

CHAPTER 3300
DEPARTMENT OF ECONOMIC SECURITY
TRAINING; COMMUNITY SUPPORT SERVICES

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NOTE: Effective July 1, 2003, the Department of Economic Security and the Department of Trade and Economic Development were merged by Department of Administration reorganization number 189 to create the Department of Employment and Economic Development. Laws 2003, First Special Session chapter 4, changed the name of the Department of Trade and Economic Development to the Department of Employment and Economic Development. Laws 2002, chapter 220, article 12, section 13, abolished the Department of Economic Security effective July 1, 2003. At the time of this publication, name change legislation for the Department of Economic Security has not yet been adopted.

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*

3300.0100 MR 1999 [Obsolete, MS s 14.47, subd. 6, paragraph (b)]

3300.0200 MR 1999 [Obsolete, MS s 14.47, subd. 6, paragraph (b)]

3300.0300 MR 1999 [Obsolete, MS s 14.47, subd. 6, paragraph (b)]

3300.0400 MR 1999 [Obsolete, MS s 14.47, subd. 6, paragraph (b)]

YOUTH EMPLOYMENT

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 [Repealed, 13 SR 932]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 MR 1999 [Obsolete, MS s 14.47, subd. 6, paragraph (b)]

3300.0700 MR 1999 [Obsolete, MS s 14.47, subd. 6, paragraph (b)]

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 119A.375, 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; L 1998 c 397 art 11 s 3*

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.

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 RECORD KEEPING.

Record keeping 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*

3300.1950 [Repealed, 22 SR 2294]

3300.2000 [Repealed, 11 SR 394]

EXTENDED EMPLOYMENT PROGRAMS**3300.2005 DEFINITIONS.**

Subpart 1. Scope. When used in parts 3300.2005 to 3300.2055, the terms defined in this part have the meanings given them.

Subp. 2. Accreditation. "Accreditation" means accreditation by The Rehabilitation Accreditation Commission . . . CARF (CARF).

Subp. 3. Advocacy organization. "Advocacy organization" means a public or private nonprofit organization that has a mission statement defining its advocacy for persons with disabilities and does not receive funding for direct employment services to clients.

Subp. 4. Annual survey. "Annual survey" means the yearly survey of department staff, extended employment program providers, consumer and advocacy organizations, organizations representing cultural and racial minorities, and county social service agencies to determine the need for center-based employment, community employment, and supported employment.

Subp. 5. **Appropriate modes of communication.** "Appropriate modes of communication" means specialized aids and supports that enable an individual with a disability to comprehend and respond to information that is being communicated. Appropriate modes of communication include, but are not limited to, the use of interpreters, open- and closed-captioned videos, specialized telecommunications services and audio recordings, Braille and large-print materials, materials in electronic formats, augmentative communication devices, graphic presentations, and simple language materials.

Subp. 6. **Center-based employment.** "Center-based employment" means employment which provides paid work on the premises of an extended employment provider and training services or other services necessary for employment on or off the premises of an extended employment provider to persons who, because of the nature and severity of their disabilities, need intensive ongoing employment support services funded by the state unit in order to work.

Subp. 6a. **Center-based fund.** "Center-based fund" means the extended employment program fund which pays for the center-based employment subprogram.

Subp. 7. **Certification.** "Certification" means the process used by the department to ensure that extended employment program providers meet the minimum state standards in part 3300.2010.

Subp. 8. **Commissioner.** "Commissioner" means the commissioner of the Minnesota Department of Economic Security.

Subp. 9. **Competitive employment.** "Competitive employment" means work in the competitive labor market that is performed on a full-time or part-time basis in an integrated setting; and for which an individual is compensated at or above the minimum wage, but not less than the customary wage and level of benefits paid by the employer for the same or similar work performed by individuals who are not disabled.

Subp. 10. **Community employment.** "Community employment" is paid work in the community requiring intensive ongoing employment support services that does not meet the definition of supported employment only because the worker is paid less than minimum wage or the employment does not meet the criteria of an integrated setting, or the worker is compensated at or above the minimum wage but below the customary wage paid by the employer for the same or similar work performed by individuals without a disability.

Subp. 10a. **Community support fund.** "Community support fund" means the extended employment program fund which pays for the community employment subprogram and supported employment subprogram.

