Bureau of Rehabilitation Services Division of Vocational Rehabilitation Independent Living Services Program Policy Manual: January 2000 Final Rules
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9. Services After Closure
The Independent Living Services Program, hereinafter referred to as the (ILS Program), in conjunction with the Division of Vocational Rehabilitation (DVR), Bureau of Rehabilitation Services, (BRS) assists people who have significant disabilities to live more independently in their homes and communities. The program provides and arranges needed IL services subject to the availability of funds. The program is also an advocacy program for people with disabilities and their families.

1. **PURPOSE AND GENERAL REQUIREMENTS OF THE INDEPENDENT LIVING SERVICES PROGRAM**

The ILS Program assists eligible persons with significant disabilities to overcome substantial barriers to functioning independently in family or community. The IL process is based upon an Independent Living Plan (ILP) which is designed to achieve or maintain independence. Services provided to people with disabilities must directly relate to the removal of barriers to independent living, as identified in the Certificate of Eligibility. Services must be provided in a cost effective and responsible manner.

The ILS Program is operated in compliance with the Federal Rehabilitation Act of 1973, as Amended. The legal authorities for the policies contained in the ILS Services Policy Manual are Title 29 U.S.C. 720 et seq.; Title 34 CFR Part 365 in the Federal Register, and Title 26 M.R.S.A., Chapter 19, section 1411, et seq.

The consumer is the foundation of the ILS Program. All services shall be consumer planned and developed within the scope of the program guidelines. The direct and active participation of the eligible consumer is required within this program to the maximum extent feasible for the individual. Each phase of the service delivery process shall be documented within the case record.

1.1 Eligibility is determined without regard to sex, race, creed, age, color, national origin or type of disability.

1.2 There is no residency requirement which would exclude from services a person living in Maine.

1.3 The ILS Program shall process referrals in an equitable and expeditious manner.

1.4 The ILS Program shall establish and maintain a case record for each applicant for, and recipient of, IL Services. The case record will contain all required documentation.

1.5 Case service expenditures shall require written authorization by the ILS Program administrator prior to the initiation of the services or the purchase of any goods.

1.6 When appropriate, ILS Program staff shall provide advocacy or referral necessary to support people with significant disabilities in securing needed services or goods from other agencies and organizations.

1.7 Each applicant or individual provided IL services shall be informed of the procedure for requesting a review and/or a re-determination of agency action concerning the furnishing or denial of services, including the names and addresses of individuals with whom appeals may be filed and of the availability of the Client Assistance Program.
2. **CONFIDENTIALITY**

All personal information acquired by the ILS shall only be used and released for purposes directly connected with the administration of the ILS Program. Use and release of personal information acquired by the ILS Program shall conform with applicable Federal Regulations and State laws. Personal information will be released with the informed written consent of the consumer or their duly authorized representative.

2.1 For purposes of this policy, informed written consent shall mean a document that:

- 2.1.1 is in language and a communication format that the person understands. Alternative communication shall be provided to the consumer, such as voice, American Sign Language, Braille, or augmented technology, and shall be documented in the case record as declared by the consumer for the purpose of releasing or sharing specific information with parties designated by the consumer;
- 2.1.2 is signed and dated by the consumer or duly authorized representative;
- 2.1.3 is specific in designating the ILS Program as the agency or person authorized to disclose information;
- 2.1.4 is specific as to the nature of the information which may be released;
- 2.1.5 specifically designates the parties by whom the information may be used;
- 2.1.6 specifically indicates the duration of the release of information.

2.2 Release to consumer or duly authorized representative.

Upon informed written consent by the individual with disabilities or duly authorized representative, all information in the case record shall be made available in a timely manner, except:

- 2.2.1 information obtained from outside the ILS Program may be released only under the conditions established by the outside agency or organization.

2.3 Release To Other Programs

Upon informed written consent of the individual with disabilities or duly authorized representative, Maine ILS Program may release to another agency or organization information that may be released to the individual with disabilities and only to the extent that the other agency demonstrates that the information is necessary for its program.
2.3.1 Maine ILS Program must release personal information, with or without consent of the individual, if required by State and Federal law, if in response to investigations in connection with law enforcement, fraud, or abuse, (except where expressly prohibited by Federal or State laws or regulations), and in response to an order issued by a judge, magistrate, or other authorized judicial officer.

