendments provided that state vocational rehabilitation agencies must ensure that their eligibility requirements are applied without regard to the applicant's current employment status. 34 C.F.R. § 361.42(c)(2)(ii)(E). However, MRS Administrative Rule R 395.65 currently	definitions used exclusively in R 395.65 ("Job in jeopardy", "seasonal employment", "temporary employment", "underemployment", and "Unsteady employment").		

			provides that an "individual with a disability who is employed may be eligible for MRS services if, as a result of his or her disability, his or her employment does any of the following: (a) endangers the health and safety of the individual or others, (b) is in jeopardy, (c) is unsteady, (d) results in significant underemployment and needed services cannot be obtained from other agencies or resources." This MRS Administrative Rule puts conditions on the eligibility of an applicant employed at intake, which means MRS considers the applicant's employment status when determining eligibility. This has been expressly prohibited by the federal regulations for		

			the past seven years. In the CAP's experience, MRS counselors and managers still consider an applicant's current employment status when determining eligibility. This year, in 2023, the CAP advocated on behalf of an applicant who applied for MRS services in April of 2022. Under the federal regulations, MRS is required to make eligibility determinations within 60 days absent exceptional and unforeseen circumstances. In early March 2023 – eleven months later – MRS still had not made an eligibility determination with respect to this individual. During this delay, in October 2022, the MRS counselor wrote to the individual and advised that the counselor's			

			management needed to inquire about the individual's current job status and whether the individual's job was in jeopardy. In early March 2023, MRS advised the individual and the CAP that MRS anticipated determining the individual was not eligible for services because his job was not in jeopardy. It was evident that neither the counselor nor the managers directly involved understood that the federal regulations prohibit denying eligibility on this basis. It seems odd that MRS would bother to make minor edits to two of these definitions, which serve no purpose other than as part of a rule that the federal regulations have prohibited since 2016.		

			MRS should rescind MRS Administrative Rule R 395.65 and the definitions listed above."		
7	John Sloat Disability Rights Michigan The Client Assistance Program		"MRS is proposing amendments to the definition of "substantial impediment to employment," but the proposed amendments do not sufficiently align the MRS Administrative Rules with the federal regulations. First, the MRS definition includes the word "materially" before the word "hinders," but the definition in the federal regulations, 34 C.F.R. § 361.42 (c)(52), does not include "materially." The word "materially" is defined as "substantially," "considerably," or "to an important degree." This word is important because this defined phrase is part of one of the	Rationale: MRS agrees with the commenter that the word "materially" in the definition of "Substantial impediment to employment" potentially imposes more restrictive eligibility requirements than federal regulations (34 CFR 361.42(c)(52)) and should be rescinded. Additionally, MRS agrees that inclusion of the phrases "entering into" and "advancing in" are consistent with the requirements of 34 CFR 361.42(c)(52). Description of Change: MRS has removed the word "materially" and added the words "entering into" and "advancing in" to the proposed rule language.	R 395.51(m)

			three basic requirements for eligibility. Under the current MRS definition, there could be an argument about whether an applicant's impairment hinders them "substantially" – but the federal regulations don't require this – they only require that the impairment hinders the applicant. MRS's definition makes MRS's determination of eligibility potentially more restrictive than the federal regulations, and MRS is not permitted to do this. Second, the MRS definition does not include the terms "entering into" or "advancing in" that are included in the definition in the federal regulations. The absence of the phrase "advancing in" is particularly important, for the			

			reasons discussed above in the CAP's comments on the definition of "employment outcome.""		
8	John Sloat Disability Rights Michigan The Client Assistance Program		"MRS is not proposing any amendments to the definition of "substantial services," but the current MRS definition is not aligned with the federal regulations. The federal regulations do not include the term "substantial services" or anything resembling it. The term "substantial services" is only used once in the MRS Administrative Rules, in R 395.79 ("Rehabilitated case closure"), which MRS has proposed amending as part of this Request for Rulemaking. As explained below in the CAP's comments on MRS's proposed amendments to	Rationale: MRS agrees with the commenter that the term "substantial services" does not appear in the federal regulations and should be rescinded from both 395.51(n) and R 395.79. Description of Change: MRS has updated the proposed rule language to rescind the definition of "Substantial services".	R 395.51(n); R 395.79