Subp. 11. **Consumer Price Index or CPI.** "Consumer Price Index" or "CPI" means the index of prices of goods and services from the United States Department of Commerce published on a monthly basis and available from the Minnesota Department of Economic Security.

Subp. 12. **Day training and habilitation program or DTH.** "Day training and habilitation program" or "DTH" means a program of services as defined in Minnesota Statutes, section 252.41, subdivision 3.

Subp. 13. **Department.** "Department" means the Minnesota Department of Economic Security.

Subp. 14. **Expanded program.** "Expanded program" means an expansion of an existing provider's capacity to provide community employment or supported employment to persons with mental illness, traumatic brain injury, or the most severe disabilities, to persons from racial or ethnic minorities, to other unserved or underserved populations, and to persons living in geographic regions of Minnesota unserved or underserved by the extended employment program.

Subp. 15. **Extended employment program or program.** "Extended employment program" or "program" means an employment program which provides the ongoing employment support services necessary to maintain and advance the employment of individuals with severe disabilities by providing work in center-based employment,

community employment, or supported employment subprograms. Work in extended employment should encompass the broad range of employment choices available to all individuals and promote an individual's self-sufficiency and financial independence.

Subp. 16. **Extended employment provider or provider.** "Extended employment provider" or "provider" means a rehabilitation facility as defined in subpart 34 and certified by the commissioner under part 3300.2010 to provide center-based, community, or supported employment.

Subp. 17. **Extended employment support plan.** "Extended employment support plan" means the individual service plan developed with the provider, by the worker, based on informed choice, with assistance from the worker's interdisciplinary team if desired by the worker.

Subp. 18. **Extended employment worker or worker.** "Extended employment worker" or "worker" means an individual with a most severe disability as defined in subpart 22 that results in serious limitations in three or more functional areas as defined in subpart 20 that affect employment, who requires and receives ongoing employment support services as defined in subpart 31 over an extended period of time to maintain and advance in employment, and who is reported to the department by the provider during the contract period. Reference to extended employment worker always includes the worker's legal representative.

Subp. 19. **Fundamental personnel benefits.** "Fundamental personnel benefits" means personnel benefits provided by an extended employment provider to workers in center-based employment and to workers in supported employment and community employment when the provider is the payroll agent. Fundamental personnel benefits include vacation, sick leave, holidays, and other mandated state and federal benefits. Specific benefit requirements are identified in part 3300.2015, subpart 4.

Subp. 20. **Functional area.** "Functional area" means communication, interpersonal skills, mobility, self-care, self-direction, work skills, or work tolerance. For the purposes of parts 3300.2005 to 3300.2055:

A. "Communication" means the ability to effectively give and receive information through spoken words or concepts, such as writing, speaking, and listening, or other means of communicating such as sign language, mime, gesture, 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.

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

Subp. 21. **Grievance.** "Grievance" means a claim or complaint brought to an extended employment provider by a worker in the extended employment program or a representative of the worker involving dissatisfaction with the worker's extended

employment program over an issue in which the extended employment program provider has control. A worker who uses the grievance procedure does not give up the right to use a worker appeal as defined in subpart 38.

Subp. 22. **Individual with a most severe disability.** "Individual with a most severe disability" means an individual:

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

B. whose employment can be expected to require ongoing employment support 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. 23. **Informed choice.** "Informed choice" means a voluntary decision made by a prospective or current worker or that person's legal representative, after becoming familiar with worker rights and with alternative service options, and having been provided sufficient relevant written and verbal information at an appropriate comprehension level and in a manner consistent with the appropriate mode of communication and primary language used by the prospective or current worker or that person's legal representative.

Subp. 24. **Informed consent.** "Informed consent" means the written agreement with the worker's extended employment support plan, or an agreement as documented in the worker's case file, by a legally competent worker or a worker's legal representative who is making decisions voluntarily and without coercion, and has knowledge to make informed choices.

Subp. 25. **Integrated setting.** "Integrated setting," with respect to an employment outcome, means a setting typically found in the community in which an individual with the most severe disabilities interacts with nondisabled individuals, other than nondisabled individuals who are providing services to that individual, to the same extent that nondisabled individuals in comparable positions interact with other persons.