2.3.2 The Maine ILS Program may release personal information without informed written consent of the individual in order to protect the individual or others when the individual poses a threat to his/her safety or the safety of others except for HIV test results which may not be released without informed written consent of the individual.

2.4 Release for Audit, Evaluation or Research

At the discretion of the ILS Program Manager/Supervisor, personal information may be released to an organization, agency or individual engaged in audit, evaluation, or research only for purposes directly connected with the administration of the ILS Program, or for purposes which would significantly improve the quality of life for people with disabilities and only if the organization, agency or individual assures that:

1) the information shall be used only for the purposes for which it is being provided;
2) the information shall be released only to persons officially connected with the audit, evaluation or research;
3) the information shall not be released to the involved individual;
4) the information shall be managed in a manner to safeguard confidentiality; and
5) the final product will not reveal any personal identifying information without the informed written consent of the involved individual or duly authorized representative.

2.5 Release of Records for Testimony

An employee of a Maine ILS Program shall not testify in court or in an administrative hearing; nor release records without the consent of the individual or their duly authorized representative unless ordered to do so by a judge, magistrate, or other authorized judicial officer.

3. ILS PROGRAM APPEALS PROCESS

An applicant for or recipient of the IL Services who is dissatisfied with any determination made by an ILS Program staff concerning the furnishing or denial of services may request (or, if appropriate, may request through the individual’s duly authorized representative) a timely review of the determination. ILS Program services shall make reasonable accommodation as required in the conduct of the appeals process. Whenever possible, ILS Program staff shall attempt to resolve conflicts informally prior to Mediation or a Due Process Hearing. An individual may request a meeting with the counselor, the appropriate supervisor, and a Client Assistant Program (CAP) representative, if desired, to explore options for resolving any conflicts.
3.1 Continuation of Services Pending Completion of the Hearing

Pending a final determination of an appeal hearing, the ILS Program may not suspend, reduce, or terminate services being provided under an Independent Living Plan (ILP), unless the services were obtained through misrepresentation, fraud or collusion of the individual or duly authorized representative, or the individual or duly authorized representative requests suspension, reduction, or termination of services.

3.2 Time Frames

The time frames listed under Section 3.3 Mediation and 3.4 Due Process Hearing may be waived if both parties agree to an extension of time in order to conduct the Mediation or Hearing or to render a decision.

3.3 Mediation

3.3.1 The Department of Labor Mediation process is an option to resolve conflicts when a resolution is not possible informally. Mediation is voluntary for both parties and either party may withdraw at any time. The goal of the mediation is to help the parties reach a mutually satisfactory resolution of their dispute.

3.3.2 An individual must request Mediation within thirty (30) calendar days of the ILS Program notice regarding the provision or denial of services that are in question. The request shall be in writing and the request shall describe the complaint. The request should be sent to the Director of DVR who will immediately forward it to the Department of Labor, Division of Administrative Hearings.

3.3.3 The Division of Administrative Hearings will commence a mediation meeting within fifteen (15) calendar days of receipt of the request and shall be held in a location that is convenient to the parties in the dispute.

3.3.4 Mediation will be conducted in accordance with the Court Alternative Dispute Resolution Service’s (CADRES) standards on ethics and neutrality.

3.3.5 An agreement reached in the mediation process shall be set forth in a written mediation agreement and shall be included in the case record.

3.3.6 Discussions that occur during the mediation process shall be confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding in accordance with CADRES confidentiality standards.

3.3.7 The individual may be represented at the mediation. Representation may include but is not limited to, representation by the Client Assistance Program.

3.4 Due Process Hearing

3.4.1 A Due Process Hearing is a procedure whereby an individual who is dissatisfied with any determination concerning the provision or denial of ILS Program services may seek a re-determination of ILS Program action before an impartial hearing officer.
3.4.2 The individual must request a Due Process Hearing within thirty (30) calendar days of the ILS Program notice regarding the provision or denial of service if Mediation was not requested.

3.4.3 If no request for Due Process Hearing is made within thirty (30) calendar days, the ILS Program decision is considered final.

