# TITLE 9. REHABILITATIVE AND DEVELOPMENTAL SERVICES

# DIVISION 3. DEPARTMENT OF REHABILITATION

**INITIAL STATEMENT OF REASONS**

**PROBLEM STATEMENT**

The Department of Rehabilitation (“Department”) is responsible for administering the provision of vocational rehabilitation services for Californians with disabilities in accordance with United States Code, title 29, section 700 et seq., Welfare and Institutions Code section 19000 et seq., and implementing federal and state regulations (Title 34 Code of Federal Regulations section 361.1 et seq., Cal. Code of Regs., tit. 9, section 7000 et seq.).

Prior to receiving vocational rehabilitation services, an individual must apply for and be determined eligible for vocational rehabilitation services. Title 34 Code of Federal Regulations section 361.41 allows an individual to apply for vocational rehabilitation services in one of three ways: (1) completing and signing a Department application, (2) completing and signing a common intake application from the one-stop center requesting vocational rehabilitation services, or (3) otherwise requesting vocational rehabilitation services from the Department.

With an increasingly technological population, many individuals are choosing to apply for vocational rehabilitation services via a newly developed online portal. The Department’s regulations allow individuals to apply for vocational rehabilitation services via the online portal but require them to complete and sign a paper application, the DR 222 Vocational Rehabilitation Services Application. The DR 222 Vocational Rehabilitation Services Application also requests additional information that is not necessary for the Department to determine an individual’s eligibility for vocational rehabilitation services.

The proposed amendments will delete the requirement that every individual who applies for vocational rehabilitation services, regardless of the modality in which they apply, must complete and sign a DR 222 Vocational Rehabilitation Services Application. The proposed amendments will also delete the reference to the DR 222 Vocational Rehabilitation Services Application and instead identify the minimum information an individual must provide to apply for vocational rehabilitation services.

In 2014, the Workforce Innovation and Opportunity Act (hereinafter “WIOA”) (Pub. L. No. 113-128 (July 22, 2014)) made significant changes to the Rehabilitation Act of 1973 (29 U.S.C. section 701(b)). In 2016, the federal implementing regulations were amended. This rulemaking package proposes to amend current regulations and repeal outdated regulations to align with the changes made by the WIOA amendments to the Rehabilitation Act of 1973, the implementing federal regulations, and state law. In the process of updating the regulations, the Department has also updated the authority citations, as well as made wording, grammar, and syntax improvements for clarity and ease of reading.

Lastly, the proposed amendments will add gender-neutral language.

**BENEFITS**

The proposed regulations will increase openness and promote transparency for individuals who wish to apply for vocational rehabilitation services. The proposed regulations will also remove unnecessary, duplicative processes for individuals who choose to apply using the online portal or using another method. The proposed regulations will align the Department’s regulatory text with federal law and regulations and will utilize gender-neutral language.

**CONSISTENCY**

All changes in this proposed rulemaking packages are consistent or compatible with existing laws and regulations.

**SPECIFIC PURPOSE AND NECESSITY OF EACH SECTION AS REQUIRED BY GOVERNMENT CODE SECTION 11346.2(c)**

When a state agency’s proposed regulation is identical to a previously adopted or amended federal regulation, Government Code section 11346.2(c) allows the agency to make a statement to that effect and to cite where an explanation of the federal regulation can be found to satisfy the requirements for rulemaking.

The proposed regulation text has been revised to be consistent with the Rehabilitation Act of 1973, as amended by the WIOA. Explanations of the changes made can be found in United States Department of Education, Rehabilitation Services Administration’s description of the final federal regulations implementing the WIOA, released in the Federal Register (Vol. 81, No. 161, 55682-55683, August 19, 2016) available at [https://www.federalregister.gov/documents/2016/08/19/2016-15980/state-vocational-rehabilitation-services-program-state-supported-employment-services-program](https://gcc02.safelinks.protection.outlook.com/?url=https%3A%2F%2Fwww.federalregister.gov%2Fdocuments%2F2016%2F08%2F19%2F2016-15980%2Fstate-vocational-rehabilitation-services-program-state-supported-employment-services-program&data=04%7C01%7CMichele.Welz%40dor.ca.gov%7Cb47d4a93eba34396a81408d910e362b6%7C19ed70549d9743c792b16781b6b95b68%7C0%7C0%7C637559391067400934%7CUnknown%7CTWFpbGZsb3d8eyJWIjoiMC4wLjAwMDAiLCJQIjoiV2luMzIiLCJBTiI6Ik1haWwiLCJXVCI6Mn0%3D%7C1000&sdata=jiFrP8cNCKD5HFSg%2BH2UN3uvZr9EgQxmF97cFBJQMPI%3D&reserved=0).