Subp. 26. **Interdisciplinary team.** "Interdisciplinary team" means the worker, the worker's legal representative, service professionals, and other individuals chosen by the worker or the worker's legal representative to develop, implement, and assess the worker's extended employment support plan.

Subp. 27. **Legal representative.** "Legal representative" means an individual who is legally authorized to make informed choices on a worker's behalf. A legal representative may be one of the following individuals: the parent of a minor who has not been emancipated; a court-appointed guardian or conservator of a worker who is 18 years of age or older, in areas where legally authorized to make decisions; a guardian ad litem or special guardian or conservator, in areas where legally authorized to make decisions; legal counsel if so specified by the worker; or other legally authorized individual.

Subp. 28. **Natural supports.** "Natural supports" means ongoing employment support services provided under an extended employment support plan by individuals who are agents of the worker's employer. Community employment or supported employment using a natural supports approach is the process of a provider helping an employer to expand its capacity for training, supervising, and supporting one or more workers with the most severe disabilities. This definition involves the direct hire of a worker in an individual job, the location of which is not isolated by disability.

Subp. 29. **New program.** “New program” means an extended employment provider funded by the department under part 3300.2030 that meets the certification requirements in part 3300.2010 and that was not funded in the previous state fiscal year.

Subp. 30. **Nonexempt.** “Nonexempt” means subject to the provisions of the Fair Labor Standards Act as set forth in United States Code, title 29, as amended.

Subp. 31. **Ongoing employment support services.** “Ongoing employment support services” means any of the following services identified in the worker’s extended employment support plan as related to a worker’s limitations in functional areas as defined in subpart 20 and that are necessary to maintain or advance the worker’s employment:

- A. facilitation of natural supports at the work site;
- B. rehabilitation technology, job redesign, or environmental adaptations;
- C. disability awareness training for the worker, or the worker’s employer, supervisor, or coworkers, and other services to increase the worker’s inclusion at the worksite;
- D. job skill training at the work site;
- E. regular observation or supervision of the worker;
- F. behavior management;
- G. coordination of support services;
- H. job-related safety training;
- I. job-related self-advocacy skills training to advance employment;
- J. training in independent living skills, such as: money management, grooming and personal care, social skills, orientation and mobility, and using public transportation or drivers’ training;
- K. communication skills training such as sign language training, Braille, speech reading, and the use of communication devices or other adaptive methods for the worker, or the worker’s employer, supervisor, or coworkers;
- L. follow-up services such as regular contact with the worker’s employer, supervisor, or coworkers; the worker’s parents, family members, advocates, or legal representatives of the worker; and other suitable professional and informed advisors, in order to reinforce and stabilize the job placement;
- M. training in job seeking skills;
- N. career planning, job development, or job placement to advance in employment;
- O. transitional employment services; and
- P. any other service that is similar to the services in items A to O, that is identified in the worker’s extended employment support plan, and that is needed to maintain or advance the employment of a worker in the extended employment program.

Subp. 32. **Paid work.** “Paid work” means employment of the person served that results in the production of products or provision of services.

Subp. 32a. **Primary language.** “Primary language,” with reference to an individual with limited English proficiency, means the language normally used by that individual.

Subp. 33. **Qualified health care professional.** “Qualified health care professional” means a professional holding licensure to diagnose one or more of the disabilities identified in subpart 22.

Subp. 34. **Rehabilitation facility or facility.** “Rehabilitation facility” or “facility” means an entity as defined in Minnesota Statutes, section 268A.01, subdivision 6, including an entity that meets the definition of community rehabilitation program under the federal Rehabilitation Act, but that has not been certified under part 3300.2010 as an extended employment provider.

Subp. 35. **Supported employment.** “Supported employment” means competitive employment in an integrated setting with ongoing support services for individuals with

the most severe disabilities for whom competitive employment has not traditionally occurred or for whom competitive employment has been interrupted or intermittent as a result of a severe disability; and who, because of the nature and severity of their disabilities, need intensive ongoing employment support services from the designated state unit and extended services after transition in order to perform this work; or transitional employment for individuals with the most severe disabilities due to mental illness.

