**California Code of Regulations**

**Title 9. Rehabilitative and Developmental Services**

**Division 3. Department of Rehabilitation\***

\* Formerly in Title 22, Division 1.8, Chapter 1.

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***The following Notes are NOT part of Title 9.***

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**California Code of Regulations**

**Title 9. Rehabilitative and Developmental Services**

**Division 3. Department of Rehabilitation**

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# Chapter 1. Definitions and Terms

### § 7000. Definitions and Terms.

Unless otherwise specified in this division, terms shall have the meanings specified in this chapter. The use of the words “shall” or “must” means mandatory, and the use of the word “may” means permissive.

The regulations in this division have been adopted by the authority of the Welfare and Institutions Code, Division 10, Part I, Chapter 1, Sections 19006 and 19016.

NOTE: Authority cited: Sections 19006 and 19016, Welfare and Institutions Code. Reference: Section 15, Welfare and Institutions Code.

### § 7000.2. Act.

“Act” means the Rehabilitation Act of 1973, as amended (29 USC 701 et seq.).

NOTE: Authority cited: Sections 19006 and 19016, Welfare and Institutions Code. Reference: 29 USC 701 et seq.; 34 CFR Part 361; and Section 19011, Welfare and Institutions Code.

### § 7000.5. Alcohol Disability/Drug Disability. [Repealed]

### § 7001. Applicant.

“Applicant” means an individual who submits an application for vocational rehabilitation services in accordance with Section 7041(b) of these regulations.

NOTE: Authority cited: Sections 19006 and 19016, Welfare and Institutions Code. Reference: 34 CFR 361.5(b)(4); and Section 19011, Welfare and Institutions Code.

### § 7001.2. Appropriate Modes of Communication.

“Appropriate Modes of Communication” means specialized aids and supports that enable an individual with a disability to comprehend and respond to information that is being communicated. Appropriate modes of communication include, but are not limited to, the use of interpreters, open and closed captioned videos, specialized telecommunications services and audio recordings, Brailled and large print materials, materials in electronic formats, augmentative communication devices, graphic presentations, and simple language materials.

NOTE: Authority cited: Sections 19006 and 19016, Welfare and Institutions Code. Reference: 29 USC 701(c); 34 CFR 361.5(b)(5); and Sections 19011 and 19013.5, Welfare and Institutions Code.

**§ 7001.5. Assessment to Determine Eligibility and Vocational Rehabilitation Needs.**

“Assessment to Determine Eligibility and Vocational Rehabilitation Needs” means, as appropriate in each case:

(a) A review of existing data---

(1) To determine if an individual is eligible for vocational rehabilitation services; and

(2) To assign priority for an Order of Selection implemented pursuant to Section 7053 of these regulations.

(b) To the extent necessary, the provision of appropriate assessment activities to obtain necessary additional data to make the eligibility determination and assignment.

(c) To the extent additional data are necessary to make a determination of the employment outcome and the nature and scope of vocational rehabilitation services to be included in the Individualized Plan for Employment (IPE) of an eligible individual, a comprehensive assessment to determine the unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice, including the need for supported employment, of the eligible individual. This comprehensive assessment---

(1) Is limited to information that is necessary to identify the rehabilitation needs of the individual and to develop the IPE of the eligible individual;

(2) Uses as a primary source of information, to the maximum extent possible and appropriate and in accordance with confidentiality requirements---

(A) Existing information obtained for the purposes of determining the eligibility of the individual and assigning priority for an Order of Selection implemented pursuant to Section 7053 of these regulations; and

(B) Information that can be provided by the individual and, if appropriate, by the family of the individual;

(3) May include, to the degree needed to make such a determination, an assessment of the personality, interests, interpersonal skills, intelligence and related functional capacities, educational achievements, work experience, vocational aptitudes, personal and social adjustments, and employment opportunities of the individual and the medical, psychiatric, psychological, and other pertinent vocational, educational, cultural, social, recreational, and environmental factors that affect the employment and rehabilitation needs of the individual; and

(4) May include, to the degree needed, an appraisal of the patterns of work behavior of the individual and services needed for the individual to acquire occupational skills and to develop work attitudes, work habits, work tolerance, and social and behavior patterns necessary for successful job performance, including the use of work in real job situations to assess and develop the capacities of the individual to perform adequately in a work environment.

(5) To the maximum extent possible, relies on information obtained from experiences in integrated employment settings in the community and in other integrated community settings.

(d) Referral, for the provision of rehabilitation technology services to the individual, to assess and develop the capacities of the individual to perform in a work environment.

(e) An exploration of the individual’s abilities, capabilities, and capacity to perform in work situations, which must be assessed periodically during trial work experiences, including experiences in which the individual is provided appropriate supports and training.

Note: Authority cited: Sections 19006 and 19016, Welfare and Institutions Code. Reference: 29 USC 705; 34 CFR 361.5, 361.42, and 361.45; and Section 19011, Welfare and Institutions Code.

### § 7002. Assistive Technology Device.

(a) “Assistive Technology Device” means any item, piece of equipment, or product system, whether acquired commercially off the shelf, modified, or customized, that is used to increase, maintain, or improve the functional capabilities of an individual with a disability.

(b) Assistive technology devices may be used to modify vehicles or vans, as a rehabilitation technology service pursuant to Section 7024.7 of these regulations. Assistive technology does not include the purchase and repair of a vehicle because that is included in the definition of transportation pursuant to Section 7029 of these regulations.

(c) Installation of assistive technology devices on real property at the individual’s home or workplace may not involve or require construction as defined in Section 7149.1 of these regulations.

NOTE: Authority cited: Sections 19006 and 19016, Welfare and Institutions Code. Reference: 29 USC Sections 705(3) and (30), 723(a)(8) and (14), and 3002; 34 CFR Sections 361.5(b)(7), (45), and (57), and 361.48(h) and (q); and Sections 19011 and 19150(a)(10) and (15), Welfare and Institutions Code.

**§** **7002.5. Assistive Technology Service.**

“Assistive Technology Service” means any service that directly assists an

individual with a disability in the selection, acquisition, or use of an assistive technology device, including:

(a) The evaluation of the needs of an individual with a disability, including a functional evaluation of the individual in his or her customary environment;

(b) Purchasing, leasing, or otherwise providing for the acquisition by an individual with a disability of an assistive technology device;

(c) Selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing, or replacing assistive technology devices;

(d) Coordinating and using necessary therapies, interventions, or services with assistive technology devices, such as those associated with existing education and rehabilitation plans and programs;

(e) Training or technical assistance for an individual with a disability or, if appropriate, the family members, guardians, advocates, or authorized representatives of the individual; and

(f) Training or technical assistance for professionals (including individuals providing education and rehabilitation services and entities that manufacture or sell assistive technology devices), employers, or others who provide services to, employ, or are otherwise substantially involved in the major life functions of individuals with disabilities, to the extent that training or technical assistance is necessary to the achievement of an employment outcome by an individual with a disability.

(g) Expanding the availability of access to technology, including electronic and information technology, to individuals with disabilities.

Note: Authority cited: Sections 19006 and 19016, Welfare and Institutions Code. Reference: 29 USC Sections 705, 723, and 3002; 34 CFR Sections 361.5 and 361.48; and Sections 19011 and 19150, Welfare and Institutions Code.

**§ 7004.6. Clear and Convincing Evidence.**

(a) With respect to the determination of eligibility, “Clear and Convincing Evidence” means a high degree of certainty before it can be concluded that, due to the severity of the individual’s disability, the individual is incapable of benefiting from vocational rehabilitation services in terms of an employment outcome in a~~n~~ competitive integrated employment setting.

(b) Clear and convincing evidence may include a description of assessments, including situational assessments and supported employment assessments from service providers who have concluded that they would be unable to meet the individual’s needs due to the severity of the individual’s disability.

(c) The demonstration of clear and convincing evidence must include, if appropriate, a functional assessment of skill development activities, with any necessary supports (including assistive technology), in real life settings.

Note: Authority cited: Sections 19006 and 19016, Welfare and Institutions Code. Reference: 29 USC 722; 34 CFR 361.42; and Sections 19011 and 19103(b), Welfare and Institutions Code.

**§ 7005. Client.**

“Client” or “Consumer” means an eligible individual receiving services under the Act, as defined in 34 CFR Section 370.6(b).

Note: Authority cited: Sections 19006 and 19016, Welfare and Institutions Code. Reference: 34 CFR 370.6.

### § 7005.5. Client Assistance Program.

### “Client Assistance Program” or “CAP” means the designated public or private agency that provides the services to clients and applicants described in 34 CFR Section 370.4.

NOTE: Authority cited: Sections 19006 and 19016, Welfare and Institutions Code. Reference: 34 CFR Sections 370.1, 370.2, 370.4 and 370.6; and Sections 19010 and 19011, Welfare and Institutions Code.

### § 7006. Comparable Services and Benefits.

(a) “Comparable Services and Benefits” means services and benefits, including accommodations or auxiliary aids and services, that are:

(1) Provided or paid for, in whole or in part, by other Federal, State, or local public agencies, by health insurance, or by employee benefits;

(2) Available to the individual at the time needed to ensure the progress of the individual toward achieving the employment outcome in the individual’s Individualized Plan for Employment (IPE); and

(3) Commensurate to the services that the individual would otherwise receive from the Department.

(b) For the purposes of this definition---

(1) Comparable services and benefits do not include awards and scholarships based on merit.

(2) A Plan for Achieving Self-Support (PASS) issued to an individual with a disability by the Social Security Administration (SSA) does not constitute a comparable service and benefit.

(3) A “ticket” issued to an individual with a disability under the Ticket to Work and Work Incentives Improvement Act of 1999 (TWWIIA) (42 USC 1320b-19) is considered a comparable service and benefit under the vocational rehabilitation program to the extent that a ticket holder is receiving services from another entity that is serving as that individual’s employment network.

(4) If the individual initially chooses the Department as its employment network under TWWIIA or otherwise transfers his or her ticket to the Department, the ticket would not be considered a comparable service and benefit.

Note: Authority cited: Sections 19006 and 19016, Welfare and Institutions Code. Reference: 29 USC 721; 34 CFR Section 361.5 and 361.53; and Sections 19011 and 19150, Welfare and Institutions Code.

### § 7006.1 Community Rehabilitation Program

(a) “Community Rehabilitation Program” is a program that enables individuals with disabilities to maximize their employment opportunities, including career advancement, by providing directly or facilitating the provision of one or more of the following vocational rehabilitation services to them:

(1) Medical, psychiatric, psychological, social, and vocational services that are provided under one management.

(2) Testing, fitting or training in the use of prosthetic and orthotic devices.

(3) Recreational therapy.

(4) Physical and occupational therapy.

(5) Speech, language, and hearing therapy.

(6) Psychiatric, psychological, and social services, including positive behavior management.

(7) Assessment for determining eligibility and vocational rehabilitation needs.

(8) Rehabilitation Therapy.

(9) Job development, placement, and retention services.

(10) Evaluation or control of specific disabilities.

(11) Orientation and mobility services for individuals.

(12) Extended employment.

(13) Psychosocial rehabilitation services.

(14) Supported employment services and extended services.

(15) Customized employment.

(16) Services to family members if necessary, to enable the applicant or eligible individual to achieve an employment outcome.

(17) Personal assistance services.

(18) Services similar to the services described in paragraphs (1) through (17) of this definition.

(b) For the purposes of this definition, program means an agency, organization, or institution, or unit of agency, organization, or institution, that provides directly or facilitates the provision of vocational rehabilitation services as one of its major functions.

Note: Authority cited: Sections 19006 and 19016, Welfare and Institutions Code. Reference: 29 USC Section 705; 34 CFR Section 361.5; Sections 19011 and 19150(b), Welfare and Institutions Code.

**§ 7006.3. Competitive Integrated Employment.**

(a) “Competitive integrated employment” means work that—

(1) Is performed on a full-time or part-time basis (including self-employment) and for which an individual is compensated at a rate that—

(A) Is not less than the higher of the rate specified in section 6(a)(1) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(a)(1)) or the rate required under the applicable state or local minimum wage law for the place of employment;

(B) Is not less than the customary rate paid by the employer for the same or similar work performed by other employees who are not individuals with disabilities and who are similarly situated in similar occupations by the same employer and who have similar training, experience, and skills; and

(C) In the case of an individual who is self-employed, yields an income that is comparable to the income received by other individuals who are not individuals with disabilities and who are self-employed in similar occupations or on similar tasks and who have similar training, experience, and skills; and

(D) Is eligible for the level of benefits provided to other employees; and

(2) Is at a location—

(A) Typically found in the community; and

(B) Where the employee with a disability interacts for the purpose of performing the duties of the position with other employees within the particular work unit and the entire work site, and, as appropriate to the work performed, other persons (e.g., customers and vendors), who are not individuals with disabilities (not including supervisory personnel or individuals who are providing services to such employee) to the same extent that employees who are not individuals with disabilities and who are in comparable positions interact with these persons; and

(3) Presents, as appropriate, opportunities for advancement that are similar to those for other employees who are not individuals with disabilities and who have similar positions.

Note: Authority cited: sections 19006 and 19016, Welfare and Institutions Code. Reference: 29 U.S.C. section 705; 34 C.F.R section 361.5; and sections 19000 and 19011, Welfare and Institutions Code.

### § 7006.5. Consulting Psychologist.

 “Consulting Psychologist” means a licensed psychologist employed by the Department.

NOTE: Authority cited: Sections 19006 and 19016, Welfare and Institutions Code. Reference: Sections 19006 and 19016, Welfare and Institutions Code.

**§ 7006.6. Customized Employment**

(a) “Customized Employment” is competitive integrated employment for an individual with a significant disability, that is:

(1) Based on an individualized determination of the unique strengths, needs, and interests of the individual with a significant disability.

(2) Designed to meet the specific abilities of the individual with a significant disability and the business needs of the employer.

(3) Carried out through flexible strategies, such as;

(A) Job exploration by the individual, and

(B) Working with the employer to facilitate placement, including:

(i) Customizing a job description based on current employer needs or on previously unidentified and unmet employer needs:

(ii) Developing a set of job duties, a work schedule and job arrangement, and specifics of supervision (including performance evaluation and review), and determining a job location; and

(iii) Using a professional representative chosen by the individual, or if elected self-representation, to work with an employer to facilitate placement; and

(iv) Providing services and supports at the job location.

Note: Authority: sections 19006 and 19016, Welfare and Institutions Code, Reference: 29 U.S.C. section 705; 34 C.F.R section 361.5.

### § 7007. Department.

“Department” means the Department of Rehabilitation.

NOTE: Authority cited: Sections 19006 and 19016, Welfare and Institutions Code. Reference: Sections 19001 and 19005.1, Welfare and Institutions Code.

### § 7008. District Administrator.

“District Administrator” means an employee of the Department responsible for the administration of Department offices including the vocational rehabilitation program, within a specific geographical area of the State.

NOTE: Authority cited: Sections 19006 and 19016, Welfare and Institutions Code. Reference: 29 USC 720(a)(3)(E); and Section 19000(e)(9), Welfare and Institutions Code.

### § 7009. Eligible. [Repealed]

### § 7009.1. Eligible Individual.

“Eligible Individual” means an applicant for vocational rehabilitation services who meets the eligibility requirements specified in Section 7062 of these regulations.

NOTE: Authority cited: Sections 19006 and 19016, Welfare and Institutions Code. Reference: 34 CFR 361.5(b)(15); and Section 19011, Welfare and Institutions Code.

### § 7010. Objectives. [Repealed]

### § 7011. Employment Outcome.

“Employment Outcome” means, with respect to an individual, entering, advancing in, or retaining full-time or, if appropriate, part-time competitive integrated employment as defined in Section 7006.3 of these regulations (including customized employment, self-employment, telecommuting, or business ownership), or supported employment as defined in section 7028 of these regulations, that is consistent with an individual’s unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice.

Note: Authority cited: Sections 19006 and 19016, Welfare and Institutions Code. Reference: 29 USC Section 705; 34 CFR 361.5~~(b)~~; and Section 19011, Welfare and Institutions Code.

### § 7013.2. Equipment.

“Equipment” means a machine, mechanical or electronic device, or appliance or fixture, that an individual operates or activates to perform a task, excluding “Assistive Technology Devices” as defined in Section 7002 of these regulations, and “Tools” as defined in Section 7028.4 of these regulations.

NOTE: Authority cited: Sections 19006 and 19016, Welfare and Institutions Code. Reference: 29 USC 723; 34 CFR 361.48; and Section 19150, Welfare and Institutions Code.

### § 7013.5. Entry Level. [Repealed]

### § 7013.6. Extended Employment.

(a) “Extended Employment” means work in a non-integrated or sheltered setting for a public or private nonprofit agency or organization that provides compensation in accordance with the Fair Labor Standards Act (FLSA) (29 USC 214(c)) for the limited purposes of training, or otherwise preparing for competitive integrated employment where vocational services may be provided.

Note: Authority cited: Sections 19006 and 19016, Welfare and Institutions Code. Reference: 34 CFR Sections 361.5~~(b)~~ and 361.37; and Section 19011, Welfare and Institutions Code.

### § 7014. Extended Evaluation. [Repealed 2/2023]

### § 7014.1. Extended Services.

(a) “Extended services” means ongoing support services and other appropriate services that are—

(1) Needed to support and maintain an individual with a most significant disability including a youth with a most significant disability, in supported employment;

(2) Organized or made available, singly or in combination, in such a way as to assist an eligible individual in maintaining supported employment;

(3) Based on the needs of an eligible individual, as specified in an Individualized Plan for Employment (IPE);

(4) Provided by a State agency, a private nonprofit organization, employer, or any other appropriate resource, after an individual has made the transition from support from the Department; and

(5) Provided to a youth with a most significant disability by the Department for a period not to exceed four years, or at such time that a youth reaches age 25 and no longer meets the definition of a youth with a disability, whichever occurs first.

(6) The designated State unit may not provide extended services to an individual with a most significant disability who is not a youth with a most significant disability.

Note: Authority cited: Sections 19006 and 19016, Welfare and Institutions Code. Reference: 29 USC 705; 34 CFR 361.5; and Section 19011, Welfare and Institutions Code.

### § 7015. Family Member.

“Family Member,” for purposes of receiving vocational rehabilitation services in accordance with Section 7149(i) of these regulations, means an individual:

(a) Who either –

(1) Is a relative or guardian of an applicant or eligible individual; or

(2) Lives in the same household as an applicant or eligible individual;

(b) Who has a substantial interest in the well-being of that individual; and

(c) Whose receipt of vocational rehabilitation services is necessary to enable the applicant or eligible individual to achieve an employment outcome.

NOTE: Authority cited: Sections 19006 and 19016, Welfare and Institutions Code. Reference: 29 USC 723(a)(17); 34 CFR Sections 361.5(b)(23) and 361.48(i); and Sections 19011 and 19150(a)(17), Welfare and Institutions Code.

### § 7016. Functional Limitation. [Repealed]

### § 7016.1. Group Placement. [Repealed 2/2023]

### § 7017. Individual with a Disability.

 (a) “Individual with a Disability” means an individual:

 (1) Who has a physical or mental impairment;

 (2) Whose impairment constitutes or results in a substantial impediment to employment; and

 (3) Who can benefit in terms of an employment outcome from the provision of vocational rehabilitation services.

NOTE: Authority cited: Sections 19006 and 19016, Welfare and Institutions Code. Reference: 29 USC 705(20)(A); 34 CFR 361.5(b)(28); and Sections 19011 and 19151, Welfare and Institutions Code.

### § 7017.2. Individual with a Most Significant Disability.

“Individual with a Most Significant Disability” means an individual with a disability:

(a) who has a serious limitation in terms of an employment outcome in at least four functional capacity areas; and

(b) who satisfied Section 7017.5, subdivision (a), or meets the criteria in Section 7017.5, subdivisions (b)(2) and (3).

NOTE: Authority cited: Sections 19006 and 19016, Welfare and Institutions Code. Reference: 29 USC Sections 705(21)(E) and 721(a)(5); 34 CFR Sections 361.5(b)(30) and 361.36; and Sections 19011 and 19102, Welfare and Institutions Code.

### § 7017.5. Individual with a Significant Disability.

“Individual with a Significant Disability” means an individual:

(a) who the Social Security Administration has determined is eligible for Social Security benefits under Title II (42 U.S.C. Section 401 et seq.) or Title XVI (42 U.S.C. Section 1381 et seq.) of the Social Security Act, or

(b) who meets the following three criteria:

(1) has a severe physical or mental impairment that seriously limits one or more functional capacities (such as mobility, communication, self-care, self-direction, interpersonal skills, work tolerance, or work skills) in terms of an employment outcome; and

(2) whose vocational rehabilitation program can ~~is~~ be expected to require multiple vocational rehabilitation services over an extended period of time; and

(3) has one or more physical or mental disabilities resulting from acquired traumatic brain injury, amputation, arthritis, autism, blindness, burn injury, cancer, cerebral palsy, cystic fibrosis, deafness, head injury, heart disease, hemiplegia, hemophilia, HIV, intellectual disability, respiratory or pulmonary dysfunction, mental illness, multiple sclerosis, muscular dystrophy, musculo-skeletal disorders, neurological disorders (including stroke and epilepsy), spinal cord conditions (including paraplegia and quadriplegia), sickle cell anemia, specific learning disability, end-stage renal disease, or another disability or combination of disabilities determined on the basis of an assessment for determining eligibility and vocational rehabilitation needs to cause comparable substantial functional limitation.

Note: Authority cited: Sections 19006 and 19016, Welfare and Institutions Code. Reference: 29 USC 705; 34 CFR 361.5; and Sections 19011 and 19151, Welfare and Institutions Code.

### § 7017.7. Individual’s Representative.

“Individual’s Representative” means any representative chosen by an applicant or eligible individual, as appropriate, including a parent, guardian, other family member, or advocate, unless a representative has been appointed by a court to represent the individual, in which case the court-appointed representative is the individual’s representative.

NOTE: Authority cited: Sections 19006 and 19016, Welfare and Institutions Code. Reference: 34 CFR 361.5(b)(32); and Section 19011, Welfare and Institutions Code.

### § 7018. Individualized Plan for Employment (IPE).

(a) “Individualized Plan for Employment (IPE)” means a written plan developed in accordance with Chapter 2, Article 5 of these regulations.

(b) All references to the Individualized Written Rehabilitation Program (IWRP) in Title 9, Division 3, California Code of Regulations, shall be deemed a reference to the Individualized Plan for Employment (IPE).

NOTE: Authority cited: Sections 19006 and 19016, Welfare and Institutions Code. Reference: 29 USC 722; 34 CFR Sections 361.45 and 361.46; and Section 19011, Welfare and Institutions Code.

### § 7018.4. Integrated Setting.

“Integrated Setting” ---

(a) With respect to the provision of services, means a setting typically found in the community in which applicants or eligible individuals interact with non-disabled individuals other than non-disabled individuals who are providing services to those applicants or eligible individuals.

(b) With respect to an employment outcome, means a setting—

(i) Typically found in the community; and

(ii) Where the employee with a disability interacts, for the purpose of performing the duties of the position, with other employees within the particular work unit and the entire work site, and, as appropriate to the work performed, other persons (e.g., customers and vendors) who are not individuals with disabilities (not including supervisory personnel or individuals who are providing services to such employee) to the same extent that employees who are not individuals with disabilities and who are in comparable positions interact with these persons.

NOTE: Authority cited: Sections 19006 and 19016, Welfare and Institutions Code. Reference: 34 CFR Sections 361.5(b)(16) and (33); and Section 19011, Welfare and Institutions Code.

### § 7018.5. Job Club. [Repealed]

### § 7019. Maintenance.

(a) “Maintenance” means monetary support provided to an individual for expenses, such as food, shelter, and clothing, that are in excess of the normal expenses of the individual and that are necessitated by the individual’s participation in an assessment for determining eligibility and vocational rehabilitation needs or the individual’s receipt of vocational rehabilitation services under an Individualized Plan for Employment (IPE).

(b) Examples of expenses that meet the definition of maintenance include, but are not limited to:

(1) The cost of a uniform or other suitable clothing that is required for an individual’s job placement or job-seeking activities.

(2) The cost of short-term shelter that is required in order for an individual to participate in assessment activities or vocational training at a site that is not within commuting distance of an individual’s home.

(3) The initial one-time costs, such as a security deposit or charges for the initiation of utilities, that are required in order for an individual to relocate for a job placement or participate in training.

(4) The costs of an individual’s participation in enrichment activities related to that individual’s training program. For students this includes, but is not limited to, student trips, visits to museums, and supplemental lectures, when such activities are essential components of the training.

(c) Nothing in this section shall be construed to mean that the Department will provide maintenance on a long-term or ongoing basis to support an individual’s everyday living expenses or take the place of, provide the services of, or become a payment program similar to, welfare and other social service agencies.

NOTE: Authority cited: Sections 19006 and 19016, Welfare and Institutions Code. Reference: 29 USC 723(a)(7); 34 CFR Sections 361.5(b)(35) and 361.48(g); and Sections 19011 and 19150(a)(8), Welfare and Institutions Code.

### § 7019.1. Medical Consultant.

“Medical Consultant” means a licensed physician employed by the Department.

NOTE: Authority cited: Sections 19006 and 19016, Welfare and Institutions Code. Reference: Sections 19006 and 19016, Welfare and Institutions Code.

### § 7019.2. Medical Services Officer. [Repealed]

### § 7019.5. Ongoing Support Services.

(a) “Ongoing Support Services,” as used in the definition of “Supported Employment,” means services that are:

(1) Needed to support and maintain an individual with a most significant disability, including a youth with a most significant disability, in supported employment;

(2) Identified based on a determination by the Department of the individual’s need as specified in the Individualized Plan for Employment (IPE); and

(3) Furnished by the Department from the time of job placement until transition to extended services, unless post-employment services are provided following transition, and thereafter by one or more extended services providers throughout the individual’s term of employment in a particular job placement.

(b) Ongoing support services must include an assessment of employment stability and provision of specific services or the coordination of services at or away from the worksite that are needed to maintain stability based on:

(1) At a minimum, twice-monthly monitoring at the worksite of each individual in supported employment; or

(2) If under specific circumstances, especially at the request of the individual, the IPE provides for off-site monitoring, twice-monthly meetings with the individual.

(c) Ongoing support services shall consist of:

(1) Any particularized assessment supplementary to the comprehensive assessment of rehabilitation needs described in Section 7001.5(c) of these regulations;

(2) The provision of skilled job trainers who accompany the individual for intensive job skill training at the worksite;

(3) Job development, job retention, and placement services;

(4) Social skills training;

(5) Regular observation or supervision of the individual;

(6) Follow-up services including regular contact with the employers, the individuals, the parents, family members, guardians, advocates, or authorized representatives of the individuals, and other suitable professional and informed advisors, in order to reinforce and stabilize the job placement;

(7) Facilitation of natural supports at the worksite;

(8) Any other service identified in the scope of vocational rehabilitation services for individuals described in Section 7149 of these regulations; or

(9) Any service similar to the foregoing services.

NOTE: Authority cited: Sections 19006 and 19016, Welfare and Institutions Code. Reference: 29 USC Section 705; 34 CFR Sections 361.5 and 361.48; and Section 19011, Welfare and Institutions Code.

### § 7019.6. Percent of Intervention.

“Percent of Intervention,” for purposes of supported employment, means the percent produced by the following formula: the total number of hours that the eligible individual received job coaching services between the first work day and last work day of a calendar month, divided by the total number of hours the individual worked during that month.

NOTE: Authority cited: Sections 19006 and 19016, Welfare and Institutions Code. Reference: Sections 19011 and 19150(a)(5), Welfare and Institutions Code; 29 USC Sections 705(13), (27)(C)(ii), (35) and (36) and 723(a)(16); and 34 CFR Sections 361.47, 361.48(m), 363.1, and 363.6(c)(1), (2)(iii), (iv) and (3)(iii)(B).

### § 7019.7. Personal Assistance Services.

“Personal Assistance Services” means a range of services provided by one or more persons designed to assist an individual with a disability to perform daily living activities on or off the job that the individual would typically perform without assistance if the individual did not have a disability. The services must be designed to increase the individual’s control in life and ability to perform everyday activities on or off the job. The services must be necessary for the achievement of an employment outcome and may be provided only while the individual is receiving other vocational rehabilitation services. The services may include training in managing, supervising, and directing personal assistance services.

NOTE: Authority cited: Sections 19006 and 19016, Welfare and Institutions Code. Reference: 29 USC Sections 705(28) and 723(a)(9); 34 CFR Sections 361.5(b)(39) and 361.48(n); and Sections 19011 and 19150(a)(2) and (11), Welfare and Institutions Code.

### § 7020. Physical and Mental Restoration Services.

(a) “Physical and Mental Restoration Services” means ---

(1) Corrective surgery or therapeutic treatment that is likely, within a reasonable period of time, to correct or modify substantially a stable or slowly progressive physical or mental impairment that constitutes a substantial impediment to employment;

(2) Diagnosis of and treatment for mental or emotional disorders by qualified personnel in accordance with State licensure laws;

(3) Dentistry;

(4) Nursing services;

(5) Necessary hospitalization (either inpatient or outpatient care) in connection with surgery or treatment and clinic services;

(6) Drugs and supplies;

(7) Prosthetic and orthotic devices;

(8) Eyeglasses and visual services, including visual training, and the examination and services necessary for the prescription and provision of eyeglasses, contact lenses, microscopic lenses, telescopic lenses, and other special visual aids prescribed by personnel that are qualified in accordance with State licensure laws;

(9) Podiatry;

(10) Physical therapy;

(11) Occupational therapy;

(12) Speech or hearing therapy;

(13) Mental health services;

(14) Treatment of either acute or chronic medical complications and emergencies that are associated with or arise out of the provision of physical and mental restoration services, or that are inherent in the condition under treatment;

(15) Special services for the treatment of individuals with end-stage renal disease, including transplantation, dialysis, artificial kidneys, and supplies; and

(16) Other medical or medically related rehabilitation services.

(b) Physical and mental restoration services may be provided only to the extent that financial support is not readily available from a source other than the Department (such as through health insurance or a comparable service and benefit as defined in Section 7006 of these regulations).

NOTE: Authority cited: Sections 19006 and 19016, Welfare and Institutions Code. Reference: 29 USC 723(a)(6); 34 CFR Sections 361.5(b)(40) and 361.48(e); and Section 19011, Welfare and Institutions Code.

### § 7021. Physical or Mental Impairment.

(a) “Physical or Mental Impairment” means---

(1) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological, musculo-skeletal, special sense organs, respiratory (including speech organs), cardiovascular, reproductive, digestive, genitourinary, hemic and lymphatic, skin, and endocrine; or

(2) Any mental or psychological disorder such as intellectual disability, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

(b) The presence of a physical or mental impairment alone does not qualify an individual to receive vocational rehabilitation services from the Department. To be eligible for services, the individual must meet all three of the basic requirements for eligibility established in Section 7062, subdivisions (a)(1)-(3), of these regulations.

NOTE: Authority cited: Sections 19006 and 19016, Welfare and Institutions Code. Reference: 29 USC 705(20)(A); 34 CFR 361.5(b)(28) and (41); and Sections 19011 and 19151, Welfare and Institutions Code.

### § 7021.5. Post-Employment Services.

(a) “Post-Employment Services” means one or more of the services identified in Section 7149 of these regulations 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 strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice.

(b) Post-employment services may be provided to meet only those rehabilitation needs that do not require a complex and comprehensive provision of services. Thus, post-employment services shall be limited in scope and duration. If more comprehensive services are required, then a new rehabilitation plan shall be considered.

(c) Post-employment services shall be provided under an amended Individualized Plan for Employment (IPE). A re-determination of eligibility is not required.

NOTE: Authority cited: Sections 19006 and 19016, Welfare and Institutions Code. Reference: 29 USC 723(a)(18); 34 CFR Sections 361.5(b)(42) and 361.48(o); and Sections 19011 and 19150(a)(2), Welfare and Institutions Code.

**§ 7021.****6 Pre-Employment Transition Services**

(a) “Pre-employment transition services” means the required and authorized services, listed as follows:

(1) The Department must provide all of the following pre-employment transition services:

(A) Job exploration counseling.

(B) Work-based learning experiences, which may include in-school or after school opportunities, or experience outside the traditional school setting (including internships), that is provided in an integrated environment in the community to the maximum extent possible.

(C) Counseling on opportunities for enrollment in comprehensive transition or postsecondary educational programs at institutions of higher education.

(D) Workplace readiness training to develop social skills and independent living.

(E) Instruction in self-advocacy (including instruction in person-centered planning), which may include peer mentoring (including peer mentoring from individuals with disabilities working in competitive integrated employment).

(2) With the funds that are available and remaining after the provision of the required activities described in paragraph (a)(1) of this section, the Department may provide authorized activities to improve the transition of students with disabilities from school to postsecondary education or an employment outcome by—

(A) Implementing effective strategies to increase the likelihood of independent living and inclusion in communities and competitive integrated workplaces;

(B) Developing and improving strategies for individuals with intellectual disabilities and individuals with significant disabilities to live independently; participate in postsecondary education experiences; and obtain, advance in and retain competitive integrated employment;

(C) Providing instruction to vocational rehabilitation counselors, school transition personnel, and other persons supporting students with disabilities;

(D) Disseminating information about innovative, effective, and efficient approaches to achieve the goals of this section;

(E) Coordinating activities with transition services provided by local educational agencies under the Individuals with Disabilities Education Act (20 U.S.C. 1400 et seq.);

(F) Applying evidence-based findings to improve policy, procedure, practice, and the preparation of personnel, in order to better achieve the goals of this section;

(G) Developing model transition demonstration projects;

(H) Establishing or supporting multistate or regional partnerships involving States, local educational agencies, the Department, the Department of Developmental Services, private businesses, or other participants to achieve the goals of this section; and

(I) Disseminating information and strategies to improve the transition to postsecondary activities of individuals who are members of traditionally unserved and underserved populations.

Note: Authority cited: sections 19006 and 19016, Welfare and Institutions Code. Reference: 29 U.S.C. section 733; 34 CFR sections 361.5 and 361.48; sections 19011 and 19150, Welfare and Institutions Code.

### § 7024. Rehabilitation Counselor.

“Rehabilitation Counselor” means an employee of the Department who:

(a) Provides information, counseling, and referral services to individuals with disabilities in accordance with Sections 7035, 7037 and 7038 of these regulations;

(b) Determines an applicant’s eligibility under conditions specified in Section 7062 of these regulations;

(c) Determines an eligible individual’s priority category in accordance with Section 7062.3 for the purposes of an Order of Selection implemented pursuant to Section 7053 of these regulations;

(d) Assists an eligible individual to develop the Individualized Plan for Employment (IPE), as appropriate, evaluates the contents of the IPE, and, if appropriate, approves and signs the IPE in accordance with Chapter 2, Article 5 of these regulations;

(e) Reviews the IPE at least annually, as appropriate, to assess the eligible individual’s progress toward achieving the employment outcome in the IPE under conditions specified in Section 7133 of these regulations and collaborates, as appropriate, with the individual or, as appropriate, the individual’s representative to amend the IPE, as necessary, as specified in Section 7130(a)(6) and (7) of these regulations;

(f) Coordinates and facilitates all aspects of the individual’s vocational rehabilitation program;

(g) Maintains the record of services in accordance with Section 7122 of these regulations;

(h) Evaluates the appropriateness of closing an individual’s record of services and conducts mandatory reviews after the record of services has been closed under conditions specified in Chapter 4 of these regulations; and

(i) Assists the individual to exercise informed choice throughout the vocational rehabilitation process.

NOTE: Authority cited: Sections 19006 and 19016, Welfare and Institutions Code. Reference: 29 USC Sections 720(a)(3)(E), 721(a)(5) and (20), 722, and 723; 34 CFR Sections 361.13, 361.36, 361.37, 361.41, 361.42, 361.43, 361.44, 361.45, 361.47, 361.48, 361.52, and 361.56; and Sections 19000(e)(9), 19011, and 19102, Welfare and Institutions Code.

### § 7024.4. Rehabilitation Engineering.

“Rehabilitation Engineering” means the systematic application of engineering sciences to design, develop, adapt, test, evaluate, apply, and distribute technological solutions to problems confronted by individuals with disabilities in functional areas, such as mobility, communications, hearing, vision, and cognition, and in activities associated with employment, independent living, education, and integration into the community.

NOTE: Authority cited: Sections 19006 and 19016, Welfare and Institutions Code. Reference: 29 USC 723(a)(14); 34 CFR Sections 361.5(b)(44) and 361.48(q); and Sections 19011 and 19150(a)(10), Welfare and Institutions Code.

### § 7024.5. Rehabilitation Supervisor.

“Rehabilitation Supervisor” means an employee of the Department whose primary responsibility is to provide direct supervision to Rehabilitation Counselors.

NOTE: Authority cited: Sections 19006 and 19016, Welfare and Institutions Code. Reference: 29 USC 720(a)(3)(E); and Section 19000(e)(9), Welfare and Institutions Code.

### § 7024.7. Rehabilitation Technology.

(a) “Rehabilitation Technology” means the systematic application of technologies, engineering methodologies, or scientific principles to meet the needs of, and address the barriers confronted by, individuals with disabilities in areas that include education, rehabilitation, employment, transportation, independent living, and recreation. The term includes rehabilitation engineering, assistive technology devices, and assistive technology services. The term also includes vehicular modification and telecommunications, sensory, and other technological aids and devices.

(b) Rehabilitation technology does not include the purchase and repair of a vehicle because that is defined as transportation pursuant to Section 7029 of these regulations.

NOTE: Authority cited: Sections 19006 and 19016, Welfare and Institutions Code. Reference: 29 USC Sections 705(30) and 723(a)(14); 34 CFR Sections 361.5(b)(45) and (57) and 361.48(q); and Sections 19011 and 19150(a)(10), Welfare and Institutions Code.

### § 7024.9. Self-employment Setting.

“Self-employment Setting” means an employment setting in which an eligible individual works in a chosen occupation, for profit or fee, in his or her own small business, with control and responsibility for decisions affecting the conduct of the business.”

NOTE: Authority cited: Sections 19006 and 19016, Welfare and Institutions Code. Reference: 29 USC Sections 705(11) and 722(b)(3); 34 CFR Sections 361.5(b)(15) and (16), 361.45, 361.46, and 361.81; and Section 19011, Welfare and Institutions Code.

### § 7025. Severely Handicapped Individual. [Repealed]

### § 7025.3. Similar Benefits or Comparable Services and Benefits. [Repealed]

### § 7025.4. Small Business Consultant.

“Small Business Consultant” means an individual who is qualified by education, training, and experience to provide consultation to the Department and to an eligible individual who is interested in working in a proposed self-employment setting regarding the development of a small business plan and the establishment and operation of a small business, consistent with Section 7149(s) of these regulations.

NOTE: Authority cited: Sections 19006 and 19016, Welfare and Institutions Code. Reference: 29 USC Sections 705(11) and 723(a)(13); 34 CFR Sections 361.5(b)(15) and (16), 361.48(s) and 361.50; and Section 19011, Welfare and Institutions Code.

### § 7025.5. Social Security Disability Insurance. [Repealed]

### § 7025.7. Source of Extended Services.

“Source of Extended Services” means the person, entity or fund that pays for extended services after Department funding ends.

NOTE: Authority cited: Sections 19006 and 19016, Welfare and Institutions Code. Reference: Sections 19011 and 19150(a)(2) and 19150(a)(5), Welfare and Institutions Code; 29 USC Section 705(13) and (35); and 34 CFR Sections 363.1 and 363.6(c)(1) and (2)(iv).

### § 7026. Specific Learning Disability. [Repealed]

### § 7026.2. Statewide Dental Consultant. [Repealed]

### § 7026.3. Statewide Optometric Consultant. [Repealed]

### § 7026.5. Student with a Disability; Students with Disabilities.

### (a) The term “student with a disability” means an individual who:

### (1) is not younger than 16, and

(2) is not older than 21 years of age; unless the student is participating in a special education program under the California Education Code section 56026, then to ensure there is no gap in pre-employment transition services, the Department will extend such services to any student who turns 22 prior to the end of their special education program as follows:

(A) If a student will become 22 years old in January to June, their pre-employment transition services may extend for the remainder of the current fiscal year, including any extended school year program (e.g. summer school).

(B) If a student will become 22 years old in July, August, or September, their pre-employment transition services may not extend through the beginning of a new fiscal year. However, if a student is in a year-round school program and is completing their individualized education program in a term that extends into the new fiscal year, then the student may complete that term.

(C) If a student will become 22 years old in October, November, or December, their pre-employment transition services may extend through the end of the calendar year, unless the student would otherwise complete their individualized education program at the end of the current fiscal year.

(3) is enrolled in a secondary or postsecondary education program which includes non-traditional or alternative secondary education programs, such as home schooling, continuation schooling, education programs offered through the juvenile justice system, and other recognized educational programs.

(4) is one or more of the following:

(A) eligible for and receiving special education or related services under Part B of the Individuals with Disabilities Education Act (20 U.S.C. section 1414.)

(B) an individual with a disability, as defined in section 7017 of these regulations.

(b) “Students with disabilities” means more than one student with a disability.

NOTE: Authority cited: Sections 19006 and 19016, Welfare and Institutions Code. Reference: 20 U.S.C. section 1412, 29 U.S.C. sections 705 and 733; 34 C.F.R. sections 361.5 and section 19011, Welfare and Institutions Code; section 56026, Education Code.

### § 7027. Substantial Impediment to Employment.

“Substantial Impediment to Employment” means that a physical or mental impairment (in light of attendant medical, psychological, vocational, educational, communication, and other related factors) hinders an individual from preparing for, entering into, engaging in, or retaining employment consistent with the individual’s abilities and capabilities.

NOTE: Authority cited: Sections 19006 and 19016, Welfare and Institutions Code. Reference: 29 USC 705(20)(A); 34 CFR 361.5(b)(28) and (52); and Sections 19011 and 19151, Welfare and Institutions Code.

### § 7028. Supported Employment.

“Supported Employment” means:

(a) Competitive integrated employment including customized employment, or employment in an integrated work setting in which an individual with a most significant disability, including a youth with a most significant disability, is working on a short-term basis toward competitive integrated employment that is individualized, and customized, consistent with the unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice of the individual including ongoing support services for individuals with the most significant disabilities;

(1) For whom competitive integrated employment has not historically occurred or for whom competitive integrated employment has been interrupted or intermittent as a result of a significant disability; and

(2) Who, because of the nature and severity of their disabilities, need intensive supported employment services and extended services after transition as described in Section 7014.1 of these regulations to perform this work.

Note: Authority cited: Sections 19006 and 19016, Welfare and Institutions Code. Reference: 29 USC 705; 34 CFR 361.5; and Section 19011, Welfare and Institutions Code.

### § 7028.1. Supported Employment Services.

“Supported Employment Services” means ongoing support services including customized employment, and other appropriate services made available singly or in combination, based upon the determination of the needs of the eligible individual, specified in an Individualized Plan for Employment (IPE), and organized in such a way so as to support and maintain an individual or a youth with a most significant disability in supported employment in order to perform this work---

(a) Provided by the Department and not to exceed 24 months, unless the eligible individual and the Rehabilitation Counselor jointly agree to extend the time beyond 24 months to support and maintain the individual in supported employment necessary to achieve the employment outcome identified in the Individualized Plan for Employment (IPE); and

(b) Following transition, as post-employment services that are unavailable from an extended services provider and that are necessary to maintain or regain the job placement or advance in employment.

Note: Authority cited: Sections 19006 and 19016, Welfare and Institutions Code. Reference: 34 CFR Sections 361.5 and 361.48; and Section 19011, Welfare and Institutions Code.

### § 7028.4. Tools.

“Tool” means an implement, utensil, or instrument, usually hand held, that an individual controls and manipulates to perform a task, and that is typically required for use in a skilled trade such as carpentry, plumbing or electrical work, or auto mechanics. A tool is distinguished from an “Assistive Technology Device” as defined in Section 7002 of these regulations, and “Equipment” as defined in Section 7013.2 of these regulations.

NOTE: Authority cited: Sections 19006 and 19016, Welfare and Institutions Code. Reference: 29 USC 723; 34 CFR 361.48; and Section 19150, Welfare and Institutions Code.

### § 7028.6. Transition Services.

### (a) “Transition Services” means a coordinated set of activities for a student or youth with a disability that are all of the following:

(1) Designed within an outcome-oriented process, that promotes movement from school to post-school activities, including post-secondary education, vocational training, competitive integrated employment, supported employment, continuing and adult education, adult services, independent living, or community participation;

(2) Coordinated set of activities must be based upon the individual student’s or youth’s needs, taking into account their preferences and interests.

(3) Including instruction, community experiences, the development of employment and other post-school adult living objectives, and, if appropriate, acquisition of daily living skills and functional vocational evaluation;

(4) Promoting or facilitating the achievement of the employment outcome identified in the student’s or youth’s Individualized Plan for Employment (IPE);

(5) Including outreach to and engagement with the parents, or as appropriate, the representative of the youth or student with a disability.

Note: Authority cited: Sections 19006 and 19016, Welfare and Institutions Code. Reference: 29 USC Sections 705 and 723; 34 CFR Sections 361.5 and 361.48; and Sections 19011, 19013 and 19150, Welfare and Institutions Code.

**§ 7028.7. Transition to Extended Services.**

“Transition to extended services,” for purposes of supported employment, means the change of responsibility for funding ongoing support services from the Department to a source of extended services.

NOTE: Authority cited: Sections 19006 and 19016, Welfare and Institutions Code. Reference: Sections 19011 and 19150(a)(2) and 19150(a)(5), Welfare and Institutions Code; 29 USC Section 705(13) and (35); and 34 CFR Sections 363.1, 363.6(c)(1) and (2)(iv), and 363.55.

### § 7028.8. Transitional Employment. [Repealed 2023.]

**§ 7029. Transportation.**

(a) “Transportation” means travel and related expenses that are necessary to enable an applicant or eligible individual to participate in a vocational rehabilitation service.

(b) The following are examples of expenses that meet the definition of transportation:

(1) Actual cost of public transportation such as buses, light rail, rapid transit, or paratransit, including passes for bus, light rail, or rapid transit, and expenses for training in the use of public transportation vehicles and systems.

(2) Necessary bridge tolls, parking, gasoline or oil upon a determination that an applicant’s or eligible individual’s vehicle must be used.

(3) Travel and related expenses for a personal care attendant or aide if the services of that person are necessary to enable the applicant or eligible individual to travel to participate in any vocational rehabilitation service.

(4) Relocation expenses incurred by an eligible individual in connection with a job placement that is a significant distance from the eligible individual’s current residence.

(5) The purchase and repair of vehicles, including vans, but not the modification of these vehicles, as vehicle modification is considered a rehabilitation technology service.

NOTE: Authority cited: Sections 19006 and 19016, Welfare and Institutions Code. Reference: 29 USC 723(a)(8); 34 CFR Sections 361.5(b)(57) and 361.48(h); and Sections 19011 and 19150(a)(15), Welfare and Institutions Code.

### § 7029.1. Trial Work Experiences for Individuals with Significant Disabilities.

(a) Prior to any determination that~~,~~ an individual with a disability is unable to benefit from vocational rehabilitation services in terms of an employment outcome because ~~due~~ ~~to~~ of the severity of ~~the~~ that individual’s disability~~,~~ or that the individual is ineligible for vocational rehabilitation services, the Department must conduct an exploration of the individual’s abilities, capabilities, and capacity to perform in realistic work situations.

(b) The Department must develop a written plan to assess periodically the individual’s abilities, capabilities, and capacity to perform competitive integrated employment work settings to the maximum extent possible through the use of trial work experiences, consistent with the informed choice and rehabilitation needs of the individual;

(1) Trial work experiences include supported employment, on-the-job training, and other experiences using realistic integrated work settings.

(2) Trial work experiences must be of sufficient variety and over a sufficient period of time for the Department to determine that:

(A) There is sufficient evidence to conclude that the individual can benefit from the provision of vocational rehabilitation services in terms of an employment outcome in competitive integrated employment setting; or

(B) There is clear and convincing evidence, as defined in Section 7004.6 of these regulations, that the individual is incapable of benefiting from vocational rehabilitation services in terms of an employment outcome in a competitive integrated employment setting due to the severity of the individual’s disability.

(3) The Department must include appropriate supports including but not limited to assistive technology devices and services and personal assistance services to accommodate the rehabilitation needs of the individual during trial work experiences.

Note: Authority cited: Sections 19006 and 19016, Welfare and Institutions Code. Reference: 29 USC Sections 705, 722; and 723; 34 CFR Sections 361.42, 361.47 and 361.48 and Sections 19011 and 19150, Welfare and Institutions Code.

### § 7029.3. Vocational Psychologist. [Repealed]

### § 7029.5 Workshop [Repealed 2023]

### § 7029.4 Youth with a Disability; Youth with Disabilities

### (a) “Youth with a Disability” means an individual with a disability who is not younger than 14 years of age and older than 24 years of age.

(b) “Youth with Disabilities” means more than one youth with a disability.

Note: Authority cited: sections 19006 and 19016, Welfare and Institutions Code. Reference: 34 CFR section 361.5; and sections 19011 and 19150, Welfare and Institutions Code.

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# Chapter 1.5. Informed Choice

### § 7029.6. Informed Choice.

(a) Applicants and eligible individuals or, as appropriate, their representatives shall be provided information and support services to assist them in exercising informed choice throughout the rehabilitation process consistent with the requirements of this section.

(b) To assist applicants and eligible individuals to exercise informed choice throughout the vocational rehabilitation process, the Department shall:

(1) Inform each applicant and eligible individual (including students with disabilities who are making the transition from programs under the responsibility of an educational agency to the Department’s programs), through appropriate modes of communication, about the availability of and opportunities to exercise informed choice, including the availability of support services for individuals with cognitive or other disabilities who require assistance in exercising informed choice throughout the vocational rehabilitation process;

(2) Assist applicants and eligible individuals in exercising informed choice in decisions related to the provision of assessment services;

(3) Afford eligible individuals meaningful choices among methods used to procure vocational rehabilitation services, consistent with applicable State procurement laws and regulations and federal policy directives issued by the U.S. Department of Education, Office of Special Education and Rehabilitative Services (OSERS), Rehabilitation Services Administration; and

(4) Assist eligible individuals or, as appropriate, the individuals’ representatives to acquire information that enables them to exercise informed choice in the development of their Individualized Plans for Employment (IPEs) with respect to the selection of the ---

(A) Employment outcome, as defined in and consistent with Section 7011 of these regulations;

(B) Specific vocational rehabilitation services needed to achieve the employment outcome, as defined in and consistent with Section 7149 of these regulations;

(C) Entity that will provide the services;

(D) Employment setting and the settings in which the services will be provided; and

(E) Methods available for procuring the services, consistent with State procurement laws and regulations and federal policy directives issued by the U.S. Department of Education, Office of Special Education and Rehabilitative Services (OSERS), Rehabilitation Services Administration.

(c) The availability and scope of informed choice shall be consistent with the Department’s obligations under the Act and federal regulations and with the Department’s responsibilities for the administration of the vocational rehabilitation program. Statutory and regulatory requirements that affect the exercise of informed choice include all of the following:

(1) Section 101(a)(6)(C) of the Act and 34 CFR 361.51, which require that any facility used in connection with the delivery of vocational rehabilitation services is accessible to individuals with disabilities.

(2) Section 101(a)(8)(A) of the Act and 34 CFR 361.53, which require that prior to providing any vocational rehabilitation service to an eligible individual, or to members of the individual’s family, the Department shall determine whether comparable services and benefits as defined in Section 7006 of these regulations are available under any other program in accordance with and under conditions specified in Chapter 5, Article 3 of these regulations.

(3) Section 101(a)(9)(B) of the Act and 34 CFR 361.45, which require that vocational rehabilitation services be provided in accordance with the provisions of the Individualized Plan for Employment (IPE).

(4) 34 CFR 361.50, which authorizes the Department to develop and maintain written policies covering the nature and scope of each of the vocational rehabilitation services specified in Section 7149 of these regulations and the criteria under which each service is provided.

(5) 34 CFR 361.54, which permits the Department to consider the financial need of eligible individuals, or individuals who are receiving services through trial work experience under Section 7062(h) for purposes of determining the extent of their participation in the costs of vocational rehabilitation services under conditions specified in Chapter 5, Article 1 of these regulations.

(6) 2 CFR 200.317 of the Office of Management and Budget (OMB) Guidance, which governs the procurement of property and services under a grant.

(7) 34 CFR 361.13, which specifies activities that are the responsibility of the Department in the administration of the vocational rehabilitation program. These activities include, but are not limited to:

(A) All decisions affecting eligibility for vocational rehabilitation services, the nature and scope of available services, and the provision of these services; and

(B) The allocation and expenditure of vocational rehabilitation funds.

(8) 34 CFR 361.12, which requires, in part, that the Department ensure financial accountability in administering the vocational rehabilitation program.

(9) 34 CFR 361.48 which requires, in part, that vocational rehabilitation services must be appropriate to the vocational rehabilitation needs of the individual.

(10) 34 CFR 361.45, which requires, in part, that the employment outcome chosen by the eligible individual must be consistent with the individual’s strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice.

(d) When assisting an applicant and eligible individual to exercise informed choice during the assessment for determining eligibility and vocational rehabilitation needs and during development of the IPE, the Department must provide the individual or the individual’s representative, or assist the individual or the individual’s representative to acquire, information necessary to make an informed choice about the specific vocational rehabilitation services, including the providers of those services, that are needed to achieve the individual’s employment outcome. This information must include, at a minimum, information relating to the ---

(1) Cost, accessibility, and duration of potential services;

(2) Consumer satisfaction with those services, to the extent that this information is available;

(3) Qualifications of potential service providers;

(4) Types of services offered by the potential providers;

(5) Degree to which services are provided in integrated settings; and

(6) Outcomes achieved by individuals working with service providers, to the extent that this information is available.

(e) In providing, or assisting the individual or the individual’s representative to acquire, the information specified in (d) of this section, the Department may use, but is not limited to, the following methods or sources of information.

(1) Lists of services and service providers.

(2) Periodic consumer satisfaction surveys and reports.

(3) Referrals to other consumers, consumer groups, or disability advisory councils qualified to discuss the services or service providers.

(4) Relevant accreditation, certification, or other information relating to the qualifications of service providers.

(5) Opportunities for individuals to visit or experience various work and service provider settings.

NOTE: Authority: Sections 19006 and 19016, Welfare and Institutions Code. Reference: 29 USC Sections 701, 721 and 722; 2 CFR Section 200.317, 34 CFR Sections 361.50 and 361.52; and Sections 19000, 19005, 19011, and 19012, Welfare and Institutions Code.

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# Chapter 1.7. Rights and Responsibilities of Individuals with Disabilities; Applicants; Eligible Individuals

### § 7029.7. Rights of Individuals with Disabilities; Applicants; Eligible Individuals.

 (a) Any individual with a disability shall have a right to:

 (1) Be treated with respect for individual dignity, personal responsibility, self-determination, and pursuit of a meaningful career based on informed choice, consistent with principles established in Section 2 of the Act.

 (2) Apply for services from the Department in accordance with Section 7041 of these regulations.

 (3) Be referred by the Department to other appropriate Federal and State programs, including other components of the workforce investment system, under conditions specified in Section 7037 of these regulations, or be referred to a local extended employment provider under conditions specified in Section 7038 of these regulations.

 (b) Any applicant or eligible individual, as appropriate, shall have a right to:

 (1) Be an active and full partner in the vocational rehabilitation process and exercise informed choice throughout the vocational rehabilitation process in accordance with Section 7029.6 of these regulations.

 (2) Have his or her eligibility determined within 60 days of the date of application, under conditions specified in Section 7060 of these regulations.

 (3) If determined to be eligible, have his or her priority category determined for the purposes of an Order of Selection in accordance with Chapter 2, Article 2 of these regulations.

 (4) Have personal information collected and maintained by the Department kept confidential and request that documentation in his or her record of services be amended in accordance with the requirements of Chapter 2, Article 6 of these regulations. The right to confidentiality shall continue after the record of services is closed.

 (5) If determined to be eligible, develop all or part of his or her Individualized Plan for Employment (IPE) in accordance with Chapter 2, Article 5 of these regulations and receive a periodic, but at least annual, review of his or her IPE in accordance with Section 7133 of these regulations.

 (6) Receive appropriate services without undue delay, except where the delay results from circumstances beyond the Department’s control, such as the absence of training openings at schools or facilities, or unanticipated changes in the program due to new information or conditions.

 (7) Appeal any determination made by the Department that affects the provision of vocational rehabilitation services through administrative review, mediation, and fair hearing under conditions specified in Chapter 12 of these regulations. Determinations that may be appealed include a determination that an applicant is ineligible for services or that an individual who was previously eligible is no longer eligible for services.

NOTE: Authority cited: Sections 19006 and 19016, Welfare and Institutions Code. Reference: 29 USC Sections 701(a) and (c), 720, 721(a)(5), (19), and (20), and 722; 34 CFR Sections 361.36, 361.37, 361.38, 361.41, 361.42, 361.43, 361.45, 361.50, 361.52, and 361.57; Sections 1798.1, 1798.21, and 1798.35, Civil Code; and Sections 19000(d) and (e), 19011, and 19102, Welfare and Institutions Code.

### § 7029.9. Responsibilities of Individuals with Disabilities; Applicants; Eligible Individuals.

 (a) Any individual with a disability who wishes to receive vocational rehabilitation services from the Department is responsible for completing the application process in accordance with the requirements of Section 7041 of these regulations.

 (b) Any applicant or eligible individual, as appropriate, shall have the responsibility to:

 (1) Participate and cooperate in obtaining and providing the information needed by the Department to:

 (A) Determine eligibility and priority for services in accordance with Section 7062 of these regulations;

 (B) Determine priority category for the purposes of an Order of Selection in accordance with Section 7062.3 of these regulations;

 (C) Determine whether the individual’s chosen employment outcome is consistent with the individual’s strengths, resources, priorities, concerns, abilities, capabilities, and interests;

 (D) Determine the nature and scope of vocational rehabilitation services to be included in the Individualized Plan for Employment (IPE) in accordance with Section 7130.5 of these regulations; and

 (E) Make any other determinations that are required by or consistent with federal or state statutes and regulations.

 (2) Be an active and full partner in the vocational rehabilitation process and exercise informed choice throughout the vocational rehabilitation process, with assistance from the Rehabilitation Counselor as appropriate, by engaging in the following activities to the extent possible:

 (A) Gathering and evaluating information and participating in planning and problem solving and decisions related to the assessment process, selection of the employment outcome and settings in which employment occurs, vocational rehabilitation services, service providers, settings in which services will be provided, and methods for procuring services;

 (B) Seeking or identifying needed resources;

 (C) Evaluating the consequences of the various options;

 (D) Making decisions in ways that reflect the individual’s strengths, resources, priorities, concerns, abilities, capabilities, and interests; and

 (E) Taking personal responsibility for implementing the chosen options and achievement of the employment outcome the individual selected.

 (3) Report any changes in circumstances that may affect:

 (A) Eligibility for vocational rehabilitation services;

 (B) Priority category under an Order of Selection;

 (C) The services and/or the employment outcome specified in the Individualized Plan for Employment (IPE); and

 (D) The Department’s ability to contact the individual.

 (4) Cooperate in the assessment process and in developing and meeting the objectives identified in the IPE including, but not limited to, active participation, reasonable effort, regular attendance at scheduled appointments and training, and regular communication with the Rehabilitation Counselor regarding progress toward achievement of the employment outcome. Failure to cooperate, make reasonable effort, lack of regular attendance, or failure to maintain regular communication may result in loss of further services and closure of the record of services.

 (5) Participate in the cost of services under conditions specified in Chapter 5, Article 1 of these regulations.

 (6) Apply for, secure and use comparable services and benefits to the extent to which the individual is eligible for such benefits in accordance with Chapter 5, Article 3 of these regulations.

NOTE: Authority cited: Sections 19006 and 19016, Welfare and Institutions Code. Reference: 29 USC Sections 701(c), 720, 721(a)(5) and (8) and 722; 34 CFR Sections 361.13, 361.36, 361.38, 361.41(b), 361.42, 361.45, 361.46, 361.48, 361.53, and 361.54; Section 1798.15, Civil Code; and Sections 19011, 19018, 19102, and 19150(b), Welfare and Institutions Code.

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# Chapter 2. Referral and Application Processes; Order of Selection; Eligibility; Record of Services; Individualized Plan for Employment (IPE)

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## Article 1. Referral and Application Processes

### § 7030. Vocational Rehabilitation Services. [Repealed]

### § 7031. Rights of Individuals with Disabilities. [Repealed]

### § 7032. Definitions. [Renumbered]

### § 7033. Responsibilities of Applicants and Clients. [Repealed]

### § 7034. Similar Benefit Review. [Renumbered]

### § 7035. Processing Referrals of Individuals to the Department.

(a) The purpose of this section is to provide standards for the prompt and equitable handling of referrals of individuals, made to the Department for vocational rehabilitation services, including referrals of individuals made through one-stop service delivery systems established under the Workforce Innovation and Opportunity Act and by other state units.

(b) The Department shall provide all individuals, referred to the Department with information about:

(1) The application process and requirements under Section 7041 of these regulations, including the requirement that the individual provide the Department with information necessary to initiate an assessment to determine eligibility and priority for services as a condition of application;

(2) The basis for a determination of eligibility and priority category in accordance with Section 7062 of these regulations; and

(3) The Order of Selection process as specified in Chapter 2, Article 2 of these regulations.

(c) The information specified in (b) of this section shall be provided in writing to the potential applicant and/or his or her authorized representative no later than 15 working days after the initial contact from the potential applicant and/or his or her authorized representative or from a third party referring the potential applicant.

Note: Authority cited: Sections 19006 and 19016, Welfare and Institutions Code. Reference: 34 CFR 361.41; and Section 19011, Welfare and Institutions Code.

### § 7037. Processing Referrals of Individuals to Other Agencies.

(a) The Department shall provide individuals with disabilities, including eligible individuals who are not in a priority category being served under an Order of Selection implemented pursuant to Chapter 2, Article 2 of these regulations, with accurate vocational rehabilitation information and guidance (which may include counseling and referral for job placement) to assist those individuals to prepare for, secure, retain, advance in, or regain employment. The Department shall provide this information using appropriate modes of communication.

(b) The Department shall refer individuals with disabilities to other appropriate Federal and State programs, including other components of the statewide workforce development system. In making these referrals, the Department must---

(1) Refer the individual to Federal or State programs, including programs carried out by other components of the statewide workforce development system, best suited to address the specific employment needs of an individual with a disability; and

(2) Provide the individual who is being referred with all of the following:

(A) A notice of referral by the Department to the agency carrying out the program;

(B) Information identifying a specific point of contact within the agency to which the individual is being referred;

(C) Information and advice regarding the most suitable services to assist the individual to prepare for, secure, retain, advance in, or regain employment; and

(D) Information about the Client Assistance Program and how to contact that program.

NOTE: Authority cited: Sections 19006 and 19016, Welfare and Institutions Code. Reference: 29 USC Sections 721and 723; 34 CFR Sections 361.37, and 361.48; and Section 19011, Welfare and Institutions Code.

### § 7038. Processing Referrals of Individuals to Local Extended Employment Providers.

The Department must refer to local extended employment providers an individual with a disability who makes an informed choice to pursue extended employment, as defined in Section 7013.6 of these regulations. Before making this referral, the Department must---

(a) Consistent with Section 7041(d)(6) of these regulations, explain to the individual that the purpose of the vocational rehabilitation program is to assist individuals to achieve an employment outcome, as defined in Section 7011 of these regulations;

(b) Consistent with informed choice as described in Section 7029.6 of these regulations, provide the individual with information concerning the availability of employment options and of vocational rehabilitation services, to assist the individual to achieve the appropriate employment outcome;

(c) Inform the individual that services under the vocational rehabilitation program may be provided to eligible individuals in an extended employment setting if necessary for the purposes of training or otherwise preparing for employment in an integrated setting;

(d) Inform the individual that, if he or she initially chooses not to pursue an employment outcome as described in section 7011, he or she may seek services from the Department at a later date if, at that time, he or she chooses to pursue an employment outcome; and

(e) Refer the individual, as appropriate, to the Social Security Administration (SSA) in order to obtain information concerning the ability of individuals with disabilities to work while receiving benefits from the SSA.

NOTE: Authority cited: Sections 19006 and 19016, Welfare and Institutions Code. Reference: 34 CFR Sections 361.5 and 361.37; and Section 19011, Welfare and Institutions Code.

### § 7040. Referrals. [Repealed]

### § 7041. Processing Applications.

(a) Application forms shall be available at all Department offices and in One-Stop centers established pursuant to the Workforce Investment Act of 1998 (29 USC 2841).

(b) An individual is considered to have submitted an application when the individual or the individual’s representative, as appropriate:

(1) Has applied for or requested services by:

(A) Completing and signing a DR 222, Vocational Rehabilitation Services Application (Rev. 03/04), incorporated by reference herein; or

(B) Completing a common intake application form in a One-Stop center requesting vocational rehabilitation services; or

(C) Otherwise requesting services from the Department; and

(2) Has provided the Department with information necessary to initiate an assessment to determine eligibility and priority for services; and

(3) Is available to complete the assessment process.

(c) For the purposes of determining eligibility within the timelines established in Section 7060 of these regulations, the date of application shall be the date upon which all three conditions specified in (b)(1) through (3) of this section are met.

(d) All applicants shall be provided all of the following information:

(1) The date of application as established in (c) of this section.

(2) Timelines for an eligibility determination in accordance with Section 7060(a)(1) and (2) of these regulations.

(3) The basis for establishing a priority for services under an Order of Selection as set forth in Chapter 2, Article 2 of these regulations.

(4) The right to appeal any determination made by the Department that affects the provision of vocational rehabilitation services through administrative review, mediation, and fair hearing as provided in Chapter 12 of these regulations and the availability of assistance from the Client Assistance Program.

(5) The confidentiality of personal information, and Department policies and procedures regarding its use and release, as specified in Chapter 2, Article 6 of these regulations.

