

REGULAR

STD. 400 (REV. 01-2013)

OAL FILE NUMBERS	NOTICE FILE NUMBER Z-2012-1120-05	REGULATORY ACTION NUMBER 2013-0129-025	EMERGENCY NUMBER
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For use by Office of Administrative Law (OAL) only

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OFFICE OF ADMINISTRATIVE LAW

ENDORSED FILED IN THE OFFICE OF

2013 MAR 13 PM 1:25

Debra Bowen
DEBRA BOWEN
SECRETARY OF STATE

NOTICE

REGULATIONS

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 Disapproved/Withdrawn		NOTICE REGISTER NUMBER 2012 48-2	PUBLICATION DATE 11/30/2012	

B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1a. SUBJECT OF REGULATION(S) Order of Selection		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.)		ADOPT	
		AMEND	
TITLE(S) 9		7017.2; 7017.5; 7021; 7051 and 7053	
		REPEAL	

3. TYPE OF FILING

Regular Rulemaking (Gov. Code §11346)

Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §§11349.3, 11349.4)

Emergency (Gov. Code, §11346.1(b))

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.

Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1)

Emergency Readopt (Gov. Code, §11346.1(h))

File & Print

Other (Specify) _____

Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100)

Print Only

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)

Effective January 1, April 1, July 1, or October 1 (Gov. Code §11343.4(a))

Effective on filing with Secretary of State

§100 Changes Without Regulatory Effect

Effective other (Specify) _____

6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY

Department of Finance (Form STD. 399) (SAM §6660)

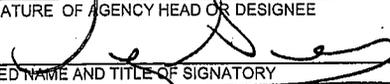
Fair Political Practices Commission

State Fire-Marshal

Other (Specify) _____

7. CONTACT PERSON Shelly Risbry	TELEPHONE NUMBER 916-445-4466	FAX NUMBER (Optional) 916-558-5826	E-MAIL ADDRESS (Optional) srisbry@dor.ca.gov
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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.

SIGNATURE OF AGENCY HEAD OR DESIGNEE 	DATE 1/28/13
TYPED NAME AND TITLE OF SIGNATORY Anthony "Tony" Bauer, Director	

For use by Office of Administrative Law (OAL) only

ENDORSED APPROVED

MAR 13 2013

Office of Administrative Law

TEXT OF REGULATIONS

Amend California Code of Regulations, title 9, sections 7017.2, 7017.5, 7021, 7051, and 7053 as follows:

§ 7017.2. Individual with a Most Significant Disability.

~~(a) — “Individual with a Most Significant Disability” means an individual with a significant disability; whose level of significance of disability (LSOD) is “most significantly disabled,” as defined in Section 7051 of these regulations.~~

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

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

~~(b) — All references to “individual with a most severe disability” in Title 9, Division 3, California Code of Regulations, shall be deemed a reference to “individual with a most significant disability.”~~

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 ~~with a~~ disability:

(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) ~~Who has a~~ serious limitation ~~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, in at least~~ one functional capacity area; and

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

(3) ~~Who 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 retardation~~, 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.

~~(b) All references to "individual with a severe disability" in Title 9, Division 3, California Code of Regulations, shall be deemed a reference to "individual with a significant disability."~~

NOTE: Authority cited: Sections 19006 and 19016, Welfare and Institutions Code. Reference: 29 USC 705(21)(A); 34 CFR 361.5(b)(31); and Sections 19011 and 19102, 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 ~~mental retardation~~, 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.

§ 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 of Rehabilitation.