Subp. 36. Transitional employment. “Transitional employment” means a series of temporary job placements in competitive work in integrated settings with ongoing support services for individuals with the most severe disabilities due to mental illness. In transitional employment, the provision of ongoing support services must include continuing sequential job placements until job permanency is achieved.

Subp. 37. Work hours. “Work hours” means the hours for which a worker performs paid work, including hours of paid holidays, paid sick, paid vacation, and other paid leaves. A work hour is the basic funding unit for allocating extended employment program funds.

Subp. 38. Worker appeal. “Worker appeal” means an independent due process procedure available to a current or prospective worker or a worker’s legal representative through federal or state statutes, case law, or rules.

Statutory Authority: *MS s 268.021; 268.0122; 268A.03; 268A.15*

History: 22 SR 2294

3300.2010 STATE CERTIFICATION.

Subpart 1. Scope. This part governs the operation of any extended employment provider engaged in, or rehabilitation facility seeking to engage in, the programs listed in part 3300.2005, subpart 15. Extended employment program certification issued under these certification procedures 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. 2. Purpose. The purpose of certification is to ensure that all providers meet the department’s minimum requirements for extended employment program funding. Providers must be certified by the commissioner. Program certification as evidenced by a valid provider certificate is required before the commissioner may provide funding for an extended employment program pursuant to Minnesota Statutes, section 268A.15.

Subp. 3. Certification procedure. A rehabilitation facility seeking a certification as a provider, including a provisional certification, must complete an official application form available from the department. When a rehabilitation facility has been found in compliance with all certification requirements, a single provider certificate will be issued to a provider. The certificate will specify the type and location of all approved programs. Provider certification shall be reviewed and reissued, as appropriate, on a yearly basis.

Subp. 4. Requirements for certification. The commissioner shall certify rehabilitation facilities that meet all of the following requirements as eligible extended employment providers:

A. To be certified as a provider of center-based employment, an organization must achieve and maintain accreditation in the program standards governing center-based employment. To be certified as a provider of community and supported employment, an organization must achieve and maintain accreditation in the program standards governing community and supported employment. The provider must notify the department of the upcoming date of each CARF survey, and provide standing written permission to CARF to allow release to the department of the results of the accreditation process and of site surveys, resurveys, supplemental surveys, reviews, and return visits. The provider must maintain compliance each year with the following provisions of the 1997 CARF Standards Manual and Interpretive Guidelines for Employment and Community Support Services, or with comparable sections in subse-

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quent CARF manuals: Section 1, Promoting Organizational Quality; Section 2, Promoting Individual Service Quality; and Section 3, Organizational Employment Services and Community Employment Services. The provider must make its worker records and performance data available to the department for spot checks.

B. Providers must provide fundamental personnel benefits, as described in part 3300.2015, subpart 4, to workers in center-based employment and to workers in community and supported employment when the provider is the payroll agent.

C. Providers shall have written grievance procedures for workers in center-based, community, and supported employment. Grievances may be appealed to the department for review. The department shall complete its review of a grievance that has been appealed to the department within one month from the date the appeal request is received. The grievance procedure for workers must include, as a final step, binding arbitration as defined in Minnesota Statutes, section 268A.07, subdivision 2. The following must be subject to the grievance procedure:

- (1) working conditions in center-based, community, and supported employment sites;
- (2) the worker's extended employment support plan;
- (3) the worker's access to employment in the community; and
- (4) the quality and effectiveness of the worker's ongoing employment support services.

D. The provider must comply with the requirements to provide workers with the information on program planning and service delivery in part 3300.2025, subpart 7, in the worker's primary language using appropriate modes of communication.

E. The provider must provide the worker with the extended employment support plan in part 3300.2025, subpart 4, in the worker's primary language using appropriate modes of communication.

F. [Removed, L 2003 1SP14 art 6 s 67]

G. Members of the governing board and management staff of providers shall be provided a minimum of eight hours of continuing education and training each year over a three-year cycle concurrent with the provider's three-year accreditation cycle with CARF. Members of the governing board and management staff of extended employment provider shall complete training in each of the three subject areas listed in subitems (1) to (3) during the course of the three-year training cycle. At a minimum, two-thirds of the members of the governing board and management staff shall complete this training. The provision of this training shall be documented in the record of meetings of the provider's board of directors. Subjects for continuing education and training include, but are not limited to, the following:

- (1) legal mandates affecting the provider's programs, such as the federal Rehabilitation Act of 1973, as amended, the Americans with Disabilities Act, and the extended employment program statutes and rules;
- (2) practices to improve outcomes and increase the availability of extended employment services to persons with the most severe disabilities; and
- (3) understanding the programmatic and ethical responsibilities of non-profit organizations to the communities they serve.

