

**CHAPTER 3300**  
**DEPARTMENT OF ECONOMIC SECURITY**  
**TRAINING; COMMUNITY SUPPORT SERVICES**

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**3300.0050 FEES FOR REHABILITATION SERVICES.**

The Division of Rehabilitation Services in the Department of Economic Security will charge \$50 per hour for rehabilitation services described in Minnesota Statutes, section 176.102, subdivision 9, clause (b). The authority for charging the hourly rate is contained in Minnesota Statutes, section 129A.03, paragraphs (b), (c), and (m). The rehabilitation services are the following:

- A. jobs analysis;
- B. labor market surveys;
- C. vocational counseling;
- D. job development;
- E. testing;
- F. on-the-job training;
- G. placement;
- H. training in job seeking skills;
- I. analysis of transferable skills;
- J. follow-up;
- K. referrals; and
- L. monitoring of medical and training services.

**Statutory Authority:** *MS s 129A.03 cl (b),(c),(m)*

**History:** *10 SR 2622; L 1994 c 483 s 1*

## YOUTH EMPLOYMENT

**3300.0100 DEFINITION OF TERMS.**

Subpart 1. **Scope.** The following terms used in parts 3300.0100 to 3300.0700 shall have the meanings given them.

Subp. 2. **Act.** "Act" means the Youth Employment Act of 1977, Minnesota Statutes, sections 268.31 to 268.36.

Subp. 3. **Commissioner.** "Commissioner" means the commissioner of the Minnesota Department of Economic Security.

Subp. 4. **Contract.** "Contract" means an agreement entered into between a political subdivision, school district, or a nonprofit organization and the commissioner for the operation of a youth employment and training program under the act.

Subp. 5. **Department.** "Department" means the Minnesota Department of Economic Security.

Subp. 6. [Repealed, 9 SR 2526]

Subp. 7. **Contractor.** "Contractor" means an organization which employs a person under the program established by the act.

Subp. 8. [Repealed, 9 SR 2526]

Subp. 9. **Support services.** "Support services" means services which are necessary to enable an eligible individual to participate in employment and training funded under the act. Support services include transportation, child care, meals, temporary shelter, reasonable and necessary safety equipment, required uniforms, and other normal expenses associated with employment and training funded under the act.

Subp. 10. **Transitional services.** "Transitional services" means services which help eligible youth complete school, upgrade basic skills, and prepare for additional schooling or permanent employment. Transitional services include counseling, case management, basic skills training and remedial education, life skills training, mentoring and tutoring services, and work readiness skills training.

**Statutory Authority:** *MS s 268.021; 268.33*

**History:** *9 SR 2526; 10 SR 2512; 13 SR 932; 15 SR 618; L 1994 c 483 s 1*

**3300.0200 PURPOSE AND STATUTORY AUTHORITY.**

Parts 3300.0100 to 3300.0700 govern the administration of the Youth Employment Opportunities program as authorized by the Youth Employment Act of 1977, Minnesota Statutes, sections 268.31 to 268.36. The purpose of the Minnesota Youth Program is:

A. to provide eligible youth with exposure to the world of work;

B. to encourage school completion or enrollment in alternative school programs;

and

C. to enhance the basic educational skills of youth.

**Statutory Authority:** *MS s 268.021; 268.33*

**History:** *11 SR 2077; 13 SR 932*

**3300.0300 ALLOCATION OF FUNDS.**

Subpart 1. **Allocations to counties.** The commissioner shall allocate funds available under the act as follows:

A. Fifty percent of the funds available under the act shall be allocated to counties on the basis of each county's share of the estimated youth population of the state which is from the ages of 14 years up to but not including 22 years.

B. Fifty percent of the funds available under the act shall be allocated to counties according to each county's share of the estimated youth population of the state which is from the ages of 14 years up to but not including 22 years, adjusted for:

(1) historic summer unemployment rates in the county as evidenced by official labor force estimates for the months of June, July, and August for the most recent three year period for which such data is available;

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(2) the county's poverty ratio based upon the percent of children from five to 17 years of age living in families below the poverty line as evidenced by the most recent United States Census figures as adjusted by reference to more recent population surveys, provided that reference to more recent population surveys shall be made only if such data is available for all counties in the state; and

(3) the migration of postsecondary school students between counties, where they are counted by the census in March and April, to their home counties where the program is active during the June to September period.

C. The mathematical statement of the allocation to counties is given below:

$$A_i^c = 0.5(F) \frac{Y P_i^c}{\sum_{i=1}^{87} Y P_i^c} + 0.5(F) \frac{(Y P_i^c) (U_i^c) (P_i^c) (C_i^c)}{\sum_{i=1}^{87} [(Y P_i^c) (U_i^c) (P_i^c) (C_i^c)]}$$

$$\text{and } C_i^c = \left[ 1 - \frac{1.5(SC_i^c)}{Y P C_i^c} \right]$$

where:

- (1)  $A_i^c$  = total dollar allocation to the  $i^{\text{th}}$  county;
- (2)  $F$  = total funds available for allocation;
- (3)  $Y P_i^c$  = youth population 14 to 21 years of age in the  $i^{\text{th}}$  county, determined by interpolation for the current year from projections of the state demographer;
- (4)  $U_i^c$  = most recent three-year average of official labor force unemployment for the months of June, July, and August for the  $i^{\text{th}}$  county;
- (5)  $P_i^c$  = percent of all families with income below the poverty level and with related children five to 17 years of age as evidenced by the most recent United States census or more recent population surveys as referenced in subpart 2, item B;
- (6)  $C_i^c$  = the adjustment factor due to the timing of the census in March and April to account for residency flows of postsecondary school enrolled students between their home county and that of school location;
- (7)  $SC_i^c$  = count of number of students 20 and 21 years of age enrolled in school in the  $i^{\text{th}}$  county as evidenced in the most recent United States census; and
- (8)  $Y P C_i^c$  = youth population 14 to 21 years of age of the  $i^{\text{th}}$  county as evidenced in the most recent United States census.

**Subp. 2. Allocation to cities and Indian reservations.** After the commissioner has made an allocation to each county, each county's allocation shall be divided as follows:

A. Each city within the county which has a total population of 2,500 or more shall receive that portion of the county's allocation which is proportionate to the population of the city as compared to the total population of the county as evidenced by the most recent United States Bureau of Census estimates. Allocations to Indian reservations will be based on the same procedure as that of cities. Reservation population and counties of location will be based on the most recent United States Bureau of Indian Affairs and/or United States Bureau of Census Information.

B. The remainder of the county allocation, that part which is not allocated to cities and Indian reservations under item A, shall be allocated to the county as a whole.

**Statutory Authority:** *MS s 268.021; 268.33*

**History:** *9 SR 2526; 10 SR 2512; 11 SR 2077*

### 3300.0400 CONTRACTING.

The commissioner may enter into contracts for operation of the program with organizations enumerated in part 3300.0100, subpart 4. Selection of contractors will be determined

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by the commissioner. Consideration will be given to contractors with experience in administering youth employment and training programs and to those who have demonstrated efforts to coordinate state and federal youth programs locally.

**Statutory Authority:** *MS s 268.021; 268.33*

**History:** *9 SR 2526; 10 SR 2512; 11 SR 2077; 13 SR 932*

**3300.0500 OPERATION PROCEDURES.**

Subpart 1. **Regular program.** Youths who are at least 14 years of age but less than 22 years of age at the time of application are eligible for program participation. Ninety percent of the youths hired must be from families which meet the definition for economically disadvantaged under the federal Job Training Partnership Act. Hereinafter, this portion of the program is referred to as the "regular program."

Subp. 2. [Repealed, 13 SR 932]

Subp. 2a. **Transitional services.** Contractors may provide or arrange for transitional services to help eligible youth complete school, upgrade basic skills, and prepare for additional schooling or permanent employment.

Subp. 3. **Eligible youth.** Recruitment of eligible youths shall be a cooperative effort between the department and the local contractors selected to deliver the program.

Subp. 4. **Minimum wage.** Eligible youths not designated as shall be paid the federal or state minimum wage for a period not to exceed 40 hours per calendar week and for not more than 480 hours per calendar year.

Subp. 5. **Supervisors.** A contractor may designate eligible youth as supervisors for youths in its employ under the act. Youths designated as supervisors shall be paid the federal or state minimum wage plus a rate per hour to be established by the local contractor.

Subp. 6. **Employment of eligible youth.** Contractors may begin employing eligible youths upon signing the contract. Contractors have the option to employ youth during the nonsummer months with the approval of the department.

**Statutory Authority:** *MS s 268.021; 268.0122; 268.33*

**History:** *9 SR 2526; 11 SR 2077; 13 SR 932; 15 SR 618; 16 SR 1996*

**3300.0600** [Repealed, 9 SR 2526]

**3300.0601 SUPPORT SERVICES.**

Contractors may provide or arrange for support services as defined in part 3300.0100, subpart 9, to eligible youth, using funds allocated under this act. The cost of the support services must not exceed 15 percent of the contract. Contractors shall not be required to provide support services to eligible youth when funds received under the act have been exhausted.

**Statutory Authority:** *MS s 268.021; 268.33*

**History:** *10 SR 2512; 11 SR 2077; 13 SR 932; 15 SR 618*

**3300.0700 REALLOCATION PROCEDURES.**

Funds may be reallocated within a county or between a county and a city or between counties under the following circumstances:

A. the city or county originally allocated the funds according to the formula in part 3300.0300 refuses the funds; or

B. the city or county originally allocated the funds gives its permission for those funds to be used in another city or county.

In addition, the contractors may reallocate up to the equivalent of one full-time slot or position not to exceed \$1,500 between any subdivision above for the purpose of simplified administration of the program.

During the period of the contract, the department may shift funds from one contractor to another with the mutual consent of both contractors.

**Statutory Authority:** *MS s 268.021; 268.33*

**History:** *9 SR 2526; 13 SR 932*

## WEATHERIZATION ASSISTANCE FOR LOW-INCOME PEOPLE

**3300.0800 PURPOSE.**

The purpose of parts 3300.0800 to 3300.1900 is to develop and implement a state weatherization assistance program under the authority of Minnesota Statutes, section 268.37 in the dwellings of low-income persons in order both to aid those persons least able to afford higher utility costs and to conserve needed energy.

**Statutory Authority:** *MS s 268.37 subd 3*

**3300.0900 ADMINISTRATION OF GRANTS.**

Grants awarded under parts 3300.0800 to 3300.1900 shall be administered in accordance with the following:

A. Uniform Administrative Requirements for Grants-in-Aid to State and Local Governments, issued as Office of Management and Budget Circular A-102 Revised and found in the Federal Register, volume 42, pages 45828-45891 (1977);

B. Grants and Agreements With Institutions of Higher Education, Hospitals, and other Nonprofit Organizations, issued as Office of Management and Budget Circular A-110 and found in the Federal Register, volume 41, pages 32016-32037 (1976);

C. Audit of Federal Operations and Programs, issued as Office of Management and Budget Circular A-73 and found in the Federal Register, volume 43, pages 12404-12406 (1978);

D. Cost Principles for State and Local Governments, issued as Office of Management and Budget Circular A-87 and found in the Federal Register, volume 46, pages 9548-9554 (1981);

E. Evaluation, Review and Coordination of Federal and Federally Assisted Programs and Projects, issued as Office of Management and Budget Circular A-95 and found in the Federal Register, volume 40, pages 2052-2065 (1976);

F. Notification to States of Grant-in-Aid Information, issued as United States Treasury Circular 1082 and found in the Federal Register, volume 41, page 2652 (1976); and

G. Withdrawal of Cash From the Treasury for Advances Under Federal Grant and Other Programs, issued as United States Treasury Circular 1075 and found in the Code of Federal Regulations, title 31, part 205 (1980).

**Statutory Authority:** *MS s 268.37 subd 3*

**3300.1000 DEFINITIONS.**

Subpart 1. **Scope.** As used in parts 3300.0800 to 3300.1900 the following terms have the meanings given them.

Subp. 2. **Agency.** "Agency" means an organization that receives funds under parts 3300.0800 to 3300.1900 to operate a weatherization program.

Subp. 3. **Assistant commissioner.** "Assistant commissioner" means the assistant commissioner of the Division of Training and Community Services of the Department of Economic Security.

Subp. 4. **Community action agency.** "Community action agency" means a private corporation or public agency as defined in Minnesota Statutes, section 268.53, subdivision 1.

Subp. 5. **Commissioner.** "Commissioner" means the commissioner of the Department of Economic Security.

Subp. 6. **Conditioned space.** "Conditioned space" means an area inside the building envelope where the air temperature can be altered by a heating or cooling device.

Subp. 7. **Cosmetic items.** "Cosmetic items" means items that only enhance the aesthetic appearance of the property. Some examples of "cosmetic items" are finishes, decorative fenestration, and elevation materials such as aluminum siding, board and batten, clapboard, brick, stone, shakes, and asphalt siding.

Subp. 8. **Cost of employment.** "Cost of employment" means compensation for services as defined in Office of Management and Budget Circular A-87, Attachment B, A.10, A.13, and A.14, as cited in part 3300.0900, item D.

Subp. 9. **Department.** "Department" means the Department of Economic Security.

Subp. 10. **Dwelling unit.** "Dwelling unit" means a house or household. It includes stationary mobile homes, homes, apartments, and groups of rooms or single rooms occupied as separate living quarters.

Subp. 11. **Elderly person.** "Elderly person" means a person who is 60 years of age or older.

Subp. 12. **Eligible dwelling unit.** "Eligible dwelling unit" means a dwelling unit that is occupied by a low-income family unit.

Subp. 13. **Family unit.** "Family unit" means all persons living together in a dwelling unit.

Subp. 14. **Grantee.** "Grantee" means an organization that receives funds under this rule to operate a weatherization program.

Subp. 15. **Grantor.** "Grantor" means the Division of Training and Community Services, Department of Economic Security, state of Minnesota.

Subp. 16. **Handicapped person.** "Handicapped person" means a person who, in the opinion of a qualified medical person, is permanently physically or mentally disabled. "Qualified medical person" means a qualified physician or chiropractor authorized to practice in the state of Minnesota.

Subp. 17. **Heating degree days.** "Heating degree days" means the difference in temperature, in degrees Fahrenheit between the mean temperature for the day and 65 degrees Fahrenheit on any day when the mean temperature is less than 65 degrees Fahrenheit. Data for this factor is from *Monthly Normals of Temperature, Precipitation and Heating and Cooling Degree Days, 1941 to 1970*, issued by the National Oceanic and Atmospheric Administration (United States Department of Commerce, 1973).

Subp. 18. **Heating or cooling source.** "Heating or cooling source" means a device that can raise or lower temperatures in a dwelling unit as part of the permanent heating, ventilating, and air conditioning system installed in the dwelling unit. It includes furnaces, heat pumps, stoves, boilers, heaters, fireplaces, air conditioners, fans, and solar devices.

Subp. 19. **Independent contractor.** "Independent contractor" means an entity that furnishes materials or provides labor or both in the weatherization of buildings of low-income persons.

Subp. 20. **Indian tribe.** "Indian tribe" means any tribe, band, nation, or other organized group or community of Native Americans, including any Alaska native village, or regional or village corporation as defined in or established under the Alaska Native Claims Settlement Act, United States Code, title 43, sections 1601 to 1628 (1977 and Supplement III 1980), which:

A. is recognized as eligible for special programs and services provided by the United States to Native Americans because of its status as Native American; or

B. is located on or near a federal or state reservation or rancheria.

Subp. 21. **Low-income.** "Low-income" means having a total household income in relation to family size which:

A. is at or below 125 percent of the poverty level determined in accordance with criteria established by the Director of the Federal Office of Management and Budget in Code of Federal Regulations, title 45, section 1060 (1981); or

B. is the basis for which cash assistance payments have been paid during the preceding 12-month period under titles IV and XVI of the Social Security Act, Statutes at Large, volume 49, page 620, chapter 531 (1935), codified in scattered sections of United States Code, volume 42.

Subp. 22. **Mechanical equipment.** "Mechanical equipment" means control devices or apparatus that is primarily designed to improve the heating or cooling efficiency of a dwelling unit and that will be permanently affixed to an existing heating or cooling source. It includes a flue damper, clock setback thermostat, filter, and replacement limit switches.

Subp. 23. **Multifamily dwelling unit.** "Multifamily dwelling unit" means a dwelling unit that is located in a structure containing more than one dwelling unit.

Subp. 24. **Number of low-income, owner-occupied dwelling units in the county.** "Number of low-income, owner-occupied dwelling units in the county" means the number of those dwelling units in a county as determined by the department.

Subp. 25. **Number of low-income, renter-occupied dwelling units in the county.** "Number of low-income, renter-occupied dwelling units in the county" means the number of those dwelling units in a county as determined by the department.

Subp. 26. **Repair material.** "Repair material" means an item necessary for the effective performance or preservation of weatherization materials. "Repair material" includes lumber used to frame or repair windows and doors that could not otherwise be caulked or weather-stripped, and protective materials, such as paint, used to seal materials installed under this program. "Repair material" also includes furnace efficiency modifications limited to:

- A. replacement burners;
- B. devices for modifying fuel openings, including one-time replacement of furnace filters; and
- C. electrical or mechanical furnace ignition systems that replace standing gas pilot lights.