**SPECIFIC PURPOSE AND NECESSITY OF EACH SECTION AS REQUIRED BY GOVERNMENT CODE SECTION 11346.2(b)(1)**

The specific purpose of each adoption, and the rationale for the determination that each adoption is reasonably necessary to carry out the purpose for which it is proposed, together with a description of the problem, administrative requirement, or other condition or circumstance that each adoption is intended to address is as follows:

**Section 7041(a). Processing Applications**

Purpose: This subsection is amended to change the capitalization of one-stop. It also has added “known as America’s Job Centers of California”. This subsection is amended to change the name of the act from Workforce Investment Act of 1998 to Workforce Innovation and Opportunity Act.

Necessity: This amendment is necessary for grammatical purposes, consistent with state and federal law, and for transparency and clarity for the public to be informed about the name used by the one-stop centers in California. This amendment is necessary to update the name of the referenced Act as the Workforce Investment Act of 1998 was repealed and replaced by the Workforce Innovation and Opportunity Act.

**Section 7041(b). Processing Applications**

Purpose: This subsection was amended to delete the reference to the DR 222 Vocational Rehabilitation Services Application and amended to add that individuals can provide the information identified in the proposed section 7044 of the regulations to apply for vocational rehabilitation services. This subsection is further amended to change the capitalization of one-stop.

Necessity: This amendment is necessary for clarity, consistency, and transparency to identify how individuals may apply for vocational rehabilitation services. Many individuals now apply for vocational rehabilitation services online and do not fill out the paper version of the DR 222 Vocational Rehabilitation Services Application. Deletion of this language is necessary to remove the requirement that an individual who applies online must also complete the paper version of the DR 222 Vocational Rehabilitation Services Application, thereby deleting an unnecessary duplicative, paper-based system. This amendment is also necessary for grammatical purposes and consistency with state and federal law.

**Section 7041. Reference.**

Purpose: In this section, citations to specific subsections were removed.

Necessity: It is necessary to delete these subsections because any time the federal law and regulation subsections change, the subsections listed in the California state regulations are no longer up to date. To remove the possibility of future error and confusion for the reader, the Department is removing all subsections from this rulemaking for clarity and consistency. The Administrative Procedures Act does not require reference citations with subsections. This is a non-substantive change with no regulatory effect.

**Section 7044. Application for Vocational Rehabilitation Services**

Purpose: This section is added to inform an individual who is interested in applying for vocational rehabilitation services that they must provide the following information to apply for services: name, date of birth, disability, description of how the disability is a substantial impediment to employment, and a description of how vocational rehabilitation services will assist the individual to prepare for, secure, retain, advance in, or regain employment.

Necessity: This addition is necessary for transparency and to provide clarity and inform an individual on the information they must provide to apply for vocational rehabilitation services. The name and date of birth are required for identification purposes and to avoid conflating records of individuals with the same name. The disability, description of how the disability is a substantial impediment to employment, and a description of how vocational rehabilitation services will assist the individual to prepare for, secure, retain, advance in, or regain employment are necessary for the Department to determine an individual’s eligibility for vocational rehabilitation services.

**Section 7045(b). Initial Interview.**

Purpose: This section is amended to delete the language requiring an individual to complete and sign the DR 222 Vocational Rehabilitation Services Application at the individual’s initial interview. Subsections (b)(2), (3), and (4) are re-numbered subsections (b)(1), (2), and (3) to reflect the deletion of subsection (b)(1).

Necessity: This amendment is necessary for clarity and to remove an unnecessary, duplicative paper-based process. Many individuals now apply for vocational rehabilitation services online and do not fill out the paper version of the DR 222 Vocational Rehabilitation Services Application. Deletion of this language is necessary to remove the requirement that an individual who applies online must also complete the paper version of the DR 222 Vocational Rehabilitation Services Application, thereby deleting an unnecessary duplicative, paper-based system.

**Section 7045. Reference.**

Purpose: In this section, citations to specific subsections were removed.

Necessity: It is necessary to delete these subsections because any time the federal law and regulation subsections change, the subsections listed in the California state regulations are no longer up to date. To remove the possibility of future error and confusion for the reader, the Department is removing all subsections from this rulemaking for clarity and consistency. The Administrative Procedures Rehabilitation Act does not require reference citations with subsections. This is a non-substantive change with no regulatory effect.

