

**State of California
Office of Administrative Law**

In re:
Department of Rehabilitation

Regulatory Action:

Title 09, California Code of Regulations

Adopt sections:

Amend sections: 7140, 7142, 7142.5, 7143.5,
7164.6, 7196, 7211, 7290,
7353.6

Repeal sections:

**NOTICE OF APPROVAL OF CHANGES
WITHOUT REGULATORY EFFECT**

**California Code of Regulations, Title 1,
Section 100**

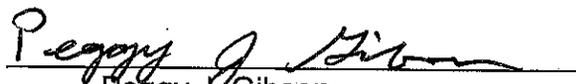
OAL Matter Number: 2016-0421-05

OAL Matter Type: Nonsubstantive (N)

This section 100 action amends several sections in title 9 to primarily make the text easier to use with assistive technology. Other changes include corrections to authority/reference citations and correcting typographical errors.

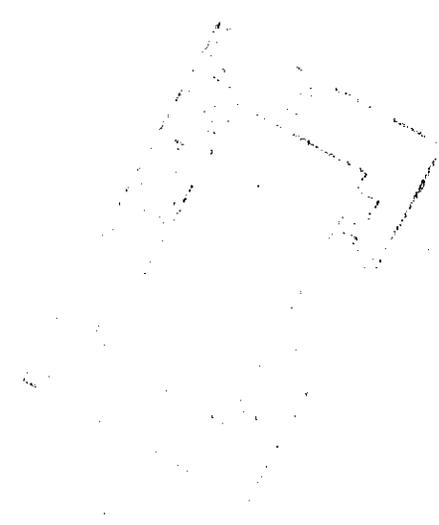
OAL approves this change without regulatory effect as meeting the requirements of California Code of Regulations, title 1, section 100.

Date: May 12, 2016


Peggy J. Gibson
Senior Attorney

For: Debra M. Cornez
Director

Original: Joe Xavier
Copy: Shelly Risbry



NOT SUBSTANTIVE

STATE OF CALIFORNIA--OFFICE OF ADMINISTRATIVE LAW

NOTICE PUBLICATION/REGULATIONS SUBMISSION

(See instructions on reverse)

For use by Secretary of State only

STD. 400 (REV. 01-2013)

OAL FILE NUMBERS	NOTICE FILE NUMBER Z-	REGULATORY ACTION NUMBER 2016-0421-05N	EMERGENCY NUMBER
For use by Office of Administrative Law (OAL) only			
NOTICE		REGULATIONS	

ENDORSED - FILED
in the office of the Secretary of State
of the State of

MAY 12 2016

2:02 PM

2016 APR 21 P 3: 58
OFFICE OF ADMINISTRATIVE LAW

AGENCY WITH RULEMAKING AUTHORITY
Department of Rehabilitation

AGENCY FILE NUMBER (if any)

A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)

1. SUBJECT OF NOTICE		TITLE(S)	FIRST SECTION AFFECTED	2. REQUESTED PUBLICATION DATE
3. NOTICE TYPE <input type="checkbox"/> Notice re Proposed Regulatory Action <input type="checkbox"/> Other		4. AGENCY CONTACT PERSON	TELEPHONE NUMBER	FAX NUMBER (Optional)
OAL USE ONLY	ACTION ON PROPOSED NOTICE <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn		NOTICE REGISTER NUMBER	PUBLICATION DATE