Subp. 27. **Regional clearinghouse.** "Regional clearinghouse" means the local regional development commission that has the authority under title IV of the Intergovernmental Cooperation Act of 1968, United States Code, volume 42, sections 4231 to 4233 (1977), to review and comment with respect to projects funded by the federal and state governments.

Subp. 28. **Rental dwelling unit.** "Rental dwelling unit" means a dwelling unit occupied by a person who pays periodic sums of money to occupy the dwelling unit.

Subp. 29. **Separate living quarters.** "Separate living quarters" means those in which the occupants do not regularly live and eat with any other persons in the structure and which have either direct access from the outside of the building or through a common hall, or complete kitchen facilities for the exclusive use of the occupants. The occupants may be a single family, one person living alone, two or more families living together, or any other group of related or unrelated persons who share living arrangements.

Subp. 30. **Single-family dwelling unit.** "Single-family dwelling unit" means a structure containing no more than one dwelling unit.

Subp. 31. **State.** "State" means the state of Minnesota.

Subp. 32. **Weatherization crew.** "Weatherization crew" means a group of weatherization laborers with a weatherization supervisor.

Subp. 33. **Weatherization laborer.** "Weatherization laborer" means a person who performs weatherization and repair activities necessary to complete work on eligible dwelling units. The work may include auditing, inspecting, delivery, and physical warehousing of weatherization materials and equipment.

Subp. 34. **Weatherization project.** "Weatherization project" means a project conducted in a single geographical area which undertakes to weatherize dwelling units that are thermally inefficient.

Subp. 35. **Weatherization supervisor.** "Weatherization supervisor" means a person who inspects weatherization and repair activities and who is responsible for crew laborers' conduct, performance, and evaluation.

Subp. 36. **Weatherization materials.** "Weatherization materials" means materials used to weatherize homes as defined in Code of Federal Regulations, title 10, sections 456.101 to 456.914 (1980) amended by Federal Register, volume 45, pages 63449, 63453, 63793 (1980).

**Statutory Authority:** *MS s 268.37 subd 3*

**History:** *1Sp1985 c 14 art 9 s 75; 17 SR 1279; L 1994 c 483 s 1*

### 3300.1100 ALLOCATION OF FUNDS.

Subpart 1. **Determination.** The department shall allocate funds by county to eligible grantees with a demonstrated ability to administer and deliver weatherization services. The department shall determine whether or not a grantee has a demonstrated ability to administer

and deliver weatherization services by taking into account the criteria in subpart 4. Equal weight shall be given to each of the criteria. The department shall also allocate funds to eligible grantees who have been engaged in contracting for the construction and repair of real property.

Subp. 2. **Contracts.** All contracts between the state and a grantee will run for six months beginning July 1.

Subp. 3. **Termination of grant.** A grant shall be terminated if the department determines, after a public hearing conducted by the Office of Administrative Hearings, that the grantee has been ineffective in meeting the purpose of Minnesota Statutes, section 268.37.

Subp. 4. **Criteria.** In making a determination under subpart 3, the department shall evaluate the performance of the grantee and shall consider:

A. how quickly the weatherization project achieves the goals of Minnesota Statutes, section 268.37;

B. whether the grantee has adhered to the plan submitted;

C. the quality of work performed through the grantee; and

D. the number, qualifications, and experience of staff members of the grantee.

**Statutory Authority:** *MS s 268.37 subd 3*

### 3300.1200 GRANT APPLICATIONS.

Subpart 1. **Application procedure.** Applications to the department must contain a plan for the use of state funds which is submitted not later than 30 days after receipt of written notice from the department of the availability of funds for each year. The department shall review each timely application and if the submission complies with the applicable provisions of this rule, approve a final budget and issue a notice of grant award.

Subp. 2. **Application.** Each application must include:

A. the name and address of the grantee responsible for administering the program;

B. a financial schedule which indicates the monthly funding requirements based on projected production;

C. staffing patterns for all weatherization personnel to allow local program grantees to attain production goals;

D. a written review of the plan by the regional clearinghouse; and

E. a statement by grantee ensuring that:

(1) no dwelling unit may be weatherized without written documentation that the unit is eligible for weatherization as provided in parts 3300.0800 to 3300.1900;

(2) there is an outreach process used to obtain applications together with a description of that process; and

(3) it will establish a priority system for client applications.

Each application must state the minimum number of dwelling units to be completed by each grantee which are to be established by the department.

Subp. 3. **Maximum amount of material in dwelling unit.** The grantee shall ensure that no eligible dwelling unit receives more than \$750 in material and that each dwelling unit is weatherized according to the priority list established by the department as found in subparts 4 and 5. The department shall waive the \$750 restriction for individual eligible dwelling units on written application documenting that the material costs on the applicant's dwelling exceed \$750 and that all activities are eligible according to the agency's priority list. A waiver will be granted if the eligible dwelling exceeds 1,500 square feet, or is two story, or requires more than 16 storm windows. If a waiver is granted, the total material expenditures may not exceed \$1,000. For purposes of subparts 4 and 5, home types have the following meanings:

A. "Type I" means homes with accessible attics;

B. "Type II" means homes with inaccessible basements;

C. "Type III" means homes with solid walls;

D. "Type IV" means homes with knee wall construction;

E. "Type V" means mobile homes.

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Subp. 4. **Department's memorandum; weatherization priorities for home types I-IV, 8-28-81.** The following list of priorities is a departmental memorandum:

Weatherization deliverers will follow the priority list given below. If the particular activity listed currently exists or cannot be done, then an explanation must be made on the Retro Tech Job Sheet. If the client will not permit certain activities, then a statement with an explanation of the refusal to permit work, signed by the client, must be in the file.

Priorities

### I. General Heat Waste

#### A. Caulk all exterior envelope infiltration points including:

1. Window and door frames.
2. Sill plates.
3. Foundation cracks.
4. Corners of buildings.
5. Under door sills.
6. Around all electrical & plumbing entrances.
7. All other infiltration areas.

B. Install hot water heater jackets except where a vent damper is present.

C. Insulate hot water pipes in accessible unheated space.

D. Weatherstrip movable windows and doors between conditioned and unconditioned space, including basement doors, attic scuttles and knee wall entrances.

E. Install gaskets on electrical boxes located on the interior side of exterior walls.

F. Replace or reset broken or loose glass.

### II. Insulate Attic area

#### A. To R-38

B. Vent in accordance with FHA/HUD Minimum Property Standards. (No vapor barrier 1 to 150 ratio; with vapor barrier 1 to 300 ratio.)

C. Insulate attic scuttle doors to R-30; dam access area allowing entry to attic.

### III. Insulate exterior walls to minimum of R-11.

IV. Insulate rim joist area to a minimum of R-19 with vapor barrier on warm side.

V. Insulate above-grade foundation walls to R-11. When insulation is applied to interior side of the foundation wall, extend insulation 2 feet below grade.

On crawl space, either insulate perimeter foundation wall to R-11 or floor to minimum of R-19 where freezing of pipes is not a factor.

VI. Install storm windows on single-glazed windows where storm windows are missing or existing storm windows are deteriorated beyond repair.

VII. Install new primary doors and windows only where old ones are beyond repair and cannot be weatherstripped.

Optional Items — Only after all of the required items are completed and if maximum material limit has not been reached.

I. Clock set back thermostats.

II. Storm doors.

Subp. 5. **Department's memorandum; mobile home priorities, 8-28-81.** The following list of priorities is a departmental memorandum:

Priorities for Type V Home

### I. General Heat Waste

#### A. Caulk all exterior envelope infiltration points including:

1. Window and door frames.
2. Corners of buildings.
3. Under door sills.
4. Around all electrical and plumbing entrances.
5. Along all siding seams.

- 6. Around all "through the wall" accessories.
    - B. Install hot water heater jackets on electrical water heaters, or Insulate water heater closet on gas and oil fired water heaters.
    - C. Insulate hot water pipes where accessible.
    - D. Replace all worn weather stripping on all movable windows.
    - E. Weatherstrip all exterior prime doors.
    - F. Replace or reset broken or loose glass.
  - II. Insulate ceiling to maximum extent possible not to exceed R-38 and install at least two 8-inch round vents or equivalent.
  - III. Insulate floor to maximum extent possible not to exceed R-38.
  - IV. Install storm windows on those single glazed windows where the original storm is either missing or damaged beyond repair.
  - V. Install new prime doors and windows where existing ones are beyond repair.
- Optional Items (Only after all required items are completed.)
- I. Replace damaged or missing storm door.
  - II. Repair and tighten skirting — certify that permanent vent equaling 36 sq. in. per 25 lineal feet of skirt is installed if skirting repair is done.

**Statutory Authority:** *MS s 268.37 subd 3*

### 3300.1300 ALLOWABLE EXPENDITURES.

Expenditures shall be limited to:

- A. the cost of purchase, delivery, and storage of weatherization materials;
  - B. transportation of weatherization materials, tools, equipment, and work crews to a storage site and to the dwelling work site;
  - C. maintenance, operation, and insurance of vehicles to transport items in item B;
  - D. maintenance of tools and equipment;
  - E. purchases of tools, equipment, and vehicles;
  - F. payments to an independent contractor for furnishing materials or providing labor or both in the weatherization of dwellings of low-income persons;
  - G. the cost of employment of weatherization supervisors;
  - H. the cost of employment of weatherization laborers;
  - I. the cost, not to exceed \$150 per dwelling unit, for repair materials and repairs to the heating source necessary to make the installation of weatherization materials effective;
  - J. building permits where applicable;
  - K. the cost of liability insurance for weatherization projects for personal injury and property damage;
  - L. administrative expenses not to exceed 7.5 percent of each grantee's allocation;
- and
- M. weatherization of a building containing eligible rental dwelling units if at least 66 percent of the rental units in the building are eligible dwelling units and if the landlord or landlord's agent agrees in writing that the grantee may do the weatherization work and that rents will not be raised because of the weatherization work.

All purchases in item E with an acquisition value of \$300 or more must have written approval from the department. Purchasing must follow procedures outlined in Office of Management and Budget Circulars A-87, A-102, and A-110, as cited in part 3300.0900.

**Statutory Authority:** *MS s 268.37 subd 3*

### 3300.1400 UNALLOWABLE EXPENDITURES.

Grant funds may not be used for any of the following purposes:

- A. to weatherize a dwelling unit that has been weatherized previously with grant funds from the United States Department of Energy or state assistance under Minnesota Statutes, section 268.37 or parts 3300.0800 to 3300.1900, unless the dwelling unit has been damaged by fire, flood, or an act of God, and repair of the damage to weatherization materials is not paid for by insurance;

B. to weatherize a dwelling unit that is vacant or designated for acquisition or clearance by a federal, state, or local government program within 12 months from the date weatherization of the dwelling unit would be scheduled to be completed; or

C. to purchase cosmetic items, remodeling items, or a heating or cooling source.

**Statutory Authority:** *MS s 268.37 subd 3*

### **3300.1500 OVERSIGHT RESPONSIBILITY.**

The department shall supervise the projects of the grantees in the following manner:

A. At least once every three months the department shall monitor and evaluate the operation of projects carried out by the grantees receiving financial assistance under parts 3300.0800 to 3300.1900 through on-site inspections, reviews of reports submitted by grantees, and inspection of their books and records.

B. The grantee shall give the department access, for the purpose of audit and examination, to any books, documents, papers, information, and records of any weatherization project receiving financial assistance under parts 3300.0800 to 3300.1900.

C. The commissioner shall conduct an annual audit of the records of a grantee receiving financial assistance under parts 3300.0800 to 3300.1900.

**Statutory Authority:** *MS s 268.37 subd 3*

### **3300.1600 RECORDKEEPING.**

Recordkeeping shall be in accordance with Office of Management and Budget Circular A-87 as cited in part 3300.0900, item D. Each grantee receiving state financial assistance under parts 3300.0800 to 3300.1900 shall keep records the department requires, including records which fully disclose the amount and disposition by each grantee of funds received under parts 3300.0800 to 3300.1900, the total cost of the weatherization project for which the assistance was given or used, including all sources and amounts of funds for the project or program, and other records the department deems necessary for an effective audit and performance evaluation.

**Statutory Authority:** *MS s 268.37 subd 3*

### **3300.1700 MONTHLY REPORTS.**

Each grantee receiving financial assistance under parts 3300.0800 to 3300.1900 shall submit a monthly program performance report and a monthly financial report or invoice to the department.

**Statutory Authority:** *MS 268.37 subd 3*

### **3300.1800 GRANTING PROCESS.**

When the department approves an application for a grant, it shall notify the grantee, in writing, of the approval. The department and the grantee shall sign a grant contract. The grant contract must specify what report requirements and other grant requirements must be met prior to any obligation of funds. Payments on grant contracts shall be made on the basis of grantee activity in the program. Cash on hand in excess of 30-day program requirements shall not be delivered. Payments to grantees shall be reviewed in comparison to expenditures to determine cash needs. Grantees shall report expenditures monthly on forms to be supplied by the department. The department shall require the grantees to project the next month's cash needs on the previous month's expenditure report. If the grantee determines that it cannot fulfill its obligations under the plan in whole or part, the grantee may request an amendment or revision of the existing approved plan and resubmit a new plan or amendments within 30 days after the written notice of request for consideration. The request from the grantee must be in writing detailing its specific views with supporting data and arguments.

**Statutory Authority:** *MS s 268.37 subd 3*

### **3300.1900 VARIANCES.**

Subpart 1. **Granting of variance.** The department shall grant a variance to the use of materials required by part 3300.1000, subpart 36 if it appears that:

A. product or test standards have changed; and

B. granting the variance would not adversely affect the public health or safety; and

C. granting the variance would not conflict with applicable building codes.

Subp. 2. **Written request for a variance.** A grantee may submit to the department a written request for a variance documenting the need to include or exclude additional or existing materials required by part 3300.1000, subpart 36. If the agency initiates the variance as a result of a United States Department of Energy directive it will notify all grantees in accordance with subpart 3. If the agency denies a request for a variance it shall notify the applicant, in writing, of the reasons for the denial.

Subp. 3. **Notification of variance.** The department shall notify all grantees, in writing, that a variance has been granted. Notification will be issued within 30 days after the granting of the variance.

**Statutory Authority:** *MS s 268.37 subd 3*

### EXTENDED EMPLOYMENT PROGRAMS

#### 3300.1950 SCOPE AND PURPOSE.

Parts 3300.1950 to 3300.3050 govern the provision of extended employment programs by rehabilitation facilities as defined in Minnesota Statutes, chapter 129A. The purpose of extended employment programs is to maximize the vocational potential of persons with disabilities by providing appropriate paid work through establishing the most enabling environment.

**Statutory Authority:** *MS s 129A.08 subd 5; L 1988 c 689 art 2 s 267*

**History:** *11 SR 394; 12 SR 2783*

**3300.2000** [Repealed, 11 SR 394]

#### 3300.2050 DEFINITIONS.

Subpart 1. **Scope.** When used in parts 3300.1950 to 3300.3050, the terms defined in this part have the meanings given them.

Subp. 2. **Commissioner.** "Commissioner" means the commissioner of the Minnesota Department of Economic Security.

Subp. 3. [Repealed, 19 SR 639]

Subp. 4. **Competitive employment.** "Competitive employment" means employment in a position which:

A. is paid at a rate equal to or greater than the state or federal minimum wage, whichever is appropriate;

B. is not subsidized for training purposes by public funds, excluding any state or federal tax credits available to increase employment among specified groups;

C. is full time, unless employment of less than 30 hours per week is determined to be appropriate because of the availability of positions in which the worker can be employed or other individual circumstances;

D. can reasonably be expected to be available on an ongoing basis or can reasonably be expected to be followed by employment in positions not subsidized for training purposes by public funds;

E. has a majority of nondisabled individuals as the working peers of the worker; and

F. can reasonably be expected to allow the worker to develop the worker's vocational potential.

Subp. 5. **Conversion point score.** "Conversion point score" means a numerical value on a scale of standard deviations above or below a mean. It is used to provide a uniform scale to which the quantifiable performance measures, the economic and geographic factors, and the disability index conversion scores can be converted for use in allocating funds.

Subp. 6. **Disability adjusted average hourly earnings factor.** "Disability adjusted average hourly earnings factor" means an average wage calculation for the extended employment program. The calculation has as its numerator the sum of the products which result from multiplying each worker's disability index conversion score by each worker's total wages in

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the reporting period. Total wages include remuneration for paid holidays and paid sick, vacation, and other paid leave. The calculation has as its denominator the total number of hours worked in the reporting period by the total unduplicated number of workers. Number of hours worked is defined in subpart 20. The mathematical formula for the wage calculation is represented as follows:

$$\frac{\text{Sum of (the sum of wages in the reporting period for each program worker multiplied by that worker's disability index conversion score)}}{\text{Total number of hours worked by the total unduplicated number of workers in the reporting period}} = \text{Disability adjusted average hourly earnings factor}$$

**Subp. 7. Disability index.** "Disability index" means an index which measures the effect that disability levels have on workers in achieving their vocational potential. The disability index is the total score (sum of 30 ratings) of the Functional Assessment Inventory (FAI) as revised in August 1990 and published by the Division of Rehabilitation Services. This inventory was originally developed and authored by Nancy M. Crewe, Ph.D., and Gary T. Athelstan, Ph.D. and is published by the Materials Development Center of the University of Wisconsin-Stout. The modified inventory is incorporated by reference and is not subject to frequent change. It is available for loan and inspection at the State Law Library and for inspection at the Minnesota Department of Economic Security, Division of Rehabilitation Services, 390 North Robert Street, First Floor, Saint Paul, Minnesota 55101.