			that rule, the federal regulations concerning case closure do not contain language comparable to "substantial services," and it is difficult to understand the purpose of including such language. MRS should rescind the definition of "substantial services.""		
9	John Sloat Disability Rights Michigan The Client Assistance Program		"MRS is proposing amendments to the definition of "Vocational rehabilitation services," but the proposed amendments do not sufficiently align the MRS Administrative Rules with the federal regulations. The federal regulations contain a definition of "vocational rehabilitation services," 34 C.F.R. § 361.42 (c)(57), that incorporates the list of services	Rationale: MRS agrees with the commenter that referencing the federal regulation's (34 CFR 361.48 Scope of vocational rehabilitation services for individuals with disabilities and 34 CFR 361.49 Scope of vocational rehabilitation services for groups of individuals with disabilities) definitions of what services are included in the term "Vocation rehabilitation services" or "VRS" is preferable to listing an internal	R 395.51(r)

			contained in "Scope of vocational rehabilitation services for individuals with disabilities," 34 C.F.R. § 361.48, and "Scope of vocational rehabilitation services for groups of individuals with disabilities," 34 C.F.R. § 361.49. These federal regulations require the state vocational rehabilitation agency to ensure that the specific services listed are available to eligible individuals. However, these services are not listed anywhere in the MRS Administrative Rules. It is the view of the CAP that, under Michigan law, MRS must implement this list of services through a formal rule-making process. The federal regulations provide that MRS	MRS policy manual document. As the commenter points out, this creates uniformity in how "VRS" and "Pre-ETS" reference scope of services in MRS rule definitions. Description of Changes: MRS has altered the proposed definition of "VRS" to reference the federal regulations application to scope of VRS to individuals or groups of individuals.		

			must develop and maintain written policies covering the nature and scope of each of the vocational rehabilitation services specified under 34 C.F.R. § 361.48 and the criteria under which each service is provided. 34 C.F.R. § 361.50. In Spear v. Michigan Rehabilitation Services, 202 Mich. App. 1, 4-5 (1993), the Court of Appeals of Michigan held that MRS was required to implement a needs test through a formal rule-making process where the federal regulations required the state to maintain written policies with respect to any needs test. The issue in Spears is analogous to the federal requirements concerning written policies covering the list of vocational			

			rehabilitation services. Publishing the list in the MRS Rehabilitation Services Manual is not implementation through a formal rule-making process. The CAP is proposing that MRS amend this Administrative Rule to incorporate the services set forth in the federal regulations. In fact, in this Request for Rulemaking, MRS has created a new definition, "Pre -employment transition services," that does exactly this for pre-employment transition services."		
10	John Sloat Disability Rights Michigan The Client Assistance Program		"MRS is proposing amendments to R 395.53 "Purpose," but the proposed amendments do not sufficiently align the MRS Administrative Rules with the	Rationale: MRS agrees with the commenter that R 395.53 should be altered to mirror the language of 34 CFR 361.1(b), and agrees with the addition of the term "unique" to accompany the	R 395.53

				federal regulations. The federal regulations also contain a "purpose" section. 34 C.F.R. § 361.1. The CAP's proposed revisions to subpart (1) mirror the language in 34 C.F.R. § 361.1 (b), and align the MRS Administrative Rule with the federal regulation. Neither the Rehabilitation Act, 29 U.S.C. 701(b), nor the federal regulations refer to an employment outcome in their purpose sections. Instead, both refer to the goals of competitive integrated employment and economic self-sufficiency. This makes sense because the term "employment outcome" is itself defined by the goal of competitive integrated employment. -	language concerning an individual's strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice, and update what federal regulations require of an IPE, including providing services in accordance with the IPE, each IPE being designed to achieve a specific employment outcome selected by the customer consistent with the customer's unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice and that each IPE must include a description of the specific vocational rehabilitation services needed to achieve the employment outcome. Description of Changes: MRS has altered proposed language for R 395.53 to	