3.4.4 The request for Due Process Hearing shall be in writing and shall describe the complaint. The ILS Program will accommodate an individual's disability and offer assistance in this process. The request should be sent to the Director of DVR.

3.4.5 A pre-hearing conference will be held. At that time mediation will be explored as an option for resolving the dispute.

3.4.6 The Due Process Hearing shall be conducted within forty-five (45) calendar days of receipt of the request for Due Process Hearing.

3.4.7 A Due Process Hearing shall be conducted by an impartial hearing officer from the pool of qualified persons.

3.4.8 The ILS Program may not deny or dismiss a request for Due Process Hearing unless the individual or his/her representative:

a) withdraws the request in writing; or
b) is adjudged by the Due Process Hearing officer to be in default for failure to appear at the hearing without good cause.

3.4.9 The Due Process Hearing shall be conducted and a recommended decision shall be issued in accordance with Maine's Administrative Procedures Act, 5 M.R.S.A. Chapter 375, subchapter IV.

3.4.10 The Due Process Hearing Officer shall issue a decision within thirty (30) days of the completion of the hearing. If the Commissioner of the Department of Labor or the Commissioner's designee decides to review the decision of the impartial hearing officer, he/she will notify the individual or, if appropriate, the individual's duly authorized representative, of that intent within twenty (20) days of the mailing of the impartial hearing officer's decision. The Commissioner or his/her designee shall give the individual or individual's duly authorized representative ten (10) calendar days to submit additional evidence and information relevant to the final decision. If the Commissioner or his/her designee does not notify the applicant/client of the intent to review the decision, the decision of the impartial hearing officer becomes the final decision.

3.4.11 Within thirty (30) days of providing notice of intent to review the impartial hearing officer's decision, the Commissioner or designee shall make a final decision and provide a full report in writing of the decision, including findings and the statutory, regulatory, or policy grounds for the decision, to the individual or, if appropriate, the individual's duly authorized representative.

3.4.12 The Commissioner or designee may not overturn or modify a decision, or part of a decision, of an impartial hearing officer unless the Commissioner or designee concludes, based on clear and convincing evidence, that the decision is clearly erroneous because it is contrary to the approved State Plan, the Act, Federal Regulations or State Policy.

3.4.13 The Due Process Hearing decision shall be considered final by the agency pending the outcome of further appeal procedures.
3.5 Judicial Review Under M.R. Civ. P. 80C

In the written decision from the Commissioner or designee of a Due Process Hearing, the individual shall be advised of the right to file a petition in Superior Court under Rule 80C of the Maine Rules of Civil Procedure.

4. ELIGIBILITY DETERMINATION

4.1 Application for ILS Program Services

Any person who applies for services shall undergo an eligibility determination, the results of which shall be shared with the individual. An applicant is anyone who signs a dated application or letter requesting IL Services. An evaluation(s) will take place, at no cost to the consumer, to provide information for the eligibility decision. At any time in this process that it is determined the individual is not eligible for IL Services, the evaluation shall cease. Appropriate notification will be provided to the individual.

4.2 An individual is eligible for ILS Program services if an evaluation documents the following:

4.2.1 That the individual has a significant physical or mental disability which for that individual constitutes or results in a severe limitation(s) in ability to function independently in family or community setting;

4.2.2 That IL Services may reasonably be expected to assist the individual to function independently in a family or community setting; and

4.2.3 The consumer’s ability to direct the IL service planning and selection with or without assistance.

The evaluation(s) shall take into consideration any relevant case record materials available from the ILS Program or other sources. A special diagnostic study(ies) shall be conducted for purposes of determining eligibility for IL Services only if already available information is not complete, relevant, or current. The evaluation(s) shall be sufficient in scope to determine which services will best meet the current needs of the individual for functioning more independently in family or community setting.

4.3 Certification of Eligibility or Ineligibility

Upon completion of the evaluation, the ILS Program staff responsible for determining eligibility shall make one of the following decisions:

1) The applicant is eligible; or
2) The applicant is ineligible.
4.3.1 Certification of Eligibility and/or Amendments

For each individual determined eligible for IL Program services, the case record must include documentation of the presence of a significant disability and a Certification of Eligibility which is signed and dated by the authorizing ILS Program staff and which documents:

a) how the disability(ies) result in significant limitations in ability to function independently in family or community settings;

b) how there is a reasonable expectation that ILS Program services will assist the individual's ability to function independently in a family or community setting; and

c) how the consumer's direct and active participation in the process will be accomplished.