**Subp. 8. Disability index conversion score.** "Disability index conversion score" means an expression of workers' disability indexes in terms of their rank among other workers in a program, converted to a continuous scale from one to four.

**Subp. 9. Disability levels.** "Disability levels" means the varieties of disabling conditions affecting workers' potential for rehabilitation as measured by the disability index described in subpart 7.

**Subp. 10. Economic conditions.** "Economic conditions" means those economic and geographic factors in the primary service areas surrounding rehabilitation facilities which affect extended employment programs in providing placement opportunities, paying wages, and furnishing service hours to workers. The factors are the following:

- A. annual average county unemployment rate;
- B. average county covered quarterly wages;
- C. county per capita income; and
- D. percent of population below the poverty level.

Information concerning items A to D is available upon request from the Minnesota Department of Economic Security, Research and Statistics Office (RASO), 390 North Robert Street, Fifth Floor, Saint Paul, Minnesota 55101. Item A is computed by RASO. Item B is published by RASO in Minnesota Employment and Wages by County and is available for inspection at RASO. Item C is published in the Minnesota Labor Market Information Directory by RASO and is available for inspection at RASO. Item D is provided to RASO by the Office of the Minnesota State Demographer based on the latest United States Census estimates or actual data. Items A to D will be updated annually. If more than one county is contained in a rehabilitation facility's primary service area, data from the counties will be combined and weighted in proportion to the program workers' counties of residence. The factors in items A to D are given equal weight.

**Subp. 11. Extended employment programs.** "Extended employment programs" means programs providing paid work and service hours as a step in the rehabilitation process for those who cannot be readily absorbed in the competitive labor market, or during such time as employment opportunities for them in the competitive labor market do not exist. The programs are reasonably expected to allow workers to develop their vocational potential. The programs provide pay at a rate equal to or greater than the state or federal minimum

wage, whichever is appropriate, or at a lesser rate of pay according to a certificate issued under Code of Federal Regulations, title 29, sections 525.1 to 525.24, or other federal regulations providing for exemption from federal minimum wage requirements. Extended employment programs are the following:

- A. long-term employment program as defined in subpart 16;
- B. work activity program as defined in subpart 33; and
- C. supported employment program as defined in subpart 31a.

Subp. 12. **Full-time employment.** "Full-time employment" means employment for an average of 30 hours per week or more in a supported employment program or in competitive employment.

Subp. 13. **Full-time equivalent (FTE).** "Full-time equivalent" or "FTE" means the lesser of the following calculations:

A. a count resulting when the total annual number of work and service hours for each program produced by a rehabilitation facility is divided by 1,560 hours per year for a long-term employment program or a supported employment program, or by 1,040 hours per year for a work activity program. Service hours may comprise no more than one-quarter of the total hours of participation for each program in a year; or

B. a count of workers in a program during a year. For purposes of this subpart, a worker is counted in the program where the worker accrued the most hours of work during the year and where the worker's annual hours of work and service were at least 120 hours in a long-term employment program or a supported employment program, or 80 hours in a work activity program.

Subp. 14. **Fundamental personnel benefits.** "Fundamental personnel benefits" means benefits for vacation, sick leave, holidays, and social security provided to workers in a long-term employment program on a proportional basis as provided to the nonexempt, full-time staff of the rehabilitation facility, and benefits for military leave, jury duty, overtime pay, voting time, workers' compensation, and leave as required by the federal Family and Medical Leave Act and Minnesota Statutes, sections 181.940 to 181.943, provided to workers in a long-term employment program as provided to the nonexempt, full-time staff under applicable laws and personnel policies. "Nonexempt" has the meaning given it in the federal Fair Labor Standards Act of 1938, as amended. However, in no event will the workers be entitled annually to less than five days of paid vacation, five days of paid sick leave, and five paid holidays.

Subp. 15. **Grievance.** "Grievance" means a claim or complaint brought by a worker in a long-term employment program or a representative of the worker involving the interpretation or application of written personnel policies or other written expression of the terms and conditions of employment.

Subp. 16. **Long-term employment program.** "Long-term employment program" means a program which provides paid work to workers on the premises of a rehabilitation facility and service hours to workers on or off the premises.

Subp. 17. [Repealed, 12 SR 2783]

Subp. 18. **Net program costs.** "Net program costs" means the total direct and indirect costs calculated for each extended employment program less the dollar amount of wages paid to workers in each program and the dollar amount incurred for production supplies in each program.

Subp. 19. [Repealed, 19 SR 639]

Subp. 20. **Number of hours worked.** "Number of hours worked" means the hours for which a worker receives pay for performing work, including hours of paid holidays and paid sick, vacation, and other leave, but not including service hours as defined in subpart 30.

Subp. 21. **Opportunities for workers to participate in decisions affecting their employment.** "Opportunities for workers to participate in decisions affecting their employment" means organized activities sponsored by the rehabilitation facility to encourage workers' participation in decisions affecting their employment and must include the following:

- A. worker representation on safety committees in rehabilitation facilities;
- B. at least quarterly meetings where workers may discuss with staff matters of concern affecting their employment; and

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C. at least semiannual consultation with workers' representatives at management staff meetings.

Subp. 22. [Repealed, 19 SR 639]

Subp. 22a. [Repealed, 19 SR 639]

Subp. 23. **Placement.** "Placement" means an offer by an employer and acceptance by a worker of competitive employment after a written plan has been developed which specifies the number of hours per week of employment and the provision of services reasonably expected to assure continued employment or work.

Subp. 24. **Program efficiency.** "Program efficiency" means a measurement of the cost of providing a combination of paid work and service hours to program workers in the reporting period. The cost per hour rate results when the allocation for the extended employment program in the reporting period is divided by the combined total of the sum of the number of hours worked by program workers and the sum of the number of service hours provided to program workers in the reporting period. The mathematical calculation is represented as follows:

$$\frac{\text{Program allocation}}{\text{Total hours worked and service hours provided}} = \text{Program efficiency}$$

Subp. 25. **Rate of placement in competitive employment.** "Rate of placement in competitive employment" means a ratio in which the numerator is the sum of the disability index conversion scores of all workers placed in competitive employment during a reporting period and in which the denominator is the total unduplicated number of workers in all extended employment programs offered by a rehabilitation facility during that reporting period. The mathematical formula for the calculation is represented as follows:

$$\frac{\text{Sum of disability index conversion scores of workers placed in competitive employment}}{\text{Total unduplicated number of workers in all extended employment programs}} = \text{Rate of placement in competitive employment}$$

Subp. 26. **Rate of retention in competitive employment.** "Rate of retention in competitive employment" means a ratio in which the numerator is the sum of the disability index conversion scores of workers for each extended employment program who were placed during the previous reporting period and who continued in competitive employment one year or more and in which the denominator is the total unduplicated number of workers in all extended employment programs in the previous reporting period. The mathematical formula is represented as follows:

$$\frac{\text{Sum of disability index conversion scores for all workers placed in competitive employment during the previous reporting period who were employed 12 months or more}}{\text{Total unduplicated number of workers in all extended employment programs in the previous reporting period}} = \text{Rate of retention in competitive employment}$$

Subp. 27. **Rate of transfer to long-term employment.** "Rate of transfer to long-term employment" means a rate derived from a calculation for the work activity program in which the numerator is the sum of the disability index conversion scores of the workers who were transferred to long-term employment during the reporting period and in which the denomi-

nator is the total unduplicated number of workers in the work activity program of the rehabilitation facility during the reporting period. The mathematical formula for the calculation is represented as follows:

$$\frac{\text{Sum of the disability index conversion scores for workers transferred to long-term employment in the reporting period}}{\text{Total unduplicated number of workers in the work activity program in the reporting period}} = \text{Rate of transfer to long-term employment}$$

Subp. 28. **Rate of work and service in supported employment.** "Rate of work and service in supported employment" means a ratio in which the numerator is the sum in all extended employment programs of each worker's number of hours worked and paid service hours provided in supported settings multiplied by each worker's disability index conversion score and in which the denominator is the total number of hours of work and paid service hours provided in all extended employment programs offered by a rehabilitation facility. The mathematical formula for the calculation is represented as follows:

$$\frac{\text{Number of hours worked and paid service hours provided in supported employment multiplied by each worker's disability index conversion score}}{\text{Total number of hours worked and paid service hours provided in all extended employment programs}} = \text{Rate of work and service in supported employment}$$

Subp. 28a. **Reconciliation period.** "Reconciliation period" means a cycle of three consecutive fiscal years, consisting of:

- A. the first year of the cycle, during which allocations for that fiscal year are made and data are produced reported;
- B. the second year of the cycle, during which the reported data produced during the first year are audited by the Division of Rehabilitation Services; and
- C. the third year of the cycle, in which adjustments, if any, are made to the allocations for the third year of the cycle resulting from reconciliations under part 3300.2550, subpart 7.

An example of a reconciliation period is: in fiscal year 1995, allocations are made and data are produced and reported; in fiscal year 1996, the data reported for fiscal year 1995 are audited; in fiscal year 1997, the adjustments, if any, to allocations for fiscal year 1997 are made based on the reconciliation of data produced in fiscal year 1995.

Subp. 28b. **Rehabilitation facility.** "Rehabilitation facility" means any entity as defined in Minnesota Statutes, section 268A.01, subdivision 6, that provides one of the extended employment programs as listed in subpart 11, and that is operated by a city, town, county, nonprofit organization, state regional center, or any combination of these.

Subp. 29. **Responsiveness to grievances.** "Responsiveness to grievances" means that (1) a grievance resolution procedure has been implemented with binding arbitration as its final step, (2) education and training of workers in the use of the procedure has occurred, (3) the procedure has accommodated workers' disabling conditions, and (4) the grievances have been responded to according to approved procedure.

Subp. 30. **Service hours.** "Service hours" means the hours of service which an extended employment program provides to workers to maximize their vocational potential, whether paid or unpaid, which are recognized as an expense incurred by the program. Ser-

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vice hours may be provided either on or off the premises of a rehabilitation facility. Each of the following categories qualifies as hours of service:

- A. money management training;
- B. training in independent living skills;
- C. use of public transportation training and drivers training;
- D. training in grooming and personal care skills;
- E. training in job seeking skills;
- F. job and safety training;
- G. coordination of support services;
- H. behavioral management;
- I. sign language training;
- J. social skill training;
- K. simulated work training; and
- L. orientation, mobility, braille, and electronic communications training.

Subp. 31. [Repealed, 12 SR 2783]

Subp. 31a. **Supported employment program.** "Supported employment program" means a program, as defined in Minnesota Statutes, section 268A.01, subdivision 11, which:

- A. is under the supervision of a rehabilitation facility that provides supported employment as defined in Minnesota Statutes, section 268A.01, subdivision 13;
- B. provides workers with the opportunity for social interaction with individuals who do not have disabilities and who are not paid caregivers;
- C. provides ongoing support services to workers as defined by Code of Federal Regulations, title 34, section 363.6, paragraphs (c)(2)(iv), (c)(2)(v), and (c)(3); and
- D. provides full-time employment, unless work of less than 30 hours per week is determined to be appropriate due to the availability of work opportunities or other individual circumstances.

Subp. 32. [Repealed, 12 SR 2783]

Subp. 33. **Work activity program.** "Work activity program" means a program within the meaning of Minnesota Statutes, section 268A.01, subdivision 7, and which complies with state and federal law, including the federal Fair Labor Standards Act of 1938, as amended, which provides paid work and other services and which permits a level of production below that required for a long-term employment program.

Subp. 34. [Repealed, 19 SR 639]

Subp. 35. **Worker.** "Worker" means a person with severe physical, mental, emotional, or behavioral disabilities who receives one or more days of service or paid work in an extended employment program during a reporting period.

Subp. 36. **Worker productivity.** "Worker productivity" means the extent to which a worker is using the worker's own current capacity for work in an extended employment program.

**Statutory Authority:** *MS s 129A.08; 268.0122; 268.021; 268A.09; L 1988 c 689 art 2 s 267*

**History:** *11 SR 394; 12 SR 2783; 19 SR 639*

**3300.2100** [Repealed, 11 SR 394]

### **3300.2150 CERTIFICATION REQUIREMENTS AND TYPES OF CERTIFICATES.**

Subpart 1. **Scope.** The requirements in this part govern the operation of any extended employment program engaged in, or seeking to engage in, the programs listed in part 3300.2050, subpart 11. Program certification as evidenced by a valid rehabilitation facility certificate is required before the commissioner may provide funding for an extended employment program.

Subp. 2. **Full certificate.** Requirements for a full rehabilitation facility certificate are the following:

A. The membership of the rehabilitation facility's governing body must comply with the requirements of Minnesota Statutes, section 268A.08.

B. Accreditation by a national accrediting body for rehabilitation facilities must be acquired and maintained by a rehabilitation facility in order for an extended employment program to be certified. For each program seeking certification, the accrediting body must have been approved by the commissioner as appropriate for each program. The criteria the commissioner will use in determining appropriateness for accrediting bodies is:

(1) The accrediting agency is national in the scope of its operations.

(2) The accrediting agency performs no function that would be inconsistent with the formation of independent judgment of the quality of a program.

(3) The accrediting agency makes available to the public the standards and criteria it uses for accreditation purposes, makes regular reports of its operations, and lists the facilities it has accredited.

(4) The agency uses an on-site examination as a basis for securing sufficient and pertinent data concerning the quantitative and qualitative aspects of the program.

(5) The accrediting agency has an adequate organization and effective procedures to maintain its operations on an ethical basis.

(6) The agency reviews at regular intervals the standards and criteria by which it evaluates facilities.

(7) The accrediting agency has had enough experience to indicate its competence to do the job it sets out to do.

C. Each rehabilitation facility must have a risk protection program adequate to preserve its assets and to compensate its staff, volunteers, workers, and the public for reasonable claims for which the entity is liable.

D. Fundraising activities undertaken by a rehabilitation facility must conform to all requirements of state law.

E. Each rehabilitation facility must comply with United States Code, title 42, sections 12101 to 12213, of the Americans with Disabilities Act.

F. Each rehabilitation facility must comply with the Employee Right to Know Act of 1983, Minnesota Statutes, chapter 182, and the Minnesota State Building Code, chapter 1340.

G. Each rehabilitation facility or extended employment program must comply with all applicable regulations of the Minnesota Department of Labor and Industry and the United States Department of Labor.

H. Each extended employment program must be in compliance with other applicable state law and federal laws.

I. Eligibility for extended employment programs must be established by rehabilitation facilities using appropriate standards and criteria. The standards and criteria must be in writing and be made available to the public. The standards and criteria by which persons with severe disabilities are to be determined eligible for participation in each program must include the following:

(1) assurances that persons with severe disabilities, including those with severe behavioral disabilities, will not be categorically denied access to, admission to, full use of, or benefit from any extended employment program because of their severe disabilities;

(2) assurances that persons with severe disabilities seeking admission are in need of participation in an extended employment program and are reasonably expected to develop their vocational potential through participation; and

(3) assurances that persons with severe disabilities seeking admission to or being served by an extended employment program will not be discriminated against as provided in the Minnesota Human Rights Act, Minnesota Statutes, chapter 363.

J. Each rehabilitation facility must provide its long-term employment program workers with fundamental personnel benefits as defined in part 3300.2050, subpart 14, with a procedure for resolution of grievances which has binding arbitration as a final step and provides responsiveness to grievances as defined in part 3300.2050, subpart 29, and with opportunities for workers to participate in decisions affecting their employment as defined in part 3300.2050, subpart 21.

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K. Each rehabilitation facility must comply with the requirements of United States Code, title 29, sections 2601 to 2635, the Family and Medical Leave Act of 1993, and Minnesota Statutes, sections 181.940 to 181.943.

L. Each rehabilitation facility must provide time off to vote in accordance with Minnesota Statutes, section 204C.04.

M. Each rehabilitation facility must provide leave for jury duty as provided by United States Code, title 28, section 1875, and Minnesota Statutes, section 593.50.

N. Each rehabilitation facility must comply with the applicable overtime pay provisions of the federal Fair Labor Standards Act, United States Code, title 29, section 207, and Minnesota Statutes, section 177.25, the Minnesota Fair Labor Standards Act.

O. Each rehabilitation facility must comply with the requirements for military leave and reinstatement in employment as provided by United States Code, title 38, chapter 43, sections 2021 and 2024, and Minnesota Statutes, section 192.261, subdivision 6.

**Subp. 3. Provisional certificate.** A provisional rehabilitation facility certificate may be issued to new entities for new extended employment programs or to existing rehabilitation facilities for expanded programs for a specified period of time, not to exceed 18 months. In order to obtain a provisional certificate, all new or expanded extended employment programs covered by the certificate must be in full compliance with all the requirements of subpart 2, except item B. However, the extended employment programs must demonstrate that there is a reasonable likelihood that the programs will meet the requirements in subpart 2, item B, within 18 months. If at the end of the 18-month period all of the programs covered by the provisional certificate have not met the requirements in subpart 2, item B, or are no longer meeting any of the other requirements of subpart 2, the commissioner will not issue a full rehabilitation facility certificate for the programs. However, a rehabilitation facility has the option of removing any noncomplying program from consideration for inclusion under a full certificate. Denial of a full certificate under this subpart means the termination of program certification as provided in part 3300.2250, subpart 7, for all the programs covered by the provisional certificate.