			Similarly, in the federal regulations, the word “unique” always accompanies the language concerning an individual’s strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice. - Neither the Rehabilitation Act nor the federal regulations contain language in their purpose sections resembling the language in MRS’s R 395.53 subpart (4). This language could be rescinded. However, if MRS decides to retain this language, it must be revised to be consistent with the federal regulations because MRS’s language fundamentally mischaracterizes key elements of what the Rehabilitation	mirror the language of 34 CFR 361.1(b), added the term “unique” to accompany the language concerning an individual’s strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice, and updated what federal regulations require of an IPE, including providing services in accordance with the IPE, each IPE being designed to achieve a specific employment outcome selected by the customer consistent with the customer’s unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice and that each IPE must include a description of the specific vocational rehabilitation services needed to achieve the employment outcome.		

			Act requires. "The MRS process is based on an IPE that is oriented to an individual's achievement of a vocational goal." The rule uses the term "vocational goal," which is not a defined term in the MRS rules (and the term does not appear in the federal regulations) instead of using the term "employment outcome," which is a core term in the federal regulations. It is too weak to say that an IPE is "oriented to an individual's achievement of [an employment outcome]." The federal regulations provide that an IPE must be designed to achieve a specific employment outcome. 34 C.F.R. § 361.45 (b)(2).			

			The current MRS rule fails to acknowledge that the customer choses the employment outcome. 34 C.F.R. § 361.46 (a)(1). "Services provided must be essential to overcome the vocational impediment and must be provided at the least cost to meet the individual's rehabilitation needs." The federal regulations do not provide that services must be essential "to overcome the vocational impediment." This is particularly concerning because it is unclear what is meant by "vocational impediment." This term is not used anywhere else in the MRS rules, and it never appears in the federal regulations.			

			While it is the case that, in order to be eligible for vocational rehabilitation services, there must be determinations that the applicant has a physical or mental impairment and that the impairment constitutes or results in a substantial impediment to employment, MRS is not permitted to limit services to those that directly address how the impairment constitutes or results in a substantial impediment to employment. Vocational rehabilitation services must be needed to achieve the employment outcome, but they are not required to be "essential to overcome the vocational impediment." This MRS rule appears to limit services in a manner			

			prohibited by the federal regulations. The language in the MRS rule providing that services "must be provided at the least cost to meet the individual's rehabilitation needs" is not required by the federal regulations. In the CAP's experience, MRS personnel apply this language in a manner that is inconsistent with the purposes of the Rehabilitation Act. This "least cost" language does not appear anywhere in the federal regulations governing the State Vocational Rehabilitation Services Program, 34 C.F.R. § 361, and it does not appear in the federal regulations concerning Uniform Administrative Requirements, Cost Principles, and Audit			

			Requirements for Federal Awards, 2 C.F.R. § 200. The CAP's experience is that MRS personnel focus on the words "least cost" in this policy and give insufficient consideration to the quality of the services provided by the "least cost" option or whether the "least cost" service will actually meet the individual's specific vocational rehabilitation needs. The Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards contain a section, "Reasonable costs," 2 C.F.R. § 200.404, that would provide a more appropriate rule."		
11	John Sloat Disability Rights Michigan		"Much of this language appears to be derived from 29 U.S.C. section 3248. Absent any	Rationale: MRS agrees that the language regarding "participant status" and	R 395.54(1)