4.3.2 Documentation of Certificate of Ineligibility

In all cases where the authorizing ILS Program staff documents that IL Services cannot be expected to assist an individual to function more independently in family or community setting, there must be a certification dated and signed by the authorizing ILS Program staff. If an applicant has been determined to be ineligible, then the certification must be documented as follows:

a) Reason(s) for Ineligibility.

1) The service provider may determine an applicant to be ineligible for IL Services only after full consultation with the applicant or duly authorized representative, or after providing a clear opportunity for this consultation;

2) The applicant or duly authorized representative shall receive written, or by other appropriate media, notification of the agency action, appeal rights, and the availability of advocacy services through the Client Assistance Program;

3) The service provider shall provide a detailed explanation of the availability and purposes of the Client Assistance Program including information on how to contact the program; and

4) If appropriate, the service provider shall refer the applicant to other agencies and facilities, including the state's vocational rehabilitation program.

b) Review of Ineligibility Determination

1) If an applicant for IL Services has been found ineligible, the service provider shall review the applicant's current status no later than twelve (12) months after the determination has been made;

2) The review need not be conducted in situations where the applicant has refused the review, the applicant is no longer present in the state, or the applicant's whereabouts are unknown; and

3) All review efforts will be documented in the case record.
4.4 Order of Selection

4.4.1 At any time services cannot be provided within a reasonable time to all eligible individuals, the ILS Program Order of Selection shall be implemented. A reasonable time will be determined by the Director of DVR in consultation with the Statewide Independent Living Council.

4.4.2 After determining eligibility, ILS Program staff shall follow the Order of Selection in purchasing services.

4.4.3 A Statewide waiting list shall be established by the ILS Program provider in consultation with the DVR Grant Manager. The waiting list will be organized by Priority Status and chronological order of the Eligibility date.

Eligible individuals shall be served in the following priority order:

4.4.3.1 Priority 1 Status

Those eligible adults who will lose their current level of independence and would be required to move to more restrictive setting immediately and permanently, unless they receive the assistance of a specific service or set of services which the ILS Program can provide.

4.4.3.2 Priority 2 Status

Those eligible adults who, with the assistance of a specific service or set of services which the ILS Program can provide, can immediately move to a less restrictive and more independent setting.

4.4.3.3 Priority 3 Status

Those eligible adults, who, with the provision of a service or set of services which the ILS Program can provide, will be able to overcome a specific barrier or set of barriers to independent living.

4.4.3.4 Priority 4 Status

All other eligible individuals.

4.4.4 All individuals in each priority shall be served before serving those in the next succeeding priority status.
5. INDEPENDENT LIVING PLAN

An Independent Living Plan (ILP) shall be developed after the consumer is found eligible. The ILP is based on a determination of independent living potential designed to achieve the IL goals consistent with an individual's abilities. The case record shall support the development of the consumer directed IL goal(s). The case record shall reflect the significant participation of the eligible consumer, and may include, at the consumer’s discretion, the participation of the consumer’s duly authorized representative in the development of the plan(s). The ILS Program staff shall provide copies of the ILP and any amendments to the consumer, and, where appropriate, their duly authorized representative. In the case of the duly authorized representative, the consumer must participate to the maximum extent feasible in the development of the ILP goals. Goods and services may only be provided in accordance with the ILP. Goods and services provided must remove the barrier to independent living. Goods and services will relate to the Order of Selection priority categories. The details of this process will be thoroughly outlined and included in the ILS Program operating procedures. The ILP is not a legal contract.