**Subp. 4. Probationary certification status.** The commissioner may place on probationary certification status any extended employment program that has previously been fully certified where the program no longer completely meets any of the certification requirements in subpart 2, item A or B, or is not fully complying with the applicable nonquantifiable factors in part 3300.2350, subpart 2. If the program is not complying with subpart 2, items A or B, through no fault of its own, it may request instead that its full certificate be extended as provided in subpart 5. Probationary certification status permits a noncomplying program to continue to receive state funding. To qualify for probationary certification status, the rehabilitation facility must first submit a written plan which has been approved by the commissioner and which will bring the program into compliance with the certification requirements or the nonquantifiable factors or both within a reasonable time. If the program is not in full compliance within the time specified by a written plan, certification for the program will be terminated as provided in part 3300.2250, subpart 7. Probationary certification status for one program does not affect program certification for any other complying programs under a full certificate.

**Subp. 5. Extension of certificate.** Upon written request of any rehabilitation facility, the commissioner may grant an extension of a certificate beyond the certificate's expiration date. The extension may not exceed one year and no consecutive extensions of a certificate may be granted. A request for an extension should normally be made before the certificate's expiration date. The commissioner may grant an extension if the commissioner finds that a program, through no fault of its own, no longer completely meets any of the certification requirements in subpart 2, item A or B, because:

A. a natural disaster such as a tornado or a flood, or a material change in circumstances such as a labor strike or the loss of a building lease, has adversely affected or completely halted program operations; or

B. convincing evidence is submitted showing that the national accrediting body responsible for accreditation cannot schedule a timely review.

**Statutory Authority:** *MS s 129A.08; 268.0122; 268.021; 268A.09; L 1988 c 689 art 2 s 267*

**History:** *11 SR 394; 12 SR 2783; 19 SR 639*

**3300.2200** [Repealed, 11 SR 394]

**3300.2250 CERTIFICATION PROCEDURE.**

Subpart 1. **Purpose.** The purpose of certification is to ensure that all extended employment programs meet minimum requirements for operation.

Subp. 2. **Subminimum wage payments.** A rehabilitation facility certificate issued under the certification procedure provided by this part does not replace or modify any certificates issued by the United States Department of Labor or the Minnesota Department of Labor and Industry for purposes of subminimum wage payments.

Subp. 3. **Single certificate.** A single rehabilitation facility certificate will be issued to a rehabilitation facility, and the certificate will specify the type and location of all approved programs. Entities seeking a certificate, including a provisional certificate as provided in part 3300.2150, subpart 3, must complete an official application form available from the Division of Rehabilitation Services in the Minnesota Department of Economic Security.

Subp. 4. [Repealed, 19 SR 639]

Subp. 5. **Time limitation.** A rehabilitation facility certificate may not be issued for more than three years unless an extension is granted as provided in part 3300.2150, subpart 5.

Subp. 6. **Additional programs under certificate.** Programs may be added under a rehabilitation facility certificate. However, any additional program must fully comply with all the requirements of part 3300.2150, subpart 2. Once an additional program has met all applicable requirements and is accepted for state funding, the rehabilitation facility certificate must be amended to reflect its inclusion and to specify the type and location of the approved program.

Subp. 7. **Termination of program certification.** Certification for programs not complying with the requirements of part 3300.2150 will be terminated and allocated state funds will be withdrawn as provided in part 3300.2650. The withdrawal of state funds creates the right of appeal as provided in part 3300.2650, subpart 3. Once a program's certification has been terminated and any right of appeal has been exhausted, the rehabilitation facility certificate must be amended to show the termination. Termination of program certification occurs where:

A. a program covered by a full certificate no longer meets all of the requirements of part 3300.2150, subpart 2; or

B. one or more of the programs covered by a provisional certificate is not successfully brought into compliance as provided in part 3300.2150, subpart 3, resulting in termination of certification for all the programs covered by the certificate; or

C. a program in probationary certification status is not successfully brought into compliance as provided in part 3300.2150, subpart 4.

**Statutory Authority:** *MS s 129A.08; 268.0122; 268.021; 268A.09*

**History:** *11 SR 394; 12 SR 2783; 19 SR 639*

**3300.2300** [Repealed, 11 SR 394]

**3300.2350 STANDARDS FOR STATE FUNDING.**

Subpart 1. **Evaluation factors in general.** After fulfilling the certification requirements of part 3300.2150 and submitting approved plans and budgets as provided in Minnesota Statutes, section 268A.06, subdivision 1, extended employment programs are eligible to receive state funding. Funding of extended employment programs by the commissioner must take into consideration an evaluation of individual program effectiveness. The evaluation factors to be considered are the following:

A. the disability adjusted average hourly earnings paid to workers as defined in part 3300.2050, subpart 6;

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B. the rate of placement in competitive employment as defined in part 3300.2050, subpart 4;

C. the rate of work and service in supported employment as defined in part 3300.2050, subpart 31a;

D. the rate of retention in competitive employment as defined in part 3300.2050, subpart 26;

E. program efficiency as defined in part 3300.2050, subpart 24;

F. the disability levels, as defined in part 3300.2050, subpart 9, of the workers served, as measured by the average of their disability index conversion scores as defined in part 3300.2050, subpart 8;

G. economic conditions as defined in part 3300.2050, subpart 10;

H. the rate of transfer to long-term employment;

I. whether or not fundamental personnel benefits, as defined in part 3300.2050, subpart 14, are provided to long-term employment program workers;

J. whether or not opportunities for workers to participate in decisions affecting their employment, as defined in part 3300.2050, subpart 21, are provided;

K. whether or not the responsiveness to grievances, as defined in part 3300.2050, subpart 29, of long-term employment program workers is adequate; and

L. the increases in worker productivity as defined in part 3300.2050, subpart 36.

**Subp. 2. Nonquantifiable evaluation factors.** Before an individual program offered by a rehabilitation facility, except a new or expanded program as provided in subpart 6, may receive state funding under part 3300.2550, the individual program must be in full compliance with the nonquantifiable evaluation factors listed in subpart 1, items I to L. An individual program, except a new or expanded program as provided in subpart 6, must remain in full compliance with the nonquantifiable evaluation factors during the reporting period or the program will be placed on probationary certification status as provided in part 3300.2150, subpart 4.

**Subp. 3. Quantifiable evaluation factors.** The quantifiable evaluation factors are listed in subpart 1, items A to H. The quantifiable evaluation factors applicable to a long-term employment program and a supported employment program are those at subpart 1, items A to G. The quantifiable evaluation factors applicable to a work activity program are listed in subpart 1, items A to H.

**Subp. 4.** [Repealed, 19 SR 639]

**Subp. 5. Audit and allocation adjustments.** Using generally accepted auditing standards, the Division of Rehabilitation Services will assess each individual program on its effectiveness as measured by both:

A. a comparison of reported and actual data attributable to the quantifiable evaluation factors listed in subpart 1, items A to D; and

B. a comparison of reported and actual FTEs, and hours of work.

The audit of data from quantifiable evaluation factors will be conducted each fiscal year and will cover the previous 12-month period. The applicable audited figures from the evaluation factors listed in subpart 1, items A to D, and the FAI data will be used to adjust allocations as found in part 3300.2550, subpart 6. The audit of FAI data will be limited to a random sampling of disability index conversion scores of workers who have entered the program since the program's last FAI audit. However, if random samplings of any individual program reveal a pattern of significant deviation from statewide averages, all FAI data on newly entered workers will be audited for all individual programs. A significant deviation means a variation in reported FAI data of ten percent or more plus or minus from statewide averages.

**Subp. 6. New program evaluation.** An entity offering a new or expanded extended employment program must have been issued a provisional certificate as provided in part 3300.2250 and have submitted an approved plan and budget before it may be eligible to receive state funding and be evaluated under this part. A new or expanded program from its start up must be in full compliance with the nonquantifiable factors listed in subpart 1, items I to K, and must remain in full compliance with those factors during the reporting period. As measured at the end of the first year of operation, a new or expanded individual program must

also be in full compliance with the nonquantifiable evaluation factor listed in subpart 1, item L. If a new or expanded program under a provisional certificate is not in full compliance with the nonquantifiable factors in subpart 1, items I to L, at the end of the first year of operation, a written plan specifying how and when compliance will be achieved must be submitted to and approved by the commissioner. However, the time specified may not extend beyond the 18-month period authorized by the provisional certificate. If the program is not complying fully with the nonquantifiable factors within the time approved by the commissioner, the program will be denied full certification and be terminated as provided in part 3300.2250, subpart 7, item B. If a new or expanded program after the expiration of its provisional certificate is not in compliance with all the certification requirements in part 3300.2150, subpart 2, full certification will also be denied and the program terminated. However, a provisional certificate may be extended as provided in part 3300.2150, subpart 5.

**Statutory Authority:** *MS s 129A.08; 268.0122; 268.021; 268A.09; L 1988 c 689 art 2 s 267*

**History:** *11 SR 394; 12 SR 2783; 19 SR 639*

**3300.2400** [Repealed, 11 SR 394]

### **3300.2450 OPERATIONAL POLICIES FOR FUNDING STANDARDS.**

Subpart 1. [Repealed, 19 SR 639]

#### **Subp. 2. Policies for calculating the rate of placement in competitive employment.**

If a worker is placed twice in competitive employment in a given year, both placements may be included in calculating the placement rate as defined in part 3300.2050, subpart 25. Any subsequent placement of that worker in the reporting period will not be considered in calculating the rate of placement. When a worker is placed in competitive employment but also continues on a part-time basis with an extended employment program, the worker will be considered to have been placed in competitive employment if the worker's wages from participation in the extended employment program are at or above 100 percent of the prevailing wage rate for the work performed.

**Subp. 3. Policies for calculating rate of retention in competitive employment.** A worker who changes from one position to another or one employer to another without returning to the status of worker in an extended employment program is considered to have been retained in competitive employment, as long as no period of unemployment intervenes which lasts longer than one month. When a worker returns to the status of worker in an extended employment program, the worker can no longer be counted as retained in competitive employment. When a worker is placed in competitive employment but also continues on a part-time basis with an extended employment program, the worker will be considered to have been retained in competitive employment if the worker's wages from work in the extended employment program are at or above 100 percent of the prevailing wage rate for the work performed.

**Statutory Authority:** *MS s 129A.08; 268.0122; 268.021; 268A.09*

**History:** *11 SR 394; 12 SR 2783; 19 SR 639*

**3300.2500** [Repealed, 11 SR 394]

### **3300.2550 ALLOCATION OF FUNDS.**

Subpart 1. **Statewide program allocation.** From the total grant funds available each fiscal year, the commissioner will establish a statewide program allocation for each extended employment program unless otherwise directed by the legislature and will determine the number of full-time equivalents for each individual program. The total of the individual program FTEs will constitute the statewide FTE level. The elements of the statewide allocation for each of the extended employment programs and the weighted relative power of each element in terms of percentages are the following:

A. the net program costs for each statewide program in the previous fiscal year, with a relative power of ten percent;

B. the net program costs for each statewide program based on budgets submitted for the current fiscal year, with a relative power of ten percent;

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C. the number of FTEs for each statewide program at the end of the previous fiscal year, with a relative power of 20 percent;

D. the number of hours worked in each statewide program in the previous fiscal year, with a relative power of ten percent;

E. the need for the services of each statewide program in the current fiscal year as demonstrated by periodic surveys of the incidence of disability levels and disability types, by periodic surveys of rehabilitation counselors and staff, by research and by waiting lists maintained by rehabilitation facilities, with a relative power of 40 percent; and

F. the effect on services provided to current workers in each statewide program of changes in the level of statewide allocation from the previous fiscal year, with a relative power of ten percent.

**Subp. 2. Statewide program allocation base rate.** The commissioner will use 50.5 percent of each statewide program allocation as calculated in subpart 1 to provide a base rate allocation to each individual program offered by a rehabilitation facility in direct proportion to the number of FTEs in these individual programs. The base rate per FTE is determined by dividing 50.5 percent of the statewide program allocation by the total number of full-time equivalents for the statewide program. The mathematical calculation is represented as follows:

$$\frac{(.505 \times \text{statewide program allocation})}{\text{full-time equivalents}} = \begin{matrix} \text{Uniform} \\ \text{per FTE} \\ \text{base rate} \end{matrix}$$

The base rate allocation for each individual program is determined by multiplying the per FTE base rate from the above formula by the number of FTEs in the individual program.

**Subp. 3. Statewide program allocation set aside.** The commissioner will set aside 49.5 percent of each statewide program allocation in each current fiscal year as determined in subpart 1 in order to distribute allocations to individual programs as provided in subpart 4. The distribution in subpart 4, will be based on evaluation factors found in part 3300.2350, subpart 1. The evaluation factors applicable to each statewide program will be weighted in terms of percentages of each statewide program allocation. The factors and percentages applicable to the extended employment programs are the following:

Funding Factor Weightings by Program, Expressed as Percentages of Total Program Allocation

Factor	Long-Term	Program Work Activity	Supported
1. Disability Level	7	7.5	7
2. Economic Conditions	15	15	15
3. Program Efficiency	2.5	2.5	2.5
4. Hourly Earnings	7.5	7.5	7.5
5. Supported Employment Rate	7.5	7.5	7.5
6. Competitive Employment Placement Rate	5	3.5	5
7. Competitive Employment Retention Rate	5	3.5	5
8. Transfer Rate to Long-Term		2.5	
<b>Total</b>	<b>49.5</b>	<b>49.5</b>	<b>49.5</b>

**Subp. 4. Total individual program allocation.** The base rate allocation, calculated in subpart 2, will be increased for each individual program by the program's relative share of the set-aside funds as provided in subpart 3. The commissioner will distribute the set-aside funds according to the individual program's relative standing on each applicable factor. The

program's conversion point score for each factor will be calculated when budgets are submitted for the current fiscal year and will be based on the program's reported performance in the previous 12-month period. On each factor, the individual programs whose performance or evaluation value is lowest will receive no additional funds, with the funding level for other individual programs related directly to their standing on the factor.

Subp. 5. [Repealed, 19 SR 639]

Subp. 6. **New or expanded program funding.** The commissioner will consider a new or expanded individual program for funding based upon the following:

- A. the need for the new or expanded individual program;
- B. the relationship of the new or expanded individual program to any current programs in terms of defined needs;
- C. the performance of current individual programs; and
- D. the geographic distribution of current programs and the new or expanded program in relationship to geographic needs.

When a new or expanded individual program offered by a rehabilitation facility is accepted for funding, the commissioner will fund its first and second years of operation based upon its relative percentage of the statewide FTE in that program. A new or expanded program's funding will be determined by dividing its FTE by the statewide FTE, and multiplying that fraction times the statewide allocation for that program. The mathematical calculation is represented as follows:

$$\frac{\text{New or expanded individual program FTE}}{\text{Total program FTE}} \times \text{Total program allocation} = \text{New or expanded program allocation}$$

A new or expanded individual program has the right to appeal the commissioner's denial of initial funding as provided in part 3300.3050.

Beginning with their third year of operation, new or expanded programs will be funded in the same manner as all other programs.

Subp. 7. **Reconciliation.** Allocations based on the contracted number of FTEs each fiscal year, the reported data on quantifiable evaluation factors each fiscal year, and the reported FAI data will be reconciled with the actual numbers and data at the end of the reconciliation period as provided in part 3300.2350, subpart 5. Any rehabilitation facility aggrieved by a decision of the commissioner under this subpart has the right to appeal using the procedures of part 3300.3050.

**Statutory Authority:** *MS s 129A.08; 268.0122; 268.021; 268A.09; L 1988 c 689 art 2 s 267*

**History:** *11 SR 394; 12 SR 2783; 19 SR 639*

**3300.2600** [Repealed, 11 SR 394]

### **3300.2650 WITHDRAWAL OF ALLOCATED STATE FUNDS.**

Subpart 1. **Criteria for withdrawal of allocated state funds.** The commissioner may withdraw allocated state funds from an individual extended employment program which has been accepted for state funding. A program is eligible to receive allocated state funds after it has fulfilled the certification requirements of part 3300.2150 and submitted an approved plan and budget. Allocated state funds will be withdrawn when:

- A. unencumbered but allocated state funds are not needed for the individual program to which they were allocated; or
- B. an individual program is not being administered according to its approved plan and budget as provided in Minnesota Statutes, section 268A.09, subdivision 2; or
- C. program certification has been terminated as provided in part 3300.2250, subpart 7; or
- D. an individual program is not being administered in accordance with these rules.

Subp. 2. **Notice of withdrawal.** In situations governed by subpart 1, the commissioner must give written notice at least 45 days before allocated state funds may be withdrawn from

an individual program or programs in a rehabilitation facility, except where there is an imminent danger to the health or safety of program workers. The notice must state the grounds for the withdrawal of funds and must allow a reasonable period of time to remedy the noncompliance. If program certification is to be terminated in addition to the withdrawal of funds, the notice must also state the grounds for the termination. An opportunity for a remedy must be given except where the withdrawal is based on inadequate past performance that cannot be presently corrected, including situations governed by subpart 1, items C and D.

Subp. 3. **Right of appeal.** Any rehabilitation facility, including a new entity or existing rehabilitation facility operating an extended employment program under a provisional certificate, has the right to appeal the commissioner's withdrawal of allocated state funds from any of its individual programs. The appeal procedure is provided for in part 3300.3050.

