# Vocational Rehabilitation Services Manual A-200: Customer Rights and Legal Issues

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## A-205: Subrogation

Subrogation is a process in which TWC recovers all or part of the costs of providing rehabilitation services when a customer:

* was injured in an accident that was someone else's fault; and
* stands to recover monetary damages in a lawsuit or insurance settlement.

TWC-VR's statutory authority for subrogation is Tex. Lab. Code § 352.058. When TWC-VR funds are expended on behalf of a customer who has filed litigation or other legal claims, TWC Office of the General Counsel (OGC) helps recover those funds.

### A-205-1: Legal Authorization

Tex. Lab. Code § 352.058, provides TWC-VR to be subrogated to the customer’s right of recovery when TWC-VR pays for rehabilitation or medical care services for a customer.  In other words, TWC-VR is put in the customer’s place and assumes the customer’s right of recovery from:

* personal insurance, or
* another person for personal injury caused by the other person's negligence or wrongdoing, or
* any other source.

TWC-VR’s right of subrogation is limited to the cost of the services TWC-VR has provided to the customer.

**Example:** TWC-VR pays for rehabilitation or medical services made necessary by a motor vehicle accident, and the customer later receives a court judgment or insurance settlement for the accident. TWC- VR is entitled to be reimbursed out of the proceeds of the settlement or judgment for the services TWC-VR provided to the customer.

TWC-VR has the ability to waive, totally or partially, TWC-VR’s subrogation interest when it is found enforcement will tend to defeat the purpose of the customer’s rehabilitation.

### A-205-2: Asking the Right Questions

When completing or updating the Personal Information page in RHW, the VR counselor must ask the customer whether they have retained an attorney for any issues associated with his or her disability or the services they are requesting from VR.

If the customer confirms that they have retained an attorney, then it is presumed that there is a pending claim or litigation and the VR counselor must ascertain whether TWC-VR may pursue subrogation. Refer to A-205-3: Types of Subrogation for additional information about pursuing subrogation.

### A-205-3: Types of Subrogation

When the customer has retained an attorney or there is a disability related lawsuit pending, the VR counselor reviews the following scenarios with the customer to determine whether a VR3500, Subrogation Report should be completed:

#### TWC-VR pursues recovery of expenditures in the following types of cases:

1. A customer is bringing claims or suing another party for personal injury caused by the other party's negligence or wrongdoing, and when TWC-VR has expended, or will expend, funds for rehabilitation services due to the negligence or wrongdoing.
2. A customer was injured on the job, but there is no workers’ compensation coverage, and the customer has filed a liability claim or lawsuit.
3. The Texas Department of Insurance, Division of Workers’ Compensation, has denied the customer’s claim, and the customer is appealing the denial either to the Texas Department of Insurance, Division of Workers’ Compensation, or in court, and TWC-VR has provided or will provide diagnostic or restorative services related to the injury.

#### TWC does not pursue subrogation when any of the following are true:

1. The Texas Department of Insurance, Division of Workers’ Compensation, is paying or will pay for the customer’s medical expenses.
2. When the Customer is applying for SSI or SSD benefits.
3. When TWC-VR has expended no funds and expects to spend no funds.
4. When TWC-VR expenditures in on-the-job injury cases include no medical costs relating to the original injury.

### A-205-4: Subrogation and Use of Comparable Benefits

TWC-VR usually does not purchase goods or services for customers when there are other sources to cover these expenses. However, per 34 CFR §361.53(a), VR funds can be used before a settlement or judgment is reached in a workers' compensation or liability case when funds are not available at the time needed to ensure that the customer's progress toward the employment goal is not delayed.

### A-205-5: Subrogation Procedure

If it is determined that TWC-VR may be entitled to pursue subrogation there are several steps required to ensure that OGC is notified of the pending subrogation case in a timely manner.

As part of the diagnostic interview or when completing the IPE, Joint annual Review, or IPE amendment, VR staff must complete the VR3500, Subrogation Report. Include the details of the subrogation in either the diagnostic interview or another case note.

Enter “yes” in the “lawsuit pending” section of the RHW Personal Information page and send the form to the Texas Workforce Commission, Office of the General Counsel by email, fax, or regular mail to:

Legal Assistant
Office of the General Counsel
Texas Workforce Commission
101 East 15th Street, Room 608
Austin, Texas 78778

Tel: (512) 936-3511
Fax: (512) 463-1426
Email: subrogation@twc.state.tx.us

One copy of the VR3500 is filed in the customer’s paper case file and another copy of the VR3500 is provided to the customer to inform them of TWC-VR’s subrogation rights under Texas law.

If the customer has questions about the subrogation process, VR staff can escalate those questions through their chain of management to the TWC Office of General Counsel for additional guidance and support.

Once the VR3500, Subrogation Report has been completed and submitted to OGC, recovery will begin when funds that are recoverable have been encumbered,

TWC-VR field staff are not required to track a subrogated case until it is resolved.

### A-205-6: Role of Office of General Counsel in Subrogation Process

TWC Office of General Counsel provides all legal support and representation regarding subrogation, including legal intervention in lawsuits. In addition, the office acts as a liaison with the Office of the Attorney General.

Within the Office of General Counsel, the subrogation coordinator:

* helps identify cases that are appropriate for subrogation,
* begins efforts to recover costs when they are notified of a subrogation case, and
* communicates with field counselors and private attorneys to facilitate reimbursement.

### A-205-7: The Recovery Process

When OGC finalizes a settlement of a subrogation claim, the customer's attorney often will submit a request for a waiver of all or part of the TWC-VR subrogation lien. When this happens, the TWC subrogation coordinator:

* communicates with the customer's attorney regarding the subrogation claim, and
* sends a list of assessment questions to the counselor of record or the manager of that unit.

The VR counselor of record (or VR Supervisor):

* completes the list of assessment questions, and
* sends the completed document to the Subrogation Coordinator within three workdays.

When all necessary documents, including the VR counselor's assessment responses, are received, TWC-OGC will use the information provided to negotiate an appropriate settlement amount for the subrogation claim, if warranted.

The final settlement amount may range from 0 percent to 100 percent of the total lien amount claimed by TWC-VR.