5.1 The Independent Living Plan shall document the following:

5.1.1 The basis on which a determination of eligibility was made;

5.1.2 The IL goals established with the individual and a rationale for the goals;

5.1.3 The specific services to be provided in order to achieve the established IL goals;

5.1.4 Beginning and projected ending dates for each service;

5.1.5 A procedure and schedule for monitoring progress toward achieving goals based upon objective criteria appropriate for each individual, and a record of the result of ILP monitoring. The ILP shall be reviewed as often as necessary but at least annually;

5.1.6 The decisions of the consumer and/or duly authorized representative concerning IL services;

5.1.7 The terms and conditions for the provision of services, including the consumer's participation in cost of services when feasible, and, whether the consumer is eligible for similar benefits and the extent to which they will be used, and were used;

5.1.8 An assurance that the consumer has been informed of their rights and the means by which they may express and seek remedy for any dissatisfaction, as described in Section 3, ILS Program Appeals Process; and assurance that the consumer has been provided a detailed explanation of the availability of the resources within the Client Assistance Program;

5.1.9 The IL Plan must be developed jointly and signed by the appropriate staff member, consumer, and/or duly authorized representative;

5.1.10 A copy of the IL Plan, and any amendment shall be provided to the consumer, and/or duly authorized representative, retaining the original for the case record.
5.2 ILP Amendment

Any major changes to an individual's plan, including closure, require an ILP Amendment. The case record shall have documentation which reflects the reason(s) for an Amendment and will give the consumer, and/or duly authorized representative the opportunity to redevelop and sign the ILP Amendment(s).

6. COMPARABLE BENEFITS AND PARTICIPATION BY CONSUMERS IN THE COST OF IL PROGRAM SERVICES

6.1 If an eligible consumer wishes to financially participate in the cost of IL goods and services consistent with the ILP and/or amendments, it will be documented in the case record.

6.2 If comparable services and benefits are available, they shall be utilized to meet, all or part of the cost of IL services. The utilization of comparable services and benefits do not apply, if the determination of the availability would delay the provision of services to a consumer who is at extreme medical risk. A determination of extreme medical risk shall be based upon medical evidence provided by an appropriate licensed medical professional and presents a risk of substantially increasing functional impairment or risk of death if medical services are not provided expeditiously. If comparable services or benefits exist under any other program, but are not available to the individual at the time needed to satisfy the objectives in the individual's ILP, the ILS Program shall provide independent living services until those comparable services and benefits become available. The utilization of comparable services and benefits do not apply in the following situations:

6.2.1 Counseling and guidance necessary to develop an IL Plan; and
6.2.2 Referral and placement to alternative resources.

6.3 ILS Program case service funds shall not be used to supplant services traditionally provided by other state, federal or private agencies.

7. INDEPENDENT LIVING PROGRAM SERVICES

IL Program Services may provide for such goods and services as are necessary to establish eligibility and to determine and achieve IL goals. A maximum lifetime expenditure of $5,000 in planned services shall be allowed for each eligible individual served by the program. Goods and services shall be purchased in accordance with the assurance of the health and safety of the eligible individual. Costs associated with determining eligibility and the planning of services developed in the ILP are not considered part of the $5,000. Any services exceeding this amount needed for the successful attainment of goals documented in the ILP will require the approval of the DVR IL Program Specialist.

The ILS Program services shall purchase IL goods and services only from vendors who meet State Licensure or Certification requirements, where applicable. All modification and other
accommodations shall be implemented according to applicable code enforcement laws and the Americans with Disabilities Act (ADA) standards.

The consumer may choose to waive design standards to conform with individual needs. A waiver request, in writing, or in alternative format, signed by the consumer, or duly authorized representative, shall document the reason(s) for the waiver. No waiver may be authorized that would jeopardize health or safety.

7.1 Costs associated with evaluation and related services necessary to determine eligibility and to develop an appropriate IL Plan shall be excluded from the maximum lifetime expenditure cap. All services and goals by the ILS Program will be provided with required and supportive documentation. Documentation by qualified personnel must identify barrier removal.

7.2 The following core services shall be within the scope of the program:

7.2.1 Information and Referral services;
7.2.2 Individual Independent Living Skills Training;
7.2.3 Peer Counseling (including cross-disability peer counseling); and
7.2.4 Individual and Systems Advocacy