Subp. 4. **Reinstatement of eligibility to receive funds.** After allocated funds have actually been withdrawn from an individual extended employment program and any right of appeal has been exhausted, reinstatement of eligibility to receive funds can only occur when at least one calendar year has elapsed from the date of the withdrawal of funds. Furthermore, a program seeking reinstatement, as measured at the end of the calendar year following withdrawal of funds, must fully satisfy parts 3300.2150, 3300.2250, and 3300.2350.

Subp. 5. **Reallocation.** Withdrawn funds will be reallocated by the commissioner whenever possible. The commissioner will reallocate by increasing the number of full-time equivalents for extended employment programs capable of serving additional persons.

**Statutory Authority:** *MS s 129A.08; 268.0122; 268.021; 268A.09*

**History:** *11 SR 394; 12 SR 2783; 19 SR 639*

**3300.2700** [Repealed, 11 SR 394]

### **3300.2750 ELIGIBLE APPLICANTS FOR STATE FUNDING.**

An application for state funding may be submitted at times the commissioner specifies by a city, town, county, nonprofit organization, state regional center, or any combination of those, which operates or proposes to operate a public or nonprofit extended employment program.

**Statutory Authority:** *MS s 129A.08; 268.0122; 268.021; 268A.09; L 1988 c 689 art 2 s 267*

**History:** *11 SR 394; 12 SR 2783; 19 SR 639*

**3300.2800** [Repealed, 11 SR 394]

### **3300.2850 NET PROGRAM COSTS.**

The net program costs attributable to each individual program will be derived from each rehabilitation facility's plan and budget. A plan and budget must be submitted at times specified by the commissioner for the commissioner's approval.

**Statutory Authority:** *MS s 129A.08; 268.0122; 268.021; 268A.09; L 1988 c 689 art 2 s 267*

**History:** *11 SR 394; 12 SR 2783; 19 SR 639*

**3300.2900** [Repealed, 11 SR 394]

### **3300.2950 STATE FUNDING APPLICATION CONTENT.**

All applications for state funding must be made on official application forms available from the Division of Rehabilitation Services in the Minnesota Department of Economic Security. Applicants must use application forms for the appropriate fiscal year. Assistance in completing the forms may be requested directly from the division at its central office.

**Statutory Authority:** *MS s 129A.08; 268.0122; 268.021; 268A.09*

**History:** *11 SR 394; 19 SR 639*

**3300.3000** [Repealed, 11 SR 394]

### **3300.3050 APPEAL PROCEDURE.**

Subpart 1. **Scope.** The procedure in this part governs all appeals initiated by rehabilitation facilities having a right of appeal under:

A. part 3300.2650, subpart 3, which provides for appealing the commissioner's withdrawal of allocated state funds from a rehabilitation facility's individual programs;

B. part 3300.2550, subpart 6, which provides for appealing the commissioner's denial of initial funding to a new or expanded individual program; or

C. part 3300.2550, subpart 7, which provides for appealing a decision of the commissioner concerning reconciliations.

**Subp. 2. Notice of intent to appeal.** A rehabilitation facility appealing under subpart 1, item A, B, or C, must send a written notice of intent to appeal to the Division of Rehabilitation Services in the Minnesota Department of Economic Security. The written notice of intent to appeal must be received by the Division of Rehabilitation Services within 30 days from the date that the rehabilitation facility received written notice from the Division of Rehabilitation Services of the action that the rehabilitation facility wishes to appeal. If the notice of intent to appeal is not received from the rehabilitation facility within the 30-day period, the preliminary determination of the Division of Rehabilitation Services is final. The notice of intent to appeal must state the grounds for the appeal including relevant facts and issues that could be addressed at a contested case hearing.

**Subp. 3. Informal contact.** No more than 15 days after the Division of Rehabilitation Services receives a notice of intent to appeal, a representative of the commissioner will contact the rehabilitation facility and discuss the grounds for the appeal. The contact by the commissioner's representative may be oral or written. Before the end of the 15-day period, the commissioner's representative must make a decision concerning the rehabilitation facility's appeal. The decision by the commissioner's representative must be made in writing, must contain a summary of the nature and basis of the decision and must describe the rehabilitation facility's appeal rights under subpart 4.

**Subp. 4. Contested case appeal.** If a rehabilitation facility has first informally discussed the appeal as provided in subpart 3 and has not been completely satisfied, the rehabilitation facility may request in writing a contested case hearing before an administrative law judge as provided in Minnesota Statutes, sections 14.57 to 14.62. The written request for a contested case hearing must be received by the Division of Rehabilitation Services no more than 15 days after the date when the rehabilitation facility received written notice of the decision of the commissioner's representative under subpart 3. Within 15 days from the date the Division of Rehabilitation Services receives the rehabilitation facility's request for a contested case hearing, the Division of Rehabilitation Services must request the Office of Administrative Hearings to schedule a hearing. The contested case hearing will be initiated and conducted according to parts 1400.5100 to 1400.8500.

**Subp. 5. Proposal for decision.** When an initial decision is rendered, the administrative law judge will prepare a proposal for decision that will be recommended for the commissioner's adoption.

**Subp. 6. Decision and order.** The commissioner must notify the rehabilitation facility of a final decision as provided in Minnesota Statutes, section 14.62.

**Subp. 7. Legal representation.** Any party may be represented by legal counsel at any step of the appeals process.

**Statutory Authority:** *MS s 129A.08; 268.0122; 268.021; 268A.09*

**History:** *11 SR 394; 19 SR 639*

## INDEPENDENT LIVING CENTERS

**3300.3100 MR 1985** [Repealed, 11 SR 394]

### **3300.3100 SCOPE AND PURPOSE.**

Parts 3300.3100 to 3300.3270 govern the certification of centers for independent living as defined in Minnesota Statutes, section 129A.01. The purpose of a center for independent living is to enable persons with disabilities to live and function more independently in their home, family, and community. A center for independent living accomplishes this purpose by

promoting consumer control, self-sufficiency, equal access, and local focus in the programming they provide to persons with disabilities.

**Statutory Authority:** *MS s 129A.10 subd 3*

**History:** *11 SR 634*

### 3300.3150 DEFINITIONS.

Subpart 1. **Scope.** When used in parts 3300.3100 to 3300.3270, the terms defined in this part have the meanings given them.

Subp. 2. **Center for independent living.** "Center for independent living" means a private nonprofit organization incorporated under Minnesota law and operated for the purpose of providing independent living services to persons with disabilities. The board of directors for the center for independent living is composed of community representatives, 51 percent of which must be individuals who are either severely disabled themselves or spouses or parents of persons with severe disabilities.

Subp. 3. **Commissioner.** "Commissioner" means the commissioner of the Minnesota Department of Economic Security.

Subp. 4. **Eligible applicant organization.** "Eligible applicant organization" means any private nonprofit organization that is incorporated or has applied for incorporation under Minnesota Statutes, chapter 317A, which meets or intends to meet the purpose and board member criteria in subpart 2.

Subp. 5. **Independent living.** "Independent living" means the capacity of a person with a disability to manage the person's affairs, participate in day-to-day life in the community, and to fulfill a variety of social roles with as much personal control as possible.

Subp. 6. **Person with a disability.** "Person with a disability" means an individual who has a physical, mental, or psychological impairment or dysfunction that limits independent functioning in the family, community, or employment.

**Statutory Authority:** *MS s 129A.10 subd 3*

**History:** *11 SR 634; L 1989 c 304 s 137; L 1994 c 483 s 1*

3300.3200 MR 1985 [Repealed, 11 SR 394]

### 3300.3200 CERTIFICATION REQUIREMENTS.

Subpart 1. **Purpose.** The purpose of certification is to ensure that a center for independent living meets minimum requirements for operation.

Subp. 2. **Center for independent living certificate.** Certification and a valid certificate is required before the commissioner may provide funding for a center for independent living. Requirements for a certificate are the following:

A. The membership of the board of directors of a center for independent living must comply with the requirements of Minnesota Statutes, section 129A.01, paragraph (h).

B. The center for independent living must be incorporated under Minnesota Statutes, chapter 317A.

C. The center for independent living must assure that individuals with severe disabilities will not be categorically denied access to full utilization of, or benefit from, any independent living service because of their severe disabilities and will not be discriminated against as provided in the Minnesota Human Rights Act, Minnesota Statutes, chapter 363.

D. The center for independent living must have a risk protection program adequate to preserve assets of the center for independent living and to compensate staff, volunteers, consumers, and the public for reasonable claims for which the center is liable.

E. Fundraising activities undertaken by the center for independent living must conform to all requirements of state law.

F. The center for independent living must be in compliance with chapter 1340 of the State Building Code which requires buildings to be accessible to persons with disabilities.

G. The center for independent living may provide any or all the independent living services described in Minnesota Statutes, section 129A.10, subdivision 1, but must at a minimum provide:

- (1) intake counseling to determine the individual's need for services;
- (2) referral and counseling service with respect to attendant care;
- (3) counseling and advocacy with respect to legal and economic rights and benefits;
- (4) housing and transportation referral and assistance; and
- (5) peer counseling.

H. The center for independent living must provide for substantial involvement by consumers in the policy direction, decision-making, service delivery, and management of the center. Substantial involvement must include the following:

- (1) periodic meetings, at least once a year, of staff and consumers or their representatives; and
- (2) periodic surveys of consumer satisfaction.

**Statutory Authority:** *MS s 129A.10 subd 3*

**History:** *11 SR 634; L 1989 c 304 s 137*

### 3300.3210 [Renumbered 3300.0050]

#### 3300.3250 CERTIFICATION PROCEDURE.

Subpart 1. **Eligible applicant organization.** An application for certification as a center for independent living may be submitted at times the commissioner specifies by an eligible applicant organization as defined in part 3300.3150, subpart 4.

Subp. 2. **Application forms.** All applications for certification must be made on official application forms available from the Division of Rehabilitation Services in the Minnesota Department of Economic Security.

Subp. 3. **Reports, plans, and budgets.** When applying for certification, eligible applicant organizations must submit expenditure reports and proposed plans and budgets as required in Minnesota Statutes, section 129A.10, subdivision 4.

Subp. 4. **Time limitation.** A center for independent living certificate may not be issued for more than three years but a center for independent living may be issued a new certificate if the center complies with the certification requirement of part 3300.3200, subpart 2.

**Statutory Authority:** *MS s 129A.10*

**History:** *11 SR 634; L 1994 c 483 s 1*

#### 3300.3260 TERMINATION OF CERTIFICATION AND PRELIMINARY NOTICE.

Subpart 1. **Certification termination.** Certification of a center for independent living will be terminated when:

A. a center for independent living is not being administered in accordance with an approved annual plan and budget as required in Minnesota Statutes, section 129A.10, subdivision 4;

B. a center for independent living is not meeting all of the requirements of part 3300.3200; or

C. a center for independent living is not being administered in accordance with parts 3300.3100 to 3300.3270.

Subp. 2. **Preliminary determination.** In situations governed by subpart 1, the commissioner must give written notice at least 45 days before terminating the certification of a center for independent living, except where there is imminent danger to the health or safety of consumers. The preliminary notice must state the grounds for the termination and must allow a reasonable time to remedy the noncompliance. The preliminary notice of termination of certification creates the right of appeal as provided in part 3300.3270.

Subp. 3. **Withdrawal of state funds.** Allocated state funds will be withdrawn from a center for independent living whose certification is terminated.

**Statutory Authority:** *MS s 129A.10 subd 3*

**History:** *11 SR 634*

**3300.3270 APPEAL.**

Subpart 1. **Scope.** A center for independent living operating under a valid certificate has the right to appeal the commissioner's termination of its certification under part 3300.3260, subpart 1.

Subp. 2. **Notice of intent to appeal.** The center for independent living may appeal a preliminary determination concerning termination of certification as provided in part 3300.3260, subpart 2. The appeal must be in writing to the Division of Rehabilitation Services in the Minnesota Department of Economic Security. The written notice of intent to appeal must be received by the Division of Rehabilitation Services within 30 calendar days from the date that a preliminary notice of termination is sent. If the notice of intent to appeal is not received within the 30-day period, the preliminary determination of the Division of Rehabilitation Services is final. The notice of intent to appeal must state the grounds for the appeal including relevant facts and issues that could be addressed at a contested case hearing.

Subp. 3. **Informal contact.** A representative of the commissioner will contact the appellant and discuss the grounds for the appeal no more than 15 days after the Division of Rehabilitation Services receives a notice of intent to appeal. The contact by the commissioner's representative must be reduced to writing, must contain a summary of the nature and basis of the decision, and must describe the appellant's appeal rights under subpart 4.

Subp. 4. **Contested case appeal.** If an appellant has first informally discussed the appeal as provided in subpart 3 and has not been completely satisfied, the appellant may request in writing a contested case hearing before an administrative law judge as provided in Minnesota Statutes, sections 14.57 to 14.62. The contested case hearing must be initiated and conducted according to parts 1400.5100 to 1400.8500.

Subp. 5. **Proposal for decision.** When an initial decision is rendered, the administrative law judge will prepare a proposal for decision that will be recommended for the commissioner's adoption.

Subp. 6. **Decision and order.** The commissioner must notify the appellant of a final decision as provided in Minnesota Statutes, section 14.62.

Subp. 7. **Legal representation.** A party may be represented by legal counsel at any step of the appeals process.

**Statutory Authority:** *MS s 129A.10*

**History:** *11 SR 634; L 1994 c 483 s 1*

**OPPORTUNITIES INDUSTRIALIZATION CENTERS****3300.3300 OPPORTUNITIES INDUSTRIALIZATION CENTERS; JOB TRAINING.**

Subpart 1. **Purpose.** The purpose of this part is to define "economically disadvantaged" for the purpose of job training and related services through opportunities industrialization centers according to Minnesota Statutes, section 268.61.

Subp. 2. **Economically disadvantaged, defined.** The term "economically disadvantaged" means an individual who:

A. receives, or is a member of a family which receives, cash welfare payments under a federal, state, or local welfare program;

B. has, or is a member of a family which has, received a total family income for the six-month period prior to application for the program involved (exclusive of unemployment compensation, child support payments, and welfare payments) which, in relation to family size, was not in excess of the higher of the poverty level determined in accordance with criteria established by the director of the Office of Management and Budget, or 70 percent of the lower living standard income level;

C. is receiving food stamps pursuant to the Food Stamp Act of 1977;

D. is a foster child on behalf of whom state or local government payments are made; or

E. in cases permitted by regulation of the Secretary of the Department of Labor, is an adult handicapped individual whose own income meets the requirements of item A or B, but who is a member of a family whose income does not meet those requirements.

**Statutory Authority:** *MS s 268.61 subd 4*

**History:** *9 SR 424*

**3300.4010** [Repealed, 1Sp1985 c 14 art 9 s 78]

**3300.4020** [Repealed, 1Sp1985 c 14 art 9 s 78]

**3300.4030** [Repealed, 1Sp1985 c 14 art 9 s 78]

**3300.4040** [Repealed, 1Sp1985 c 14 art 9 s 78]

**3300.4050** [Repealed, 1Sp1985 c 14 art 9 s 78]

**3300.4060** [Repealed, 1Sp1985 c 14 art 9 s 78]

**3300.4065** [Repealed, 1Sp1985 c 14 art 9 s 78]

**3300.4070** [Repealed, 1Sp1985 c 14 art 9 s 78]

**3300.4080** [Repealed, 1Sp1985 c 14 art 9 s 78]

**3300.4090** [Repealed, 1Sp1985 c 14 art 9 s 78]

**3300.4100** [Repealed, 1Sp1985 c 14 art 9 s 78]

**3300.4110** [Repealed, 1Sp1985 c 14 art 9 s 78]

### VOCATIONAL REHABILITATION SERVICES

#### 3300.5000 PURPOSE AND SCOPE.

Subpart 1. **Purpose.** The purpose of parts 3300.5000 to 3300.5060 is to establish procedures and standards for the provision of vocational rehabilitation services to persons with disabilities in Minnesota.

Subp. 2. **Scope.** Parts 3300.5000 to 3300.5060 apply to the division, vendors of services under agreement with the division, and all persons applying for or receiving vocational rehabilitation services from the division. Parts 3300.5000 to 3300.5060 do not require expenditures for a person if funds are not available to the division from federal and state appropriations for the provision of vocational rehabilitation services.

Subp. 3. **Exclusion.** Parts 3300.5000 to 3300.5060 do not apply to the provision of vocational rehabilitation services to persons who are blind by State Services for Blind and Visually Impaired Persons under parts 3325.0100 to 3325.0490.

**Statutory Authority:** *MS s 268.021; 268A.03*

**History:** *18 SR 2248*

#### 3300.5010 DEFINITIONS.

Subpart 1. **Scope.** As used in parts 3300.5000 to 3300.5060, the following terms have the meanings given them.

Subp. 2. **Applicant.** "Applicant" means a person who has submitted an application for vocational rehabilitation services to the division, or whose parent, guardian, or legal representative has submitted an application.

Subp. 3. **Assessment for determining eligibility and vocational rehabilitation needs.** "Assessment for determining eligibility and vocational rehabilitation needs" means the acquisition and use of information from applicants or eligible consumers and their families, medical and psychological service providers, programs serving persons with disabilities, and other sources in order to determine eligibility, establish an employment goal, and identify the specific vocational rehabilitation services an eligible consumer will need to achieve the eligible consumer's employment goal.