(6) That individuals who receive vocational rehabilitation services from the Department must intend to achieve an employment outcome. The applicant’s completion of the application process, as specified in (b) of this section, is sufficient evidence of the individual’s intent to achieve an employment outcome.

NOTE: Authority cited: Sections 19006 and 19016, Welfare and Institutions Code. Reference: 29 USC Sections 721(a)(5) and 722(c); 34 CFR Sections 361.36, 361.38, 361.41(b), 361.42(a)(4), and 361.57; and Sections 19011 and 19102, Welfare and Institutions Code.

### § 7041.5. Date of Application. [Repealed]

###  § 7042. Reapplication.

(a) When a former applicant or eligible individual whose record of services has been closed reapplies for services, the Rehabilitation Counselor shall:

(1) Determine the individual’s eligibility; and

(2) If the individual is determined to be eligible, determine the individual’s priority category under an Order of Selection implemented pursuant to Section 7053 of these regulations.

(b) The determinations specified in (a)(1) and (2) of this section shall be made in accordance with the established criteria for first-time applicants specified in Chapter 2, Articles 2 and 3 of these regulations.

(c) In making the determinations specified in (a)(1) and (2) of this section, the Rehabilitation Counselor shall consider pertinent information contained in the individual’s prior record of services.

NOTE: Authority cited: Sections 19006 and 19016, Welfare and Institutions Code. Reference: 29 USC Sections 721(a)(5) and 722(a); 34 CFR Sections 361.36 and 361.42; and Sections 19011, 19102, and 19103(c), Welfare and Institutions Code.

### § 7045. Initial Interview.

(a) As part of the Department’s application process, an initial interview shall be conducted with the applicant. Whenever possible, the initial interview shall be conducted within two weeks of the date of application established in Section 7041(c) of these regulations.

(b) The Department shall take the following actions before or during the initial interview:

(1) Have the individual or his or her authorized representative complete and sign a DR 222, Vocational Rehabilitation Services Application (Rev. 03/04), incorporated by reference herein, if he or she has not already done so.

(2) Obtain any additional information needed to initiate an assessment of eligibility and priority for services as described in Section 7062 of these regulations.

(3) Provide information about the vocational rehabilitation program, including, but not limited to, information that explains:

(A) Eligibility requirements, consistent with Section 7062 of these regulations;

(B) Department priorities for serving individuals with disabilities under an Order of Selection implemented pursuant to Section 7053 of these regulations, consistent with Chapter 2, Article 2 of these regulations;

(C) Services that may be provided to the applicant during an assessment to determine eligibility and priority for services, including the provision of rehabilitation technology when needed, and services that may be provided to an eligible individual under an Individualized Plan for Employment (IPE);

(D) Informed choice, consistent with Section 7029.6 of these regulations;

(E) Protection, use, and release of personal information collected and maintained by the Department, consistent with Chapter 2, Article 6 of these regulations;

(F) Rights and responsibilities of the applicant, consistent with Sections 7029.7 and 7029.9 of these regulations, respectively; and

(G) The Client Assistance Program, including the services provided by the program and how to contact the program.

(4) Provide the applicant with the Client Information Handbook.

(c) The applicant shall be advised that individuals who receive services under the Department’s vocational rehabilitation program must intend to achieve an employment outcome.

NOTE: Authority cited: Sections 19006 and 19016, Welfare and Institutions Code. Reference: 29 USC Sections 701(a)(6) and (c)(1), 705(20), 721(a)(5) and (19), and 722(b)(2) and (d); 34 CFR Sections 361.5(b)(28), 361.36, 361.38, 361.41, 361.42, 361.52 and 361.57; and Sections 19000(d)(1) and (e)(6), 19011, 19102, and 19151, Welfare and Institutions Code.

### § 7045.2. Intake Interview-SSDI and SSI/SSP Recipients. [Repealed]

### § 7048. Rights of Disabled Individuals. [Renumbered]

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## Article 2. Order of Selection for Vocational Rehabilitation Services

### § 7050. General Provisions.

(a) The purpose and intent of this article is:

(1) To provide an organized and equitable method to serve individuals with disabilities, if it is anticipated that all eligible individuals who apply for vocational rehabilitation services cannot be served, by:

(A) determining the need for an Order of Selection for Vocational Rehabilitation Services;

(B) timing the establishment of an Order of Selection for Vocational Rehabilitation Services;

(C) developing priority categories for an Order of Selection for Vocational Rehabilitation Services;

(D) implementing and monitoring an Order of Selection for Vocational Rehabilitation Services; and

(E) determining a priority category for each eligible individual.

(2) To manage the resources available for the provision of vocational rehabilitation services for each fiscal year.

(3) To assure that first priority for vocational rehabilitation services is given to individuals with the most significant disabilities as defined herein.

(4) To assure the statewideness of the Order of Selection for Vocational Rehabilitation Services.

(5) To define the circumstances under which the Department will not require an Order of Selection for Vocational Rehabilitation Services.

(b) Order of Selection for Vocational Rehabilitation Services shall not be based on the following:

(1) Any geographical location of residency within the state;

(2) Any duration of residency requirement, provided the individual is present in the State;

(3) Type of disability;

(4) Sex, race, age, religious creed, color, ancestry, national origin, sexual orientation, or marital status;

(5) Source of referral;

(6) Type of expected employment outcome;

(7) The particular service needs or anticipated cost of services required by an individual; and

(8) The income level of an individual or an individual's family.

NOTE: Authority cited: Sections 19006 and 19016, Welfare and Institutions Code. Reference: 29 USC Sections 705(21) and 721(a)(5); 34 CFR Sections 361.5(b)(30) and 361.36; and Sections 19011 and 19102, Welfare and Institutions Code.

### § 7051. Definitions.

(a) For the purposes of this Article, the following definitions shall apply:

(1) “Accommodation” for the purpose of evaluating the impact in a functional capacity area means any type of assistance required as a result of an impairment including, but not limited to, work site adaptation, job restructuring, assistive technology devices, personal assistance services, prescribed medication, alternate media, or prosthesis.

(2) “Assess” or “assessment,” for the purposes of Order of Selection for Vocational Rehabilitation Services only, means quantifying the impact of the limitations presented by an individual's disability considered in a full range of environments. This assessment takes place after an individual has been determined to be eligible for services from the Department.

(3) “Extended period of time” means more than six months.

(4) “Functional Capacity Area” means communication, interpersonal skills, mobility, self-care, work skills, and work tolerance, which are impacted by an individual's disability.

(A) “Communication” means the ability to use, give and/or receive information.

(B) “Interpersonal Skills” means the ability to establish and/or maintain appropriate interactions with others.

(C) “Mobility” means the ability to move from place to place.

(D) “Self-Care” means the ability to plan and/or perform activities of daily living.

(E) “Work Skills” means the ability to learn and/or perform work functions.

(F) “Work Tolerance” means the ability to sustain the required level of work functions.

(5) “Multiple vocational rehabilitation services” means two or more vocational rehabilitation services, excluding counseling and guidance, services to family members, and transportation.

(6) “Priority Category” means the order in which individuals will be served. The category shall be established, first, based on their level of significance of disability, and second, their date of application.

(7) “Serious limitation in terms of an employment outcome” means a reduction of one's capacity to perform, due to severe physical or mental impairment, to the degree that the individual requires services or accommodations in order for the individual to work or be a fully functioning member of the community.

(8) “Transportation,” for the purposes of Order of Selection for Vocational Rehabilitation Services only, means the use of public or private modes of travel. The purchase of a vehicle, vehicle modification, repair, and mobility evaluation are not defined as transportation for purposes of determining the need for multiple vocational rehabilitation services.

NOTE: Authority cited: Sections 19006 and 19016, Welfare and Institutions Code. Reference: 29 USC Sections 705(21) and 721(a)(5); 34 CFR Sections 361.5(b)(30) and (31) and 361.36; and Sections 19011, and 19102, Welfare and Institutions Code.

### § 7052. Determination of Need for Order of Selection for Vocational Rehabilitation Services.

(a) Prior to the beginning of each fiscal year, the Department shall:

(1) project the cost of determining eligibility for all applicants for vocational rehabilitation services in the next fiscal year; and

(2) project the cost of serving, in the next fiscal year, the projected number of individuals with Individualized Plans for Employment (IPEs) in place at the end of the current fiscal year; and

(3) project the cost of serving, in the next fiscal year, individuals whose IPEs will be put in place in that year.

(b) The Director shall declare the Department under Order of Selection for Vocational Rehabilitation Services when the budget information available indicates that the projected resources available for vocational rehabilitation services identified in subsection (a), are not adequate to meet all the projected costs under subsection (a).

(c) After the start of a fiscal year, the Director shall declare the Department under Order of Selection for Vocational Rehabilitation Services when the budget information available indicates that the projected resources available for vocational rehabilitation services identified in subsection (a), for the remainder of the fiscal year, are not adequate to meet all projected costs under subsection (a) for the remainder of the year.

NOTE: Authority cited: Sections 19006 and 19016, Welfare and Institutions Code. Reference: 29 USC 721; 34 CFR 361.29; and Sections 19005, 19011 and 19102, Welfare and Institutions Code.

### § 7053. Order of Selection for Vocational Rehabilitation Services Process.

(a) If the number of individuals eligible to receive vocational rehabilitation services must be limited, an Order of Selection for Vocational Rehabilitation Services shall be implemented and services shall be provided to individuals in priority categories in the following order:

(1) Priority Category One: Eligible individuals with a most significant disability, as defined in Section 7017.2, beginning with the earliest application date.

(2) Priority Category Two: Eligible individuals with a significant disability, as defined in Section 7017.5, beginning with the earliest application date.

(3) Priority Category Three: All other eligible individuals who do not meet the criteria for Priority Category One or Priority Category Two, beginning with the earliest application date.

(b) When eligible individuals who are in Priority Category Two can be served, all eligible individuals who are in Priority Category One shall be served regardless of the date of application.

(c) When eligible individuals who are in Priority Category Three can be served, all eligible individuals who are in Priority Category Two shall be served regardless of the date of application.

(d) Individuals who are not included in the priority category(ies) being served shall be placed on a waiting list pursuant to Section 7055.

(e) The criteria established by the Department for the Order of Selection, mandates individuals with the most significant disabilities will be selected first for the provision of vocational rehabilitation services. Additionally, the Department, in its discretion, may elect to serve eligible individuals who require specific services or equipment to maintain employment, whether or not the individuals are receiving vocational rehabilitation services under the Order of Selection. The Department shall specify any such election in its Order of Selection Declaration.

(f) Upon implementation of the Order of Selection for Vocational Rehabilitation Services:

(1) Individuals whose IPE was written and signed prior to implementation shall continue to receive services including additional services subsequently identified as necessary to complete their IPE.

(2) Individuals who were determined eligible prior to implementation, but for whom the IPEs have not been written and signed, shall be assigned to a priority category.

(3) Students with disabilities who were receiving pre-employment transition services in accordance with section 7149(a) and have not yet been determined eligible for vocational rehabilitation services prior to implementation shall continue to receive such services regardless of the Order of Selection.

NOTE: Authority cited: Sections 19006 and 19016, Welfare and Institutions Code. Reference: 29 USC Sections 705 and 721; 34 CFR Sections 361.5 and 361.36; and Sections 19011 and 19102, Welfare and Institutions Code.

### § 7053.5. Modifying Order of Selection for Vocational Rehabilitation Services.

(a) When the Director of the Department has declared the Department in Order of Selection for Vocational Rehabilitation Services, at least a quarterly review will be done to determine whether the projected resources available to serve individuals in priority category/ies currently being served are adequate to meet all projected costs for such individuals for the remainder of the fiscal year.

(b) If the review indicates that the projected resources are inadequate to serve individuals in priority categories currently being served, the priority categories being served will be reduced accordingly. Individuals in a priority category no longer being served, whose Individualized Plan for Employment (IPE) was written and signed prior to implementation of the reduction shall continue to receive services including additional services subsequently identified as necessary to complete their IPE.

(c) If the review indicates that the projected resources are adequate to serve only individuals in priority categories currently being served, no change will be made in the priority categories being served.

(d) If the review indicates that the projected resources are adequate to serve individuals in additional priority categories, those categories will be served.

(e) The Director shall make a declaration of any change in priority categories.

NOTE: Authority cited: Sections 19006 and 19016, Welfare and Institutions Code. Reference: 29 U.S.C. 721; 34 CFR 361.36; and Sections 19005 and 19102, Welfare and Institutions Code.

### § 7055. Waiting List.

(a) Upon a determination in accordance with Section 7052 that an Order of Selection for Vocational Rehabilitation Services must be implemented, the Department shall establish a statewide waiting list of eligible individuals in priority categories.

(b) The Department, through the local offices, shall notify each individual placed on the waiting list, or his or her designated representative, in writing, of all of the following:

(1) The priority category to which he or she has been assigned.

(2) The priority category(ies) that are currently being served.

(3) His or her appeal rights as specified in Sections 7350 through 7361.

(4) His or her right to a re-evaluation of his or her priority category placement per Section 7055(f).

(c) The Department shall contact an individual on the waiting list, in writing, within one year of being placed on the waiting list, and at least annually thereafter to inform him or her of the priority category to which he or she has been assigned, the priority category(ies) that are currently being served, and his or her waiting list status in order to determine if he or she wishes to remain on the waiting list.

(d) If an individual does not respond within thirty (30) days of contact to the information contained in the annual notice, the individual will be notified that his or her case will be closed if there is no contact with the Rehabilitation Counselor within the next sixty (60) days. If the individual chooses, a designated representative may receive notification on his or her behalf. If departmental staff is unable to contact the individual, or if the individual declines to remain on the waiting list, a notice of case closure letter will be sent to the individual or to his or her designated representative.

(e) The final notice of case closure in Section 7055(d) shall contain all of the following:

(1) the date of case closure;

(2) the information regarding re-evaluation as stated in Section 7055(f); and

(3) the individual's appeal rights as stated in Sections 7350 through 7361.

(f) Individuals on the waiting list may request a re-evaluation of his or her priority category placement at anytime he or she believes that his or her situation has changed sufficiently to place him or her in a different priority category. The Department shall conduct a re-evaluation and notify individuals of the results within thirty (30) days of the request. If the re-evaluation takes longer than thirty (30) days, the Rehabilitation Counselor shall inform the client of the reason for the delay, and the estimated date the re-evaluation shall be completed.

NOTE: Authority cited: Sections 19006 and 19016, Welfare and Institutions Code. Reference: 29 U.S.C. 721(a)(5); 34 CFR 361.36; and Sections 19005 and 19102, Welfare and Institutions Code.

### § 7056. Monitoring the Order of Selection for Vocational Rehabilitation Services.

(a) The Department shall review at least annually the order of selection for all eligible individuals in priority categories, including those being served and those on the waiting list. This review shall be conducted to assure that:

(1) services are being provided on a statewide basis; and

(2) the determination of priority category does not bar or discriminate against any eligible individual based on the factors specified in Section 7050(b) of these regulations.

(b) If the Department's review discloses the Order of Selection for Vocational Rehabilitation Services is barring or discriminating against any eligible individual(s) based on factors specified in (a)(2) of this section, the Department shall remedy that situation by promulgating emergency regulations within 90 days.

NOTE: Authority cited: Sections 19006 and 19016, Welfare and Institutions Code. Reference: 29 USC 721(a)(5); 34 CFR 361.36; and Section 19102, Welfare and Institutions Code.

### § 7057. Ending the Order of Selection for Vocational Rehabilitation Services.

(a) When the Department determines that the available resources are adequate to fund vocational rehabilitation services to all eligible individuals, it will begin to provide vocational rehabilitation services to all priority categories.

(b) The factors to make the determination will be the same as Section 7052.

(c) All individuals on the waiting list will be notified, in writing, within thirty (30) days of the determination to end Order of Selection for Vocational Rehabilitation Services, that the Department is no longer under an Order of Selection for Vocational Rehabilitation Services. If the individual chooses, a designated representative may receive notification on his/her behalf.

(d) The Department will continue to complete the level of significance of disability determination with each eligible individual and maintain its priority category information.

NOTE: Authority cited: Sections 19006 and 19016, Welfare and Institutions Code. Reference: 29 USC 721(a)(5); 34 CFR 361.36; and Section 19102, Welfare and Institutions Code.

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## Article 3. Determination of Eligibility and Priority for Services;

**Ineligibility Determination**

### §7060. General Provisions - Eligibility.

(a) An eligibility determination must be made within 60 days of an individual submitting an application by meeting the requirements of 7041(b)(1)-(3), unless----

(1) Exceptional and unforeseen circumstances beyond the control of the Department preclude making an eligibility determination within 60 days and the Department and the individual agree to a specific extension of time; or

(2) Information required to make an eligibility determination must be obtained through trial work experience in accordance with Section 7062(h) of these regulations and cannot be obtained within 60 days.

(b) If the applicant does not agree to specific extension of time as specified in (a)(1) of this section, an eligibility determination shall be made based on the information available.

(1) If the applicant does not agree with the eligibility determination, the applicant and/or his or her authorized representative shall be informed of the right to appeal the determination made by the Department through administrative review, mediation, and fair hearing as provided in Chapter 12 of these regulations.

(c) Prohibited factors:

(1) The Department shall not impose, as part of determining eligibility, a duration of residence requirement that excludes from services any applicant who is present in the State.

(A) The Department may not require the 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.

(2) In making a determination of eligibility, the Department shall assure that---

(A) No applicant or group of applicants is excluded or found ineligible solely on the basis of the type of disability; and

(B) The eligibility requirements are applied without regard to the:

1. Age, gender, race, color, or national origin of the applicant;

2. Type of expected employment outcome;

3. Source of referral for vocational rehabilitation services; and

4. Particular service needs or anticipated cost of services required by an applicant or the income level of an applicant or applicant’s family.

5. Applicants’ employment history or current employment status.

6. Applicants’ educational status or current educational credential.

NOTE: Authority cited: Sections 19006 and 19016, Welfare and Institutions Code. Reference: 29 USC Sections 721and 722; 34 CFR Sections 361.41 and 361.42; and Sections 19009, 19011, and 19103, Welfare and Institutions Code.

### § 7061. Residence Requirement. [Renumbered]

### §7062. Assessment for Determining Eligibility.

In order to determine whether an individual is eligible for vocational rehabilitation services, and the individual’s priority category in accordance with Section 7062.3 under an Order of Selection implemented pursuant to Section 7053 of these regulations, the Department must conduct an assessment in the most integrated setting possible, consistent with the individual’s needs and informed choice, and in accordance with the following provisions.

(a) The Department’s determination of an applicant’s eligibility for vocational rehabilitation services must be based only on the following requirements:

(1) A determination by qualified personnel, who need not be Department employees, that the applicant has a physical or mental impairment;

(2) A determination by qualified personnel, who need not be Department employees, that the applicant’s physical or mental impairment constitutes or results in a substantial impediment to employment for the applicant;

(3) A determination by a Rehabilitation Counselor employed by the Department that the applicant requires vocational rehabilitation services to prepare for, secure, retain, advance in, or regain employment consistent with the applicant’s unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice; and

(4) A presumption, in accordance with (c) of this section, that the applicant can benefit from the provision of vocational rehabilitation services in terms of an employment outcome in an integrated setting.

(b) Personnel not employed by the Department who make the determination(s) specified in (a)(1) or (2) must:

(1) Possess the knowledge and expertise needed to make the determination(s); and

(2) Base the determination(s) on current information that is relevant and sufficient to support such determination(s).

(c) The Department must presume that an applicant who meets the eligibility requirements specified in (a)(1) and (2) of this section can benefit in terms of an employment outcome.

(d) When determining the eligibility of Social Security recipients and beneficiaries the following conditions shall apply:

(1) Any applicant who has been determined by the Social Security Administration (SSA) to be eligible for Social Security benefits under Title II (Social Security Disability Insurance (SSDI)) or Title XVI (Supplemental Security Income (SSI)) of the Social Security Act (42 USC Section 401 and 1381) because the individual is blind or disabled is---

(A) Presumed eligible for vocational rehabilitation services under (a) and (c) of this section; and

(B) Considered an individual with a significant disability as defined in Section 7017.5 of these regulations.

(2) If an applicant for vocational rehabilitation services asserts that he or she is eligible for Social Security benefits under Title II or Title XVI of the Social Security Act (and therefore is presumed eligible for vocational rehabilitation services under (d)(1)(A) of this section), but is unable to provide appropriate evidence, such as an award letter to support that assertion, the Department must verify the applicant’s eligibility under Title II or Title XVI of the Social Security Act by contacting the Social Security Administration. The Department shall obtain verification within a reasonable period of time that enables the Department to determine the applicant’s eligibility for vocational rehabilitation services within 60 days of the individual submitting an application for services in accordance with Section 7041(b) of these regulations.

(e) Any eligible individual, including an individual whose eligibility for vocational rehabilitation services is based on the individual being eligible for Social Security benefits under Title II or Title XVI of the Social Security Act, must intend to achieve an employment outcome that is consistent with the applicant’s unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice.

(f) Nothing in this section, including the provisions of (d)(1), shall be construed to create an entitlement to any vocational rehabilitation service.

(g) Except as provided in (h) and (i) of this section, the Department--

(1) Must base its determination of each of the basic eligibility requirements in (a) of this section on---

(A) A review and assessment of existing data, including:

1. Rehabilitation Counselor observations including, but not limited to, observation of an obvious impairment, as in the case of loss of a limb.

2. Medical records.

3. Education records.

4. Information provided by the individual or the individual’s family, particularly information used by education officials.

5. Determinations made by officials of other agencies.

(B) To the extent existing data do not describe the current functioning of the individual or are unavailable, insufficient, or inappropriate to make an eligibility determination, an assessment of additional data resulting from the provision of vocational rehabilitation services, including trial work experiences, assistive technology devices and services, personal assistance services, and any other support services that are necessary to determine whether an individual is eligible.

(2) Must base its presumption under (d)(1) of this section that an applicant who has been determined eligible for Social Security benefits under Title II or Title XVI of the Social Security Act satisfies each of the basic eligibility requirements in (a) of this section on determinations made by the Social Security Administration.

(h) Prior to any determination that an individual with a disability is incapable of benefiting from vocational rehabilitation services in terms of an employment outcome in an integrated setting due to the severity of the individual’s disability, or that the individual is ineligible for vocational rehabilitation services, the Department must conduct trial work experience as defined in Section 7029.1 of these regulations to determine whether or not there is clear and convincing evidence as defined in Section 7004.6 to support such a determination.

 (i) The Rehabilitation Counselor shall document the basis on which the individual’s eligibility has been established in a notice of eligibility. This notice, signed and dated by the Rehabilitation Counselor, shall be provided to the individual and a copy placed in the individual’s record of services.

NOTE: Authority cited: Sections 19006 and 19016, Welfare and Institutions Code. Reference: 29 USC 722; 34 CFR Sections 361.5, 361.42, and 361.47; and Sections 19011 and 19100, Welfare and Institutions Code.

### § 7062.3. Assessment for Determining Priority Category in Order of Selection.

(a) Determining an eligible individual’s “priority category” as defined in Section 7051(a)(6) when the Department is operating under an Order of Selection pursuant to Section 7053 of these regulations shall be:

(1) a collaborative effort on the part of Departmental staff and the individual with a disability and, as appropriate, his or her family, or advocates, or designated representative; and

(2) based on information collected from a wide variety of sources; and

(3) based on a review of the individual's daily life, including community, home, school, and work, considering an individual's ability to participate in major life activities, as they impact an employment outcome; and

(4) a consideration of the impact of an individual's impairment/s in each of the functional capacity areas (communication, interpersonal skills, mobility, self-care, work skills and work tolerance).

(5) based on a review of the data that was developed under 7062(g) and 7062(h) to make the eligibility determination; and

(6) based on an assessment of additional data, including data developed under 7062(i), to the extent necessary; and

(7) based on an assessment in the most integrated setting possible and consistent with the individual’s needs and informed choice.

(b) The record of services shall include determination of whether any serious limitations in terms of an employment outcome exist in each of the functional capacity areas.

The following factors are to be considered in determining if a serious limitation in terms of an employment outcome exists in each functional capacity area. The factors listed below for each of the functional capacity areas are not considered to be all-inclusive or fully comprehensive.

(1) A serious limitation in terms of an employment outcome is indicated in the area of communication when, as a result of the physical and/or mental impairment:

(A) The individual requires accommodation to use, give and/or receive verbal/auditory information; or

(B) The individual requires accommodation to use, give and/or receive visual information.

(2) A serious limitation in terms of an employment outcome is indicated in the area of mobility when, as a result of the physical and/or mental impairment:

(A) The individual requires accommodation to move from place to place; or

(B) The individual is limited in terms of distance and/or terrain that can be traveled.

(3) A serious limitation in terms of an employment outcome is indicated in the area of interpersonal skills when, as a result of the physical and/or mental impairment, the individual requires accommodation to establish and/or maintain appropriate interactions with others.

(4) A serious limitation in terms of an employment outcome is indicated in the area of self-care when, as a result of the physical and/or mental impairment, the individual requires accommodation to plan and/or perform activities of daily living.

(5) A serious limitation in terms of an employment outcome is indicated in the area of work skills when, as a result of the physical and/or mental impairment:

(A) The individual requires accommodation to learn and/or perform work functions; or

(B) The individual requires accommodation to plan, problem solve and/or organize work functions.

(6) A serious limitation in terms of an employment outcome is indicated in the area of work tolerance when, as a result of the physical and/or mental impairment:

(A) The individual requires accommodation to sustain the required level of work function; or

(B) The individual is restricted from working in certain work environments which may include, but are not limited to, cold, heat and noise.

(c) The assessment also includes whether the number of “multiple vocational rehabilitation services” as defined in Section 7051(a)(5) are needed over an “extended period of time” as defined in Section 7051(a)(3):

(d) The Department shall provide the individual with a copy of the priority category along with the notice of eligibility and priority for services as referenced in Section 7062(j).

NOTE: Authority cited: Sections 19006 and 19016, Welfare and Institutions Code. Reference: 29 USC Sections 705(21) and 721(a)(5); 34 CFR Sections 361.5(b)(30) and (31) and 361.36; and Sections 19011 and 19102, Welfare and Institutions Code.

### §7098. Ineligibility Determination.

If the Department determines that an applicant is ineligible for vocational rehabilitation services from the Department or determines that an eligible individual is no longer eligible for services, the Department must---

(a) Make the ineligibility determination only after providing an opportunity for full consultation with the individual or, as appropriate, the individual’s representative.

(b) Notify the individual in writing, supplemented as necessary by other appropriate modes of communication consistent with the informed choice of the individual, of the ineligibility determination including—

(1) The reasons for the ineligibility determination;

(2) The requirements of this section; and

(3) A description of the means by which the individual may obtain review of the ineligibility determination, including the individual’s right to an administrative review, mediation, and fair hearing pursuant to Chapter 12 of these regulations.

(c) Provide the individual with a description of services available from the Client Assistance Program and information on how to contact that program.

(d) Refer the individual to other programs that are part of the one-stop service delivery system under the Workforce Innovation and Opportunity Act, known as America’s Job Centers of California, that can address the individual’s training or employment-related needs; or

(1) To federal, state, or local programs or service providers, including, as appropriate, independent living programs and extended employment providers, best suited to meet their rehabilitation needs, if the ineligibility determination is based on a finding that the individual has chosen not to pursue, or is incapable of achieving, an employment outcome as defined in section 7011 of these regulations.

(e) Place a copy of the written notice of ineligibility described in (b) of this section in the individual’s record of services and close the record of services in accordance with the provisions of Chapter 4 of these regulations.

Note: Authority cited: Sections 19006 and 19016, Welfare and Institutions Code. Reference: 29 USC 722; 34 CFR Sections 361.43 and 361.47; and Section 19011, Welfare and Institutions Code.

### § 7120. Purpose. [Repealed]

### § 7121. Definition. [Renumbered]

### § 7122. Content of the Record of Services.

The Department must maintain for each applicant and eligible individual a record of services that includes, to the extent pertinent, the following documentation:

(a) If an applicant has been determined to be an eligible individual, a notice of eligibility and documentation supporting that determination in accordance with the requirements under Section 7062 of these regulations.

(b) If an applicant or eligible individual receiving services under an Individualized Plan for Employment (IPE) has been determined to be ineligible, a notice of ineligibility and documentation supporting that determination in accordance with the requirements under Section 7098 of these regulations.

(c) Documentation that describes the justification for closing an applicant’s or eligible individual’s record of services if that closure is based on reasons other than ineligibility.

(d) Documentation supporting the priority for services category when the Department is under an Order of Selection pursuant to Chapter 2, Article 2 of these regulations.

(e) If an individual with a significant disability requires an exploration of abilities, capabilities, and capacity to perform in realistic work situations through the use of trial work experiences or, as appropriate, an extended evaluation to determine whether the individual is an eligible individual:

(1) Documentation supporting the need for, and the plan relating to, trial work experience or, as appropriate, extended evaluation; and

(2) Documentation regarding the periodic assessments carried out during the trial work experiences or, as appropriate, results of the extended evaluation, in accordance with Sections 7014(d), 7029.1(b)(3), and 7062(h) and (i) of these regulations.

(f) The IPE and any amendments to the IPE, consistent with the requirements of Section 7131.

(g) Documentation describing the extent to which the applicant or eligible individual exercised informed choice in the development of the IPE, consistent with Section 7029.6(b) of these regulations.

(h) In the event that an individual’s IPE provides for vocational rehabilitation services in a non-integrated setting, a justification to support the need for the non-integrated setting.

(i) In the event that an individual obtains competitive employment, verification that the individual is compensated at or above the minimum wage and that the individual’s wage and level of benefits are not less than that customarily paid by the employer for the same or similar work performed by non-disabled individuals in accordance with Section 7006.3(b) of these regulations.

(j) In the event an individual achieves an employment outcome in which the individual is compensated in accordance with section 14(c) of the Fair Labor Standards Act (FLSA) (29 USC 214(c)), or the Department closes the record of services of an individual in extended employment on the basis that the individual is unable to achieve an employment outcome consistent with Section 7011 of these regulations, or that an eligible individual through informed choice chooses to remain in extended employment, documentation of the results of mandatory reviews after the record of services has been closed required by Section 7181.1(b) of these regulations, the individual’s input into those reviews, and the individual’s or, if appropriate, the individual’s representative’s signed acknowledgement that those reviews were conducted.

(k) Documentation concerning any action or decision resulting from a request by an individual for a review of determinations made by Department personnel in accordance with Chapter 12 of these regulations.

(l) In the event that an applicant or eligible individual requests that documentation in the record of services be amended and the documentation is not amended, documentation of the request.

(m) In the event an individual is referred to another program through the Department’s information and referral system under Section 7037 of these regulations, including other components of the statewide workforce investment system, documentation on the nature and scope of services provided by the Department to the individual and on the referral itself, consistent with the requirements of Section 7037 of these regulations.

(n) In the event an individual’s record of services is closed with a determination that an employment outcome has been achieved, documentation that demonstrates:

(1) Services provided under the individual’s IPE contributed to the achievement of the employment outcome; and

(2) All of the requirements for closure of the record of services with an employment outcome have been satisfied.

(o) Additional documentation, as appropriate, including, but not limited to:

(1) Documentation and results of mandatory reviews after the record of services has been closed required by Section 7181.1(a) of these regulations and necessary when the Department determines that an applicant or an individual receiving services under an IPE is ineligible for vocational rehabilitation services based on a finding that the individual is incapable of achieving an employment outcome.

(2) Documentation and results of annual reviews of the Individualized Plan for Employment (IPE) conducted pursuant to Section 7133 of these regulations.

(3) Any personal information that the Department collects and maintains about an individual for purposes of the administration of the vocational rehabilitation program.

(4) Documentation of the appointment of an authorized representative, duly appointed guardian, or conservator provided by an individual or the court.

(5) Details of disclosure(s) of personal information about an individual made to that individual pursuant to Section 7141 or made to other persons or entities pursuant to Sections 7142 and 7143 of these regulations.

(6) For an individual who is reapplying for vocational rehabilitation services, copies of pertinent records from his or her previous record of services.

(7) The DR 222, Vocational Rehabilitation Services Application (Rev. 03/04), incorporated by reference herein.

(8) Documentation of referrals made to the Department by other agencies and by the Department to other agencies, including agencies that are partners in the One-Stop service delivery system, consistent with Sections 7035, 7037, and 7038 of these regulations.

(9) Documentation that the Department has made a reasonable number of attempts to contact an applicant who declines to participate in, or is unavailable to complete, the assessment for determining eligibility and priority for services, required before closing a record of services without an eligibility determination pursuant to Section 7179 of these regulations.

NOTE: Authority cited: Sections 19006 and 19016, Welfare and Institutions Code. Reference: 29 USC Sections 721(a)(19) and (20) and 722(a), (b) and (d); 34 CFR Sections 361.5(b)(11) and (16), 361.37, 361.38, 361.41, 361.42, 361.43, 361.44, 361.45, 361.46, 361.47, 361.48, 361.52, 361.53, 361.55, and 361.57; Section 1798 et seq., Civil Code; and Section 19011, Welfare and Institutions Code.

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## Article 5. The Individualized Plan for Employment (IPE)

### § 7128. General Requirements.

(a) An Individualized Plan for Employment (IPE) shall be developed and implemented consistent with the requirements of this Article. Services shall be provided in accordance with the provisions of the IPE.

(b) Once an individual has been determined eligible to receive services from the Department and is in a priority category being served under an Order of Selection implemented pursuant to Section 7053 of these regulations, the IPE must be developed in collaboration with the eligible individual as soon as possible, but no later than 90 days from the date of the eligibility determination. The following exceptions apply:

(1) If exceptional and unforeseen circumstances beyond the control of the Department arise, and the individual and the Department agree to a specific extension of time for IPE development, a rationale and date for the extension, signed by the individual and the qualified vocational rehabilitation counselor must be entered into the record of services for that individual.

(2) Only one extension may be agreed to by the rehabilitation counselor and, in such case, the IPE must be developed by the agreed upon date, unless an additional extension is approved by the appropriate District Administrator.

(c) The Department must conduct an assessment for determining vocational rehabilitation needs, if appropriate, prior to development of the IPE, for each eligible individual who is in a priority category being served under Order of Selection. This assessment is conducted consistent with Section 7001.5 of these regulations to determine the employment outcome and the nature and scope of vocational rehabilitation services to be included in the IPE**.**

(d) The IPE must be designed to achieve a specific employment outcome in competitive integrated employment, as defined in Sections 7006.3 and 7011 of these regulations, that is selected by the individual and is consistent with the individual’s unique strengths, resources, priorities, concerns, abilities, capabilities, career interests, and informed choice.

Note: Authority cited: Sections 19006 and 19016, Welfare and Institutions Code. Reference: 29 USC Sections 705, 721, 722, and 723; 34 CFR Sections 361.5, 361.45, 361.46 and 361.48; and Sections 19011, 19102, and 19150, Welfare and Institutions Code.

### § 7129. Options for Developing an Individualized Plan for Employment (IPE).

The Department must provide the following information to each eligible individual or, as appropriate, the individual’s representative, in writing and, if appropriate, in the native language or mode of communication of the individual or the individual’s representative:

(a) Information on the available options for developing the Individualized Plan for Employment (IPE), including the option that an eligible individual or, as appropriate, the individual’s representative may develop all or part of the IPE---

(1) Without assistance from the Department or other entity; or

(2) With assistance from---

(A) A Rehabilitation Counselor employed by the Department;

(B) A qualified vocational rehabilitation counselor who is not employed by the Department;

(C) A disability advocacy organization; or

(D) Resources other than those specified in (A), ~~or~~ (B) or (C) of this section who are qualified in the field in which they are providing assistance.

(b) The Department shall also provide additional information to assist the eligible individual or, as appropriate, the individual’s representative in developing the IPE, including---

(1) Information describing the full range of components that must be included in an IPE.

(2) As appropriate to each eligible individual ---

(A) An explanation of Department guidelines and criteria for determining an eligible individual’s financial commitments under an IPE;

(B) Information on the availability of assistance in completing Department forms required as part of the IPE; and

(C) Additional information that the eligible individual requests or the Department determines to be necessary to the development of the IPE.

(3) A description of the rights and remedies available to the individual, including, if appropriate, recourse to administrative review, mediation, and fair hearing processes as described in Chapter 12 of these regulations.

(4) A description of the availability of the Client Assistance Program and information on how to contact that program.

(c) For individuals entitled to benefits under Title II or XVI of the Social Security Act on the basis of a disability or blindness, the Department shall provide general information on additional supports and assistance for individuals with disabilities desiring to enter the workforce, including assistance with benefits planning.

Note: Authority cited: Sections 19006 and 19016, Welfare and Institutions Code. Reference: 29 USC 722; 34 CFR 361.45; and Section 19011, Welfare and Institutions Code.

### § 7130. Mandatory Procedures for Development of the Individualized Plan for Employment (IPE); Review; Amendment.

(a) The following mandatory procedures shall be used to develop an Individualized Plan for Employment (IPE).

(1) The IPE shall be a written document prepared on the form DR 215 (Rev. 03/04) provided by the Department.

(2) The IPE shall be developed and implemented in a manner that gives eligible individuals the opportunity to exercise informed choice consistent with 7029.6 of these regulations, in selecting---

(A) The employment outcome, including the employment setting;

(B) The specific vocational rehabilitation services needed to achieve the employment outcome, including the settings in which services will be provided;

(C) The entity or entities that will provide the vocational rehabilitation services; and

(D) The methods available for procuring the services, consistent with applicable State procurement laws and regulations and federal policy directives issued by the U.S. Department of Education, Office of Special Education and Rehabilitative Services (OSERS), Rehabilitation Services Administration.

(3) The IPE must be---

(A) Agreed to and signed by the eligible individual or, as appropriate, the individual’s representative; and

(B) Approved, signed, and dated by a Rehabilitation Counselor employed by the Department after determining that the employment outcome, the specific vocational rehabilitation services needed to achieve the employment outcome, the employment setting and settings in which services will be provided, the entities that will provide the services, and the methods available for procuring the services are appropriate and necessary in consideration of:

 (i.) The individual’s unique strengths, resources, priorities, concerns, abilities, capabilities interests, and informed choice; and

(ii.) The scope of applicable laws and regulations specified in Section 7029.6(c) of these regulations.

(4) A copy of the IPE and a copy of any amendments to the IPE shall be provided to the eligible individual or, as appropriate, to the individual’s representative, in writing and, if appropriate, in the native language or mode of communication of the individual or, as appropriate, the individual’s representative.

(5) The IPE shall be reviewed at least annually in accordance with Section 7133 of these regulations by a qualified vocational rehabilitation counselor and the individual or, as appropriate, the individual’s representative to assess the eligible individual’s progress in achieving the identified employment outcome.

(6) The IPE may be amended, as necessary, by the individual or, as appropriate, the individual’s representative, in collaboration with a representative of the Department or a qualified vocational rehabilitation counselor (to the extent determined to be appropriate by the individual), if there are substantive changes in the employment outcome, the vocational rehabilitation services to be provided, or the providers of the vocational rehabilitation services.

(7) Amendments to the IPE do not take effect until agreed to and signed by the eligible individual or, as appropriate, the individual’s representative and by a Rehabilitation Counselor employed by the Department. Before approving and signing any amendment to the IPE, the Rehabilitation Counselor shall review the amendment consistent with applicable requirements established in (a)(3)(B)1. of this section.

(8) The IPE shall be amended, as necessary, to include the post-employment services and service providers that are necessary for the individual to maintain, advance in or regain employment, consistent with the individual’s unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice.

Note: Authority cited: Sections 19006 and 19016, Welfare and Institutions Code. Reference: 29 USC Sections 705, 720, 721and 722; 34 CFR Sections 361.45, 361.50; and Sections 19005, 19011, 19012, and 19013.5, Welfare and Institutions Code.

### § 7130.5. Data for Preparing the Individualized Plan for Employment

**(IPE).**

(a) To the extent possible, the employment outcome and the nature and scope of rehabilitation services to be included in the individual’s Individualized Plan for Employment (IPE) must be determined based on the data used to assess eligibility and priority for services under Section 7062 of these regulations.

(b) If additional data are necessary to determine the employment outcome and the nature and scope of services to be included in the IPE of an eligible individual, the Department must conduct a comprehensive assessment, as defined in Section 7001.5(c) of these regulations, of the unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice, including the need for supported employment services, of the eligible individual, in the most integrated setting possible, consistent with the informed choice of the individual.

(c) In preparing the comprehensive assessment, the Department must use, to the maximum extent possible and appropriate and in accordance with confidentiality requirements, existing information that is current as of the date of the development of the IPE, including---

(1) Information available from other programs and providers, particularly information used by education officials and the Social Security Administration;

(2) Information provided by the individual and the individual’s family; and

(3) Information obtained under the assessment for determining the individual’s eligibility and vocational rehabilitation needs.

NOTE: Authority cited: Sections 19006 and 19016, Welfare and Institutions Code. Reference: 29 USC Sections 705(2), 722(b), and 723(a)(1); 34 CFR Sections 361.5(b)(6), 361.42, 361.45, and 361.48(a) and (b); and Sections 19011 and 19150(a)(1), Welfare and Institutions Code.

### § 7131. Content of the Individualized Plan for Employment (IPE).

(a) Regardless of the approach selected by an eligible individual to develop an Individualized Plan for Employment (IPE) under Section 7129(a) of these regulations, each IPE must include the following mandatory components:

(1) A description of the specific employment outcome, as defined in Section 7011 of these regulations, that is chosen by the eligible individual and is consistent with the individual’s unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice.

(2) A description of the specific vocational rehabilitation services under Section 7149 of these regulations including, as appropriate, the anticipated duration of such services that are---

(A) Needed to achieve the employment outcome, including, as appropriate, the provision of assistive technology devices, assistive technology services, and personal assistance services, including training in the management of those services; and

(B) Provided in the most integrated setting that is appropriate for the services involved and is consistent with the informed choice of the individual.

(3) Timelines for the achievement of the employment outcome and for the initiation of services.

(4) A description of the entity or entities chosen by the individual or, as appropriate, the individual’s representative, that will provide the vocational rehabilitation services and the methods used to procure those services.

(5) A description of the criteria that will be used to evaluate progress toward achievement of the employment outcome.

(6) The terms and conditions of the IPE, including, as appropriate, information describing---

(A) The responsibilities of the Department.

(B) The responsibilities of the eligible individual, including---

1. The responsibilities the individual will assume in relation to achieving the employment outcome;

2. If applicable, the extent of the individual’s participation in paying for the cost of services in accordance with Chapter 5, Article 1 of these regulations; and

3. The responsibility of the individual with regard to applying for and securing comparable services and benefits as described in Chapter 5, Article 3 of these regulations.

(C) The responsibilities of other entities as the result of arrangements made pursuant to the comparable services or benefits requirements in Chapter 5, Article 3 of these regulations.

(b) In regard to post-employment services, the IPE for each individual must contain, as determined to be necessary, statements concerning---

(1) The expected need for post-employment services prior to closing the record of services of an individual who has achieved an employment outcome;

(2) A description of the terms and conditions for the provision of any post-employment services; and

(3) If appropriate, a statement of how post-employment services will be provided or arranged through other entities as the result of arrangements made pursuant to the comparable services or benefits requirements in Chapter 5, Article 3 of these regulations.

NOTE: Authority cited: Sections 19006 and 19016, Welfare and Institutions Code. Reference: 34 Sections CFR 361.46 and 361.50; and Section 19011, Welfare and Institutions Code.

### § 7131.1. Individualized Plan for Employment (IPE) for Supported Employment.

(a) An Individualized Plan for Employment (IPE) for an individual with a most significant disability for whom an employment outcome of supported employment, as defined in Section 7028 of these regulations, has been determined to be appropriate shall be developed and implemented in accordance with Sections 7128-7131 of these regulations and also must:

(1) Specify the supported employment services to be provided by the Department, consistent with Section 7028.1 of these regulations;

(2) Specify the expected extended services needed, consistent with Section 7014.1 of these regulations, which may include natural supports;

(3) Identify the source of extended services or, to the extent that it is not possible to identify the source of extended services at the time the IPE is developed, include a description of the basis for concluding that there is a reasonable expectation that those sources will become available;

(4) Provide for periodic monitoring to ensure that the individual is making satisfactory progress toward meeting the weekly work requirement established in the IPE by the time of transition to extended services;

(5) Provide for the coordination of services provided under an IPE with services provided under other individualized plans established under other Federal or State programs;

(6) To the extent that job skills training is provided, identify that the training will be provided on site; and

(7) Include placement in an integrated setting for the maximum number of hours possible based on the unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice of individuals with the most significant disabilities.

NOTE: Authority cited: Sections 19006 and 19016, Welfare and Institutions Code. Reference: 29 USC Sections 705(11) and 723(a)(16); 34 CFR Sections 361.5(b)(16), (20), (38), (53), and (54), 361.45, 361.46, and 361.48(m); and Section 19011, Welfare and Institutions Code.

### § 7131.2. Individualized Plan for Employment (IPE) for a Student with a Disability.

(a) An Individualized Plan for Employment (IPE) for a student with a disability defined in section 7026.5 who is receiving special education services or 504 accommodations under the Americans with Disability Act, and who has been determined eligible for vocational rehabilitation services and is in a priority category being served under an Order of Selection implemented pursuant to Section 7053 of these regulations, shall be completed and approved as early as possible during the transition planning process but, at the latest, by the time the student leaves the school setting.

(b) The IPE shall be developed and implemented in accordance with Sections 7128 through7131 of these regulations and also must---

(1) Consider the student’s Individualized Education Program (IEP) or 504 Plan and be coordinated with the goals, objectives, and services identified in the IEP,and 504 services if any;

(2) Be consistent with the plans, policies, procedures, and terms of the interagency agreement between the California Departments of Education and Rehabilitation.

NOTE: Authority cited: Sections 19006 and 19016, Welfare and Institutions Code. Reference: 29 USC Sections 722, 723and 794; 34 CFR Sections 361.5, 361.22, 361.45, 361.46, and 361.48; and Sections 19011 19013, and 19150, Welfare and Institutions Code.

### § 7133. Annual Review of the Individualized Plan for Employment (IPE).

(a) The Individualized Plan for Employment (IPE) shall be reviewed at least annually by the eligible individual or, as appropriate, the individual’s representative, and---

(1) A Rehabilitation Counselor employed by the Department; or

(2) A qualified vocational rehabilitation counselor who is not employed by the Department.

(b) Any annual review prepared by an individual specified in (a)(2) of this section must be reviewed by, and is subject to the approval of, a Rehabilitation Counselor employed by the Department. Only those annual reviews in full compliance with the requirements of this section shall be approved.

(c) The annual review shall include all of the following mandatory components:

(1) A summary of the services provided by the Department and the results or outcome of the provision of these services.

(2) An evaluation of progress made by the eligible individual toward achievement of the employment outcome identified in the IPE.

(3) A summary of any changes in the eligible individual’s circumstances that may affect the individual’s participation in vocational rehabilitation services or progress toward achievement of the employment outcome identified in the IPE.

(4) Statements that the eligible individual or, as appropriate, the individual’s representative was informed about options for preparing the annual review specified in (a) of this section and was given the opportunity to participate in the annual review.

(d) The annual review shall consider data originally used to develop the eligible individual’s IPE and information accumulated after development of the IPE, including the performance of the individual.

(e) Based on results of the annual review, if there are substantive changes in the employment outcome, services to be provided, or service providers, the IPE shall be amended in accordance with Section 7130 of these regulations.

(f) Copies of the annual review shall be placed in the individual’s record of services and provided to the eligible individual or, as appropriate, his or her representative.

NOTE: Authority cited: Sections 19006 and 19016, Welfare and Institutions Code. Reference: 29 USC 722(b)(2)(E); 34 CFR Sections 361.45 and 361.47; and Section 19011, Welfare and Institutions Code.

### § 7136. Homemaker Plans. [Repealed 2023.]

### § 7136.4. Self-employment; Informed Choice.

To assure informed choice, prior to development of an Individualized Plan for Employment (IPE) for an eligible individual who is interested in entering, advancing in, or retaining work in a self-employment setting, the Rehabilitation Counselor (RC) shall discuss with the individual:

(a) The criteria and process for assessing whether the proposed self-employment setting is appropriate, as specified in Sections 7136.6, 7136.7, and 7136.8 of these regulations;

(b) The scope of vocational rehabilitation services that may be provided by the Department to assist an eligible individual to achieve employment in a self-employment setting, as specified in Section 7137 of these regulations; and

(c) The eligible individual’s responsibility to identify and obtain resources that may be necessary to establish and operate the proposed small business, as specified in Sections 7136.6 and 7136.9 of these regulations.

NOTE: Authority cited: Sections 19006 and 19016, Welfare and Institutions Code. Reference: 29 USC Sections 705, 720, 721, 722, and 723; 34 CFR Sections 361.5, 361.45, 361.48, 361.50, and 361.52; and Section 19011, Welfare and Institutions Code.

### § 7136.5. Self-employment; Development and Contents of the Individualized Plan for Employment (IPE).

(a) An Individualized Plan for Employment (IPE) for an eligible individual who is interested in working in a self-employment setting shall be developed and implemented as soon as an appropriate employment outcome and the services necessary to assist the individual to achieve it are identified, in accordance with the requirements specified in Sections 7128-7131 of these regulations and with the requirements in this section.

(b) The employment outcome in an IPE for an eligible individual interested in working in a self-employment setting shall include:

(1) The occupation in which the individual seeks to be employed (e.g., cosmetologist, accountant, etc.); and

(2) A description of the proposed self-employment setting.

(c) As part of the IPE development, the eligible individual shall prepare, with the assistance of the Rehabilitation Counselor (RC), a summary of the proposed small business, as specified in Section 7136.8(a) of these regulations. This summary shall be used, together with other available information, to assess whether the proposed self-employment setting is appropriate, as specified in Section 7136.6 of these regulations, and to identify the nature and scope of vocational rehabilitation services to be provided to assist the individual to be employed in the self-employment setting. If more detailed information is required for these purposes, the individual may be required to prepare a Small Business Plan, as specified in Section 7136.8 of these regulations.

(d) The IPE shall identify the vocational rehabilitation services, consistent with Section 7149 of these regulations, to be provided to assist the eligible individual to achieve employment in the chosen occupation that is identified in the employment outcome.

(e) The IPE shall also include the following information regarding the proposed self-employment setting:

(1) If at the time the IPE is developed it can be determined, based on existing information and the summary of the proposed small business or Small Business Plan, as specified in 7136.8 of these regulations, that the self-employment setting is appropriate, as specified in Section 7136.6 of these regulations, the IPE shall identify the vocational rehabilitation services to be provided to assist the individual to achieve employment in the proposed self-employment setting, consistent with Section 7137 of these regulations.

(2) If at the time the IPE is developed additional information is required to assess whether the proposed self-employment setting is appropriate, as specified in Section 7136.6 of these regulations, the IPE shall identify the additional assessment activities and services that will be provided to obtain such additional information.

(3) If it is determined after the IPE is developed, based on additional information and/or assessment(s), that the self-employment setting is appropriate, as specified in Section 7136.6 of these regulations, the IPE shall be amended to identify the vocational rehabilitation services to be provided to assist the individual to achieve employment in the proposed self-employment setting, consistent with Section 7137 of these regulations.

(f) When it has been determined, during or after development of the IPE, that the proposed self-employment setting is appropriate, as specified in Section 7136.6 of these regulations, the IPE shall identify, or shall be amended to identify, the following information regarding the self-employment setting:

(1) Any one-time, initial costs of establishing the proposed small business in which the individual will be self-employed to be provided by the Department, consistent with Section 7137 of these regulations;

(2) The responsibilities of the individual to actively participate in applying for and obtaining any additional resources that are necessary to establish and operate the business, consistent with Section 7136.9 of these regulations, and to obtain such resources prior to the Department’s provision or expenditure of vocational rehabilitation funds or services to assist the individual to achieve employment in the self-employment setting;

(3) The estimated date upon which the individual is to begin working in the self-employment setting and operating the small business;

(4) The methods to be used in monitoring the business to determine whether the individual is able to maintain employment in the self-employment setting, and the criteria that will be used to evaluate the individual’s progress, including but not limited to regular meetings with the RC, preparation of monthly income and expense reports by the individual, review of such reports by the RC or a Small Business Consultant, and comparison of such reports with the projected income and expenses contained in the summary of the proposed small business or the Small Business Plan, as specified in Section 7136.8 of these regulations; and

(5) The expected need for post-employment services, consistent with Section 7021.5 of these regulations, if any, subject to comparable services and benefits and financial participation of the eligible individual, including any income produced by the small business.

(g) If it is determined during or after development of an eligible individual’s IPE with a proposed self-employment setting, based upon additional information and/or assessment(s), that the self-employment setting is not appropriate, as specified in Section 7136.6 of these regulations, the RC and the individual shall discuss alternative employment settings, and the IPE shall be developed, or amended, consistent with informed choice, to include an alternative employment setting and to identify any vocational rehabilitation services to be provided to assist the individual to achieve employment in the individual’s chosen occupation in the alternative setting.

NOTE: Authority cited: Sections 19006 and 19016, Welfare and Institutions Code. Reference: 29 USC Sections 705(2)(B) and (11), 720(a)(3)(C), 721(a)(9) and (19), 722(b) and (d), and 723(a)(1); 34 CFR Sections 361.5(b)(6)(ii), (10), (15), (16) and (42), 361.45, 361.46, 361.48, 361.50, 361.52, 361.53, and 361.54; and Sections 19011, and 19150(a)(1), Welfare and Institutions Code.

### § 7136.6. Self-employment; Assessing the Self-employment Setting.

(a) The Department shall support an eligible individual’s choice to work in a self-employment setting only when it determines that the proposed self-employment setting is appropriate.

(b) A proposed self-employment setting is appropriate when:

(1) Working in the proposed self-employment setting is consistent with the individual’s personal attributes, including the individual’s strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice;

(2) The proposed small business in which the individual will be self-employed is reasonably likely to produce sufficient income, within a reasonable period after the individual begins operating the business, not to exceed 12 months, to:

(A) Pay the necessary ongoing operating expenses of the small business, as specified in Section 7136.8 of these regulations; and

(B) Yields an income that is comparable to the income received by other individuals who are not individuals with disabilities and who are self-employed in similar occupations or on similar tasks and who have similar training, experience, and skills; and

(3) The individual is able to obtain all resources necessary to establish and operate the proposed small business, including any resources necessary to fund the ongoing operating expenses of the business and to support the individual’s basic living expenses during the period until the small business produces the income specified in subsection (b)(2) of this section.

(c) To determine whether a proposed self-employment setting is appropriate, the Department shall consider any existing information; the summary of the proposed small business specified in Section 7136.5(c) of these regulations; and, to the extent additional information is necessary, information obtained through assessments (including, if appropriate, development and review of a Small Business Plan) consistent with Sections 7001.5, 7128, 7130.5, 7136.7, 7136.8, 7136.9, and 7149(b) of these regulations.

NOTE: Authority cited: Sections 19006 and 19016, Welfare and Institutions Code. Reference: 29 USC Sections 705, 720, 722, and 723; 34 CFR Sections 361.1, 361.5, 361.13, 361.45, 361.46, 361.48, and 361.50; and Sections 19011 and 19150, Welfare and Institutions Code.

### § 7136.7. Self-employment; Assessment of Personal Attributes.

(a) To assess whether working in the proposed self-employment setting is consistent with the eligible individual’s personal attributes, including the individual’s strengths, resources, priorities, concerns, abilities, capabilities, interests and informed choice as specified in Section 7136.6(b)(1) of these regulations, the Department and the individual shall, as appropriate:

(1) Conduct an exploration of the individual’s personal skills and abilities that are necessary for success in a self-employment setting, including decision-making and planning skills, initiative and entrepreneurial abilities, organizational skills, interpersonal skills, ability to communicate, ability to follow through, and ability to work independently;

(2) Review the individual’s technical knowledge, experience and education that are necessary for success in a self-employment setting, including training or experience in areas necessary for the operation of the small business, such as marketing, office management, time management, inventory control, and bookkeeping; and

(3) Review the individual’s financial history and credit record to assure the individual has appropriate money management skills, is able to obtain credit necessary for the proposed small business, and is able to protect assets of the business from claims of existing creditors.

(b) The assessment of the individual’s skills, aptitudes and interests in relation to the proposed self-employment setting shall include the use of at least one of the following: self-assessment tests, web resources such as those available through the Small Business Administration, and participation in self-employment workshops or seminars.

(c) The individual’s participation in and completion of his or her responsibilities in the vocational rehabilitation process shall also be considered in assessing whether working in a self-employment setting is consistent with the individual’s personal attributes.

(d) To the extent that the assessment identifies that the eligible individual needs additional training or experience to be employed in the proposed self-employment setting, the Rehabilitation Counselor (RC) and the individual shall consider whether vocational rehabilitation services can assist the individual to obtain the necessary training or experience. If such services are available, the Individualized Plan for Employment (IPE) shall identify, or shall be amended to identify, such services.

(e) If it is determined after assessment that working in the proposed self-employment setting is not consistent with the individual’s personal attributes, including the individual’s strengths, resources, priorities, concerns, abilities, capabilities, interests and informed choice, the RC and the individual shall discuss alternative employment settings, and the IPE shall be developed, or amended, consistent with Section 7136.5(g) of these regulations.

NOTE: Authority cited: Sections 19006 and 19016, Welfare and Institutions Code. Reference: 29 USC Sections 705(2)(B) and (11), 720(a)(2) and (3), 721(a)(19), 722(b) and (d), and 723(a); 34 CFR Sections 361.5(b)(6)(ii), (15) and (16), 361.45, 361.46, 361.48, 361.50, and 361.52; and Section 19011, Welfare and Institutions Code.

### § 7136.8. Self-employment; Assessment of the Proposed Small Business.

(a) The summary of the proposed small business, prepared by the eligible individual as part of the Individualized Plan for Employment (IPE) development, as specified in Section 7136.5(c) of these regulations, shall include:

(1) The proposed products or services of the small business;

(2) The projected monthly income and expenses of the small business for the first 12 months of operation;

(3) The number of hours the individual will work in the small business on a monthly basis;

(4) The initial costs necessary to establish the proposed small business;

(5) The individual’s resources;

(6) The market analysis and marketing strategy for the small business; and

(7) The staffing requirements of the small business.

(b) The eligible individual shall be required to prepare a Small Business Plan when:

(1) More detailed information regarding the proposed small business, beyond the information in the summary, is necessary to assess whether the proposed small business to be operated by the individual is reasonably likely to produce sufficient income, as specified in Section 7136.6(b)(2) of these regulations; or

(2) Preparation of such a plan will provide additional information that is necessary to identify the nature and scope of vocational rehabilitation services to be provided to assist the individual to be employed in the proposed self-employment setting.

(c) An eligible individual may elect to prepare a Small Business Plan, when not required to do so by the Department pursuant to subsection (b) of this section, when such a plan would assist the individual in obtaining resources necessary to establish or operate the business or in managing the business.

(d) The Department shall provide consultation and technical assistance necessary to assist the eligible individual in preparing or revising a Small Business Plan, through its staff or by referral to other sources such as the U.S. Small Business Administration, a small business development center at a local community college, Service Corps of Retired Executives (SCORE) or a Small Business Consultant.

(e) A Small Business Plan shall include:

(1) A description of the proposed small business and the products or services to be provided;

(2) The form of business organization;

(3) A detailed market analysis, including identification of potential customers, the geographic area in which the business will provide products or services, and potential competition within the area;

(4) A plan that describes how the products or services will be distributed and advertised;

(5) A projected timetable for starting business operations and an estimate of anticipated work hours before operations begin;

(6) A financial plan that includes a projection of estimated sales, monthly income and operating expenses for the first year of operation, an itemization of the costs necessary to establish the business, and an estimate of when the business will produce income that exceeds operating expenses;

(7) A description of required licenses, permits, or zoning variances and insurance;

(8) A description of the vocational rehabilitation services the individual is requesting from the Department, consistent with these regulations; the resources that will be obtained from other sources to establish and operate the small business; how the ongoing operating expenses of the small business will be funded, whether through the projected business income, loans, or other sources; and how the individual will provide for basic living expenses until the small business produces sufficient income, as specified in Section 7136.6(b)(2) of these regulations; and

(9) A description of the tasks to be performed by the individual in operating the business and anticipated hours that the individual will be required to work to obtain projected income.

(f) The Small Business Plan and any other available information shall be reviewed by the Rehabilitation Counselor (RC), with the assistance of other Department staff with expertise in self-employment, and/or a Small Business Consultant, as appropriate, to assess whether the proposed small business is reasonably likely to provide sufficient income to meet the ongoing operating costs of the business and generate income for the individual as specified in Section 7136.6(b)(2) of these regulations, including review of the following criteria:

(1) Whether the small business is reasonably likely to produce the projected income, including whether the products or services can be produced, marketed and/or distributed, whether a market exists for the product or services, whether the small business will be able to produce the product or services in the projected quantities, and whether the projected income of the proposed small business is consistent with industry standards (i.e., prevailing income of comparable small businesses within the same industry);

(2) Whether the projected ongoing operating expenses are necessary for the operation of the business, whether they are usual and customary for similar businesses, and whether they are sufficient in amount to generate the projected products or services;

(3) Whether the proposed income of the small business is sufficient to pay for the projected ongoing operational expenses;

(4) Whether the small business is subject to potential liability, risks or insurance requirements that will negatively affect the projected income;

(5) Whether the projected initial costs are necessary and are usual and customary for similar small businesses;

(6) Whether all resources necessary to establish and operate the small business have been identified, including funding sources for the ongoing operating expenses of the small business and the individual’s basic living expenses; and

(7) Any other factors that would affect the projected income or expenses associated with the small business, or the individual’s ability to establish and operate the business.

(g) For the purpose of a self-employment setting, ongoing operating expenses of a small business include but are not limited to: rent; utilities; insurance; professional services; payroll and payroll taxes; inventory; stock or supplies (above and beyond initial stock and supplies provided for a period of six months as initial costs); advertising; depreciation; repair and maintenance of property; replacement of tools and equipment; dues and subscriptions; assistive services, such as attendants, readers, and interpreters that will be used in operating the business; and transportation that will be used in operating the business.

(h) If it is determined, after assessment of the proposed small business, that the self-employment setting is not appropriate because it will not generate sufficient income, as specified in Section 7136.6(b)(2) of these regulations, the RC and the individual shall discuss alternative employment settings, and the IPE shall be developed, or amended, consistent with Section 7136.5(g) of these regulations.

NOTE: Authority cited: Sections 19006 and 19016, Welfare and Institutions Code. Reference: 29 USC Sections 705(2)(B) and (11), 720(a)(2) and (3), 721(a)(19), 722(b) and (d), and 723(a); 34 CFR Sections 361.1, 361.5(b)(6)(ii), (11), (15) and (16), 361.13(c), 361.45, 361.46, 361.48, 361.50, and 361.52; and Section 19011, Welfare and Institutions Code.

### § 7136.9. Self-employment; Assessment of Necessary and Available Resources.

(a) To assess whether the eligible individual is able to obtain all resources necessary to establish and operate the proposed small business, as specified in Section 7136.6(b)(3) of these regulations, the Department and the eligible individual shall, as appropriate:

(1) Identify resources necessary to establish and operate the proposed small business, using a summary of the proposed small business or a Small Business Plan, as specified in Section 7136.8 of these regulations;

(2) Identify sources from which necessary resources can be obtained, including from the individual or family members; use of comparable services and benefits; funding from grants, loans, loan guarantee programs, and economic development funds; or a Social Security Administration (SSA) Plan for Achieving Self Support (PASS);

(3) Identify technical assistance to be provided to the individual to assist in applying for or obtaining funding from other sources; and

(4) Identify when the resources will be obtained by the individual.

(b) In identifying and assessing available resources, the eligible individual may, but is not required to, obtain a loan or utilize a Plan for Achieving Self-Support (PASS) issued by the Social Security Administration (SSA) to fund the proposed small business; however, if resources in addition to the initial costs provided by the Department are required to establish and operate the proposed small business, the individual is responsible for obtaining such resources, and must decide, based on informed choice, whether to obtain funding through a loan, a PASS or other sources, or to seek employment in an alternative setting.

(c) If funding for the operation of the proposed small business is denied by a source outside the Department, the Department shall consider the decision and the reasons for such decision in assessing whether the self-employment setting is appropriate, as specified in Section 7136.6 of these regulations.

(d) If it is determined that the individual is unable to obtain resources necessary to establish and operate the small business, the Rehabilitation Counselor (RC) and the individual shall discuss alternative employment settings, and the Individualized Plan for Employment (IPE) shall be developed, or amended, consistent with Section 7136.5(g) of these regulations.

NOTE: Authority cited: Sections 19006 and 19016, Welfare and Institutions Code. Reference: 29 USC Sections 705(11), 720(a)(2) and (3), 721(a), 722(b) and (d), and 723(a); 34 CFR Sections 361.1, 361.5(b)(10), (15) and (16), 361.45, 361.46, 361.48, 361.50, 361.52, 361.53, and 361.54; and Section 19011, Welfare and Institutions Code.

### § 7137. Self-employment; Scope of Services Provided for a Self-employment Setting.

(a) The services provided by the Department to assist the eligible individual to achieve employment in an appropriate self-employment setting include assessment, technical assistance, and training to assist the individual in preparing for entering, advancing in, or retaining work in a self-employment setting, and certain initial one-time costs to establish the proposed small business.

(b) The one-time, initial costs of establishing the small business are limited to such costs that are consistent with Section 7149 of these regulations, are appropriate and necessary to assist the individual to achieve employment in a self-employment setting, and are consistent with the usual and customary initial costs typically required for establishing similar small businesses, including:

(1) Payment of occupational license fees, pursuant to Section 7149(p);

(2) Purchase or lease of tools or other equipment, in quantities consistent with the initial cost of establishing similar small businesses, pursuant to Section 7149(p);

(3) Purchase of initial stock and supplies necessary for a period not to exceed six months, pursuant to Section 7149(p); and

(4) Payment of initial deposits required for rental agreements or utility service, consistent with Section 7149(g).

(c) The Department shall consider and utilize the most cost-effective means appropriate to provide the initial costs, including use of leased rather than purchased equipment, for a lease period not to exceed six months, and acquiring initial stock on a consignment basis.