7.3 In addition, the ILS Program may provide or contract for the following services:

7.3.1 Counseling services, including, psychological, psychotherapeutic, and related services;
7.3.2 Temporary housing and supports, incidental to the provision of any Independent Living Program services;
7.3.3 Home modifications, including those adaptive devices and structural changes necessary for the individual with a disability to function independently in order to achieve ILS Program goals;
7.3.4 Rehabilitation technology including, but not limited to, the purchase of adaptive devices and technology. This would include vehicles and vehicle modifications;
7.3.5 Mobility training, as applicable, to people with a wide range of disabilities;
7.3.6 Services and training for individuals with cognitive and sensory and psychiatric disabilities, including life skills training and adult basic education, community orientation (including recreation, social and community activities), and training in the use of interpreter and reader services incidental to other IL services;
7.3.7 Short-term attendant care services incidental to the provision of other independent living services and not as requisite to the maintenance of the individual's everyday attendant care needs;
7.3.8 Surveys, directories, and other activities to identify appropriate housing, recreation opportunities, accessible facilities and transportation, and other support services;
7.3.9 Consumer information programs on rehabilitation and IL services available in the Rehabilitation Act of 1973, as Amended, especially for minorities and other individuals...
with disabilities who have traditionally been unserved or underserved by programs under the Rehabilitation Act of 1973, as Amended;

7.3.10 Education and training necessary for living and participating in community activities;

7.3.11 Transportation, incidental to the provision of any Independent Living Program services; including referral and assistance for transportation. This does not include the purchase of vehicles or vehicle modifications unless eligible in section 7.3.4;

7.3.12 Physical and psychosocial rehabilitation;

7.3.13 Therapeutic treatment under the direction of a qualified practitioner;

7.3.14 Provision of needed prostheses and other appliances and devices;

7.3.15 Individual and group social and recreational services;

7.3.16 Any other services that may be necessary and are consistent with the provisions of the Rehabilitation Act of 1973, as Amended.

7.4 The ILS Program retains the right to reclaim equipment purchased by the agency in instances when:

7.4.1 the equipment is no longer being used for the purpose for which it was purchased;

7.4.2 the ILP is not completed;

7.4.3 the case was closed not successful;

7.4.4 the consumer or duly authorized representative was given prior notification that reclaim was part of ILP development.

8. CLOSURE

Prior to closure, the ILS Program will monitor and document the consumer's needs for additional ILS Program services for a six month period following the completion of their ILP services. Regular contact will be made and documented by ILS staff. If no additional services are identified or any other eligible services that the ILS Program may be able to provide, then the ILS Program will move to Closure. Closure is the final amendment to an ILP.

Closure is intended to be a mutual decision between the consumer and/or their duly authorized representative and the ILS Program staff. An individual's case record may be closed when:

8.1 the individual is determined ineligible and includes the following:

The IL staff may close a case without any determination of eligibility when an individual is unavailable during an extended period of time to complete an evaluation and the IL staff has made repeated efforts to contact the individual and to solicit his/her participation. The consumer may also request case closure.
The case record must:

1) document attempts to contact the consumer in the record; and

2) include written notification of appeal rights, including the name and address of the person with whom an appeal may be filed and the availability of the Client Assistance Program is required.

8.2 the individual is no longer eligible when:

• the program is no longer able to contact the individual, or the individual has moved out of state;

• the program can no longer be expected to assist the individual in functioning independently in the family or community;

• the individual or their duly authorized representative is unable, or unwilling to complete their responsibilities as documented in their ILP or delineated in program policy;

8.3 documentation supports that the person has achieved all of their ILP goals.

Documentation of the individual’s participation in the closure’s process will be included in the case record. It will also be documented that the consumer received notification of their rights to appeal in a format usable by the consumer (including a written format) and/or their duly authorized representative.

9. SERVICES AFTER CLOSURE

The ILS Program will establish a procedure that allows an individual who has already received ILS Program services to return within five (5) years of the date of closure. This will allow the person to receive ILS Program services without starting over with the application process and be placed on the waiting list again. This only applies to goods and services needed to accomplish the original ILP goals and objectives. This policy will allow up to 50% of the original cost of the goods and services to be used within the Lifetime Cap. With regard to durable goods, this may be used for maintenance and/or repair excluding abuse.

Referenced materials in these rules include:

- CADRES - Court Alternative Dispute Resolution Services
- Title VII of the Rehabilitation Act of 1973, as Amended
- ADA - Americans with Disabilities Act of 1990
- Maine’s Administrative Procedures Act, 5 MRSA Chapter 375, subchapter IV