Subp. 3a. **Auxiliary aids and services for effective communication.** "Auxiliary aids and services for effective communication" has the meaning given auxiliary aids and services in Code of Federal Regulations, title 28, sections 35.104 and 36.303, paragraph (b).

Subp. 4. **Books and supplies for postsecondary training.** "Books and supplies for postsecondary training" means required textbooks, paper, pencils, pens, small calculators, and similar items that are usually required for participation in a training program at a postsecondary training institution.

Subp. 5. **Commissioner.** "Commissioner" means the commissioner of the Department of Economic Security or an individual designated by the commissioner to act on the commissioner's behalf.

Subp. 6. **Comparable benefits.** "Comparable benefits" means services or financial assistance available to an eligible consumer, from sources other than the division or the eligible consumer, to meet, in whole or in part, the cost of vocational rehabilitation services. Examples of comparable benefits are: Medicare, Medicaid, individual and group insurance, workers' compensation benefits, community social service agencies, state agencies other than the division, and public or private educational and training grants and scholarships.

Subp. 7. **Division.** "Division" means the Division of Rehabilitation Services in the Department of Economic Security.

Subp. 8. **Durable medical equipment.** "Durable medical equipment" means wheelchairs; three-wheel self-propelled devices; canes, crutches, and other mobility aids; and other commercially available nonconsumable equipment whose primary purpose is to enable an individual to perform life functions that, due to the individual's physical or mental impairment, the individual cannot adequately perform without the equipment.

Subp. 9. **Eligible consumer.** "Eligible consumer" means a person who is eligible for vocational rehabilitation services as provided by the Rehabilitation Act of 1973, United States Code, title 29, section 722, subsection (a), as amended.

Subp. 10. **Employment goal.** "Employment goal" means full-time or part-time gainful employment that:

A. is consistent with the strengths, resources, priorities, concerns, abilities, and capabilities of an eligible consumer;

B. provides the eligible consumer with access to an appropriate occupational field in which there is opportunity for the eligible consumer to develop and be productive, consistent with the eligible consumer's abilities and informed choice;

C. is available in the labor market area where the eligible consumer is willing to seek and accept employment; and

D. is in the competitive labor market, including supported employment, or any other vocational outcome determined by the secretary of the federal Department of Education to be consistent with the Rehabilitation Act of 1973, as provided by United States Code, title 29, chapter 16, as amended.

Subp. 11. **Extreme medical risk.** "Extreme medical risk" means a determination, based on medical evidence provided by a licensed medical professional, that there is a risk of increasing functional impairment or risk of death if medical services are not provided expeditiously.

Subp. 12. [Repealed, 21 SR 1779]

Subp. 13. **Functional area.** "Functional area" means mobility, communication, self-care, self-direction, interpersonal skills, work tolerance, or work skills. For the purposes of this subpart:

A. "communication" means the ability to effectively give and receive information through spoken words or concepts, such as writing, speaking, listening, sign language, or other adaptive methods;

B. "interpersonal skills" means the ability to establish and maintain personal, family, and community relationships as it affects, or is likely to affect, job performance and security;

C. "mobility" means the physical and psychological ability to move about from place to place inside and outside the home, including travel to and from usual destinations in the community for activities of daily living, training, or work;

D. "self-care" means the skills needed to manage self or living environment, such as eating, toileting, grooming, dressing, money management, and management of special

health or safety needs, including medication management, as they affect an individual's ability to participate in training or work-related activities;

E. "self-direction" means the ability to plan, initiate, organize, or carry out goal-directed activities or solve problems related to self-care, socialization, recreation, and working independently;

F. "work skills" means:

(1) the ability to do specific tasks required to carry out job functions; and

(2) the capacity to benefit from training in how to perform tasks required to carry out job functions; and

G. "work tolerance" means the capacity to effectively and efficiently perform jobs requiring various levels of physical demands, psychological demands, or both.

Subp. 14. **Gift aid.** "Gift aid" means grants, scholarships, and other financial assistance from federal, state, or other sources that are used to pay for the costs of postsecondary training and that do not have to be repaid.

Subp. 15. [Repealed, 21 SR 1779]

Subp. 16. **Independent living skills training.** "Independent living skills training" means training services that improve the ability of an individual with a severe disability to live and function more independently.

Subp. 17. **Individual with a most severe disability.** "Individual with a most severe disability" means an eligible consumer:

A. who has a severe physical or mental impairment that results in a serious functional limitation in terms of employment in three or more functional areas;

B. whose vocational rehabilitation can be expected to require multiple vocational rehabilitation services over an extended period of time; and

C. 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, heart disease, hemiplegia, hemophilia, respiratory or pulmonary dysfunction, mental retardation, mental illness, multiple sclerosis, muscular dystrophy, musculoskeletal disorders, neurological disorders including stroke and epilepsy, paraplegia, quadriplegia, and other spinal cord conditions, sickle cell anemia, specific learning disability, and 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 serious functional limitation.

Subp. 18. **Individual with a severe disability.** "Individual with a severe disability" means an eligible consumer:

A. who has a severe physical or mental impairment that results in a serious functional limitation in terms of employment in one or two functional areas;

B. whose vocational rehabilitation can be expected to require multiple vocational rehabilitation services over an extended period of time; and

C. 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, heart disease, hemiplegia, hemophilia, respiratory or pulmonary dysfunction, mental retardation, mental illness, multiple sclerosis, muscular dystrophy, musculoskeletal disorders, neurological disorders including stroke and epilepsy, paraplegia, quadriplegia, and other spinal cord conditions, sickle cell anemia, specific learning disability, and 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 serious functional limitation.

Subp. 19. **Individualized written rehabilitation program.** "Individualized written rehabilitation program" means a written document specifying the eligible consumer's employment goal and the services and objectives by which barriers to employment resulting from the eligible consumer's disability will be reduced. An individualized written rehabilitation program is developed for each eligible consumer by the eligible consumer and the eligible consumer's rehabilitation counselor and amended as necessary, as provided by United States Code, title 29, section 722, subsection (b), as amended.

Subp. 20. **Initial stocks, supplies, and equipment.** "Initial stocks, supplies, and equipment" means the initial inventory of goods for direct resale to customers by an eligible consumer entering into a self-employment enterprise, a start-up supply of expendable items that are necessary for the day-to-day operation of a business, and nonexpendable goods and tools that are necessary for the operation of a business, excluding the ongoing replacement of inventory and supplies and repair and replacement of equipment.

Subp. 21. **Interpreter services.** "Interpreter services" means interpreting of oral, manual, or written communication for persons who are deaf or hard of hearing.

Subp. 22. **Job coaching.** "Job coaching" means services provided to assist an eligible consumer to perform work duties and retain employment in a competitive employment setting, such as:

- A. job skills training;
- B. training and assistance with work behaviors; and
- C. assistance to employers and coworkers when necessary to assist the eligible consumer to retain employment.

Subp. 23. **Job placement.** "Job placement" means services that assist eligible consumers in seeking and obtaining gainful employment. These services include one or more of the following:

A. contacting employers to develop or identify job opportunities and assisting eligible consumers in securing employment;

B. assessing the characteristics and tasks of an eligible consumer's job choice to determine the skills, knowledge, and abilities needed to perform the tasks involved in the job;

C. assisting the eligible consumer to become knowledgeable about job duties, personnel benefits, rates of pay, employment policies and practices, and the job location prior to job acceptance;

D. providing group or individual counseling or training or both regarding the techniques for obtaining and maintaining employment, including assisting eligible consumers in preparing resumes and job applications and in developing job interviewing skills;

E. enhancing disability awareness through educating eligible consumers and employers about various disabilities and resulting vocational implications, rehabilitation technology, job accommodations, services provided by the division, incentives to the employer, and current disability-related legislation;

F. providing on-site job analysis, consultation, and recommendations for work site and job modification, when appropriate;

G. maintaining contact for a reasonable period of time to promote adequate job adjustment and retention;

H. assisting employers to identify, modify, or eliminate architectural, procedural, instructional, attitudinal, or communication barriers to the employment and advancement of persons with disabilities; and

I. maintaining communication and coordination with other community agencies and resources concerning job openings, coordination of services to assist eligible consumers to obtain and retain employment, and joint efforts to increase employment opportunities for people with disabilities.

Subp. 24. **Maintenance.** "Maintenance" means the financial assistance provided to or on behalf of an eligible consumer to pay for added costs incurred by the eligible consumer as a result of participation in other planned vocational rehabilitation services.

Subp. 25. **Notetaker services.** "Notetaker services" means the recording in writing of oral or written communication for later use by an eligible consumer.

Subp. 25a. **Ongoing monthly living expenses.** "Ongoing monthly living expenses" means costs such as rent, utilities, and food.

Subp. 26. **Order of selection.** "Order of selection" means the priority system under which the division provides vocational rehabilitation services to eligible consumers when all eligible consumers cannot be served.

Subp. 27. **Paratransit.** "Paratransit" means the comparable transportation service provided by a public entity as required by United States Code, title 42, section 12143, for indi-

viduals with disabilities who are unable to use fixed route transportation services. Paratransit includes door-to-door or demand responsive transportation for persons who are unable to use conventional transportation provided by a public entity. Paratransit may be provided directly by a public transit agency or contracted out to a private company.

Subp. 28. **Personal assistance services.** "Personal assistance services" means a range of services, provided by one or more persons, to assist an eligible consumer to perform daily living activities, on or off the job, that the eligible consumer would typically perform if the eligible consumer did not have a disability.

Subp. 28a. **Physical and mental restoration services.** "Physical and mental restoration services" means the medical or medically related services provided to correct or modify, within a reasonable period of time, a physical or mental condition that is stable or slowly progressive. These services consist of the services listed under the definition of physical and mental restoration services in Code of Federal Regulations, title 34, section 361.1, subsection (c), paragraph (2), as amended.

Subp. 29. **Postemployment services.** "Postemployment services" means vocational rehabilitation services provided to assist an eligible consumer to maintain, regain, or advance in employment after the consumer has been determined to be rehabilitated according to Code of Federal Regulations, title 34, section 361.43, as amended. Postemployment services are provided only to the extent necessary to overcome barriers to maintaining, regaining, or advancing in employment that result from the consumer's disability.

Subp. 30. **Postsecondary training.** "Postsecondary training" means training provided by:

A. a postsecondary training institution; or

B. a community rehabilitation program in conjunction with a postsecondary training institution, when gift aid for the training is available through the postsecondary training institution.

Subp. 31. **Postsecondary training institution.** "Postsecondary training institution" means a public or private university, college, community college, junior college, vocational school, business school, technical college, technical institute, hospital school of nursing, or other school as defined in Minnesota Statutes, section 136A.62, subdivision 3, or 141.21, subdivision 5, that is registered as provided by Minnesota Statutes, section 136A.63, licensed as provided by Minnesota Statutes, section 141.25, or exempt from such licensing or registration requirements.

Subp. 31a. **Public entity.** "Public entity" means:

A. any state or local government; or

B. any department, agency, special purpose district, or other instrument of one or more state or local governments.

Subp. 32. **Public safety officer.** "Public safety officer" means a person serving the United States or a state or unit of local government, with or without compensation, in any activity involving:

A. the enforcement of criminal laws, or maintenance of civil peace by the National Guard or armed forces;

B. a correctional program, facility, or institution where the activity is potentially dangerous because of contact with criminal suspects, defendants, prisoners, probationers, or parolees;

C. a court having criminal or juvenile jurisdiction where the activity is potentially dangerous because of contact with criminal suspects, defendants, prisoners, probationers, or parolees; or

D. firefighting, fire prevention, or emergency rescue missions.

Subp. 33. **Reader services.** "Reader services" means the oral reading of written material for an eligible consumer.

Subp. 34. **Referral.** "Referral" means counseling or research on behalf of an applicant or eligible consumer for the purpose of directing the applicant or eligible consumer to other agencies and organizations that provide financial assistance, rehabilitation services, or other services needed by the applicant or eligible consumer.

Subp. 35. **Rehabilitation counseling and guidance.** “Rehabilitation counseling and guidance” means the process by which a rehabilitation counselor assists an eligible consumer to:

- A. understand the eligible consumer’s abilities and potential and develop self-confidence;
- B. identify and establish an employment goal and intermediate objectives to reach that goal; and
- C. complete a program of services leading to the achievement of the intermediate objectives and employment goal established in the eligible consumer’s individualized written rehabilitation program.

Subp. 36. **Rehabilitation counselor.** “Rehabilitation counselor” means a person classified by the Minnesota Department of Employee Relations as a rehabilitation counselor and employed by the division to determine eligibility for and provide and coordinate the provision of vocational rehabilitation services.

Subp. 37. **Rehabilitation technology.** “Rehabilitation technology” means services that apply technologies, engineering methodologies, or scientific principles to meet the needs of and address the barriers confronted by an eligible consumer. These services include:

- A. any piece of equipment, or product system, including taped books and text, and alternative format books accessible by computer, whether acquired commercially off the shelf, modified, or customized, that is used to increase, maintain, or improve functional capabilities of individuals with disabilities; and
- B. any service that directly assists an eligible consumer in the selection, acquisition, or use of a piece of equipment or product system described in item A.

Subp. 38. [Repealed, 20 SR 168]

Subp. 39. **Self-help aid.** “Self-help aid” means forms of student financial assistance, such as loans and work-study, offered to a student by a postsecondary institution and that the student must repay or work to earn.

Subp. 40. **Serious functional limitation.** “Serious functional limitation” means that, due to a severe physical or mental impairment, one or more of an individual’s functional capacities, including mobility, communication, self-care, self-direction, interpersonal skills, work tolerance, or work skills is restricted to the degree that the individual requires services or accommodations not routinely made for other individuals in order to prepare for, enter, engage in, or retain employment.

Subp. 41. **State Rehabilitation Advisory Council.** “State Rehabilitation Advisory Council” means the council established under United States Code, title 29, section 725, as amended, to advise the division on the services and outcomes of the vocational rehabilitation program.

Subp. 42. **Tools and equipment.** “Tools and equipment” means hammers, clamps, cutlery, screwdrivers, tool belts, brushes, safety goggles, ladders, scissors, and similar implements required for participation in an individualized written rehabilitation program.

Subp. 43. **Transportation services.** “Transportation services” means payments for:

- A. gasoline and parking;
- B. transportation provided by a public entity including paratransit;
- C. a driver, if one is required;
- D. other available transportation if transportation provided by a public entity, including paratransit, and transportation by private vehicle are unavailable; or
- E. the purchase of vehicle repairs.

Subp. 44. **Tuition cap.** “Tuition cap” means:

- A. For the regular three-quarter or two-semester academic year:

(1) for undergraduate postsecondary training programs at all private postsecondary institutions and at public postsecondary institutions outside Minnesota, the dollar amount equal to the cost of tuition and mandatory fees needed for an individual to be considered a full-time student at the state university in the Minnesota State College and University system with the highest combined cost of tuition and mandatory fees. This amount is available annually from the Higher Education Services Office;

(2) for postbaccalaureate degree programs at the University of Minnesota, the dollar amount equal to the cost of tuition and mandatory student service fees needed for an individual to be considered a full-time student at the Graduate School of the University of Minnesota-Twin Cities Campus. This amount is available annually from the Higher Education Services Office; or

(3) for postbaccalaureate degree programs at all private postsecondary institutions and at public postsecondary institutions outside Minnesota, the dollar amount equal to the cost of tuition and mandatory fees needed for an individual to be considered a full-time student at the graduate school in the Minnesota State College and University system with the highest combined cost of tuition and mandatory fees. This amount is available annually from the Higher Education Services office.

B. For summer school:

(1) for undergraduate summer school programs at all private postsecondary institutions and at public postsecondary institutions outside Minnesota, the dollar amount equal to the cost of tuition and mandatory fees needed for an individual to be considered a full-time student in two consecutive summer school sessions at the state university in the Minnesota State College and University system with the highest combined cost of tuition and mandatory fees. This amount is available annually from the Higher Education Services Office;

(2) for postbaccalaureate degree programs at the University of Minnesota, the dollar amount equal to the cost of tuition and mandatory student service fees needed for an individual to be considered a full-time student in two consecutive summer school sessions at the Graduate School of the University of Minnesota-Twin Cities Campus. This amount is available annually from the Higher Education Services Office; or

(3) for postbaccalaureate degree programs at all private postsecondary institutions and at public postsecondary institutions outside Minnesota, the dollar amount equal to the cost of tuition and mandatory fees needed for an individual to be considered a full-time student in two consecutive summer school sessions at the graduate school in the Minnesota State College and University system with the highest combined cost of tuition and mandatory fees. This amount is available annually from the Higher Education Services Office.

Subp. 45. **Vehicle adaptations.** "Vehicle adaptations" means changes made to the structure or control devices of a motor vehicle for a person with a disability to enter, exit, or operate the vehicle safely and legally.

Subp. 46. **Vocational evaluation.** "Vocational evaluation" means an assessment of a person's performance in a simulated or real work situation to determine the person's abilities, skills, attitudes toward work, and work behaviors.

Subp. 47. **Vocational rehabilitation program.** "Vocational rehabilitation program" means the organizational unit in the division that determines eligibility for, and provides vocational rehabilitation services to, individuals.

Subp. 48. **Vocational rehabilitation services.** "Vocational rehabilitation services" means the services provided or arranged for individuals by the division's vocational rehabilitation program to determine and achieve an employment goal.