(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) "Level of significance of disability" means one of the following: disabled, significantly disabled, or most significantly disabled as determined by the following criteria:~~

~~(A) "Disabled" means an eligible individual:~~

- ~~1. who has no serious limitation in terms of an employment outcome in any functional capacity area; or~~
- ~~2. whose vocational rehabilitation is not expected to require multiple vocational rehabilitation services; or~~
- ~~3. whose vocational rehabilitation is not expected to require an extended period of time.~~

~~(B) "Significantly disabled" means an eligible individual:~~

- ~~1. who meets the following criteria:~~
 - ~~a. who has a serious limitation in terms of an employment outcome in at least one functional capacity area; and~~
 - ~~b. whose vocational rehabilitation can be expected to require multiple vocational rehabilitation services; and~~
 - ~~c. whose vocational rehabilitation can be expected to require an extended period of time; and~~
 - ~~d. who has one or more physical or mental disabilities resulting from amputation, arthritis, autism, blindness, burn injury, cancer, cerebral palsy, cystic fibrosis, deafness, head injury, acquired traumatic brain injury,~~

~~heart disease, hemiplegia, hemophilia, HIV infection, respiratory or pulmonary dysfunction, mental retardation, 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; or~~

~~2. who has a disability or is blind as determined pursuant to Title II or Title XVI of the Social Security Act (42 USC 401 et seq. and 1381 et seq.). If the Department is serving only individuals who are the Most Significantly Disabled under Order of Selection, the Department shall complete a form DR 213A, Significance of Disability Instrument (New 06/01), incorporated by reference herein, pursuant to Section 7054, for individuals who have a disability or are blind as determined pursuant to Title II or Title XVI of the Social Security Act (42 USC 401 et seq. and 1381 et seq.) to determine whether they are Most Significantly Disabled.~~

~~(C) "Most significantly disabled" means an eligible individual:~~

~~1. who meets the following criteria:~~

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

~~b. whose vocational rehabilitation can be expected to require multiple vocational rehabilitation services; and~~

~~c. whose vocational rehabilitation can be expected to require an extended period of time; and~~

~~d. who has one or more physical or mental disabilities resulting from amputation, arthritis, autism, blindness, burn injury, cancer, cerebral palsy, cystic fibrosis, deafness, head injury, acquired traumatic brain injury, heart disease, hemiplegia, hemophilia, HIV infection, respiratory or pulmonary dysfunction, mental retardation, 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; or~~

~~2. who has a disability or is blind as determined pursuant to Title II or Title XVI of the Social Security Act (42 USC 401 et seq. and 1381 et~~

~~seq.) and who has a serious limitation in terms of an employment outcome in at least four functional capacity areas.~~

(56) "Multiple vocational rehabilitation services" means two or more vocational rehabilitation services; excluding counseling and guidance, services to family members, and transportation.

(67) "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.

(78) "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.

(89) "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.

§ 7053. Order of Selection for Vocational Rehabilitation Services

Process.

(a) If the number of individuals eligible to receive vocational rehabilitation services must be limited, ~~the following~~ 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) A determination will be made as to which priority categories can be served by comparing the projected costs of serving all individuals assigned to a priority category, and the projected resources available to meet these costs.~~

~~(2) All eligible individuals assigned to a priority category, who do not have a signed IWRP, shall be notified, in writing, of the Department's intention to implement Order of Selection for Vocational Rehabilitation Services. If the individual chooses, a designated representative may receive notification on his/her behalf.~~

~~(3) The Order of Selection for Vocational Rehabilitation Services shall be effective ten (10) working days following the Director's declaration. The application date used to establish the order in which services will be~~

~~provided under subsection (5) may be prior to the date of the Director's declaration.~~

(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.

(e4) Upon implementation of the Order of Selection for Vocational Rehabilitation Services:

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

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

~~(5) Following implementation, services shall be provided to individuals in priority categories in the following order:~~

~~(A) Eligible individuals determined to be most significantly disabled, as defined in Section 7017 (a)(5)(C), beginning with the earliest application date.~~

~~(B) Eligible individuals determined to be significantly disabled, as defined in Section 7051(a)(5)(B), beginning with the earliest application date.~~

~~(C) All other eligible individuals determined to be disabled as defined in Section 7051(a)(5)(A), beginning with the earliest application date.~~

~~(D) When eligible individuals determined to be significantly disabled can be served, all eligible individuals determined to be most significantly disabled shall be served regardless of the date of application.~~

~~(E) When eligible individuals determined to be disabled can be served, all eligible individuals determined to be significantly disabled shall be served regardless of the date of application.~~

~~(6) Individuals who are not included in the priority category(ies) being served shall be placed on a waiting list pursuant to Section 7056.~~

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.