	The Client Assistance Program		further explanation, it is difficult to know what the added term "participant status" means. Within the U.S. Code (as cited by MRS in the proposed amendment), it appears to refer to discrimination against individuals who are participants in programs or activities that receive funds under the Workforce Innovation and Opportunity Act because of the individual's status as a participant. The grammar of this sentence is also confusing because it is constructed to read as follows: "MRS shall not discriminate on the basis of … certain non-citizens as defined by section 188 of the workforce innovation and opportunity act, 29 USC 3248.""	"certain non-citizens" could be altered to add clarity. Description of Change: MRS has altered the sentence structure to provide additional information of what "participant status" entails and corrected the sentence structure to fix the "certain non-citizens" grammatical issue.	
12	John Sloat		"MRS is proposing	Rationale: MRS agrees with the	R 395.54(2)

	Disability Rights Michigan The Client Assistance Program		amendments to R 395.54 subsection (2), but the proposed amendments do not sufficiently align the MRS Administrative Rules with the federal regulations. The federal regulations provide that MRS must not impose, as part of determining eligibility, a duration of residence requirement that excludes from services any applicant who is present in the state. 34 C.F.R. § 361.42(c)(1). This MRS rule is incoherent when considered in comparison to the federal regulations, and MRS's proposed revision does not address the problem. The main issue is that an individual does not develop an individualized plan for employment until after MRS has	commenter that the federal regulations (34 CFR 361.42(c)(1)) that prohibit imposing a duration of residence requirement apply to eligibility determination, which occurs before an IPE is generated. Description of Changes: MRS has altered the proposed rule to make clear that MRS is prohibited by federal regulations from imposing a duration of residence requirement when determining eligibility for services.		

			determined that the individual is eligible for services. MRS must provide services to eligible individuals, and MRS cannot impose a duration of residency requirement as part of its eligibility determinations. Since an IPE does not exist until after the eligibility determination, it does not make sense to talk about a duration of residence requirement excluding an individual "from services under the IPE." The CAP's proposed language more closely tracks the federal regulations."		
13	John Sloat Disability Rights Michigan The Client Assistance Program		"MRS is not proposing any amendments to R 395.54 subsection (6), but the current MRS definition is not aligned with the federal regulations.	Rationale: MRS agrees with the commenter that MRS may not impose a duration of residence requirement, which the word "permanent" unintentionally	R 395.54(6)

			As noted above, and as recognized in the MRS rules, MRS may not impose a duration of residency requirement. 34 C.F.R. § 361.42 (c)(1). Furthermore, under the federal regulations, MRS may not require an applicant to demonstrate a presence in the State through the production of any documentation that under state or local law, or practical circumstances, results in a de facto duration of residence requirement. 34 C.F.R. § 361.42 (c)(1). Given these regulations, it is inconsistent with the federal regulations for the MRS rules to refer to any determinations concerning an individual's "permanent" residence, because this amounts to a de	could imply, and agrees that it is not permitted under federal regulations to ask an applicant or customer for proof of permanent residency. Description of Changes: MRS has removed the work "permanently" in the drafted rule language.		

			facto duration of residence requirement."		
14	John Sloat Disability Rights Michigan The Client Assistance Program		"The language in the MRS rule providing that "retroactive authorizations are prohibited" is not required by the federal regulations. In the CAP's experience, MRS applies this rule in a manner that is inconsistent with the purposes of the Rehabilitation Act This "retroactive authorizations are prohibited" language does not appear anywhere in the federal regulations governing the State Vocational Rehabilitation Services Program, 34 C.F.R. § 361, and it does not appear in the federal regulations concerning Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, 2	Rationale: MRS agrees that retroactive authorizations are permitted through a defined exception process. Description of Changes: MRS has updated the proposed rule to eliminate the "retroactive authorizations are prohibited" language and include when MRS may authorize payment for services that have already been provided.	R 395.54(8)