B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1a. SUBJECT OF REGULATION(S) Section 100 - Reference, Terms, and Typographical Corrections		1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S)	
2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics related)			
SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)		per agency request	
ADOPT			
AMEND		7140, 7142, 7142.5, 7143.5, 7153 , 7164.6, 7196, 7211, 7272 , 7290, 7353.6	
REPEAL			
3. TYPE OF FILING			
<input type="checkbox"/> Regular Rulemaking (Gov. Code §11346)	<input type="checkbox"/> Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §§11346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute.	<input type="checkbox"/> Emergency Readopt (Gov. Code, §11346.1(h))	<input checked="" type="checkbox"/> Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100)
<input type="checkbox"/> Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §§11349.3, 11349.4)	<input type="checkbox"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1)	<input type="checkbox"/> File & Print	<input type="checkbox"/> Print Only
<input type="checkbox"/> Emergency (Gov. Code, §11346.1(b))		<input type="checkbox"/> Other (Specify) _____	
4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, §44 and Gov. Code §11347.1)			
5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs., title 1, §100)			
<input type="checkbox"/> Effective January 1, April 1, July 1, or October 1 (Gov. Code §11343.4(a))	<input type="checkbox"/> Effective on filing with Secretary of State	<input checked="" type="checkbox"/> §100 Changes Without Regulatory Effect	<input type="checkbox"/> Effective other (Specify) _____
6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY			
<input type="checkbox"/> Department of Finance (Form STD. 399) (SAM §6660)	<input type="checkbox"/> Fair Political Practices Commission	<input type="checkbox"/> State Fire Marshal	
<input type="checkbox"/> Other (Specify) _____			
7. CONTACT PERSON Shelly Risbry	TELEPHONE NUMBER (916) 445-4466	FAX NUMBER (Optional) (916) 558-5826	E-MAIL ADDRESS (Optional) shelly.risbry@dor.ca.gov

8. I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.

For use by Office of Administrative Law (OAL) only

SIGNATURE OF AGENCY HEAD OR DESIGNEE <i>Kelly Hargreaves</i> per agency request	DATE 7-06-16
TYPED NAME AND TITLE OF SIGNATORY Joe Xavier, Director	<i>Kelly Hargreaves, Chief Counsel</i>

Department of Rehabilitation
Text of Proposed Changes to:
Title 9: Rehabilitative and Developmental Services

§ 7140. General Provisions.

(a) The purpose and intent of these regulations are:

(1) To protect the right to privacy of each individual who is or has been an applicant or client of the Department. 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 client-related 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 applicant or client, authorized representative, and duly appointed guardian or conservator for inspection and copying.

(2) "Case Record" means any information about an applicant or client 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 and Section 1798.30, Civil Code. Reference: Sections 1798 et seq., Civil Code and 34 CFR Section ~~361.49~~ 361.38.

§ 7142. Disclosure to Other Persons or Entities.

(a) Except as specifically authorized by sections 7141, 7143, and 7143.5, disclosure, including the fact that a particular individual is or has been an applicant or client, shall not be made to any person or entity unless the informed, written consent of the applicant or client has been obtained. The prohibition against disclosures without the informed written consent of the applicant or client 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 and social security number of the applicant or client.

(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 applicant or client.

(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 applicant or client.

(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 applicant for client's HIV test result information outside the Department without the applicant or client's express written authorization or as is expressly authorized under Health and Safety Code section 499.24121025.

NOTE: Authority cited: Sections 19006 and 19016, Welfare and Institutions Code. Reference: Sections 1798.24 and 1798.25, Civil Code, Section 121025, Health and Safety Code; and 34 CFR Section 361.49-361.38.

§ 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 applicant or client 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 applicant or client 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 applicant or client, the disclosure shall be accompanied by a written statement as follows:

NOTICE

THIS IS ~~CONFIDENTIAL~~ 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 ~~361.49~~ 361.38 and Sections ~~199.20~~ 121022 and ~~199.21~~ 121025, Health and Safety Code.

§ 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 applicant or client 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 applicant or client commits or threatens to commit a crime on the premises of the Department or against Departmental personnel, or where an applicant or client, 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 361.49 361.38.

§ 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.

§ 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 ~~IWRP~~ 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 ~~IWRP~~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).

§ 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:

.....

(13) "Department" means the Department of Rehabilitation in this chapter, unless otherwise specified.

[renumber subparagraphs (13) through (60) as (14) through (61)]

.....

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.

§ 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 ~~7150-7149~~.

NOTE: Authority cited: Sections 19006 and 19016, Welfare and Institutions Code. Reference: Section 19150, Welfare and Institutions Code; 34 CFR section 361.45.

§ 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).