

December 17, 2019

Dear VR Director:

The Rehabilitation Services Administration (RSA), in the Office of Special Education and Rehabilitative Services, has received several inquiries related to whether “fees for services that were not rendered” or “cancellation fees” are allowable under the State Vocational Rehabilitation Services (VR), State Supported Employment Services (Supported Employment), and the Independent Living Services for Older Individuals who are Blind (OIB) programs. In this letter, RSA will provide an analysis for program staff to use when determining whether such a cost is allowable and, therefore, may be paid with program funds as an administrative cost. To be clear, this letter does not have the force or effect of law and is not meant to bind the public in any way. Instead, it is intended only to provide clarity to the public regarding existing requirements under the law or agency policies.

Both fees for services that were not rendered and cancellation fees are subject to the same general rules as other costs not specifically authorized by statute--they are allowable if they are necessary and reasonable for the performance of the Federal award, allocable to that Federal award, and consistent with uniformly applicable policies of the grantee (2 C.F.R. § 200.403(a) and (c)). As explained in this letter, fees for services that were not rendered generally are not allowable costs because they typically do not satisfy the requirements and analysis described below. However, cancellation fees are more likely to be allowable charges to RSA formula grant awards because they often satisfy the requirements and analysis described below.

Applicable Federal Requirements

Neither the Rehabilitation Act of 1973 (Rehabilitation Act), which authorizes the VR, Supported Employment, and OIB programs, nor 2 C.F.R. part 200, the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (Uniform Guidance), specifically addresses whether fees for services that were not rendered or cancellation fees are allowable costs to be charged to these programs. As such, the general rule for determining whether a cost is allowable, consistent with 2 C.F.R. §§ 200.403 through 200.405, applies. Costs not specifically authorized by statute that are expended under a Federal program are allowable if they are –

- Necessary and reasonable for the performance of the Federal award;
- Allocable to that award (2 C.F.R. § 200.403(a)); and
- Consistent with policies and procedures that apply uniformly to both federally financed activities and other activities of the grantee (2 C.F.R. § 200.403(c)).

What It Means for a Cost to be “Necessary and Reasonable”:

Under 2 C.F.R. § 200.404, a cost is reasonable if, in its nature and amount, it does not exceed that which would be incurred by a prudent person under the circumstances prevailing at the time the decision was made to incur the cost. In determining the reasonableness of a given cost, the program must consider:

- (a) Whether the cost is of a type generally recognized as ordinary and necessary for the operation of the non-Federal entity or the proper and efficient performance of the Federal award.
- (b) The restraints or requirements imposed by such factors as: sound business practices; arm's-length bargaining; Federal, State, local, Tribal, and other laws and regulations; and terms and conditions of the Federal award.
- (c) Market prices for comparable goods or services for the geographic area.
- (d) Whether the individuals concerned acted with prudence in the circumstances considering their responsibilities to the non-Federal entity, its employees, where applicable its students or membership, the public at large, and the Federal government.
- (e) Whether the non-Federal entity significantly deviates from its established practices and policies regarding the incurrence of costs, which may unjustifiably increase the Federal award's cost.

What It Means for a Cost to be “Allocable”:

A cost is allocable to a Federal award if it is chargeable to that Federal award in accordance with relative benefits received by that program (2 C.F.R. § 200.405(a)). For example, a community rehabilitation program could not charge the VR agency for a service to a VR consumer that was not provided because there is no benefit to the VR program.

What It Means for a Cost to be “Consistent with Policies Uniformly Applied”:

Federal grantees must treat costs consistently when considering policies and procedures that apply uniformly to both federally financed activities and other activities of the grantee (2 C.F.R. § 200.403(c)). In other words, a grantee may not consider costs to be allowable with Federal funds under one program if it would not consider the same costs to be allowable under its own State, or a comparable Federal, program.

Fees for Services that Were Not Rendered

For purposes of this analysis, “fees for services that were not rendered” refers to those fees charged by service providers for the full cost of services, even though the services were never provided. During its onsite monitoring visits, RSA has seen two common scenarios when this occurs: (1) only a subset of contracted services are provided and (2) a service is not provided because the service provider cancels the appointment.