			C.F.R. § 200. In the CAP's experience, an MRS policy that strictly prohibits retroactive authorizations can cause avoidable harm to MRS customers. The CAP has repeatedly seen situations where timely authorizations were not made for services that were expressly contemplated in the IPE due to delays outside of the eligible individual's control – including situations where MRS personnel were involved in the delays. MRS managers then take the position that this retroactive authorization rule prohibits taking any action to pay for the needed services. In order to address this reoccurring problem, MRS policy should include		

			provisions that allow for exceptions to this rule where the service is contained in the individual's IPE and where the individual made reasonable efforts to ensure MRS was able to make a timely authorization. In addition, under the federal regulations, MRS is required to establish policies related to the timely authorization of services, 34 C.F.R. § 361.50 (e), but the MRS Administrative Rules do not contain any such policies."		
15	John Sloat Disability Rights Michigan The Client Assistance Program		"MRS is proposing amendments to R 395.54 subsection (9), but the proposed amendments do not sufficiently align the MRS Administrative Rules with the federal regulations. It is unclear what is meant by	Rationale: MRS agrees with the commenter that the language "goods and services must be explored by the individual" is unclear, that MRS customers may develop all or part of their IPE without the assistance of MRS, and that rule language in	R 395.54(9)

			"goods and services must be explored by the individual." There is no comparable rule in the federal regulations. The federal regulations provide that MRS must ensure that the IPE is developed and implemented in a manner that gives the individual the opportunity to exercise informed choice in selecting the specific vocational rehabilitation services needed to achieve the employment outcome, including the settings in which services will be provided, and the entity or entities that will provide the vocational rehabilitation services. 34 C.F.R. § 361.45 (d)(2). It is possible to read this MRS rule as allowing that someone (a counselor?) could	alignment with 34 CFR 361.45(d)(2) is preferable. Description of Changes: MRS has altered the rule to remove the unclear language of "goods and services must be explored by the individual", make explicit that MRS customers may develop all or part of their IPE without the assistance of MRS, and bring language into alignment with 34 CFR 361.45(d)(2)	

			decide to not involve the individual in the choice of who will provide the goods and services. (The individual "may" be involved in the choice of who will provide the goods and services – under this language, who decides whether the individual will be involved?) The federal regulations provide that MRS must inform eligible individuals that they have the option of developing all or part of their IPE without assistance from MRS. 34 C.F.R. § 361.45(c)(1)(i). This MRS rule implies that an individual may only explore goods and services (and the choice of providers) with assistance from an MRS counselor.			

			The language that the CAP is proposing, which comes directly from the federal regulations, 34 C.F.R. § 361.45 (d)(2), does not appear anywhere else in the MRS Administrative Rules."		
16	John Sloat Disability Rights Michigan The Client Assistance Program		"MRS is proposing amendments to R 395.54 subsection (11), but the proposed amendments do not sufficiently align the MRS Administrative Rules with the federal regulations. The language that the CAP is proposing more closely tracks the language of the federal regulations. 34 C.F.R. § 361.57 (b). For example, the federal regulations do not use the word "redetermination" in this context, and the word only appears one other time in the MRS Administrative Rules. Instead, both the	Rationale: MRS agrees with the commenter that adopting language more closely consistent with 34 CFR 361.57(b) is appropriate regarding the right of individuals to review MRS determinations and 34 CFR 361.57(b)(1)(v) to inform individuals of not just the existence of the CAP, but how the CAP might assist the individual. Description of Changes: MRS has altered the language of the proposed rule to be more closely consistent with 34 CFR 361.57(b) regarding the right of individuals to review MRS determinations and 34 CFR 361.57(b)	R 395.54(11)

			Rehabilitation Act and the federal regulations provide for an individual's right to review of determinations by the vocational rehabilitation agency. The MRS rule does not mention the individual's right to pursue mediation. The MRS rule only requires the counselor to inform the individual about the "availability" of the CAP, but the rule does not use the language of the federal regulations that requires MRS to specify how the CAP can assist the individual. 34 C.F.R. § 361.57 (b)(1)(v). The MRS Administrative Rules contain sections that provide greater detail about the review of MRS determinations, and this rule should include a	(1)(v) to inform individuals of not just the existing of the CAP, but how the CAP might assist the individual.		