**Section 7122(e)(1) and (2) Content of the Record of Services.**

Purpose: The Department has removed “extended evaluation” from this subsection as it is no longer supported by the 2014 Workforce Innovation and Opportunity Act amendments to the Rehabilitation Act of 1973.

Necessity: This change is necessary for consistency between the state and federal regulations and has identical or similar language as found in title 34 Code of Federal Regulations section 361.47(a)(5).

**Section 7122(g) Content of the Record of Services.**

Purpose: This regulation is amended to add a requirement that documentation of how an individual exercised informed choice in the development of their Individualized Plan for Employment “regarding availability of support services for individuals with cognitive or other disabilities, provision of assessment services, methods used to procure vocational rehabilitation services, and the extent to which the eligible individual exercised informed choice.”

Necessity: This change is necessary for transparency, clarity, and consistency with Title 9 California Code of Regulations section 7029.6(b)(1), which requires the Department to inform individuals of opportunities throughout the vocational rehabilitation process to exercise informed choice.

**Section 7122(i) Content of the Record of Services.**

Purpose: The Department has added the word “integrated” to this subsection so that it specifies competitive integrated employment, which is mandated by the 2014 amendments to the Rehabilitation Act of 1973.

Necessity: This change is necessary since the Workforce Innovation and Opportunity Act placed greater emphasis on competitive integrated employment and requires employment outcomes to meet the definition of competitive integrated employment as found in title 34 Code of Federal Regulations section 361.5(c)(15) and (c)(9).

**Section 7122(m) Content of the Record of Services.**

Purpose: This amendment changed statewide workforce investment system to statewide workforce development system.

Necessity: This change is necessary for consistency between the state and federal regulations and to accurately reflect the new title of the workforce system as implemented by the Workforce Innovation and Opportunity Act.

**Section 7122(o)(6) Content of the Record of Services.**

Purpose: This subsection is amended to delete the terms, “his or her” and replace with “the individual’s.”

Necessity: This is necessary to further the State of California’s policy on gender neutral legislative drafting. (Assembly Concurrent Resolution 260) Although this a regulatory change, the Department supports the State of California’s efforts to reduce the amount of gendered language by reusing the noun instead of gendered pronouns. This is a non-substantive change.

**Section 7122(o)(7) Content of the Record of Services.**

Purpose: This subsection is amended to delete the requirement that a completed DR 222 Vocational Rehabilitation Services Application must be retained in the Record of Services and adds a requirement that the Record of Services must contain documentation of how the individual requested vocational rehabilitation services under Section 7041(a)(1).

Necessity: This amendment is necessary for consistency with proposed Sections 7041, 7044, and 7045 as the Department is proposing to delete the requirement for every individual to fill out a DR 222 Vocational Rehabilitation Services Application regardless of how they apply for vocational rehabilitation services. Many individuals now apply for vocational rehabilitation services online and do not fill out the paper version of the DR 222 Vocational Rehabilitation Services Application. Deletion of this language is necessary to remove the requirement that an individual who applies online must also complete the paper version of the DR 222 Vocational Rehabilitation Services Application, thereby deleting an unnecessary duplicative, paper-based system.

**Section 7122(o)(8) Content of the Record of Services.**

Purpose: This subsection is amended to change the capitalization of one-stop. It also has added “known as America’s Job Centers of California”. This subsection is amended to change the name of the act from Workforce Investment Act of 1998 to Workforce Innovation and Opportunity Act.

Necessity: This amendment is necessary for grammatical purposes, consistency with state and federal law, and for transparency and clarity for the public to be informed about the name used by the one-stop centers in California. This amendment is necessary to update the name of the referenced Act as the Workforce Investment Act of 1998 was repealed and replaced by the name Workforce Innovation and Opportunity Act.

**Section 7122. Reference.**

Purpose: In this section, citations to specific subsections were removed.

Necessity: It is necessary to delete these subsections because any time the federal law and regulation subsections change, the subsections listed in the California state regulations are no longer up to date. To remove the possibility of future error and confusion for the reader, the Department is removing all subsections from this rulemaking for clarity and consistency. The Administrative Procedures Rehabilitation Act does not require reference citations with subsections. This is a non-substantive change with no regulatory effect.

