**DRAFT Policy 51.403**

**Effective Date:  xx/xx/xx**

TITLE: DETERMINING ELIGIBILITY OF PARTICIPATING EMPLOYEES

# PURPOSE.

This policy prescribes the requirements an individual must meet to be counted towards the direct labor hour (DLH) ratio of people who are blind or have significant disabilities in the workforce of a nonprofit agency (NPA) in order for the NPA to be qualified to participate in the AbilityOne Program (Program). It also sets forth the documentation requirements and record-keeping responsibilities of an NPA; the review and evaluation responsibilities of a Central Nonprofit Agency (CNA); and the oversight and quality assurance surveillance responsibilities of the Commission.

# APPLICABILITY.

This policy applies to the Commission, the CNAs, and the NPAs.

# AUTHORITY

1. 41 U.S.C. §§ 8501 – 8506, Javits-Wagner-O’Day (JWOD) Act
2. 41 CFR Chapter 51, Committee for Purchase from People Who Are Blind or Severely Disabled

# DEFINITIONS AND ACRONYMS.

Definitions, abbreviations, and acronyms frequently used throughout this policy system are provided in Policy 51.102, Definitions. Terms unique to a specific subject matter are defined below.

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| Term | Definition |
| Significant Job Support | A reasonable accommodation that requires some difficulty or expense, or an action beyond what is required as a reasonable accommodation under the ADA. |
| Participating Employee | An employee who is blind and/or has a significant disability, and can be counted towards the DLH ratio mandated by the Javits-Wagner-O’Day Act (JWOD). |
| Technical Assistance | The process of providing targeted support and expertise to an NPA to build capability and capacity, or to resolve performance challenges. Technical assistance may include prescribing corrective action plans and providing training and consulting to identify, select, or design solutions based on research or recognized best practices. |