			cross reference to those rules, as in the revisions proposed by the CAP."		
17	John Sloat Disability Rights Michigan The Client Assistance Program		MRS is proposing amending R 395.54 to add subsection (2), but the proposed rule conflicts with the federal regulations. The federal regulations provide that the vocational rehabilitation agency may establish a fee schedule if the schedule is not so low as to effectively deny an individual a necessary service and if the fee schedule is not absolute and permits exceptions so that individual needs can be addressed. 34 C.F.R. § 361.50(c)(2). MRS's proposed rule states that MRS shall only authorize payment at the rate of payment in the fee schedule unless	Rationale: MRS agrees with the commenter that the proposed rule must make clear that the values established on the fee schedule are not absolute, that MRS will permit exceptions to the fee schedule so that the needs of MRS customers can be met, and that the wording of "arbitrary" dollar limit should be changed to be consistent with the requirements of federal regulations. Description of Changes: MRS has altered the language of the proposed rule to make clear that the values established on the fee schedule are not absolute, that MRS will permit exceptions to the fee schedule so that the needs of MRS customers can be met, to remove the	R 395.76(2)

			there is an established exception process that allows for rates of payment that deviate from the fee schedule. This rule reads such that MRS could determine for an individual case that there is no "established exception process," and so MRS would then only authorize the amount in the fee schedule. But the federal strict adherence to the fee schedule if individual needs are not being addressed. In addition, MRS must implement any such "established exception process" through a formal rule-making process and conduct public meetings regarding any such process for the reasons set forth above.	wording of an "arbitrary" dollar limit.	
18	John Sloat Disability Rights Michigan		"MRS is proposing amendments to R 395.79, but the proposed amendments do	Rationale: MRS agrees with the commenter that the proposed MRS rules need adjusting to	R 395.79

	The Client Assistance Program		not sufficiently align the MRS Administrative Rules with the federal regulations. Under the federal regulations, determining whether an individual has achieved an employment outcome depends on the definition of "employment outcome," the definition of "competitive integrated employment," and the content of the individual's IPE. The federal regulations do not condition achieving an employment outcome on all of the requirements listed in MRS R 395.79. Instead, the federal regulations include a section that addresses closing the record of an individual who has achieved an employment outcome. 34 C.F.R. § 361.56. The CAP's	comply with the provisions of 34 CFR 361.56 and that case closure depends on the definition of "employment outcome", and the content of the individual's IPE. Description of Changes: MRS has adjusted the language of the proposed rule to comply with the provisions of 34 CFR 361.56 named by the commenter and specify that case closure depends on the definition of "employment outcome", and the content of the individual's IPE.		

			proposed revisions would align MRS R 395.79 more closely with this federal regulation. The federal regulation does not require "substantial services under an IPE are provided and have contributed to the employment outcome." In fact, an individual could achieve an employment outcome without MRS providing "substantial services," and the CAP expects that MRS would close such a case as having achieved the employment outcome, so it is not clear why subsection (b) is included here. The federal regulations require that a record may only be closed if the individual has maintained the employment for an "appropriate period of time" necessary to			

			ensure the stability of the employment outcome, 34 C.F.R. § 361.56 (b), and this period cannot be less than 90 days. MRS R 395.79 only requires that the employment outcome is maintained for at least 90 days – the MRS rule is weaker than the one required by the federal regulations. In its proposed amendment, MRS has deleted its provision concerning assessment for post-employment services. The CAP presumes this is related to MRS's decision to rescind the rules on post-employment services. However, as the federal regulations make clear, MRS is required to inform the individual who has achieved an employment outcome of the availability of			

			post-employment services. 34 C.F.R. § 361.56 (d). MRS should revise, not delete, the reference to post-employment services here.”		

14.Date report completed:

11/30/2023