Subp. 49. **Vocational training services.** "Vocational training services" means instruction and supplies provided to an eligible consumer to assist the eligible consumer in acquiring the knowledge, skills, attitudes, and educational qualifications necessary to obtain and retain gainful employment. These services include:

A. tuition and materials usually required for in an educational program at a postsecondary training institution; and

B. fees and materials usually required for vocational skills training in settings other than postsecondary training institutions, such as competitive employment settings and community rehabilitation programs.

Subp. 50. **Work adjustment training.** "Work adjustment training" means using real or simulated work situations to assist persons to:

A. understand the meaning, value, and demands of work;

B. learn or reestablish skills, attitudes, and work behaviors; and

C. develop physical or mental capacities necessary for work.

**Statutory Authority:** *MS s 268.021; 268A.03*

**History:** *18 SR 2248; L 1994 c 483 s 1; 20 SR 168; 21 SR 1779*

### **3300.5020 CONDITIONS FOR IMPLEMENTING AN ORDER OF SELECTION.**

Subpart 1. **Determination of open priority categories.** The commissioner shall determine the need for an order of selection annually. The commissioner's determination shall be made after consulting with and obtaining advice from the State Rehabilitation Advisory Council. The commissioner's determination shall be based on the anticipated number of individuals eligible for services from the vocational rehabilitation program and the resources anticipated to be available to the vocational rehabilitation program. The commissioner shall open as many priority categories as it is projected that the division can serve, starting with the first priority category listed in part 3300.5030. The division retains the discretion to open and close established priority categories based on an assessment of need and resources, but the division must not change the established order of categories. The open priority categories for order of selection must be identified in the division's state plan for vocational rehabilitation submitted annually to the federal Rehabilitation Services Administration. The division must conduct public meetings on the plan prior to its adoption, as provided by Code of Federal Regulations, title 34, section 361.18, paragraph (a)(1).

Subp. 2. **Continuation of services.** When there is a change in the priority categories open under an order of selection, the division must continue to provide vocational rehabilitation services to eligible consumers who have begun to receive services in accordance with an individualized written rehabilitation program developed before the change occurred.

**Statutory Authority:** *MS s 268.021; 268A.03*

**History:** *18 SR 2248; 21 SR 1779*

### **3300.5030 PRIORITY CATEGORIES FOR ORDER OF SELECTION.**

Subpart 1. **First priority category.** The first priority category includes all individuals with a most severe disability.

Subp. 2. **Second priority category.** The second priority category includes all individuals with a severe disability that results in serious functional limitations in two functional areas.

Subp. 3. **Third priority category.** The third priority category includes all individuals with a severe disability that results in a serious functional limitation in one functional area.

Subp. 4. **Fourth priority category.** The fourth priority category includes all other eligible consumers.

Subp. 5. **Priority for public safety officers.** If all eligible consumers in a priority category cannot be served, the division shall first serve those eligible consumers whose disability was sustained in the line of duty while performing as a public safety officer, and whose disability was caused by a criminal act, apparent criminal act, or hazardous condition resulting directly from the public safety officer's performance of duties in direct connection with the enforcement, execution, and administration of law, fire prevention, firefighting, or related public safety activities.

**Statutory Authority:** *MS s 268.021; 268A.03*

**History:** *18 SR 2248*

### **3300.5040 CONSUMER FINANCIAL PARTICIPATION IN COST OF VOCATIONAL REHABILITATION SERVICES.**

Subpart 1. **Financial participation required.** An eligible consumer whose gross family income is more than the consumer financial participation threshold shall pay for vocational rehabilitation services an amount equal to the percentage by which the eligible consumer's gross family income exceeds the consumer financial participation threshold. For example, if an eligible consumer's gross family income exceeds the consumer financial participation threshold by ten percent, the eligible consumer shall pay ten percent of the cost of vocational rehabilitation services provided and the division would pay 90 percent.

Subp. 1a. **Consumer financial participation threshold.** The division must calculate the consumer financial participation threshold annually. The consumer financial participation threshold is the average of:

A. the most recent estimate of Minnesota median income levels as adjusted for family size using the adjustment methodology specified in Code of Federal Regulations, title 45, section 96.85, as amended; and

B. 187.5 percent of the poverty guidelines updated annually in the Federal Register by the United States Department of Health and Human Services under authority of section 673(2) of the Omnibus Budget Reconciliation Act of 1981, as adjusted for family size.

Subp. 2. **No required financial participation.** An eligible consumer whose gross family income is equal to or less than the consumer financial participation threshold is not required to pay any portion of the cost of the vocational rehabilitation services that the eligible consumer receives. However, regardless of consumer financial participation requirements under this part, all eligible consumers are required to participate in the search for and utilization of comparable benefits as provided in part 3300.5050, and the division's payments for any vocational rehabilitation services will not exceed the amounts described in part 3300.5060.

Subp. 3. **Basis for determining degree of financial participation required.** The division shall determine the degree of financial participation required for eligible consumers who are not exempt from determination of the degree of financial participation under subpart 4. The degree of financial participation required is determined on the basis of the eligible consumer's gross family income in relation to the consumer financial participation threshold.

A. For the purposes of this subpart, the eligible consumer's gross family income includes cash payments or benefits, other than gifts or loans, received by or actually available to an eligible consumer or an eligible consumer's family from public or private sources. These payments or benefits include:

- (1) cash earnings from wage or salaried positions before payroll deductions;
- (2) cash income receipts from a business, farm, or profession after deduction of operating expenses;
- (3) unearned payments from government assistance programs or other public sources such as reemployment insurance benefits, workers' compensation, veteran's benefits, social security, and government pensions; and
- (4) unearned payments from private sources such as private pensions, annuities, net rental income, dividends, and interest.

B. For purposes of determining gross family income, the eligible consumer's family includes:

- (1) the spouse of the eligible consumer; and
- (2) the parent or parents of the eligible consumer if:
  - (a) the eligible consumer is under 18 years of age and living with the parent or parents; or
  - (b) the parent or parents claimed the eligible consumer as a dependent for federal income tax purposes in the most recent calendar year; or
  - (c) a postsecondary institution has determined that the eligible consumer is a dependent student for purposes of determining financial aid for postsecondary training.

Subp. 4. **Exemption from determination of degree of financial participation.**

A. Except as provided in item B, an eligible consumer is not required to pay any portion of the cost of the vocational rehabilitation services that the eligible consumer receives if the eligible consumer has been determined eligible for a federal or state means-tested income assistance program, such as Aid to Families with Dependent Children or general assistance, or a federal or state means-tested health insurance program, such as medical assistance, when the highest income eligibility requirements of the income assistance program or the health insurance program are equal to or less than the consumer financial participation threshold.

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B. When the eligible consumer has been determined eligible for a federal or state means-tested health insurance program, or when the eligible consumer receives payments from Supplemental Security Income, the division must determine the degree of financial participation required of the eligible consumer if:

(1) the eligible consumer is under 18 years of age and living with the parent or parents;

(2) the parent or parents claimed the eligible consumer as a dependent for federal income tax purposes in the most recent calendar year; or

(3) a postsecondary institution has determined that the eligible consumer is a dependent student for purposes of determining financial aid for postsecondary training.

**Subp. 5. Services subject to financial participation.** An eligible consumer may be required to participate in paying the cost of all vocational rehabilitation services not exempted from financial participation under subpart 6.

**Subp. 6. Services exempted from financial participation.** The division must not require eligible consumer financial participation for the following services:

A. assessment for determining eligibility and vocational rehabilitation needs, except those services provided under an extended evaluation that are not diagnostic in nature;

B. vocational evaluation;

C. work adjustment training;

D. rehabilitation counseling and guidance;

E. job placement services;

F. referral services;

G. job coaching;

H. on-the-job training;

I. independent living skills training that supports an employment goal;

J. auxiliary aids and services for effective communication;

K. single-time nonrecurring purchases of goods and services costing \$300 or less;

and

L. postemployment services consisting of the services identified in this subpart.

**Subp. 7. Income verification.** If an eligible consumer's individualized written rehabilitation program includes or is expected to include vocational rehabilitation services other than those identified in subpart 6, the eligible consumer shall provide the division with written verification of the eligible consumer's gross family income and sources of income, unless the eligible consumer provides the division with written verification that the eligible consumer is exempt from the determination of the degree of financial participation under subpart 4. The eligible consumer shall provide the division with a copy of the first page of the most recent federal income tax return documenting the eligible consumer's gross family income. If there has been a substantial change in the eligible consumer's or family's income, either an increase or a decrease, to the degree that it would change the eligible consumer's financial participation, the eligible consumer shall provide the division with written verification of the eligible consumer's present gross family income.

**Subp. 8. Consumer financial participation.** The amount of consumer financial participation in the costs of services and the amount of division payments for services must be determined as follows:

A. determine the actual cost of the service;

B. subtract the amount of available comparable benefits from the amount determined in item A;

C. if the result obtained under item B is greater than zero, determine the dollar amount of consumer financial participation based on the lesser of:

(1) the amount determined in item B; or

(2) the maximum amount the division is permitted to pay for the service under part 3300.5060;

D. subtract the amount of consumer financial participation determined under item C from the amount determined under item B;

E. if the result obtained under item D is greater than zero, division payments must be the lesser of:

- (1) the amount determined under item D; or
- (2) the maximum amount the division is permitted to pay for the service under part 3300.5060, minus the amount of consumer financial participation determined under item C.

Subp. 9. **Variance.** An eligible consumer who cannot pay for vocational rehabilitation services to the extent required in subpart 1 may apply to the commissioner for a variance in the determination of financial need as follows:

A. A request for a variance must be submitted in writing by the eligible consumer or the eligible consumer's legal representative. The request must provide the commissioner with evidence describing the unusual financial situation. If the commissioner requires additional information to determine eligibility for a variance, the division must, within 15 days after receiving the written request, inform the eligible consumer in writing of the specific additional information required.

B. The commissioner must determine whether the eligible consumer is eligible for a variance and notify the eligible consumer of the determination in writing 30 days after the commissioner receives all the information required under item A. The written notification must:

- (1) specify whether the eligible consumer is eligible for a variance;
- (2) indicate the reasons for the determination;
- (3) specify the amount of the variance, if any;
- (4) inform the eligible consumer of review and appeal rights under Code of Federal Regulations, title 34, subtitle B, chapter III, section 361.48, as amended; and
- (5) be signed and dated by the commissioner.

C. The commissioner shall grant a variance only if the eligible consumer demonstrates that it is impossible for the eligible consumer to make the cost contributions required under subpart 1 because of extraordinary costs resulting from illness or disability in areas such as mobility, communication, self care, medical care, shelter, food, and clothing.

D. The commissioner shall determine the amount of a variance by:

- (1) calculating the sum of the eligible consumer's extraordinary expenditures identified under item C that make it impossible for the eligible consumer to make the cost contributions required under subpart 1; and
- (2) subtracting the sum in subitem (1) from the financial participation amount the eligible consumer would have to pay without the variance.

E. An eligible consumer who receives a variance must immediately notify the commissioner in writing if the eligible consumer's gross family income improves.

F. The commissioner may review the financial situation of an eligible consumer who receives a variance at any time to determine whether the individual's financial situation continues to justify the variance.

**Statutory Authority:** *MS s 268.021; 268A.03*

**History:** *18 SR 2248; 20 SR 168; 21 SR 1779; L 1997 c 66 s 80*

### 3300.5050 COMPARABLE BENEFITS AND SERVICES.

Subpart 1. **Use of comparable benefits.** Comparable benefits must be used if available to an eligible consumer or a member of an eligible consumer's family for all vocational rehabilitation services identified in the eligible consumer's individualized written rehabilitation program except:

- A. assessment for determining eligibility and vocational rehabilitation needs;
- B. rehabilitation counseling and guidance;
- C. job placement services;
- D. referral services;
- E. vocational and other training services, such as personal and vocational adjustment training, that are not provided as part of a postsecondary training program;

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- F. rehabilitation technology services;
- G. medical services for an individual at extreme medical risk;
- H. the services listed in items A to G when provided as postemployment services necessary to assist consumers to maintain, regain, or advance in employment; or
- I. when a search for comparable benefits would cause an immediate job placement to be lost.

**Subp. 2. Consumer responsibilities.** Except in the circumstances described in subpart 1, an eligible consumer must, with the assistance of the division, participate in the search for and use of comparable benefits as follows:

A. Before receiving training services in a postsecondary institution, an eligible consumer must apply for educational grants and scholarships to pay all or part of the costs of tuition, fees, books, supplies, tools and equipment, and living expenses; and

(1) provide evidence to the rehabilitation counselor of the amount of the educational grants and scholarships that are available to the eligible consumer; or

(2) provide evidence to the rehabilitation counselor that the eligible consumer is not eligible for educational grants and scholarships.

B. If grants or scholarships are not available to the eligible consumer because the eligible consumer is in default on repayment of a student loan, the division must not participate financially in the purchase of postsecondary training services until the division determines that a responsible repayment effort has been made. This determination shall be made by the rehabilitation counselor in consultation with the eligible consumer and the holder of the loan, after considering such factors as the financial resources available to the eligible consumer and the attempts that have been made to work out a satisfactory repayment agreement with the holder of the loan. The requirement of a responsible repayment effort will be deemed to be satisfied if the consumer has made six consecutive payments.

C. Before receiving physical and mental restoration services or durable medical equipment, an eligible consumer must file a claim or application with the consumer's health insurer, if any. If the eligible consumer has no health insurance, or if the restoration services or durable medical equipment provided are not covered by the eligible consumer's health insurance, the eligible consumer must apply to a local human services agency for medical assistance under Minnesota Statutes, chapter 256B, or general assistance medical care under Minnesota Statutes, chapter 256D, if the division determines that it is likely that the eligible consumer may be eligible for medical assistance or general assistance medical care.

D. Before receiving any vocational rehabilitation service other than those listed in subpart 1, an eligible consumer shall apply or provide evidence of having already applied for any comparable benefit that the division determines may be available to the eligible consumer. The division must not purchase a service when the eligible consumer refuses to make formal application for a comparable benefit to pay all or part of the cost of the service, or when the eligible consumer refuses to accept a comparable benefit that is available to the eligible consumer.

**Statutory Authority:** *MS s 268.021; 268A.03*

**History:** *18 SR 2248; 20 SR 168; 21 SR 1779*

### **3300.5060 TERMS AND CONDITIONS FOR PROVISION OF VOCATIONAL REHABILITATION SERVICES.**

**Subpart 1. General conditions for provision of vocational rehabilitation services.**

A. The division must provide vocational rehabilitation services only for the following purposes:

(1) to determine whether an individual is eligible for vocational rehabilitation services and the nature and scope of vocational rehabilitation services needed by the individual, as provided by Code of Federal Regulations, title 34, subtitle B, chapter III, sections 361.31, 361.32, 361.33, and 361.34; and

(2) to assist an eligible consumer to achieve an employment goal in accordance with the consumer's individualized written rehabilitation program.

B. The division must follow applicable state, Department of Economic Security, and division purchasing policies and procedures when purchasing goods or services for consumers.

C. The division must not make payments to reduce legal financial obligations incurred by the consumer.

Subp. 1a. **Auxiliary aids and services for effective communication.** The division must provide auxiliary aids and services for effective communication necessary to enable an applicant or eligible consumer to access division services or participate in vocational rehabilitation services under an individualized written rehabilitation program, except that the division must not assume the responsibility of other programs or vendors, such as postsecondary training institutions, community rehabilitation programs, physicians, psychologists, and placement agencies, for providing program and service accessibility under Code of Federal Regulations, title 28, sections 35.149 to 35.164; and 36.301 to 36.310.

Subp. 2. **Child care.**

A. Before the division provides child care, the amount of consumer financial participation in the cost of child care must be determined under part 3300.5040.

B. The eligible consumer must, with the assistance of the division, participate in the search for and use of comparable benefits under part 3300.5050, subpart 2, item D, except that a search for comparable benefits is not required if the search would cause the eligible consumer to lose an immediate job placement.

C. The division must not provide child care unless an eligible consumer's individualized written rehabilitation program would be interrupted if child care is not provided. The division must:

(1) purchase child care services only from providers who are licensed by the Department of Human Services, under chapter 9502 or 9503, or who are exempt from the licensure requirements under part 9502.0325, subpart 3; and

(2) pay for no more than one period of child care of up to three months in duration in any 12-month period.

D. Division payments for child care must not exceed the rate established by the Department of Human Services under part 9565.5100.

Subp. 3. **Computer hardware and software.**

A. Before the division purchases computer software or hardware, including modems, printers, and other peripherals, the amount of consumer financial participation in the cost of the items must be determined under part 3300.5040.

B. The eligible consumer must, with the assistance of the division, participate in the search for and use of comparable benefits under part 3300.5050, subpart 2, item D, except that a search for comparable benefits is not required if the search would cause the eligible consumer to lose an immediate job placement.

C. The division must purchase computer software or hardware, including modems, printers, and other peripherals, only for disability-related reasons, except for computers purchased as equipment necessary for an eligible consumer to achieve an employment goal of self-employment or operation of a small business.

D. The division must not purchase computer software or hardware, including modems, printers, and other peripherals, if an eligible consumer's needs can be met through alternative means of accessing computers, such as the use of computer laboratories at postsecondary institutions.