- (1) A CRP enters into a contract with a VR agency to provide a particular type of VR service to 100 VR consumers for a total cost of \$100,000 (which is \$1,000 per individual served). At the end of the contract period, the CRP served 95 individuals, not 100; however, the VR agency paid the full \$100,000, without adjusting for the five individuals who never received services under the contract. This means that the VR agency paid \$5,000 in fees for services that were never rendered.

- (2) A VR-eligible individual has an appointment with a CRP, and the appointment was arranged by the VR counselor with an authorization to pay for assessment services. On the day of the appointment, the individual receives a phone call informing her that the appointment has been cancelled due to weather conditions. The following week, the CRP sends the VR counselor a bill for the full amount of the services, despite the fact the assessment was not provided on that date. This bill constitutes a fee for services that were not rendered.

Since fees for services not rendered are not universal among most industries and are frequently not nominal in cost, “fees for services not rendered” are generally not allowable under the VR, Supported Employment, and OIB programs because they are not likely to be reasonable, allocable, and necessary for the grant, and therefore do not typically satisfy the requirements of 2 C.F.R. §§ 200.403 through 200.405. Therefore, State agencies are not permitted to use VR, Supported Employment, or OIB program funds to pay these costs unless they can demonstrate that the cost is one that would satisfy all of the requirements of 2 C.F.R. §§ 200.403 through 200.405 (i.e., necessary and reasonable, allocable, and consistently applied to other programs).

Cancellation Fees

For purposes of this analysis, “cancellation fees” are those administrative fees charged by providers when an individual fails to cancel an appointment by the requisite time before the appointment (e.g., 24 to 48 hours, depending on the provider). It is RSA’s understanding that most service providers—not just those providing services to individuals with disabilities served by the VR, Supported Employment, and OIB programs—customarily charge cancellation fees. Service providers customarily incorporate these cancellation fees, which typically range from \$25 to \$100 depending on the specialty level of the service provider, into their policies and inform individuals of the fee at the time the appointment is made.

Cancellation fees generally, with some exceptions, will be allowable under the VR, Supported Employment, and OIB programs because they are reasonable in accordance with the Uniform Guidance, universally charged by service providers, and relatively nominal in the context of the services to be rendered. However, these determinations must be made on a case-by-case basis by grantee staff, depending on the facts of the situation, to ensure the requirements of 2 C.F.R. §§ 200.403 through 200.405 are satisfied. RSA is available to provide technical assistance, as needed.

Using the above criteria for establishing allowability, grantees must consider the following:

1. Is the cancellation fee necessary for the performance of the Federal program (2 C.F.R. § 200.403(a))? In other words, if the VR, Supported Employment, or OIB program refused to pay such fee, would the service provider’s policies prohibit the scheduling or rescheduling of an essential appointment for the individual, thus, in effect, denying the individual a necessary service?
2. Is the cancellation fee reasonable? In other words, is it one which a prudent person would consider reasonable? Is it ordinary in the industry to charge a cancellation fee? Is the amount of the cancellation fee reasonable for the industry and geographic area

- (2 C.F.R. § 200.404(a)-(c))? In assessing reasonableness, the agency should determine whether the cancellation fee charged is the same as that which would be charged to another payer, regardless of who it is (e.g., public agency, private agency, or individual) or whether it is targeted against the VR, Supported Employment, or OIB program as a Federally funded program.
3. Did the agency personnel act with prudence under the circumstances with respect to paying the cancellation fees, considering their responsibilities to the agency and the Federal interest (2 C.F.R. § 200.404(d))?
 4. Does the agency have a policy or practice against paying cancellation fees? Would the payment of a cancellation fee be a substantial deviation from the agency's own policies and practices and, thus, unjustifiably increase costs under the Federal program (2 C.F.R. § 200.404(e))?
 5. Is the cost chargeable (i.e., allocable) to the program to which the cancellation fee is charged (2 C.F.R. § 200.405(a))? In other words, is the cancellation fee charged for an individual who is eligible for the particular program for which the fee is charged? This means that one program must not be charged all of the cancellation fees for all programs; fees should only be charged to the program at issue.
 6. Does the State agency treat the payment of cancellation fees consistently and are they applied uniformly to both its federally financed and other activities (2 C.F.R. § 200.403(c))? In other words, if a given service is allowable under multiple Federal programs and other programs administered by the agency, are cancellation fees for that service treated similarly by the agency among the programs?