(d) Initial costs, for purposes of a self-employment setting, do not include the following costs:

(1) Costs associated with expansion of a small business;

(2) Lease or purchase of real property;

(3) Construction or remodeling of real property;

(4) Payment of taxes or tax liens;

(5) Payment of patent fees or for product development;

(6) Refinancing or repayment of debt;

(7) Reimbursement or payment of any losses incurred in connection with the small business;

(8) Purchase of an existing business or of a business franchise;

(9) Purchase or lease of a vehicle for use in operating a small business;

(10) Employee wages and benefits; and

(11) Funding for ongoing operating expenses, as specified in Section 7136.8(g) of these regulations.

Note: Authority cited: Sections 19006 and 19016, Welfare and Institutions Code. Reference: 29 USC Sections 705, 720, and 723; 34 CFR Sections 361.1, 361.5, 361.48, and 361.50; and Section 19011, Welfare and Institutions Code.

### § 7138. Self-employment; Monitoring the Operation of the Small Business.

(a) The Rehabilitation Counselor (RC) shall monitor the eligible individual’s employment in the self-employment setting, as specified in the Individualized Plan for Employment (IPE), after the individual begins operating the small business, for a period of no less than 90 days and no more than 12 months, to determine whether the individual is able to maintain employment in the self-employment setting, whether the individual requires additional training or technical assistance to maintain the employment, whether the small business is producing the projected income, and whether the criteria for closure of the record of services have been met.

(b) If it appears during the monitoring period that the individual is having difficulty maintaining employment in the self-employment setting, or if the small business is not achieving the monthly income projected in the summary of the proposed small business or the Small Business Plan, the RC and the individual shall, with technical assistance from other Department staff with expertise in self-employment and/or a Small Business Consultant:

(1) Identify the problems that the individual is experiencing;

(2) Assess whether additional training or technical assistance could assist the individual to overcome those problems; and

(3) Re-assess, based on available information, whether the self-employment setting is appropriate as specified in Section 7136.6 of these regulations.

(c) If it is determined during the monitoring period that the self-employment setting is still appropriate as specified in Section 7136.6 of these regulations, and that additional training or technical assistance will assist the individual in maintaining employment in the self-employment setting, the IPE shall be amended to identify the training or technical assistance to be provided to assist the individual in overcoming the identified problems; and the RC shall continue to monitor the individual’s employment for the purposes specified in subsection (a) of this section.

(d) If it is determined by the Department during the monitoring period that the self-employment setting is not appropriate and/or that the individual is not able to maintain employment in the self-employment setting, and that additional training or technical assistance will not assist or is declined by the individual, the RC and the individual shall discuss alternative employment settings, and the IPE shall be amended, as appropriate, consistent with Section 7136.5(g) of these regulations, or the individual’s record of services shall be closed as specified in Section 7179.5 of these regulations.

NOTE: Authority cited: Sections 19006 and 19016, Welfare and Institutions Code. Reference: 29 USC Sections 705(11), 720(a)(3)(C), 721(a)(19), 722(b) and (d), and 723(a); 34 CFR Sections 361.5(b)(15) and (16), 361.45, 361.46, 361.47, 361.48, 361.50, 361.52, and 361.56; and Section 19011, Welfare and Institutions Code.

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## Article 6. Confidentiality

### § 7140. General Provisions.

(a) The purpose and intent of these regulations are:

(1) To protect the right to privacy of each individual. The right to privacy is a fundamental right which is protected by the California Constitution.

(2) To secure to such individuals the right to gain access to information pertaining to them which is maintained by the Department unless there is a clear and overriding public interest in withholding such information.

(3) To secure to such individuals the right to correct any misinformation that is being maintained about them by the Department.

(b) All information collected by the Department is the property of the Department provided such ownership does not abridge the rights of any individual as otherwise provided by this Subchapter.

(c) All provisions of this subchapter also apply to records maintained by any individual or entity under contract with the Department as a provider of goods or services to clients of the Department.

(d) Definitions:

(1) “Access” means the availability of the case record to the individual, authorized representative, and duly appointed guardian or conservator for inspection and copying.

(2) “Case Record” means any information about an individual that is maintained or otherwise possessed by the Department, including but not limited to information regarding medical history, diagnostic studies, employment history, financial status, and education. Information on computer tape, computer cards, microfilm, or any other memory system, which is strictly derivative in nature and is otherwise maintained in the case record is not included. Both active and closed records or files are included. Information gathered during the course of an investigation conducted by or on behalf of the Department, and separately maintained or supervised by the Legal Office of the Department, when such information is compiled in reasonable anticipation of a civil or criminal action or an administrative adjudication, is not included.

(3) “Disclose” means to disclose, release, transfer, disseminate, or otherwise communicate all or any part of any record orally, in writing, or by electronic, or any other means to any person or entity.

Note: Authority cited: Sections 19006 and 19016, Welfare and Institutions Code; Section 1798.30, Civil Code. Reference: Sections 1798 et seq., Civil Code and 34 CFR Section 361.38.

### § 7140.5. Collection of Information.

(a) The case record shall contain only information which is relevant and necessary to carry out the programs of the Department.

(b) A Client Information Booklet which describes the kinds of information that may be requested from the applicant or client shall be provided and explained to all applicants at the initial interview and shall be annually reviewed with the client or his or her representative thereafter. The applicant's signature on the Application for Services (DR 222 dated January, 1991) acknowledges receipt of the booklet. The Client Information Booklet shall contain:

(1) The title, address, and telephone number of the Department employee who maintains the case record.

(2) The name of the Division or individual within the Department who is requesting the information.

(3) A statement as to whether the provision of each item of information requested is mandatory or voluntary.

(4) An explanation of the consequences of not providing all or part of the requested information.

(5) An explanation of the purpose or purposes for which the information is to be used.

(6) The legal authority which authorizes the maintenance of the information.

(7) A statement as to the applicant's or client's right to review the case record.

(8) Any known or foreseeable interagency or intergovernmental transfer of the information which may be made.

(c) To the greatest extent practicable, information shall be collected directly from the applicant or client who is the subject of the information rather than from another source.

(d) The applicant ’s or client’s informed, written consent, using the DR 260 (REV. 01/18) Consent to Release and Obtain Information, incorporated by reference, to obtain personal information, shall, as appropriate, be required for each request to a third party to obtain personal information about an applicant or client, including, but not limited to:

(1) Benefits Planning Query.

(2) Benefits Summary and Analysis.

(3) Drug and Alcohol Information as explicitly described in the client’s written authorization.

(4) Employment History.

(5) Financial Aid Award.

(6) HIV and AIDS Information.

(7) Individualized Education Program (IEP).

(8) Individualized Plan for Employment (IPE).

(9) Progress Reports.

(10) Psychological and Psychiatric Reports.

(11) Regional Center Records, including Individual Program Plan (IPP).

(12) Transcripts and Report Cards.

(13) Vocational Rehabilitation Records.

(14) Work Incentives Plan.

(e) During the initial interview and whenever necessary, the Counselor shall obtain the applicant’s or client’s written consent using the DR 260 (REV. 01/18) Consent to Release and Obtain Information, incorporated by reference, to contact each source of information about the applicant or client. Each release form shall:

(1) Specifically state the information requested and to whom the request for information is directed.

(2) Be signed and dated by the applicant or client or other individual legally allowed to sign on behalf of the applicant or client authorizing each release. The signed release is used to verify that consent was obtained to collect the applicant’s or client’s personal information. If the applicant or client is unable to sign the release, then the applicant or client can indicate with an “X” or other mark, and one witness will sign as verification.

(3) Be prepared in triplicate. The original of each signed release shall be attached to the appropriate request for information, a copy shall be given to the applicant or client, and a copy shall be filed in the case record with relevant correspondence.

(4) Expire thirty (30) days from the date signed by the applicant or client or other individual legally allowed to sign on behalf of the applicant or client, unless the release specifies another expiration date.

(f) In addition to the above, the DR 260 (REV. 01/18) Consent to Release and Obtain Information must include a specific authorization from the applicant or client to the provider of health care to allow the release of the information to the Department.

(g) Medical, psychological, and work evaluation examinations and information created by the provider at the request and expense of the Department do not require a consent signed by the applicant or client to release such information to the Department, except medical information relating to HIV or AIDS.

(h) The source of any information shall be identified in the case record unless the source is the applicant or client. If the source is an entity such as a governmental agency, a corporation, an association, or an individual, this requirement can be met by maintaining the name of the entity so long as the smallest responsible unit of that entity is reasonably identified.

(i) Except as provided in section 7141.5, information in the case file shall remain in the file until the case is destroyed. No information in the case record shall be removed, destroyed, or altered for purposes of avoiding compliance with these regulations. The following information may be purged from the case record and destroyed:

(1) Information in the case file that is irrelevant and unnecessary for carrying out the Rehabilitation program.

(2) Handwritten notes when the notes have been transcribed into the case record.

(3) Duplicative information.

NOTE: Authority cited: Sections 19006 and 19016, Welfare and Institutions Code; and Section 1798.30, Civil Code. Reference: 5 USC Section 552a; 42 USC Section 290dd-2; 42 CFR Sections 2.33, 2.51, 2.52, 2.61, and 2.63; 34 CFR Section 361.38; Sections 56.10, 56.11, 56.13, 56.15 and 1798.14-1798.23, Civil Code; and Sections 19005 and 19011, Welfare and Institutions Code.

### § 7141. Disclosure to the Individual.

(a) Except as limited by (c), all information in the case record shall, upon request and proper identification, be disclosed to the individual.

(b) The Counselor shall translate or arrange for translation of documents in the case record when requested, in a language that is understood by the individual. It is not required that the case record be translated into other languages.

(c) In cases where the individual requests access to the case record and where the Department has reason to believe that the disclosure of some portion of the case record may be harmful to the individual, the Department shall notify the individual in writing that direct disclosure is not authorized by law. The notification shall include the way in which the Department will release the information using the following options.

(1) Disclose, and if requested or needed, interpret the information directly to the authorized representative, guardian or conservator of the individual.

(2) Disclose and interpret the information to the individual through the District Medical Consultant, the District Psychologist, a panel physician, or panel psychiatrist.

(3) Upon written authorization, disclose such information to a physician, psychiatrist, or licensed or certified psychologist or other representative designated by the individual.

(d) Information in the case record shall upon request be disclosed to a duly appointed guardian or conservator of the individual provided that it can be proved, with reasonable certainty, that such person is the duly appointed guardian or,

(e) A request by an individual to examine his/her case record shall be processed as expeditiously as possible and shall not take longer than 30 days for an active case record or 60 days for a closed case record.

(f) Examination of the case record shall be permitted only in a departmental office. During the examination, the Counselor or other designated employee shall be present while the case is being reviewed. Case records may not be removed from a departmental office except by an employee of the Department for official business.

(g) The Department shall provide copies of any document or item of information which the individual is entitled to obtain at a charge not to exceed 10 cents per page. If fewer than ten pages are requested, no charge shall be made. The Department may waive the charge at its discretion.

(h) The Counselor shall record in the case record the pertinent details of each disclosure including the date disclosed.

Note: Authority cited: Sections 19006 and 19016, Welfare and Institutions Code and Section 1798.30, Civil Code. Reference: Sections 1798.25 -1798.34 and 1798.40, Civil Code, and 34 CFR Section 361.38.

### § 7141.5. Amending the Case Record.

(a) When a Counselor determines that information which originated for the case record is inaccurate or incomplete, the Counselor shall correct that portion of the case record. Copies of the corrected information shall be provided to all individuals who obtained incorrect information.

(b) An individual may submit a written request to add, delete, or amend information contained in the case record. The Department, within 30 days of the receipt of such request, shall make a decision whether to amend the record.

(c) If the individual requests a change to information that was originated by a source outside the Department, they shall be informed that departmental staff cannot change information in the case record not originated by departmental staff and that the request should be made to the source of the information.

(d) If the record is to be amended, the Department shall:

(1) Amend any portion of the record which is not accurate, relevant, timely, or complete.

(2) Destroy the original material.

(3) Provide the individual with a copy of the amended material.

(e) If the record is not to be amended, the Department shall inform the individual in writing of the decision not to amend the record, the reason for such decision, and the procedures for requesting an administrative review and fair hearing of such decision.

(f) If the individual disagrees with the decision of the Department not to amend the case record, the individual may appeal that decision through the administrative review and fair hearing process.

(1) If, after administrative review, the decision of the Department not to amend the case record is upheld, the individual may submit a written statement of reasonable length setting forth the reasons for the individual's disagreement with the disputed information. This statement shall be placed in the case record. The Department shall clearly identify any portion of the record which is disputed and make available a copy of such individual's statement and a copy of a concise statement of the reasons for the decision not to amend to any person or agency to whom the disputed portion of the record is disclosed.

(2) If, after administrative review, the individual remains dissatisfied with the decision of the Department, they may request a fair hearing as provided in Section 7354 of these regulations.

(g) All details of a request to amend a case record including pertinent dates shall be recorded in the case record.

Note: Authority cited: Sections 19006 and 19016, Welfare and Institutions Code and Section 1798.30, Civil Code. Reference: Sections 1798.3-1798.37, Civil Code, and 34 CFR Section 361.38.

### § 7142. Disclosure to Other Persons or Entities.

(a) Except as specifically authorized by sections 7141, 7143, and 7143.5, no disclosure, shall be made to any person or entity about receiving services from the Department or being in the process of obtaining services from the Department, unless the informed, written consent of the individual whose records are being requested has been obtained by the Department. The prohibition against disclosures without the informed written consent of the individual applies irrespective of whether the person or party seeking disclosure already has the information, has other means of obtaining it, has obtained a subpoena, or asserts any other basis or justification for disclosure not expressly authorized by these regulations.

(b) The consent for disclosure shall be in writing and should, as appropriate, contain:

(1) The name of the individual.

(2) The name or title of the person or organization to whom the disclosure is to be made.

(3) The extent or nature of the information to be disclosed.

(4) A statement that the consent is subject to revocation at any time.

(5) The date on which the consent is signed.

(6) The signature of the individual.

(c) The consent shall be valid for a period not to exceed 30 days from the date the consent is signed unless otherwise specified in writing by the individual.

(d) The Counselor shall record pertinent details of each disclosure in the case record including the date disclosed and the person or entity to whom the information was disclosed.

(e) The Department shall not disclose an individual’s HIV test result information outside the Department without the individual’s express written authorization or as is expressly authorized under Health and Safety Code section 121025.

Note: Authority cited: Sections 19006 and 19016, Welfare and Institutions Code. Reference: Sections 1798.24 and 1798.25, Section 121025, Health and Safety Code; and Civil Code and 34 CFR Section 361.38.

### § 7142.5. Prohibition Against Redisclosure.

(a) Except as specifically authorized by section 7143, the results of any HIV test performed shall not be redisclosed to any third party without the written consent of the individual for each disclosure.

(b) Except as specifically authorized by these regulations, no person or entity who receives information from the Department shall redisclose such information or any portion thereof to any other person or entity without the informed written consent of the person to whom the information pertains. Nothing in this part shall prohibit the individual from disclosing any information which is received from his or her case record.

(c) Whenever the Department makes a disclosure to any person or entity other than the individual, or their authorized representative, the disclosure shall be accompanied by a written statement as follows:

NOTICE

THIS IS PERSONAL INFORMATION FROM THE RECORDS

OF THE CALIFORNIA DEPARTMENT OF REHABILITATION.

STATE AND FEDERAL LAW AND DEPARTMENTAL

REGULATIONS PROHIBIT YOU FROM MAKING ANY

FURTHER DISCLOSURE OF THIS INFORMATION WITHOUT

THE INFORMED WRITTEN CONSENT OF THE PERSON TO

WHOM THIS INFORMATION PERTAINS.

Note: Authority cited: Sections 19006 and 19016, Welfare and Institutions Code. Reference: 34 CFR Section 361.38 and Sections 121022 and 121025, Health and Safety Code.

### § 7143. Disclosures Without Written Consent.

(a) The individual shall be informed of the following exceptions to the regulation that no disclosure shall be made without the written consent of the individual. Any disclosure made under this part shall be strictly limited to the information necessary to carry out the purposes for which the information was released.

(1) Disclosure of information in the case record may be made between or among the staff members of the Department and its medical panel.

(2) Disclosure of information in the case record may be made in order to process payment to or from the individual or to purchase goods and services for the individual.

(3) Disclosure of information in the case record may be made to any federal or state auditor or reviewer who has authority under federal or state law to conduct an audit or review of the Department.

(4) Disclosure of information in the case record may be made to any official of the United States Department of Education, who has authority under law to review or inspect such case records.

(5) Disclosure of information in the case record may be made to the Social Security Administration, the Disability Evaluation Division of the California Department of Social Services (DSS), the Department of Health Care Services (DHCS), the Department of Public Health (CDPH), the Department of State Hospitals (DSH), the Department of Developmental Services (DDS) and Regional Centers, and the Employment Development Department (EDD). Information that can be released without individual consent to these agencies is limited to the following:

(A) The status of the individual including whether they are in training.

(B) Information relating to the IPE such as employment goal, training received, changes made to the plan, etc.

(C) The projected time in plan.

(D) Whether EDD, DSS, or California Department of Education (CDE) purchased services will be utilized in the implementation of the plan and the information, except medical information, necessary to obtain those services.

(E) The extent of client participation in the plan.

(F) The date of employment or on-the-job training.

(G) The date the case is closed or training is completed or ceases, and if it ceases prior to completion, the reasons therefore.

(6) Disclosure of information in the case record may be made to medical personnel, either private or governmental, when in the opinion of a member of the professional staff of the Department a medical emergency exists.

(7) Disclosure of information in the case record, except that which would disclose the results of any HIV test performed, may be made to protect the potential victim when, in the exercise of reasonable skill, knowledge and care, a member of the professional staff of the Department determines, based on reliable information, that an individual poses a danger of violence to another person, or themselves.

(8) Disclosure of information in the case record may be made to an employee of the Department, or a designated representative of an employee, when such employee has punitive action taken against him or her by the Department and such action is based, or partly based, on information in a case record. Such disclosure shall be conditioned on a written agreement to protect the information from unauthorized disclosure.

(9) Disclosure of written materials and other information may be made to either of the following:

(A) An impartial hearing officer when such disclosure is necessary for the resolution of an appeal as provided in Section 7354 of these regulations.

(B) An Equal Employment Opportunity Counselor or Investigator, or the Chief, Office of Civil Rights when the disclosure is necessary to accomplish any of the following:

1. Review a complaint for prima facie evidence of discrimination.

2. Resolve a complaint of alleged discrimination.

3. Conduct an investigation of a complaint of alleged discrimination.

(10) Disclosure of information in the case record may be made to a prospective employer of an individual of the Department without specific written consent, except medical and psychological, provided that such client has signed the general consent statement on the Application for Services.

(11) Disclosure of personal and confidential information for research purposes shall be made only at the discretion of the Department, if:

(A) the research is directly connected with the vocational rehabilitation of disabled individuals;

(B) the organization or individual gives satisfactory written assurance that the information will be used only for the purpose for which it is provided;

(C) the information provided will not be released to persons not directly connected with the study under consideration;

(D) the final product of the research will not reveal any information that would tend to identify any person without the written consent of such person and the Department;

(E) the plan of the organization or individual for maintaining confidentiality of the information provided is approved by the Department prior to the initiation of the research project.

(b) The Department shall keep an accounting of those disclosures so designated by the Information Practices Act of 1977.

Note: Authority cited: Sections 19006 and 19016, Welfare and Institutions Code and Section 1798.30, Civil Code. Reference: Sections 1798.24 and 1798.25, Civil Code; Sections 19000, 19013 and, Welfare and Institutions Code; and 34 CFR Sections 104.7, 104.51, 104.61, 361.19 and 361.38.

### § 7143.5. Prohibitions Against Disclosure to Law Enforcement Officials.

(a) No disclosure shall be made to any law enforcement official, including any public prosecutor, without the specific written consent of the individual except as is necessary under section 7143(a)(7). However, nothing in these regulations shall be construed as prohibiting an employee of the Department from seeking the assistance of a law enforcement official where an individual commits or threatens to commit a crime on the premises of the Department or against Departmental personnel, or where an individual, after investigation, is reasonably believed to have committed a fraudulent or otherwise illegal act or acts against the Department or Departmental personnel, and such disclosure is made for purposes of further investigation and/or prosecution for such act or acts. Nothing in this section shall be construed to allow the disclosure of information to law enforcement officials, including public prosecutors, for purposes of investigating or prosecuting illegal acts allegedly committed against a third party or entity, except as necessary under section 7143(a)(7).

NOTE: Authority cited: Sections 19006 and 19016, Welfare and Institutions Code and Section 1798.30, Civil Code. Reference: 34 CFR Section 361.38.

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# Chapter 3. Vocational Rehabilitation Services for Individuals with Disabilities

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## Article 1. General Provisions

### § 7149. Scope of Vocational Rehabilitation Services for Individuals with Disabilities.

(a) The Department shall, in collaboration with the local educational agencies involved, provide or arrange for the provision of, pre-employment transition services for all students with disabilities in need of services, without regard to the type of disability.

(1) Pre-employment transition services shall be made available statewide to all students with disabilities, regardless of whether the student has applied or been determined eligible for vocational rehabilitation services.

(b) As appropriate to the vocational rehabilitation needs of each individual and consistent with each individual’s informed choice, the Department shall make the following vocational rehabilitation services available to assist the individual with a disability to prepare for, secure, retain, advance in, or regain an employment outcome that is consistent with the individual’s strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice.

(1) Assessment for determining eligibility and priority for services by qualified personnel including, if appropriate, an assessment by personnel skilled in rehabilitation technology in accordance with Sections 7001.5 and 7062 of these regulations.

(2) Assessment for determining vocational rehabilitation needs by qualified personnel including, if appropriate, an assessment by personnel skilled in rehabilitation technology, in accordance with Sections 7001.5, 7128(b), and 7130.5(b) of these regulations.

(3) Vocational rehabilitation counseling and guidance, including information and support services to assist an individual in exercising informed choice in accordance with Section 7029.6 of these regulations.

(4) Referral and other services necessary to assist applicants and eligible individuals to secure needed services from other agencies, including other components of the statewide workforce development system, other government agencies, independent living centers, and local extended employment service providers, consistent with the requirements of Sections 7037 and 7038 of these regulations.

(5) Physical and mental restoration services, in accordance with Section 7020 of these regulations, to the extent that financial support is not readily available from a source other than the Department.

(6) Vocational, educational, and other training services, including personal and vocational adjustment training, advanced training in, but not limited to, a field of science, technology, engineering, mathematics (including computer science), medicine, law or business; books, tools, and other training materials, except that no training or training services in an institution of higher education (from universities, colleges, community or junior colleges, vocational schools, technical institutes, or hospital schools of nursing) may be paid for by the Department unless maximum efforts have been made by the Department and the individual to secure grant assistance, in whole or in part, from other sources to pay for that training.

(7) Maintenance, as defined in Section 7019 and provided under conditions specified in Section 7177 of these regulations.

(8) Transportation provided to enable participation in any vocational rehabilitation service, in accordance with the definition in Section 7029 of these regulations.

(9) Vocational rehabilitation services to family members, as defined in Section 7015 of these regulations, of an applicant or eligible individual if necessary to enable the applicant or eligible individual to achieve an employment outcome.

(10) Interpreter services, including sign language and oral interpreter services for individuals who are deaf or hard of hearing and tactile interpreting services for individuals who are deaf-blind provided by qualified personnel.

(11) Reader services, rehabilitation teaching services, and orientation and mobility services for individuals who are blind.

(12) Job-related services, including job search and placement assistance, job retention services, follow-up services, and follow-along services.

(13) Supported employment services in accordance with the definition of that term in Section 7028.1 of these regulations.

(14) Personal assistance services in accordance with the definition of that term in Section 7019.7 of these regulations.

(15) Post-employment services in accordance with the definition of that term in Section 7021.5 of these regulations.

(16) Occupational licenses, tools as defined in Section 7028.4 and equipment as defined in Section 7013.2 of these regulations, and initial stocks and supplies.

(17) Rehabilitation technology in accordance with the definition of that term in Section 7024.7 of these regulations.

(18) Transition services in accordance with the definition of that term in Section 7028.6 of these regulations.

(19) Technical assistance and other consultation services to conduct market analyses, develop business plans, and otherwise provide resources, to the extent those resources are authorized to be provided through the statewide workforce development system, to eligible individuals who are pursuing self-employment or telecommuting or establishing a small business operation as an employment outcome.

(20) Customized employment in accordance with the definition of that term in Section 7006.6.

(21) Other goods and services, in accordance with Section 7174 of these regulations, that are determined necessary for the individual with a disability to achieve an employment outcome.

(c) The designated state unit may provide for the following vocational rehabilitation services for the benefit of groups of individuals with disabilities:

(1) The establishment, development, or improvement of a public or other nonprofit community rehabilitation program that is used to provide vocational rehabilitation services that promote integration into the community and prepare individuals with disabilities for competitive integrated employment, including supported employment and customized employment, and under special circumstances, the construction of a facility for a public or nonprofit community rehabilitation program as defined in 34 CFR 361.5. Examples of special circumstances include the destruction by natural disaster of the only available center serving an area or a state determination that construction is necessary in a rural area because no other public agencies or private nonprofit organizations are currently able to provide vocational rehabilitation services to individuals.

(2) Telecommunications systems that have the potential for substantially improving vocational rehabilitation service delivery methods and developing appropriate programming to meet the particular needs of individuals with disabilities, including telephone, television, video description services, satellite, tactile-vibratory devices, and similar systems, as appropriate.

(3) Special services to provide nonvisual access to information for individuals who are blind, including the use of telecommunications, Braille, sound recordings, or other appropriate media; captioned television, films, or video cassettes for individuals who are deaf or hard of hearing; tactile materials for individuals who are deaf-blind; and other special services that provide information through tactile, vibratory, auditory, and visual media.

(4) Technical assistance to businesses that are seeking to employ individuals

with disabilities.

(5) In the case of any small business enterprise operated by individuals with significant disabilities under the supervision of the designated state unit, including enterprises established under the Randolph-Sheppard program, management services and supervision provided by the State unit along with the acquisition by the state unit of vending facilities or other equipment, initial stocks and supplies, and initial operating expenses, in accordance with the following requirements:

(i) *Management services and supervision* includes inspection, quality control, consultation, accounting, regulating, in-service training, and related services provided on a systematic basis to support and improve small business enterprises operated by individuals with significant disabilities. Management services and supervision may be provided throughout the operation of the small business enterprise.

(ii) *Initial stocks and supplies* include those items necessary to the establishment of a new business enterprise during the initial establishment period, which may not exceed six months.

(iii) Costs of establishing a small business enterprise may include operational costs during the initial establishment period, which may not exceed six months.

(iv) If the designated state unit provides for these services, it must ensure that only individuals with significant disabilities will be selected to participate in this supervised program.

(v) If the designated state unit provides for these services and chooses to set aside funds from the proceeds of the operation of the small business enterprises, the state unit must maintain a description of the methods used in setting aside funds and the purposes for which funds are set aside. Funds may be used only for small business enterprises purposes, and benefits that are provided to operators from set-aside funds must be provided on an equitable basis.

(6) Consultation and technical assistance services to assist state educational agencies and local educational agencies in planning for the transition of students and youth with disabilities from school to postsecondary life, including employment.

(7) Transition services to youth with disabilities and students with disabilities who may not have yet applied or been determined eligible for vocational rehabilitation services, for which a vocational rehabilitation counselor works in concert with educational agencies, providers of job training programs, providers of services under the Medicaid program under title XIX of the Social Security Act (42 U.S.C. 1396 *et seq.*), entities designated by the state to provide services for individuals with developmental disabilities, centers for independent living (as defined in section 702 of the Act), housing and transportation authorities, workforce development systems, and businesses and employers. These specific transition services are to benefit a group of students with disabilities or youth with disabilities and are not individualized services directly related to an individualized plan for employment goal. Services may include, but are not limited to, group tours of universities and vocational training programs, employer or business site visits to learn about career opportunities, career fairs coordinated with workforce development and employers to facilitate mock interviews and resume writing, and other general services applicable to groups of students with disabilities and youth with disabilities.

(8) The establishment, development, or improvement of assistive technology demonstration, loan, reutilization, or financing programs in coordination with activities authorized under the Assistive Technology Act of 1998 (29 U.S.C. 3001 *et seq.*) to promote access to assistive technology for individuals with disabilities and employers.

(9) Support (including, as appropriate, tuition) for advanced training in a field of science, technology, engineering, or mathematics (including computer science), medicine, law, or business, provided after an individual eligible to receive services under this title demonstrates—

(i) Such eligibility;

(ii) Previous completion of a bachelor’s degree program at an institution of higher education or scheduled completion of such a degree program prior to matriculating in the program for which the individual proposes to use the support; and

(iii) Acceptance by a program at an institution of higher education in the United States that confers a master’s degree in a field of science, technology, engineering, or mathematics (including computer science), a juris doctor degree, a master of business administration degree, or a doctor of medicine degree, except that—

(A) No training provided at an institution of higher education may be paid for with funds under this program unless maximum efforts have been made by the designated state unit to secure grant assistance, in whole or in part, from other sources to pay for such training; and

(B) Nothing in this paragraph prevents any designated state unit from providing similar support to individuals with disabilities within the state who are eligible to receive support under this title and who are not served under this section.

(d) If the designated state unit provides for vocational rehabilitation services for groups of individuals, it must—

(1) Develop and maintain written policies covering the nature and scope of each of the vocational rehabilitation services it provides and the criteria under which each service is provided; and

(2) Maintain information to ensure the proper and efficient administration of those services in the form and detail and at the time required by the Secretary, including the types of services provided, the costs of those services, and, to the extent feasible, estimates of the numbers of individuals benefiting from those services.

Note: Authority cited: Sections 19006 and 19016, Welfare and Institutions Code. Reference: 29 USC 723; 34 CFR 361.48 and 361.49; Section 19011, Welfare and Institutions Code.

### § 7149.1. Excluded Services—Construction.

(a) Construction, as defined in this section, shall not be provided as a vocational rehabilitation service. Construction on real property is expressly prohibited by Education Department General Administrative Regulations (EDGAR) 34 CFR 76.533.

(b) The following definitions apply to this section:

(1) “Construction” means:

(A) Erection of any new structure or building on real property, either temporary or permanent, in whole or in part.

(B) Additions to, modification or replacement of, or demolition or removal of, all or part of an existing structure or building on real property, either temporary or permanent, including but not limited to existing electrical, plumbing, heating and air conditioning appliances, fixtures, and systems, foundations, roofs, walls, floors, ceilings, windows, doors, cabinets, countertops, closets, and kitchen or bathroom fixtures such as sinks, toilets, tubs and showers.

(C) A remodel of all or part of a structure or building on real property.

(D) Installation of any item, piece of equipment, or product system as a permanent fixture on real property.

(E) Improvements to land, including theaddition, modification or replacement of roads,driveways, walkways, fences, or barriers.

(2) “Permanent fixture” means an item, piece of equipment, or product system that once installed is considered a permanent appendage or addition to real property because the item, piece of equipment or product system is physically attached to real property and cannot be readily or easily removed without damage to, or alteration or modification of**,** the real property or of the item, piece of equipment or product system, or that has been designed or modified for use upon that real property. Examples of permanent fixtures include elevators and wheelchair lifts. A wheelchair ramp installed for access to a structure may or may not be a permanent fixture, depending upon how the particular ramp is installed and/or designed for use with that structure.

(3) “Real Property” means land and any structures and improvements situated on the land including, but not limited to, a building, house, trailer home, guest house, garage, or any type of outbuilding, whether used as a residence, place of business, or for other purposes, and any roads, driveways, walkways, fences, or barriers situated on the real property.

NOTE: Authority cited: Sections 19006 and 19016, Welfare and Institutions Code. Reference: 29 USC 723; 34 CFR Sections 76.533 and 361.48; and Section 19150, Welfare and Institutions Code.

### § 7150. General Provisions. [Repealed]

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## Article 2. Counseling and Placement

### § 7151. Counseling, Guidance and Referral Services.

### (a) Counseling and guidance is the core service from which all other vocational rehabilitation services are identified, justified and provided. Counseling and guidance is the process by which the Department assists individuals to understand and focus on the vocational significance of their unique strengths, resources, priorities, concerns, abilities, capabilities, career interests, and informed choice in the selection of vocational rehabilitation services~~.~~ with the goal of preparing for, securing, retaining, advancing in or regaining an employment outcome.

(b) Referral services are provided to an individual in order to assist that applicant or client to obtain or utilize appropriate community resources.

Note: Authority cited: Sections 19006 and 19016, Welfare and Institutions Code. Reference: 34 CFR 361.48.

### § 7152. Placement Services.

(a) Placement services require the joint participation of the client and the Department.

(b) Placement services shall be provided on an individualized basis, through the JOB Club, or through a workshop, or other rehabilitation facility offering work or vocationally oriented programs, or a tutor as limited by (c), and include but are not limited to:

(1) Vocational Exploration

(2) Job Seeking Skills Training

(3) Job Analysis

(4) Job Modification or restructuring

(5) Employer Contacts

(6) Employer/Client Follow-Up and Consultation

(c) The services specified in (b) shall be purchased from a workshop, or other rehabilitation facility offering work or vocationally oriented programs, or a tutor only upon a determination by the Counselor that one of the following conditions exist:

(1) The services are not available from the Department.

(2) The services available from the Department are not appropriate for the client's needs.

NOTE: Authority cited: Sections 19006 and 19016, Welfare and Institutions Code. Reference: Sections 19150 and 19152, Welfare and Institutions Code; 34 CFR Section 361.42.

### § 7153. Placement in Suitable Employment. [Repealed]

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## Article 3. Training and Job Coaching Services

### § 7154. Training Services.

(a) Training services shall be provided only to the extent necessary to accomplish either or both of the following:

(1) Facilitate achievement of the vocational objective.

(2) Prepare an individual with the skills and abilities necessary to be a competitive candidate for competitive integrated employment.

(b) Advanced training may be provided in, but not limited to, a field of science, technology, engineering, mathematics (including computer science), medicine, law, or business;

(c) The selection of training services shall be based on the needs of the individual and the timeliness, availability, and cost of training.

(d) Any training facility which is equipped to meet the special training needs of an individual and meets the standards set forth in chapter 3, subchapter 7 of these regulations may be used.

Note: Authority cited: Sections 19006 and 19016, Welfare and Institutions Code. Reference: Sections 19150 and 19152, Welfare and Institutions Code; 34 CFR 361.48

### § 7155. Use of Public or Private Institutions.

(a) Training in a private institution shall not be provided except when:

(1) It is clear that the training needs of the individual can be better met by a private, correspondence, on-the-job, tutorial, or other training institution or method; or

(2) Overall cost to the Department will be less; or

(3) The training is not available in a public institution; or

(4) Attendance in a public training program would cause a significant delay in the individual's preparation for a suitable employment outcome.

(b) Prior written approval of the Rehabilitation Supervisor shall be required before a Counselor may send an individual to a private school for training or to a college or university for graduate level training. The Rehabilitation Supervisor's decision shall be based upon documentation that the requirements of (a) as well as of Section 7154 and Sections 7196 through 7198 have been met.

NOTE: Authority cited: Sections 19006 and 19016, Welfare and Institutions Code. Reference: Section 19150, Welfare and Institutions Code; and 34 CFR 361.46 and 361.48.

### § 7156. College Level Training.

Clients receiving college level training shall use the least expensive educational institutions in the following order of preference:

(a) For the first two years, a community college or other equivalent resource.

(b) For the first two years, a state college or university if the overall cost to the Department will be equal to or less than a community college.

(c) After the first two years, a state college or university.

(d) A private school when:

(1) The private school is essential to the success of the Individualized Plan for Employment (IPE); or

(2) The overall cost to the Department will be equal to or less than the costs of a public school; or

(3) The client agrees to pay all additional costs for training in a private school when the Department has determined that a public institution is sufficient to meet the needs of the client.

NOTE: Authority cited: Sections 19006 and 19016, Welfare and Institutions Code. Reference: Section 19200, Welfare and Institutions Code; 34 CFR 361.42, 361.47, 361.48 and 361.56.

### § 7157. On-the-Job Training.

(a) On-the-job training programs shall be selected on the basis of the individual trainer's ability and willingness to instruct the client.

(b) Compensation paid by the trainer to the client during and/or after the on-the-job training period shall meet all legal requirements.

(c) Clients receiving on-the-job training are considered employees of the trainer and shall receive appropriate benefits and employee insurance coverage, except that the Department shall bear the full amount of any additional workers' compensation insurance premium expense incurred by the trainer during the clients' training period. The Department shall either reimburse the trainer for his or her increased costs or purchase a policy specifically for the client.

(d) On-the-job training agreements developed in accordance with section 7157.5 are not legally binding contracts, and may be modified or terminated by the Department or trainer whenever circumstances warrant.

(e) The length of the on-the-job training shall be based upon the following factors:

(1) The usual and customary training period required for a specific occupation.

(2) The extent to which the client already qualifies for the vocational objective.

(3) The extent of both the client's:

(A) Educational background.

(B) Physical or mental impairment.

NOTE: Authority cited: Sections 19006 and 19016, Welfare and Institutions Code. Reference: Section 3351.5, Labor Code; Section 19150, Welfare and Institutions Code; 34 CFR Sections 361.42, 361.48 and 361.50.

### § 7157.5. On-the-Job Training Agreements.

(a) Prior to the implementation of on-the-job training a letter of agreement shall be reviewed and signed by all of the following:

(1) The client.

(2) The trainer.

(3) The counselor.

(b) The on-the-job letter of agreement shall include all of the following:

(1) Identification of a specific vocational objective.

(2) The training curriculum, including the length of the training and the specific skills to be learned.

(3) The number of hours of instruction and supervision to be provided by a qualified instructor.

(4) The hours of training including all of the following:

(A) Starting and quitting time.

(B) Lunch hour.

(C) Break time(s).

(D) Schedule of time off.

(E) Number of hours to be spent in the shop or field.

(5) The pay, along with a statement that the trainer agrees to pay the trainee the prevailing rate paid other employees with similar knowledge and skills.

(6) The training fees that the Department agrees to pay to the trainer.

(7) A description of any accommodations required to meet the special needs of the client, along with an identification of the party responsible for providing each accommodation during the training period.

(8) All of the following statements:

(A) The agreement is not a legally binding contract and may be modified or terminated at any time by the trainer or the Department.

(B) An employer-employee relationship exists and the trainer is responsible for both of the following:

1. Applicable and required employer contributions such as unemployment insurance benefits and social security, except the Department is responsible for worker's compensation in accordance with Section 7157(c).

2. Withholding from the trainee's earnings applicable and required deductions such as state and federal income taxes, social security and state disability insurance.

(C) The trainer agrees to employ the trainee upon completion of training or to assist in placing the trainee with another employer.

(D) The trainer agrees to inform the Department of any problems that may arise and agrees to submit monthly progress reports each month with his/her invoice.

(c) A copy of the signed agreement shall be given to both the trainer and the trainee. The Counselor shall retain the original in the client's case record.

NOTE: Authority cited: Sections 19006 and 19016, Welfare and Institutions Code. Reference: Section 3351.5, Labor Code; and Section 19150, Welfare and Institutions Code.

### § 7158. Workshop Training. [Repealed.]

### § 7158.8. Out-of-State Training.

Clients may be provided out-of-state training when:

(a) Suitable facilities or courses are not available within the State; or

(b) The client lives near an adjoining State and the out-of-state facilities are more readily available in the adjoining state; or

Undue hardship would be imposed on the client by requiring the use of facilities or courses within the State.

NOTE: Authority cited: Sections 19006 and 19016, Welfare and Institutions Code. Reference: Section 19200, Welfare and Institutions; 34 CFR Sections 361.42 and 361.48.

### § 7159. Completion and Termination of Training.

Training shall be terminated whenever an assessment of the client indicates readiness for employment or a lack of adequate performance by either the client or trainer in the training program.

NOTE: Authority cited: Sections 19006 and 19016, Welfare and Institutions Code. Reference: 34 CFR Sections 361.42 and 361.48.

### § 7159.5. Job Coaching Services.

(a) Job coaching services shall be provided ~~only~~ when necessary for the individual to prepare for, secure, retain, advance in, or regain competitive integrated employment.

(b) Job coaching services shall~~:~~ include some or all of the following activities: on-the-job skill training; observation or supervision at the worksite; consultation or training, or both, of coworkers or supervisors; assistance in integrating into the work environment, destination training, assistance with public support agencies, family and residential provider consultation; and any other on- or off-the-job support services needed to reinforce and stabilize job placement.

(c) Whenever possible, job coaching services for deaf or non-English speaking individuals shall be purchased from a service provider equipped to meet the individual's communication needs. When such a provider is not available, the Department shall purchase interpreter services separately.

(d) Be provided in a permanent or temporary, as limited by (d), job setting that meets all of the following conditions:

(1) The setting is community-based.

(2) There is regular contact between the client and co-workers or members of the public who are not disabled.

(3) The individual is paid in accordance with applicable state and federal labor laws.

(e) Job coaching service providers shall submit written reports to the client's Counselor at least once a month describing, at a minimum, both:

(1) The individual's progress toward employment stability as specified in the client's Individualized Plan of Employment (IPE).

(2) Contacts with the individual's employer.

(f) A temporary job setting shall be utilized only when the Counselor has determined that work- related objectives such as the following cannot be accomplished through the provision of job coaching services in a permanent employment setting:

(1) Overcoming the fear of work.

(2) Development of work tolerance.

(3) Evaluation of work behaviors in relation to the proposed occupational objective.

(4) Determination of the level of support, both on and off the job, needed by the client.

(5) Testing of the feasibility of a specified occupational objective.

(6) Provision of intermediate non-threatening steps toward permanent placement.

(g) For individuals whose employment goal may require supported employment, job coaching shall include the type of monitoring specified in the individual’s IPE. At a minimum the monitoring shall include:

(1) For monitoring at the work site, two visits per month to the work site to assess employment stability.

(2) For monitoring away from the work site, two meetings per month with the individual and one employer contact per month to assess employment stability.

Note: Authority cited: Sections 19006 and 19016, Welfare and Institutions Code. Reference: Section 19150, Welfare and Institutions Code; 34 CFR 361.5.

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## Article 4. Physical and Mental Restoration Services

### § 7160. Physical and Mental Restoration Services/Purchases-General.

(a) Physical and mental restoration services/purchases shall be subject to all provisions specified in this section. Services/purchases shall be:

(1) Provided only in accordance with an Individualized Plan for Employment (IPE).

(2) Unavailable in cases of Interim Determination of Eligibility, as defined in Section 7063.

(3) Subject to the similar benefit provisions of Sections 7196 through 7198 and the client financial participation provisions of Sections 7190-7194.

(4) Prescribed/recommended by the attending physician, except as provided in Section 7160.5(a)(4).

(5) Reviewed/approved in writing prior to the provision of the service/purchase, except as provided in 7160.5(c) and in accordance with (b), by one or more of the following as appropriate to the service being rendered or the purchase being authorized:

(A) The Medical Consultant or Psychiatric Consultant.

1. The approving Medical/Psychiatric Consultant shall not be the prescribing/recommending physician specified in (4).

(B) The Vocational Psychologist (if licensed by the Board of Psychology and only in districts that do not have a Psychiatric Consultant).

(C) The Rehabilitation Supervisor.

(D) The Medical Services Officer.

(E) The District Administrator, if services or purchases cost in excess of $5,000 and when renting a wheelchair.

(F) The District Administrator and the Director or the Director's designee in cases of maxillo-facial surgery costing in excess of $5,000.

(G) The Chief Medical Consultant.

(H) The Statewide Psychiatric Consultant.

(I) The Statewide Optometric Consultant.

(J) The Statewide Dental Consultant.

(b) Approval shall occur only after reaching a conclusion, based upon a careful review of the diagnostic study, that the IPE will be jeopardized if the service/purchase is not provided to individuals eligible for vocational rehabilitation services, the service is necessary to both:

(1) Correct or substantially modify, within a reasonable period of time, a physical or mental condition which is stable or slowly progressive. A reasonable period of time shall be determined based upon factors related to the nature of the disability.

(2) Prepare the individual for suitable employment.

(c) Evaluations/progress reports and final treatment reports from physicians, hospitals, rehabilitation centers and other facilities or appropriate providers shall be received and reviewed for recommendation by the Medical/Psychiatric Consultant or the Vocational Psychologist (if the conditions specified in 7160(a)(5)(B) exist) to determine the individual's status/progress related to the likelihood of achieving the desired physical/mental restoration objective.

(1) Progress/final treatment report(s) submitted as a result of a service purchased by the Department shall include an evaluation of the individual's progress, prognosis, functional limitations and capacities.

(2) In addition to the report(s) specified in (1), initial evaluations and report(s) submitted for physical/occupational/speech therapy or for psychiatric therapy/psychological counseling shall include a limited history, diagnosis, summary of functional limitations and capacities and the recommended therapy plan based upon the results of the evaluation or the provision of subsequent services.

(d) All service(s) shall be limited to six sessions/visits, except when:

(1) Physical therapy training in the use of a prosthetic or orthotic appliance has been recommended by the prescribing physician, or

(2) The need for additional sessions/visits has the concurrence of the Medical Consultant and approval of the District Administrator. A written justification prepared by the provider of service shall be submitted to the Department for review and shall include the following:

(A) The basis on which the additional treatment is recommended.

(B) The anticipated number of visits/sessions in excess of six.

(e) When treatment is recommended beyond six sessions/visits the Counselor shall seek alternate ways to provide service based upon available resources.

NOTE: Authority cited: Sections 19006 and 19016, Welfare and Institutions Code. Reference: Sections 19010 and 19050, Welfare and Institutions Code; 34 CFR Sections 361.42 and 361.48.

### § 7160.5. Limitations on Physical and Mental Restoration Services.

(a) In addition to the conditions specified in Section 7160:

(1) Acupuncture services shall;

(A) require referral for treatment by a physician licensed by the Medical Board of California or a comparable agency of another state when service is provided out of state. The referring physician shall be a specialist in the appropriate specialty area to diagnose and treat the disabling condition.

(B) Only be authorized in those cases for the control of pain when, in the opinion of the referring physician, all other modalities have been tried and failed.

(C) Be provided by a qualified physician, including but not limited to, an anesthesiologist, neurologist, physiatrist or orthopedist.

(2) Chiropractic services shall be authorized only if:

(A) The treatment has the concurrence of the examining or treating physician.

(B) The treatment is utilized for the correction of a subluxation of the spine which has been demonstrated to exist by a radiologist.

(3) Psychiatric therapy/psychological counseling services shall include the initial evaluation and report specified in 7160(c)(2), testing as necessary, and counseling/therapy, and shall be subject to the following restrictions:

(A) Psychiatric therapy shall only be provided by physicians and surgeons licensed by the Medical Board of California who practice psychiatry.

(B) Psychological counseling services shall only be provided by one of the following:

1. A physician and surgeon licensed by the Medical Board of California who practices psychiatry.

2. A Psychologist licensed by the Board of Psychology.

3. Other professionals, as allowed within the scope of their licensure, following a special certification from the Chief Medical Consultant, as specified in Section 7295.7. Such professionals shall be licensed by the Board of Behavioral Science Examiners and may be either of the following:

a. A Clinical Social Worker.

b. A Marriage, Family and Child Counselor.

(C) Psychological testing services shall only be provided by one of the following:

1. A physician and surgeon licensed by the Medical Board of California who practices psychiatry.

2. A Psychologist licensed by the Board of Psychology.

3. A Vocational Psychologist, as defined in Section 7029.3.

4. An Educational Psychologist, if certified in accordance with Section 7295.7.

(4) Services provided by allied health professionals or independent health care professionals shall be provided within the scope of their licensure. Such services, including but not limited to, speech pathology, physical therapy, occupational therapy, or the provision of hearing aids, visual aids, and durable medical equipment and devices, when determined by the Department to be medical in nature, shall:

(A) Be prescribed by a physician before authorization except when:

1. Visual aids are prescribed by an Optometrist.

2. Rental is necessary while the permanent equipment/device is being repaired.

3. Repairs cost 20% or less of the purchase price and do not change the fit of the equipment/device to the client.

(B) Meet the following applicable conditions:

1. Prior to the provision of a wheelchair or a vehicle device to be used as a wheelchair, a wheelchair evaluation must be completed by a person recognized by the Department as a specialist, working under the supervision of a physician as applicable to his/her licensure.

2. Physical/occupational/speech therapy shall be supervised by a physician.

3. Transcutaneous nerve stimulators shall be subject to the following conditions:

a. Before any purchase, a device shall be rented for a minimum of 30 days and its use must have a demonstrated therapeutic benefit in the relief of pain.

b. The rental period shall not exceed three months or rental charges exceed $1,000, whichever comes first. The rental costs shall be deducted from the purchase price.

(b) Dental services shall be provided after receipt of a dental plan and

x-rays submitted by a dentist/orthodontist. Prior approval of the State Dental Consultant is required if the dental restoration program is in question, if service has been denied by Medi-Cal or if service includes extensive treatment such as maxillo-facial dental service, maxillo-facial prosthetics, gold or porcelain/gold crown, root canal treatment, surgical gum treatment, full or partial dentures or bridges.

(c) Treatment of an intercurrent illness, which is an acute medical/dental/psychiatric condition not considered a new, permanent disability and which interrupts other planned services, shall be considered a physical and mental restoration service. Service may include, but is not limited to, office visits, medication, surgical procedure and hospitalization while the client is in the rehabilitation program. Services shall not be:

(1) Subject to prior written approvals but shall be provided after consulting with and getting verbal approval from the Rehabilitation Supervisor with written approvals, as specified in Section 7160(a)(5), to follow within 15 days of the authorization for service.

(2) Provided in excess of 30 days.

NOTE: Authority cited: Sections 19006 and 19016, Welfare and Institutions Code. Reference: Sections 19006 and 19050, Welfare and Institutions Code; 34 CFR Sections 361.42, 361.48 and 361.50.

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## Article 5. Transportation Services

### § 7161. Transportation Services---General.

(a) Transportation as defined in section 7029:

(1) Shall be provided as a supportive service when necessary to provide for those travel expenses resulting from:

(A) A determination of rehabilitation potential.

(B) The provision of counseling and placement services.

(C) The individual's participation in a completion of an approved program of vocational rehabilitation services.

(D) The provision of post-employment services.

(2) Shall not be provided as a sole service because a supportive service is one which only contributes to the individual's ability to receive the benefit of other vocational rehabilitation services. Alone, it is not a vocational rehabilitation service.

(3) Shall not be provided for travel expenses caused by or required solely for personal, social, recreational or other non-vocational reasons.

(4) Shall be provided only to a individual who is engaged in suitable employment as defined in section 7011 under either of the following circumstances:

(A) Until the individual is financially capable of assuming the cost as determined in accordance with section 7161.5 or until the case is closed in accordance with section 7179.2, whichever occurs first.

(B) In accordance with (e).

(b) Prior to provision of any transportation services the Counselor shall determine both of the following:

(1) Whether the individual is eligible for similar benefits in accordance with Sections 7196 through 7198. If eligibility exists, the Counselor shall follow the procedures specified in those regulations.

(2) The ability of the individual to financially participate in accordance with sections 7190 through 7194. If the client is able to financially participate, the procedures for payment specified in those regulations shall be followed.

(c) The mode of transportation provided shall be the least costly mode which meets the special needs of the individual. Modes of transportation include, but are not limited to:

(1) Publicly owned or contracted transportation such as buses, dial-a-ride and rapid transit.

(2) Transportation available through community resources.

(3) Client-owned vehicles.

(4) Privately owned transportation such as taxi cab, limousine or paratransit companies and charter buses.

(5) Car pools and payment to co-workers.

(6) Car rental agencies.

(d) Additional authorization criteria and rates of payment for specific modes of transportation shall be set by the Department pursuant to sections 7162 through 7163.5.

(e) Once a case is closed because the individual is rehabilitated, transportation services shall be provided only upon written approval of the Rehabilitation Supervisor. The Rehabilitation Supervisor's approval shall be based upon such criteria as verification that:

(1) The services are necessary to support an over-all program of post-employment services as defined in section 7176.

(2) The services are requested within 12 months of the individual's case closure.

(3) The requirements of (b) have been met.

Note: Authority cited: Sections 19006 and 19016, Welfare and Institutions Code. Reference: Sections 19018 and 19150, Welfare and Institutions Code; and 34 CFR Sections 361.5 and 361.48.

### § 7161.5. Transportation Services---Employed Clients.

(a) For the purposes of section 7161(a)(4)(A), a client shall be deemed to be financially capable of assuming the cost of transportation after the client has received one full month of salary or wages unless there is evidence that undue financial hardship exists.

(b) Undue financial hardship means that the client's income, minus mandatory payroll deductions, and liquid assets for the month are insufficient to meet the current costs of transportation to and from employment in addition to all of the following:

(1) The average monthly costs, established in accordance with (c), of:

(A) Housing.

(B) Utilities, including basic rate for phone.

(C) Clothing required for employment.

(D) Food.

(E) Monthly medical and dental services.

(F) Child care necessary for employment.

(G) Court ordered child or spousal support.

(2) Unusual or unforeseen necessary expenses including such occurrences as:

(A) Deposits required for a client to move into more suitable housing.

(B) Repair or replacement of personal belongings damaged due to fire, earthquake or other natural disaster.

(C) Other similar occurrences.

(c) For the purposes of (b)(1), the average monthly costs shall be established by averaging the prior two months actual costs unless the Counsel-

or and client agree upon a different methodology for a particular item; for example, the client has paid for child care for only one month.

(d) Except as specified in section 7161(e), transportation services shall not be authorized after the client has received one full month of wages or salary, without the approval of the District Administrator. The District Administrator's decision shall be based upon such criteria as verification that:

(1) The conditions specified in section 7161(b) and (c) have been met.

(2) Undue financial hardship pursuant to subsection (b) of this section exists.

(e) In no instance shall a case, which would otherwise be closed in accordance with section 7184, remain open solely because a client is not financially capable of assuming the cost of transportation.

NOTE: Authority cited: Sections 19006 and 19016, Welfare and Institutions Code. Reference: Section 19150, Welfare and Institutions Code and 34 CFR Sections 361.5, 361.42 and 361.48.

### § 7162. Client-Owned Vehicle Use.

(a) Clients who use their own vehicles for transportation shall receive payment in accordance with this section and sections 7162.3 and 7162.5. The payment made pursuant to this section shall be in the form of a monthly allowance paid to the client, except that payment of parking fees may vary from situation to situation. For example, if the client is attending a public school, the Department may purchase a parking permit for the client to use for parking in the school's parking lot.

(b) Upon a determination by the counselor that a client-owned vehicle must be used because either of the following conditions exists, the rate of payment shall be the amount specified in (c):

(1) The client is required to operate his/her own vehicle to complete an Individualized Plan for Employment (IPE).

(2) A publicly owned or contracted mode of transportation is not readily available or would cause undue hardship to the client. Readily available and undue hardship shall be determined by considering such factors as:

(A) The special needs of the client.

(B) The proximity of public transportation to the client's home and to his/her destination.

(C) The frequency of public transportation at the times of day during which the client will be traveling.

(c) When the conditions specified in (b) exist, the transportation allowance shall include all of the following:

(1) Actual costs of necessary bridge tolls.

(2) Actual costs of necessary parking, unless other payment arrangements pursuant to (a) have been made.

(3) Payment for gasoline and oil which shall be the lesser of actual costs or:

(A) Fifteen cents per mile for vehicles other than vans which have been specially adapted to meet the client's needs.

(B) Twenty cents per mile for vans specially adapted to meet the client's needs.

(d) A client may elect to use his/her vehicle in lieu of public transportation. The rate of payment in such case shall equal the lesser of the following:

(1) Actual costs of gas, oil, and necessary parking and bridge tolls.

(2) The least expensive rate charged by the local public transportation company for the mode of transportation accessible to the client.

(e) The transportation allowance shall be calculated on an average monthly basis and paid to the client at the beginning of each month.

(f) A monthly transportation allowance shall be prorated and adjusted in a following month to reflect client absences when both of the following conditions exist:

(1) The transportation allowance is determined pursuant to (c).

(2) Client absences are in excess of four days per month.

NOTE: Authority cited: Sections 19006 and 19016, Welfare and Institutions Code; Reference: Section 19150, Welfare and Institutions Code and 34 CFR Sections 361.5, 361.42, 361.44, 361.46 and 361.48.

### § 7162.3. Vehicle Insurance.

(a) Vehicle insurance shall be purchased by the Department for an individual’s vehicle only when either of the following conditions exist:

(1) The individual is required to operate his/her own vehicle to complete an Individualized Plan for Employment (IPE). In this instance the amount of insurance purchased shall not exceed the State's legally prescribed minimum level. Prior written approval of the District Administrator shall be required. The District Administrator's decision shall be based upon such criteria as verification that:

(A) The individual is required to operate his/her own vehicle to complete the IPE.

(B) The requirements in section 7161(b) have been met.

(2) A vehicle is required as a condition of employment. In this instance the amount of insurance purchased may exceed the State's legally prescribed minimum level only when the conditions specified in (A) or (B) exist. The approval of the District Administrator shall not be required.

(A) As a condition of employment, additional coverage is required.

(B) A lien-holder requires additional coverage.

(b) The rate of payment shall be the usual and customary charges of the insurer.

(c) The payment shall be made by the Department to the insurer.

Note: Authority cited: Sections 19006 and 19016, Welfare and Institutions Code; Reference: Section 19150, Welfare and Institutions Code and 34 CFR 361.45, and 361.48.

### § 7162.5. Client-Owned Vehicle Repairs.

(a) For purposes of this section repairs shall include labor costs and the purchase of vehicle related items such as tires, batteries and automotive parts.

(b) Authorization of vehicle repairs shall occur only upon the written approval of the Rehabilitation Supervisor. For the authorization of more than $250 for repairs in a 12 month period, the written approval of the District Administrator shall also be required. The Rehabilitation Supervisor's and District Administrator's decision shall be based upon such criteria as whether or not:

(1) The client's rehabilitation program can be completed without the use of the client's vehicle.

(2) A written report establishing that the vehicle is repairable and authorization to repair the vehicle have been obtained from the Fleet Administration Division of the Department of General Services. When the repair cannot be delayed without jeopardizing the successful outcome of the client's rehabilitation program, a telephone call shall be made by the Counselor to the Fleet Administration Division for a determination as to whether an on-the-spot inspection is required before the repairs are made.

(3) The requirements in section 7161(b) have been met.

(c) The rate of payment shall be the usual and customary amount charged by the repairer for the specific repair being purchased.

(d) Payment shall be made directly to the client only when both of the following conditions exist:

(1) The cost of the repair is $100 or less.

(2) The client has paid for the repair and has proof of payment.

(e) Except as specified in (d), payment shall be made directly to the provider of service.

NOTE: Authority cited: Sections 19006 and 19016, Welfare and Institutions Code; Reference: Section 19150(2)(f), Welfare and Institutions Code and 34 CFR Sections 361.42 and 361.44.

### § 7163. Privately Owned and Operated Modes of Transportation.

(a) Privately-owned and operated modes of transportation shall be authorized only when both of the following conditions exist:

(1) The Counselor has made a determination in accordance with section 7162(b)(2) that a publicly-owned or contracted mode of transportation is not readily available or would cause undue hardship to the client.

(2) The privately-owned mode of transportation can meet the client's special needs.

(b) The rate of payment shall be the transportation provider's usual and customary charge for the service.

(c) Payment shall be made to the transportation provider.

NOTE: Authority cited: Sections 19006 and 19016, Welfare and Institutions Code. Reference; Section 19150, Welfare and Institutions Code and 34 CFR Sections 361.5, 361.42, 361.44, 361.46 and 361.48.

### § 7163.5. Transportation Expenses for Permanent Relocation.

(a) Transportation expenses for permanent relocation shall be provided when:

(1) The client has accepted suitable employment as a result of the completion of the IWRP.

(2) Permanent relocation is more cost effective and feasible than transportation to and from the client's current residence and place of employment.

(3) The requirements in section 7161(b) have been met.

(b) Transportation expenses for permanent relocation shall include only the costs specified in (1) or (2).

(1) For self-moves, the costs of renting a truck or trailer plus the amounts specified in section 7162(c). The mileage shall be based upon the most direct route from the client's former residence to the new residence.

(2) For carrier moves, the costs for a licensed carrier that is certified by the State and:

(A) For clients who own a vehicle and are driving it to the new residence, the amounts specified in section 7162(c). The mileage shall be based upon the most direct route from the client's former residence to the new residence.

(B) For clients who do not own a vehicle or are not driving it to the new residence, the costs of a one-way fare on the least expensive mode of common carrier which is accessible to the client.

(c) Prior to the authorization of transportation expenses for permanent relocation the written approval of the Rehabilitation Supervisor shall be obtained. If the estimated costs exceed $500 the written approval of the District Administrator shall also be obtained. The Rehabilitation Supervisor's and District Administrator's decision shall be based upon criteria such as verification that the conditions specified in (a) have been met.

(d) The rate of reimbursement shall be the usual and customary charges for the service by the carrier or rental agency.

(e) Payment shall be made directly to the carrier or rental agency, except for the amounts specified in section 7162(c) which shall be paid to the client.

NOTE: Authority cited: Sections 19006 and 19016, Welfare and Institutions Code; Reference: Section 19150(2)(f), Welfare and institutions Code; 34 CFR Sections 361.42, 361.44 and 361.46.

### § 7164. Vehicle Purchase.

(a) A motor vehicle shall be purchased for an individual only when all of the following conditions exist:

(1) The individual for whom the vehicle will be purchased meets all of the following conditions:

(A) Is physically unable to use non-adapted or alternate forms of transportation.

(B) Has competitive integrated employment as a vocational goal and one of the following conditions exist. The individual :

1. Is ready for or participating in vocational training.

2. Is job ready.

3. Has been offered a job.

4. Is already employed in suitable employment.

(C) Has the financial ability to operate, maintain and replace the vehicle as determined pursuant to section 7164.2.

(2) All other modes of transportation, as well as permanent relocation, have been explored and documented and a determination has been made that vehicle purchase is the cost effective means of obtaining transportation necessary to meet the individual’s specialized vocational needs.

(3) The individual has been evaluated by the Department or by a Department-approved mobility evaluation program in accordance with section 7164.4, or has obtained a waiver of the mobility evaluation in accordance with section 7164.6 and one of the following conditions exist:

(A) The individual has a driver's license and has obtained a waiver of the mobility evaluation.

(B) The mobility evaluation program has determined that the individual has a driver's license or has the potential for obtaining a driver's license and agrees that:

1. All driving instruction recommended by a mobility evaluation program shall be mandatory even if the individual has a current driver's license.

2. Until the unlicensed individual receives a driver's license, a licensed driver who has been approved by the Counselor and who has been provided instructions regarding any modifications added to the vehicle shall be utilized at all times.

(C) The individual does not have the potential to obtain a driver's license, but both of the following conditions exist:

1. A determination has been made through the mobility evaluation program or waiver process that the individual meets the passenger criteria.

2. The individual agrees that a licensed driver who has been approved by the Counselor and who has obtained instructions regarding any modifications added to the vehicle shall be utilized at all times.

(4) The individual has signed the Issuance of Vehicle form (DR 290A dated February, 1991) promising to abide by the following conditions while his or her case remains open:

(A) If the individual does not possess a driver's license, only the person(s) specified in (a)(3)(B)2. or (C)2. shall operate the vehicle.

(B) Manufacturers guidelines or General Service Administration's instructions contained in STD 271 (revised 8-78), which is incorporated by reference herein, regarding vehicle maintenance shall be followed.

(C) A record of both vehicle and modification maintenance shall be maintained in STD 271 and shall be reviewed annually by the Rehabilitation Counselor.

(D) The individual shall provide proof of insurance in an amount at least equal to the State's legally prescribed minimum level for the vehicle being purchased.

(E) Until the case is closed, the Department shall be the legal owner of the vehicle. If the case is closed for a reason other than “rehabilitated", the vehicle shall be returned to the Department, unless the individual purchases the vehicle from the Department at fair market value as determined in accordance with section 7194(c). In no instance shall any individual financial participation obligation paid by the individual be refunded.

(F) The individual shall make no alterations to the vehicle or its adaptive equipment without the prior written approval of the Rehabilitation Counselor.

(G) The individual shall obtain any recommended driver instruction and not drive the vehicle independently until all instructions recommended by the Mobility Evaluation program are completed.

(H) If the individual is the driver, the ~~client~~ individual shall maintain a valid California driver's license and shall notify the Rehabilitation Counselor if his or her license is no longer valid.

(I) The individual shall notify the Rehabilitation Counselor if the vehicle is involved in an accident.

(J) The individual shall notify the Rehabilitation Counselor of any reason which prevents him or her from carrying out his or her IPE.

(b) The least expensive vehicle which meets the individual 's specialized vocational needs shall be purchased.

(c) The vehicle shall be inspected and approved by the Fleet Administration Division of the Department of General Services.

Note: Authority cited: Sections 19006 and 19016, Welfare and Institutions Code. Reference: Section 19150(a)(12), Welfare and Institutions Code; 34 CFR Sections 361.48.

### § 7164.2. Vehicle Purchase---Financial Ability.

(a) A client shall demonstrate that he/she has the financial ability to operate, maintain and replace a vehicle by having actual or projected remaining disposable monthly income for basic living expenses at least equal to the current SSI/SSP monthly payment level for a disabled individual in an independent living situation. The client's remaining disposable monthly income shall be computed as follows:

(1) Subtract the client's monthly involuntary payroll deductions, such as federal and state income tax withholding and state disability insurance, from the client's total monthly gross earned income. If the client is employed, actual gross earnings and involuntary deductions shall be used. If the client is not employed, projected gross earnings, based upon the type of employment being sought and the client's marketable skills, shall be used. Involuntary deductions shall be projected as 20 percent of the projected gross earnings. These calculations determine the client's total monthly net earned income.

(2) Combine the client's total monthly net earned income with the client's total monthly unearned income and, for client's who are SSI/SSP recipients, the SSI adjusted amount determined in accordance with (b). This is the client's total monthly income. Unearned income includes such payments as SSDI, Veterans benefits and pensions.