**Section 7140.5(b) Collection of Information.**

Purpose: This subsection is amended to delete the terms, “his or her,” applicant, and client and replace those terms with “individual.” This subsection is amended to delete the following language, “The applicant’s signature on the Application for Services (DR 222 dated January 1991) acknowledges receipt of the booklet.”

Necessity: This is necessary to further the State of California’s policy on gender neutral legislative drafting. (Assembly Concurrent Resolution 260) Although this a regulatory change, the DOR supports the State of California’s efforts to reduce the amount of gendered language by reusing the noun instead of gendered pronouns. This is a non-substantive change. The replacement of the terms applicant and client with individual is necessary because state and federal regulations on confidentiality apply to individuals, the definition of which includes not just clients and applicants, but also potentially eligible adults, students, or youth with disabilities as well as students or youth with disabilities who are already receiving some services. This is important under the 2014 amendments to the Rehabilitation Act, which added the requirement that pre-employment transition services to be provided to students with disabilities, including students who had not yet applied for, or been determined eligible for vocational rehabilitation services. (29 U.S.C. section 733.) The general term, “individual,” is broader than client, and applicant and will be easier to understand by the readers as being inclusive. The deletion of the language regarding the applicant’s signature on the Application for Services is necessary as the Client Information Handbook is now distributed online and many individuals apply for vocational rehabilitation services online and not via the paper version of the DR 222 Vocational Rehabilitation Services Application. Deletion of this language is necessary to remove an outdated paper-based process.

**Section 7140.5(c),(d),(e), (f),(g),(h) Collection of Information.**

Purpose:  In all of these subsections, the terms, “applicant” and “client,” have been deleted, and “individual” has been kept or has replaced those terms.

Necessity: This is necessary because state and federal regulations on confidentiality apply to individuals, the definition of which includes not just clients and applicants, but also potentially eligible adults, students, or youth with disabilities as well as students or youth with disabilities who are already receiving some services. This is important under the 2014 amendments to the Rehabilitation Act, which added the requirement that pre-employment transition services to be provided to students with disabilities, including students who had not yet applied for, or been determined eligible for vocational rehabilitation services. (29 U.S.C. section 733.) The general term, “individual,” is broader than client, and applicant and will be easier to understand by the readers as being inclusive.

**ECONOMIC IMPACT ASSESSMENT (GOVERNMENT CODE SECTION 11346.3(B))**

The proposed regulations have no estimated private sector cost impacts. The proposed regulations pertain to the application form and information an individual must provide to apply for vocational rehabilitation services at the Department of Rehabilitation. As such, the changes will not create any economic impact on private sector entities.

The Department concludes that the proposed regulations are:

1. Unlikely to eliminate any jobs within California;
2. Unlikely to create any jobs in California;
3. Unlikely to create any new businesses in California;
4. Unlikely to eliminate any existing businesses in California;
5. Unlikely to affect the expansion of existing businesses in California;

**STUDIES, REPORTS, OR DOCUMENTS RELIED UPON (GOVERNMENT CODE SECTION 11346.2(B)(3))**

None.

**REASONABLE ALTERNATIVES CONSIDERED OR AGENCY’S REASONS FOR REJECTING THOSE ALTERNATIVES (GOVERNMENT CODE SECTION 11346.2(B)(5)(A))**

The Department has considered whether there is a reasonable alternative and determined that there is no reasonable alternative that would be more cost-effective to clarify the rules pertaining to vocational rehabilitation. This is because the amendments do not add new obligations but merely clarify existing obligations and remove reference to outdated application forms.

**REASONABLE ALTERNATIVES THAT WOULD LESSEN ANY ADVERSE IMPACT ON SMALL BUSINESS (GOVERNMENT CODE SECTION 11346.2(B)(5)(B))**

The Department has determined that there are no reasonable alternatives to the proposed amendments that would lessen any adverse impact on small businesses were identified. As discussed above, the proposed amendments are not expected to have an adverse impact on small businesses.

**EVIDENCE RELIED UPON TO SUPPORT THE INITIAL DETERMINATION THAT THE REGULATION WILL NOT HAVE A SIGNIFICANT ADVERSE ECONOMIC IMPACT ON BUSINESS (GOVERNMENT CODE 11346.2(B)(6))**

The Department has determined that the proposed regulations will not have a significant statewide adverse economic impact directly affecting business. As discussed above, the proposed regulations involve the application process between the Department and an individual. Businesses are not involved in the Department’s application process. Therefore, it is reasonable to conclude that the proposed regulations will not have a significant statewide adverse economic impact directly affecting business either.