In applying the above analysis for example, consider a \$50 cancellation fee charged by a psychologist who is not a Medicaid provider for any appointment not cancelled at least 24 hours prior to the appointment time. This fee is charged to all patients who fail to cancel an appointment at least 24 hours prior to the appointment time, not just those who are individuals with disabilities served by the VR program. This cancellation fee is similar to that charged by other psychologists in the geographic area. All patients are notified of the fee when completing their initial paperwork. Individuals refusing to sign consent to pay the fee would not be given an appointment. Similarly, the VR program is notified of the cancellation fee in its vendor/payer contract with the psychologist. If the VR program refuses to pay the fee, the provider's policies would not permit the individual to be scheduled or rescheduled for the needed service. The agency does not have a policy or practice against paying cancellation fees and routinely does so under other programs it administers. Finally, the \$50 cancellation fee charged is for a VR consumer, and the agency plans to use VR funds to pay the fee as an administrative cost under the VR program. All the facts presented in this hypothetical would satisfy the requirements of 2 C.F.R. §§ 200.403 through 200.405. As such, the cancellation fee in this hypothetical would be allowable under the VR program as an administrative cost.

Consider the same facts described above with one critical change: the psychologist is a Medicaid provider. The Medicaid program generally prohibits the payment of cancellation fees. Many VR consumers have Medicaid as their primary insurance, with the VR program being a secondary payer for other costs. In this new situation, the VR program staff also must consider the requirement of Section 101(a)(8) of the Rehabilitation Act that the VR agency must determine whether comparable services and benefits exist prior to paying for the cost of most services. In

this instance, Medicaid would constitute a comparable service and benefit for this service under the VR program. Next, a prudent person likely would not consider it reasonable for the VR program, as a secondary payer, to pay a cancellation fee when the provider is prohibited from charging that same fee for the individual under an agreement with the individual's primary insurer. Payment of this fee would be particularly troubling when it would create an unnecessary inconsistency between allowable costs in two Federal programs. Therefore, even if some requirements of 2 C.F.R. §§ 200.403 through 200.405 are satisfied the cost would not be allowable under the VR program since all of the requirements under 2 C.F.R. §200.403(c) are not satisfied.

Federal Reporting Requirements

First, funds under the VR, Supported Employment, and OIB programs may be used for the provision of allowable services and associated administrative costs. In the event a cancellation fee is allowable, these are not service costs but administrative costs. Under the VR program, these costs would not be reported as purchased costs on the RSA-911 (Case Service Report); rather, they would be reported as administrative costs on the RSA-2 (Annual Cost Report) and on financial reports. This may mean that service providers will need to itemize invoices to enable the VR agency to differentiate between allowable fees charged for the provision of actual services and those fees charged, for example, for cancellation fees. In this way, VR agencies will more easily be able to report the different expenditures to RSA properly.

Second, for all procurement mechanisms, it is incumbent upon VR agencies to ensure that they have policies and procedures for establishing reasonable cancellation fees and ensuring that VR, Supported Employment, and OIB program funds are managed, monitored, and reviewed in accordance with the Uniform Guidance at 2 C.F.R. §§ 200.302 and 200.328. As such, the State's financial management system, including records documenting compliance with Federal statutes, regulations, and the terms and conditions of the Federal award, must be sufficient to permit the preparation of reports required by general and program-specific terms and conditions and the tracing of funds to a level of expenditures adequate to establish that the funds have been used according to the Federal statutes, regulations, and the terms and conditions of the Federal award. Agencies are also responsible for ensuring they have written procedures for determining the allowability of costs in accordance with Subpart E–Cost Principles.

Please contact the RSA State Liaison assigned to your agency if you need further assistance.

Sincerely,

/s/

Mark Schultz
Delegated the authority to perform the
functions and duties of the Assistant Secretary
for the Office of Special Education and Rehabilitative Services