(3) From the total monthly income determined in (2), subtract the projected monthly vehicle operation and maintenance costs determined in accordance with (c) and the projected driver's costs, if any, determined in accordance with (d). This is the client's remaining disposable monthly income.

(b) The SSI adjusted amount shall be calculated as follows:

(1) Subtract the client's actual or projected monthly impairment-related work expenses, if any, from the client's actual or projected total gross earned income determined in accordance with (a)(1). Impairment-related work expenses shall be limited to those items specified in 20 CFR 416.976(c), April 1988 edition, which is incorporated by reference herein. If the client is employed, the actual cost of impairment-related work expenses shall be used. If the client is not employed, the Counselor, together with the client, shall estimate the cost of impairment-related work expenses based upon the special needs of the individual client.

(2) If the client has:

(A) Both earned and unearned income:

1. Subtract $20 from the client's unearned income. This is the client's total unearned income used to determine the SSI adjusted amount.

2. Subtract $65 from the amount determined in (1). Divide the remainder by two. This is the client's total earned income used to determine the SSI adjusted amount.

3. Add the amount determined in 1., even if the amount is less than zero, to the amount determined in 2. This is the client's total combined monthly income used to determine the SSI adjusted amount.

(B) Only earned income:

1. Subtract $85 from the amount determined in (1).

2. Divide the amount determined in 1. by two. This is the client's total monthly income used to determine the SSI adjusted amount.

(3) Subtract the amount determined in (2)(A) or (B), as appropriate, from the current SSI/SSP payment level. This is the SSI adjusted amount to be used in (a)(2).

(c) The costs of operating, maintaining and replacing a vehicle shall be projected on a monthly basis in accordance with this subsection. Based upon the special needs of the individual client, the Counselor, together with the client, shall estimate the type of vehicle and modifications/assistive devices that will be required. The applicable of the following amounts shall then be applied:

(1) Monthly vehicle costs:

(A) Compact or subcompact car $330.00

(B) Intermediate-sized car $370.00

(C) Pickup truck $392.00

(D) Station wagon $392.00

(E) Van $410.00

(2) Monthly modification costs:

(A) Single, such as hand controls or left foot

 accelerator $1.66

(B) Moderately complex, such as passenger

 equipment lift or power doors $12.50

(C) Complex, such as lift, transfer seat, power

 tiedown or sensitized steering $22.91

(d) If the vehicle will be purchased for the client as a passenger and the client anticipates driver costs, the Counselor together with the client shall estimate the number of hours a month that the client will need a driver for employment-related purposes. This amount shall be multiplied by the minimum wage of $4.25 per hour to determine the projected driver costs.

NOTE: Authority cited: Sections 19006 and 19016, Welfare and Institutions Code. Reference: Section 19150(a)(11), Welfare and Institutions Code; 34 CFR Section 361.42.

### § 7164.4. Mobility Evaluations.

(a) Mobility evaluations shall be accepted only if completed by a Department-approved Mobility Evaluation program which complies with the standards specified in section 7302.

(b) Prior to the authorization of a mobility evaluation, the approval of the District Administrator shall be obtained. The District Administrator's decision shall be based upon such criteria as verification that:

(1) All of the conditions in section 7164(a)(1)(A) and (C) and (2) are met.

(2) There is compliance with section 7161(b) and all of the requirements therein are met. For the purposes of client financial participation, the amount shall be calculated for the month in which the vehicle will be received by the client and payment shall be made to the Department at the time the client receives the vehicle.

(3) There is evidence that the client has completed or will successfully complete his or her IPE.

(c) A mobility evaluation for clients who wish to be drivers shall include an assessment of all of the following:

(1) Physical functional abilities, including but not limited to, medical condition, strength and range of motion.

(2) Perceptual and cognitive abilities, including but not limited to, visual abilities, judgment skills and emotional stability.

(3) A behind-the-wheel assessment using the type of vehicle and equipment recommended pursuant to (f) which shall include both of the following:

(A) Stationary vehicle testing to determine the client's specific positioning needs, initial equipment needs and functional potential to operate the vehicle.

(B) A moving vehicle assessment which shall include an assessment of all of the following. The client's:

1. Physical performance in the driving set-up.

2. Integration of physical, visual and cognitive skills in varied driving environments.

3. Endurance and fatigue threshold.

(4) Potential for obtaining a driver's license.

(d) If the client has the potential to obtain a driver's license, the mobility evaluation, in addition to the items specified in (c), shall include both of the following:

(1) Specifications for adaptive driving equipment and vehicle modifications as specified in (f).

(2) An estimate of the amount and type of driver instruction needed.

(e) A mobility evaluation for clients who will be passengers shall include both of the following:

(1) An assessment of the client's:

(A) Functional abilities.

(B) Equipment needs for safety as a passenger.

(2) The appropriate recommendations specified in (f).

(f) Recommendations for the least expensive and complicated type of vehicle and assistive device which will meet the client's functional capabilities and vocational and safety needs. A van shall be the last alternative considered. Recommended vehicle modifications and assistive devices shall meet the standards specified in section 7165(d).

NOTE: Authority cited: Sections 19006 and 19016, Welfare and Institutions Code. Reference: Section 19150(a)(11), Welfare and Institutions Code; 34 CFR Sections 361.5, 361.42, and 361.48.

### § 7164.6. Mobility Evaluation---Waivers.

(a) A client who will be the driver of the vehicle shall have the mobility evaluation waived only if all of the following conditions exist:

(1) The client has driven a modified car and possesses a current and valid driver's license which has been issued after the onset of the client's disability. The client shall present his or her driver's license as verification.

(2) The new car has similar options, such as power steering, power brakes, etc. as the client's former car and / or the modifications to be purchased have the same generic classifications, such as hand control, spinner knob, etc., as the modifications the client has been using and the modifications will cost $750 or less.

(3) The client, within the three prior years, has had no moving violations or record of an accident while operating a vehicle as verified through a printout of the client's driving record from the Department of Motor Vehicles, driver instructor's reports or similar documents.

(4) Supporting medical evidence is presented by the client which indicates that the client's medical condition is, or can be expected to remain, stable and that the client has no perceptual problems. In addition, there shall be confirmation from a Medical Consultant that the supporting medical evidence is accurate and consistent with the client's medical information maintained by the Department.

(5) There is verification that the new vehicle and / or modifications to be purchased is consistent with that recommended by an occupational or physical therapist.

(6) Approval of the Program Supervisor has been obtained. The Program Supervisor's decision shall be based upon whether or not there is verification:

(A) Of the criteria specified in (1) through (5).

(B) That the requirements of section 7164(b) and 7164.2 have been met.

(b) A client who will be transported as a passenger in the vehicle shall have the mobility evaluation waived only if all of the following conditions exist:

(1) The client will be transported in a standard, full-sized van.

(2) The measured height of the client from the floor to the top of his or her head while sitting upright is less than 51 inches.

(3) The client, without tipping the wheelchair, can temporarily bend over in his or her wheelchair so that the distance from the floor to the top of his or her head or the highest point on the wheelchair is less than 48 inches.

(4) The distance from the back of the rear wheel to the tip of the toe or end of foot plate, whichever is longer, is less than:

(A) 45 inches if the chair is equipped with anti-tip rollers.

(B) 48 inches if the chair is not equipped with anti-tip rollers.

(5) The client has no respiratory or other special equipment which must be attached to the van.

(6) The client does not anticipate the need or ability to be an independent driver in the next five years.

(7) The client has a standard noncustomized wheelchair. Recliner wheelchairs are permissible only with a doctor's permission for repeated use.

(8) The Counselor and / or the client foresee no equipment needs other than any of the following:

(A) A wheelchair lift operable by an attendant and located according to client needs and preference.

(B) Lift switches located such that the client's attendant can see the lift through its whole cycle of operation.

(C) A light near the lift for night use.

(D) The floor of the van leveled.

(E) A manual (non powered) wheelchair tiedown at the standard passenger position between and just behind the two front seats.

(F) A seat belt attached to the van at the passenger position.

(G) Buckle or velcro closure trunk supports attached to the client's wheelchair for trunk stability while stopping or cornering.

(9) The approval of the Program Supervisor has been obtained. The Program Supervisor's decision shall be based upon whether or not there is documentation of the criteria specified in (1) through (7).

NOTE: Authority cited: Sections 19006 and 19016, Welfare and Institutions Code. Reference: Section 19150(a)(11), Welfare and Institutions Code; 34 CFR Sections 361.5, 361.42, and 361.48.

### § 7165. Purchase of Vehicle Modifications.

(a) The provisions of this section shall apply to the purchase of all vehicle modifications and repairs to existing modifications. In addition, except as specified in (b), the provisions of sections 7164 through 7164.6 shall apply to all vehicle modifications.

(b) Vehicle modifications or repairs to existing modifications costing under $750, unless being purchased in conjunction with the purchase of a vehicle, shall not be subject to the provisions of either of the following:

(1) Sections 7164(a)(1)(B) and 7164(b), providing the purchase is necessary for the completion of the IWRP.

(2) Sections 7164(a)(1)(C) and section 7164.2.

(c) Prior approval of the Program Supervisor shall be obtained for vehicle modifications costing less than $2,000. Prior approval of the District Administrator shall be obtained for vehicle modifications costing $2,000 or more. The Program Supervisor's or District Administrator's decision shall be based upon consideration as to whether:

(1) The requirements of section 7161(b) have been met.

(2) The provisions of sections 7164 through 7164.6, if applicable, have been met.

(d) All modifications and repairs to existing modifications shall be inspected and approved by the Fleet Administration Division of the Department of General Services. All modifications shall meet the standards specified in all of the following which are incorporated by reference herein:

(1) “Requirements for Adaptive Driving Equipment" prepared by the Department and the Department of General Services, 1989 Revision.

(2) Standards of the Society of Automotive Engineers, Inc. (SAE), sections J258, dated June, 1971, J514, dated April, 1980, J516, dated June, 1987, J517, dated March, 1988, J518, dated December 1987, J537, dated June, 1986, J538, dated August, 1983, J541, dated July, 1983, J553, dated June, 1988, J575, dated July, 1983, J858a, dated August, 1969, J928, dated June, 1980, and J1292, dated October, 1981.

(3) Veteran's Administration (VA) Standard Design and Test Criteria for Safety and Quality of Automatic Wheelchair Lift Systems for Passenger Motor Vehicles, dated May 17, 1978.

(4) VA Program Guide, Prosthetic and Sensory Aids Services, Add-on Automotive Adaptive Equipment for Passenger Automobiles, dated March 31, 1978.

(5) Title 49 CFR sections 571.3, 571.101, 571.105, 571.107, 571.124, 571.201, 571.203, 571.207 through 571.210 and 571.302, October 1, 1988 edition.

NOTE: Authority cited: Sections 19006 and 19016, Welfare and Institutions Code. Reference: Section 19150(a)(11), Welfare and Institutions Code; 34 CFR Sections 361.42 and 361.47.

### § 7166. Vehicle Maintenance. [Repealed]

### § 7167. Maintenance. [Repealed]

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## Article 6. Personal Services

### § 7168. Interpreters.

### (a) The following interpreter services for individuals who are deaf or hard of hearing, non-English-speaking, or individuals who are deaf-blind shall be provided when necessary to provide vocational rehabilitation services:

(1) Sign Language Interpretation

(2) Oral Interpretation

(3) Tactile Interpretation

Note: Authority cited: Sections 19006 and 19016, Welfare and Institutions Code. Reference: 34 CFR 361.42 and 361.48.

### § 7169. Readers, Notetaker Services, Attendants and Drivers.

(a) The following services shall be provided when necessary to provide vocational rehabilitation services:

(1) Readers for blind or other severely disabled applicants or clients.

(2) Notetaker services for deaf or other severely disabled applicants or clients.

(3) Attendants and/or drivers for severely disabled applicants or clients.

(b) Prior to provision of any of the services specified in (a), the Counselor shall determine whether either of the following conditions exist:

(1) The applicant or client has a family member or other closely associated person who is able to provide the service without pay and who volunteers to do so. In this case the Department shall not provide the service.

(2) The applicant or client is eligible for similar benefits in accordance with sections 7196 through 7198. If eligibility exists, the Counselor shall follow the procedures specified in those regulations.

(c) When a family member or other closely associated person is able to provide the service but refuses to do so without pay, the approval of the District Administrator shall be obtained prior to authorizing such individual to provide the service. The District Administrator's approval shall be based upon verification that:

(1) The applicant or client meets the qualifications specified in (a) for receipt of the specific services.

(2) The conditions specified in (b)(2) have been met.

(3) No provider, other than a family member or other closely associated person, is available to provide the necessary service(s).

NOTE: Authority cited: Sections 19006 and 19016, Welfare and Institutions Code. Reference: Section 19150, Welfare and Institutions Code; and 34 CFR Sections 361.42 and 361.47.

### § 7170. Tutorial Services.

(a) The following tutorial services shall be provided when necessary for the successful outcome of the Individualized Plan for Employment (IPE):

(1) Academic or vocational skills tutorial services as a supplement to training services specified in Sections 7154 through 7158.

(2) Other tutorial services, including but not limited to, assistance in learning a skill essential to achieving independence or suitable employment, such as assistance in learning to use public transportation.

(b) Prior to the provision of any tutorial services, the Counselor shall determine whether the applicant or client is eligible for similar benefits in accordance with Sections 7196 through 7198, including services available through institutions for higher education. If eligibility exists, the Counselor shall follow the procedures specified in those regulations.

(c) Whenever possible, tutorial services for the deaf or non-English speaking clients shall be purchased from a service provider who meets both the appropriate qualifications for tutors specified in Section 7301.5 and for interpreters specified in Section 7300. When such a provider is not available, the Department shall purchase tutorial services from a provider who meets the appropriate qualifications specified in Section 7301.5. Interpreter services under Section 7186 shall be purchased by the Department from a provider who meets the appropriate qualifications specified in Section 7300.

Note: Authority cited: Sections 19006 and 19016, Welfare and Institutions Code. Reference: Section 19150, Welfare and Institutions Code; 34 CFR Sections 361.45 and 361.48.

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## Article 7. Technological AIDS/Devices and Occupational Licenses/Tools/Equipment

### § 7172. Telecommunication, Sensory and Other Technological AIDS and Devices.

(a) Telecommunication, sensory and technological aids and/or devices may be provided when all of the following conditions exist:

(1) The client's disability warrants such aids or devices.

(2) There is no other method of accommodating the client's disability which is more efficient or less expensive.

(3) The aid or device is necessary to the client's vocational rehabilitation program.

(4) No medical contraindication exists.

(5) The client's disability is stable enough so that the client will benefit from the aid or device over a prolonged period of time.

(b) Any telecommunication, sensory or other technological aid or device provided to a client shall meet all established federal and state health, engineering and safety standards of general applicability that govern that type of aid or device.

(c) Prior to the provision of the aid or device the Counselor shall determine both of the following:

(1) Whether the client is eligible for similar benefits in accordance with Sections 7196 through 7198. If eligibility exists, the Counselor shall follow the procedures specified in those regulations.

(2) The ability of the client to financially participate in accordance with sections 7190 through 7193. If the client is able to financially participate, the procedures for payment specified in those regulations shall be followed.

NOTE: Authority cited: Sections 19006 and 19016, Welfare and Institutions Code. Reference: Sections 19018 and 19150, Welfare and Institutions Code; and 34 CFR Sections 361.42 and 361.47.

### § 7173. Occupational Licenses, Tools and Equipment.

(a) Occupational licenses, tools and equipment may be provided when necessary for the client to achieve suitable employment.

(b) Tools may be provided during a training program or to enable the client to become suitably employed. Such tools are limited to those that trainees and employees are normally required to provide or special tools that are necessary because of the client's disability.

(c) Equipment may be provided if it is required for participation in an occupation, or is necessary because of the client's disability.

NOTE: Authority cited: Sections 19006 and 19016, Welfare and Institutions Code. Reference: 34 CFR 361.42.

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## Article 8. Other Vocational Rehabilitation Services

### § 7174. Other Goods and Services – General Provisions.

(a) Other goods and services may be provided to an eligible individual under an Individualized Plan for Employment (IPE) only if the goods and services are necessary for the individual to achieve the employment outcome specified in his or her IPE.

(b) Other goods and services include, but are not limited to:

(1) Short-term or emergency financial assistance to an individual, except that financial assistance shall not be provided to support an individual’s everyday living expenses or take the place of, provide the services of, or become a payment program similar to, welfare and other social service agencies.

(2) Occasional or emergency purchases of haircuts, handbags, or toiletries for an individual.

(c) Before providing any vocational rehabilitation services to an individual as other goods and services, the Rehabilitation Counselor shall determine all of the following:

(1) Whether the goods and services to be provided are available from other sources as a comparable service and benefit, including, but not limited to, health or disability insurance, employee benefits, social security programs, welfare and social service programs, and other programs sponsored by federal, state, city, and county government agencies that serve individuals with disabilities.

(2) The extent of the individual’s financial participation in the cost of goods and services to be provided.

(3) That other, more cost-effective, alternatives are not available.

NOTE: Authority cited: Sections 19006 and 19016, Welfare and Institutions Code. Reference: 29 USC 721(a)(8); 34 CFR Sections 361.5(b)(10), 361.13, 361.48, 361.53, and 361.54; and Sections 19018 and 19150, Welfare and Institutions Code.

### § 7175. Services to Family Members.

(a) Any vocational rehabilitation service may be provided to a member of a client's family if the service is necessary to support the client's vocational adjustment or vocational rehabilitation.

(b) The services provided to a family member or members shall be based on an evaluation of the client's needs which includes:

(1) Problems faced by the family in support of the client's rehabilitation; and

(2) The probable substantial impact of services and increased opportunities for the client to use vocational rehabilitation services; and

(3) A determination that without such services the client would be unable to achieve suitable employment.

(c) Prior to the provision of a service to family members the Counselor shall:

(1) Determine:

(A) Whether the family member for whom the service is planned is eligible for similar benefits in accordance with sections 7196 through 7198. If eligibility exists, the Counselor shall follow the procedures specified in those regulations.

(B) The ability of the client to financially participate in accordance with sections 7190 through 7193. If the client is able to financially participate, the procedures for payment specified in those regulations shall be followed.

(2) Obtain approval of the Rehabilitation Supervisor. The Rehabilitation Supervisor's decision shall be based upon such criteria as verification that:

(A) The condition in (a) and (b) exist.

(B) The requirements of (1) have been met.

NOTE: Authority cited: Sections 19006 and 19016, Welfare and Institutions Code. Reference: Sections 19018 and 19150, Welfare and Institutions Code; and 34 CFR Sections 361.42 and 361.47.

### § 7176. Post-Employment Services.

(a) The purpose of post-employment services is to maintain, regain, or advance in competitive integrated employment.

(b) An Individualized Plan for Employment (IPE) for post-employment services shall be completed prior to providing any services.

(c) Post-employment services shall be terminated when the client's employment has been maintained or when a new evaluation of the client's situation is deemed necessary.

Note: Authority cited: Sections 19006 and 19016, Welfare and Institutions Code. Reference: Section 19150(2), Welfare and Institutions Code and 34 CFR 361.5, 361.48, and 363.4(c).

### § 7177. Maintenance.

(a) The Department may provide maintenance, as defined in Section 7019 of these regulations, to an individual who:

(1) Is participating in an assessment for determining eligibility and vocational rehabilitation needs or receiving vocational rehabilitation services under an Individualized Plan for Employment (IPE); and

(2) Must incur additional expenses for items such as food, shelter, and clothing in excess of that individual’s normal expenses in order to participate in the assessment or receive the service.

(b) The Department may not provide maintenance to support an individual’s basic living expenses. Short-term emergency financial assistance may be provided under limited conditions specified in Section 7174 of these regulations.

(c) Before maintenance may be provided, the Rehabilitation Counselor must document all of the following in the record of services:

(1) The availability and use of comparable services and benefits, as specified in Chapter 5, Article 3 of these regulations;

(2) The extent of the individual’s financial participation, if any, as specified in Chapter 5, Article 1 of these regulations; and

(3) The amount of expense that must be incurred in excess of normal living expenses in order for the individual to participate in the assessment or receive the service described in (a)(1) of this section.

(d) Maintenance payments to an individual are limited to actual expenses in excess of normal living expenses.

(e) The District Administrator must approve the provision of maintenance to an individual who is not in an independent living situation (e.g., living at home with parents or with a family relative) when that maintenance exceeds $500 during any consecutive 12-month period. The District Administrator must verify that the requirements of this section are met before granting approval.

(1) A 12-month period begins with the month in which the first allowable expense is incurred and ends after 12 months have elapsed. For example, if the expense was incurred in April, the 12 month period ends in the following April. If the next expense is not incurred until July, a new 12-month period begins in July.

NOTE: Authority cited: Sections 19006 and 19016, Welfare and Institutions Code. Reference: 29 USC 723(a)(7); 34 CFR Sections 361.5(b)(35) and 361.48(g); and Sections 19011 and 19150(a)(8), Welfare and Institutions Code.

### § 7178. Ancillary Services for the Blind.

(a) Ancillary Counselor-teacher services for the blind, including but not limited to those services specified in Section 19525, Welfare and Institutions Code, may be provided when necessary to the successful outcome of the client's vocational goal.

(b) When the Counselor-teacher is not the client's Vocational Rehabilitation Counselor, the Counselor-teacher shall coordinate his/her provision of services with the services provided by the Vocational Rehabilitation Counselor, including any services provided by the Orientation Center for the Blind.

NOTE: Authority cited: Sections 19006 and 19016, Welfare and Institutions Code. Reference: Sections 19150 and 19525, Welfare and Institutions Code.

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# Chapter 4. Standards for Closing the Record of Services

### § 7179. Closing the Record of Services Without an Eligibility Determination.

(a) The Department may not close an applicant’s record of services prior to making an eligibility determination unless:

(1) The applicant declines to participate in, or is unavailable to complete, the assessment for determining eligibility and priority for services conducted pursuant to Section 7062 of these regulations, which includes any trial work experience; and

(2) The Department has made at least three attempts over a 30-day period to contact the applicant or, if appropriate, the applicant’s representative to encourage the applicant’s participation. The first attempt shall be made in writing to the last known address of the applicant or his or her representative.

(b) For purposes of (a)(1) of this section—

(1) An individual is considered to have declined to participate in the assessment to determine eligibility and priority for services when the individual chooses not to participate in vocational rehabilitation services; or when the individual prevents the completion of the assessment by failing to cooperate in such assessment or any part thereof, including repeated failure to keep appointments, maintain contact, or carry out the individual’s responsibilities with respect to the assessment, making threats or engaging in violent conduct, or engaging in abusive language or behavior directed at a Department employee, vendor, or other applicant or eligible individual, when such language or behavior continues after notice is given that the language or behavior is inappropriate.

(2) An individual is considered to be unavailable to complete the assessment to determine eligibility and priority for services when the individual cannot be located or contacted; the individual is unavailable to participate for an extended or indefinite period due to health problems or prolonged confinement in a hospital, nursing home, prison, jail, treatment center, or similar facility, or for another reason; or the individual is deceased.

Note: Authority cited: Sections 19006 and 19016, Welfare and Institutions Code. Reference: 34 CFR Sections 361.42 and 361.44; and Section 19011, Welfare and Institutions Code.

### § 7179.1. Closing the Record of Services With a Determination of Ineligibility.

(a) The Department shall close the record of services when it determines that an applicant is ineligible for vocational rehabilitation services or determines that an eligible individual is no longer eligible for services, as specified in Section 7098 of these regulations.

(b) The Department shall review any ineligibility determination based on a finding that the individual is incapable of achieving an employment outcome in accordance with Section 7181.1 of these regulations.

(c) For purposes of (a) of this section, an individual is not eligible for services when any of the following conditions exists:

(1) Following trial work experience, there is clear and convincing evidence, as defined in Section 7004.6 of these regulations, that the individual cannot benefit from vocational rehabilitation services in terms of an employment outcome due to the severity of the individual’s disability.

(2) The individual does not have a physical or mental impairment, as defined in Section 7021 of these regulations.

(3) The individual’s impairment does not constitute a substantial impediment to employment, as defined in Section 7027 of these regulations.

(4) The individual does not require vocational rehabilitation services provided by the Department to prepare for, secure, retain, advance in or regain an employment outcome in competitive integrated employment consistent with the individual’s unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice, including circumstances in which the individual has obtained an employment outcome without benefit from Department services.

Note: Authority cited: Sections 19006 and 19016, Welfare and Institutions Code. Reference: 29 USC Sections 705 and 722; 34 CFR Sections 361.5, 361.42; and Sections 19011, 19103, and 19151, Welfare and Institutions Code.

### § 7179.2. Closing the Record of Services With an Employment Outcome.

(a) The record of services of an eligible individual who has achieved an employment outcome may be closed only if all of the following requirements are met.

(1) The individual has achieved the employment outcome specified in his or her Individualized Plan for Employment (IPE), and the employment outcome is consistent with the individual’s unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice.

(2) The individual has maintained the employment outcome for an appropriate period of time, but not less than 90 days, necessary to ensure the stability of the employment outcome, and the individual no longer needs vocational rehabilitation services.

(3) At the end of the appropriate period specified in (a)(2) of this section, the individual and the Rehabilitation Counselor consider the employment outcome to be satisfactory and agree that the individual is performing well in the employment.

(4) The individual is informed through appropriate modes of communication of the availability of post-employment services, as defined in Section 7021.5 of these regulations.

Note: Authority cited: Sections 19006 and 19016, Welfare and Institutions Code. Reference: 34 CFR Sections 361.5, 361.47, and 361.56; and Section 19011, Welfare and Institutions Code.

###  7179.3. Closing the Record of Services for Other Reasons.

(a) An eligible individual’s record of services may be closed at any time if the Department determines that the individual is precluded from continued participation in their Individualized Plan for Employment (IPE) and entering competitive integrated employment because the individual ------

(1) Chooses not to participate in, or continue participating in, the vocational rehabilitation program;

(2) Cannot be located or contacted and, as a result, fails to participate;

(3) Is unavailable to participate for an extended or indefinite period due to health problems or a prolonged confinement in a hospital, nursing home, prison, jail, treatment center, or similar facility, or for another reason;

(4) Is deceased;

(5) Fails to cooperate at any point in the vocational rehabilitation program, including repeated failure to keep appointments, maintain regular contact with the Rehabilitation Counselor, or carry out other responsibilities associated with participation in the program specified in Section 7029.9 of these regulations;

(6) Requires extended services for supported employment, and the extended services needed are not available;

(7) Achieved supported employment in integrated employment but did not earn a competitive wage after exhausting the 24 months of supported employment services and any agreed upon extension of time; or

(8) Has engaged in any criminal activity when applying for or receiving vocational rehabilitation services, including fraud or misrepresentation used to obtain services, collusion, or theft.

Note: Authority cited: Sections 19006 and 19016, Welfare and Institutions Code. Reference: 29 USC 720 and 722; 34 CFR Sections 361.5, 361.42, 361.43 and 361.44; and Section 19011, Welfare and Institutions Code.

### § 7179.4. Self-employment; Closure with an Employment Outcome.

(a) For purposes of the closure requirements in Section 7179.2(a)(2) and (3) of these regulations, an eligible individual is considered to have achieved an employment outcome in a self-employment setting when:

(1) The self-employment setting is consistent with the individual's personal attributes, including the individual's unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice under Article 4.

(2) The individual has maintained self-employment in ~~a~~ competitive integrated employment comparable to other individuals similarly situated as specified in the Individualized Plan for Employment (IPE) for a sufficient period of three months to one year.

(3) The individual yields an income that is comparable to the income received by other individuals who do not have disabilities and are self-employed in similar occupations or performing similar tasks, with the same or similar training, experience, or skills but not less than the customary wage and benefit level received by individuals engaged in the same or similar self-employment. ~~and~~

(4) The individual and their Rehabilitation Counselor agree that the employment outcome in the self-employment setting is satisfactory, and the individual is performing well.

(b) At closure, any equipment purchased by the Department and loaned to the individual in connection with the IPE shall be returned to the Department or provided to the individual, as specified in Section 7194 of these regulations.

Note: Authority cited: Sections 19006 and 19016, Welfare and Institutions Code. Reference: 29 USC 705; 34 CFR 361.5 and 361.56; and Section 19011, Welfare and Institutions Code.

### § 7179.5. Self-employment; Closure without an Employment Outcome.

(a) The record of services for an eligible individual whose Individualized Plan for Employment (IPE) includes a self-employment setting shall be closed without an employment outcome when:

(1) It is determined that the self-employment setting is not appropriate, as specified in Section 7136.6 of these regulations; or that the eligible individual is unable to maintain competitive integrated employment in the self-employment setting; or the individual has not met the criteria for a successful competitive integrated employment outcome specified in Section 7179.4 of these regulations within 12 months after beginning operation of the small business, whichever occurs earlier; and

(2) The Rehabilitation Counselor (RC) has offered the individual an opportunity to discuss alternative employment settings and other vocational rehabilitation services that could be provided to assist the individual in obtaining employment in an alternative setting, and the individual declines such services or no such services are available.

(b) At closure, any equipment purchased by the Department and loaned to the individual in connection with the IPE shall be returned to the Department or provided to the individual, as specified in Section 7194 of these regulations.

Note: Authority cited: Sections 19006 and 19016, Welfare and Institutions Code. Reference: 29 USC Sections 705, 720, 721, and 722; 34 CFR Sections 361.5, 361.45, 361.46 and 361.56; and Section 19011, Welfare and Institutions Code.

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### § 7179.7. Supported Employment Program; Closing the Record of Services With an Employment Outcome.

### (a) In addition to Section 7179.2, an individual with a most significant disability, including a youth with a most significant disability, who is employed in competitive integrated employment will be considered to have concurrently achieved an employment outcome, including customized employment, in supported employment and their record of services may be closed when:

(1) The individual has supported employment services specified in Section 7028.1.

(2) The individual has maintained the employment for a minimum of 90 days before transition to extended services, to ensure the stability of the employment outcome;

(3) The individual and the Department consider the employment outcome to be satisfactory and agree that the individual is performing well in the employment;

(b) The record of services for a youth with a most significant disability who is receiving extended services provided by the Department will be closed when—

(1) The youth with a most significant disability achieves an employment outcome in supported employment in competitive integrated employment; and

(A) Is no longer eligible to receive extended services provided by the Department because the individual—

(i) No longer meets age requirements established in the definition of a youth with a disability as defined in Section 7030; or

(ii) Has received extended services for a period of four years; or

(iii) Has transitioned to extended services prior to meeting the age or time restrictions established under paragraphs (A) and (B) of this section, respectively; and

(B) Satisfies requirements for case closure, as set forth in Section 7179.2; and

(C) The individual is no longer receiving any other vocational rehabilitation service from the Department.

(D) Funding has transitioned to a source of extended services; and

(E) The individual has maintained the employment for no less than 90 days after transition to extended services.

Note: Authority cited: Sections 19006 and 19016, Welfare and Institutions Code. Reference: Sections 19011 and 19150 and 19150, Welfare and Institutions Code; 29 USC 705; and 34 CFR 361.46, 361.47, 363.1, 363.3, and 363.53 through 363.55.

###  7181. Closing the Record of Services---Notification Requirements.

(a) When an individual’s record of services is closed, the Department shall provide written notice to that individual, or his or her representative, as appropriate, supplemented as necessary by other appropriate modes of communication consistent with the informed choice of the individual. When the reason for closure is inability to locate or contact the individual, the notice shall be sent to the last known address of the individual or his or her representative.

(b) A written notice issued pursuant to (a) of this section shall include all of the following information:

(1) The reason the record of services was closed and reference to the federal or state statute or regulation or federal policy directive issued by the U.S. Department of Education, Office of Special Education and Rehabilitative Services (OSERS), Rehabilitation Services Administration, that supports the closure.

(2) A description of the means by which the individual may appeal the Department’s decision to close the record of services, including administrative review, mediation, and fair hearing processes specified in Chapter 12, Articles 1, 1.5, and 2 of these regulations.

(3) A description of services available from the Client Assistance Program and information on how to contact that program.

NOTE: Authority cited: Sections 19006 and 19016, Welfare and Institutions Code. Reference: 29 USC 722(a)(5) and (c); 34 CFR Sections 361.43, 361.44, 361.47, 361.56, and 361.57; Sections 19005, 19011, 19012, and 19013.5, Welfare and Institutions Code; and Section 7295.2, Government Code.

### §7181.1. Mandatory Reviews After the Record of Services Has Been Closed.

The purpose of this section is to specify circumstances under which the Department must conduct reviews after a record of services has been closed.

(a) The Department must conduct a semi-annual review and reevaluation for the first two years of such employment and annually thereafter, in accordance with the requirements in paragraph (b) of this section, for an individual with a disability:

(1) Who has a record of service, as described in Section 7122, as either an applicant or eligible individual under the vocational rehabilitation program; and

(2) Who has achieved employment in which the individual is compensated in accordance with Section 14(c) of the Fair Labor Standards Act; or

(3) Who is in extended employment, including those individuals whose record of service is closed while the individual is in extended employment on the basis that the individual is unable to achieve an employment outcome consistent with an individual’s unique strengths, resources, priorities, concerns, abilities, capabilities, interests or that the individual made an informed choice to remain in extended employment.

(b) For each individual with a disability who meets the criteria in paragraph (a) of this section, the Department must—

(1) Semi-annually review and reevaluate the status of each individual for two years after the individual's record of services is closed (and annually thereafter) to determine the interests, priorities, and needs of the individual with respect to competitive integrated employment or training for competitive integrated employment;

(2) Enable the individual or, if appropriate, the individual's representative to provide input into the review and reevaluation and must document that input in the record of services with the individual's or, as appropriate, the individual's representative's signed acknowledgment that the review and reevaluation have been conducted; and

(3) Make maximum efforts, including identifying and providing vocational rehabilitation services, reasonable accommodations, and other necessary support services, to assist the individual in engaging in competitive integrated employment as defined in Section 7006.3.

(c) If the Department determines that an applicant is ineligible for vocational rehabilitation services, or determines that an eligible individual, whether or not the individual is receiving services under an Individualized Plan for Employment (IPE), is no longer eligible for services, and the determination is based on a finding that the individual is incapable of achieving an employment outcome, the Department shall review the ineligibility determination within 12 months of the decision and annually thereafter, if such review is requested by the individual or, if appropriate, by the individual’s representative. This review need not be conducted in situations in which the individual has refused it, the individual is no longer present in the State, the individual’s whereabouts are unknown, or the individual’s medical condition is rapidly progressive or terminal.

Note: Authority cited: Sections 19006 and 19016, Welfare and Institutions Code. Reference: 34 CFR Sections 361.5, 361.43, 361.47, and 361.55; and Section 19011, Welfare and Institutions Code.

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# Chapter 5. Client Financial Participation; Loaned Property; Similar Benefits

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## Article 1. Client Financial Participation

### § 7190. Client Financial Participation---General.

(a) Clients shall financially participate to the extent required by this article in the cost of vocational rehabilitation services.

(b) The Department shall deny authorization of a specific service(s) to any client when it has been determined pursuant to this article that client financial participation is required and the client refuses or fails to do so. The Counselor shall record in the case record the reason for denying authorization of the service(s). Other services may continue to be authorized if the IWRP remains viable without the provision of the service(s) that was denied.

(c) For the purposes of this article, the following definitions shall apply:

(1) “Client income” means all money, before deductions except for a deduction equal to the amount paid for any court ordered child or spousal support payments, received by any of the persons specified in (A) through (D) during a calendar month. “Client income” does not mean financial assistance defined as a similar benefit in accordance with Sections 7026 and 7197.

(A) The client.

(B) The client's spouse, providing the client and spouse reside together.

(C) The parent(s) of a client under the age of 18 years with whom the client resides.

(D) The parent(s) of a client of any age who claim the client as a dependent for federal or state income tax reporting purposes, unless the only monies made available to the client are court ordered child support payments. In this case, only the monies received by the client are considered.

(2) “Household member” means only the following persons:

(A) If the client is 18 years of age or older, except as specified in (C):

1. The client.

2. The client's spouse, providing the client and spouse reside together.

3. The client's minor children under the age of 18 years residing with the client.

4. Any other person the client claims as a dependent for federal or state income tax reporting purposes.

(B) If the client is a minor under the age of 18 years:

1. The client.

2. The client's parent(s) and minor sibling(s) under the age of 18 residing with the client.

3. Any other person the client's parent(s) claims as a dependent for state or federal income tax reporting purposes.

(C) If the client is 18 years of age or older and is claimed by his/her parent(s) as a dependent for state or federal income tax reporting purposes:

1. The client.

2. The following persons, unless the only monies made available to the client by the parent(s) are court ordered child support payments:

a. The client's parent(s).

b. Any other person the parent(s) claims as a dependent for state or federal income tax reporting purposes.

(3) “Liquid assets” means cash, savings, checking accounts less any current month's income which has been deposited, or similar accounts, credit union funds, stocks, and negotiable bonds owned by any of the persons specified in (1)(A) through (D).

(4) “Medical exemption” means the monthly medical expenses that are necessary for a client to function independently including, but not limited to, medication, treatment, equipment, assistive devices, and special diet. “Medical exemption" also means the costs for extraordinary medical care incurred by other household members, providing the costs are not subject to payment by a third party, such as insurance, Medicare or Medical. It does not mean the cost of routine medical and dental care, or insurance premiums.

(5) “Routine medical and dental care” means care which would be received by a person without a substantial handicap, such as periodic check ups, treatment for influenza or a virus, or the filling of dental caries.

(6) “Surplus income” means the client's monthly income which exceeds the appropriate amount specified in section 7192.

(7) “Surplus liquid assets” means liquid assets which exceed $2,000.00 in value plus $750.00 additional value for each of the client's household members.

NOTE: Authority cited: Sections 19006 and 19016, Welfare and Institutions Code. Reference: 34 CFR Section 361.47(b); and Section 19018, Welfare and Institutions Code.

### § 7191. Exemptions from Client Financial Participation.

(a) A client shall be exempt from client financial participation in the cost of any vocational rehabilitation services if the client is a recipient of any of the following:

(1) SSDI.

(2) SSI/SSP.

(3) Public Assistance, including General Relief, General Assistance, or Aid to Families with Dependent Children.

(b) Clients who are not exempt in accordance with (a) shall complete a Statement of Financial Status form DR 233, part I, Rev. 1/90. In the case of a client whose parent meets the definition of “household member" in section 7190(c)(2), the form shall be completed by the client's parent, unless the parent refuses to do so. When the parent refuses, the client may complete the form; however, the parent's income and liquid assets shall continue to be considered. The client shall:

(1) State his/her name and Social Security number, the source and amount of his/her liquid assets and the type and amount of medical expenses which qualify for the medical exemption.

(2) Sign a certification that the income, liquid assets, number of household members and medical expenses used by the Counselor in the financial participation computation are correct to the best of his/her knowledge.

(3) Acknowledge that he/she understands that any changes in income, household composition and medical expenses, as well as changes of $100 or more in liquid assets, must be reported to the Department and that such changes may result in a change to the amount of the client financial participation obligation.

(c) The following vocational rehabilitation services shall be exempt from the client financial participation requirement and under no circumstances shall any client be asked to participate in the cost of these services:

(1) Evaluation of rehabilitation potential including diagnostic services and related services.

(2) Counseling and guidance, and referral services.

(3) Placement.

(4) Training, tutoring, books, and other training materials.

(5) Tools necessary for performance of an occupation.

(6) Personal services including attendant care, deaf and language interpreter, notetaker, driver, and reader services.

(7) Transportation costs up to the rate charged by the most economical public transportation available, or reimbursement for the operation of a private motor vehicle on a per mile basis at a rate established by the Department.

(8) Job Coaching Services.

NOTE: Authority cited: Sections 19006 and 19016, Welfare and Institutions Code. Reference: 34 CFR 361.47(a); and Section 19018, Welfare and Institutions Code.

### § 7192. Computation of Client Financial Participation.

(a) Client financial participation in the cost of vocational rehabilitation services shall be determined in accordance with the provisions of this section.

(b) The client financial participation shall cover a one month period and be determined as follows:

(1) Subtract the appropriate monthly income exemption, based on the number of household members, specified in (c) from the client's total monthly income. This is the client's surplus income. If the remainder is less than zero, the client has zero surplus income.

(2) Subtract $2,000.00 plus $750.00 for each of the client's household members from the client's total liquid assets. These are the client's surplus liquid assets. If the remainder is less than zero, the client has zero surplus liquid assets.

(3) Combine the client's surplus income from (1) and surplus liquid assets from (2).

(4) Subtract the client's total medical exemptions from the amount determined in (3). The remainder, if any, is the amount of the monthly client financial participation which the client shall be required to contribute toward the cost of vocational rehabilitation services not exempt pursuant to section 7191(c).

(c) The client and his/her household members shall be allowed a monthly income exemption of the following amount:

*Size of Household (including client) Monthly Income Exemption*

 1 person $1,344.00

 2 persons $1,502.00

 3 persons $1,660.00

 4 persons $1,818.00

 5 persons $1,976.00

 6 persons $2,134.00

 7 persons $2,292.00

 8 persons $2,450.00

 9 persons $2,608.00

 10 persons $2,766.00

 more than 10 persons add $158 for each

 additional person

(d) Client financial participation shall be recomputed anytime a change in monthly income, liquid assets, number of household members or medical expenses is reported.

(e) The amounts specified in (c) shall be adjusted to reflect changes in the California median income level for a household consisting of one individual as most recently calculated by the State Department of Finance. An additional $158 shall be added for each household member other than the client.

NOTE: Authority cited: Sections 19006 and 19016, Welfare and Institutions Code. Reference: Section 19018, Welfare and Institutions Code; and 34 CFR Section 361.47(a).

### § 7193. Client Financial Participation---Payment

(a) The client shall directly purchase a service that is subject to client financial participation when both of the following conditions exist:

(1) The amount of the monthly client financial participation computed pursuant to section 7192(b) equals or exceeds the cost of the service to the client.

(2) The client has not yet fulfilled his/her financial participation obligation for the month.

(b) The client shall pay the amount of the monthly client financial participation to the Department in cash, money order or cashier's check prior to receipt of the service when all of the following conditions exist:

(1) The client requires a service that is subject to financial participation.

(2) The amount of the monthly client financial participation is less than the cost of the service to the client.

(3) The client has not yet fulfilled his/her financial participation obligation for the month.

(c) For ongoing services that are subject to client financial participation, such as speech therapy or short term psychotherapy, the client shall fulfill his/her financial participation obligation in accordance with (a) or (b) each month prior to the authorization of the services by the Department.

(d) The client shall not be required to contribute toward the costs of equipment or other items loaned to him/her by the Department unless, and until such time as, the title and/or legal ownership is transferred to the client in accordance with section 7194.

(e) A client who must pay the amount of his/her monthly financial participation to the Department in accordance with (b) shall sign an agreement to pay the Department prior to authorization of the service(s). The agreement shall specify the service(s) toward which the payment will be applied.

NOTE: Authority cited: Sections 19006 and 19016, Welfare and Institutions Code. Reference: Section 19018, Welfare and Institutions Code; and 34 CFR 361.47(a).

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## Article 2. Loaned Property

### § 7194. Department-Loaned Property.

(a) The Department may loan equipment or other items, except items specified in (b), to a client while he or she is participating in an IPE. The Department shall retain title to the property until one of the following occurs:

(1) The client is successfully rehabilitated. When this occurs the Rehabilitation Counselor shall determine if the property is essential to the client's employment. Upon a determination by the Rehabilitation Counselor that the property is:

(A) Essential to the client's employment, the ownership shall be transferred to the client if the client either;

1. Has no financial participation obligation, or

2. Pays the outstanding balance of his or her financial obligation, if any, to the Department.

(B) Not essential to the client's employment, the property may be purchased by the client at a fair market value, as defined in (c). If the client does not purchase the property, it shall be returned to the Department.

(2) The client's IPE is interrupted and the case is closed as not rehabilitated or the case is inactivated. When this occurs, the property shall be returned to the Department unless the client purchases it at fair market value, as defined in (c).

(b) Ownership of the following items shall be transferred to the client immediately upon receipt by the client providing he or she has no client financial participation obligation or he or she pays the outstanding balance of the financial participation obligation to the Department. The client has no legal right to the property until the client financial participation obligation is paid.

(1) Prosthetic, orthotic and other physical restoration devices including, but are not limited to, wheelchairs, hearing aids and eyeglasses.

(2) Customized equipment that has been modified to meet the individual client's needs, excluding modifications to state-owned vehicles to which the Department holds title.

(c) Fair market value shall be determined by the Rehabilitation Counselor contacting a party qualified to appraise the specific item of property, such as the party from whom the item was originally purchased. Factors to be considered shall include the age and current condition of the item.

NOTE: Authority cited: Sections 19006 and 19016, Welfare and Institutions Code. Reference: 34 CFR 361.47(a); and Sections 19018 and 19150, Welfare and Institutions Code.

### § 7195. Improper Disposal of or Failure to Return Loaned Property.

(a) The Department shall take appropriate administrative and/or legal action to receive payment or recover any Departmental equipment, vehicles, or other items loaned to the client if they are improperly disposed of or the client, upon receiving a verbal or written request from the Department, fails to return them. Such actions may include, but are not limited to:

(1) Informal attempts by the Counselor to recover the property.

(2) Obtaining reimbursement for the item's fair market value as determined in accordance with section 1794(c).

(3) Commencing an investigation under the authority of section 11180, Government Code.

(4) In the case of pawned property, both of the following:

(A) Informing the pawnbroker that California Commercial Code sections 1201(9) and 2403 specifically exempt pawnbrokers from ownership rights afforded the buyer in the purchase of goods sold in violation of the ownership rights or security interest of a third party.

(B) Demanding the property's return.

(5) Notifying local law enforcement.

(6) Initiating proceedings in small claims court.

NOTE: Authority cited: Sections 19006 and 19016, Welfare and Institutions Code. Reference: Sections 19018 and 19150, Welfare and Institutions Code; and 34 CFR Section 361.47(a).

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## Article 3. Similar Benefits or Comparable Services and Benefits

### § 7196. General Requirements.

(a) Clients eligible for similar benefits shall apply for and fully utilize those similar benefits to the extent required by these regulations.

(b) The utilization of similar benefits shall not apply to the following services, including when those services are received as post-employment services:

(1) Evaluation of rehabilitation potential.

(2) Counseling, guidance and referral.

(3) Vocational and other training services including, personal and vocational adjustment training, books, tools and other training materials provided by a resource other than an institution of higher education.

(4) Placement.

(5) Rehabilitation engineering services.

(6) Job Coaching Services.

(c) Unless the conditions specified in Section 7198 exist, the completion of a similar benefit review shall be required prior to the authorization of any service not specified in (b). Upon a determination by the Counselor that a similar benefit is available, the Counselor shall advise the client that he or she is required to apply for and use such benefit. If the client refuses to apply for or use the similar benefit, the Counselor shall:

(1) Deny provision of the service(s) for which the similar benefit is available.

(2) Continue the provision of other services for which there is no similar benefit, providing the IPE remains viable and will most likely succeed without the provision of the service(s) that was denied.

(d) When a client:

(1) Is denied eligibility to a similar benefit, the Counselor shall:

(A) Verify the ineligibility through telephone contacts with the appropriate agency representatives or by viewing a copy of the denial notice.

(B) Document the verification in the case record.

(C) Authorize the service.

(2) Has a similar benefit reduced or terminated, the Counselor shall:

(A) Verify the reduction or termination by one of the methods specified in (1)(A).

(B) Document the verification in the case record.

(C) Assess the circumstances with the client and take one of the following actions, as appropriate:

1. Authorize a supplement to the reduced benefit.

2. Authorize the service that has been terminated by the other source.

3. Amend the IPE in accordance with the provisions in Chapter 2, Article 5 (commencing with Section 7130).

NOTE: Authority cited: Sections 19006 and 19016, Welfare and Institutions Code. Reference: Section 19150(b), Welfare and Institutions Code; and 34 CFR Section 361.47(b).

### § 7197. Additional Requirements---Institutions of Higher Education.

### (a) For the purposes of this section, the following definitions shall apply:

(1) “Institution of higher education” means a university, college, community college, or private proprietary school which provides academic or vocational education and/or training above the California secondary school level.

(2) “Maximum effort” means a client's specific actions which are necessary to establish eligibility and secure any similar benefits necessary to vocational rehabilitation.

(b) The Department shall not authorize training or training services provided by an institution of higher education unless a maximum effort has been made by the client to secure grant assistance from other sources to pay in whole or in part the cost of such services. The Counselor shall assist the client as necessary in identifying and applying for any grant assistance for which the client may be eligible.

(c) The amount of services, if any, to be authorized by the Department for educational purposes shall be determined by subtracting the total amount of the client's educational grants and/or awards as reported by the financial aid office from the costs of the client's tuition, books and supplies, maintenance and transportation. The remainder is the amount of services to be authorized by the Department.

NOTE: Authority cited: Sections 19006 and 19016, Welfare and Institutions Code. Reference: Section 19150, Welfare and Institutions Code; and 34 CFR 361.42(a)(4) and 361.47(b).

### § 7198. Extreme Medical Risk.

(a) For purposes of this section “extreme medical risk” means a probability of substantially increasing functional impairment or death if medical services, including mental health services, are not provided expeditiously.

(b) The determination of availability of similar benefits under any other program shall not apply if the determination would delay the provision of vocational rehabilitation services to any eligible individual who is at extreme medical risk.

(c) A determination of extreme medical risk shall be based upon medical evidence provided by a licensed physician and verified by a Medical Consultant.

(d) Nothing in this section shall be construed to mean that the Department shall either:

(1) Be required to provide services to persons who no longer meet the conditions of eligibility specified in Section 7062.

(2) Become a primary health care payment program or take the place of other primary health care payment programs, such as the Medi-Cal program.

NOTE: Authority cited: Sections 19006 and 19016, Welfare and Institutions Code. Reference: Section 19150(b), Welfare and Institutions Code; and 34 CFR Sections 361.1, 361.5 and 361.47.

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# Chapter 6. Business Enterprise Program for the Blind

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## Article 1. General Provisions

### § 7210. General Provisions.

(a) These regulations in this chapter govern the operation of the Business Enterprises Program for the Blind, hereafter BEP, which is a program established pursuant to the Randolph-Sheppard Act (20 USC section 107 et seq.) and state law (Welfare and Institutions Code section 19625 et seq.), that is promoted by the Department of Rehabilitation, hereafter Department, to provide blind persons with remunerative employment. The Department administers and operates the BEP and, as the state licensing agency, issues licenses for the operation of vending facilities on federal, state, and other property in California to individuals who meet the requirements for participation in the BEP specified in Section 7212(a) of these regulations, and who have successfully completed the Vendor Training Program provided for in Section 7212.1 of these regulations.

(b) The Director of the Department shall do all of the following:

(1) Provide all licensees and vendors with a copy of all rules and regulations adopted by the Department that pertain to the BEP. These rules and regulations shall be provided to the licensee or vendor in the licensee’s or vendor’s preferred mode of communication, to the extent possible. Such modes of communication may include providing rules and regulations in large print, Braille, on audiotape, 3.5” diskette, or compact disk. The Department shall transmit copies of the rules and regulations electronically, upon request.

(2) Notify all licensees and vendors of any proposed changes to the rules and regulations that pertain to the BEP at least 45 days before any proposed action by the Department.

(3) Review regulations adopted by the Department that pertain to the BEP for possible revision at least every three years.

NOTE: Authority cited: 20 USC Section 107b (5); 34 CFR Section 395.4; and Sections 19006, 19016, and 19639, Welfare and Institutions Code. Reference: 20 USC Sections 107 and 107a(a)(5), (b) and (e); 34 CFR Sections 361.5(b)(5), 395.2, 395.3(a)(11)(vi), 395.5, and 395.7; and Sections 19011, 19013.5(b), 19625, and 19639, Welfare and Institutions Code.

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## Article 2. Definitions and Terms

### § 7211. Definitions and Terms.

(a) For the purposes of this chapter, the following definitions and terms shall apply to the administration and operation of the Business Enterprises Program for the Blind, hereafter BEP:

(1) “Active Participation” means an ongoing process of consultation between the Department of Rehabilitation, hereafter Department, and the California Vendors Policy Committee, hereafter CVPC, in developing policies, standards, and procedures affecting the overall operation of the BEP vending facilities program, prior to implementation by the Department, in accordance with Welfare and Institutions Code section 19638(b)(1).

(2) “Adequate Net Income” means, for purposes of Welfare and Institutions Code section 19631, minimum projected net income of $3,300 per month to place a licensee or vendor in a newly established or previously established vending facility or in a vending facility formed by combining or consolidating two or more sites. The Department shall

annually review this minimum income level and make adjustments based upon the changes in the California Necessities Index.

(3) “Applicant Review Panel” means a group of individuals, as specified in Section 7212(c) of these regulations, which determines a blind person’s readiness to participate in the Vendor Training Program.

(4) "Authorized Representative" means any person or entity designated by the licensee or vendor to act on his or her behalf during an administrative review or a full evidentiary hearing.

(5) "Blind Person," as specified in Welfare and Institutions Code section 19153, means either a person who has not more than 20/200 central visual acuity in the better eye after correction, or a person who has visual acuity greater than 20/200 but with a limitation in the fields of vision such that the widest diameter of the visual field subtends an angle no greater than 20 degrees. Such blindness shall be certified by a licensed physician and surgeon who specializes in diseases of the eye or a licensed optometrist.

(6) "Business Enterprises Consultant” or “BEC" means the individual employed by the Department to provide technical assistance to licensees and vendors in the operation of vending facilities within an assigned geographic area of California.

(7) "Business Enterprises Program for the Blind” or “BEP” means the Department administered and operated program that licenses blind persons, as defined in subsection (a)(5) herein, to operate vending facilities, as defined in subsection (a)(54) herein, with a priority established by federal and state law to operate a vending facility on federal and state property in California. A blind person licensed by the BEP also may operate a vending facility on other property in California, whether owned or controlled privately or by any county, city, city and county, or other political subdivision.

(8) “Business Enterprises Program for the Blind Manager” or “BEP Manager” means the individual employed by the Department to oversee the administration of the BEP.

(9) "California Vendors Policy Committee” or “CVPC" means the biennially elected committee of licensed blind vendors who are fully representative of all licensed blind vendors in the BEP, as provided for in Welfare and Institutions Code section 19638.

(10) “Client-Trainee" means an individual who is eligible to participate in the BEP, in accordance with Section 7212(a) of these regulations, and who is enrolled in the Vendor Training Program provided for in Section 7212.1 of these regulations.

(11) “Combining or Consolidation of Vending Facilities” means the act by which the Department combines or consolidates two or more sites into a vending facility.

(12) “Contracting Agency” means the person, governing board, or legislative body that owns, leases, rents, or otherwise controls or occupies a federal, state, or other property, with the authority to sign a Permit, as defined in subsection (a)(35) herein, for the vending facility.

(13) “Department” means the Department of Rehabilitation in this chapter, unless otherwise specified.

(14) “Deputy Director of the Division of Specialized Services for the Blind and Visually Impaired and the Deaf and Hard of Hearing” means the individual employed by the Department pursuant to Welfare and Institutions Code sections 19095 and 19095.5, who provides direct supervision to the Department’s blind and visually impaired programs.

(15) "Direct Competition," as defined herein, applies to federal properties only, and means the presence and operation of a vending machine or a vending facility on the same premises as a vending facility operated by a blind vendor, except that vending machines or vending facilities operated in areas serving employees the majority of whom normally do not have direct access (in terms of uninterrupted ease of approach and the amount of time required to patronize the vending facility) to the vending facility operated by a blind vendor shall not be considered to be in direct competition with the vending facility operated by a blind vendor.

(16) "Director" means the Director of the Department of Rehabilitation in this chapter, unless otherwise specified.

(17) "Disabled Employee" means an individual who has a physical or mental disability, as defined in Government Code section 12926(i) and (k), which has been certified by either a Rehabilitation Counselor or a licensed physician.

(18) "Election Coordinator" means any Departmental employee appointed by the Director, or an independent agent under contract with the Department, to conduct CVPC elections. If a Department employee is appointed for this purpose by the Director, he or she shall be part of a three-member panel. The remaining two members shall be vendors who are not nominees and are approved by the CVPC. If an outside agent is hired, there is no requirement for a three-member panel.

(19) "Equipment" means a machine, mechanical or electronic device, or appliance or fixture, that an individual operates or activates to perform a task, excluding “Assistive Technology Devices” as defined in Section 7002 of these regulations, and “Tools” as defined in Section 7028.4 of these regulations, consistent with the definition specified in Section 7013.2 of these regulations.

(20) "Executive Officers of the CVPC" means the Chairperson, the Vice-Chairperson, and the Secretary, who are elected by a majority vote of the CVPC to serve a specific term.

(21) “Facility Number” means a unique number assigned by the BEP to designate each vending facility. An individual vending facility number shall be issued for a vending facility, whether comprised of one site, or two or more sites that have been combined or consolidated, as provided for in subsection (a)(11) herein.

(22) "Federal Property," as defined in 20 USC section 107e(3) and 34 CFR section 395.1(g), means any building, land, or other real property owned, leased, or occupied by any department, agency, or instrumentality of the United States, including the Department of Defense and the United States Postal Service, or any other instrumentality wholly owned by the United States, or by any department or agency of the District of Columbia or any territory or possession of the United States.

(23) “Financial Averages” mean the BEP Profit and Loss Statewide Financial Averages for types of vending facilities defined in subsection (a)(54) herein, developed by the BEP annually using information derived from the DR 478, Vendor’s Monthly Operating Report (Rev. 06/16), incorporated by reference herein, using the DR 478A, Vendor’s Monthly Operating Report Privacy Notice and Instructions (Rev. 06/16), incorporated by reference herein, submitted by BEP vendors.

(24) “Food Service Contract Vending Facility” [RESERVED]

(25) “Food Service Contractor” [RESERVED]

(26) "Hearing Officer" means an individual who is:

(A) Not a Department employee; and

(B) An impartial individual who is:

1. Hearing Officer;

2. Administrative Law Judge (ALJ) at the Office of Administrative Hearings (OAH); or

3. Any other individual under contract with the Department to conduct full evidentiary hearings who is experienced in the field of administrative law.

(27) “In-Service Training” means guidance, instruction, and direction designed to maintain and improve vendor skill levels necessary to operate a vending facility. In-Service training may be provided to an individual vendor in his or her vending facility upon request, or in a classroom setting. In-Service training is provided for in Section 7212.4 of these regulations.

(28) "Interim Facility Vendor List" means a list maintained by the Selection Coordinator that contains the names of licensees and vendors who have expressed an interest in operating an interim vending facility.

(29) "Interim Vending Facility” means a vending facility that is operated on a temporary basis by a vendor, not to exceed six months, except if renewed for a period of time specified in writing by the BEP Manager.

(30) "License" means the DR 468, Vending Facility License (Rev. 07/07), incorporated by reference herein, issued by the Department, which authorizes a blind person, as defined in subsection (a)(5) herein, to operate a vending facility on federal, state, or other property defined in subsections (a)(22), (a)(44), and (a)(34) herein, respectively.

(31) "Licensee" means a person who is eligible to participate in the BEP, in accordance with Section 7212(a) of these regulations, who has been issued a DR 468, Vending Facility License (Rev. 07/07), incorporated by reference herein, by the BEP, but who is not currently operating a vending facility.

(32) "Manager" means any individual employed by a vendor to operate the vendor’s vending facility during the vendor’s absence. A manager is not required to be a licensee.

(33) "Net Proceeds" means the amount remaining from the sale of articles or services of vending facilities, and any vending machine or other income accruing to a vendor after deducting the cost of such sale and other expenses (excluding set-aside fees) for the monthly reporting period.

(34) "Other Property" means property owned or controlled privately or by any county, city, city and county, or other political subdivision.

(35) "Permit" means any agreement between the BEP and the contracting agency, as defined in subsection (a)(12) herein, which authorizes the establishment of a vending facility on property owned, leased, rented or otherwise controlled or occupied by the contracting agency.

(36) “Primary Site” means the site designated by the BEP as the main site of a vending facility that is comprised of two or more sites that have been combined or consolidated into a vending facility. Such vending facility shall be comprised of a primary site and satellite site(s), as defined in subsection (a)(38) herein.

(37) “Probation” means the period of time in which a vendor has to correct deficiencies identified by the BEP.

(38) “Satellite Site” means the secondary site or sites of two or more sites that have been combined or consolidated into a vending facility, consistent with subsection (a)(11) herein.

(39) "Secretary" means the Secretary of the U.S. Department of Education.

(40) “Selection Committee for Vending Facilities” means a group of individuals, which is responsible for evaluating applicants and selecting a licensee or vendor to operate a vending facility.

(41) “Selection Coordinator” means a BEP staff representative designated by the BEP Manager (with the exception of a Business Enterprises Consultant (BEC) or Supervising Business Enterprises Consultant (SBEC) assigned to a field office or otherwise involved in day-to-day contact with BEP vendors) who facilitates and coordinates all facets of the selection process by which a licensee or vendor is chosen to operate a vending facility, as defined in subsection (a)(54) herein.

(42) "Set-Aside Fees" means those fees paid by vendors to into the Set-Aside Fund established by the Department from the net proceeds generated by the vendor’s operation of a vending facility. Pursuant to Welfare and Institutions Code section 19629, the Department shall provide that if any funds are set aside, or caused to be set aside, from the net proceeds of the operation of vending facilities, those funds shall be set aside, only to the extent necessary, but not to exceed the amount equal to 6 percent of gross sales of a vending facility, and may be used only for the purposes identified in Welfare and Institutions Code section 19629(a).

(43) “Site” means an area that meets the requirements for a satisfactory site, as defined in 34 CFR section 395.1(q), and the requirements for a feasible site, consistent with Welfare and Institutions Code section 19627(a)(2). A vending facility may be located on one site or, when two or more sites are combined or consolidated into a vending facility, on two or more sites.

(44) "State Property" means all real property, or part thereof, owned, leased, rented, or otherwise controlled or occupied by any department or other agency or body of this state.

(45) "Supervising Business Enterprises Consultant” or “SBEC" means the individual employed by the Department to provide direct supervision to one or more Business Enterprises Consultants (BECs) within an assigned geographic area of California.

(46) “Suspension of a Vendor’s License” means that the license, which authorizes the vendor to operate a vending facility, has been made inactive for a specific period of time.

(47) “Suspension of a Vendor’s Operating Agreement” means that the vendor’s operating agreement, as defined in (a)(60) herein, has been made inactive for a specific period of time.

(48) “Teaming Contractor” [RESERVED]

(49) “Termination of a Licensee’s or Vendor’s License” means that the license, which authorizes a licensee or vendor to operate a vending facility, is revoked.

(50) “Termination of a Vendor’s Operating Agreement” means that the vendor’s operating agreement, as defined in (a)(60) herein, is revoked.

(51) “Training Instructor” means an individual employed by the Department to coordinate all aspects of the Vendor Training Program.

(52) “Unassigned Vending Machine Commissions” means the income received by the Department from vending machines operated on state property where there are no BEP vendors. Such income is placed directly into the fund for vendor benefits, consistent with Welfare and Institutions Code section 19630(a) and (d).

(53) “Upward Mobility Training” has the meaning specified in Section 7212.4(e) of these regulations.

(54) "Vending Facility" means a business operated by a vendor, which is a single entity under one facility number issued by the BEP, excluding interim vending facilities. A vending facility may consist of one site, or two or more sites combined or consolidated into a vending facility, one of which is a primary site defined in subsection (a)(36) herein, and others that are satellite sites defined in subsection (a)(38) herein. Vending facilities may consist exclusively, or in combination, of the same or different types of facilities including but not limited to, vendor-operated cafeteria, dry/wet facility, food concession vehicle or cart service, snack-bar facility, or vending machine facility, as defined herein, which may sell newspapers, periodicals, confections, tobacco products, foods, beverages, lottery tickets, and other articles or services that are dispensed automatically or manually and prepared on or off the premises.

(A) "Cafeteria Facility" means a food service vending facility, which may include restaurants or food courts, providing a broad variety of foods and beverages prepared on or off the premises, including hot meals.

(B) "Dry/Wet Facility" means a convenience store vending facility providing manual as well as automated dispensing of articles, prepackaged refreshments, gifts, souvenirs, sundry items, or services. Wet facilities have plumbing to accommodate vending activities such as making coffee or providing fountain drinks.

(C) “Food Concession Vehicle” or “Cart Service” means a motorized or non-motorized vehicle providing manual dispensing of food, refreshments, or other items.

(D) “Snack-bar Facility” means a super convenience or convenience store vending facility selling limited lines of refreshment and prepared food items.

(E) "Vending Machine Facility" means automated coin, currency, or debit card operated vending machine(s) dispensing food, refreshments, or other articles or services, except that those machines operated by the U.S. Postal Service for the sale of postage stamps or other postal products and services, machines providing services of a recreational nature, and telephones shall not be considered to be vending machines.

(55) "Vending Machine Commissions" mean all commissions paid by commercial vending businesses that operate a vending facility in or on a site where the BEP has a right to establish a vending facility, whether the commission is paid to a blind vendor or, if unassigned, placed directly into the fund for vendor benefits.

(56) "Vendor" means a person who is eligible to participate in the BEP, in accordance with Section 7212(a) of these regulations, who has been issued a DR 468, Vending Facility License (Rev. 07/07), incorporated by reference herein, by the BEP, and who is currently operating a BEP vending facility.

(57) "Vendor Benefits" means retirement or pension plans, health insurance, paid sick leave, and vacation time.

(58) “Vendor-Trainer” means a vendor who is certified pursuant to Section 7212.2 of these regulations, and who conducts an on-the-job pre-entry evaluation as part of the assessment of an individual’s potential to operate a vending facility, and who provides on-the-job training toClient-Trainees in the Vendor Training Program.

(59) "Vendor Training Program" means the training described in Section 7212.1 of these regulations, which is provided to a Client-Trainee herein, to prepare him or her for licensure to operate a vending facility.

(60) "Vendor’s Operating Agreement" means the written agreement between a vendor and the BEP establishing the terms and conditions for the operation of a vending facility.