1. **RESPONSIBILITIES.**
2. The Commission:
3. Establishes methods for the NPAs to use in determining whether individuals are eligible to be participating employees in the Program.
4. Determines whether the CNA’s activities in monitoring, reviewing, and evaluating an NPA’s determination and documentation of whether individuals are eligible to be participating employees, and a CNA’s provision of technical assistance to an NPA to meet its obligations in this area, meets the quality expectations of the Commission.
5. Conducts inspections of NPAs as determined necessary.
6. The CNA:
   1. Establishes a process to monitor, review, and evaluate an NPA’s determination and documentation of whether individuals are eligible to be participating employees.
   2. Provides technical assistance to NPAs to properly determine and document whether an individual is eligible to be a participating employee.
   3. Provides data to the Commission regarding the NPAs’ determinations and documentation of whether individuals are eligible to be participating employees in an electronic format that the Commission can directly and fully access.
7. The NPA:
   1. Establishes and implements a system for determining and documenting an individual’s eligibility to be a participating employee.
   2. Establishes quality assurance measures that prevent and detect defective determinations or documentations; corrects such defects in a timely manner; and conducts recommended quality audits of records.
   3. Establishes a record-keeping system for all documentation necessary to determine whether individuals are eligible to be participating employees and transmits all data in the required format to the CNAs.
   4. Participates in all required education and training programs offered by the CNA or the Commission.
8. **POLICY**.
9. In General:
   1. The AbilityOne Program exists to create and enhance employment opportunities for individuals who are blind or have significant disabilities. Through sound documentation, the NPAs ensure that the Program continues to be a wellspring of opportunity to those individuals who are eligible to participate in the Program.
   2. Several fellow government agencies have an obligation to determine whether people with disabilities are eligible for the financial benefits and/or services provided by such government agencies. For purposes of efficiency in government, and as a matter of respect for the work of other government agencies, the Commission will accept certifications from certain government agencies to the maximum extent possible.
10. Full Eligibility:
    1. The following documents are sufficient to establish eligibility as a participating employee:
    2. An award letter from the Social Security Administration (SSA) that the individual is receiving Supplemental Security Income (SSI) or Social Security.
    3. A letter from the state or a state designee that the individual is receiving Home and Community-Based Services (HCBS) under Medicaid or is eligible to receive such benefits based on their disability. The letter does not require a signature.
    4. The government certifications listed above must have been issued within one (1) year of the Section (D) eligibility evaluation. The NPA must collect a new version of the government certification from the participating employee every seven (7) years.
11. Medical Documentation:
    1. Veterans Administration
       1. A letter from the Department of Veterans Affairs (VA) indicating that the individual is receiving benefits under the disability compensation system will be sufficient medical documentation of disability, if the document identifies the particular disability. The letter does not require a signature.
    2. Vocational Rehabilitation
       1. A document from the state agency designated to provide vocational rehabilitation (VR) services indicating it has been determined by qualified personnel that the individual has a physical or mental impairment will be sufficient medical documentation of a disability, if the document identifies the particular disability. The letter does not require a signature.
    3. Documentation from medical professionals that an individual has a disability other than blindness must meet the following requirements:
    4. The document is a physical or digital record.
    5. The document includes a diagnosis of a physical or mental impairment.
    6. The document identifies the qualifications of the licensed professional that made the diagnosis.
    7. The document describes the nature of the impairment (including characteristics such as: physical, cognitive, mental, sensory, developmental, emotional, or a combination of such characteristics).
    8. The document describes the extent (permanent, temporary, partial, or total) of the impairment.
    9. The document includes the legible, full name of the qualified licensed professional; the name and address of the qualified licensed professional’s practice; and contact information (email or phone number) for the qualified licensed professional or practice.
    10. The document is signed with an electronic or ink signature.
    11. The document is dated.
    12. The document is issued within seven (7) years of the Section (D) eligibility evaluation.
12. Documentation from a medical professional that an individual is blind must meet the following requirements:
    1. The document is a physical or digital record.
    2. The document includes a diagnosis that the individual has:
       1. A visual acuity with best correction not exceeding 20/200; OR
       2. Measured limit to field of vision in the better eye to such a degree that its widest diameter subtends an angle of no greater than 20 degrees (also known as visual field test); OR
       3. A qualified licensed professional’s explanation that a visual acuity and visual field test are both impossible and/or impractical (common examples of explanations include, but are not limited to, no light perception (NLP); presence of prosthesis (PROS); etc.).
    3. The document includes the legible, full name of the qualified licensed professional; the name and address of the qualified licensed professional’s practice; and contact information (email or phone number) for the qualified licensed professional or practice.
    4. The document is signed with an electronic or ink signature.
    5. The document is dated.
    6. The document is issued within seven (7) years of the Section (D) eligibility evaluation.
13. Eligibility as a Participating Employee
    1. To determine whether an individual with the medical documentation described in Section (C) is eligible to be a participating employee, the NPA must make the assessment that the individual requires significant job supports to overcome barriers to employment as a result of the individual’s disability.
14. One-Time Evaluations of Disability
    1. Section (D) participating employee eligibility evaluation will occur once for a labor position. If an individual changes to a different labor position, then a new Section (D) evaluation will be required.
    2. Each Section (D) eligibility evaluation, and the underlying Section (C) medical documentation is subject to CNA and/or Commission review consistent with Commission Policy 51.407.
15. Record Keeping
    1. An NPA shall complete and maintain records establishing an individual’s eligibility to be a participating employee.
    2. An NPA shall transmit the records to the CNA in an electronic manner that is directly and fully accessible to the Commission.
16. Addressing Potential Conflicts of Interest
    1. The Commission expects that the majority of participating employees will have third-party Government certifications and that, in the absence of such certifications, the NPAs will receive documentation from independentqualified licensed professionals.
    2. The Commission may approve an NPA’s use of medical assessments provided by qualified licensed professionals associated with the NPA when justified and verified as described in Section 7.

**7.**   **PROCEDURES**

1. If an NPA wishes to use medical documentation provided by medical professionals associated with the NPA (for example, as employees, contractors, or through an association with a related corporation, affiliated health care facility, or the parent company of the NPA), the NPA must provide to its designated CNA its justification for using such professionals, such as (but not limited to) facts demonstrating limited or lack of access to providers of medical or psychological services in the local community.
2. The CNA shall evaluate the justification offered by the NPA and recommend to the Commission whether to approve the NPA’s use of qualified licensed professionals associated with the NPA to provide medical documentations, including recommendations for specific safeguards to ensure objectivity in such determinations.
3. The Commission will evaluate the CNA’s recommendation and issue a written determination to accept or reject the NPA’s use of qualified licensed professionals associated with the NPA to provide medical documentations. The Commission may add specific safeguards to ensure objectivity in such determinations.
4. The Commission will annually review its approval of the NPA’s use of qualified licensed professionals associated with the NPA to provide medical documentations.
5. Any Commission approval of an NPA’s use of qualified licensed professionals associated with the NPA to provide medical documentations will be incorporated into the Commission’s Management Internal Controls Program for annual review.

**8. EXCEPTION TO POLICY.**

None.

**9. SUPERSESSION**.

This Policy supersedes the Commission Compliance Policies 51.407 and 51.408, both dated August 15, 2020.

**APPROVED:  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Date: \_\_\_\_\_\_\_\_\_\_\_\_\_**

**Kimberly M. Zeich**

**Executive Director**