E. Before the division purchases computer software or hardware, including modems, printers, and other peripherals, if either the counselor or the eligible consumer is uncertain regarding the eligible consumer's needs, an assessment to determine the eligible consumer's needs for computer hardware, software, or modems, printers, and other peripherals must be conducted by a person knowledgeable about computers who is not a vendor of computer equipment.

F. Any division purchases of computer software or hardware, including modems, printers, and other peripherals, must be made using the information obtained from the assessment under item E.

G. The division expenditures for the purchase of computer hardware, modems, printers, and other peripherals for an eligible consumer must not exceed \$3,000, excluding costs for adaptations required because of the eligible consumer's disability.

**Subp. 3a. Durable medical equipment.**

A. Before the division provides durable medical equipment, the amount of consumer financial participation in the cost of durable medical equipment must be determined under part 3300.5040.

B. The eligible consumer must, with the assistance of the division, participate in the search for and use of comparable benefits under part 3300.5050, subpart 2, item D, except that a search for comparable benefits is not required if the search would cause the eligible consumer to lose an immediate job placement.

**Subp. 4. [Repealed, 20 SR 168]**

**Subp. 5. Maintenance.**

A. Before the division provides maintenance, the amount of consumer financial participation must be determined under part 3300.5040.

B. The eligible consumer must, with the assistance of the division, participate in the search for and use of comparable benefits under part 3300.5050, subpart 2, item D, except that a search for comparable benefits is not required if the search would cause the eligible consumer to lose an immediate job placement.

C. The division must not provide maintenance to pay for expenses that the eligible consumer would incur whether or not the eligible consumer was receiving vocational rehabilitation services.

D. The division must not pay for maintenance if the provision of maintenance would result in a reduction of payments to the eligible consumer by other government assistance programs.

E. Maintenance will be provided only when participation in one or more other vocational rehabilitation services being provided results in added costs.

F. Payments for relocation expenses may be provided only when:

(1) the eligible consumer cannot receive needed vocational rehabilitation services without relocation; and

(2) a rehabilitation counselor, in consultation with the eligible consumer, has determined that there is a need to relocate, based on available employment and labor market information.

G. Maintenance payments for ongoing monthly living expenses for eligible consumers participating in postsecondary training may be provided only when the eligible consumer cannot receive postsecondary training without incurring added living costs and:

(1) the eligible consumer is unable to work while participating in postsecondary training because of the eligible consumer's disability, as determined based on available medical, psychological, and other diagnostic information; or

(2) it is necessary for the eligible consumer to leave subsidized housing in order to participate in postsecondary training under an individualized written rehabilitation program.

H. When added costs are due to loss of subsidized housing:

(1) the eligible consumer must reapply for subsidized housing if available in the new location; and

(2) maintenance for ongoing monthly living expenses shall be discontinued when new subsidized housing is offered or the eligible consumer's individualized written rehabilitation program terminates.

I. Maintenance payments for ongoing monthly living expenses for eligible consumers not participating in postsecondary training may be provided only during a period of temporary relocation necessary to participate in other vocational rehabilitation services under an individualized written rehabilitation program while a primary residence is maintained by the eligible consumer or the eligible consumer's family.

J. Except as provided in item K, division maintenance payments for ongoing monthly living expenses must not exceed the lesser of:

(1) the amount necessary to pay for the added costs resulting from the provision of one or more other vocational rehabilitation services; or

(2) a monthly amount equal to the average, rounded to the nearest \$10, of the monthly payment for the Minnesota general assistance program as provided by Minnesota Statutes, chapter 256D, and the monthly federal benefit amount for the Social Security Supplemental Security Income program as provided by Code of Federal Regulations, title 20, chapter III, subpart D, section 416.410.

K. For eligible consumers receiving maintenance under item I, division maintenance payments in any 12-month period must not exceed the lesser of:

(1) the amount necessary to pay for the added costs resulting from the provision of one or more other vocational rehabilitation services; or

(2) 12 times the amount determined under item J, subitem (2).

Subp. 6. [Repealed, 20 SR 168]

Subp. 7. **Personal assistance services.**

A. The division must not provide personal assistance services unless an eligible consumer is receiving one or more other vocational rehabilitation services.

B. Before the division provides personal assistance services, the amount of consumer financial participation in the cost of personal assistance services must be determined under part 3300.5040.

C. The eligible consumer must, with the assistance of the division, participate in the search for and use of comparable benefits under part 3300.5050, subpart 2, item D, except that a search for comparable benefits is not required for personal assistance services that are necessary for job placement.

D. The division must purchase personal assistance services only from:

(1) a personal care attendant who is employed by or under contract to a personal care provider organization; or

(2) a personal care attendant who is authorized by the Department of Human Services Personal Care Services Division to be independently enrolled for the purpose of providing personal care.

E. After an eligible consumer is hired for a job that meets the eligible consumer's employment goal, the division must not provide personal assistance services for a period exceeding 90 consecutive calendar days from the eligible consumer's first day of employment.

F. Division payments for personal assistance services must be made at the lesser of the provider's submitted charges or the maximum rate established by part 9505.0335, subpart 11, as adjusted by the consumer price index for urban consumers as published by the Bureau of Labor Statistics, United States Department of Labor and is incorporated by reference. It is subject to frequent change and is available from the Minitex interlibrary loan system.

G. The division must not provide personal assistance services if the provision of the services would result in a reduction in benefits or services from other government or private programs.

H. The division must provide eligible consumers with training in the management of personal care attendants when the eligible consumer and a rehabilitation counselor jointly determine that the training is necessary.

(1) Before the division provides training in the management of personal care attendants, the amount of consumer financial participation in the cost of training in the management of personal care attendants must be determined under part 3300.5040.

(2) A search for comparable benefits for training in the management of personal care attendants is not required.

Subp. 7a. **Physical and mental restoration services.**

A. Before the division provides physical and mental restoration services, the amount of eligible consumer financial participation in the cost of physical and mental restoration services must be determined under part 3300.5040.

B. The eligible consumer must, with the assistance of the division, participate in the search for and use of comparable benefits under part 3300.5050, subpart 2, items C and D,

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except that a search for comparable benefits is not required if the search would delay the provision of medical services to an eligible consumer at extreme medical risk, or if the search would cause the eligible consumer to lose an immediate job placement.

C. The division must not pay for recurring, ongoing physical or mental restoration services that an eligible consumer would require regardless of participation in an individualized written rehabilitation program, such as group or individual psychotherapy, prescription drugs, or physical therapy.

D. Eligible consumers may select:

(1) any licensed physician to perform physical restoration services;

(2) any licensed dentist to perform dental restoration services;

(3) any qualified professional to provide mental health services, for example, a licensed clinical social worker, licensed psychologist, registered psychiatric nurse, or traditional American Indian healer; and

(4) any vendor to provide braces or artificial limbs.

Subp. 8. [Repealed, 20 SR 168]

Subp. 9. **Rehabilitation technology.**

A. Before the division provides rehabilitation technology, the amount of consumer financial participation in the cost of rehabilitation technology must be determined under part 3300.5040, except that items that are also auxiliary aids and services for effective communication are not subject to consumer financial participation.

B. Before the division purchases rehabilitation technology, if either a rehabilitation counselor or the eligible consumer is uncertain regarding the eligible consumer's needs, an assessment to determine the eligible consumer's needs for rehabilitation technology must be conducted by a knowledgeable person.

C. Division purchases of vehicle adaptations must be made as follows:

(1) before the division purchases vehicle adaptations, an evaluation of the vehicle and the consumer's needs must be conducted by a person knowledgeable in adapting vehicles for persons with disabilities who is not a vendor of vehicle adaptations;

(2) any vehicle adaptations purchased by the division must be consistent with the findings of the evaluation in subitem (1);

(3) the division must not consider the availability of transportation provided by a public entity, including paratransit, or carpooling in determining whether to provide vehicle adaptations; and

(4) the division must only purchase vehicle adaptations that have not been previously owned and that are not yet installed in the consumer's vehicle at the time of purchase of the vehicle, except that the division may purchase used vehicle adaptive equipment if the following conditions are met:

(a) the used equipment must be evaluated for its operational reliability by a person knowledgeable in adapting vehicles for persons with disabilities who is not the vendor selling the used equipment or a person employed by that vendor, and a copy of the evaluation must be submitted to the division;

(b) the used equipment meets the eligible consumer's needs as identified in subitem (1);

(c) the cost of the used equipment, including the cost of removing the used equipment from the vehicle in which it is currently installed and installing it in the vehicle being adapted, is less than the cost of purchasing and installing new equipment;

(d) the vendor of the used equipment must provide the division and the eligible consumer with a written warranty in which the vendor of the used equipment agrees to pay the costs of parts and labor necessary to repair or replace the used equipment if the used equipment malfunctions or is found to be defective for a period of at least six months after installation in the eligible consumer's vehicle; and

(e) the purchase of the used equipment must comply with the applicable bidding and purchasing requirements of the Department of Administration, Materials Management Division.

Subp. 10. [Repealed, 20 SR 168]

**Subp. 11. Small business enterprises.**

A. Before the division purchases occupational licenses, tools, equipment, and initial stocks and supplies to establish a small business enterprise, the amount of consumer financial participation in the cost of the occupational licenses, tools, equipment, and initial stocks and supplies must be determined under part 3300.5040.

B. The eligible consumer must, with the assistance of the division, participate in the search for and use of comparable benefits under part 3300.5050, subpart 2, item D.

C. Division assistance in the establishment of a small business enterprise is for the purchase of occupational licenses, tools, equipment, and initial stocks and supplies.

D. Before the division provides occupational licenses, tools, equipment, and initial stocks and supplies for the establishment of a small business enterprise, the eligible consumer must:

(1) obtain advice and consultation from a small business development center or comparable organization on developing a business plan and possible sources of funding for the proposed business; and

(2) develop and submit to the eligible consumer's rehabilitation counselor a business plan based on the advice and consultation received under subitem (1) that includes a market analysis, a description of the technical and management expertise of the person or persons expected to manage and operate the business, and a financial analysis including an estimation of the viability of the business.

E. The division must not require an eligible consumer to accept a loan, but an eligible consumer may choose to accept a loan to supplement the division's purchases of occupational licenses, tools, equipment, and initial stocks and supplies to establish a small business.

F. The division's purchases of occupational licenses, tools, equipment, and initial stocks and supplies for the establishment of a small business enterprise must be made only after the eligible consumer and the rehabilitation counselor take into consideration the information obtained in item D.

G. Total division expenditures for occupational licenses, tools, equipment, and initial stocks and supplies for a small business enterprise must not exceed \$5,000 for the life of the business, excluding costs for rehabilitation technology.

H. The division must not purchase occupational licenses, tools, stocks, supplies, or equipment for the ongoing operation of a business after initial stocks, supplies, and equipment are provided.

I. The division must not pay any costs of bankruptcy proceedings or costs due to the bankruptcy of an eligible consumer's small business.

**Subp. 12. Transportation services.**

A. Before the division provides transportation services, the amount of consumer financial participation in the cost of transportation services must be determined under part 3300.5040.

B. The eligible consumer must, with the assistance of the division, participate in the search for and use of comparable benefits under part 3300.5050, subpart 2, item D, except that a search for comparable benefits is not required if the search would cause the eligible consumer to lose an immediate job placement.

C. The division must not provide transportation services unless an eligible consumer is receiving one or more other vocational rehabilitation services.

D. The division must not purchase, lease, or otherwise obtain, maintain, or insure vehicles for applicants or eligible consumers.

E. If transportation provided by a public entity, including paratransit, is available and used by the eligible consumer, division payments for transportation must not exceed the actual cost of the transportation.

F. If transportation provided by a public entity, including paratransit, is available, but the eligible consumer chooses alternate transportation, division payments for transportation must not exceed the equivalent cost of transportation provided by a public entity.

G. When transportation provided by a public entity, including paratransit, is unavailable and the eligible consumer is being transported by personal vehicle, the division's

payments must not exceed the costs of gasoline and parking plus the cost of a driver if required. The division's payments for gasoline costs must be determined by using the rate established by the Internal Revenue Service for personal income tax deductions for mileage for charitable contributions under the Internal Revenue Code of 1986, section 170i, as amended through December 31, 1992. The division's payments for a driver must be determined by the usual and customary rate for the area.

H. When transportation provided by a public entity, including paratransit, and transportation by personal vehicle are unavailable, division payments must not exceed the actual cost of the available transportation.

I. Division purchases of vehicle repairs must be made as follows:

(1) repair to a vehicle owned or used by an eligible consumer must not be provided unless an eligible consumer's ability to participate in an individualized written rehabilitation program would be interrupted if vehicle repair is not provided. The division may provide vehicle repair only if no other means of transportation, such as public transportation, paratransit, or carpooling, is available and the repair is necessary for the safe and legal operation of the vehicle; and

(2) division payments for vehicle repairs must not exceed \$1,500 for an eligible consumer in a 12-month period.

**Subp. 12a. Postsecondary training books, supplies, and tools and equipment.**

A. Before the division provides books, supplies, and tools and equipment for postsecondary training, the amount of consumer financial participation in the cost of those services must be determined under part 3300.5040.

B. The eligible consumer must, with the assistance of the division, participate in the search for and use of comparable benefits under part 3300.5050, subpart 2, items A, B, and D.

C. Division payments under this subpart shall only be for the cost of books, supplies, and tools and equipment required of all students in the postsecondary training program.

D. The division shall consider any gift aid in excess of tuition and fees as a comparable benefit when determining the amount the division will pay for required books, supplies, and tools and equipment.

**Subp. 13. Postsecondary training tuition and mandatory fees.**

A. Before the division provides tuition and mandatory fees for postsecondary training, the amount of consumer financial participation in the cost of those services must be determined under part 3300.5040.

B. The eligible consumer must, with the assistance of the division, participate in the search for and use of comparable benefits under part 3300.5050, subpart 2, items A, B, and D.

C. The estimated cost of tuition and mandatory fees for the eligible consumer's postsecondary training program must be determined annually, based on information from the postsecondary training institution. The estimated cost of tuition and mandatory fees for the eligible consumer's postsecondary training during the regular academic year and the estimated costs of tuition and mandatory fees for the eligible consumer's summer school postsecondary training must be determined separately, based on information from the postsecondary training institution.

D. The tuition cap for an eligible consumer who will attend fewer than three quarters or two semesters during the regular academic year must be prorated based on the number of quarters or semesters which the eligible consumer will attend. The summer school tuition cap must be prorated based on the number of summer school sessions which the eligible consumer will attend if the eligible consumer is attending a postsecondary institution where there are two summer school sessions.

E. The tuition cap for an eligible consumer enrolled in a postsecondary training program less than full time must be prorated in accordance with the specific program standards for full-time or part-time status.

F. The division must not apply the tuition cap in determining the amount of division payments for tuition and mandatory fees for postsecondary training when the eligible consumer's individualized written rehabilitation program includes attendance at:

(1) Gallaudet University;

(2) National Technical Institute for the Deaf; or

(3) a postsecondary training program operated by a community rehabilitation program in conjunction with a Minnesota public postsecondary training institution.

G. If the undergraduate field of study required by the eligible consumer's individualized written rehabilitation program is not available at a Minnesota public postsecondary institution, the division shall not apply the tuition cap in determining the amount of division payments for tuition and mandatory fees.

H. The amount of gift aid available to the eligible consumer to pay for the costs of postsecondary training must be determined annually, based on information obtained from the postsecondary training institution. The amount of gift aid available to the eligible consumer to pay for the costs of the regular academic year must be determined separately from the amount of gift aid available to the eligible consumer to pay for the costs of summer school, based on information obtained from the postsecondary training institution.

I. When the amount of gift aid equals or exceeds the cost of tuition and mandatory fees, the division shall not pay any of the costs of tuition and mandatory fees.

J. When the amount of gift aid is less than the cost of tuition and mandatory fees, the amount, if any, to be paid by the eligible consumer must be determined by applying the consumer financial participation requirements under part 3300.5040 to the lesser of:

(1) the difference between the amount of gift aid and the total cost of tuition and mandatory fees; or

(2) the tuition cap, if applicable.

K. When the cost of tuition and mandatory fees exceeds the total of gift aid and eligible consumer financial participation, the division shall pay the lesser of:

(1) the difference between the cost of tuition and mandatory fees, and the total of gift aid and eligible consumer financial participation; or

(2) the tuition cap, if applicable, minus the amount of any required consumer financial participation.

L. Regardless of the provisions in items A to K and subpart 12a, the division must make payments for tuition and mandatory fees, and for books, supplies, and tools and equipment for postsecondary training only to the extent that the division payments do not reduce the amount of gift aid available to the eligible consumer.

M. The division does not require an eligible consumer to accept self-help aid. The eligible consumer has the right to accept or reject a postsecondary training institution's offer of self-help aid. When the division assistance results in a reduction of eligibility for self-help aid from a postsecondary training institution, the eligible consumer may choose whether to accept the division assistance in full or in part, or to accept the self-help aid.

N. The division must report to the postsecondary training institution, with the eligible consumer's release, the amount of planned division purchases of services for postsecondary training for an eligible consumer. If the eligible consumer does not provide a release for the division to report planned division purchases of services for postsecondary training, the division must not make the purchases.

**Statutory Authority:** *MS s 268.021; 268A.03*

**History:** *18 SR 2248; L 1994 c 483 s 1; 20 SR 168; 21 SR 1779*