(61) “Working Day” means Monday through Friday, excluding holidays observed by the State of California.

NOTE: Authority cited: 20 USC Section 107b (5); 34 CFR Section 395.4; and Sections 19006, 19016, 19632 and 19639, Welfare and Institutions Code. Reference: 20 USC Sections 107, 107a(a)(5), 107a(b), 107a(e), 107b(3) 107b(6), 107b-1(2), 107b-1(3), 107d-1(a), 107d-3, 107d-4 and 107e(3); 34 CFR Sections 395.1(f)-(y), 395.2, 395.3(a)(3), (4), (7), (8) and (11)(ii) and (iv), 395.5, 395.7, 395.8, 395.9, 395.11, 395.13, 395.14, 395.16, 395.32, 395.33, 395.34 and 395.35; Section 8880.48, Government Code; and Sections 19011, 19095, 19095.5, 19153, 19625, 19626, 19627, 19629, 19630, 19631, 19632, 19635 and 19638, Welfare and Institutions Code.

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## Article 3. Eligibility and Training

### § 7212. Eligibility Requirements; Applicant Assessment; Interview; Referral.

(a) Any individual who is 18 years or older, blind, as defined in Section 7211(a)(5) of these regulations, a United States citizen, and eligible to receive vocational rehabilitation services from the Department, is eligible to apply for participation in the Business Enterprises Program for the Blind, hereafter BEP.

(b) The readiness of an applicant meeting the requirements of subsection (a) herein to participate in the BEP Vendor Training Program shall be determined by:

(1) An on-the-job pre-entry evaluation conducted by a Vendor-Trainer who is selected cooperatively by the Rehabilitation Counselor for the Blind and the Training Instructor. This evaluation shall be conducted for 20 working days, and may be extended with the approval of the Rehabilitation Counselor for the Blind and the Training Instructor.

(2) A review and interview conducted by an Applicant Review Panel, as specified in subsections (g) and (h) herein, respectively.

(c) The Applicant Review Panel shall consist of the Training Instructor, who shall be the Chairperson of the Panel, representatives from BEP staff identified by the BEP Manager, and representation by a maximum of two vendors who are selected by the California Vendors Policy Committee, hereafter CVPC, Training Subcommittee Chairperson.

(d) The Vendor-Trainer shall conduct the on-the-job pre-entry evaluation at the Vendor-Trainer’s vending facility and shall maintain the confidentiality of the evaluation. Training shall be provided as a vocational rehabilitation service as provided for by 34 CFR section 361.48(f) and Welfare and Institutions Code section 19150(a)(3). During the on-the-job pre-entry evaluation, each applicant shall be evaluated in areas of work performance as specified on the DR 446, Pre-Entry Evaluation (Rev. 07/07), incorporated by reference herein. The applicant must score at least 66 percent on the DR 446, Pre-Entry Evaluation (Rev. 07/07) to be referred for the review and interview conducted pursuant to (g) and (h) herein respectively. The DR 446, Pre-Entry Evaluation (Rev. 07/07) measures 12 areas of performance, has a possible total score of 12 points, and is rated and scored as follows:

(1) Standard = Fully meets expected standards. Each standard rating is scored as one (1) point.

(2) Below Standard = Fails to meet expected standards. Each below standard rating scores zero (0) points. Any rating of Below Standard must be fully explained by the Vendor-Trainer on the DR 446, Pre-Entry Evaluation (Rev. 07/07), including specific examples to support the rating.

(e) The Vendor-Trainer shall complete and forward to the Rehabilitation Counselor for the Blind, a DR 446, Pre-Entry Evaluation (Rev. 07/07) for each applicant he or she evaluated. Those applicants who score at least 66 percent on the DR 446, Pre-Entry Evaluation (Rev. 07/07), consistent with subsection (d) herein, shall be referred to the Applicant Review Panel for the review and interview required by subsections (g) and (h) herein, respectively.

(f) For those applicants who score less than 66 percent, the Rehabilitation Counselor for the Blind shall take one of the following actions:

(1) Work with the applicant to establish a plan, including classes, training, or business or work experience, which would increase the applicant’s ability to successfully complete the on-the-job pre-entry evaluation required by subsection (b)(1) herein; or

(2) Re-evaluate the applicant’s choice of an employment outcome as a BEP vendor.

(g) The Applicant Review Panel shall review the DR 446, Pre-Entry Evaluation (Rev. 07/07) for each applicant referred pursuant to subsection (e) herein. The DR 446, Pre-Entry Evaluation (Rev. 07/07) shall be submitted by the Rehabilitation Counselor for the Blind and/or the Training Instructor:

(h) The Applicant Review Panel shall interview each applicant referred pursuant to subsection (e) herein. The Applicant Review Panel shall maintain confidentiality throughout and after the interview process. Interview questions shall be developed by the BEP, with the active participation of the CVPC, before any interviews begin. The Applicant Review Panel shall select questions from the predetermined questions developed by the BEP. Once the questions have been selected, the Applicant Review Panel shall ask all applicants the same questions and shall assign numerical scores to each applicant based on his or her responses. Each question is rated with a score of 1 to 5 points per question.

(i) The Applicant Review Panel scores from each member of the panel shall be added to the score derived from the DR 446, Pre-Entry Evaluation (Rev. 07/07). For an applicant referred pursuant to (e) herein to meet the requirements for entrance into the Vendor Training Program, the combined score on the DR 446, Pre-Entry Evaluation (Rev. 07/07) and the score assigned during the interview must average 70 percent of the highest combined scores possible. Within 60 calendar days of completion of the interview, the Applicant Review Panel Chairperson shall inform the applicant’s Rehabilitation Counselor for the Blind that the individual is:

(1) Approved to enter and participate in the Vendor Training Program; or

(2) Referred back to his or her Rehabilitation Counselor for the Blind, who shall take one of the following actions:

(A) Work with the applicant to establish a plan, including classes, training, or business or work experience, which would increase the applicant’s ability to meet requirements for entrance into the Vendor Training Program; or

(B) Re-evaluate the applicant’s choice of an employment outcome as a BEP vendor.

NOTE: Authority cited: 20 USC Section 107b(5); 34 CFR Section 395.4; and Sections 19006, 19016, 19632(b) and 19639, Welfare and Institutions Code. Reference: 20 USC Sections 107, 107b-1(3) and 107d-4; 34 CFR Sections 361.45, 361.46, 361.48, 395.3(a)(4) and (8), 395.7, 395.11, and 395.14(b); and Sections 19011, 19150(a)(3), 19625, 19632(a), 19632(b) and 19638(b), Welfare and Institutions Code.

### § 7212.1. Vendor Training Program.

(a) The Vendor Training Program may be conducted when at least five individuals have been approved to enter and participate in the Vendor Training Program by meeting requirements established in Section 7212 of these regulations. However, the BEP Manager may approve the training for fewer than five individuals. The maximum size of the training class shall be determined by the Business Enterprises Program for the Blind, hereafter BEP, based on the staffing available to effectively provide the training, after consultation with the California Vendors Policy Committee, hereafter CVPC. Before training commences, the Rehabilitation Counselor for the Blind shall forward documentation to the Training Instructor regarding the Client-Trainee’s qualifications to participate in the BEP training program as provided for in Section 7212(a) of these regulations.

(b) The Vendor Training Program shall include a training syllabus developed by the BEP that sets out the required courses and performance standards that Client-Trainees are expected to maintain. The training syllabus, schedule, curriculum, and vendor training evaluation process shall be made available to the CVPC or any vendor upon request.

(c) The training curriculum shall include, at a minimum:

(1) Classroom training including, but not limited to, subjects such as: federal law (20 USC section 107 et seq.); federal regulations (34 CFR Part 395); state law (Welfare and Institutions Code section 19625 et seq.); state regulations (California Code of Regulations (CCR), Title 9, Section 7210 et seq.); and applicable California Health and Safety Code requirements and certifications. This training shall include homework, tests, and evaluations, as determined by the Training Instructor.

(2) On-the-Job Training at two or more BEP vending facilities.

(3) Additional training to enhance knowledge in specific subject areas, which may be provided through classroom and on-the-job training, if required by the Training Instructor.

(d) The training syllabus, performance standards, and methods of testing and scoring established by the BEP shall be reviewed every two years, at a minimum, by BEP management with the active participation of the CVPC.

(e) The duration of training specified in subsection (c) herein shall be determined by the BEP.

(f) To successfully pass the training specified in subsection (c) herein, Client-Trainees shall be required to average 70 percent on all required tests developed by the BEP. On a test for certification by a food service organization or association, a Client-Trainee shall be required to achieve the score established by the food service organization or association for certification. A midterm test shall be given to Client-Trainees following the basic classroom training component. Client-Trainees must have a minimum score of 70 percent to continue the training. Failure to achieve this score shall constitute sufficient cause to remove the Client-Trainee from the Vendor Training Program and refer the Client-Trainee back to his or her Rehabilitation Counselor for the Blind, who shall take one of the following actions:

(1) Work with the applicant to establish a plan, including classes, training, or business or work experience, which would increase the applicant’s ability to successfully complete the Vendor Training Program; or

(2) Re-evaluate the applicant’s choice of an employment outcome as a BEP vendor.

(g) A Client-Trainee shall complete all of the training components at the performance levels specified in subsection (h) herein before he or she successfully completes the Vendor Training Program and may be certified by the Training Instructor and licensed by the Department to operate a vending facility. Performance levels are measured using the DR 445, Client-Trainee Training Evaluation (Rev. 07/07), incorporated by reference herein, using the DR 445A, Client-Trainee Training Evaluation Instructions (Rev. 07/07), incorporated by reference herein. The DR 445, Client-Trainee Training Evaluation (Rev. 07/07) measures 10 areas of performance, has a possible total score of 10 points, and is rated and scored as follows:

(1) Standard = Fully meets expected standards. Each standard rating is scored as one (1) point.

(2) Below Standard = Fails to meet expected standards. Each below standard rating scores zero (0) points. Any rating of Below Standard must be fully explained by the Vendor Trainer on the DR 445, Client-Trainee Training Evaluation (Rev. 07/07), including specific examples to support the rating.

(h) To meet the requirements of (g) of this section, the Client-Trainee must achieve performance levels as follows:

(1) For the classroom component of training, a score 70 percent on Part II of the DR 445, Client-Trainee Training Evaluation (Rev 07/07).

(2) For the on-the-job component of training, a score of 70 percent on Part I of the DR 445, Client-Trainee Training Evaluation (Rev. 07/07).

(A) The Training Instructor shall take remedial action if a Client-Trainee scores four or more Below Standard ratings on any one DR 445, Client-Trainee Training Evaluation (Rev. 07/07). Remedial action may include placing the Client-Trainee on probation or removing the Client-Trainee from the Vendor Training Program.

(i) The Training Instructor shall complete a DR 454, Client-Trainee Final Appraisal (Rev. 07/07) to determine a Client-Trainee’s final grade. The Client-Trainee must score at least 70 points on the DR 454, Client-Trainee Final Appraisal (Rev. 07/07) to be licensed. When a Client-Trainee scores at least 70 points on the DR 454, Client-Trainee Final Appraisal (Rev. 07/07), the Training Instructor also shall complete a DR 456, Certification of Eligibility for BEP License (Rev. 07/07), incorporated by reference herein; and a DR 468, Vending Facility License (Rev. 07/07), incorporated by reference herein, which shall be sent to the Client-Trainee within 30 working days of the completion of training.

(j) The BEP shall provide the Rehabilitation Counselor for the Blind with a copy of the forms specified in subsection (i) herein, for insertion into the Client-Trainee’s vendor file.

(k) An applicant who has experience operating a blind vendor facility in another state, or who has prior experience in the food service business, may not challenge the requirement to complete the Vendor Training Program required by this section.

NOTE: Authority cited: 20 USC Section 107b(5); 34 CFR Section 395.4; and Sections 19006, 19016, 19632 and 19639, Welfare and Institutions Code. Reference: 20 USC Sections 107b-1(3) and 107d-4; 34 CFR Sections 361.47 395.1(i), 395.3(a)(4) and (8), 395.11 and 395.14(b); and Sections 19011, 19632 and 19638, Welfare and Institutions Code.

### § 7212.2. Vendor-Trainers.

(a) Any Business Enterprises Program for the Blind, hereafter BEP, vendor who wishes to become a Vendor-Trainer shall file a written request and a copy of the vendor’s current, valid Food Safety Certification issued pursuant to Health and Safety Code section 113947.1, with the BEP Training Instructor. This request may be made at any time. Depending on the need, the Training Instructor also may recruit vendors for this purpose.

(b) A BEP vendor must meet all of the following requirements to be considered eligible to become a Vendor-Trainer and to continue being a Vendor-Trainer:

(1) Possess a current, valid Food Safety Certification pursuant to Health and Safety Code section 113947.1.

(2) Be current with filing the DR 478, Vendor’s Monthly Operating Report (Rev. 06/16), incorporated by reference herein.

(3) Have no current delinquency on payment of any fees or other payments resulting from the operation of a vending facility.

(4) Have no history of abandonment of his or her vending facility or, for two or more sites that have been combined or consolidated into a vending facility, any one of the sites that were combined or consolidated.

(5) Successfully complete the BEP Vendor-Trainer Certification Class to be certified by the BEP Manager. The certification shall be valid for a period consistent with the length of time the Food Safety Certification required by subsection (b)(1) herein is valid.

(c) The BEP Vendor-Trainer Certification Class shall be presented annually, if needed. A Vendor-Trainer must complete the certification class and successfully pass an examination every five years to remain certified. The examination shall be based on areas of performance specified on the DR 445, Client-Trainee Training Evaluation (Rev. 07/07), incorporated by reference herein, and the DR 446, Pre-Entry Evaluation (Rev. 07/07), incorporated by reference herein.

(d) The BEP Manager shall terminate the certification of a Vendor-Trainer who fails to meet the requirements of subsections (b) and (c) herein by providing written notice to the Vendor-Trainer. A Vendor-Trainer who is terminated has the right to appeal such decision through an administrative review and/or full evidentiary hearing provided pursuant to Sections 7227 through 7227.2 of these regulations.

NOTE: Authority cited: 20 USC Section 107b(5); 34 CFR Section 395.4; and Sections 19006, 19016 and 19639, Welfare and Institutions Code. Reference: 20 USC Sections 107b(6), 107d-1(a) and 107d-4; 34 CFR Sections 361.48, 395.3(a)(7) and (8), 395.11, and 395.13; Section 113947.1, Health and Safety Code; and Sections 19011, 19632(b) and 19635, Welfare and Institutions Code.

### § 7212.3. Client-Trainee Responsibilities.

(a) During his or her participation in the Vendor Training Program, the Client-Trainee is responsible for meeting performance standards including, but not limited to:

(1) Achieve performance levels for classroom and on-the-job training at levels specified in Section 7212.1(h) of these regulations.

(2) Attend classroom and on-the-job training, unless excused by the Training Instructor.

(A) Maintain an accurate and complete timesheet for on-the-job training. This timesheet must be signed by the Vendor-Trainer and turned in by the Client-Trainee to the Training Instructor by the 10th of the following month, to cover the previous month’s training.

(3) Wear clothing that is in good condition, neat and clean, and that is appropriate for meeting the public in a food service operation.

(4) Maintain good personal hygiene that is consistent with safe and sanitary food handling.

(b) The standards set forth in subsection (a) herein shall be distributed and explained at the beginning of each Vendor Training Program. Each Client-Trainee shall receive a copy of these standards in an appropriate mode of communication, to the extent possible, consistent with 34 CFR section 361.5(b)(5) and Welfare and Institutions Code section 19013.5(b). Such modes of communication may include providing the standards in large print, Braille, on audiotape, 3.5” diskette, or compact disk. The Department shall transmit copies of the standards electronically, on request. The standards also shall be made available by the BEP Manager to the California Vendors Policy Committee, hereafter CVPC, or any vendor upon request.

(1) The transmittal and receipt of these standards shall be confirmed when the Training Instructor and the Client-Trainee sign and date the DR 441, Transmittal and Receipt of Performance Standards for the BEP Training Program (New 07/07), incorporated by reference herein.

(c) Any Client-Trainee who fails to meet one or more of the performance standards specified in subsection (a) herein may be placed on probation for up to 60 days. The BEP shall notify the Client-Trainee in writing of the area(s) of deficiency that need to be corrected and the length of the probation. A copy of this notification shall be sent to the Client-Trainee’s Rehabilitation Counselor for the Blind and the Training Instructor.

(1) A Client-Trainee may provide an explanation for any deficiency and this explanation shall be reviewed and considered by the BEP. Any written explanation provided by the Client-Trainee shall also go to the Rehabilitation Counselor for the Blind and the Training Instructor.

(2) All deficiencies shall be corrected on or before the last day of the probationary period. Failure to correct all deficiencies within the probationary period may result in the Client-Trainee’s termination from the Vendor Training Program.

(d) Inappropriate behavior or serious misconduct on the part of a Client-Trainee shall result in a formal warning, and possible placement on probation or dismissal from the Vendor Training Program without probation, depending on the severity of the inappropriate behavior or serious misconduct.

(e) Whenever a Client-Trainee is terminated from the Vendor Training Program, he or she shall be referred back to his or her Rehabilitation Counselor for the Blind, who shall take one of the following actions.

(1) Work with the applicant to establish a plan, including classes, training, or business or work experience, which would increase the applicant’s ability to successfully complete the Vendor Training Program provided for in Section 7212.1 of these regulations; or

(2) Re-evaluate the applicant’s choice of an employment outcome as a BEP vendor.

(f) At the conclusion of each Vendor Training Program, the CVPC shall be provided with the following: the number of Client-Trainees enrolled in the Vendor Training Program; the number who successfully completed the Vendor Training Program; the number who were referred back to the Rehabilitation Counselor for the Blind; and the number who were terminated from the Vendor Training Program.

(g) At the completion of each class, a designee of the BEP Manager and a designee of the CVPC shall conduct joint exit interviews with Client-Trainees who have successfully completed the Vendor Training Program.

NOTE: Authority cited: 20 USC Section 107b(5); 34 CFR Section 395.4; and Sections 19006, 19016 and 19639, Welfare and Institutions Code. Reference: 20 USC Sections 107b-1(3) and 107d-4; 34 CFR Sections 361.5(b)(5), 361.46, 361.47, 395.3(a)(4) and (8), 395.11 and 395.14(b); and Sections 19011, 19013.5(b), 19632(b) and 19638(b), Welfare and Institutions Code.

### § 7212.4. In-Service and Upward Mobility Training.

(a) In-Service and Upward Mobility Training shall have the meanings and objectives specified in Section 7211(a)(27) and (53) of these regulations, respectively. Any vendor may make written application to the Training Instructor to attend any regularly scheduled Business Enterprises Program for the Blind, hereafter BEP, training as part of ongoing In-Service Training. The vendor’s application may be for initial training, retraining, training on new technology or new food service management techniques, or for the purpose of certification to be a Vendor-Trainer.

(b) In-Service Training shall be offered at least once a year, in at least two locations in the state. In-Service Training may be provided to individual vendors by the Training Instructor or BEP in the classroom or on site in the vendor’s vending facility, upon request.

(c) In-Service Training may include, but is not limited to, presentations on the following subjects:

(1) Federal and state laws and regulations applicable to the BEP, including federal law (20 USC section 107 et seq.), federal regulations (34 CFR Part 395), state law (Welfare and Institutions Code section 19625 et seq.), and state regulations (California Code of Regulations (CCR), Title 9, Section 7210 et seq.).

(2) Assistance and advocacy available from the California Vendors Policy Committee, hereafter CVPC.

(3) Sanitation and safety.

(4) Food and beverage preparation, menu planning, and pricing.

(5) Convenience store merchandising.

(6) Financial management and preparation of the DR 478, Vendor’s Monthly Operating Report (Rev. 06/16), incorporated by reference herein.

(7) Customer relations.

(8) Labor law.

(9) Human resources.

(10) Business marketing.

(11) Vending machines, including maintenance and minor repairs.

(12) Vending equipment (excluding vending machines) including maintenance and minor repairs.

(13) Developing an Employee Handbook.

(d) The CVPC shall actively participate in developing In-Service Training.

(e) Upward Mobility Training shall include further education and additional training or retraining for improved work opportunities for all licensees and vendors, as necessary to assure that their maximum vocational potential is achieved. The BEP shall further ensure that post-employment services are provided to vendors as vocational rehabilitation services as necessary to assure that the maximum vocational potential of such vendors is acheived and suitable employment is maintained within the State’s vending facility program.

(f) Vocational rehabilitation services available to vendors as post-employment services include, but are not limited to:

(1) Vocational and personal adjustment services designed to assist a vendor to be more self-reliant and independent on the job, which may include orientation and mobility services.

(2) Assistive technology services.

(3) Training services that are career-related including, but not limited to, training in business practices, accounting, and customer relations.

(g) A vendor who is interested in receiving services for purposes of upward mobility shall contact his or her Rehabilitation Counselor for the Blind or the nearest Blind Field Services office. A vendor who requests services for purposes of upward mobility shall advise the BEP when he or she applies for such services.

NOTE: Authority cited: 20 USC Section 107b(5); 34 CFR Section 395.4; and Sections 19006, 19016, 19632 and 19639, Welfare and Institutions Code. Reference: 20 USC Sections 107b-1(3) and 107d-4; 29 USC Section 723(a)(5), (14) and (18); 34 CFR Sections 361.5(b)(42), 361.48(f), (o) and (q), 395.3(a)(4) and (8), 395.11 and 395.14(b); and Sections 19011, 19150(a)(3) and 19150(a)(10), 19632(b) and 19638(b), Welfare and Institutions Code.

## Article 4. Licensing

### § 7213. Licensing.

(a) An applicant who meets all of the following requirements shall be issued a DR 468, Vending Facility License (Rev. 07/07), incorporated by reference herein, within 30 working days of the Training Instructor’s issuance of the DR 456, Certification of Eligibility for BEP License (Rev. 07/07), incorporated by reference herein:

(1) Eligible to apply to participate in the Business Enterprises Program for the Blind (BEP) established in Section 7212(a) of these regulations;

(2) Possess a DR 456, Certification of Eligibility for BEP License (Rev. 07/07), as specified in Section 7212.1(i) of these regulations; and

(3) Ability to comply with all applicable laws and regulations.

(b) The DR 468, Vending Facility License (Rev. 07/07) shall be valid as long as the licensee or vendor to whom it is issued continues to meet requirements specified in Section 7213(a) of these regulations, unless the license is suspended or terminated, as provided for in Section 7213.1 of these regulations.

(c) Licensees and vendors shall provide the BEP Manager with a current mailing address. Licensees and vendors shall notify the BEP Manager in writing of any change of address within 30 calendar days of the effective date of the change of address. It shall also be the responsibility of licensees and vendors to confirm that BEP has a current mailing address on file.

NOTE: Authority cited: 20 USC Section 107b(5); 34 CFR Section 395.4; and Sections 19006, 19016, 19632 and 19639, Welfare and Institutions Code. Reference: 20 USC Sections 107, 107a(a)(5), 107a(b), and 107a(e); 34 CFR Sections 395.1(i), 395.2, 395.5 and 395.7; and Sections 19011 and 19625, Welfare and Institutions Code.

### § 7213.1. Suspension or Termination of a Licensee’s or Vendor’s License.

(a) For the purposes of this section, the DR 468, Vending Facility License (Rev. 07/07), incorporated by reference herein, shall be referred to

as the “license.” Only the Department may suspend or terminate the license of a licensee or a vendor.

(b) Written notice of the intent to terminate the license of a licensee or suspend or terminate the license of a vendor shall be considered properly served by one of the following two methods and shall include a declaration of service:

(1) Certified mail to the current mailing address provided to the BEP Manager by the licensee or vendor in accordance with Section 7213(c) of these regulations; or

(2) Personal service on the licensee or vendor.

(c) The notice of intent to terminate a licensee’s license or suspend or terminate a vendor’s license shall specify the following:

(1) If applicable, the primary site and any satellite sites of a vendor’s vending facility, as defined in Section 7211(a)(36) and (a)(38) of these regulations, respectively, that are affected.

(2) The grounds for the suspension or termination that constitute good cause, as specified in Section 7213.3 of these regulations.

(3) The facts upon which the suspension or termination are based.

(4) The effective date of the suspension of a vendor’s license, in accordance with (d) herein, or the effective date of the termination of a licensee’s or vendor’s license, in accordance with (e) herein.

(5) The length of the suspension, if the notice is of a suspension.

(6) The right of the licensee or vendor to an administrative review and a full evidentiary hearing, in accordance with Sections 7227.1 and 7227.2 of these regulations, respectively.

(d) Suspension of a vendor’s license shall be effective 15 working days from the date of service, unless the vendor files a request for an administrative review or a full evidentiary hearing, in accordance with Section 7227.1 or 7227.2 of these regulations, respectively, before the effective date of the suspension.

(e) Termination of a licensee’s or vendor’s license shall be effective 15 working days from the date of service, unless the licensee or vendor files a request for an administrative review or a full evidentiary hearing, in accordance with Section 7227.1 or 7227.2 of these regulations, respectively, before the effective date of the termination.

(1) If a licensee appeals a termination of his or her license, and the Department prevails at an administrative review and/or a full evidentiary hearing, the licensee’s license shall be immediately terminated upon the effective date of the decision.

(2) If a vendor appeals a suspension of his or her license, and the Department prevails at an administrative review and/or a full evidentiary hearing, a vendor with only one site, or with two or more sites that have been combined or consolidated or include an interim vending facility, may not operate at any of the sites until the suspension period has ended and the cause(s) for the suspension have been remedied. If the vendor fails to remedy the cause(s) for the suspension, the BEP shall take action to terminate the vendor’s license or operating agreement for good cause in accordance with Section 7213.3 of these regulations. The vending facility vacated may be placed into interim operation pursuant to Section 7215 of

these regulations, until such time that the vacated vending facility may be announced as available to be operated on a permanent basis.

(3) If a vendor operating a vending facility comprised of only one site, or two or more sites that have been combined or consolidated or include an interim vending facility, appeals a termination of his or her license, and the Department prevails at an administrative review and/or a full evidentiary hearing, the vendor may not operate at any of the sites, as of the effective date of the decision. The vendor must vacate all sites within his or her vending facility within 15 calendar days of the effective date of the decision. The vending facility vacated may be placed into interim operation pursuant to Section 7215 of these regulations, until such time that the vacated vending facility may be announced as available to be operated on a permanent basis.

NOTE: Authority cited: 20 USC Section 107b(5); 34 CFR Section 395.4; and Sections 19006, 19016, 19632 and 19639, Welfare and Institutions Code. Reference: 20 USC Sections 107, 107a(a)(5), 107a(b), 107a(e), 107b(6) and 107d-1(a); 34 CFR Sections 395.1(i), 395.2, 395.3(a)(7), 395.3(a)(11)(ii), 395.5, 395.7 and 395.13; and Sections 19011, 19625, 19626, 19632(d) and 19635, Welfare and Institutions Code.

### § 7213.2. Suspension or Termination of a Vendor’s Operating Agreement.

(a) For the purposes of this section, Vendor’s Operating Agreement, as defined in Section 7211(a)(60), shall be referred to as the “operating agreement.” The suspension or termination of a vendor’s operating agreement does not require that a vendor’s DR 468, Vending Facility License (Rev. 07/07), incorporated by reference herein, be suspended or terminated.

(b) Upon properly served written notice of intent to suspend or terminate an operating agreement in accordance with subsection (c) herein, the Business Enterprises Program for the Blind (BEP) shall suspend or terminate a vendor’s operating agreement when:

(1) The Permit for the vending facility is withdrawn by the contracting agency;

(2) The vendor vacates the vending facility;

(3) The vendor’s license is suspended or terminated, in accordance with Section 7213.1 of these regulations; or

(4) Good cause exists as specified in Section 7213.3 of these regulations.

(c) Written notice of the intent to suspend or terminate an operating agreement shall be considered properly served by one of the following two methods and shall include a declaration of service:

(1) By certified mail, return receipt requested, to the current mailing address provided to the BEP Manager in accordance with Section 7213(c) of these regulations; or

(2) By personal service on the licensee or vendor.

(d) The notice of intent to suspend or terminate the operating agreement shall specify all of the following:

(1) The primary site and satellite site(s) of a vending facility, as defined in Section 7211(a)(36) and (a)(38) of these regulations, respectively, that are affected.

(2) The grounds that constitute good cause for suspension or termination of the operating agreement, consistent with subsection (b) herein.

(3) The facts upon which the suspension or termination are based.

(4) The length of the suspension, if the notice is of a suspension.

(5) The effective date of the suspension or termination.

(6) The right of the vendor to an administrative review and a full evidentiary hearing, as provided for in Sections 7227.1 and 7227.2 of these regulations, respectively.

(e) Termination of a vendor’s operating agreement shall be effective 15 working days from the date of service of the written notice of intent, unless the vendor files a request for an administrative review or a full evidentiary hearing, in accordance with Section 7227.1 or 7227.2 of these regulations, respectively, before the effective date of the termination.

(f) If a vendor operating a vending facility at only one site appeals a suspension of his or her operating agreement, and the Department prevails at an administrative review and/or a full evidentiary hearing, the vendor must either:

(1) Demonstrate that the deficiency or deficiencies leading to the suspension have been fully corrected to the satisfaction of the BEP Manager and the contracting agency; or

(2) Vacate the vending facility within 15 working days of the effective date of the decision.

(g) If the vendor operates a vending facility comprised of two or more sites that have been combined or consolidated into a vending facility, and the cause for a suspension did not occur at all of those sites, subsections (f)(1) and (2) herein apply only to the site(s) where the deficiency or deficiencies leading to the suspension occurred.

(h) If a vendor operating a vending facility at only one site has his or her operating agreement terminated, and the Department prevails at an administrative review and/or a full evidentiary hearing, the vendor shall vacate the vending facility within 15 working days from the effective date of the decision. The vending facility vacated may be placed into interim operation pursuant to Section 7215 of these regulations, until such time that the vacated vending facility may be announced as available to be operated on a permanent basis.

(i) If the vendor operates a vending facility comprised of two or more sites that have been combined or consolidated into a vending facility, and the vendor is required to vacate only one of those sites due to suspension or termination of the operating agreement, the operating agreement is null and void due to this material change in the agreement, and the vendor must enter into a new operating agreement for the remaining sites that were not vacated. The vendor must submit a signed operating agreement for the remaining sites to the BEP within five working days of receiving it. Failure to submit a signed operating agreement for the remaining sites shall result in the BEP filing an action against the vendor to terminate the operating agreement.

(j) If the vendor vacates a site of a vending facility comprised of two or more sites that have been combined or consolidated into a vending facility, the site vacated shall be made available as an interim vending facility pursuant to Section 7215 of these regulations, until such time that the vacated vending facility may be announced as available to be operated on a permanent basis.

(k) A vendor whose operating agreement is terminated may apply to operate another BEP vending facility, if the vendor pays all monies owed to the BEP, including, but not limited to, set-aside fees, payment for workers’ compensation and liability insurance, and penalties, and files any delinquent DR 478, Vendor’s Monthly Operating Reports (Rev. 06/16), incorporated by reference herein.

NOTE: Authority cited: 20 USC Section 107b(5); 34 CFR Section 395.4; and Sections 19006, 19016 and 19639, Welfare and Institutions Code. Reference: 20 USC Sections 107b(3), 107b(6) and 107d-1(a); 34 CFR Sections 395.1(o), 395.2, 395.3(a)(7), 395.9, 395.13, 395.16, 395.34 and 395.35; and Sections 19011, 19626, 19629 and 19635, Welfare and Institutions Code.

**§ 7213.3. Good Cause for Suspension or Termination of a License or Operating Agreement.**

(a) For purposes of this section, the DR 468, Vending Facility License (Rev. 07/07), incorporated by reference herein, shall be referred to as the “license” and Vendor’s Operating Agreement, as defined in Section 7211(a)(60), shall be referred to as the “operating agreement.”

(b) Good cause for termination of a licensee’s license is that the licensee no longer meets the eligibility requirements to apply for participation in the Business Enterprises Program for the Blind (BEP) established in Section 7212(a) of these regulations.

(c) Any of the following conditions shall be considered good cause for suspension or termination of a vendor’s license or operating agreement:

(1) The vendor no longer meets the eligibility requirements to apply for participation in the BEP established in Section 7212(a) of these regulations.

(2) The vendor abandons his or her vending facility or, for two or more sites that have been combined or consolidated into a vending facility, the vendor abandons any one of those sites. A vending facility site shall be considered abandoned when it is closed for three consecutive working days and no services are provided, and/or it is closed without approval from the BEP Manager.

(3) The vendor fails to operate his or her vending facility in accordance with applicable federal law (20 USC section 107 et seq.), federal regulations (34 CFR Part 395), state law (Welfare and Institutions Code section 19625 et seq.), state regulations (California Code of Regulations (CCR), Title 9, Section 7210 et seq.), or with applicable Health and Safety Codes.

(4) The vendor fails to operate his or her vending facility in accordance with the terms and conditions of the Permit defined in Section 7211(a)(35) of these regulations, or the Vendor’s Operating Agreement defined in Section 7211(a)(60) of these regulations.

(5) The vendor fails to personally manage his or her vending facility by a continuing presence at the vending facility, as required by Section 7220(a) of these regulations.

(6) The vendor willfully or maliciously destroys, or fails to exercise necessary care for, equipment furnished by the BEP or the contracting agency named in the Permit.

(d) Any of the following acts by a vendor whose conduct interferes with any aspect of the operation of his or her vending facility is good cause for suspension or termination of a vendor’s license or operating agreement. These acts include, but are not limited to, the following:

(1) Conviction of fraud during licensure.

(2) Intoxication on the vending facility premises.

(3) Neglect of any of the duties required by these regulations.

(4) Failure to file the DR 478, Vendor’s Monthly Operating Report (Rev. 06/16), incorporated by reference herein, in accordance with these regulations.

(5) Failure to submit to a medical examination provided in Welfare and Institutions Code section 19632, subdivision (a) of this section when requested by the BEP.

(6) Using a facility or allowing others to use a vending facility for unlawful activities.

(7) Using the facility for purposes not expressly authorized in the Permit, as defined in Section 7211(a)(35) of these regulations.

(8) Filing false or misleading DR 478, Vendor’s Monthly Operating Report (Rev. 06/16).

(9) Allowing the DR 468, Vending Facility License (Rev. 07/07) to be suspended under conditions specified in Section 7213.3 of these regulations and failing to apply for reinstatement in accordance with Section 7213.6 of these regulations.

(e) A vendor’s failure to pay any of the following is good cause for suspension or termination of a vendor’s license or operating agreement, if unpaid for more than 90 days from the date in which payment is due:

(1) Liability or workers’ compensation insurance as required by the BEP.

(2) Set-aside fees, as defined in Section 7211(a)(42) of these regulations.

(3) Penalty charges on delinquent set-aside fees, in accordance with Section 7221(a) of these regulations.

(f) A vendor’s failure to prepare and maintain records required by Section 7220(l) of these regulations, make records or financial reports relating to the operation of his or her vending facility available within 15 calendar days of receipt of a written request from BEP or Department staff, or failure to cooperate with BEP or Department staff during the conduct of an audit or any other matters relating to the vending facility shall be good cause for the suspension or termination of a vendor’s license or operating agreement.

NOTE: Authority cited: 20 USC Section 107b(5); 34 CFR Section 395.4; and Sections 19006, 19016, 19632 and 19639, Welfare and Institutions Code. Reference: 20 USC Sections 107, 107a(a)(5), 107a(b), 107a(e), 107b(3) 107b(6), and 107d-1(a); 34 CFR Sections 395.1(i) 395.1(o), 395.2, 395.3(a)(7), 395.3(a)(11)(ii), 395.5, 395.7, 395.9, 395.13, 395.16, 395.34 and 395.35; and Sections 19011, 19625, 19626, 19629, 19632 and 19635, Welfare and Institutions Code.

### § 7213.4. Disapproval or Withdrawal of Approval of a Vendor by the Contracting Agency.

(a) A contracting agency, as defined in Section 7211(a)(12) of these regulations, may disapprove, or withdraw approval of, a vendor currently operating a vending facility on property cared for, in the custody of, or controlled by the contracting agency, but only for good cause. The Department may not orally, in writing, or by any other form of communication, instigate, initiate, or encourage a person, governing board,

or legislative body having control of the property on which a vending facility is operated, to request the removal of a vendor.

(b) The contracting agency shall notify the Business Enterprises Program for the Blind (BEP) in writing of the grounds for disapproval or withdrawal of approval of a vendor and shall supply any supporting material to the BEP. The BEP Manager shall review this written notice and supporting material within three working days and determine whether there is good cause for disapproval or withdrawal of approval of a vendor.

(c) If good cause exists, the BEP shall immediately send a letter of reprimand to the vendor by certified mail with a receipt confirmation required that shall include all of the following:

(1) A copy of the original notification form and any supporting material provided by the contracting agency.

(2) A description of the acts or omissions that constitute good cause for disapproval or withdrawal of approval of the vendor, which may include one or more of the following:

(A) Failure to carry out the vendor’s responsibilities as specified in Section 7220 of these regulations.

(B) Any of the conditions considered good cause, as specified in Section 7213.3 of these regulations.

(3) Identification of applicable federal law (20 USC section 107 et seq.), federal regulations (34 CFR Part 395), state law (Welfare and Institutions Code section 19625 et seq.), state regulations (California Code of Regulations, title 9, section 7210 et seq.), and applicable Health and Safety Code requirements that have been violated.

(4) The date of removal from the vending facility.

(5) Any corrective action(s) the vendor must take which, if taken, shall allow the vendor to remain at the vending facility.

(6) The vendor’s right to an administrative review and a full evidentiary hearing as provided for in Sections 7227.1 and 7227.2 of these regulations, respectively.

(d) The vendor shall have 15 working days from receipt of the letter of reprimand provided for in subsection (c) herein to correct any deficiency or deficiencies that are the basis for the reprimand. During this 15-day period, the Department shall make all reasonable efforts, as appropriate, to assist the vendor in rectifying the condition(s) upon which the letter of reprimand is based. If the vendor does not rectify the condition(s) to the satisfaction of the contracting agency, the Director of the Department shall so inform the vendor in writing, who shall vacate his or her vending facility immediately.

(e) Upon the vendor’s departure, the vending facility may be placed into interim operation pursuant to Section 7215 of these regulations, until such time that the vacated vending facility may be announced as available to be operated on a permanent basis.

(f) If the vendor requests an administrative review and/or a full evidentiary hearing, the vending facility may be placed into interim operation pursuant to Section 7215 of these regulations, until a final decision to approve or disapprove the vendor is rendered.

(g) Upon the vendor’s departure from the vending facility, the vending facility stock (excluding equipment) shall be liquidated as follows:

(1) If title to the stock is vested in the BEP pursuant to Section 7222(a)(4) of these regulations, the Department shall be responsible for stock liquidation. The Department may sell stock it owns to the vendor of the interim vending facility or to any other vendor interested in purchasing the stock.

(2) If title to the stock is vested in the vendor, the vendor shall be responsible for stock liquidation as specified in Section 7222(a)(4) of these regulations.

(h) Disapproval or withdrawal of approval of a vendor by the contracting agency is not equivalent to suspension or termination of a vendor’s DR 468, Vending Facility License (Rev. 07/07), incorporated by reference herein. However, the Department may bring an action to suspend or terminate a vendor’s license, based on the facts that resulted in the disapproval or withdrawal of approval by the contracting agency, in accordance with Section 7213.1 of these regulations.

(i) The removal of a vendor from a vending facility on property cared for, in the custody of, or controlled by the contracting agency and, at the request of the contracting agency, shall not require the vendor to vacate other vending facility sites that he or she operates on property cared for, in the custody of, or controlled by a different contracting agency and shall not require a finding of ineligibility for licensing.

NOTE: Authority cited: 20 USC Section 107b(5); 34 CFR Section 395.4; and Sections 19006, 19016 and 19639, Welfare and Institutions Code. Reference: 20 USC Sections 107b(6) and 107d-1(a); 34 CFR Sections 395.2, 395.3(a)(7) and 395.13; and Sections 19011, 19632(c) and (d), and 19635, Welfare and Institutions Code.

### § 7213.5. Eligibility of a Licensee to Apply for a BEP Vending Facility

(a) To be eligible to apply for a Business Enterprises Program for the Blind (BEP) vending facility, including an interim vending facility, a licensee shall comply with the following requirements to ensure that he or she maintains the qualifications to operate a BEP vending facility:

(1) If the licensee has not operated a BEP vending facility, including an interim vending facility, from two to four years from the date of licensure or from the last day the licensee operated a vending facility, whichever is most recent in the previous, the licensee must either:

(A) Enroll in and complete the BEP Vendor Training Program described in Section 7212.1 of these regulations, except that an individual who was a former vendor will not be required to complete the on-the-job training specified in Section 7212.1(c)(2) of these regulations; or

(B) Challenge the requirement to take the BEP Vendor Training Program by taking and scoring 70 percent or higher on an examination given by the BEP Training Instructor, comparable to the midterm test specified in Section 7212.1(f) of these regulations.

(2) If the licensee has not operated a BEP vending facility, including an interim vending facility, for more than four years from the date of licensure or from the last day the licensee operated a vending facility as a vendor, whichever is most recent, the licensee must complete all components of the Vendor Training Program described in Section 7212.1 of these regulations.

(b) A licensee who fails to take the appropriate action specified herein shall not be eligible to apply for a BEP vending facility, including an interim vending facility.

NOTE: Authority cited: 20 USC Section 107b(5); 34 CFR Section 395.4; and Sections 19006, 19016, 19632 and 19639, Welfare and Institutions Code. Reference: 20 USC Sections 107, 107a(a)(5), 107a(b) and 107a(e); 34 CFR Sections 395.1(i), 395.2, 395.5 and 395.7; and Sections 19011 and 19625, Welfare and Institutions Code.

### § 7213.6. Reinstatement of a License.

(a) For purposes of this section, the DR 468, Vending Facility License (Rev. 07/07), incorporated by reference herein, shall be referred to as the “license.”

(b) If a licensee or vendor resigns from the Business Enterprises Program for the Blind (BEP), the licensee or vendor may request reinstatement of his or her license.

(1) If a former licensee or vendor requests reinstatement within two years after he or she resigned, the BEP Manager may reinstate a license only if:

(A) The former licensee or vendor meets the requirements to apply for participation in the BEP established in Section 7212(a) of these regulations;

(B) The former licensee or vendor requesting reinstatement possesses necessary certifications required by Health and Safety Code sections 113700 through 114180; and

(C) If the individual requesting reinstatement was a former vendor, he or she has paid all monies owed to the BEP, including, but not limited to set-aside fees payment for workers’ compensation or liability insurance, and penalties, and filed all of the required DR 478, Vendor’s Monthly Operating Reports (Rev. 06/16), incorporated by reference herein.

(2) If a former licensee or vendor requests reinstatement from two to four years from the date of resignation or from two to four years from the

last day the former vendor operated a vending facility, whichever is most recent, the former licensee or vendor requesting reinstatement must either:

(A) Enroll in and complete the BEP Vendor Training Program described in Section 7212.1 of these regulations, except that an individual who was a former vendor will not be required to complete the on-the-job training specified in Section 7212.1(c)(2) of these regulations; or

(B) Challenge the requirement to take the BEP Vendor Training Program. Former licensees and vendors who challenge the need to take the Vendor Training Program are required to score 70 percent or higher on an examination given by the BEP Training Instructor, comparable to the midterm test specified in Section 7212.1(f) of these regulations. A former licensee or vendor who passes

this test shall have his or her license to operate a vending facility reinstated by the BEP Manager.

(3) If a former licensee or vendor requests reinstatement after four years from the date of resignation or the last day he or she operated a BEP vending facility, the former licensee or vendor requesting reinstatement must complete all components of the Vendor Training Program described in Section 7212.1 of these regulations.

(c) A former licensee or vendor who fails to take the appropriate actions specified herein shall not have his or her license reinstated.

(d) A former licensee or vendor whose license is not reinstated has the right to an administrative review and full evidentiary hearing as provided for in Sections 7227.1 and 7227.2 of these regulations, respectively.

NOTE: Authority cited: 20 USC Section 107b(5); 34 CFR Section 395.4; and Sections 19006, 19016, 19632, and 19639, Welfare and Institutions Code. Reference: 20 USC Sections 107, 107a(a)(5), 107a(b), 107a(e), 107b(3), 107b(6) and 107d-1(a); 34 CFR Sections 395.1(i), 395.2, 395.3(a)(7), 395.5, 395.7, 395.9 and 395.13; Sections 113700-114180, Health and Safety Code; and Sections 19011, 19625, 19629 and 19635, Welfare and Institutions Code.

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## Article 5. Vending Facilities; Announcement; Application; Selection; Placement

### § 7214. Announcing the Availability of Vending Facilities.

(a) The Business Enterprises Program for the Blind (BEP) shall announce the availability of a vending facility by issuing a DR 460, Vending Facility Announcement (Rev. 09/09), incorporated by reference herein. At least 10 calendar days prior to the deadline for submitting applications, the BEP shall post the announcement on the Department’s website, record the announcement on a telephone based information system that is available to licensees and vendors, and provide the announcement to the California Vendors Policy Committee. Upon request, the BEP shall also provide the announcement in an appropriate mode of communication, to the extent possible, consistent with Code of Federal Regulations, title 34, part 361.5(b)(5) and Welfare and Institutions Code section 19013.5(b). Such modes of communication may include providing the announcement in large print, Braille, on audiotape, 3.5” diskette, or compact disk, and transmitting announcement electronically.

(b) When announcing the availability of a vending facility, the BEP shall consider whether or not the vending facility is projected to generate an adequate net income, as defined in Section 7211(a)(2) of these regulations.

(1) When a newly established vending facility is available and the minimum projected net income meets BEP guidelines specified in Section 7211(a)(2) of these regulations, the vending facility shall be announced as available as a primary site, as defined in Section 7211(a)(36) of these regulations.

(2) When a previously operated vending facility is available and the minimum projected net income meets BEP guidelines specified in Section 7211(a)(2) of these regulations, the vending facility shall be announced as a primary site, as defined in Section 7211(a)(36) of these regulations. The vending facility shall be announced within 15 working days following receipt of resignation or removal of the vendor whose facility is being vacated and made available.

(3) When a previously operated vending facility is available and the minimum projected net income does not meet BEP guidelines specified in Section 7211(a)(2) of these regulations, the vending facility shall be announced as available to be operated as a satellite site to be combined or consolidated with one or more other sites. The BEP Manager shall identify which of the sites is the primary site.

(4) When two or more previously operated vending facilities are available concurrently, and no one vending facility is projected to generate a minimum projected net income specified in Section 7211(a)(2) of these regulations, the BEP may combine or consolidate the sites and announce them as available to be operated as a vending facility on more than one site. The BEP Manager shall identify which of the sites shall be the primary site. Sites that are combined or consolidated into a vending facility shall be announced as available within 15 working days of the BEP’s decision to combine and consolidate the sites.

(c) Before announcing the availability of a vending facility that is comprised of two or more sites that have been combined or consolidated, the BEP Manager shall assess the potential income of each site to determine whether the combined or consolidated sites will generate a minimum projected net income of at least the amount specified in Section 7211(a)(2) of these regulations.

NOTE: Authority cited: 20 USC Section 107b(5); 34 CFR Section 395.4; and Sections 19006, 19016 and 19639, Welfare and Institutions Code. Reference: 20 USC Sections 107, 107a(a)(5), 107a(b), 107a(e) and 107b-1(3); 34 CFR Sections 361.5(b)(5), 395.1(i), 395.2, 395.3(a)(4), 395.5, 395.7 and 395.14(b); and Sections 19011, 19013.5(b), 19625, 19626, 19631 and 19638(b), Welfare and Institutions Code.

### § 7214.1. Application Requirements and the Application Process.

(a) Licensees and vendors who are applying to operate a vending facility shall submit a completed DR 462, Vending Facility Application (Rev. 07/07), incorporated by reference herein, to the BEP. The licensee or vendor may submit an application in an alternative form, as long as the application contains all information required by the DR 462, Vending Facility Application (Rev. 07/07). The completed application may be delivered to the BEP by mail, electronic mail, facsimile, or personal delivery. Applications must be postmarked or date stamped by the Department on or before the final filing date in order to be accepted.

(b) A vendor currently operating a vending facility on a permanent basis must have operated that vending for at least 183 calendar days before the final filing date on the DR 460, Vending Facility Announcement (Rev. 09/09), incorporated by reference herein, to be eligible to submit an application to operate a different vending facility.

(c) The application requirements established in subsection (b) herein may be waived by the BEP Manager after notification to the California Vendors Policy Committee (CVPC) of the waiver for the following reasons:

(1) The vendor can demonstrate that the current vending facility he or she was selected for and assigned to operate was not opened within a reasonable period of time due to delays beyond the vendor’s control; or

(2) The vendor can demonstrate that he or she was unable to remain at his or her vending facility for at least 183 days due to circumstances beyond the vendor’s control.

(d) Grounds for immediate disqualification of an applicant include any one of the following:

(1) Failure to submit all required information on the DR 462, Vending Facility Application (Rev. 07/07) or on an application submitted in an alternative format.

(2) Failure to submit the application by the final filing date.

(3) Failure to comply with the provisions of subsection (b) herein, absent a waiver specified in subsection (c) herein.

(4) Failure to provide all requested information.

(5) Failure to appear at the designated time and date for the interview.

(6) Failure to pass any criminal or other background check required by the contracting agency.

(e) In addition to the grounds for immediate disqualification of an applicant established in subsection (d) herein, the BEP shall disqualify an applicant who owes the BEP monies, including, but not limited to, set-aside fees, payment for workers’ compensation or liability insurance, and penalties, with the exception of subsection (e)(2) herein, or has any outstanding DR 478, Vendor’s Monthly Operating Report (Rev. 06/16), incorporated by reference herein.

(1) The Department’s Accounting Office shall verify that each applicant who is a vendor is not delinquent in the submission of any DR 478, Vendor’s Monthly Operating Report (Rev. 06/16), or payment of set-aside fees, penalties, or insurance payments. If the vendor is found to be delinquent on any of these payments, he or she may satisfy the delinquency by paying the amount of the delinquency in full, in the form of a cashier’s check or money order, no later than five calendar days before the date of his or her interview. The applicant shall bring evidence of recent payment to the interview to avoid any potential disqualification.

(2) A vendor’s application shall not be disqualified because the vendor is delinquent on, or has outstanding, payments of money owed to the BEP, if the amount of the delinquent payment is less than $100 or the amount owed has been delinquent for less than 60 calendar days from the final filing date specified on the DR 460, Vending Facility Announcement (Rev. 09/09).

(f) The BEP shall mail a DR 461, Notification of Selection Committee for Vending Facilities Meeting (Rev. 09/09), incorporated by reference herein, to each qualified applicant. This notice shall be sent at least 15 calendar days before the date of the interview specified in the notice. A scheduled time for a walkthrough of the available vending facility by prospective vendors shall be included in the notice, and the walkthrough shall occur at least seven days before the interview date specified in the notice. The BEP may schedule the walkthrough of the available vending facility, after consultation with the CVPC.

(g) The DR 461, Notification of Selection Committee for Vending Facilities Meeting (Rev. 09/09) must include, but is not limited to, the following information:

(1) The status of the application (i.e., accepted/qualified or rejected/disqualified). If the application is rejected, the reason(s) for rejection shall be stated, including, but not limited to: failure to meet the requirements of subsection (b) herein, absent a waiver specified in subsection (c) herein, or grounds specified in subsections (d) and (e) herein.

(2) Notice that any applicant may withdraw his or her application by notifying the Selection Coordinator in writing no later than five calendar days before the scheduled date for the Selection Committee for Vending Facilities Meeting.

(3) The date and time for the walkthrough specified in (f) herein.

(4) The date, time, and location of the Selection Committee for Vending Facilities Meeting, including the time of the applicant’s interview.

(5) Notice that a vendor who is an applicant may not participate in a selection interview unless he or she pays any delinquent or outstanding payments as specified in subsection (e) herein, or files any delinquent or outstanding DR478, Vendor’s Monthly Operating Report (Rev. 06/16).

(h) If the applicant does not appear at the date and time specified on the DR 461, Notification of Selection Committee for Vending Facilities Meeting (Rev. 09/09) and fails to give the notification specified in subsection (g)(2) herein, the applicant shall be subject to the restrictions specified in Section 7214.4(a) of these regulations.

NOTE: Authority cited: 20 USC Section 107b(5); 34 CFR Section 395.4; and Sections 19006, 19016 and 19639, Welfare and Institutions Code. Reference: 20 USC Sections 107, 107a(a)(5), 107a(b), 107a(e), 107b(3) and 107b-1(3); 34 CFR Sections 395.1(i), 395.2, 395.3(a)(4), 395.5, 395.7, 395.9 and 395.14(b); and Sections 19011, 19625, 19629 and 19638(b), Welfare and Institutions Code.

### § 7214.2. Resume and Business Plan.

(a) As part of the selection interview process specified in Section 7214.4 of these regulations, a qualified applicant shall submit a resume and a business plan for each vending facility he or she is applying to operate.

(1) The resume shall provide information about the applicant’s education and experience that is relevant to the operation of a vending facility.

(2) The business plan shall include a description of the business, vision and mission statements, plans for staffing and operating the facility, hours of operation, the proposed menu and items for sale, and other relevant matters that demonstrate how the vendor envisions the business will function.

(b) All resumes and business plans shall be prepared using type with at least a 14-point font.

(1) Four copies of both the resume and the business plan must be submitted to the Selection Coordinator, as defined in Section 7211(a)(41) of these regulations, before the selection interview. The resume and the business plan may be submitted to the Business Enterprises Program for the Blind (BEP) by U.S. Postal Service mail. If this method of submittal is used, the submittal must be postmarked five days before the selection interview with the Selection Committee for Vending Facilities. If the submittal is not mailed, it may be hand delivered at the beginning of the selection interview during the Selection Committee for Vending Facilities Meeting.

NOTE: Authority cited: 20 USC Section 107b(5); 34 CFR Section 395.4; and Sections 19006, 19016 and 19639, Welfare and Institutions Code. Reference: 20 USC Sections 107, 107a(a)(5), 107a(b) and 107a(e); 34 CFR Sections 361.5(b)(5), 395.2, 395.3(a)(7), 395.5 and 395.7; and Sections 19011, 19013.5(b) and 19625, Welfare and Institutions Code.

### § 7214.3. Selection Committee for Vending Facilities; Selection Coordinator; Committee Chairperson; Selection Process.

(a) The selection of a licensee or vendor to operate a vending facility shall be made by a Selection Committee for Vending Facilities, as defined in Section 7211(a)(40) of these regulations. The Selection Committee for Vending Facilities shall consist of three representatives of the contracting agency, as defined in Section 7211(a)(12) of these regulations, unless a written waiver stating that the Selection Committee for Vending Facilities shall consist of less than three representatives has been signed by the individual responsible for representing the contracting agency. If the contracting agency chooses not to be represented, the Selection Committee for Vending Facilities members shall be individuals with administrative or managerial experience in food service recruited by the Business Enterprises Program for the Blind, herein BEP, who do not work for the BEP.

(1) The contracting agency may reverse its decision not to be represented until such time as all three members of the Selection Committee for Vending Facilities recruited by the BEP have agreed to serve.

(b) Members of the Selection Committee for Vending Facilities shall:

(1) Be present at each applicant selection interview.

(2) Comply with any instructions from the Selection Coordinator and the Selection Committee Chairperson.

(3) Ask only questions developed by the Selection Committee and approved by the Selection Coordinator.

(4) Score each applicant fairly and consistently.

(5) Not solicit opinions from the Selection Coordinator regarding a particular applicant.

(6) Not discuss the scores of any applicant prior to announcement of the results of the selection process. Any contacts with applicants following selection interviews shall only be made by the Selection Coordinator.

(c) The Selection Coordinator, as defined in Section 7211(a)(41) of these regulations, shall serve as a non-scoring facilitator and coordinator for the Selection Committee for Vending Facilities. The Selection Coordinator shall:

(1) Contact a representative of the contracting agency and request the contracting agency identify the person who shall serve as the Selection Committee for Vending Facilities Chairperson and assist in establishing the Selection Committee for Vending Facilities.

(2) If the contracting agency declines to participate in the selection process, assist in the recruitment of Selection Committee for Vending

Facilities members and, if necessary, assist members to select a Chairperson.

(3) Provide orientation to Selection Committee for Vending Facilities members and provide any needed materials.

(4) Not offer any opinions as to any applicants at any time.

(5) Prior to the commencement of selection interviews, advise members of the Selection Committee for Vending Facilities that the selection process must remain confidential, and that members may not discuss the substance of selection interviews of applicants with anyone either during or after the completion of the selection process, except other members of the Selection Committee for Vending Facilities, and that the applicant selected is not to be discussed with anyone other than members

of the Selection Committee for Vending Facilities until results are released under conditions specified in subsection (d) herein.

(6) Prior to the commencement of selection interviews, advise applicants that:

(A) All information contained in the applicant’s resume and business plan and any other statements made by the applicant during the selection interview are subject to confirmation by the contracting agency prior to a final decision by the Selection Committee for Vending Facilities.

(B) Each applicant’s selection interview is being recorded by the Department for administrative purposes.

(C) On request, the Department shall record the applicant’s selection interview for his or her personal use. The applicant must provide a blank cassette tape for this purpose.

(D) If the applicant later requests an administrative review and/or a full evidentiary hearing and requests copies of recorded selection interviews, the Department shall provide only his or her recorded interview.

(7) Be present during all selection interviews of applicants.

(8) Call each applicant into the selection interview room and introduce the applicant to the Selection Committee for Vending Facilities members. Any member from the contracting agency shall be identified by name and position title.

(9) Provide and operate a tape recorder and record all selection interviews for the Department and at the request of an applicant.

(10) Ensure that all applicants are asked the same questions and advise members of the Selection Committee for Vending Facilities when they ask an inappropriate question that cannot be permitted.

(11) Clarify conditions and requirements that apply to the vending facility for which applicants are competing, as necessary.

(12) Assure that applicants do not present any materials or persons prohibited pursuant to Section 7214.4(g) of these regulations.

(13) At the conclusion of the selection interviews, verify computations of scores assigned to applicants by members of the Selection Committee for Vending Facilities and record those scores for approval by the Chairperson.

(d) After all applicants scores have been recorded and approved by the Chairperson of the Selection Committee for Vending Facilities, the Selection Coordinator shall provide the following information to each applicant who was interviewed:

(1) His or her total score and placement in the selection interviews;

(2) The name of the applicant selected; and

(3) A copy of the list of applicant scores and placements without identifying the applicants in relation to the scores.

(e) Duties of the Chairperson of the Selection Committee for Vending Facilities shall include the following:

(1) Ensure that the selection interview schedule is maintained. Selection interviews shall be limited to one hour for each applicant unless the Selection Committee for Vending Facilities members determine a longer period is needed before the first selection interview and each applicant is given the same opportunity.

(2) Provide the applicant with the opportunity to state his or her relevant education and experience and discuss his or her overall plan to manage the vending facility, including the business plan, and ask standard questions developed by the Selection Committee for Vending Facilities.

(3) Ask the questions developed prior to the interviews by the Selection Committee for Vending Facilities.

(4) Ensure that each member of the Selection Committee for Vending Facilities has the opportunity to ask the questions he or she has selected from a list of predetermined interview questions, as well as other questions that arise during the selection interview that pertain to the operation of the vending facility.

(5) Ensure that all questions asked of the applicant are relevant to the applicant’s education, experience, or plans for the operation of the vending facility.

(6) Provide the applicant with the opportunity to give a closing statement.

(7) Provide the contracting agency with time to perform any independent confirmation of an applicant’s experience or other information on the applicant’s resume and conduct any criminal and substance abuse background checks, if deemed necessary, prior to selection of the applicant.

(8) Record the scores of each applicant. The Chairperson shall review the scores with the Selection Coordinator before concluding the selection interview process. Any applicant who is rejected by the contracting agency pursuant to subsection (e)(7) herein shall be notified by the Chairperson of the Selection Committee for Vending Facilities that he or she has been eliminated from the selection process for good cause, as determined by the contracting agency.

NOTE: Authority cited: 20 USC Section 107b(5); 34 CFR Section 395.4; and Sections 19006, 19016 and 19639, Welfare and Institutions Code. Reference: 20 USC Sections 107b(6) and 107d-1(a); 34 CFR Sections 395.2, 395.3(a)(7) and 395.13; and Sections 19011 and 19635, Welfare and Institutions Code.

### § 7214.4. Selection Interviews of Applicants.

(a) Each qualified applicant is required to appear for a selection interview on the date and at the time and location specified on the DR 461, Notification of Selection Committee for Vending Facilities Meeting (Rev. 09/09), incorporated by reference herein. Any applicant who does not appear for the selection interview on the date and at the time and location in the notice, and who has not submitted a written notice of withdrawal in accordance with these regulations, shall be disqualified from:

(1) Participation in the selection interview process; and

(2) Applying for a vending facility for 183 calendar days from the date he or she last failed to appear.

(b) Depending on the number of qualified applicants and interviews to be scheduled, the Selection Committee for Vending Facilities Meeting may be conducted over two or more days.

(c) If the Selection Committee for Vending Facilities is comprised only of representatives from the contracting agency, then all qualified applicants shall be interviewed and scored by the same committee members. The BEP shall encourage the contracting agency to have at least three members on the Selection Committee for Vending Facilities.

(d) If the Selection Committee for Vending Facilities is comprised of representatives recruited by the Business Enterprises Program for the Blind (BEP) and fewer than three members are present during an interview on any given day, but the Selection Committee for Vending Facilities wishes to conduct the selection interviews, the interviews scheduled for that day shall be conducted. In such case, applicant scores shall be assigned in accordance with subsection (e) (1) herein.

(e) All three members of the Selection Committee for Vending Facilities are expected to be present and participate in selection interviews of all applicants, except that:

(1) When a member who is present is not present for the entire interview of an applicant or is unable to assess and score an applicant fairly and impartially, that member shall withdraw from all selection interviews and that member’s score shall not be recorded for any of the applicants. The remaining two committee members shall be the scores all of the applicants in the selection process.

(f) The BEP shall request that the California Vendors Policy Committee (CVPC) provide a delegate or a CVPC representative to attend and observe selection interviews of applicants. The role of the CVPC delegate is strictly limited to that of an observer, and the CVPC delegate or representative does not participate in the selection process.

(1) The CVPC delegate or representative shall not discuss the substance of applicant selection interviews with any of the applicants or any other person either during or after completion of the selection process.

(2) Any applicant may request that the CVPC delegate or representative not observe his or her selection interview.

(g) With the exception of a resume and business plan described in Section 7214.2 of these regulations and personal notes, the applicant is prohibited from bringing any reference materials or displays into the selection interview and is prohibited from presenting any other materials to the Selection Committee for Vending Facilities. The applicant is prohibited from bringing persons acting as references or spokespersons into the selection interview.

(h) No applicant shall be questioned about his or her disability or disabilities during the selection interview.

(i) Members of the Selection Committee for Vending Facilities shall score each applicant on the member’s DR 463, Selection Committee for Vending Facilities Rating Report (Rev. 07/07), incorporated by reference herein. At the conclusion of the selection interviews, completed reports from each member shall be forwarded to the Selection Coordinator.

(j) The Selection Committee for Vending Facilities shall score each applicant based upon:

(1) A resume that describes the applicant’s education and experience relevant to the operation of a vending facility, as required by Section 7214.2(a) of these regulations.

(2) A business plan as required by Section 7214.2(a) of these regulations.

(3) Opening and closing statements and responses to questions asked during the selection interview process.

(k) The Selection Committee for Vending Facilities shall select the applicant with the highest total score to operate the announced vending facility. The contracting agency shall determine if they wish to verify information submitted to the Selection Committee for Vending Facilities prior to making a decision to permit the establishment of a vending facility on property owned, leased, rented, or otherwise controlled or occupied by the contracting agency. After the contracting agency verifies any information provided, the Selection Coordinator shall contact the applicant with the highest score and advise the applicant of his or her selection to operate the announced vending facility. Such applicant has three working days from the date he or she is notified of being selected to operate the announced vending facility to accept or reject the announced vending facility. If the selected applicant rejects the announced vending facility, the Selection Committee for Vending Facilities shall select the applicant with the next highest total score to operate the announced vending facility.

(l) After the selection of an applicant is made, the Selection Coordinator may provide information specified in Section 7214.3(d) of these regulations to any applicant who was interviewed by the Selection Committee for Vending Facilities.

(m) The licensee or vendor selected to operate the announced vending facility shall be provided with a vendor’s operating agreement, which shall include the permit or contract for the vending facility as an exhibit thereof, for the announced vending facility he or she has been selected to operate. The BEP shall also provide the vendor operating agreement, including exhibits thereof, in the vendor’s preferred mode of communication, to the extent possible.

(n) The licensee or vendor selected to operate the vending facility must agree to abide by the terms and conditions for operation of the vending facility, as set forth in the vendor’s operating agreement, and sign and return the agreement to the BEP within 10 working days of receipt.

(1) Failure to sign the vendor’s operating agreement shall be considered good cause for rejecting the licensee or vendor selected to operate the announced vending facility and awarding that vending facility to the next highest scoring applicant.

NOTE: Authority cited: 20 USC Section 107b(5); 34 CFR Section 395.4; and Sections 19006, 19016 and 19639, Welfare and Institutions Code. Reference: 20 USC Sections 107, 107(a)(5), 107(b), 107(e) and 107b-1(3); 34 CFR Sections 395.1(i), 395.2, 395.3(a)(4), 395.3(a)(7), 395.5, 395.7 and 395.14(b); and Sections 19011, 19625 and 19638(b), Welfare and Institutions Code.

### § 7214.5. Food Service Contracts; Interviews; Selection of a Vendor. [Reserved]

### § 7214.6. Other Methods of Selection; Management Interviews.

(a) When the Business Enterprises Program for the Blind, herein BEP, announces the availability of a vending facility by preparing and circulating a DR 460, Vending Facility Announcement (Rev. 09/09), incorporated by reference herein, and there are fewer than three applicants, selection of a licensee or vendor shall be determined through interviews scheduled by the BEP and conducted by the contracting agency.

