**MODIFICATIONS TO PROPOSED TEXT OF REGULATIONS**

**California Code of Regulations**

**Title 9. Rehabilitative and Developmental Services**

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

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

Modification of the original proposed text will be in double underline and is found in § 7041(a).

### § 7041. Processing Applications.

(a) Application forms shall be available at all Department offices and in ~~One-Stop~~ one-stop centers, known as America’s Job Centers of California, established pursuant to the Workforce ~~Investment~~ Innovation and Opportunity Act of 2014 (29 U.S.C. 3101 et seq.) ~~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) Providing the information identified in Section 7044 of these regulations; ~~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 ~~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 723~~(a)(1)~~; 29 USC Section 3151; 34 CFR Sections 361.36, 361.38, 361.41~~(b)~~, and 361.42~~(a)(4)(i-ii)~~; and Sections 19011 and 19102, Welfare and Institutions Code.

### § 7044. Application for Vocational Rehabilitation Services.

1. The individual must provide all the following information to request vocational rehabilitation services.
   1. Name.
   2. Date of Birth.
   3. Disability.
   4. Description of how the disability is a substantial impediment to employment.
   5. Description of how vocational rehabilitation services will assist the individual to prepare for, secure, retain, advance in, or regain employment.

NOTE: Authority cited: Sections 19006 and 19016, Welfare and Institutions Code. Reference: 34 CFR Sections 361.41 and 361.42.

### § 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.~~

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

(2)~~(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.

(3)~~(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) and (c)~~, 705~~(20)~~, 721~~(a)~~,722~~(b) and (d)~~; 34 CFR Sections 361.5, 361.36, 361.38, 361.41, 361.42,

### § 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 regarding availability of support services for individuals with cognitive or other disabilities, the provision of assessment services, methods used to procure vocational rehabilitation services and the extent to which the 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 integrated 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 development ~~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~~ the individual’s previous record of services.

(7) ~~The DR 222, Vocational Rehabilitation Services Application (Rev. 03/04), incorporated by reference herein.~~ Documentation of how the individual requested vocational rehabilitation services under Section 7041(a)(1) of these regulations.

(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~~ one-stop service delivery system, known as America’s Job Centers of California, 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.

### § 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 individual ~~applicant or client~~ shall be provided and explained to all individuals ~~applicants~~ at the initial interview and shall be annually reviewed with the individual ~~client~~ or ~~his or her~~ the individual’s 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~~ individual’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 individual ~~applicant or client~~, who is the subject of the information rather than from another source.

(d) The individual’s ~~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 individual ~~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~~ individual’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~~ individual‘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 individual. ~~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 individual ~~applicant or client~~ or other individual legally allowed to sign on behalf of the individual ~~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~~ individual’s personal information. If the ~~applicant or client~~ individual is unable to sign the release, then the individual ~~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 individual ~~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~~ individual or other individual legally allowed to sign on the behalf of the individual ~~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~~ individual 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~~ individual 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 individual ~~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 record of services 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.