(1) If the contracting agency chooses not to conduct the management interviews, the BEP shall work with the contracting agency to select an independent party to conduct the interviews.

(2) A Selection Coordinator shall be present at all interviews in person or by telephone.

(b) The licensee or vendor must meet all of the application requirements set forth in Section 7214.1 of these regulations to be a qualified applicant and participate in the management interviews.

(c) The contracting agency may reject any applicant.

(1) If the contracting agency rejects all applicants, the DR 460, Vending Facility Announcement (Rev. 09/09) shall be re-circulated.

(2) If the announcement is re-circulated, and either there are no applicants or all the applicants have previously been rejected by the contracting agency, the vending facility shall be announced as available to be added as a satellite site to a vendor’s existing site(s).

(d) The BEP may consider combining or consolidating the available site and one or more other existing and available sites only if:

(1) No licensees and vendors who apply to operate the vending facility as a primary site, or who apply to operate the vending facility as a satellite site, meet the application requirements established in subsection (b) herein; or

(2) The contracting agency rejects all applicants who have applied to operate the vending facility pursuant to subsection (b) herein; and

(3) The vending facility established by combining or consolidating two or more existing and available sites produces, or is likely to produce, an adequate net income as defined in Section 7211(a)(2) of these regulations.

NOTE: Authority cited: 20 USC Section 107b(5); 34 CFR Section 395.4; and Sections 19006, 19016 and 19639, Welfare and Institutions Code. Reference: 20 USC Sections 107, 107a(a)(5), 107a(b), 107a(e) and 107b-1(3); 34 CFR Sections 395.1(i), 395.2, 395.3(a)(4), 395.3(a)(7), 395.5, 395.7 and 395.14(b); and Sections 19011, 19625, 19626, 19631 and 19638(b), Welfare and Institutions Code.

### § 7214.7. [Reserved]

### § 7214.8. Vendor Resignation from a Vending Facility to Accept a Different Vending Facility.

(a) A vendor who is currently operating a vending facility and applies for and is selected to operate a different vending facility must formally resign from the vending facility he or she is currently operating. A vendor is prohibited from operating two vending facilities concurrently, except as provided for in Section 7215 of these regulations. A vendor, when resigning from a vending facility, is resigning from the primary site and any satellite sites within that vending facility.

(b) To resign a vending facility he or she is currently operating, a vendor must sign a DR 1310, Vendor Resignation (Rev. 07/07), incorporated by reference herein, and state the effective date of his or her resignation from the vending facility he or she is currently operating. The effective date of the vendor’s resignation is subject to approval by the Business Enterprises Program for the Blind (BEP) Manager, who shall determine how to transition the vendor to a different vending facility.

(c) A vendor who resigns from the vending facility he or she is currently operating, and then decides he or she wants to return, may do so only if a DR 460, Vending Facility Announcement (Rev. 09/09), incorporated by reference herein, announcing the availability of the vendor’s former vending facility, has not yet been issued by the BEP and circulated to licensees and vendors.

(d) A vendor’s failure to submit a DR 1310, Vendor Resignation (Rev. 07/07) from his current vending facility before or concurrently with the executed operating agreement for the announced vending facility shall result in the vendor being disqualified as the selected vendor for the announced vending facility.

(e) This section does not apply to:

(1) A vendor who applies for and is selected to operate a vending facility that shall be combined or consolidated with the vendor’s existing sites; or

(2) A vendor who applies for and is selected to operate an interim vending facility, as described in Section 7215 of these regulations.

NOTE: Authority cited: 20 USC Section 107b(5); 34 CFR Section 395.4; and Sections 19006, 19016 and 19639, Welfare and Institutions Code. Reference: 20 USC Sections 107, 107a(a)(5), 107a(b) and 107a(e); 34 CFR Sections 395.1(i), 395.2, 395.3(a)(7), 395.5 and 395.7; and Sections 19011, 19625 and 19626, Welfare and Institutions Code.

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## Article 6. Interim Vending Facilities---Application;

**Selection; Placement.**

### §7215. Placing a Vending Facility into Interim Operation.

(a) The Business Enterprises Program for the Blind (BEP) may place a vending facility, whether comprised of one site or two or more sites combined or consolidated, into interim operation under any circumstances in which it is determined by the BEP Manager to be in the best interests of the BEP.

(b) The BEP may renew an interim vending facility more than once. An interim vending facility may be renewed only for as long as it takes for BEP to fill an unexpected vacancy. During the period of time the vending facility is being operated on an interim basis, the BEP shall decide whether the facility is to be announced as a vending facility on one site, or a combined or consolidated vending facility, as defined in Section 7211(a)(11) of these regulations, and to announce the vending facility as available to be operated on a permanent basis, as provided in Article 5 of these regulations, and select a vendor. The BEP Manager shall provide the California Vendors Policy Committee with written notification of a renewal at least 30 calendar days prior to the renewal of an interim operating facility.

NOTE: Authority cited: 20 USC Section 107b(5); 34 CFR Section 395.4; and Sections 19006, 19016 and 19639, Welfare and Institutions Code. Reference: 20 USC Sections 107, 107a(a)(5), 107a(b), 107a(e) and 107b-1(3); 34 CFR Sections 395.1(i), 395.2, 395.3(a)(4), 395.5, 395.7 and 395.14(b); and Sections 19011, 19625, 19626 and 19638(b), Welfare and Institutions Code.

### § 7215.1. Interim Vending Facility; Announcement; Interviews; Selection of a Vendor.

(a) The Business Enterprises Program for the Blind (BEP) shall announce the availability of an interim vending facility by issuing a DR 460, Vending Facility Announcement (Rev. 09/09), incorporated by reference herein. At least five calendar days prior to the deadline for submitting applications, the BEP shall post the announcement on the Department’s website, record the announcement on a telephone based information system that is available to licensees and vendors, and provide the announcement to the California Vendors Policy Committee. Upon request, the BEP shall also provide the announcement in an appropriate mode of communication, to the extent possible, consistent with Code of Federal Regulations, title 34, part 361.5(b)(5) and Welfare and Institutions Code section 19013.5(b). Such modes of communication may include providing the announcement in large print, Braille, on audiotape, 3.5” diskette, or compact disk, and transmitting announcement electronically.

(b) To apply for an interim vending facility, a licensee or vendor must submit a DR 462, Vending Facility Application (Rev. 07/07), incorporated by reference herein, by the deadline listed in the announcement.

(c) For purposes of selecting a licensee or vendor to operate an interim vending facility, the BEP shall determine the qualifications of licensees and vendors based on the following:

(1) A licensee’s or vendor’s performance during training and/or related work experience; and

(2) A vendor’s efficient operation and management of his or her current vending facility, as evidenced by submission of DR 478, Vendor’s Monthly Operating Reports (Rev. 06/16), incorporated by reference herein, and payment of any and all financial obligations to the BEP arising from the operation of his or her vending facility in accordance with these regulations.

(d) Based on the information specified in (c) herein, the BEP shall make every effort to refer at least three licensees or vendors to the contracting agency for interviews and selection of an interim vendor. If the licensee or vendor selected rejects placement in the interim vending facility, the interim vending facility shall be offered successively to each of the licensees and vendors who were assessed pursuant to (c) herein, beginning with the licensee or vendor with the next highest ranking.

(e) If the contracting agency does not wish to participate in the selection process, the BEP Manager shall select the interim vendor, based on the assessment specified in subsection (c) herein.

NOTE: Authority cited: 20 USC Section 107b(5); 34 CFR Section 395.4; and Sections 19006, 19016 and 19639, Welfare and Institutions Code. Reference: 20 USC Sections 107, 107a(a)(5), 107a(b) and 107a(e); 34 CFR Sections 361.5(b)(5), 395.1(i), 395.2, 395.3(a)(4), 395.3(a)(7), 395.5, 395.7 and 395.14(b); and Sections 19011, 19013.5(b), 19625, 19626 and 19638(b), Welfare and Institutions Code.

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## Article 7. Standards for the Establishment and Operation of Vending Facilities

### § 7216. Establishing a New Vending Facility.

(a) The Business Enterprises Program for the Blind, hereafter BEP, vending facilities shall be established in accordance with the following:

(1) On federal property in accordance with federal law (20 USC Section 107 et seq.) and regulations (34 CFR Part 395). A person who is blind, as defined in Welfare and Institutions Code section 19153, licensed by the BEP shall be given priority in the operation of vending facilities on federal property consistent with 20 United States Code sections 107 and 107d-3(e) and 34 Code of Federal Regulations parts 395.30, 395.31, and 395.33.

(2) On state property in accordance with Welfare and Institutions Code section 19625 et seq. A blind person licensed by the BEP shall be given priority in the operation of vending facilities on state property consistent with Welfare and Institutions Code sections 19625 and 19627.

(b) The Department shall encourage the establishment of vending facilities on property owned or controlled privately, or by any county, city, city and county, or other political subdivision consistent with Welfare and Institutions Code section 19625(c).

(c) The Department shall seek to establish a new vending facility on federal, state or other property only if the Department first determines that a vending facility is feasible. The Department shall consult with the California Vendors Policy Committee, herein CVPC, when evaluating whether a vending facility is feasible. Upon determining that a vending facility is feasible, the Department shall apply for a permit for the operation of a BEP vending facility with the agency or persons having care, control, or custody of the property on which the vending facility is located. In determining feasibility of a vending facility the Director shall consider, but is not limited to, all of the following:

(1) The number of employees in the building or on the federal, state or other property;

(2) The size, in square feet, of the area leased, occupied, owned, or otherwise controlled by the contracting agency;

(3) The length of time the property will be leased or occupied by the contracting agency;

(4) Whether the establishment of a vending facility would adversely affect the interest of the state;

(5) The likelihood the vending facility will produce adequate net income, as defined in Section 7211(a)(2) of these regulations, for a blind vendor as provided in Welfare and Institutions Code section 19631.

(d) When the Department receives written notice from the federal General Services Administration or California Department of General Services describing federal or state department or agency plans to occupy, acquire, renovate, or relocate a property, the Department shall review the notice within 30 calendar days of receipt and, if appropriate, respond to the notice expressing interest in establishing a vending facility on such property. The Department shall consider all of the factors identified subdivision (c) of this section to determine whether the property includes, or will include, a site that is feasible for the establishment of a vending facility.

(e) Any decision that the placement or operation of a vending facility is not feasible, or that placement or operation would adversely affect the interests of the state shall be in writing, and shall be made available to the California Vendors Policy Committee, hereafter CVPC. Where the placement or operation of a vending facility is not feasible, the Department shall not issue a waiver permanently exempting the site or location from the priority established by the Randolph-Sheppard Act (20 USC 107 et seq.).

(f) If the BEP determines, based on factors specified in subsection (c) of this section, not to establish a vending facility on a property, the BEP may contract with a commercial vending purveyor to provide vending machine services on the property.

(g) When establishing a new vending facility, the BEP, in consultation with the contracting agency, shall determine what type of vending facility, as defined in section 7211(a)(54) of these regulations, shall be established on the property.

(h) BEP shall assign a facility number to the newly established vending facility immediately upon its being identified as a feasible site, in accordance with subdivision (c) of this section.

(i) After the establishment of a vending facility, the BEP Manager may re-evaluate the income and expenses of the vending facility and approve a

change in the type of vending facility in consultation with the contracting agency and the California Vendors Policy Committee.

NOTE: Authority cited: 20 USC Section 107b(5); 34 CFR Section 395.4; and Sections 19006, 19016 and 19639, Welfare and Institutions Code. Reference: 20 USC Sections 107, 107(b)(2), 107b-1(3) and 107d-3(e); 34 CFR Sections 395.1(q), 395.3(a)(3), 395.3(a)(4), 395.14(b), 395.30, 395.31 and 395.33; and Sections 19011, 19153, 19625, 19627, 19631 and 19638(b), Welfare and Institutions Code.

### § 7216.1. Combining or Consolidating Two or More Sites Into a Vending Facility.

(a) The Business Enterprises Program for the Blind, hereafter BEP, may combine or consolidate two or more sites into a vending facility, one of which is a primary site, as defined in Section 7211(a)(36) of these regulations, and others that are satellite sites, as defined in Section 7211(a)(38), when it has determined that such a combination of sites is likely to produce, within a reasonable period of time, an adequate net income as defined in section 7211(a)(2) of these regulations. A vending facility cannot be considered for combining or consolidation if it would result in displacing the vendor presently operating that vending facility.

(b) The BEP may create a vending facility by combining or consolidating:

(1) Two or more prospective sites;

(2) Prospective site(s) with an established site(s); or

(3) Two or more established sites;

(c) The vending facilities that comprise a vending facility specified in (b) of this section must be within 50 miles of each other. For the purposes of this subdivision, vending machine facilities shall not be required to be within 50 miles of the other vending facilities that comprise the single vending facility. The BEP Manager, after consultation with the California Vendors Policy Committee, herein CVPC, may permit vending facilities that comprise the single vending facility specified in (b) of this section to be more than 50 miles from the other vending facilities that comprise the single vending facility.

(d) The BEP shall announce the availability of a newly created single vending facility in accordance with section 7214 of these regulations. A facility number, as defined in section 7211(a)(21) of these regulations, shall be assigned to the combined or consolidated vending facility at that time. A licensee or vendor shall be selected to operate the vending facility in accordance with Article 5 of this chapter.

(e) The BEP Manager, with the active participation of the California Vendors Policy Committee, hereafter CVPC, shall identify which site shall be considered to be the primary site, as defined in section 7211(a)(36) of these regulations, and which site(s) shall be considered to be satellite site(s), as defined in section 7211(a)(38) of these regulations.

NOTE: Authority cited: 20 USC Section 107b(5); 34 CFR Section 395.4; and Sections 19006, 19016 and 19639, Welfare and Institutions Code. Reference: 20 USC Section 107b-1(3); 34 CFR Sections 395.3(a)(4) and 395.14(b); and Sections 19011, 19626, 19631 and 19638(b), Welfare and Institutions Code.

### § 7216.2. Vending Facility Closure.

(a) A vending facility may be closed when any of the following have occurred:

(1) The vending facility has been announced as available for operation twice, and no licensees or vendors have applied to operate the vending facility either as a vending facility on one site or as a vending facility to be combined or consolidated with one or more other vending facilities on different sites.

(2) The minimum projected net income of the vending facility does not meet the standards for adequate net income, as defined in section 7211(a)(2) of these regulations.

(3) The contracting agency cancels the permit or contract with the Business Enterprises Program for the Blind, hereafter BEP.

(4) Efforts by the BEP to change the type of vending facility do not result in licensees or vendors applying to operate the vending facility.

(5) Efforts by the BEP to combine or consolidate the vending facility with one or more other vending facilities, consistent with section 7216.1 of these regulations are unsuccessful.

(b) The decision to close a vending facility shall be made by the BEP Manager, with the active participation of the California Vendors Policy Committee, hereafter CVPC, considering factors specified in subsection (a) of this section and whether the site is feasible in accordance with Section 7216(c) of these regulations.

NOTE: Authority cited: 20 USC Section 107b(5); 34 CFR Section 395.4; and Sections 19006, 19016 and 19639, Welfare and Institutions Code. Reference: 20 USC Section 107b-1(3); 34 CFR Sections 395.1(o), 395.1(q), 395.3(a)(4), 395.14(b), 395.16, 395.34 and 395.35; and Sections 19011, 19627(h) and 19638(b), Welfare and Institutions Code.

### § 7217. Equipment.

(a) BEP shall determine the need and provide equipment for the vending facility, in consultation with the vendor whenever possible.

(b) The title to vending facility equipment provided by BEP is vested in BEP.

(c) Upon termination of the operating agreement and/or license, the vendor shall surrender BEP-owned equipment to its lawful owner in the condition in which it was received, reasonable wear and tear excepted. BEP shall assess the equipment to determine its condition. If equipment is removed/replaced, the equipment inventory shall be adjusted, as appropriate and provided to the new vendor. The vendor shall remove his/her vendor-owned equipment from the vending facility at his/her expense.

(d) The vendor shall acknowledge receipt of the equipment provided by the BEP as part of the operating agreement.

(e) The vendor shall use the equipment furnished by the BEP and/or agency named in the permit only for the purpose of the permit. The vendor shall exercise whatever care is necessary to preserve and maintain the equipment in good condition.

(f) The BEP shall provide all necessary repairs and replacement of BEP-owned equipment. The vendor shall promptly inform the BEP of the need for equipment repairs or replacement. The vendor shall contact his/her BEC to report equipment malfunction/failure. Upon notification by the vendor of the need for equipment maintenance, the BEC shall promptly authorize repair or replacement.

(g) The BEP shall phase-in the replacement of all BEP-owned equipment in accordance with the written replacement plan and subject to fund availability. Replacement shall occur within one year of the stated life expectancy, unless, after review of usage patterns and repair history, BEP determines that replacement should be either delayed or accelerated. Replacement may be delayed if a history of limited service problems can be demonstrated or may be accelerated if the equipment has a history of excessive mechanical failure.

*Item Description Life Expectancy in Years*

Broiler, Electric 5

Broiler, Gas 25

Commercial Food Processor 10

Cash Register 5

Commercial Coffee Brewer 8

Commercial Toaster 7

Dishwasher, Above Counter, Rack 15

Dishwasher, Belt 25

Dishwasher, Under Counter, Rack 15

Display Food Warmer 20

Drinking Water Cooler 14

Food Mixer 25

Food Slicer 25

Food Steamer 10

Food Warming Drawer 25

Fryer, Electric 8

Fryer, Gas 8

Garbage Disposal 8

Griddle, Electric 10

Griddle, Gas 15

Ice Maker (Counter and Floor) 8

Jet Spray Beverage Dispenser 6

Merchandizing Freezer 11

*Item Description Life Expectancy in Years*

Oven, Convection 15

Oven, Infra Red 10

Oven, Microwave 5

Oven, Rair 8

Popcorn Machine 4

Range, Electric 10

Range, Gas 15

Refrigerated Beverage Dispenser 8

Refrigerated Salad Bar 12

Refrigerated Sandwich/Salad Unit 10

Refrigerator, Display 9

Refrigerator, Household 10

Refrigerator, Storage 11

Salad Bar (no refrigeration) 13

Steam Kettle 10

Storage Freezer 13

Vending Machine 7

Ventilation Fan System 25

Ventilation Fire Suppression System 25

Yogurt Machine 8

(h) BEP-owned Equipment, which is tagged with an identifying number, shall not be added or removed within a vending facility without the consent of the BEP. The removal and replacement of equipment for repairs or maintenance must be authorized by the BEP in writing. The vendor shall not purchase, lease, borrow or contract for equipment or services for the vending facility without the authorization of the BEP. BEP may remove any BEP-owned equipment from the vending facility when BEP determines that it is not being properly used by the vendor. BEP shall give written notice of the intent to remove equipment seven calendar days prior to removal. The notice shall state what equipment is to be removed and the date of the removal. After equipment removal, the vendor shall be provided with a revised copy of the inventory for his/her facility.

(i) The vendor shall be responsible for maintaining vendor-owned equipment in good repair and attractive condition and for replacing worn-out or obsolete equipment.

(j) When a vendor dies or leaves the program, BEP shall have first option to purchase vendor-owned equipment at fair market value. BEP is not obligated to purchase vendor-owned equipment.

NOTE: Authority cited: Sections 19006, 19016, 19626.5 and 19639, Welfare and Institutions Code. Reference: Section 19626.5, Welfare and Institutions Code; Randolph-Sheppard Act, 20 USC 107b(5); and 34 CFR Sections 395.4, 395.6 and 395.10.

### § 7217.1. Equipment Repair and Replacement.

(a) The vendor shall promptly inform the BEP of the need for equipment repairs or replacement. The vendor shall contact his/her BEC to report equipment malfunction/failure. Upon notification by the vendor of the need for equipment maintenance, the BEC shall promptly authorize repair.

(b) The title to vending facility equipment provided by BEP is vested in BEP.

(c) Upon termination of the operating agreement and/or license, the vendor shall surrender BEP-owned equipment to its lawful owner in the condition in which it was received, reasonable wear and tear excepted. BEP shall assess the equipment to determine its condition. If equipment is removed/replaced, the equipment inventory shall be adjusted, as appropriate and provided to the new vendor. The vendor shall remove his/her vendor-owned equipment from the vending facility at his/her expense.

(d) The vendor shall acknowledge receipt of the equipment provided by the BEP as part of the operating agreement.

(e) The vendor shall use the equipment furnished by the BEP and/or agency named in the permit only for the purpose of the permit. The vendor shall exercise whatever care is necessary to preserve and maintain the equipment in good condition.

(f) The BEP shall provide all necessary repairs and replacement of BEP-owned equipment.

(g) The BEP shall phase-in the replacement of all BEP-owned equipment in accordance with the written replacement plan and subject to fund availability. Replacement shall occur within one year of the stated life expectancy, unless, after review of usage patterns and repair history, BEP determines that replacement should be either delayed or accelerated. Replacement may be delayed if a history of limited service problems can be demonstrated or may be accelerated if the equipment has a history of excessive mechanical failure.

*Item Description Life Expectancy in Years*

Broiler, Electric 5

Broiler, Gas 25

Commercial Food Processor 10

Cash Register 5

Commercial Coffee Brewer 8

Commercial Toaster 7

Dishwasher, Above Counter, Rack 15

Dishwasher, Belt 25

*Item Description Life Expectancy in Years*

Dishwasher, Under Counter, Rack 15

Display Food Warmer 20

Drinking Water Cooler 14

Food Mixer 25

Food Slicer 25

Food Steamer 10

Food Warming Drawer 25

Fryer, Electric 8

Fryer, Gas 8

Garbage Disposal 8

Griddle, Electric 10

Griddle, Gas 15

Ice Maker (Counter and Floor) 8

Jet Spray Beverage Dispenser 6

Merchandizing Freezer 11

Oven, Convection 15

Oven, Infra Red 10

Oven, Microwave 5

Oven, Rair 8

Popcorn Machine 4

Range, Electric 10

Range, Gas 15

Refrigerated Beverage Dispenser 8

Refrigerated Salad Bar 2

Refrigerated Sandwich/Salad Unit 10

Refrigerator, Display 9

Refrigerator, Household 10

Refrigerator, Storage 11

Salad Bar (no refrigeration) 13

Steam Kettle 10

Storage Freezer 13

Vending Machine 7

Ventilation Fan System 25

Ventilation Fire Suppression System 25

Yogurt Machine 8

(h) BEP-owned Equipment, which is tagged with an identifying number, shall not be added or removed within a vending facility without the consent of the BEP. The removal and replacement of equipment for repairs or maintenance must be authorized by the BEP in writing. The vendor shall not purchase, lease, borrow or contract for equipment or services for the vending facility without the authorization of the BEP. BEP may remove any BEP-owned equipment from the vending facility when BEP determines that it is not being properly used by the vendor. BEP shall give written notice of the intent to remove equipment seven calendar days prior to removal. The notice shall state what equipment is to be removed and the date of the removal. After equipment removal, the vendor shall be provided with a revised copy of the inventory for his/her facility.

(i) The vendor shall be responsible for maintaining vendor-owned equipment in good repair and attractive condition and for replacing worn-out or obsolete equipment.

(j) When a vendor dies or leaves the program, BEP shall have first option to purchase vendor-owned equipment at fair market value. BEP is not obligated to purchase vendor-owned equipment.

NOTE: Authority cited: Sections 19006, 19016, 19626.5 and 19639, Welfare and Institutions Code. Reference: Section 19626.5, Welfare and Institutions Code; Randolph-Sheppard Act, 20 USC 107b(5); and 34 CFR Sections 395.4, 395.6 and 395.10.

### § 7217.2. Vendor Responsibility for Equipment Maintenance Expense. [Repealed]

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## Article 7.5. Vending Facility Equipment.

### § 7218. Vendor-Owned Vending Facility Equipment.

(a) Vendors may choose to purchase all or part of the equipment for a vending facility, rather than exclusively using equipment owned by the Business Enterprises Program for the Blind, hereafter BEP.

(b) When vendors choose to purchase vending facility equipment, such equipment may be amortized and included as an operating expense when preparing the DR 478, Vendor’s Monthly Operating Report (Rev. 06/16), incorporated by reference herein, in accordance with the following:

(1) Vending facility equipment costing less than $1,000 may be charged as an expense during the first month it is in service.

(2) Vending facility equipment costing $1,000 or more but less than $5,000 shall be purchased only with the prior written approval of the BEP Manager or the Supervising Business Enterprises Consultant, hereafter SBEC, and charged as an expense using conventional, straight line depreciation over the first 12 months of service.

(3) Vending facility equipment costing $5,000 or more shall be purchased only with the prior written approval of the BEP Manager or the SBEC. The vendor shall also propose to the BEP Manager or the SBEC, the method for amortizing the cost of the equipment. The prior written approval shall document the method the vendor is to use for amortizing the cost of the equipment

(c) The vendor shall maintain, repair, and replace any vendor-owned vending facility equipment at his or her expense and may include the expense as a cost of doing business when preparing the DR 478, Vendor’s Monthly Operating Report (Rev. 06/16).

(d) If the vendor fails to properly maintain, repair, or replace vending facility equipment that the vendor purchased, the BEP shall charge the vendor for the actual costs incurred by the BEP to maintain, repair, or replace the equipment or the BEP shall provide written notice to the vendor that the equipment must be removed from the vending facility within 10 working days at the vendor’s expense. The BEP shall send a written invoice to the vendor for the

actual costs incurred by the BEP and the vendor shall remit payment to the BEP for the charges by the date stated in the invoice.

(e) The BEP retains the first option to purchase all or part of vendor-owned equipment if vendor wishes to dispose of his or her vendor-owed equipment and vendor moves to another vending facility, his or her vendor license or operating agreement is terminated, or he or she resigns from the vending facility or the BEP. If the BEP declines to purchase all or part of the vendor-owned equipment, the vendor shall remove the vendor-owned equipment at his or her expense within 10 working days of receiving written notice that the BEP declines to purchase the equipment or prior to vacating the facility.

(f) If a vendor has an outstanding financial obligation owed to the BEP for set aside fees, payment for liability or workers’ compensation coverage, penalties, or other BEP related matters, the BEP retains the right to the first option to take possession of the vendor-owned equipment and the fair market value of the vendor-owned equipment shall be applied to satisfy all or part of the debt owed to the BEP. If the BEP exercises this option, the vendor shall transfer ownership of the vendor owned equipment to the BEP within five working days of receiving written notice that the BEP is exercising its option.

NOTE:Authority cited: 20 USC Section 107b(5); 34 CFR Section 395.4; and Sections 19006, 19016 and 19639, Welfare and Institutions Code. Reference: 20 USC Section 107b(2); 34 CFR Sections 395.3(a)(5) and 395.6; and Section 19011, Welfare and Institutions Code.

### § 7219.1. Stock Transfer/Sale.

(a) If an incoming vendor decides to purchase stock from an outgoing vendor and the outgoing vendor had obtained an initial stock loan for which there is an outstanding loan balance, payment for the stock shall first be sent to the Department. The Department shall use the funds to offset the outgoing vendor's outstanding loan balance. The Department shall forward the remaining funds, if any, to the outgoing vendor within 45 working days of receipt of the written inventory by the Department indicating the amount and type of stock being purchased by the incoming vendor.

NOTE: Authority cited: Sections 19006, 19016 and 19639, Welfare and Institutions Code. Reference: Section 19629, Welfare and Institutions Code; Randolph-Sheppard Act, 20 USC 107b(5); and 34 CFR 361.42(a)(14).

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## Article 7.7. Vending Facility Operations.

### § 7220. Operation of a Vending Facility.

(a) Upon signing the vendor’s operating agreement, the vendor shall be recognized as the operator of the vending facility named in the agreement and shall operate and manage all aspects of the vending facility in accordance with the vendor operating agreement, permit or contract, United States Code, title 20, section 107 et seq., Code of Federal Regulations, title 34, part 395, Welfare and Institutions Code section 19625 et seq., applicable Health and Safety Code sections, California Code of Regulations, title 9, section 7210 et seq., and local permits and business licenses that may be required to operate the vending facility. This includes maintaining a drug-free environment within the vending facility.

(b) The Business Enterprises Program for the Blind, herein BEP, shall provide the vendor with a copy of the vendor operating agreement, which shall include the permit or contract for the vending facility as an exhibit thereof. The BEP shall also provide the vendor with the vendor operating agreement and exhibit thereof in the vendor’s preferred mode of communication, to the extent possible.

(c) The vendor shall obtain and maintain all required state and local licenses and permits and satisfy any other legal requirements to operate the vending facility prior to commencing operation of a vending facility.

(d) The vendor shall sell only those items identified in the permit or contract for the vending facility. If a vendor wishes to add or delete items for sale listed in the permit or contract, he or she shall submit a written request of the proposed changes to the BEP. An amendment to the vendor operating agreement and, if applicable, the permit or contract must be executed by the vendor, BEP, and, if applicable, contracting agency , prior to the vendor changing the items for sale at the vending facility.

(e) A vending facility shall not be operated without liability and workers’ compensation insurance required and provided by the BEP through the BEP group policy,except a vending facility established pursuant to title 34 Code of Federal Regulations part 395.33. The vendor shall remit payment for liability and workers’ compensation insurance in accordance with Section 7221(c) of these regulations. Within 24 hours of a vendor learning of an incident occurring in connection with the vending facility that may give rise to a workers’ compensation or liability claim, the vendor must contact the BEP and the insurance carrier to report the incident.

(f) The vendor shall be personally responsible and accountable for all of the following:

(1) Operating the vending facility in accordance with all applicable federal, state, and local laws and regulations, as identified in subdivision (a) of this section;

(2) Providing a level of goods and services satisfactory to the contracting agency;

(3) Establishing and maintaining good relations with customers and the contracting agency;

(4) Maintaining and operating the facility in accordance with all health and safety standards set forth in Health and Safety Code sections 113700 et seq. and 114259.4, and other Health and Safety Code sections referenced in this chapter, as applicable; and

(5) Posting information for employees as required by Labor Code section 6408;

(g) To ensure that his or her vending facility operates in full compliance with all applicable law and regulation, a vendor shall be physically present at the primary site of his or her vending facility on a regular basis and personally accountable for, and fully aware of, the ongoing activities at any satellite sites that are part of his or her vending facility.

(h) Vendors shall be personally present at and participate in all of the following:

(1) A quarterly meeting with the Business Enterprises Consultant, hereafter BEC, at the vendor’s primary site, which shall include, but not be limited to, a review all of the DR 478, Vendor’s Monthly Operating Reports (Rev. 06/16) filed since the last quarterly meeting, payment of any financial obligations owed to the BEP, any delinquent DR 478, Vendor’s Monthly Operating Reports (Rev. 06/16) or payments of any financial obligations owed to the BEP, any complaints received from the contracting agency, and any incidents reported in accordance with subdivision (e) of this section.

(2) A quarterly meeting with the BEC to review the results of the DR 484, Vending Facility Review (Rev. 11/07).

(3) An annual meeting with the BEC to review, update, and sign for the vending facility equipment at all sites within the vendor’s vending facility.

(i) Failure of a vendor to be personally present at and participate in the reviews required by subdivision (h) of this section shall be good cause for termination or suspension of the Vendor’s Operating Agreement and/or license. Employees or other agents of the vendor may not represent the vendor for the purpose of such reviews, except as provided for in Section 7220.7 of these regulations.

(j) Under no circumstances shall a vendor purchase services, merchandise, supplies or equipment for his or her vending facility from himself or herself or a partnership or other entity in which the vendor has a financial interest of any type and include the cost of such services, merchandise, supplies or equipment in a DR 478, Vendor’s Monthly Operating Report (Rev. 06/16) to offset the set aside fees owed to the BEP.

(k) Upon the request of the BEP, vendors shall establish that the compensation paid to employees, including family members, is reasonable and commensurate with compensation for other similarly situated employees. For the purposes of this subdivision, similarly situation employees may include employees working at other BEP vending facilities or businesses which are not part of the BEP. Excessive compensation shall not be paid to employees, including family members.

(l) The vendor shall maintain required records on the operation of the facility for the current year plus the three preceding years or until completion of the action and resolution of all issues which may arise as a result of any litigation, claim, negotiation, audit, or other relevant action involving the records prior to the expiration of the three-year period, whichever is later. Upon written request, books of accurate account and records pertaining to a vending facility operation shall be made available for examination and audit by the Department at any reasonable time and place. Such records shall include:

(1) Monthly operating reports (profit and loss statements);

(2) Work sheets used to prepare monthly operating reports;

(3) Sales register (monthly summary of sales and other income);

(4) Daily cash reports (cash count forms);

(5) Cash register tapes (entire tape, if adjustments have been made to the total-“z" totals, if no adjustments have been made);

(6) Records on other operation receipts (vending machines, catering, etc.);

(7) Board of Equalization reports (sales tax);

(8) Bank deposit receipts;

(9) Purchase register (monthly summary of purchases or check register);

(10) Invoices from purveyors (cash, check and credit purchases);

(11) Canceled checks;

(12) Records on other operation purchases (vending machines, catering, etc.);

(13) Supporting records for reported monthly inventory;

(14) Physical inventory records;

(15) Payroll register (compensation records);

(16) Employee time cards or time sheets;

(17) Quarterly tax reports (Federal 941 and State DE3);

(18) Employee W-2 reports;

(19) Documentation for cost of employee meals;

(20) Records on employee fringe benefits (health, dental, pension, etc.);

(21) Records on other operating expenditures;

(22) Records on other income (subsidies, commissions, trainee revenue, vending machine commissions, etc.); and

(23) Bank statements and reconciliations.

(m) If records are not maintained to support the DR 478, Vendor’s Monthly Operating Reports (Rev. 06/16), the BEP or the Department may estimate the sales, expenses, and set-aside fees from all information available, including sales tax returns, facility announcements, prior DR 478, Vendor’s Monthly Operating Reports (Rev. 06/16) filed for the vending facility or other similar locations. The vendor shall pay the BEP the set-aside fees calculated in accordance with this subdivision and any penalties.

(n) A vendor must take all appropriate action to correct any deficiencies identified by a BEP facility review or an audit conducted by the Department within the period of time established by the Department.

(o) The vendor shall take and report the physical inventory of the vending facility merchandise and supplies twice annually for the periods ending June 30th and December 31st and submit the inventory reports to his or her assigned BEP Business Enterprises Consultant by July 25thand January 25th, respectively. The BEP may also notify the vendor in writing that the vendor must take and report the physical inventory of the vending facility merchandise and supplies at other times as well. The written notice shall include date in which the report must be submitted to the BEP.

(p) The vendor shall be solely responsible for the payment of all rent or utility charges in accordance with the terms and conditions of the vendor operating agreement or permit or contract.

(q) The vendor shall ensure that any guide dog shall be excluded

from food preparation and utensil wash areas in accordance with Health and Safety Code Section 114259.4.

(r) An amount equal to 10 percent of the wages paid by a vendor to any blind person, as defined in Welfare and Institutions Code section 19153, or employee who has a mental or physical disability, as defined in Government Code section 12926, shall be deducted from any set-aside fees paid by the vendor. Upon the request of the BEP, a vendor who is deducting an amount equal to 10 percent of the wages paid to a blind or disabled person must provide documentation supporting the deduction. If a vendor does not claim the deduction during the month for which the gross earnings were paid, the vendor may claim it at a later date. In any one month the deductions shall not exceed the set-aside charges. There shall be no deduction from set-aside fees paid by a vendor, if the vendor does not pay wages at least equal to minimum wages required of employers pursuant to Chapter 1 (commencing with Section 1171) of Part 4 of Division 2 of the Labor Code).

(s) The continuing eligibility of a vendor as a blind person pursuant to Welfare and Institutions Code section 19153 shall be recertified every 24 months for partially sighted individuals and whenever the Department has reason to believe a vendor’s status as a blind person no longer meets the definition set forth in Welfare and Institutions Code section 19153. Recertification shall require an examination by a licensed physician or surgeon who specializes in diseases of the eye or a licensed optometrist and submission of documentation signed by the examining physician or optometrist to the BEP Manager upon completion.

NOTE: Authority cited: 20 USC Section 107b(5); 34 CFR Section 395.4; and Sections 19006, 19016 and 19639, Welfare and Institutions Code. Reference: 20 USC Sections 107, 107a(a)(5), 107a(b), 107a(e) and 107b(3); 34 CFR Sections 361.5(b)(5), 395.1(o), 395.3(a)(7), 395.3(a)(11)(vi), 395.3(a)(11)(viii), 395.3(a)(11)(ix), 395.5, 395.7, 395.9, 395.16, 395.34 and 395.35; Section 12926, Government Code; Sections 113700 et seq. and 114259.4, Health and Safety Code; Sections 1171 et seq., 5401, 6408 and 6409.1, Labor Code; and Sections 19011, 19013.5(b), 19153, 19625, 19629, 19632(a) and 19633, Welfare and Institutions Code.

### § 7220.3. Vendor Placed on Probation.

(a) For the purposes of this section, the DR 468, Vending Facility License (Rev. 07/07), incorporated by reference herein, shall be referred to as the “license.” Only the Department may place a licensee or vendor on probation.

(b) Written notice of the intent to place a licensee or vendor on probation shall be considered properly served by one of the following two methods and shall include a declaration of service:

(1) Certified mail to the current mailing address provided to the BEP Manager by the licensee or vendor in accordance with Section 7213(c) of these regulations; or

(2) Personal service on the licensee or vendor.

(c) The notice of intent to place a licensee or vendor on probation shall specify the following:

(1) If applicable, the primary site and any satellite sites of a vendor’s vending facility, as defined in Section 7211(a)(36) and (a)(38) of these regulations, respectively, that are affected.

(2) The grounds for placing the licensee or vendor on probation as specified in subdivision (e) of this section.

(3) The facts upon which placing the licensee or vendor on probation are based.

(4) The effective date of the probationary period.

(5) The length of the probationary period.

(6) The right of the licensee or vendor to an administrative review and a full evidentiary hearing, in accordance with Sections 7227.1 and 7227.2 of these regulations, respectively.

(d) Probation shall be effective 15 working days from the date of service, unless the vendor or licensee files a request for an administrative review or a full evidentiary hearing, in accordance with Section 7227.1 or 7227.2 of these regulations, respectively, before the effective date of probation.

(1) If a licensee or vendor appeals being placed on probation, and the Department prevails at an administrative review and/or a full evidentiary hearing, the probationary period shall commence upon the effective date of the decision.

(e) The Department may place a licensee or vendor on probation when the licensee or vendor:

(1) Fails to comply with Health and Safety Code requirements specified in this chapter.

(2) Fails to file one or more DR 478, Vendor’s Monthly Operating Reports (Rev. 06/16), incorporated by reference herein, in accordance with Section 7221 of these regulations.

(3) Fails to pay financial obligations to the BEP, including, but not limited to set-aside fees, liability or workers’ compensation insurance coverage, or penalties in accordance with Section 7220 or 7221 of these regulations.

(4) Fails to personally manage his or her vending facility pursuant to Section 7220(g) of these regulations.

(5) Fails to comply with any other requirements of these regulations.

(f) If the licensee or vendor does not comply with all terms and conditions of probation, the vendor’s or licensee’s license and/or vendor’s operating agreement shall be suspended or terminated in accordance with these regulations.

NOTE: Authority cited: 20 USC Section 107b(5); 34 CFR Section 395.4; and Sections 19006, 19016 and 19639, Welfare and Institutions Code. Reference: 20 USC Sections 107, 107a(a)(5), 107a(b), 107a(e), 107b(6) and 107d-1(a); 34 CFR Sections 395.2, 395.3(a)(7), 395.3(a)(11)(ii), 395.5, 395.7 and 395.13; and Sections 19011, 19625, 19632(d) and 19635, Welfare and Institutions Code.

### § 7220.5. Initial Stock for Vending Facility.

(a) An individual who is a licensee selected to operate a vending facility for the first time may be provided with initial stock, consistent with Section 7149(p) of these regulations.

(1) The Business Enterprises Program for the Blind, hereafter BEP, in consultation with the licensee and the individual’s Vocational Rehabilitation Counselor for the Blind, shall determine the type and amount of initial stock to be purchased, consistent with the type of vending facility specified in section 7211(a)(54) of these regulations that the individual will operate.

(2) The individual’s Vocational Rehabilitation Counselor for the Blind shall determine whether the licensee is required to financially participate in the cost of services (i.e., initial stock), consistent with Sections 7190 through 7193 of these regulations.

(b) If the Department pays for or reimburses the individual for the initial stock, such stock shall be the property of the BEP until the individual’s record of services is closed, or no later than six months after licensure as a BEP vendor.

(c) If the individual is required to purchase the initial stock, consistent with subsection (a)(2) of this section, the initial stock shall be the property of that individual.

NOTE: Authority cited: 20 USC Section 107b(5); 34 CFR Section 395.4; and Sections 19006, 19016 and 19639, Welfare and Institutions Code. Reference: 20 USC Section 107b(2); 29 USC Section 723(a)(9); 34 CFR Sections 361.48(p), 395.3(a)(2), 395.3(a)(2)(5) and 395.6; and Sections 19011 and 19150(a)(9), Welfare and Institutions Code.

### § 7220.7. Vendor Incapacitated or Deceased.

(a) If a vendor becomes incapacitated and is unable to operate his or her vending facility, or supervise a manager at his or her vending facility, the Department may place the facility into interim operation consistent with section 7215 of these regulations and select a licensee or vendor to operate the interim vending facility for a period of six months.

(1) The licensee or vendor selected to operate the interim vending facility may operate the vending facility for an additional six months, if the prognosis of the incapacitated vendor’s illness is still unknown.

(2) The Department shall announce the vending facility as available to be operated on a permanent basis at the end of a one-year period, unless there is written medical justification that indicates the incapacitated vendor can resume responsibility for the vending facility at a specific, and within a reasonable, period of time.

(b) If a conservator is appointed to manage the incapacitated vendor’s estate, the Department shall cooperate with that conservator regarding management of the vending facility and, if appropriate, the disposition of any of the vendor’s assets.

(c) Upon the death of a vendor, the vendor’s license shall be deemed surrendered.

(d) The spouse of a vendor who meets the requirements of Welfare and Institutions Code section 19641, may operate the vending facility.

(e) If the deceased vendor’s spouse does not meet the requirements of Welfare and Institutions Code section 19641, the Department shall arrange with the spouse or other legal representative of the deceased vendor for the settlement of that vendor’s accounts, including the vendor’s interest in any equipment and stock. Once the actions taken pursuant to this subdivision are initiated, the BEP shall announce the vending facility as available to operate by licensees and vendors consistent with section 7214 of these regulations.

(f) The spouse or other legal representative of an incapacitated or deceased vendor shall be allowed a full evidentiary hearing pursuant to section 7227.2 of these regulations with respect to the amount to be paid by the BEP for the vendor's equity in the vending facility stock and equipment.

NOTE: Authority cited: 20 USC Section 107b(5); 34 CFR Section 395.4; and Sections 19006, 19016 and 19639, Welfare and Institutions Code. Reference: 20 USC Sections 107b(6) and 107d-1(a); 34 CFR Sections 395.3(a)(7), 395.6 and 395.13; and Sections 19011, 19635 and 19641, Welfare and Institutions Code.

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## Article 7.9. Vending Facility Trust Fund and Standards

for Vending Machine Commissions

### § 7221. Vending Facility Trust Fund and Set-Aside Fees.

(a) Vendors operating a Business Enterprises Program for the Blind, hereafter BEP, vending facility shall pay a set-aside fee into the Vending Facility Trust Fund.

(1) Payment of the set-aside fee shall be made monthly based on the net proceeds, as defined in Welfare and Institutions Code section 19629(d) of the vending facility for the preceding month. The fees shall not exceed 6 percent of the monthly gross sales, and the vendor may determine if he or she shall pay 6 percent of the monthly gross sales or use the BEP established set-aside fee schedule that has been approved by the Rehabilitation Services Administration to determine the set-aside fees to be paid. When using the set-aside schedule, the fees shall not exceed 6 percent of the monthly gross sales.

(2) Payment of the set-aside fee shall be made to the Department of Rehabilitation, Vending Facility Trust Fund, Accounting Section, P.O. Box 944222, Sacramento, California, 94244-2220. Payment of the fee shall be accompanied by the completed DR 478, Vendor’s Monthly Operating Report (Rev. 06/16), incorporated by reference herein. The income and expenses of each vending facility shall be reported using a DR 478, Vendor’s Monthly Operating Report (Rev. 06/16).

(b) No set-aside fee shall be paid by a vendor when the net proceeds of the Business Enterprise are less than the set-aside fee exemption amount determined by BEP in accordance with Welfare and Institutions Code section 19629(b) and pursuant to (a)(1) herein, however, the vendor is required to file a completed DR 478, Vendor’s Monthly Operating Report (Rev. 06/16) with the Department of Rehabilitation, Accounting Section, in accordance with subdivision (a)(2) of this subdivision, by the 25th day of the month following the month being reported or the vendor will be subject to the penalties contained in (c) herein.

(1) BEP shall adjust the set-aside fee exemption amount annually to reflect changes in the cost of living by the method indicated in Welfare and Institutions Code section 19629(b).

(2) BEP shall provide 30 days advance written notice to vendors of any adjustment to the set-aside fee exemption amount.

(3) Adjusted set-aside fee exemption amounts shall be effective on January 1st of the calendar year following the notice of adjustment.

(c) The DR 478, Vendor’s Monthly Operating Report (Rev. 06/16), and the sum of the set-aside fee, payment for liability insurance and workers’ compensation insurance, hereafter collectively referred to as the set-aside charge, must either be received by or postmarked by the 25th calendar day following the reporting period month-end in accordance with subdivision (a)(2) of this section. Period month-end shall mean the last calendar day of the month. When the 25th day of the month falls on a Saturday, Sunday or a holiday, the DR 478, Vendor’s Monthly Operating Report (Rev. 06/16) and the set-aside charge shall be considered timely if postmarked on the following business day pursuant to Government Code section 6706. Penalties are not deductible expenses for purposes of calculating the set-aside fee.

(1) A penalty not to exceed either 10 percent of the late set-aside charge or $50, whichever is greater, shall be assessed if the DR 478, Vendor’s Monthly Operating Report (Rev. 06/16) or set-aside charge is late, but will not exceed $250 for the first month. A $50 penalty will be assessed for each subsequent month the late set-aside charge remains unpaid. If the set-aside charge or penalty remains unpaid for 90 days or more, the Vendor’s Operating Agreement or License may be suspended or terminated. The DR 478, Vendor’s Monthly Operating Report (Rev. 06/16) or set-aside charge is late when one or more of the following conditions occur:

(A) Set-aside charge or the DR 478, Vendor’s Monthly Operating Report (Rev. 06/16), are not received pursuant to subsection (c) herein.

(B) The set-aside charge shall be considered late if the payment amount is less than the amount due. Penalties will be assessed pursuant to section 7221(c)(1) above with the exception of outstanding amounts due of $100 or less. If the outstanding amount due is $100 or less, a 10% penalty will be assessed to the amount due and the vendor will be notified of the delinquent amount. The vendor is required to add the delinquent amount to the next month’s DR 478, Vendor’s Monthly Operating Report (Rev. 06/16) after notification. If the outstanding amount is not included in the next month’s set-aside charge after notification, a $50 penalty will be assessed pursuant to section 7221(c)(1).

(C) The set-aside charge shall be considered past due if payment is made by check, and the check is returned for insufficient funds or other reasons.

(2) Penalties shall not be assessed, if acts of nature beyond the vendor’s control and due to no negligence on the part of the vendor, the vendor is unable to file the DR 478, Vendor’s Monthly Operating Report (Rev. 06/16), in accordance with subdivision (c) of this section. The vendor must notify the BEP Manager in writing of the facts that prevent the vendor from filing the DR 478, Vendor’s Monthly Operating Report (Rev. 06/16) in accordance with subdivision (c) of this section. The BEP Manager shall determine whether penalties shall not be assessed in accordance with this subsection.

(3) Vendors who have submitted a DR 478, Vendor’s Monthly Operating Report (Rev. 06/16) but have failed to include the set-aside charge shall be given written notice of the delinquency.

(4) If a DR 478, Vendor’s Monthly Operating Report (Rev. 06/16) is delinquent for more than one month, the BEP or the Department shall determine the set-aside charge based on the most reliable information available and the vendor shall be liable for this amount with applicable penalties.

(5) Submission of the DR 478, Vendor’s Monthly Operating Report (Rev. 06/16), is an attestation that all amounts are true and correct.

(A) In the event a vendor is delinquent the first month at a new or newly assigned vending facility, the BEP or the Department may determine the set-aside fee using the estimates contained in the DR 460, Vending Facility Announcement (Rev. 09/09), incorporated by reference herein.

(d) Vendors shall send a copy of the DR 478, Vendor’s Monthly Operating Report (Rev. 06/16), to the Department’s Accounting Office, as provided in subdivision (a)(2) of this section, as well as the BEP district office where the primary vending facility is located. Upon receipt, the Business Enterprises Consultant (BEC) shall either accept or reject the DR 478 Vendor’s Monthly Operating Report (Rev. 06/16). The BEC’s review to determine whether to accept or reject the DR 478 Vendor’s Monthly Operating Report (Rev. 06/16) shall include, but is not limited to, the following:

(1) Verification of compliance with the DR 478A, Vendor’s Monthly Operating Report Privacy Notice and Instructions (Rev. 06/16), incorporated by reference herein.

(2) Review of the gross receipts, net sales, cost of goods, payroll expense, other operating expense, other income, net proceeds, set-aside fee, and payments due. This review shall include all required data, increases or decreases, during the past year.

(e) If after the review, the BEC identifies issues that substantiate rejection of the DR 478 Vendor’s Monthly Operating Report (Rev. 06/16), the BEC will attempt to contact and discuss these issues with the vendor. If the issues are not rectified during this communication, the DR 478, Vendor’s Monthly Operating Report (Rev. 06/16) shall be returned to the vendor with a written notice of the deficiencies. The vendor shall correct all deficiencies and submit the corrected DR 478, Vendor’s Monthly Operating Report (Rev. 06/16) to the Department’s Accounting Office in accordance with subdivision (a) of this section and the BEP field office in accordance with subdivision (d) of this section. The late penalty shall be assessed in accordance with subdivision (c) of this section.

(f) A vendor operating an interim vending facility shall submit a separate DR 478, Vendor’s Monthly Operating Report (Rev. 06/16), while he or she is operating the facility.

(g) Department records of financial data including quarterly and annual reports of the Vending Facility Trust Fund shall be made available to any interested party in accordance with the California Public Records Act (Government Code section 6250 et seq.).

(h) Set-aside funds deposited into the Vending Facility Trust Fund shall be used only for the purposes specified in Welfare and Institutions Code section 19629, 20 United States Code section 107b(3), and 34 Code of Federal Regulations section 395.9.

(i) The Department shall report financial averages to vendors. Financial averages are used by the Department to review trends and patterns within the food service industry, and to provide Department field staff with data that can be used to assist vendors to improve the operation and profitability of their vending facilities. BEP shall prepare and distribute to all vendors an annual report of the BEP profit and loss statewide financial averages for each type of by August 31st of each year, reporting data for the previous fiscal year.

NOTE: Authority cited: 20 USC Section 107b(5); 34 CFR Section 395.4, and Sections 19006, 19016 and 19639, Welfare and Institutions Code. Reference: 20 USC Sections 107b(3) and 107b-1(1); and 34 CFR Sections 361.49(a)(5)(v), 395.9 and 395.12. Government Code, Sections 6250 et seq., 6706 and 12926; and Sections 19629, 19637 and 19639, Welfare and Institutions Code.

### § 7222. Vendor Removal from the Assigned Location.

(a) The following shall apply to vendor removal when initiated by the Department:

(1) BEP shall immediately remove a vendor from his/her assigned location, if that vendor's actions or the conditions of the facility pose a significant risk to the health and safety of the public. Significant risk means any condition, based upon inspection findings or other evidence, including, but not limited to, unsafe food temperature, sewage contamination, nonpotable water supply or an employee who is a carrier of a communicable condition, that can cause:

(A) Food infection.

(B) Food intoxication.

(C) Disease transmission.

(D) Hazardous condition.

(2) Whenever a vendor is removed from his/her assigned location pursuant to (1), the BEP shall provide written notice to the vendor setting forth the following:

(A) The acts or omissions with which the vendor is charged.

(B) The specific code or regulation sections which have been violated.

(C) The Department's intent to terminate the vendor's license.

(D) The vendor's right to a full evidentiary hearing and the time frame for filing a request.

1. Failure to request a hearing within the time frame specified shall be deemed a waiver of the right to a full evidentiary hearing.

(E) The need to take inventory in the presence of the BEP staff to determine the type and amount of stock on hand at the time of removal.

(3) The facility shall be operated by an interim vendor until the status of the vendor's license is determined.

(4) The Department shall be responsible for stock liquidation, if title to the stock is vested in BEP pursuant to Section 7219. The Department may sell the stock to the interim vendor or to any other vendor interested in purchasing the stock. If title to the stock is vested in the vendor, he/she shall be responsible for stock liquidation. The BEP shall assist the vendor in liquidating any perishable stock.

(b) If building management requests removal of a vendor, the Department shall follow the process set forth in Section 19632(c) of the Welfare and Institutions Code.

(c) The removal of a vendor, whether initiated by the Department or upon the request of the person, governing board, or legislative body having the care, custody and control of the property in which a vending facility is operated shall not require a finding of ineligibility for licensing. Any such finding of ineligibility for licensing shall occur only after the vendor has been given the opportunity for a full evidentiary hearing.

(1) A vendor who prevails at the full evidentiary hearing, shall be reinstalled in his/her facility. Retroactive compensatory damages may only be obtained by way of civil action, if the basis for an action exists.

(2) If the hearing officer finds in favor of the Department, the BEP may then terminate or suspend the vendor's license and advertise and award the location to another vendor.

(d) If the vendor fails to file a request for a full evidentiary hearing regarding the proposed suspension or termination and good cause exists, as specified in Section 7213.2, the Department may either suspend or terminate the vendor's license and then advertise and award the location.

NOTE: Authority cited: Sections 19006, 19016 and 19639, Welfare and Institutions Code. Reference: Sections 19006, 19016 and 19632, Welfare and Institutions Code; Randolph-Sheppard Act, 20 USC 107b(5); and 34 CFR 395.7.

### § 7223. Termination of an Operating Agreement.

The operating agreement may be terminated by BEP when the permit is withdrawn, the vendor vacates the vending facility, or the vendor's license is terminated or suspended. The vendor shall give the BEP at least forty-five days' written notice of intent to terminate the operating agreement. The BEP may waive or reduce this time requirement.

When the operating agreement is terminated the vendor shall vacate the vending facility premises.

NOTE: Authority cited: Sections 19006, 19016 and 19639, Welfare and Institutions Code. Reference: Sections 19006, 19016 and 19639, Welfare and Institutions Code; Randolph-Sheppard Act, 20 USC 107b(5); and 34 CFR 395.4.

### § 7224. Disabled Employees of Vendors

(a) To encourage the vendor to employ more blind and disabled employees, a vendor may claim the deduction from his or her set-aside charges as provided for in Section 7220(r) of these regulations.

(b) A vendor shall notify the Business Enterprises Program for the Blind, herein BEP, of any employment opportunity in the vending facility in order that consumers of the Department may be given preference. The vendor shall cooperate with the Department in employing and training consumers of the Department. If the Department is unable to refer qualified employees, the vendor may utilize other labor sources, giving preference to individuals with disabilities.

NOTE: Authority cited: Sections 19006, 19016 and 19639, Welfare and Institutions Code. Reference: Randolph-Sheppard Act, 20 USC Section 107b(5); 34 CFR Section 395.4; and Sections 19006, 19016 and 19639, Welfare and Institutions Code.

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## Article 8. Standards for Collection of Vending Machine Income

### § 7225. Vending Machine Commissions.

(a) Vending machine commissions shall be collected and disbursed from vending machines located on federal property as specified in 34 Code of Federal Regulations parts 395.8 and 395.32, unless the Business Enterprises Program for the Blind, herein BEP, has entered into a contract with the organization operating the vending machines on federal property.

(b) Commissions shall be collected from vending machines located on all state property as follows:

(1) A commercial vending company operating vending machines on state property, where there is a BEP vending facility, shall pay commissions in accordance with a contract with the Department to BEP on a monthly basis. All such commissions from these vending machines shall be paid to the BEP for disbursement to the vendor. Vending machine commissions shall be reported by the vendor on the DR 478, Vendor’s Monthly Operating Report (Rev. 06/16), incorporated by reference herein, when the commissions are received by the vendor.

(A) Vending machine income received, pursuant to (b)(1) herein, must be forwarded to the appropriate vendor within 30 days of receipt by the BEP.

(2) A commercial vending company operating vending machines on state property where there is no BEP vending facility shall enter into a contract with the Department and shall pay commissions from these vending machines to the BEP. These commissions shall be deposited into the Vending Machine Trust Fund and identified as “Unassigned Vending Machine Income.” Vending commissions received under this subsection shall be used for the purposes specified in Welfare and Institutions Code sections 19630(d) and (g), title 20 United States Code section 107d-3(c), 34 Code of Federal Regulations part 395.8(c), and subject to a vote of the vendors.

(c) This section does not apply to machines operated as of January 1, 1978, on state property by employee-operated, non-profit organizations.

(d) A vendor may be given approval by the BEP to contract with a private vending machine company for the operation of vending machines on-site at his or her vending facility if the vending machines are not owned by the BEP.

(1) Such vending machine income shall be reported on the DR 478, Vendor’s Monthly Operating Report (Rev. 06/16), incorporated by reference herein, as part of the net proceeds for the month in which the income was received.

(2) A vendor shall not contract with a private vending machine company to operate vending machines purchased and owned by the BEP.

(e) The BEP may authorize a vendor to lease or purchase vending machines, pursuant to the conditions contained in section 7218 in these regulations.

(1) Sales from leased or purchased machines shall be reported as part of gross receipts. Lease payments shall be the responsibility of the vendor and included as an expense item.

(2) The cost of the vending machines(s) may be amortized pursuant to Section 7218 of these regulations.

(f) The BEP shall provide the California Vendors Policy Committee, herein CVPC, with an annual accounting of the unassigned vending machine income collected during the previous calendar year, and the amount of unassigned vending machine income deposited into the vendor retirement account. This accounting shall be provided on or before April 15th of the subsequent calendar year.

NOTE: Authority cited: 20 USC Section 107b(5); 34 CFR Section 395.4; and Sections 19006, 19016 and 19639, Welfare and Institutions Code. Reference: 20 USC 107d-3; 34 CFR Sections 395.8 and 395.32; and Sections 19011 and 19630, Welfare and Institutions Code.

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**Article 9. State Committee of Blind Vendors**

### § 7226. Elections--General Provisions.

(a) A biennial election of a committee of licensed blind vendors shall be conducted in odd-numbered years by secret ballot.

(b) The Committee shall be known as the California Vendors Policy Committee, hereafter CVPC.

(c) The Committee shall be fully representative of all blind licensees in the state program. District boundaries shall be established by the CVPC to ensure that representation shall, at a minimum, be one committee member for every 25 licensed vendors. Districts shall not vary more than seven licensed vendors between the districts having the least number of licensed vendors and the districts having the greatest number of licensed vendors. When districts vary more than seven, district reapportionment shall be conducted by, and require the majority vote of, the CVPC. Reapportionment shall not be conducted until after January 1 of the even-numbered year and shall not be effective until the General Election the following odd-numbered year.

(d) Only licensed blind persons operating a facility on a non-interim basis may serve on the Committee or vote in any poll or election authorized under this section. Such licensed blind persons shall be entitled to one vote each.

(e) Elected vendors shall be known as delegates to the Committee. The Committee shall consist of and be limited to one delegate per district who has been duly elected by a plurality vote of the licensed vendors within that district who are eligible to vote, as specified in (d). Each delegate shall be entitled to one vote.

(1) A vendor who operates a vending facility that has been combined or consolidated and consists of a primary site and one or more satellite sites may only vote in the district where his or her primary site is located and may only serve as a delegate representing the district where his or her primary site is located.

(f) An elected vendor shall cease to be a delegate for the district in which he or she was elected when he or she accepts a new location in another district and begins to receive remuneration for that location.

(g) If a delegate resigns from office during his or her term, he or she shall be ineligible to run for a vacancy in the special election for his or her district.

(h) If a delegate vacancy occurs in a district due to resignation, no nomination, illness or death of a delegate or a delegate accepts a vending facility in another district and begins to receive remuneration from that facility, the Executive Officers of CVPC shall appoint an alternate from that district until a delegate is elected in a special election.

(i) Election materials shall be prepared and provided to a vendor in a vendor’s preferred mode of communication, to the extent possible. Such modes of communication may include large print or Braille, on audiotape, 3.5 diskette, compact disk or electronic transmission.

 (j) Elections shall be completed by November 25th of each odd-numbered year. Delegates shall take office on January 1 of the even-numbered year following the election and shall serve a two year term.

(k) The Director shall appoint an Election Coordinator to conduct and oversee all aspects of an election, consistent with this section. The Election Coordinator shall be responsible for the following election duties:

(1) Preparing nomination letters, along with a nomination form and a preaddressed envelope for each vendor who is eligible to vote, in accordance with subsection (d). Election materials shall be prepared and mailed to each vendor in his or her preferred mode of communication, to the extent possible. Such modes of communication may include providing election materials in large print, Braille, on audiotape, 3.5” diskette, or compact disk. The Department shall transmit copies of the election materials electronically, on request.

(2) Receiving and placing sealed envelopes containing votes received from vendors in a secure location, pending the date the ballots are to be counted.

(3) Certifying the security of the ballots.

(4) Overseeing the ballot tabulation.

(5) Certifying the election results to the Director.

NOTE: Authority cited: 20 USC Section 107b(5); 34 CFR Section 395.4; and Sections 19006, 19016 and 19639, Welfare and Institutions Code. Reference: 20 USC Section 107b-1(3); 34 CFR Sections 395.3(a)(4) and 395.14(b); and Sections 19011 and 19638(b), Welfare and Institutions Code.

### § 7226.1. General Elections.

(a) Nomination letters specifying that nominations are open shall be mailed to each vendor operating a facility on a non-interim basis no later than October 1 of each odd-numbered year along with a nomination form and a pre-addressed return envelope.

(b) A vendor may nominate him or herself using the nomination form, but shall not nominate any other vendor in his or her district. The nomination form shall be postmarked within 15 calendar days of the date of the letter and received within five calendar days of the postmark to be deemed timely received.

(c) Upon receipt, the nomination forms shall be reviewed to ensure the timeliness of submission and that the nominated vendor meets the requirements specified in subdivisions (d), (e)(1), and (f) of Section 7226. A separate ballot shall then be prepared for each district listing the qualified vendors who were nominated in that district.

(d) Ballots shall be mailed, return receipt requested no signature required, by November 1st of each odd-numbered year to all vendors specified in Section 7226(d), along with instructions for completing and mailing the ballot. Vendors shall be mailed only that ballot which is specific to his or her district, a ballot envelope and a pre-addressed mailing envelope. If a vendor does not receive his or her ballot by November 7th, it is the vendor’s responsibility to contact the Election Coordinator and request a ballot.

(e) In order to vote, the vendor shall do all of the following:

(1) Mark his/her ballot for one of the vendor names on the ballot.

(2) Place the unsigned ballot in the ballot envelope, seal and sign his/her name on the envelope.

(3) Place the ballot envelope in the pre-addressed mailing envelope and return. The mailing envelope shall be postmarked by November 15th and received within 5 calendar days to be considered timely received.

(f) Upon receipt, the mailing envelope shall be locked in a file without disturbing the seal until the scheduled date for ballot counting.

(g) Proper submission of the ballot shall be certified by the Election Coordinator at the time of ballot counting. A ballot shall be deemed properly submitted if:

(1) It was received within the time frame specified in (e)(3).

(2) The vendor's signature has been affixed to the ballot envelope.

(3) Each ballot envelope contains only one ballot.

(h) Ballots shall be counted and recorded by district. The nominee in each district receiving the most votes shall be deemed elected.

(i) In case of a tie in any district after ballot counting, re-nomination and balloting shall occur in that district. If re-nomination and balloting is undertaken, that process shall be completed within 30 calendar days from November 25th of the odd-numbered year. The time frames for the submission of nomination forms and ballots shall be set by the Election Coordinator.

(j) All vendors who participated in the election shall be notified in writing of the election results no later than November 30th of the odd-numbered year.

NOTE: Authority cited: 20 USC Section 107b(5); 34 CFR Section 395.4; and Sections 19006, 19016 and 19639, Welfare and Institutions Code. Reference: 20 USC 107b-1(3); 34 CFR Sections 395.3(a)(4) and 395.14(b); and Sections 19011 and 19638(b), Welfare and Institutions Code.

### § 7226.2. Special Elections.

(a) If a delegate vacancy occurs, a special election shall be completed within 60 days of the vacancy to determine the successor for the remainder of the term. A special election shall be conducted, if any of the following situations occur:

(1) A delegate leaves the district from which he or she was elected, as specified in Section 7226(f).

(2)A delegate resigns from office during his or her term.

(3) A delegate, or his or her alternate, fails to attend two regularly meetings per term. Regular meetings shall consist of two one day sessions. Attendance means participation in both days.

(4) Serious illness or death of a delegate.

(5) No delegate nomination was made.

(b) The procedures and requirements for nomination, ballot preparation, voting, receipt of ballots and ballot counting set forth in Section 7226.1 shall also apply to special elections. The time frames for the submission of nomination forms and ballots shall be set by the Election Coordinator to facilitate completion of the process within 60 days of the vacancy.

(c) In the case of a tie in any district after ballot counting and renomination and balloting are necessary, that process shall be completed within 60 calendar days of the date the election results are known. The time frames for the submission of nomination forms and ballots shall be set by the Election Coordinator.

(d) In special elections, the vendors shall be notified of the election results within 60 calendar days of the date of the nomination letters informing them of the vacancy.

NOTE: Authority cited: 20 USC Section 107b(5); 34 CFR Section 395.4; and Sections 19006, 19016 and 19639, Welfare and Institutions Code. Reference: 20 USC Section 107b-1(3); 34 CFR Sections 395.3(a)(4) and 395.14(b); and Sections 19011 and 19638(b), Welfare and Institutions Code.

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## Article 10. Administrative Review and Full

**Evidentiary Hearing Procedures**

### § 7226.3. Committee Responsibilities.

(a) The committee shall:

(1) Participate in major administrative decisions, and policy and program development.

(2) Receive and transmit grievances of vendors and assist such vendors at their request.

(3) Participate in the development and administration of a transfer and promotion system for vendors;

(4) Participate in developing training and retraining programs;

(5) Sponsor meetings and instructional conferences for vendors. The meetings shall be conducted in accordance with Sections 11120 through 11131, of the Government Code.

(6) Be allowed to provide input regarding the adequacy of the BEP staffing levels prior to the Director's annual review.

NOTE: Authority cited: Sections 19006, 19016 and 19639, Welfare and Institutions Code. Reference: Section 19636, Welfare and Institutions Code; Randolph-Sheppard Act, 20 USC 107b-1 and 107b(5); and 34 CFR Sections 395.3, 395.4, 395.7 and 395.14.

### § 7226.4. Committee Organization and Operation.

(a) The committee may establish by-laws consistent with the Federal and State law. The by-laws may specify:

(1) The terms and conditions pertaining to the election and function of vendor delegates.

(2) The organization and operation of the committee and subcommittees including communication procedures.

(3) The role of the committee in initiating matters for consideration by BEP.

(4) That BEP shall have the ultimate responsibility and accountability for the administration of the State vending facilities program.

(b) The committee may refer major issues to all vendors in order to ascertain their views.

(c) BEP shall take into careful and serious account the committee's written recommendations. BEP shall notify the committee in writing of the decision reached or the actions taken on all recommendations and the reasons therefore within 30 calendar days of the receipt of the committee's written recommendation.

(d) The committee may contract for professional services, including, but not limited to, legal counsel. Payment for professional services rendered to the committee shall be made from commissions from vending machines on state property pursuant to Section 19630 of the Welfare and Institutions Code.

(e) Delegates shall be reimbursed for actual and necessary expenses incurred as a result of their participation in committee functions. Subcommittee members shall be reimbursed for only transportation expenses unless it is necessary to stay more than a 24-hour period. In such instances, reimbursement for lodging may be made, subject to the CVPC Chairman's validation of the necessity. DR 265 (Rev. 1/93), entitled “Non-State Employee Travel Expense Claim", incorporated by reference herein, shall be completed for all travel expense reimbursements. All reimbursements shall be made in accordance with State Board of Control rules within 45 calendar days of receipt by the Department of a properly completed claim.

NOTE: Authority cited: Sections 19006, 19016 and 19639, Welfare and Institutions Code. Reference: Section 19638, Welfare and Institutions Code; Randolph-Sheppard Act, 20 USC 107b-1; and 34 CFR Sections 395.3, 395.7 and 395.14.

### § 7227. General Provisions.

(a)Any Business Enterprises Program for the Blind, hereafter BEP, licensee or vendor, who is dissatisfied with any action of the Department arising from licensing, selection as a vendor, termination or suspension of a license or vendor operating agreement, probation, or administration of the BEP shall have an opportunity for a prompt informal administrative review by the supervisory staff of BEP and/or a full evidentiary hearing before a hearing officer in accordance with the provisions of Sections 7227.1 and 7227.2 of these regulations.

(b) The licensee or vendor may file for an administrative review or may proceed directly to a full evidentiary hearing.

(c) When requested by a licensee or vendor, the California Vendors Policy Committee, hereafter CVPC, and CVPC delegate, who represents the district where the vendor’s primary facility is located, shall:

(1) Assist in the preparation and submission of a written request for review and/or hearing.

(2) Provide assistance in the administrative review or full evidentiary hearing process.

(3) Intervene on behalf of the licensee or vendor to negotiate with Department staff to resolve a complaint.

(4) Endeavor to achieve a fair and equitable solution to the complaint.

(d) A licensee or vendor shall be responsible for the costs of his or her own expenses related to disputing or settling issues which may include, but not limited to, travel or private counsel.

(e) Upon request of the vendor or licensee, the BEP shall provide a reader or other communication services, to the extent possible, at the administrative review or full evidentiary hearing.

(f) The CVPC may contract for professional services for training vendors in the preparation and submission of requests for review and hearings for all of the processes specified in subsection (a) herein, using vending machine income pursuant to Welfare and Institutions Code section 19630, subsections (d) and (g), and section 7225, subsection (b)(2) herein.

(g) Any client-trainee who is dissatisfied with an action arising from the administration of the BEP or the provision of vocational services, or a licensee or vendor who is dissatisfied with an action arising from the provision of vocational rehabilitation services shall have an opportunity for a prompt administrative review by the Vocational Rehabilitation supervisory staff and/or a fair hearing in accordance with Chapter 12 (commencing with Section 7350) and Section 7350 et seq. of these regulations.

NOTE: Authority cited: Sections 19006, 19016, 19627 and 19639, Welfare and Institutions Code. Reference: 20 USC Sections 107b(5), 107b(6), 107b-1(3); 34 CFR Sections 395.4 and 395.13; and Sections 19629, 19635, 19638 and 19700 et seq., Welfare and Institutions Code.

### § 7227.1. Administrative Review.

(a)Licensees or vendors who are dissatisfied with any action of the Department arising from licensing, selection as a vendor, termination or suspension of a license or vendor operating agreement, probation, or any other administrative action on the part of the Department, may elect to participate in the administrative review process prior to pursuing a full evidentiary hearing. Participating in an administrative review will not affect the right of a licensee or vendor to request a full evidentiary hearing. Licensees or vendors who elect to participate in the administrative review process shall comply with the following requirements. All requests for administrative review shall:

(1)Be made within 30 working days of the action or occurrence with which licensee or vendor is dissatisfied.

(2) Be made in writing to a Supervising Business Enterprise Consultant. Nothing shall prevent a licensee or vendor from addressing a request to a higher level, but the Department retains the right to remand the request back to a lower level.

(3) Include the following information:

(A) The reason for the request.

(B) The action the licensee or vendor wishes to have taken.

(b) Except in unusual circumstances, a request for an administrative review shall be processed and decided upon by the supervisory staff of the Department in the following order:

(1) The Supervising Business Enterprises Consultant shall examine the facts and recommend a proposed decision.

(2) The BEP Manager shall review the facts and either approve or change the proposed decision.

(3) The Deputy Director who oversees the Business Enterprises Program for the Blind shall have final review authority and shall decide the issue by approving or changing the proposed decision.

(c) The following requirements shall be met at all levels of the administrative review process:

(1) The supervisory staff of the BEP shall thoroughly review all facts pertinent to the disputed issue and shall endeavor to achieve a fair and equitable resolution to the complaint in an expeditious manner.

(2) A written notification of the decision shall be mailed to the licensee or vendor within 15 working days of the date the request was received by the Department. Each of the supervisory staff shall complete his or her level of review in sufficient time to ensure that this time frame is met. If at any level of review the supervisory staff has cause to believe that written notification cannot be provided within this time frame, the reviewer shall elevate the request to the next level of review.

(d) If a licensee or vendor is dissatisfied with the proceedings at any level of the review process, he or she may seek remedy by elevating the request to the next level of review or may abandon the administrative review process and seek remedy through a full evidentiary hearing.

(e) If the administrative review does not resolve the complaint, the licensee or vendor may request a full evidentiary hearing. The request shall be made in writing within 15 working days of the receipt of the administrative review decision.

NOTE: Authority cited: Sections 19006, 19016 and 19639, Welfare and Institutions Code; 20 USC Section 107b(5); and 34 CFR Section 395.4. Reference: Sections 19006, 19016, 19635 and 19639, Welfare and Institutions Code.

### § 7227.2. Full Evidentiary Hearing.

(a) Licensees or vendors who are dissatisfied with an action of the Department arising from licensing, selection as a vendor, termination or suspension of a license or vendor operating agreement, probation, or administration of the BEP may request a full evidentiary hearing before a hearing officer. All requests for a full evidentiary hearing shall:

(1) Be made within 30 working days of the action with which the licensee or vendor is dissatisfied, or within the time frame specified in Section 7227.1(e) of these regulations, if the licensee or vendor elected to participate in the administrative review process. In cases involving the suspension or termination of licensure or probation, the date of the action shall be deemed to be two days after the date the Department mails the written notice of proposed action specified in Section 7213.1 of these regulations.

(2) Be made in writing to the Department's Legal Affairs Office.

(3) Be date stamped by the Department’s Legal Affairs Office upon receipt when the postmark is illegible or the request is personally delivered.

(b) The licensee or vendor shall be notified of:

(1) The time and place of the hearing, which shall be accessible to both the hearing officer and the licensee or vendor and at a geographical location convenient to the licensee or vendor.

(2) The hearing procedures, including but not limited to:

(A) The circumstances under which a continuance may be granted.

(B) The opportunity to be represented by an authorized representative of the licensee's or vendor's choosing.

(C) The necessity of confirming attendance at the scheduled hearing.

(c) Any party or the hearing officer may request a continuance of the full evidentiary hearing which may be granted at the discretion of the hearing officer. A continuance shall be granted only if good cause exists and shall not extend the date of the full evidentiary hearing for more than 20 calendar days from the original hearing date. The hearing officer shall give written notice of any continuance to all parties. The notice of continuance for good cause shall include the grounds upon which the continuance was granted. For purposes of this subsection, good cause includes, but is not limited to, the following:

(1) Death of a family member of a party or authorized representative. For the purposes of this section family member shall include, but is not limited to, spouse or domestic partner.

(2) Illness of a party or authorized representative.

(3) Unavoidable conflicts in schedules that are beyond the control of a person essential to the full evidentiary hearing.

(4) Unavailability of a witness or evidence, the absence of which would result in prejudice to the licensee or vendor.

(d) The hearing officer shall voluntarily disqualify him or herself from hearing a case in which he or she cannot accord a fair and impartial consideration. Any party may request a disqualification of the hearing officer by filing an affidavit prior to the taking of evidence at the hearing, stating with particularity the grounds by which it is believed a fair and impartial hearing may not take place. Within five working days of the filing of the affidavit, the issue shall be decided by the Director or Chief Deputy Director and a new full evidentiary hearing scheduled.

(e) Except for properly granted continuances, the licensee or vendor shall be given one opportunity to appear at a scheduled hearing. Failure to appear occurs when the licensee or vendor is more than thirty minutes late for a hearing without good cause, as determined by the hearing officer, or has failed to give the hearing officer at least twenty-four hours notice of intent not to appear. Failure of an authorized representative to appear shall not constitute failure of the licensee or vendor to appear, provided the licensee or vendor agrees that the full evidentiary hearing shall proceed in the absence of the authorized representative. Upon the licensee's or vendor's failure to appear at a scheduled full evidentiary hearing, the hearing officer shall immediately send, by certified mail, to the licensee or vendor and the authorized representative, if any, a notice stating that the opportunity to appear has been exhausted and that a request to reschedule the full evidentiary hearing for good cause must be received by the Department within ten working days. If a response is not received within the required period, the hearing officer shall inform the Director who may dismiss the appeal with prejudice. If the request to reschedule is received within the required period and the hearing officer finds good cause has been shown, the full evidentiary hearing shall be rescheduled within 20 calendar days of receipt of the showing of good cause.

(f) The rules governing the full evidentiary hearing shall be as follows:

(1) The hearing officer shall receive all relevant evidence as specified in Government Code Section 11513(c).

(2) All testimony shall be under oath or affirmation. The hearing officer is hereby empowered to administer such oath or affirmation.

(3) The licensee or vendor may appear alone, with an authorized representative, or be represented by an authorized representative.

(4) The Department may be represented by the BEP Manager or staff, legal counsel, or any other person designated by the Department.

(5) All parties shall be allowed to call witnesses and to submit any relevant evidence.

(6) All parties shall be allowed to confront and question adverse witnesses.

(7) If it appears to the hearing officer that additional evidence not produced at the hearing is necessary for a full and fair hearing, he/she may order any of the following:

(A) A continuance of the hearing to take the additional evidence.

(B) That the record be left open to allow a party to submit written evidence not produced at the hearing. The other party shall be given an opportunity to respond to the new evidence and may request the hearing officer to reconvene the full evidentiary hearing if that is necessary for a fair response. The hearing officer shall determine whether or not reconvening is justified or if the record will be closed after he or she reevaluates the record.

(C) All documents submitted under (A) and (B) above shall be served upon both the hearing officer and the other party or parties.

(8) If the parties reach a settlement agreement prior to the record in the full evidentiary hearing being closed, the written settlement agreement executed by the parties shall be submitted to the Director who may issue the final decision in conformity therewith. If the Director does not issue a final decision in conformity therewith, the matter shall be remanded to the hearing officer for a full evidentiary hearing.

(9) The hearing officer shall prepare and submit to the Director a proposed decision within fifteen calendar days from the date the hearing record is closed. The hearing officer shall mail a copy of the proposed decision to the licensee or vendor and authorized representative, if any, at the time of submission to the Director. The proposed decision shall include at a minimum the following:

(A) The issues.

(B) The findings of fact.

(C) The reasons for the proposed decision referencing applicable laws, regulations and policy.

(10) Within 15 calendar days from receipt of the proposed decision from the hearing officer, the Director shall review the proposed decision based upon the standards specified in paragraph (11) of this section and take one of the following actions:

(A) Adopt the proposed decision in its entirety as the final decision.

(B) Decide an additional review is necessary to either:

1. Modify the proposed decision.

2. Reject the proposed decision and decide the matter on the basis of the record with or without additional evidence.

(11) The following standards of review shall be applied by the Director when reviewing each proposed decision rendered by the hearing officer. The proposed decision shall be adequately supported by:

(A) The sufficiency of the evidence.

(B) The findings of fact.

(C) Applicable state and federal laws and regulations.

(12) If the Director chooses to conduct an additional review of the proposed decision, he or she shall provide notice of the intent to review to all parties within the time limit specified in paragraph (10) of this section and may do either of the following:

(A) Resubmit the matter to the hearing officer for the taking of additional evidence in accordance with paragraph (7) of this section. In this instance the Director shall render a final decision within 15 calendar days of the receipt of the additional evidence.

(B) Modify the proposed decision or reject the proposed decision on the basis of the record without additional evidence. In this instance, the Director shall render a final decision within 15 calendar days of having provided notice of his or her intent to review the proposed decision.

(13) The Director shall base the final decision upon careful consideration of:

(A) The issues.

(B) The findings of fact.

(C) Applicable law, regulation and policy.

(D) Any new evidence submitted by the licensee or vendor or authorized representative in conjunction with the Department's written response or rebuttal to the new evidence.

(14) The final decision shall be sent to the licensee or vendor and the authorized representative, if any, by certified mail within five working days of the decision being adopted by the Director. An explanation of the licensee's or vendor's right to file a complaint with the Secretary shall be mailed with the final decision.

(g) The record of the hearing shall consist of the decision resulting from the administrative review, if that process was undertaken prior to the full evidentiary hearing, the proposed decision, the final decision, a transcript or recording of the hearing, and all exhibits, papers and reports filed in the proceeding. If requested by the licensee or vendor or the authorized representative, the record of the hearing or any part thereof shall be furnished to him or her within 30 calendar days from receipt of a written request at a cost not to exceed ten cents per page or for free if fewer than ten pages are requested.

(h) If a licensee or vendor is dissatisfied with the decision made after a full evidentiary hearing he or she may request that an arbitration panel be convened by filing a complaint with the Secretary of the United States Department of Education pursuant to 20 United States Code section 107d-1(a).

NOTE: Authority cited: 20 USC Section 107b(5); 34 CFR Section 395.4; and Sections 19006, 19016 and 19639, Welfare and Institutions Code. Reference: 20 USC 107b(5), 107b(6), 107d-1 and 107d-2; 34 CFR Section 395.13; and Section 19635, Welfare and Institutions Code.

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# Chapter 7. Special Programs

### § 7260. Social Security Disability Insurance, Supplemental Security Income Programs. [Repealed]

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## Article 1. College Level Training for the Deaf

### § 7261. Definitions and Terms.

(a) For the purposes of this Article, the following definitions shall apply:

(1) “Coordinating Rehabilitation Counselor for the Deaf or Coordinating RCD” means the individual responsible for the provision of services to clients attending Gallaudet University, the National Technical Institute for the Deaf (NTID), and the California State University, Northridge (CSUN).

(2) “Coordinating Rehabilitation Supervisor or Coordinating RS” means the individual who provides direct supervision to the Coordinating RCD.

(3) “Deaf and Hard of Hearing Services Section Program Manager” means the individual employed by the Department to oversee the development and coordination of policy with respect to programs for the deaf and hearing impaired which are administered through the Deaf and Hard of Hearing Services Section.

(4) “Departmental Sponsorship” means the provision of funding, in whole or in part for a deaf client's college level training program.

(5) “Local/Sending Rehabilitation Counselor for the Deaf or Local/Sending RCD” means the individual who has determined a client's eligibility for college level training and is processing the case for services and/or transfer to a Coordinating Rehabilitation Counselor for the Deaf.

(6) “Local/Sending Rehabilitation Supervisor or Local/Sending RS” means the individual who provides direct supervision to the Local/Sending RCD.

(7) “Sponsorship Probation means a trial period in which a client/student is permitted to correct any deficiency related to meeting the requirements set forth in Section 7261.2(a)(1) through (4).

NOTE: Authority Cited: Sections 19006 and 19016, Welfare and Institutions Code. Reference: Sections 19050, 19150 and 19200, Welfare and Institutions Code; 34 CFR Section 361.42.

### § 7261.1. General Provisions.

(a) The Department shall inform deaf clients of in-state and out-of-state college training opportunities. A client shall be considered for Departmental sponsorship of his/her college program only if he/she has all of the following:

(1) A clearly defined vocational goal which requires college level training,

(2) The ability and potential to complete the IWRP based upon the following academic criteria:

(A) For a four-year college program:

1. Completion of a standardized test acceptable to the college, including but not limited to, the Stanford Achievement Test, the Stanford Achievement Test for the Hearing Impaired, or the Scholastic Aptitude Test. The client shall be required to have:

a. Average scores of at least 8.0 on the reading, language and math subtests, when a standardized achievement test is taken.

b. The equivalent of at least an 8.0 grade level of achievement, when a college entrance exam is taken.

c. For Gallaudet University, when the Stanford Achievement Test For the Hearing Impaired is taken, scores on the subtests of at least 8.0 in reading, 8.5 in language and an average of 8.5 in math.

2. Acceptance of scores lower than those specified in 1. require one of the following:

a. Justification and rationale by the local RCD and approval by the local RS.

b. Successful completion of at least one year of college level core classes. Academic success is measured by the completion of a minimum of 12 units per semester/quarter with a grade of “C” or better in each class while maintaining a 2.0 G.P.A.

(B) For the National Technical Institute for the Deaf:

1. Completion of a standardized test, as specified in (a)(2)(A)1., with the average scores specified in either a. or b.

2. Lower scores than those specified in 1. shall be acceptable only if the requirements of (a)(2)(A)2. have been met.

(C) For two-year college programs:

1. The local RCD shall make a determination of the client's ability to successfully complete the IWRP based upon the client's goals and related training needs, level of maturity, past performance and school records, if available, and shall prepare a written justification and rationale supporting the training. Training shall be subject to the approval of the local RS after he or she has reviewed the justification and rationale and ensured that the Provisions of sections 7154 through 7156 have been met.

(3) A disability that is stable to ensure the completion of the training.

(4) A means of support, such as SSI/SSDI, a scholarship, or personal funds, which is available to pay for the client's basic living expense while attending school. Maintenance payments shall not be provided except as set forth in Section 7167.

(5) A formal acceptance at the college in a program that meets the academic requirements for admittance at least as a freshman.

(b) The provision of college level training for the deaf shall be subject to all of the following:

(1) The similar benefits provisions of Sections 7031 through 7034.

(2) The training services provisions of Section 7154.

(3) The out-of-state training provisions of Section 7158.8, except for training at the following Federal Regional Post Secondary Educational Programs:

(A) Gallaudet University.

(B) National Technical Institute for the Deaf (NTID).

(C) Seattle Community College.

(D) St. Paul Technical-Vocational Institute.

(c) Graduate school training and tuition at non-resident rates shall not be provided unless both of the following conditions exist:

(1) The provision of service is essential to the success of the IWRP.

(2) The approval of the local RS has been obtained after he/she has ensured that the requirements of (a) and (b) have been met, as well as the training services provisions of Section 7154.

(d) Any client who fails to meet one or more of the requirements of Section 7261.2 (a)(1) through (4) shall be placed on sponsorship probation for one grading period following the grading period in which deficiency occurred, or until such time as the Coordinating RCD confirms that the client has corrected the deficiency and is in compliance with those requirements. Except in unusual circumstances, sponsorship probation shall not be extended beyond the time frame specified above. All extensions shall require the prior approval of the Coordinating RS. The Coordinating RCD shall:

(1) Comply with the requirements of Sections 7261.4(a)(2)(F) and (G) before making a decision to withdraw financial support for the client's training because no improvement has been made.

(2) Give the client the option of financing his/her own college program, if support is to be withdrawn.

(e) The Coordinating RCDs shall meet as needed with their RSs and the Deaf and Hard of Hearing Services Section for mutual caseload conferences and problem solving to ensure consistent application of policies and procedures in all caseloads.

(f) Case disputes which may arise between districts shall be referred to the Deaf and Hard of Hearing services Section Program Manager for review and recommendations.

NOTE: Authority Cited: Sections 19006 and 19016, Welfare and Institutions Code. Reference: Sections 19050, 19150 and 19200, Welfare and Institutions Code; 34 CFR 361.42 and 361.47(b).

### § 7261.2. Client/Student Responsibilities.

(a) Each client participating in college level training shall be subject to all requirements specified below to remain in the program. The client shall:

(1) Maintain a minimum of 12 credit hours/units per quarter/semester, whichever is appropriate to the college. Due to extenuating circumstances such as a family problem, the Coordinating RCD may approve taking fewer credit hours/units for that grading period in which the problem occurred.

(2) Maintain a cumulative grade point average of 2.0.

(3) Communicate with his/her coordinating RCD on a regular basis as outlined and agreed upon in the IWRP to discuss course progress and any major program changes.

(4) Provide his/her Coordinating RCD with grade and progress reports as they are received from the college.

(5) Promptly correct any deficiency, if placed on sponsorship probation.

NOTE: Authority cited: Sections 19006 and 19016, Welfare and Institutions Code. Reference: Sections 19150 and 19200, Welfare and Institutions Code; 34 CFR 361.42.

### § 7261.4. Counselor Responsibilities.

(a) For clients attending a program outside the geographic boundaries of his/her local district office which is served by a coordinating district, the Local/Sending RCD shall contact the Coordinating RCD to discuss the appropriateness of the program for the client and to work towards finalizing the IWRP and case transfer.

(1) The Local/Sending RCD's responsibilities shall include:

(A) Confirming acceptance and justifying potential for college level work.

(B) Updating the case file with documentation which demonstrates that the client meets the applicable criteria set forth in Section 7261.1 (a), (b), and (c) and also includes:

1. The results of the following required medical examinations:

a. General Medical Exam.

b. Otological Exam.

c. Ophthalmological or Optometric Exam.

d. Any other examination recommended by the Medical Consultant.

2. School transcripts, if available.

3. Achievement test results, if required to determine eligibility for Departmental sponsorship of the program.

4. Documentation on any grants, scholarships or similar benefits for which the client has applied.

C. Developing jointly and mutually agreeing upon the IWRP with the client and the Coordinating RCD to include:

1. Support services, as appropriate, such as notetakers, sign or oral interpreters and tutors.

2. Physical restoration services such as eye glasses or hearing aids.

3. Specific client responsibilities as specified in 7261.2.

(2) The Coordinating RCD for Gallaudet, NTID, or CSUN receiving the client shall provide general case supervision and maintain the case file for deaf clients attending the programs under his/her jurisdiction. The Coordinating RCD's responsibilities shall include:

(A) Coordinating the development and transfer of the case with the Local/Sending RCD.

(B) Obtaining current schedules of fees and the actual cost of books and supplies from the college and informing the client of the amount authorized for these expenses at the beginning of each school year.

1. Additional authorizations may be made for books/supplies, if requested by the client at least one week in advance of his/her need and if approved by the Counselor.

(C) Providing the client with those support services, books and supplies which are necessary to ensure the successful completion of the IWRP.

(D) Giving the client written notification at the beginning of each school year to inform him/her of the importance of maintaining periodic communication. Such communication shall be in accordance with Section 7261.2 (a)(3) and (4).

(E) Documenting the case record with a summary of all client/counselor communications specifically listing any problems the client may have and/or progress made with the course of study.

(F) Providing written notification to inform a client, who has failed to meet one or more of the requirements of Section 7261.2(a) (1) through (4), that immediate steps must be taken to correct the deficiency(ies). The notice shall be in the client's primary language and at the client's language level. The notice shall inform the client that he/she has been placed on sponsorship probation in accordance with Section 7261.1(d), and that Department sponsorship shall be withdrawn if he/she fails to correct the deficiency(ies) within the time frames specified below. Deficiencies shall be corrected within:

1. 30 days from the date of a written notification informing the client of his/her failure to communicate or to provide grade/progress reports.

2. The grading period following the grading period in which the client has failed to maintain:

a. A cumulative grade point average of 2.0.

b. The required number of credit hours/units specified in 7261.2(a)(1).

(G) Assisting the client who is academically deficient to set specific objectives and to pursue the resources that are available to aid the client in clearing the deficiency. The resources may include tutoring or attendance at either an adult education school or community college. The case file shall be documented to indicate which resources have been discussed and which resources the client plans to utilize.

(H) Providing the client attending an out-of-state college with a travel allowance consistent with the lowest public air carrier rate for round trip transportation and baggage shipment. The travel allowance shall only be provided for the transportation expenses necessary for the client/student to travel to the college in the fall and return in the spring, or one round trip per school year.

1. The client shall have the option of using his/her travel allowance for air fare or may use that allowance on any other mode of transportation he or she chooses.

(I) Scheduling annual counseling visits to each school.

(J) Informing the client who has completed his/her educational program that he/she has the following options. The client may request:

1. That his/her case be transferred to either:

a. The district where he/she hopes to find employment.

b. The local/sending district.

2. To remain in the Coordinating RCD's caseload.

(b) For deaf clients attending a college within the geographic boundaries of his/her local district office, or an out-of-state program not covered by a Coordinating RCD, the local/sending RCD shall provide the basic eligibility determination and planning of the IWRP and shall assume all those responsibilities specified in (a).

NOTE: Authority cited: Sections 19006 and 19016, Welfare and Institutions Code. Reference: Sections 19150 and 19200, Welfare and Institutions Code; 34 CFR Section 361.42.

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## Article 2. Orientation Center for the Blind (OCB)

### § 7262. Admissions Requirements.

(a) Blind clients shall be eligible to receive the training offered at the Orientation Center for the Blind (OCB) only if they have been accepted by the Admissions Committee, defined in subsection (d). Before deciding acceptance, the Admissions Committee shall make a careful review of the case file, the contents of which is specified in section 7262.5(a)(1), to determine if the client:

(1) Meets the referral criteria specified in subsection (b).

(2) Has a need for and is likely to benefit from the comprehensive, intensive services provided by the OCB preparatory to engaging in a vocational rehabilitation program. Services include:

(A) Assistance in adapting socially and psychologically to blindness and developing daily living and prevocational skills.

(B) Instruction, as appropriate, in a residential setting in the areas of mobility, braille, industrial arts, grooming, typing, shopping, abacus, sewing, physical conditioning and training in the use of technological aids and devices such as computers.

(b) A client shall meet at least one of the following conditions before a Counselor makes a referral to the Admissions Committee for review. The results of examinations performed by an ophthalmologist or an optometrist shall be submitted to demonstrate that the client:

(1) Is blind within the meaning set forth in Section 19153, Welfare and Institutions Code.

(2) Has a serve visual impairment which significantly limits the individual's ability to function visually.

(3) Has a prognosis which indicates that vision is diminishing, and legal blindness is anticipated.

(c) Referral priority shall be given to a recently blinded client providing that the client's general physical and psychological condition would permit full participation in the learning process and the client shows a strong desire to undertake the orientation program.

(1) “Recently blinded” means any individual who has become blind within a period of three years prior to his/her application for enrollment.

(d) The Admissions Committee consisting of the OCB Administrator, the OCB Rehabilitation Counselor, the OCB Medical Consultant and one faculty member shall:

(1) Consider each case using the criteria specified in subsections (a), (b) and

(c) within two weeks of referral unless the Committee has questions which cannot be answered by examining the case file and shall then either:

(A) Request additional information from the referring Counselor, or

(B) Arrange for the client to visit the Center at no expense to the client.

(2) Place a client selected for admission on a waiting list who shall then be accepted into the OCB in referral date order after such consideration as:

(A) Available space for applicants who will fully participate in the program on a residential basis.

(B) Available dormitory space for males and females.

(C) Immediate need for service to retain current employment.

(D) Medical needs of the client population currently residing at the Center.

(3) Prepare a written summary of the Committee's reasons if a client is denied admission and send such summary to the referring Counselor within one week of that decision. The referring Counselor shall provide the client with a copy of the Committee's summary upon the client's request.

NOTE: Authority cited: Sections 19006 and 19016, Welfare and Institutions Code. Reference: Sections 19153 and 19500-19506, Welfare and Institutions Code; 34 CFR Section 361.42.

### § 7262.1. Student Competency/Skills Deficiency Assessment.

(a) Upon enrollment, a written training schedule shall be jointly developed by the student and OCB staff, to include those services specified in section 7262(2)(A) and (B), which will both:

(1) Assess the functional limitations and capacities of the student.

(2) Meet the individual training needs of the student.

(b) The written training schedule shall include all of the following:

(1) The necessary areas of training specific to the student.

(2) The anticipated length of stay at the Center.

(3) A statement of understanding regarding the student's rights and responsibilities as specified in section 7262.7.

(c) The written training schedule shall be modified, as necessary, to accommodate the changing needs of each student as he/she progresses through the program. Any modifications to the training schedule shall be made in writing and shall be made only after conferring with the student.

(d) Written assessments of each student's progress shall be made by each instructor at least three times during the course of training with a final report at the conclusion of training.

NOTE: Authority cited: Sections 19006 and 19016, Welfare and Institutions Code. Reference: Sections 19500-19506, Welfare and Institutions Code; 34 CFR Section 361.42.

### § 7262.3. Needs Assessments and Planning---Health.

(a) Within the first 24 hours of a new student's arrival, the OCB Counselor shall:

(1) Provide the student with information regarding the transmission of infectious diseases including those which are blood borne, airborne, sexually transmitted and transmitted through the sharing of needles, with special emphasis on AIDS. The information shall be in braille, large print or on tape.

(2) Require the student to sign a statement acknowledging receipt of the information specified in (a)(1), or note the student's refusal, if the student refuses to sign.

(3) Provide the student with proper materials, such as gloves, to safely clean up spills and to ensure that hygienic conditions are maintained.

(b) Limited health related services shall be available to students and shall include those services offered by:

(1) The OCB Physician who shall:

(A) Review all medical reports prior to a student's enrollment and make recommendations in regard to further examination or treatment.

(B) Confirm that all students are continuing their required medication or medical treatment through a physician in the area.

(C) Consult with treating physicians regarding medication therapy and arrange for medication to be administered at the Center when feasible.

(D) Diagnose immediate and pending problems and prescribe interim treatment for minor conditions not requiring referral to another physician.

(E) Arrange student consultations with the Nutritionist in those cases where there is a need for a special diet or a metabolic problem exists.

(F) Be available to staff for advice in emergency situations.

(G) Work in conjunction with the nurse to record the following information in the student's medical record:

1. The administration of prescribed drugs.

2. Appointments with physicians.

3. Recommendations of students' physician(s).

4. Any treatment given or arranged for by the OCB.

(H) Review the health status of students to determine their capability of continuing with training and advise the OCB Counselor and/or other appropriate staff when a student's medical condition is such that there can be no further benefit from training at the Center.

(2) The Nurse who shall:

(A) Administer medication, within his/her realm of competency, as prescribed by licensed physicians.

(B) Make necessary medical appointments and arrangements for transportation in instances when the client has not reached the skill level or his/her health condition does not permit taking independent action in this area.

(C) Administer first aid when required.

(D) Manage emergency situations when on duty.

(3) The Nutritionist who shall:

(A) Discuss dietary problems with students.

(B) Develop special diets for those students who need them.

(C) Review menus to ensure they meet accepted nutrition standards.

NOTE: Authority cited: Sections 19006 and 19016, Welfare and Institutions Code. Reference: Sections 19500-19506, Welfare and Institutions Code; 34 CFR Section 361.42.

### § 7262.5. Counselor Responsibilities.

(a) The referring Counselor shall:

(1) Ensure that the case file is properly documented prior to submission to the Admissions Committee for review to include all of the following:

(A) A report by an ophthalmologist or optometrist, including a description of usable residual vision and, if appropriate, recommendations for low vision aids.

(B) A current medical or internist report including results of a recent blood test indicating creatinine level, BUN (blood urea nitrogen), and blood fasting sugar for all clients who are diabetic.

(C) A chest X-ray or a TB skin test report.

(D) Reports of any psychological tests completed.

(E) School transcripts, if available.

(F) Employment history, if any.

(G) A referral letter which specifies:

1. Particular areas in which the client needs training.

2. Why OCB training is appropriate.

3. Which services are anticipated to continue after OCB training.

4. A tentative vocational objective.

(H) An overview of the student's means of support.

(2) Ensure there has been follow-up on recommendations for low vision aids prior to enrollment.

(3) Inform the client, if accepted at the OCB, when a vacancy is anticipated.

(4) Ensure that the client has a watch or an alarm clock (Braille when appropriate) when he/she arrives at the OCB.

(5) Confer with the OCB Counselor to provide the client with additional equipment and supplies, if necessary.

(6) Maintain communication throughout the client's stay, at least every 30 days to check on the client's progress.

(7) Inform the client, within one week of the Committee's decision to deny admission, of his/her right to appeal the decision and the time frame for filing an appeal. A written summary of the reasons for the Committee's decision shall be provided, if requested by the client.

(b) The OCB Counselor shall:

(1) Ensure the provision of classes, seminars, and counseling sessions on the transmission of infectious diseases including those which are blood borne, airborne, sexually transmitted and transmitted through the sharing of needles, with special emphasis on AIDS. Instruction shall be given to new staff when hired, to students in accordance with section 7262.3(a) and at least every three months after admittance to the OCB, and to existing staff at least twice annually.

(2) Participate in staff conferences, attended by the counselors and teachers working with the clients. The conferences shall be scheduled:

(A) At least every two weeks, to discuss the overall progress of clients.

(B) Within two weeks of the time a client leaves the program, to secure a final report of the client's mastery of those skills which prepare him/her for vocational services.

(3) Compile the assessments submitted by the staff attending each conference and ensure that copies are:

(A) Given to the student, if requested.

(B) Incorporated in the case record.

(C) Sent to the referring Counselor.

(4) Notify the referring Counselor of the client's readiness to leave the Center.

(5) Notify students whose absences are sufficient to interfere substantially with progress at the Center that one of the following actions shall be taken depending on the circumstances in each individual case. The student may:

(A) Be placed on probation until attendance improves.

(B) Be placed on a leave of absence until such time as the problem causing the absenteeism has been corrected.

(C) Be dismissed from the program if the absenteeism is not corrected.

NOTE: Authority cited: Sections 19006 and 19016, Welfare and Institutions Code. Reference: Sections 19500-19506, Welfare and Institutions Code; 34 CFR Section 361.42.

### § 7262.7. Student Responsibilities.

(a) A student attending the OCB shall:

(1) Attend all scheduled classes unless too ill to do so, or unless an excused absence has been obtained by contacting the OCB Counselor and informing the teacher of the absence.

(2) Keep all medical appointments.

(3) Be solely responsible for both of the following:

(A) The sanitation, veterinary care, feeding, and upkeep of his/her guide dog.

1. A student shall assume financial responsibility for the board and care of his/her guide dog if absent from OCB for any reason.

(B) Any injury or damage which has its origin in the behavior or activity of his/her guide dog.

NOTE: Authority cited: Sections 19006 and 19016, Welfare and Institutions Code. Reference: Sections 19500-19506, Welfare and Institutions Code; 34 CFR Section 361.42.

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## Article 3. Loan Guarantee Programs

### § 7263. Definitions.

(a) For the purposes of this article, the following definitions shall apply:

(1) “Assistive Technology Loan Guarantee Program” means the program established pursuant to Sections 19850 through 19856, Welfare and Institutions Code.

(2) “Eligible lender” means a financial institution organized, chartered, or holding a license or authorization certificate under a law of this state or the United States to make loans or extend credit and subject to supervision by an official or agency of this state or the United States.

(3) “Eligible persons” means any of the following, provided that household income does not exceed the level prescribed for moderate-income families by the Department of Housing and Community Development pursuant to Section 50093 of the Health and Safety Code:

(A) Parents or legal guardians of children of any age with disabilities who are living in the home and who require a modified vehicle for mobility, as certified by a physician or the Department.

(B) Persons with disabilities who require a modified vehicle for mobility, as certified by a physician or the Department, and who have been found ineligible for vocational rehabilitation services from the Department or who are eligible for vocational rehabilitation services but have been placed on the Department’s order of selection waiting list pursuant to Section 7053. The person shall be employed and require a vehicle to maintain that employment.

(4) “Household income” means the net income received by the individuals specified in either (A), (B), or (C). Net income is the amount of income received after deductions for such items as income tax withholdings, state disability insurance, health insurance premiums, or retirement. In the case of an employer, net income is the amount of income received after deductions for all expenses and any items specified above.

(A) When the loan is for an item for the primary benefit of a child with a disability, the income received by or on behalf of the child as well as the income of any person living with the child who contributes to his/her support shall be considered household income.

(B) Except as specified in (C), when the loan is for an item for the primary benefit of an adult, the income received by that person and that person’s spouse, or other adult with whom that person voluntarily shares income or financial responsibility, shall be considered household income.

(C) When an employer is applying for the loan in accordance with Section 7264.4(a)(1)(C), the employer’s income shall be considered the household income.

(5) “Loan guarantee agreement” means the contractual agreement between the lender and the Department which specifies the terms of the loan guarantee and the conditions under which the Department may terminate a loan guarantee.

(6) “Program Administrator” means the Department’s designee who reviews and approves applications for the programs.

(7) “Transportation Loan Guarantee Program” means the program established pursuant to Sections 19460 through 19470, Welfare and Institutions Code.

NOTE: Authority cited: Sections 19006, 19016 and 19470, Welfare and Institutions Code. Reference: Sections 19460-19470, 19852 and 19853, Welfare and Institutions Code.

### § 7263.5. Application Process.

(a) Any person wishing to apply for either the Assistive Technology or Transportation Loan Guarantee programs may do so at any of the Department's District or Branch offices. Applicants shall supply the Department with all of the following information:

(1) The name, home address and telephone number of the individual whom the loan will benefit.

(2) Documentation of the current monthly household income and expenses.

(3) Proof of steady employment and/or other source of income for a minimum of one year prior to the date of the loan request.

(4) Either of the following:

(A) A physician's certification, including a description and prognosis of the individual's disabling condition, that:

1. In the case of applicants for the Transportation Loan Guarantee program, the child or employed adult requires a modified vehicle for mobility.

2. In the case of applicants for the Assistive Technology Loan Guarantee program, the individual with a disability requires the specified equipment, aid or device in order to engage in employment or to live more independently.

(B) A written description from a professional knowledgeable in the field, such as an independent living specialist, rehabilitation engineer, or a private rehabilitation counselor of both 1. and either 2. or 3.:

1. The individual's functional capacities.

2. The type of vehicle and the modifications that will be necessary to a vehicle for applicants for the Transportation Loan Guarantee program.

3. The specific type of equipment, aid or device that will be required based upon the individual's functional capacities in order for the individual to engage in employment or live more independently for applicants for the Assistive Technology Loan Guarantee program.

(5) The estimated or, if known, the actual amount of the loan request.

(6) For applicants for the Transportation Loan Guarantee program, an estimate of the number of miles per month that the applicant anticipates the vehicle will be driven.

(7) Any additional information specified by the Department that is necessary to determine eligibility for a loan guarantee pursuant to these regulations.

(b) Any cost incurred as a direct result of the application process shall be the responsibility of the applicant. However, those costs may be included as part of the loan request.

NOTE: Authority cited: Sections 19006, 19016 and 19470, Welfare and Institutions Code. Reference: Sections 19460 through 19470 and 19853, Welfare and Institutions Code.

### § 7264. Eligibility Requirements --- General.

(a) To be eligible for either loan guarantee program, an applicant shall meet all of the following conditions:

(1) Have household income, after deducting current expenses, at least equal to the amount of the monthly loan payment plus the costs of operating and maintaining the item(s), as determined in accordance with (b), for which the loan is requested. Current expenses shall include, but not be limited to, housing, utility and food costs, attendant care costs, and payments on outstanding obligations.

(2) Have a credit record that supports a determination by the Department, in consultation with the lender, that the applicant is unlikely to default on the loan.

(3) Have an approved loan request that is all of the following:

(A) From an eligible lender.

(B) Contingent upon a contractual agreement with the Department to guarantee the loan.

(C) Not in excess of:

1. For the Assistive Technology Loan Guarantee program, the actual total costs of the item(s) to be purchased plus any costs specified in Section 7263.5(b).

2. For the Transportation Loan Guarantee program, the lesser of either the amount specified in Section 19469, Welfare and Institutions Code or the amount necessary for the costs of all of the following:

a. The purchase of the vehicle and other special equipment required to safely transport or be driven by the child or the employed person with a disability.

b. Vehicle insurance at the minimum level required by State law.

c. Any costs specified in Section 7263.5(b).

(b) The costs of operating and maintaining the item(s) to be purchased shall be determined as follows:

(1) For equipment, including vehicle modifications, aids and devices, the amount specified by the entity from which the item(s) will be purchased.

(2) For vehicles, the Department shall multiply the estimated monthly mileage reported by the applicant by $.15 per mile for vehicles other than vans and $.20 per mile for vans. If vehicle insurance is not included in the approved loan request, the costs of such insurance at the minimum level required by State law shall be prorated monthly and added to this amount.

NOTE: Authority cited: Sections 19006, 19016 and 19470, Welfare and Institutions Code. Reference: Sections 19460 through 19470 and 19853, Welfare and Institutions Code.

### § 7264.2. Eligibility Requirements --- Transportation Loan Guarantee Program.

(a) In addition to the requirements specified in Section 7264, to be eligible for a loan guarantee under the Transportation Loan Guarantee Program the applicant shall meet the definition of an eligible person established in Section 7263(a)(4)(A) or (B).

(b) The Department’s certification pursuant to Section 7263(a)(4)(A) and (B) shall be based upon the information specified in Section 7263.5(a)(4)(B).

NOTE: Authority cited: Section 19470, Welfare and Institutions Code. Reference: Sections 19460 through 19470, Welfare and Institutions Code.

### § 7264.4. Eligibility Requirements --- Assistive Technology Loan Guarantee Program.

(a) In addition to the requirements specified in Section 7264, to be eligible for an approved loan under the Assistive Technology Loan Guarantee program all of the following conditions shall exist:

(1) The applicant shall be one of the following:

(A) An adult with a disability.

(B) The parent of a child with a disability.

(C) A private employer of an employee with a disability.

(2) The item(s) to be purchased with the loan shall be both:

(A) For the benefit of a person with a disability who requires the use of the item(s) to engage in employment or to live more independently as certified by a physician or by the Department. The Department's certification shall be based upon the documentation specified in Section 7263.5(a)(4)(B).

(B) Unobtainable for the person with a disability from a free or less costly source. In order to make this determination, the Department may require such actions of the applicant or the person with a disability as the:

1. Submission of proof of the denial of purchase of the item(s) from sources such as Medi-Cal, Medicare or private health insurance when the person with a disability is currently eligible under such programs and the item(s) to be purchased appear to be covered benefits.

2. Application for benefits/services under programs such as Vocational Rehabilitation, Independent Living Services and Medi-Cal when the person with a disability appears eligible for such programs and the item(s) to be purchased appear to be services/benefits available from the programs.

3. Purchase of the item(s) from a specified source when the Department has knowledge that the cost of the item(s) is less from the specified source than the amount of the loan request.

NOTE: Authority cited: Sections 19006, 19016 and 19470, Welfare and Institutions Code. Reference: Section 19853, Welfare and Institutions Code.

### § 7264.6. Eligibility Determination Process.

(a) Within five working days of receipt of the information specified in Section 7263.5, the District or Branch office shall initiate an eligibility determination to ensure that the non-financial eligibility requirements specified in the following sections are met:

(1) Section 7263(a)(4)(A) or (B) for applicants for the Transportation Loan Guarantee Program.

(A) When needed to determine whether the applicant is an eligible person as defined in Section 7263(a)(4)(B), the Department shall:

1. Conduct an eligibility determination for vocational rehabilitation services pursuant to Section 7060 et seq.; and

2. For applicants who are determined to be eligible for vocational rehabilitation services, determine the applicant’s priority category under order of selection pursuant to Section 7050 and determine whether the applicant will be placed on the order of selection waiting list pursuant to Section 7053.

(B) When it is necessary for the Department to make the determination(s) specified in (a)(1)(A), the applicant’s loan guarantee request shall be held pending the outcome of such determination(s).

(2) Section 7264.4 for applicants for the Assistive Technology Loan Guarantee Program. If proof of denial of coverage must be submitted in accordance with Section 7264.4(a)(2)(B) 1. or 2., the loan guarantee request shall be held pending the completion of the action(s) required by those regulations.

(b) Upon completion of the non-financial eligibility determination, the District or Branch office shall take either of the following actions, as appropriate:

(1) Refer applicants who are eligible based upon the non-financial eligibility determination to the Program Administrator. The referral shall include all of the information collected during the application and non-financial eligibility determination process.

(2) Deny the loan guarantee request when the applicant does not meet the non-financial eligibility criteria or refuses to cooperate with any phase of the non-financial eligibility determination process.

(c) Within five working days of receipt of a referral specified in (b)(1), the Program Administrator shall initiate an eligibility determination to ensure that the following financial eligibility criteria are met:

(1) There are sufficient funds in the appropriate account to cover the loan guarantee.

(2) Based upon the applicant’s household income and current expenses, it appears that the applicant has sufficient income to make the monthly loan repayment.

(3) Based upon the applicant’s employment or income history over the previous year, it appears that the applicant will not default on the loan.

(4) The household income of an applicant for the Transportation Loan Guarantee program is within the limits specified in Section 19461, Welfare and Institutions Code.

(d) Upon completion of the financial eligibility determination, the Program Administrator shall take either of the following actions, as appropriate:

(1) Contact a lender who will mail its standard loan application to the applicant when the applicant is eligible based upon the financial eligibility determination.

(2) Deny the loan guarantee request when any of the following conditions exist:

(A) There are insufficient funds in the account to cover the amount of the loan request.

(B) The applicant does not meet the financial eligibility criteria.

(C) The applicant refuses to cooperate with any phase of the financial eligibility determination.

NOTE: Authority cited: Sections 19006, 19016 and 19470, Welfare and Institutions Code. Reference: Sections 19460-19470 and 19853, Welfare and Institutions Code.

### § 7264.8. Final Eligibility Determination and Loan Guarantee Process.

(a) The applicant shall be responsible for providing the lender with the information necessary for the lender to determine the applicant's eligibility for a loan.

(b) Upon notification from the lender of its decision regarding the applicant's loan application, the Program Administer shall take either of the following actions as appropriate:

(1) When the conditions specified in Section 7264(a)(2) and (3) exist, the Program Administrator shall both:

(A) In consultation with the lender, determine an affordable monthly payment and interest rate.

(B) Execute a loan guarantee agreement with the lender. At a minimum, the agreement shall include the amount of the loan, the agreed upon interest rate and acknowledgement that the lender will comply with the provisions specified in (d) and Section 7266.

(2) Notify the applicant in writing that his/her loan guarantee request has been denied.

(c) Individuals for whom the Department has guaranteed a loan shall make their monthly payments directly to the lender.

(d) Lenders with whom the Department has executed a loan agreement shall notify the Program Administrator at least quarterly of the amount of the unpaid balance on the guaranteed loan. In addition, the lender shall notify the Program Administrator at any time when the individual does not make his/her monthly payment.

NOTE: Authority cited: Sections 19006, 19016 and 19470, Welfare and Institutions Code. Reference: Sections 19460 through 19470 and 19853, Welfare and Institutions Code.

### § 7265. Notification and Appeal Procedures.

(a) All notifications made to the applicant pursuant to this article shall be in writing and shall include all of the following:

(1) The specific reasons for the determination of ineligibility.

(2) The legal or regulation citation supporting the determination.

(3) An explanation of the applicant's right to an administrative review and fair hearing in accordance with Sections 7350 through 7361, including how to request such an action and the time frames within which the request must be made. For the purposes of Section 7353, the Administrative Review Officer shall be the Deputy Director of the Independent Living Division.

NOTE: Authority cited: Sections 19006, 19016 and 19470, Welfare and Institutions Code. Reference: Sections 19460 through 19470 and 19853, Welfare and Institutions Code.

### § 7266. Loan Defaults and Terminations.

(a) The lender shall make every reasonable effort allowable under the law to recover all property, or the value thereof, for which a loan has been guaranteed under the loan guarantee programs and for which the borrower fails to meet the repayment schedule of the loan.

(b) The liability of the Department for defaulted loans shall be limited to the lesser of either:

(1) The amount of the loan guarantee.

(2) The outstanding balance of the loan plus the costs incurred by the lender in recovering and selling the property. Any amount recovered shall be deducted when calculating the outstanding balance.

(c) The Department shall terminate a loan guarantee agreement when either of the following occur:

(1) The loan has been repaid.

(2) The lender fails to meet the conditions of the loan guarantee agreement.

NOTE: Authority cited: Sections 19006, 19016 and 19470, Welfare and Institutions Code. Reference: Sections 19460 through 19470 and 19853, Welfare and Institutions Code.

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## Article 4. Nonvocational Services for the Blind

### § 7270. Application Process and Other General Requirements.

(a) Any individual wishing to apply for the nonvocational services for the blind specified in this article may do so orally or in writing at the Department's district or branch office closest to his/her place of residence. The individual shall be required to supply only such limited documentation as necessary for the Counselor to establish eligibility and the amount and type of services to be provided.

(b) The Counselor shall:

(1) Fully explain the provisions of this article to individuals requesting nonvocational services for the blind.

(2) Promptly determine an individual's eligibility and the amount and type of services to be provided, but in no instance later than 45 days from the receipt of his/her application in the district or branch office.

(3) Promptly notify the individual in a communication medium, such as large print, braille or recording, appropriate to his/her needs of any decision to approve, deny or terminate services or change the amount and type of services provided under this article. Notices to deny, terminate or reduce services shall include all of the following:

(A) The reason the action is being taken.

(B) The legal or regulatory citation supporting the action.

(C) An explanation of the individual's appeal rights.

(c) In addition to the provisions of this article, the following regulations shall apply to nonvocational services for the blind:

(1) Sections 7120 and 7123 through 7125 regarding case records. The content of the case record shall include, but not be limited to, documentation supporting both of the following:

(A) That the provisions of this article have been fully explained to the individual.

(B) Decisions regarding eligibility for, and/or the amount and type of, services to be received. This shall include copies of the notices sent in accordance with (b).

(2) Sections 7140 through 7143.5 regarding confidentiality, to the extent that those sections apply to the limited information that this article requires to be collected.

(3) Sections 7350 through 7361 regarding administrative review and fair hearing procedures.

NOTE: Authority cited: Sections 19006 and 19016, Welfare and Institutions Code. Reference: Sections 19525 and 19526, Welfare and Institutions Code.

### § 7271. Eligibility Requirements---General.

(a) In order to receive services pursuant to this article, an individual shall meet both of the following conditions:

(1) Be ineligible for, or not interested in receiving, services under the Vocational Rehabilitation program.

(2) Qualify as a blind person under the definition at Section 19153, Welfare and Institutions Code.

NOTE: Authority cited: Sections 19006 and 19016, Welfare and Institutions Code. Reference: Sections 19525 and 19526, Welfare and Institutions Code.

### § 7272. Personal Goal Services.

(a) An individual meeting the conditions specified in Section 7270 may receive services from a Counselor-teacher providing the Counselor-teacher has determined that all of the following conditions exist:

(1) The individual is both of the following:

(A) At least 18 years of age.

(B) A California resident which shall be established by physical presence with no present intention of leaving California. However, if the individual maintains a home for himself/herself in another state, he/she is not a California resident.

(2) The individual has a demonstrated need for the specialized services that can be performed by the Counselor-teacher.

(3) There is a reasonable expectation that the individual has the ability to substantially benefit from the specialized services within a limited period of time.

(b) Personal goal services shall:

(1) Be provided directly by the Counselor-teacher.

(2) Include, but not be limited to, those services specified in Section 19525, Welfare and Institutions Code.

(3) Be provided in the individual's home or a community-based setting.

NOTE: Authority cited: Sections 19006 and 19016, Welfare and Institutions Code. Reference: Section 19525, Welfare and Institutions Code.

### § 7273. Reader Services.

(a) The Department shall purchase reader services for an individual meeting the conditions specified in Section 7271 providing all of the following requirements are met:

(1) The individual:

(A) Possesses a high school diploma or its equivalent.

(B) Has been accepted for enrollment and is working toward a degree or diploma of graduation in any college or university within California.

(C) Agrees to use the reader services exclusively for his/her academic studies.

(2) There are sufficient funds to purchase the reader services.

(b) The number of hours of service authorized by the Counselor shall be based upon each individual's needs, as limited by (c). Factors to be considered in determining the number of hours of service required shall include but not be limited to all of the following:

(1) The amount of required reading in the courses for which the individual is currently enrolled.

(2) The availability of the required reading material in other communication media that are useable by the individual, such as large print, braille or recordings.

(3) The amount, duration and scope of reader services being received by the individual through another source. Nothing in this section shall be construed to require that the individual apply for and accept services from another source.

(c) Hours in excess of an average of two hours per unit per week shall be authorized only with the prior approval of the Rehabilitation Supervisor. In addition, the prior approval of the District Administrator shall be required in order to authorize hours in excess of 1,100 hours per year for undergraduate students and 1,300 hours per year for graduate students.

NOTE: Authority cited: Sections 19006 and 19016, Welfare and Institutions Code. Reference: Section 19526, Welfare and Institutions Code.

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# Chapter 8. Standards for Facilities and Providers of Service

## Article 1. General Standards

### § 7290. General.

(a) All facilities and providers of services shall meet the minimum standards specified in this chapter prior to providing services to clients.

(b) For the purposes of this chapter, the following definitions shall apply:

(1) “Certified” means a facility or provider has been approved by the Department to provide specific services to clients.

(2) “Facility” means an organizational entity providing a program of integrated and coordinated services. The services are directed toward the medical, physical, emotional, mental, social and vocational restoration and adjustment of disabled children and adults. The services consist of evaluation, treatment, education, training and placement.

(3) “Provider of services” means an individual, company, corporation or other entity, other than a facility, which provides those goods and / or services listed in Section 7149.

NOTE: Authority cited: Sections 19006 and 19016, Welfare and Institutions Code. Reference: Section 19150, Welfare and Institutions Code; 34 CFR section 361.45.

### § 7291. Rehabilitation Facilities.

Rehabilitation facilities shall meet the standards specified in Chapter 11, commencing with Section 7330.

NOTE: Authority cited: Sections 19006 and 19016, Welfare and Institutions Code. Reference: Section 19150, Welfare and Institutions Code; 34 CFR section 361.45.

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## Article 2. Health Care Providers

### § 7295. Providers of Health Care Services.

(a) All hospitals shall meet both of the following conditions:

(1) Be certified, or meet the requirements for certification, under Title XVIII of the Federal Social Security Act.

(2) Be licensed pursuant to the provisions of Chapter 2 of Division 2 of the Health and Safety Code (commencing with Section 1250).

(b) Providers of all other health care services shall meet the conditions specified in both (b)(1) and either (b)(2) or (b)(3).

(1) Be a Medi-Cal program provider or a licensed practitioner who meets the standards for participation in the Medi-Cal program specified in Title 22, CCR, Division 3, Chapter 3, Article 3 (commencing with Section 51200).

(2) Be listed on the Department's Medical Panel pursuant to Section 7295.5.

(3) Be a provider of the applicant's/client's choice, if the provider agrees to both of the following:

(A) To complete any reports requested by the District Office within the time frames specified by the District Office.

(B) To accept the Department's and/or similar benefit sources' fees as payment in full for the services rendered.

NOTE: Authority cited: Sections 19006 and 19016, Welfare and Institutions Code. Reference: Section 19150, Welfare and Institutions Code; 34 CFR section 361.45.

### § 7295.5. Medical Panel.

(a) Each District Office of the Department shall establish and maintain a list of all health care providers, other than hospitals, utilized in the service area of the district and its branch offices.

(b) Applicants in need of examinations and clients whose IWRP requires the receipt of health care services, other than hospitalization, shall be referred only to Medical Panel members unless the applicant or client specifically requests a provider of his/her choice and the conditions specified in Section 7295(b)(1) and (3) are met.

(c) Each District Office shall maintain an organized system of rotating the service utilization of individual Medical Panel members within each provider group. The rotation system may incorporate the client/provider geographical proximity and other modifications.

(d) To obtain membership on the Medical Panel a provider shall provide the District Office with all of the following:

(1) Written evidence to document the possession of the minimum qualifications specified in this chapter, including proof of enrollment as a Medi-Cal provider or a signed statement certifying that the provider has not been denied, or disqualified from, or currently is not suspended from, participation in the Medi-Cal program.

(2) A brief curriculum vitae. In lieu of a curriculum vitae, the District Office may verify the professional's status, board verification, professional competence and other necessary information. Such information shall be recorded and maintained as a curriculum vitae.

(3) Oral or written agreement to comply with all of the following:

(A) Directly render services to applicants and clients.

(B) Accept the Department's and/or similar benefit sources' fees as full and complete remuneration.

(C) Render services and submit reports that meet the needs of the District Office.

(e) The District Office shall:

(1) Review all requests for Medical Panel membership to determine whether both of the following conditions exist:

(A) The provider's qualifications meet the minimum standards set forth in this chapter.

(B) The provider's background and experience will meet the District's needs.

(2) For providers submitting the signed statement pursuant to (d)(1), verify that the provider has not been denied, or disqualified from, or currently is not suspended from, participation in the Medi-Cal program.

(f) The District Office shall inform each provider in writing of its decision to approve or deny membership on the Medical Panel. The decision and written notification shall be completed within 60 days of receipt of the request for Panel membership. If the request is:

(1) Approved, the District Office shall furnish the new member with the information regarding the fees and method of authorization and payment of services.

(2) Denied, the District Office shall inform the provider in writing of the reason for the denial.

(g) The District Office's Medical Consultant shall review the medical reports and practices of the members of the Medical Panel for quality control. When it is determined that a provider's practices and/or medical reports are insufficient to meet the District's needs, the provider shall be contacted by the District Office's Medical Consultant to resolve the insufficiencies. If the practices and/or reports continue to be insufficient, the provider shall be removed from the Medical Panel. The District Office shall notify the provider in writing of the effective date of the removal, which shall be the date the notice is mailed, and of the reasons for the removal. The information shall be included on a single notice. A copy of the notice shall be sent to the Department's Chief Medical Consultant.

(h) A provider may withdraw from the Medical Panel at anytime.

(i) If a provider wishes to become a member of the Medical Panel in several Districts, the District Offices shall coordinate information of approval, denial or withdrawal. However each District shall maintain its independence to make decisions concerning the provider's membership on its Medical Panel.

NOTE: Authority cited: Sections 19006 and 19016, Welfare and Institutions Code. Reference: Section 19150, Welfare and Institutions Code; 34 CFR 361.45.

### § 7295.7. Providers of Psychological Services.

(a) When there are no licensed psychiatrists or psychologists available or willing to provide service, the Department shall certify professionals, as allowed within the scope of their licensure, to provide psychological services. The professional shall:

(1) Be licensed to practice in the State of California.

(2) Submit a curriculum vitae to the Chief Medical Consultant for review and approval.

(3) Be willing to accept the Department's rates as payment in full for the service rendered.

NOTE: Authority cited: Sections 19006 and 19016, Welfare and Institutions Code. Reference: Section 19150, Welfare and Institutions Code; 34 CFR Section 361.45.

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## Article 3. Personal Services Providers

### § 7300. Interpreters.

(a) Interpreters for the deaf shall meet both of the following conditions:

(1) Be interviewed and evaluated in accordance with (d) by a Rehabilitation Supervisor and a certified American Sign Language proficient Counselor for the deaf.

(2) Possess one of the following:

(A) A valid certificate from the Registry of Interpreters for the Deaf in at least one of the following categories:

1. Comprehensive.

2. Oral Interpreter.

3. Reverse.

4. Interpreting.

5. Transliterating.

6. Spoken to visible.

7. Visible to spoken.

(B) A valid certificate from the California Association of the Deaf at the Generalist, Advanced or Master Level.

(C) A certificate from the Department issued in accordance with Section 7300.2.

(b) Interpreters for nonEnglish speaking persons shall be:

(1) Interviewed and evaluated in accordance with (d) by a Rehabilitation Supervisor and a Counselor who is certified bilingual in the appropriate language. If there is no Counselor certified bilingual in the appropriate language, a member of the community who is known by the Department to be bilingual in such language shall be utilized.

(2) Fluent in both the spoken and written nonEnglish and English languages.

(c) All interpreters shall:

(1) Submit a written resume and a statement of qualifications.

(2) Have paid or unpaid experience in interpreting or translating. An inexperienced interpreter may be used if he/she has demonstrated the ability to meet the client's communication needs.

(d) The interviews conducted pursuant to this Section shall verify the interpreter's fluency by evaluating his/her ability to:

(1) For the purposes of (a)(1), interpret at a level that will meet the service needs of the client.

(2) For the purposes of (b)(1), read, write, speak and interpret the nonEnglish language.

NOTE: Authority cited: Sections 19006 and 19016, Welfare and Institutions Code. Reference: Section 19150, Welfare and Institutions Code; 34 CFR section 361.45.

### § 7300.2 Interpreters---Certification by the Department.

(a) For purposes of this section, the following definitions shall apply:

(1) “Expressive interpreting skills” means the skills used when an interpreter listens to the spoken word and interprets it in the appropriate sign language.

(2) “Quality Assurance Appraisal” means the evaluation conducted by the Department's training and evaluation team to ensure minimal standards of competency and professionalism of individuals who interpret for hearing impaired clients and who have not been certified by either the Registry of Interpreters for the Deaf or by the California Association of the Deaf.

(3) “Reverse interpreting skills” means the skills used when an interpreter watches a person's signs and translates them into spoken words.

(b) The Department shall conduct a Quality Assurance Appraisal for individuals wishing to provide interpreter services for vocational rehabilitation clients in areas where there are an insufficient number of interpreters certified by either the Registry of Interpreters for the Deaf or the California Association of the Deaf to serve the Department's clients.

(c) An individual shall be certified as:

(1) Skill Level 1 if he/she demonstrates the ability to communicate on a one-to-one basis with a deaf person and possesses limited reverse skills. An individual certified at this level shall be used only to interpret at the following:

(A) General medical, audiological, otological and opthalmological examinations/evaluations.

(B) Unskilled training and educational courses.

(C) The completion of forms.

(2) Skills Level 2 if he/she demonstrates the ability to interprete and/or translate on a one-on-one or small group situation at a nontechnical level and possesses limited reverse and expressive interpreting skills. An individual certified at this level shall be used only to interpret at the following:

(A) The functions specified in (c)(1)(A) through (c)(1)(C).

(B) Specialty medical examinations.

(C) Semi-skilled training and educational courses.

(D) Vocational evaluations.

(3) Skill Level 3 if he/she demonstrates the ability to interpret and/or translate at a technical level and possesses a high level of reverse and expressive interpreting skills. An individual certified at this level may be used to interpret without limitations.

NOTE: Authority cited: Sections 19006 and 19016, Welfare and Institutions Code. Reference: Section 19150, Welfare and Institutions Code; 34 CFR section 361.45.

### § 7301. Readers, Notetakers, Drivers and Attendants.

(a) Readers, notetakers, drivers and attendants shall be interviewed and approved by the client as adequately meeting his/her needs.

(b) Drivers shall possess all of the following:

(1) A valid California Driver's License.

(2) An automobile or other appropriate motor vehicle.

(3) The minimum insurance coverage for the vehicle required by State law plus $5000 medical coverage.

NOTE: Authority cited: Sections 19006 and 19016, Welfare and Institutions Code. Reference: Section 19150, Welfare and Institutions Code; 34 CFR section 361.45.

### § 7301.5. Tutors.

(a) Academic tutors used to assist clients with educational courses shall possess a Bachelors Degree in the subject area being tutored. Absent anyone available with those qualifications, the tutor, at a minimum must have verification of successful completion of the educational course being tutored.

(b) Vocational skills tutors used to assist clients in learning a specific vocational skill shall have successfully completed an apprenticeship program in the vocational skill, if one exists. If an apprenticeship program does not exist, or absent anyone with those qualifications, the tutor, at a minimum, must have prior experience tutoring in the vocational skill.

(c) All tutors, including tutors used to assist clients in learning a skill essential to achieving independence or suitable employment, shall:

(1) Be interviewed and approved by a Rehabilitation Supervisor.

(2) Exhibit general knowledge and interest in the subject area they are offering.

(3) Demonstrate the ability to meet the level of service that will be needed by the client.

NOTE: Authority cited: Sections 19006 and 19016, Welfare and Institutions Code. Reference: Section 19150, Welfare and Institutions Code; 34 CFR Section 361.45.

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## Article 4. Other Providers of Service

### § 7302. Standards for Mobility Evaluation Programs.

(a) In order to obtain Departmental approval as a mobility evaluation program, a provider shall comply with the provisions of this section.

(b) The provider shall be a separate and independent entity from adaptive driving equipment vendors and vehicle modification vendors.

(c) The provider shall have developed and shall maintain and follow:

(1) A written plan, which shall be made available to the clients, for providing the services in section 7164.4(c) and (d), including but not limited to:

(A) The specific procedures that will be followed in completing the evaluation.

(B) The type of equipment and vehicles that are available for use in the evaluations.

(C) An identification of the staff responsible for observation and documentation.

(2) A written policy which is provided to all staff regarding the protection of client confidentiality, including a statement that reports prepared for the Department shall be released only to Department staff.

(d) All vehicle and equipment operators shall be appropriately licensed by the California Department of Motor Vehicles according to the class of vehicle or type of equipment operated.

(e) All provider owned or operated vehicles shall be properly licensed, maintained and insured. To qualify as an evaluation vehicle, the instructor at a minimum must be able to operate the brakes and shut off the engine from the instructor's seat with the seat belt and shoulder harnesses in place.

(f) The provider shall maintain liability insurance of at least $1,000,000 per incident, with the State of California named as an additional insured.

(g) A licensed physician shall be available for consultation on questions of a medical nature.

(h) Each program shall have a driver evaluator to perform the mobility evaluation specified in section 7164.4(c) through (f). The driver evaluator shall possess the following qualifications:

(1) Be either:

(A) A registered occupational or licensed physical therapist with a minimum of two years' experience working with persons with physical disabilities.

(B) A person who meets the qualifications for rehabilitation engineering service provider specified in Section 7302.5.

(2) Have the experience or familiarity with the following areas necessary to perform a mobility evaluation.

(A) Driving systems and adaptive equipment.

(B) Equipment vendors.

(C) Assessment of a client's functioning in relation to driving.

(i) In addition to the driver evaluator, each program shall have a driver instructor to assist in the moving vehicle assessment specified in section 7164.4(c)(3)(B). The driver instructor shall possess the following qualifications:

(1) A valid California driver's license with documentation of no moving violations or felonies for three years.

(2) A high school diploma or its equivalent and three years personal driving experience, or a valid traffic and safety credential from the California Department of Education.

(3) Six months experience in behind-the-wheel driver training.

(4) The knowledge of disabilities necessary to assist in the moving vehicle assessment.

(j) In addition to the qualifications specified in (h) and (i), the driver evaluator and driver instructor shall have a combined minimum of two years of in-car driver evaluation/instruction experience.

(k) Prior to the Department granting approval of the mobility evaluation program, the provider shall:

(1) Provide documentation to the Department that the requirements contained in this section are met. Documentation shall include such items as copies of licenses, insurance policies and the written plans and policies required by this section.

(2) Agree to allow representatives of the Department access to all mobility evaluation program records, staff and premises, during regular business hours, necessary in order to verify that the provider is complying with the requirements of this section.

(3) Agree to notify the Department by telephone within one working day of any changes in the documentation upon which the Department's approval of the mobility evaluation program was based.

(l) Within 60 days of receipt of a mobility evaluation program's application for certification, the Department shall take one of the following actions, as appropriate:

(1) Inform the program that the application has been accepted and advise the program of the Department's decision to approve or deny certification.

(2) Inform the program that the application is deficient and identify the specific information that is required for the Department to make a decision to approve or deny certification. Upon the receipt of the required information, the Department shall have an additional 60 days in which to approve or deny certification.

(m) Upon completion of a mobility evaluation, the provider shall submit the following to the client's Counselor:

(1) For driver evaluations, a comprehensive written report containing all of the following:

(A) A summary of the clinical assessment.

(B) A statement of the client's potential to be a safe and independent driver.

(C) The type of vehicle which is necessary.

(D) The vehicle modifications and other adaptive equipment required, along with vendor sources and special instructions or problems.

(E) Recommendations regarding the type of follow-up services, if any, that are required, along with the type of provider best suited to perform such services.

(F) An estimation of the amount of driver's training needed, including the specific areas of training requiring emphasis and a statement of where the training is available.

(2) For passenger evaluations, a comprehensive written report including the information specified in (1)(A), (C), (D) and (E).

(n) Conformance to the requirements of this section shall not supersede the provider's responsibility to comply with other applicable state and federal laws and regulations, including but not limited to the Fair Labor Standards Act (29 USC, commencing with section 201), the accessibility standards set forth in title 24, California Code of Regulations, part 2, and the Federal Rehabilitation Act, 29 USC section 794.

NOTE: Authority cited: Sections 19006 and 19016, Welfare and Institutions Code. Reference: Section 19150, Welfare and Institutions Code; and 34 CFR Sections 361.42 and 361.45.

### § 7302.5. Rehabilitation Engineering Service Providers.

(a) The minimum qualifications for an individual to perform rehabilitation engineering services for clients of the Department shall be limited to any of the following:

(1) Possession of a bachelors degree from an accredited school of engineering and two years of experience in the provision of rehabilitation engineering services.

(2) Possession of a masters degree from an accredited school of engineering or a bachelors degree and a certificate of specialization in the study of rehabilitation engineering from such a school.

(3) Employment as a licensed professional in the field of rehabilitation, such as speech pathology or physical or occupational therapy, and two years of experience in the provision of rehabilitation engineering services.

NOTE: Authority cited: Sections 19006 and 19016, Welfare and Institutions Code. Reference: Section 19150, Welfare and Institutions Code; and 34 CFR Section 361.45.

### § 7303. Private Educational Institutions and Training Schools.

(a) Private educational institutions and business, technical and trade schools shall be approved by the California Council for Private Post Secondary and Vocational Education.

(b) Correspondence schools shall:

(1) Be approved by either of the following:

(A) The National Home Study Council.

(B) The District Administrator as essential to an IWRP.

(2) Agree to accept payment only for those lessons completed.

(c) Prior to becoming a provider of service, each private educational institution or school specified in (a) shall:

(1) Provide the Department with all of the following:

(A) Copies of approval documents from the California Council for Private Post Secondary and Vocational Education.

(B) All school literature including enrollment agreements and prices, tool lists and other relevant material.

(C) Sufficient additional information for the Department to complete School Survey, DR Form 720, dated September, 1991 which is incorporated by reference herein.

(2) Agree to complete and submit each month along with its billing, a Report of Progress in Training, Form DR 226, dated 8/82, which is incorporated by reference herein. A current report card may be substituted for the Report of Progress in Training.

NOTE: Authority cited; Sections 19006 and 19016, Welfare and Institutions Code. Reference: Section 19150, Welfare and Institutions Code; 34 CFR section 361.45.

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# Chapter 9. Authorization of Services

### § 7310. General Provisions.

(a) This Subchapter sets forth the policies and standards for authorizing the purchase of vocational rehabilitation goods and services.

(b) Definitions:

(1) “Authorization" is defined as an obligating document which authorizes the delivery of specified goods or rendering of certain services by a vendor (provider) at a fixed or ascertainable fee within a stated period of time.

(c) Authorizations of goods and services shall be accomplished by the use of the following obligating documents:

(1) Department forms designated for purchase of goods and services, or

(2) State of California forms designated for the purchase of goods and services.

NOTE: Authority cited: Sections 19006 and 19016, Welfare and Institutions Code. Reference: 34 CFR, Section 361.50.

### § 7311. Requirements.

(a) A written authorization shall be made prior to the purchase of goods and services as documented in the client's case record.

(b) Designated case carriers may, with supervisory approval, be permitted to make emergency verbal authorizations. Such emergency verbal authorizations will be confirmed with a written authorization to the provider of the goods or services.

(c) The Department is not required to provide payment for goods and services that are not authorized by a Departmental employee.

NOTE: Authority cited: Sections 19006 and 19016, Welfare and Institutions Code. Reference: 45 CFR, Section 1361.42.

### § 7312. Compliance.

(a) Authorizations issued for the purchase of goods and services shall be prepared in accordance with the following guidelines:

(1) Department policies

(2) State Board of Control Regulations

(3) State Administrative Manual Rules

(4) Other related State agency policies and regulations

NOTE: Authority cited: Sections 19006 and 19016, Welfare and Institutions Code. Reference: 34 CFR Section 361.50.

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# Chapter 10. Rates of Payment

### § 7320. General Provisions.

(a) The purpose of this Subchapter is to promulgate the policies and standards that govern the rates of payment authorized by the Department for the purchase of goods and services.

(b) For the purpose of this Subchapter, the following definitions shall apply:

(1) “Goods and Services” means services in compliance with the rehabilitation service provisions of Sections 7150 through 7179 of this Chapter.

(2) “Vendor” means an individual, company, corporation, or other entity who sells goods and/or provides those services required for the rehabilitation process.

(3) “Personal Services” means supportive services, such as, readers for the blind, interpreters, attendants, drivers, Notetakers, and others providing a personal service.

(4) “Competitive Integrated Employment” means employment as set forth in Section 7006.3

Note: Authority cited: Sections 19006 and 19016, Welfare and Institutions Code. Reference: 34 CFR Section 361.5.

### § 7321. Requirements.

(a) The Department shall establish, maintain in writing, and make available, maximum rates of payment.

(b) Maximum rates of payment for authorized goods and services are regulated by any one or more of the following:

(1) Those rates established by the Department for goods and services.

(2) The California Relative Value Studies published by the California Medical Association governing maximum unit values for medical procedures.

(3) The California State Schedule of Maximum Allowances published by the Department of Health Care Services regulating maximum amounts payable for medical and related services.

(4) The California State Administrative Manual guidelines.

(5) Those rates paid by other agencies or charged the general public for comparable goods and services.

NOTE: Authority cited: Sections 19006 and 19016, Welfare and Institutions Code. Reference: 34 CFR Section 361.50.

### § 7322. Additional Charges.

(a) Vendors providing goods and services to clients under authorization from the Department shall accept the payment made by the Department as the full reimbursement. Vendors shall not make any additional charges or accept payment from the individual with a disability or any other source for such service.

NOTE:Authority cited: Sections 19006 and 19016, Welfare and Institutions Code. Reference: 34 CFR Section 361.50.

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# Chapter 11. Rehabilitation Facilities and Community Resources for Individuals with Disabilities

### § 7330. General.

(a) These regulations establish the Department's policy for:

(1) Granting funds for the establishment of rehabilitation facilities.

(2) Granting funds for innovation and expansion of vocational rehabilitation services.

(3) Purchasing services from rehabilitation facilities and other community resources for individuals with disabilities.

(4) Auditing of grants and contracts awarded to rehabilitation facilities.

(b) Definitions.

(1) “Accredited” means a facility has approval by the Commission on Accreditation for Rehabilitation Facilities (CARF) to provide disabled individuals with restorative and adjustive or employment services. Each facility shall have integrated and coordinated individualized programs placing primary emphasis on one of the following services:

(A) Physical restoration, or

(B) Personal and social development, or

(C) Vocational development, or

(D) Speech pathology, audiology, or

(2) “Certification” means a facility has approval by the Department to provide disabled individuals with specific adjustive or employment services. Each facility shall have integrated and coordinated individualized programs placing primary emphasis on one or more of the following services:

(A) Personal and social development, or

(B) Vocational development, or

(C) Independent living.

(c) The definitions contained in 45 Code of Federal Regulations 1361.1, and Section 19152, Welfare and Institutions Code, apply to this subchapter.

(d) The Department shall establish in writing and shall maintain:

(1) An inventory of rehabilitation facilities, facilities serving primarily individuals who are blind and/or deaf, independent living centers, rehabilitation centers, and other community resources for individuals with disabilities available within the State.

(2) A prioritized list of facility projects and programs necessary to achieve the short-range Department goals.

(e) A State Plan for Rehabilitation Facilities shall be developed annually and distributed to all facilities. The plan shall include by reference the standards and criteria applicable to rehabilitation facilities with respect to physical plant, equipment, personnel, administration, management, safety, and other pertinent conditions.

(f) The inventory, State Plan for Rehabilitation Facilities, and prioritized list shall be developed with the active participation of a representative group of providers and recipients of vocational rehabilitation services.

(g) The Department will provide technical assistance to any public or private non-profit rehabilitation facility to help improve the professional and business practices of the facility.

(h) All programs shall explain the Client Assistance program, including the services provided by the program and how to contact the program, to clients of the Department.

Note: Authority cited: Sections 19006 and 19016, Welfare and Institutions Code. Reference: Sections 19152, 19154, 19400 and 19401 et seq., Welfare and Institutions Code; 34 CFR 361.21 and 361.45; and 29 U.S.C. 718.

### § 7331. Accreditation and Certification.

(a) The Department shall with the exception of facilities providing services primarily to the blind, deaf and/or independent living centers, require that public and private non-profit rehabilitation facilities offering work oriented programs and services be accredited by the Commission on Accreditation of Rehabilitation Facilities (CARF) in the primary program emphasis of the services to be purchased. Applicants for grant funding must also meet accreditation criteria when applicable or be certified by the Department. To be certified they shall have a plan for seeking accreditation.

(b) The Department shall supplement programs accredited by CARF with a certification of specific services. This certification will take place no less than every three years and will be based on standards developed by the Department.

(c) The Department shall require other rehabilitation facilities to meet certification standards of the Department. The Standards for Certification shall be developed by the Department in consultation with a representative group of providers and recipients of vocational rehabilitation services.

(d) Upon written request by a Community Rehabilitation Program (CRP) and proof that its annual service expenditures are at or below fifty thousand dollars ($50,000) for three prior, consecutive years, the Department may waive the CARF accreditation requirements herein.

(1) The Department will provide written approval or denial of the request on the condition that annual expenditures do not exceed fifty thousand dollars ($50,000) and may rescind the waiver if the Department determines that the CRP is not in compliance with any law or regulation.

(2) The Department's waiver shall not supersede any other agency's or Regional Center's requirement of CARF accreditation or service standards.

Note: Authority cited: Sections 19006 and 19016, Welfare and Institutions Code. Reference: 29 USC Sections 705 and 723; 34 CFR Sections 361.5, 361.48 and 361.50; and Sections 19011 and 19401, Welfare and Institutions Code.

### § 7332. Purchase of Services.

(a) The Department may purchase vocational rehabilitation services from public or private non-profit rehabilitation facilities which include agencies serving primarily individuals who are blind and/or deaf, independent living centers, and other community resources for individuals with disabilities.

(1) The Department may pay fees for services through a schedule set by the Department and applicable to all rehabilitation facilities or a special negotiated fee for an individual service.

(2) The Department may contract for specific services for an estimated number of clients per month.

(3) The Department may contract with a public or private non-profit rehabilitation facility on a cost sharing basis to provide services for groups of individuals with disabilities. Services for groups shall include but not be limited to:

(A) The removal of architectural barriers.

(B) The purchase of a vehicle to transport clients.

(C) The purchase of telephone-teletype equipment for individuals who are deaf.

(D) The use of therapeutic recreation facilities.

(E) The use of residential facilities to accommodate individuals with disabilities while they are receiving other vocational rehabilitation services.

(F) The purchase of instructional material.

(G) The purchase or adaptation of equipment for training or employment of individuals with disabilities.

### Note: Authority cited: Sections 19006 and 19016, Welfare and Institutions. Reference: 34 CFR Section 361.50.

### § 7333. Grants.

(a) Establishment Grants.

(1) The Department may award Establishment Grants to public or private non-profit rehabilitation facilities. Such facilities include sheltered workshops, work activity centers, facilities serving primarily blind and/or deaf, independent living centers, rehabilitation centers, and other community resources for the handicapped available within the state. Such facilities shall provide vocational rehabilitation services or transitional or extended employment for handicapped individuals. The purpose of such grants is to:

(A) Expand, remodel, or alter existing buildings and/or

(B) Acquire initial and additional fixed or movable equipment of existing buildings.

(C) Provide initial or additional staffing assistance which will be available only for personnel who are engaged in new or expanded program activities of the rehabilitation facility.

(2) The initial establishment grant shall be for 12 to 15 months. Establishment grants shall be reviewed annually. If the project continues to show effectiveness in achieving its goals and is incorporated into the basic program at the end of the project, the grant may be continued and/or renewed for additional periods, however, the grant period shall not exceed a total of 51 months.

(3) The facility shall provide a minimum of twenty percent of the amount of the grant during the first year. The Department may provide up to eighty percent of the amount of the grant from federal funds. The grantee shall assume an increased share of the funding each project year as an indication of ability and intent to continue the project at the end of the project period.

(b) Innovation and Expansion Grants.

(1) The Department may award Innovation and Expansion Grants to public or private non-profit organizations and agencies. Only referrals, applicants or clients of the Department of Rehabilitation shall be served in these projects.

(2) The purpose of such Grants is to plan, prepare for, and initiate special programs that:

(A) Increase the capability of the Department to serve and rehabilitate severely handicapped individuals and other designated groups who have unusual or difficult problems in connection with their rehabilitation.

(B) Introduce new devices and techniques in the provision of vocational rehabilitation services.

(C) Develop and provide vocational rehabilitation services.

(D) Enrich existing services.

(E) Broaden the scope of existing services.

(3) The initial Innovation and Expansion grant shall be for 12 months. All Innovation and Expansion grants shall be reviewed annually. If the project is effective, the grant may be extended for additional periods, however, the total grant period shall not exceed 36 months.

(4) The facility shall provide a minimum of ten percent of the amount of the grant. The department may provide up to ninety percent of the amount of the grant from federal funds during the first year. The grantee shall assume an increased share of the funding each project year as an indication of ability and intent to continue the project at the end of the project period. These sharing ratios shall not be allowed to vary or deviate unless approved by the Department.

(c) Grant Awards to Independent Living Centers.

(1) Independent Living Centers (hereinafter “ILC's”) shall receive state grant funds to serve a specific geographic area designated by the Department. New ILC's shall be funded only for those areas of the state in which independent living services are not available. The Department shall determine when funds are sufficient to add new ILC's or extend the geographic service area for an existing funded ILC. The ILC shall not be restricted from providing services outside the geographic service area so long as these services are not supported by state ILC grant funds.

(2) To the extent that funds are allocated and appropriated, monies shall be allocated to ILC's according to the following formula:

(A) Each ILC shall receive a $150,000 base grant.

(B) Any appropriated money available after payment of the base grants shall be divided among the ILC's based on the ratio of the total of the general population in an ILC's geographic service area as compared to the total of the general population in all ILC's geographic service areas statewide.

(C) No ILC shall receive a combined allocation of base and population funds less than that received in Fiscal Year 1987-88.

NOTE: Authority cited: Sections 19006 and 19016, Welfare and Institutions Code. Reference: Sections 19800-19806, Welfare and Institutions Code; and 34 CFR 361.51, 361.73, 361.75 and 366.

### § 7334. Grant Management.

(a) The Department, in conjunction with the U.S. Department of Education, shall establish priorities for the use of allotted funds each year. The list of priorities shall be made available on request to potential applicants for funds.

(b) The Department shall establish and maintain a format to evaluate, prioritize, and award applications for grants on the basis of the following U.S. Department of Education priorities:

(1) The degree to which the applicant has responded to the annual departmental mission and objectives.

(2) Consumer involvement, affirmative action, and accessibility.

(3) Ability to meet district client needs.

(4) Adequacy of grant planning.

(5) Ability to administer grant funds.

(6) Adequacy of the current program base.

(c) Applicants shall be notified in writing of the action of the Department on their application for grants status.

(d) Applicant Appeals.

(1) Any applicant for a grant who is dissatisfied with the decision of the Department relative to an application for or discontinuation of grant funding may request a review by the Department. The request shall be in writing, clearly identify all issues in dispute, contain a full statement of the applicant's position with respect to each issue, and contain pertinent facts and reasons in support of the applicant’s position. The request shall be submitted to the Department within 30 days of the date of the notification of action.

(2) The Department's Grant Review Committee reviews all such requests. The Committee shall be appointed by the Chief Deputy Director and shall consist of up to three Departmental employees, selected at the Chief Deputy Director’s discretion. The Committee shall review the request and shall notify the appellant in writing of the decision within 30 days of the date of the request.

(3) The decision of the Grant Review Committee is final.

(e) Grants shall be managed by the Department in accordance with:

(1) The Office of Management and Budget Circulars for Administration of Grants.

(2) The Department's Grants Management Handbook.

(3) The terms of the grant between the Department and the facility.

NOTE: Authority cited: Sections 19006 and 19016, Welfare and Institutions Code. Reference: 34 CFR 76.770.

### § 7335. Auditing Requirements.

(a) Establishment Grants, Innovation and Expansion Grants, and other grants and contracts shall be audited to evaluate the financial transactions and determine compliance with the terms of the grant or contract.

(b) Grant and contract recipients shall arrange for independent audits that meet the standards and needs set forth by the Department. The audit shall be conducted in accordance with the Department's basic audit standards for grants and contracts and any additional audit standards required by the Department.

(c) Contracts for independent auditors shall provide that their audits meet the Department's needs and requirements. Copies of independent audit reports shall also be furnished to the Department. Audit working papers shall be made available to the Department and other governmental audit staff.

(d) The Department may also utilize independent audits made by Certified Public Accounting or Public Auditing firms, by an audit agency of the Federal or State Government, or Department auditors to accomplish the purpose of this article.

(e) External or internal audits shall be made in accordance with:

(1) Generally accepted auditing standards including the standards of the U.S. Accounting Office's publication “Standards for the Audit of Governmental Organizations Programs, Activities, and Functions”.

(2) Federal Regulations 34 CFR, Part 74.

(3) OMB Circular No. A-110, Federal Management Circular FMC 74-7.

(4) Department of Rehabilitation's “Grant Management Handbook”.

(5) The terms of the contract.

(6) Grant management guidelines.

(f) Audits shall be conducted at regular intervals, usually once a year, but at least once every two years. Audits may be conducted at other times at the discretion of the Department. The frequency shall depend on the nature, size and complexity of the recipient's grant or sub-grant supported activities.

(g) A copy of each audit report and a description of its resolution shall be furnished to the facility and the appropriate regional office of the U.S. Department of Education Audit Agency.

(h) A copy of the audit report shall be transmitted to the facility within 45 calendar days after the completion of the audit.

(i) The audit report is considered final 30 days after mailing unless the facility appeals the findings and recommendations in accordance with this section.

(j) If the facility disputes any audit finding or recommendation, the facility may, within 30 days of the mailing of the written notice of the audit, appeal the finding or recommendation. The appeal shall be in writing, clearly identify all issues in dispute, contain a full statement of the facility's position with respect to each issue, and contain pertinent facts and reasons in support of the facility's position. The appeal shall be addressed to the Audit Review Committee, Department of Rehabilitation. The Department may require the facility to submit additional documentation relevant to the disputed findings.

(k) The Audit Review Committee, shall be appointed by the Chief Deputy Director and shall consist of up to three Departmental employees, selected at the Chief Deputy Director’s discretion. The Audit Review Committee shall receive appeals of audit findings, conduct hearings or otherwise review the appeal to decide the merit of the dispute. The decision of the committee shall be based on the Federal and State laws and regulations and the Federal audit guidelines.

(l) The Departmental Audit Review Committee shall consider the appeal and the pertinent documentation and arrive at a decision within 45 days from receipt of the appeal. Representatives of the facility may present information to the Audit Review Committee orally or in writing.

(m) The decision of the Audit Review Committee is final and shall be in writing and shall contain findings of fact, a determination of the issues presented, a decision and an order to recover overpayments, if appropriate. Copies of the decision shall be mailed to the facility.

(n) Any overpayment determined by audit to be due and payable shall be liquidated in the following manner:

(1) By lump-sum payment.

(2) By off-set against current payments due to the provider.

(3) In accordance with a repayment agreement executed by the facility and the Department.

(4) By any other method of recovery available by law.

(o) The Department may charge interest on any overpayment from the time of the final decision of the Audit Review Committee.

NOTE: Authority cited: Sections 19006 and 19016, Welfare and Institutions Code. Reference: 34 CFR, Part 74, 80.26 and 80.40, and Sections 11180 and 12419, Government Code.

### § 7335.5. Discrimination Complaint Resolution Process.

(a) All grant and contract recipients shall:

(1) Establish an informal process for the resolution of complaints by clients of the Department who believe that they have been discriminated against by the contractor or grantee or by an employer of the contractor or grantee based upon any of the protected statuses specified in Section 7351(b). The contractor or grantee shall ensure that, at a minimum, the informal resolution process shall include all of the following procedures:

(A) As soon as a client of the Department has been accepted for services, the contractor or grantee shall inform the individual of his/her right to file a complaint of discrimination within 180 days of the alleged discrimination with any of the following:

1. The contractor or grantee, through its informal resolution process.

2. The Department, through the Chief, Office of Civil Rights and Affirmative Action.

3. The U.S. Department of Education, Office for Civil Rights.

(B) The informal resolution process shall:

1. Take no more than 20 working days to complete.

2. Include written notification to the individual describing the disposition of the complaint along with a statement that the individual, if dissatisfied with the disposition, has 30 days to file a complaint with the Department's Chief, Office of Civil Rights and Affirmative Action or U.S. Department of Education, Office for Civil Rights.

(2) Document and maintain information related to discrimination complaints filed by clients of the Department and the actions taken to resolve those complaints.

(3) Upon request, disclose to the Department the information maintained in accordance with (B)(2).

NOTE: Authority cited: Sections 19006 and 19016, Welfare and Institutions Code. Reference: 34 CFR 104.7, 104.51 and 104.61.

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# Chapter 12. Administrative Review, Mediation, Fair Hearing and Discrimination Complaint Procedures

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## Article 1. General Provisions and Administrative Reviews

### § 7350. Definitions and Terms.

(a) For the purposes of this Chapter the following definitions shall apply:

(1) “Appellant” means an applicant, client, former client, or student with a disability, of the Vocational Rehabilitation or Independent Living Services programs who has filed an oral or written request for an administrative review or a written request for a fair hearing.

(2) “Administrative Review Officer” means a District Administrator who conducts the administrative review.

(3) “Authorized Representative” means the parent of an unemancipated minor or permanent guardian or any person or entity who has been designated by the appellant to act on his/her behalf.

(4) “Administrative Review” means an informal process through which either of the following occur:

(A) The appellant and/or the appellant's authorized representative seek remedy for dissatisfaction with Departmental action.

(B) The complainant and/or the complainant's authorized representative seek remedy for a complaint of discrimination against employees of the Department.

(5) “Complainant” means an applicant, client, former client, or student with a disability who has filed an oral or written discrimination complaint for an administrative review or a formal written request for a discrimination investigation/resolution.

(6) “Equal Employment Opportunity Counselor” means an employee of the Department who has had specialized training in the counseling and resolution of discrimination complaints.

(7) “Equal Employment Opportunity Investigator” means an employee of the Department who has had specialized training in conducting impartial, formal investigations of discrimination complaints.

(8) “Good Cause” means any of the following:

(A) Death in the immediate family.

(B) Personal illness or injury to the appellant or authorized representative.

(C) Sudden and unexpected emergencies including, but not limited to traffic accidents on the day of the hearing and illness or injury of a household or family member who requires immediate care.

(9) “Impartial hearing officer” means an individual who is qualified under 34 Code of Federal Regulations part 361.5(c)(24) to conduct a fair hearing.

(10) “Mediation Coordinator” means the independent organization the Department contracts with to schedule and conduct mediation of disputes between individuals and the Department that affect the provision of vocational rehabilitation services.

(11) “Qualified Impartial Mediator” means an individual who:

(A) is not an employee of a public agency (other than an administrative law judge, hearing examiner, or employee of an institution of higher education);

(B) is not a member of the State Rehabilitation Council;

(C) has not been involved previously in the vocational rehabilitation of the applicant or eligible individual;

(D) is knowledgeable of the vocational rehabilitation program and the applicable federal and state laws, regulations and policies governing the provision of vocational rehabilitation services;

(E) has been trained in effective mediation techniques; and

(F) has no personal, professional, or financial interest that would be in conflict with the objectivity of the individual during the mediation proceedings.

Note: Authority cited: Sections 19006 and 19016, Welfare and Institutions Code; Reference: 29 USC Section 722; 28 CFR 35.107; 34 CFR 104.7, 104.51, 104.61, 34 CFR 361.5 and 361.48; and Sections 19700.1, 19703, 19704 and 19705, Welfare and Institutions Code.

### § 7351. General Provisions.

(a) Any applicant, client, former client, or student with a disability of the Vocational Rehabilitation or Independent Living Services programs who is dissatisfied with any action or inaction of the Department relating to the application for or receipt of services, shall have an opportunity for a prompt administrative review by the supervisory staff of the Department and/or a formal fair hearing. Any applicant, client, former client, or student with a disability of the Vocational Rehabilitation program may also request mediation by a qualified impartial mediator to resolve disputes involving any action or inaction of the Department that affects the provision of vocational rehabilitation services.

(b) Any applicant, client, former client, or student with a disability, who believes he/she has been discriminated against by a Department employee, a contractor or grantee of the Department, or an employee of a contractor or grantee based upon any of the protected statuses of race, color, religious creed, ancestry, national origin, sexual orientation, marital status, medical condition, physical or mental disability, sex, or age shall have an opportunity for a prompt administrative review by the supervisory staff or, as appropriate, by a contractor or grantee, and/or an informal Equal Employment Opportunity Counselor review followed, when necessary, by a formal investigation by the Department’s Office of Civil Rights and Affirmative Action.

(c) The administrative review process is optional and shall not delay a fair hearing or, in the case of alleged discrimination, an informal Equal Employment Opportunity Counselor review followed, when necessary, by a formal investigation by the Department’s Office of Civil Rights and Affirmative Action, unless the appellant or complainant and/or authorized representative and the Department agree to a delay. The mediation process is also optional and shall not delay a fair hearing, unless all parties agree to a continuation of the hearing.

(d) Notwithstanding (b), an applicant, client, former client, or student with a disability may file a formal complaint with the U.S. Department of Education, Office for Civil Rights at any time.

(e) Any service(s) currently being provided an individual under an ~~IWRP~~ Individualized Plan for Employment (IPE) shall not be suspended, reduced, or terminated pending a final determination pursuant to administrative review provided pursuant to Section 7353 or the final decision pursuant to Section 7358, unless:

(1) The individual or his/her authorized representative so requests; or

(2) The Department has determined that services have been obtained through misrepresentation, fraud, collusion, or criminal conduct on the part of the appellant or the appellant’s authorized representative, as specified in 29 USC §722(c)(7).

Note: Authority cited: Sections 19006 and 19016, Welfare and Institutions Code. Reference: 29 USC ~~§~~722; 34 CFR 100.6, 104.7(b), 104.51, 104.61; 34 CFR 361.57; Sections 19703 and 19704, Welfare and Institutions Code.

### § 7352. Appellant's Mode of Communication.

(a) The Department shall inform the appellant in his/her primary language and preferred mode of communication that, upon the appellant's specific request, all future notices and decisions shall be transmitted in the same manner. If no such request is received, future notices and decisions shall be transmitted by mail in written English.

NOTE: Authority cited: Sections 19006 and 19016, Welfare and Institutions Code; Section 35, Chapter 937, Statutes of 1993. Reference: Section 19013.5, Welfare and Institutions Code.

### § 7353. Administrative Review---Appellants.

(a) All requests for administrative review of an action of the Department relating to the application for or receipt of services shall:

(1) Be made within one year of the action(s) or decision(s) with which the appellant is dissatisfied except as set forth in Sections 7227 and 7344.

(2) Be made orally or in writing to the District Administrator responsible for overseeing the local office in which the action or decision with which the appellant is dissatisfied was initiated.

(3) Include the following information:

(A) The reason for the appeal and why the appellant thinks the decision should be changed.

(B) The action the appellant wishes to have taken.

(b) The review shall be conducted:

(1) By the Administrative Review Officer, except as provided in (e).

(2) In the presence of the appellant, or authorized representative unless either party has waived the right to attend and present additional information. Such waiver shall be in the form of a written authorization allowing the Department to conduct the review solely upon the information specified in (a)(3) and the information contained in the case record.

(3) During Departmental working hours at a local office convenient to the residence of the appellant or authorized representative.

(c) Interpreter and reader services shall be provided for the administrative review upon request for clients who are non-English-speaking, deaf, hearing impaired, speech impaired, blind, or visually impaired.

(d) Transportation and attendant services may be provided for the administrative review upon request for those who require such help and are unable to secure assistance through other sources.

(e) The Administrative Review Officer may delegate the review to a Rehabilitation Supervisor, but shall not delegate the review to the same supervisor who participated in the decision with which the appellant is dissatisfied.

(f) The Administrative Review Officer, or the Rehabilitation Supervisor who was delegated to conduct the review, shall prepare the written decision which shall be sent to the appellant by certified mail with an additional copy to be mailed to the authorized representative, if any, within 15 days of the date of the request. The written decision shall inform the appellant/authorized representative that, if he or she is dissatisfied with the decision rendered as a result of the optional administrative review, a written request for a fair hearing must be filed with the Department within 30 days of the receipt of the decision. The written decision shall also inform the appellant/authorized representative of the right to request a mediation.

(g) The written decision shall be filed in the case record.

NOTE: Authority cited: Sections 19006 and 19016, Welfare and Institutions Code. Reference: 29 USC Section 722(c)(4)(A); 34 CFR 361.48(b); and Sections 19703 and 19704, Welfare and Institutions Code.

### § 7353.5. Administrative Review---Complainants.

(a) All requests for administrative review of a complaint of discrimination shall:

(1) Be made within 180 days of the date of the alleged discrimination.

(2) Be made orally or in writing to the District Administrator responsible for overseeing the local office in which the alleged discrimination occurred.

(3) Include all of the following:

(A) The name, address and telephone number of the complainant.

(B) The name and title of the person against whom the complaint is made.

(C) A description of the alleged discrimination, including pertinent dates and a statement of how the alleged discrimination relates to the complainant's sex, race, age, religious creed, color, ancestry, national origin, sexual orientation, marital status, medical condition, or physical or mental disability.

(D) The remedy the complainant wishes to have initiated.

(b) The District Administrator shall attempt to resolve the complainant's issue within 15 working days of receipt of an oral or written discrimination complaint. If the District Administrator:

(1) Can resolve the complaint, the District Administrator shall prepare a written summary of the complaint and its resolution and send a copy of the summary to all of the following:

(A) The complainant.

(B) The Assistant Deputy Director.

(C) The Chief, Office of Civil Rights and Affirmative Action.

(2) Cannot resolve the complaint, the District Administrator shall:

(A) Prepare a written summary of the complaint, the actions taken to attempt to resolve the complaint and the reasons the complaint could not be resolved.

(B) Send a copy of the summary specified in (A) to the complainant and the Chief, Office of Civil Rights and Affirmative Action for an evaluation for prima facie evidence of discrimination and, as appropriate, informal resolution by an Equal Employment Opportunity Counselor and formal investigation, when necessary. The copy sent to the complainant shall also include both of the following:

1. Notification that the complaint has been forwarded to the Chief, Office of Civil Rights for evaluation and appropriate action.

2. A statement of the complainant's right to file a complaint with the U.S. Department of Education, Office for Civil Rights.

NOTE: Authority cited: Sections 19006 and 19016, Welfare and Institutions Code. Reference: 28 CFR 35.107; and 34 CFR 100.6 and 104.7.

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## Article 1.5. Mediation

### § 7353.6. Mediation.

(a) All requests for mediation of a dispute between an individual and the Department relating to the application for or receipt of Vocational Rehabilitation services shall:

(1) Be made within one year of the action(s) or decision(s) involved.

(2) Be made in writing and directed to the Department of Rehabilitation, Legal Affairs or sent by electronic mail to appealsinfo@dor.ca.gov. Mediation may also be requested at the same time a request for fair hearing is filed. By requesting a mediation, an individual consents to the release of the information contained in the request to a Qualified Impartial Mediator and to the sharing of information about the individual’s case with a Qualified Impartial Mediator.

(3) Include the following information:

(A) The reason for the mediation and why the party requesting mediation thinks the decision should be changed.

(B) The action the party requesting mediation wishes to have taken.

(b) The Department of Rehabilitation, Legal Affairs will contact the parties involved in the dispute to verify that all parties agree to mediation and to schedule the mediation. The District Administrator or his or her designee with authority to resolve the dispute shall attend the mediation on the Department’s behalf. The mediation shall be held within 25 calendar days of the Department of Rehabilitation, Legal Affairs’ receipt of the request for mediation, unless the parties agree to a later date. Requesting mediation shall not delay the scheduling of a Fair Hearing, unless all parties agree to the continuation of the Fair Hearing.

(c) Mediations shall be scheduled at a time and place convenient for all parties. The individual has a right to be represented at the mediation. Interpreter and reader services shall be provided for the mediation upon request for clients who are non-English-speaking, deaf, hearing impaired, speech impaired, blind, or visually impaired. The Department may authorize transportation and attendant services for the mediation upon request for those who require such help and are unable to secure assistance through other sources.

(d) Discussions that occur during the mediation process are confidential and may not be disclosed to anyone outside the mediation process or used as evidence in any subsequent due process hearings or civil proceedings. The mediator may require the parties to the mediation process to sign a confidentiality pledge prior to the commencement of the process. The parties have a right to submit evidence and information to support their positions at the mediation. Evidence that is otherwise available outside of mediation is not inadmissible in a subsequent proceeding or protected from disclosure solely by reason of its introduction or use in mediation.

(e) An agreement reached by the parties to the dispute in the mediation process must be described in a written mediation agreement that is issued by the impartial and qualified mediator and signed by all parties. Copies of the agreement must be given to all parties and placed in the case record.

NOTE: Authority cited: Sections 19006 and 19016, Welfare and Institutions Code. Reference: 29 USC Section 722(c)(4).

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## Article 2. Fair Hearings

### § 7354. Fair Hearing Requests.

(a) All requests for a fair hearing shall:

(1) Be made within one year of receipt of a written denial or action relating to an application for or receipt of services, except as set forth in

 Sections 7227, 7344, 7345, and 7353(f) of these regulations.

(2) Be made in writing and directed to the Department of Rehabilitation, Legal Affairs or sent by electronic mail to appealsinfo@dor.ca.gov.

(3) Include the information specified in Section 7353(a)(3).

(b) A hearing before an impartial hearing officer shall be held within 60 calendar days from receipt of the written request.

(c) The request shall be deemed to be "received" in one of the following ways:

(1) The date the request is postmarked plus five working days.

(2) If the postmark is illegible, five working days from the date the request is date stamped by the Department of Rehabilitation, Legal Affairs.

(3) If hand carried, the date the request is date stamped by the Department of Rehabilitation, Legal Affairs.

(4) If by electronic mail to the Department of Rehabilitation, Legal Affairs, the date the electronic mail is received plus five working days.

(d) The appellant shall be notified by certified mail of:

(1) The time and place for the hearing.

(2) The procedures used by the impartial hearing officer.

(3) The availability of sign language interpreters, oral interpreters, deaf-blind interpreters, or assistive listening systems for the deaf or hearing impaired, if requested by the appellant.

(4) The availability of readers or documents in Braille or large print for visually impaired appellants who request it.

(5) The opportunity to be represented at the hearing by an authorized representative of the appellant’s choosing.

(6) The opportunity to bring witnesses to the hearing to testify on the appellant’s behalf.

(e) The appellant’s record of services shall, upon request, be made available to the appellant and/or appellant’s authorized representative.

NOTE: Authority cited: Sections 19006 and 19016, Welfare and Institutions Code; Section 35, Chapter 937, Statutes of 1993. Reference: 34 CFR 361.57; Sections 19704, 19705, and 19708, Welfare and Institutions Code; and Section 1798.34, Civil Code.

### § 7355. Fair Hearing Procedures.

(a) The appellant may appear alone, with the authorized representative, or be represented by the authorized representative.

(b) The Department shall be represented at the hearing by the employee who made the original decision and/or the Administrative Review Officer, or the Rehabilitation Supervisor to whom the review was delegated.

(c) The appellant and/or the authorized representative and the Department representatives shall have an opportunity to:

(1) Present evidence, information, and witnesses to the impartial hearing officer.

(A) If written evidence is presented at the hearing, three (3) copies shall be presented to the impartial hearing officer by the introducing party.

(2) Be represented by counsel or other appropriate advocate.

(3) Examine all witnesses and other relevant sources of information and evidence.

(d) All persons testifying shall be placed under oath or affirmation.

(e) The impartial hearing officer shall send a notice by certified mail, to inform any appellant or authorized representative who has failed to appear at a hearing, that he or she has 14 days from the date the notice was mailed to submit a written request for another appearance before the impartial hearing officer. The hearing shall be rescheduled only if the appellant or authorized representative shows good cause for his or her failure to appear.

(f) The impartial hearing officer shall dismiss an appeal if any condition specified below exists. The appellant or authorized representative has failed to:

(1) Respond within the time period specified in (e) to request a rescheduled hearing.

(2) Show good cause for the failure to appear at the hearing.

(3) File a timely request for fair hearing as specified in Sections 7353(f) and 7354(a).

(4) Raise an issue within the jurisdiction of the impartial hearing officer.

NOTE: Authority cited: Sections 19006 and 19016, Welfare and Institutions Code; Section 35, Chapter 937, Statutes of 1993. Reference: 34 CFR Section 361.57; and Sections 19704, 19705, and 19708, Welfare and Institutions Code.

### § 7356. Appellant Responsibilities for Appearing.

(a) The appellant or authorized representative may waive the right to appear and have the matter decided on the written record by providing written notification to the impartial hearing officer. If such written notification is received less than seven days prior to the scheduled hearing, the hearing shall be canceled and the appellant shall be sent a notice as specified in Section 7355(e).

(b) The appellant or authorized representative shall notify the impartial hearing officer in writing if he or she is unable to attend a scheduled hearing.

(c) The appellant and/or authorized representative, if any, shall arrive within 30 minutes after the scheduled time of the hearing.

(1) If both the appellant and authorized representative fail to appear within the specified time, the hearing shall be canceled and the impartial hearing officer shall send a notice, pursuant to Section 7355(e).

(2) If only one of the above appear, he or she shall have the option of rescheduling the hearing or proceeding with the hearing without the presence of the other.

(A) In the event the hearing is not held and the individual who does not appear at the hearing wishes to request a rescheduled hearing, he/she shall provide documentation sufficient to establish good cause for his/her failure to appear pursuant to Section 7355(e).

(d) An appellant or authorized representative may submit a written request to withdraw the request for the hearing at any time.

(e) The appellant shall have the burden of introducing evidence at the hearing sufficient to demonstrate his or her case by a preponderance of the evidence.

NOTE: Authority cited: Sections 19006 and 19016, Welfare and Institutions Code. Reference: 34 CFR 361.57; and Section 19705, Welfare and Institutions Code.

### § 7357. Postponement and Continuation.

(a) The impartial hearing officer may postpone the scheduled hearing up to 90 days if good cause exists, if both parties agree to the postponement, or for the convenience of the appellant. A request for postponement must be filed no later than five (5) working days prior to the scheduled hearing. Theimpartial hearing officer shall not postpone the hearing for more than one year from the original hearing date.

(b) The impartial hearing officer may continue the hearing to a later date upon the determination that additional evidence not available at the hearing is necessary to reach a decision. The impartial hearing officer may order further investigation or direct either party to produce additional evidence.

(c) The impartial hearing officer may close the hearing but hold the record open for up to thirty (30) days to permit the submission of additional written evidence. Such evidence shall be made available to the Department and the appellant, and if applicable the appellant's authorized representative, and each party shall have the opportunity to submit a written response.

(d) The impartial hearing officer may conduct further hearings if the additional information or response indicates a need for such hearings.

NOTE: Authority cited: Sections 19006, 19016 and 19705 Welfare and Institutions Code. Reference: 34 CFR 361.48(d).

### § 7358. Final Decision.

(a) The impartial hearing officer shall render its final decision within 30 days of the completion of the hearing and shall mail copies by certified mail to all parties. The decision shall set forth:

(1) The issues.

(2) The findings of fact.

(3) The reasons for the decision referencing applicable laws, regulations, and policy.

(4) The final decision.

(b) At the same time the appellant receives the impartial hearing officer’s decision he/she shall also receive a statement of both of the following:

(1) The right to a review by the Superior Court as specified in Section 19709 of the Welfare and Institutions Code if he/she is dissatisfied with the decision.

(2) The availability of the Client Assistance Program to assist with the review pursuant to subsection (b)(1), if that program determines the case to have merit, and instructions on how to request the program’s assistance.

(c) A copy of the decision shall be filed in the appellant’s record of services.

NOTE: Authority cited: Sections 19006 and 19016, Welfare and Institutions Code; Section 35, Chapter 937, Statutes of 1993. Reference: 34 CFR 361.57; and Sections 19705 and 19709, Welfare and Institutions Code.

### § 7361. Record of the Hearing.

(a) The final decision, a transcript or a recording of the hearing, exhibits, papers, and reports filed in the proceeding shall constitute the record of the hearing.

(b) If requested by the appellant or authorized representative, the record of the hearing or any part thereof shall be furnished to him/her within 30 days from receipt of the written request at a cost not to exceed ten cents per page or for free if fewer than ten pages are requested.

NOTE: Authority cited: Sections 19006 and 19016, Welfare and Institutions Code; Section 35, Chapter 937, Statutes of 1993. Reference: Section 19706, Welfare and Institutions Code.

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## Article 3. Discrimination Resolutions by the Office of Civil Rights and Affirmative Action

### § 7363. Review of Complaint.

(a) Upon a receipt of either of the following, the Chief, Office of Civil Rights and Affirmative Action shall notify the complainant of receipt of the information and that a review conducted in accordance with (b) shall occur:

(1) A written complaint of discrimination containing all of the information specified in Section 7353.5(a)(3) from an applicant, client, former client, or student with a disability of the Department, and filed within 180 days of the date of the alleged discrimination or within 30 days of receiving written notification from a contractor or grantee in accordance with Section 7335.5.

(2) The summary of the Administrative Review specified in Section 7353.5(b)(2)(A).

(b) The Chief, Office of Civil Rights and Affirmative Action shall review the information received pursuant to (a) to determine both of the following:

(1) Whether the complaint was filed within the specified time limits. If the filing is untimely, the Chief, Office of Civil Rights and Affirmative action shall dismiss the complaint by advising the complainant in writing of the reason for the dismissal and of his/her right to file a complaint with the U.S. Department of Education, Office for Civil Rights.

(2) If prima facie evidence of discrimination exists. This may require the solicitation of additional information from the complainant. If a prima facie case:

(A) Exists, the Chief shall refer the complaint to whomever of the following that the Chief deems appropriate:

1. An Equal Employment Opportunity Counselor for informal counseling and resolution.

2. An Equal Employment Opportunity Investigator for formal investigation.

(B) Does not exist, the Chief shall dismiss the complaint by advising the complainant in writing of the reasons for the dismissal and of his/her right to file a complaint with the U.S. Department of Education, Office for Civil Rights.

(c) When a complaint is referred to an Equal Employment Opportunity Counselor, the Counselor shall attempt to resolve the complaint within 15 working days unless an extension of the counseling period is agreed upon between the complainant and the Counselor. If the complaint is:

(1) Resolved, the Counselor shall summarize the resolution in writing and send copies to all of the following:

(A) The complainant.

(B) The District Administrator.

(C) The Chief, Office of Civil Rights and Affirmative Action.

(2) Not resolved, the Counselor shall refer the complaint back to the Chief, Office of Civil Rights and Affirmative Action for assignment to an Equal Employment Opportunity Investigator for formal investigation. The Counselor shall send Written notification of the referral to the complainant.

Note: Authority cited: Sections 19006 and 19016, Welfare and Institutions Code. Reference: 34 CFR 100.6, 100.7,104.7, 104.51 and 104.61.

### § 7365. Formal Investigation and Decision.

(a) The Equal Employment Opportunity Investigator shall conduct an impartial investigation of the complaint and, within 70 working days of receipt of the complaint, provide a written Report of Findings to the Chief, Office of Civil Rights and Affirmative Action.

(b) At a minimum, the impartial investigation shall include a review of the documentary evidence and an interview with all of the following:

(1) The complainant who may be accompanied by a representative of his/her choosing.

(2) The respondent.

(3) The respondent's supervisor.

(c) Within 15 working days of receipt of the written Report of Findings, the Chief, Office of Civil Rights and Affirmative Action shall prepare a proposed decision for the Chief Deputy Director. A copy of the proposed decision, along with the Report of Findings, shall be transmitted to the Chief Deputy Director for review.

(d) Upon review of the proposed decision and the Report of Findings, the Chief Deputy Director shall transmit a copy of the proposed decision and the Report of Findings to the complainant and shall give the complainant ten working days within which to request an opportunity to discuss with the Chief Deputy Director the proposed decision and the Report of Findings. The discussion shall be limited to those findings and conclusions that the complainant believes are unsupported by a preponderance of the evidence or are based upon erroneous information or investigative procedures.

(e) Within 15 working days of receiving the proposed decision or conducting the discussion pursuant to (d), whichever is later, the Chief Deputy Director shall render a final decision in writing to the complainant. The final decision shall include a statement of the complainant's right, if dissatisfied with the decision, to file a complaint with the U.S. Department of Education, Office for Civil Rights for that office to determine jurisdiction.

NOTE: Authority cited: Sections 19006 and 19016, Welfare and Institutions Code. Reference: 34 CFR 100.6, 104.7, 104.51 and 104.61; and Section 19752(w), Government Code.

### § 7367. Settlements and Dismissals.

(a) Notwithstanding anything in this Chapter, the Department may continue to negotiate a settlement until such time as the Report on Findings and the proposed decision have been forwarded to the Chief Deputy Director.

(b) In addition to the dismissals pursuant to Section 7363(b), the Chief, Office of Civil Rights and Affirmative Action may dismiss a formal complaint under any of the following circumstances:

(1) The complainant fails to provide requested necessary information or to be available for interviews or conferences or otherwise refuses to cooperate to the extent that the Chief, Office of Civil Rights and Affirmative Action is unable to resolve the complaint. Prior to the dismissal, the Chief shall provide the complainant with written notification affording the complainant 20 working days in which to respond.

(2) The complainant cannot be located after reasonable efforts have been made and the complainant has not responded within 20 working days to a notice sent by the Chief to the complainant's last known address.

(3) The complainant fails to respond to or refuses an offer within 30 days of a written notice sent by the Chief, Office of Civil Rights and Affirmative Action that contains a settlement offer that is specific in its terms and would afford full relief for the alleged complaint of discrimination as specified in Section 7353.5(a)(3)(D).

NOTE: Authority cited: Sections 19006 and 19016, Welfare and Institutions Code. Reference: 34 CFR 104.7, 140.51 and 140.61; and Section 19751(w), Government Code.

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# Chapter 14. Employee Activities

## Article 1. Conflict of Interest

### § 7400. Conflict of Interest Code.

The Political Reform Act (Government Code Section 81000, et seq.) requires state and local government agencies to adopt and promulgate conflict of interest codes. The Fair Political Practices Commission has adopted a regulation (2 California Code of Regulations Section 18730) which contains the terms of a standard conflict of interest code and may be incorporated by reference in an agency’s code. After public notice and hearing it may be amended by the Fair Political Practices Commission to conform to amendments in the Political Reform Act. Therefore, the terms of 2 California Code of Regulations Section 18730 and any amendments to it duly adopted by the Fair Political Practices Commission are hereby incorporated by reference. This regulation and the attached Appendix designating officials and employees and establishing disclosure categories, shall constitute the Conflict of Interest Code of the Department of Rehabilitation (Agency).

Designated positions shall file statements of economic interests with the Agency. Upon receipt of the statements of the Director, the agency shall make and retain a copy and forward the original to the Fair Political Practices Commission. Statements for all other designated employees will be retained by the Agency and made available for public inspection and reproduction, upon request.

NOTE: Authority cited: Sections 81008, 87300, 87306, Government Code.

Reference: Section 87302, Government Code.

**Appendix**

|  |  |
| --- | --- |
| **Designated Position** | **Disclosure Category** |
|  |  |
| Director | 1,6 |
| Chief Deputy Director | 1,6 |
| Deputy Director, Legislation and Communications | 1,6 |
| Information Officer II, Public Affairs Office | 1,6 |
| Chief Counsel, Legal Affairs and Regulations | 1,6 |
| Attorney (All Levels), Legal Affairs and Regulations | 1 |
| Chief, Office of Civil Rights (Staff Services Manager II) | 1 |
| Associate Governmental Program Analyst, Office of Civil Rights | 2,3 |
| Chief, Audit Services (Senior Management Auditor) | 1 |
| Auditor (all classifications), Audit Services | 1 |
| State Rehabilitation Council Member and Ex-Officio Member | 1 |
| Executive Officer, State Rehabilitation Council | 1 |
| Executive Advisor, Strategic Initiatives Office | 1 |
|  |  |
| Vocational Rehabilitation Policy and Resources Division |  |
| Deputy Director | 1,6 |
| Assistant Deputy Director | 1,6 |
| Chief, Staff Services Manager II, Community Resources |  |
| Development Section (CRDS) | 1,6 |
| Chief, Staff Services Manager II, Program Policy Implementation Unit | 1 |
| Staff Services Manager I, Social Security Programs | 1 |
| Chief, Staff Services Manager II, Cooperative Programs | 1 |
| Staff Services Manager I, Human Services Cooperative Programs | 1 |
|  |  |
| Vocational Rehabilitation Employment Division |  |
| Deputy Director | 1,6 |
| Assistant Deputy Director | 1,6 |
| Staff Services Manager III, Regional Manager | 1,6 |
| Staff Services Manager II, Customer Services Section | 1 |
| Chief, Staff Services Manager II, Achieving Community Employment |  |
| (ACE) Team | 1 |
| Chief, Staff Services Manager II, Workforce Development Section | 1 |
| Staff Services Manager I, Workforce Development Section | 1 |
| Medical Consultants | 4 |
| Consulting Psychologist | 1 |
| Associate Governmental Program Analyst, Statewide Medical Policy |  |
| Analyst | 4 |
| Staff Services Manager I, Mobility Evaluation Unit | 1,6 |
| Senior Rehabilitation Engineering Consultant | 1 |
| Mobility Evaluation Specialist | 2,3 |
| Adaptive Driver Evaluation Specialist | 2,3 |
| Staff Services Manager II, District Administrator | 1,6 |
| Staff Services Manager I, Team Manager | 1 |
| Rehabilitation Supervisor | 1 |
| Senior Vocational Rehabilitation Counselor, Qualified Rehabilitation |  |
| Professional (SVRC, QRP) | 1 |
| Senior Vocational Rehabilitation Counselor (SVRC) | 1 |
| Staff Services Analyst, Procurement Specialist | 2,3 |
| Supervising Program Technician II | 1 |
| Rehabilitation Specialist | 1 |
| Staff Services Manager I - District Operations | 1 |
| Associate Governmental Program Analyst, VR Contract Administrator | 2,3 |
|  |  |
| Specialized Services Division, Blind and Visually Impaired and |  |
| Deaf and Hard of Hearing |  |
| Deputy Director | 1,6 |
| Assistant Deputy Director, Specialized Services Operations | 1,6 |
| Staff Services Manager I, Program Manager, Deaf and Hard of Hearing |  |
| Services | 1,5 |
| Staff Services Manager II, Program Manager, Business Enterprises |  |
| Program (BEP) | 1,6 |
| Staff Services Manager I, (BEP) | 1 |
| Associate Governmental Program Analyst, BEP | 2,3 |
| California Vendors Policy Committee Member | 1 |
| Staff Services Manager II, Administrator, |  |
| Orientation Center for the Blind (OCB) | 1 |
| Staff Services Manager I, Team Manager Blind Field Services | 1 |
| Senior Vocational Rehabilitation Counselor, Qualified Rehabilitation |  |
| Professional (SVRC, QRP), (OCB) | 1 |
| Staff Services Manager I, Orientation Center for the Blind (OCB) | 1 |
| Staff Services Manager II, District Administrator, Blind Field Services | 1,6 |
| Staff Services Manager I - District Operations, Blind Field Services | 1 |
| Associate Governmental Program Analyst, VR Contract |  |
| Administrator | 2,3 |
| Senior Vocational Rehabilitation Counselor (SVRC), Blind |  |
| Field Services | 1 |
| Senior Vocational Rehabilitation Counselor, Qualified Rehabilitation |  |
| Professional (SVRC, QRP), Blind Field Services | 1 |
| Associate Governmental Program Analyst, Blind Field Services | 3 |
| Staff Services Manager 1, Program Manager (Specialist) Older |  |
| Individuals who are Blind (OIB) | 1 |
|  |  |
| Independent Living and Community Access Division |  |
| Deputy Director | 1,6 |
| Chief, Staff Services Manager II, Independent Living (IL) |  |
| Assistive Technology (AT), and Traumatic Brain Injury (TBI) | 1,5 |
| Staff Services Manager I, Independent Living (IL) | 1 |
| Chief, Staff Services Manager I, Disability Access Services (DAS) | 1 |
| Executive Officer, California Committee on Employment of |  |
| People with Disabilities (CCEPD) | 1,5 |
| Committee Member and Ex-Officio Member, California Committee on |  |
| Employment of People with Disabilities | 1 |
| Committee Member and Ex-Officio Member, |  |
| Assistive Technology Advisory Committee (ATAC) | 1 |
| Board Member, Traumatic Brain Injury (TBI) Advisory Board | 1 |
|  |  |
| Administrative Services Division |  |
| Deputy Director | 1,6 |
| Chief, Staff Services Manager III, Human Resources Branch | 1 |
| Assistant Chief, Staff Services Manager II, Selections and Training | 1 |
| Labor Relations Specialist, Labor Relations Office | 1 |
| Assistant Chief, Staff Services Manager II, Transactions and |  |
| Performance | 1 |
| Staff Services Manager I, Planning Unit | 1 |
| Chief, Financial Management Branch | 1 |
| Chief, Accounting Administrator III, Accounting Services | 1 |
| Accounting Administrator I (All Levels) | 1 |
| Chief, Staff Services Manager III, Budgets, Fiscal Forecasting |  |
| and Research Section | 1 |
| Research Program Specialist II | 2,3 |
| Chief, Staff Services Manager II, Business Services Section | 1,6 |
| Assistant Chief, Staff Services Manager I, Business Services Section | 1,6 |
| Associate Governmental Program Analyst, Facility Manager, |  |
| Business Services Section | 2,3 |
| Chief, Staff Services Manager II, Contracts and Procurement Section | 1 |
| Staff Services Manager I, Contracts and Procurement Section | 1 |
| Associate Governmental Program Analyst, Contract and |  |
| Procurement Section | 2,3 |
| Staff Services Analyst, Contract and Procurement Section | 2 |
|  |  |
| Information Technology Services Division |  |
| Deputy Director, Chief Information Officer | 1,6 |
| Chief, Customer Service and Administration Branch, Information |  |
| Technology Manager 1 | 1 |
| Chief, Technical Management and Operations Branch, Information |  |
| Technology Manager 1 | 1 |
| Information Technology Supervisor II | 2 |
| Information Technology Specialist 1 | 2 |
| Information Technology Associate | 2 |
| Consultants/New Positions\* |  |

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\*Consultants/new positions shall be included in the list of designated employees and shall disclose pursuant to the broadest disclosure category in the code subject to the following limitation:

The Director may determine in writing that a particular consultant or new position, although a “designated position,” is hired to perform a range of duties that is limited in scope and thus is not required to fully comply with the disclosure requirements in this section. Such written determination shall include a description of the consultant's or new position's duties and, based upon that description, a statement of the extent of disclosure requirements. The Director's determination is a public record and shall be retained for public inspection in the same manner and location as this conflict of interest code (Gov. Code Section 81008).

***Disclosure Categories***

***Category 1***

A designated position in this category must report investments, positions in business entities, and income (including receipt of gifts, loans, and travel payments) from sources (including nonprofit organizations) of the type:

(a) to receive grants or financial assistance from or through the Department;

(b) to receive technical assistance from the Department;

(c) to receive products or services provided by the Department;

(d) that provide or operate services provided by the Department, including, but not limited to, vocational or rehabilitation services or facilities;

(e) to provide products or services (including service providers, such as medical providers, office equipment and information technology) to the Department.

For purposes of this conflict of interest code, technical assistance means services and programs provided to entities that either employ or seek to employ people with disabilities.

Positions designated in this category must also report any of the economic interest described above that were received from an employee, representative or officer of the business entities or nonprofits described above.

***Category 2***

A designated position in this category must report investments in, positions in business entities, and income (including receipt of gifts, loans, and travel payments) from sources that provide services, supplies, materials, machinery, or equipment of the type purchased for the Department (including information technology) in the designated position's geographic area of responsibility.

***Category 3***

A designated position in this category must report investments in, positions in business entities, and income (including receipt of gifts, loans, and travel payments) from sources (including nonprofit organizations) of the type that provide or operate educational, vocational, or rehabilitation services or facilities within the designated position's geographic area of responsibility.

***Category 4***

A designated position in this category must report investments in, positions in business entities, and income (including receipt of gifts, loans, and travel payments) from sources (including nonprofit organizations) of the type that provide medical services of any type in the designated position's geographic area of responsibility.

***Category 5***

A designated position in this category must report investments in, positions in business entities and income (including receipt of gifts, loans, and travel payments) from sources (including nonprofit organizations) of the type to receive grants or financial assistance from or through the designated position's geographic area of responsibility.

***Category 6***

A designated position in this category must report all interests in real property in the State of California of the type to be owned, leased, or rented by the Department.

Note: Authority cited: Sections 81008, 87300 and 87306, Government Code. Reference: Section 87302, Government Code.

HISTORY

1. Repealer and new section filed 12-11-91; operative 1-10-92. Submitted to OAL for printing only (Register 92, No. 12). For prior history, see Register 91, No. 38.

2. Amendment filed 7-18-94; operative 8-17-94. Submitted to OAL for printing only (Register 94, No. 29).

3. Editorial correction deleting History and 2 and redesignating History 3 to History 1 (Register 94, No. 29).

4. Editorial correction of first paragraph and category 3 (Register 95, No. 43).

5. Amendment of section and Note filed 2-8-99; operative 3-10-99. Approved by Fair Political Practices Commission 12-16-98 (Register 99, No. 7).

6. Amendment of section heading and section and new Appendix (consisting of amended designated position categories and disclosure categories) filed 1-7-2009; operative 2-6-2009. Approved by Fair Political Practices Commission 12-9-2008. Submitted to OAL for printing only (Register 2009, No. 2).

7. Amendment of Appendix filed 7-27-2012 as an emergency; operative 7-27-2012 (Register 2012, No. 30). Pursuant to Welfare and Institutions Code section 19710, this action is a deemed emergency and the emergency regulations are exempt from OAL review. A Certificate of Compliance must be transmitted to OAL by 1-23-2013 or the emergency action will be repealed by operation of law on the following day.

8. Reinstatement of Appendix as it existed prior to 7-27-2012 emergency amendment by operation of Government Code section 11346.1(f) (Register 2013, No. 4).

9. Amendment of section heading, section and Appendix filed 5-27-2015; operative 6-26-2015 pursuant to Cal. Code Regs., tit. 2, section 18750(l). Approved by the Fair Political Practices Commission 4-24-2015 and submitted to OAL for filing and printing only pursuant to Cal. Code Regs., tit. 2, section 18750(k) (Register 2015, No. 22).

10. Amendment of Appendix filed 5-29-2019; operative 6-28-2019 pursuant to Cal. Code Regs., tit. 2, section 18750(d). Approved by the Fair Political Practices Commission 5-10-2019 and submitted to OAL for filing and printing only pursuant to Government Code section 87311 (Register 2019, No. 22).

##

## Article 2. Incompatible Activities

### § 7411. Definitions and Terms.

(a) “Case Responsible” means being the provider or procurer of services in which job placement is the outcome.

(b) “Employee” means any person employed by the Department.

(c) “Job Placement” means being responsible for the act of securing employment or on-the-job training.

(d) “Private Business” means any activity for which money or other consideration is received from a source other than the State.

NOTE: Authority cited: Sections 19006 and 19016, Welfare and Institutions Code, and Section 19990, Government Code. Reference: Section 19990, Government Code.

### § 7412. Incompatible Activities.

(a) No employee of the Department shall:

(1) Conduct private business on State time, or by utilizing State facilities, resources, materials, equipment or supplies.

(2) Serve as a member of the Board of Directors, as an employee, as a consultant, as an official or in any policy making capacity in any organization which receives Departmental funds without the prior written approval of the Director. Criteria used to evaluate requests for written approval include but are not limited to determinations of whether the employee is case responsible, controls expenditures, has purchasing authority, or represents the Department to the community within the geographic service area of the organization in question.

(3) Engage in private business which:

(A) Causes either physical or mental fatigue that results in less efficient performance of the employee's State duties.

(B) Requires performance of an act in other than his or capacity as a State employee when that act may later be subject, directly or indirectly, to the control, inspection, review, audit or enforcement by that employee.

(C) Requires the employee to be case responsible or provide job placement or both when the employee is case responsible, or provides job placement or both to an individual who is an applicant or client as defined in title 9, California Code of Regulations, section 7001 or 7005.

(4) Solicit or accept gifts, money, or other consideration from a person or source other than the State for performing a duty which the employee or the Department would be expected to perform in the course of State business.

(5) Engage in a sexual relationship with an applicant or client as defined in title 9, California Code of Regulations, sections 7001 or 7005 for whom the employee is case responsible or provide job placement or both, or for whom the employee is responsible for the supervision of subordinate employees who are case responsible, or provide job placement or both.

(6) Solicit or accept gifts, money, or other consideration from any person or organization receiving funds from the Department.

(7) Use the prestige or influence of the employee's position for the employee's private gain or advantage or the private gain or advantage of another.

NOTE: Authority cited: Sections 19006 and 19016, Welfare and Institutions Code; and Section 19990, Government Code. Reference: Section 19990, Government Code.

### § 7413. Required Activities.

(a) An employee who receives an offer of gifts, money, or other consideration for the purpose of influencing an action by the State shall notify his or her immediate supervisor orally or in writing of that offer within five working days regardless of whether the offer has been refused.

(b) Within five working days of being assigned responsibility for purchasing, the assigned employee shall provide his or her supervisor with a written statement indicating the assigned employee's name, job title, effective date of assignment and that the assigned employee shall not use his or her position for his or her private gain or advantage or the private gain or advantage of another.

NOTE: Authority cited: Sections 19006 and 19016, Welfare and Institutions Code; Section 19990, Government Code. Reference: Section 19990, Government Code.

---------------------------------------------------**END**------------------------------------------------