H. In addition to the continuing education requirement in item G, the governing board of providers must provide training for all members on the fiduciary responsibilities of the directors of nonprofit organizations. Training on fiduciary responsibilities shall be provided to new board members within the first year of their term. In addition, members of the board of directors must receive copies of the provider's financial audits and review all management letters that accompany the financial audit. The record of board meetings shall document the provision of training on fiduciary responsibilities and the receipt and review of the provider's financial audit and management letter.

I. The provider must comply with United States Code, title 42, sections 12101, et seq., of the Americans with Disabilities Act of 1990.

Subp. 5. **Provisional certification.** The commissioner may issue a provisional certification to new providers or to existing providers 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 compliance with all requirements for certification except the requirement for accreditation by CARF. However, if the provider is not accredited by CARF, the provider must demonstrate a reasonable likelihood that the provider will meet the requirements for accreditation by CARF and will receive such accreditation within 18 months. If at the end of the 18-month period, the provider has not been approved for accreditation by CARF, provisional certification will be terminated.

Subp. 6. **Probationary certification status.** The commissioner shall place on probationary certification status any provider that has previously been certified where the provider no longer meets all of the certification requirements, is not being operated in compliance with the rule, or is under investigation by a law enforcement agency. Probationary certification status permits a noncomplying provider to continue to receive state funding while the plan for compliance is implemented. To qualify for probationary certification status, the provider must submit a written plan which has been approved by the commissioner and which will bring the program into compliance with the certification requirements or other requirements of the rule within a reasonable time not to exceed 12 months.

Subp. 7. **Extension of certification.** The commissioner may grant an extension if the commissioner finds that a provider, through no fault of its own, no longer completely meets certification requirements for full or provisional certification 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 operations; or

B. convincing evidence is submitted showing that CARF cannot schedule a timely review.

A provider must request an extension in writing and state the reasons for the request. The extension may not exceed one year and no consecutive extensions of a certificate may be granted. A request for an extension should be made before the certificate's expiration date.

Subp. 8. **Termination of certification.** Certification for providers not complying with the requirements for certification will be terminated by the commissioner, and allocated state funds will be withdrawn as provided in part 3300.2052. Withdrawal of state funds is subject to the appeal provisions of part 3300.2055. Extended employment program certification may be terminated when:

A. a provider no longer meets the requirements for certification under subpart 4;

B. a provider granted provisional certification does not meet the requirements for provisional certification under subpart 5; or

C. a provider granted probationary certification does not fulfill the conditions of its plan for compliance under subpart 6.

Review of compliance with certification requirements must take place yearly to determine continuation of certification. Review for compliance may take place on occasions not related to the yearly redetermination of certification continuance. The department must give 30 days' notice of intent to remove or change certification except when there is imminent danger to the health or safety of workers or gross failure to comply with CARF or extended employment program rule requirements.

Statutory Authority: *MS s 268.021; 268.0122; 268A.03; 268A.15*

History: *22 SR 2294; L 2003 ISP14 art 6 s 67*

3300.2015 EXTENDED EMPLOYMENT PROGRAM ELIGIBILITY.

Subpart 1. **Scope.** This part governs the eligibility of workers in the extended employment program. Each worker reported to the extended employment program must conform to the criteria in this part. A person with a most severe disability is presumed capable of working in the extended employment program when provided with ongoing employment support services under an extended employment support plan.

Subp. 2. **Extended employment program eligibility.** To be eligible for the extended employment program, an individual must be an extended employment program worker as defined in part 3300.2005, subpart 18.

Subp. 3. **Social security (FICA).** Workers and their payroll agents shall contribute, via payroll taxes, to the federal Social Security program. Workers in supported employment who are self-employed must pay the FICA self-employment tax for social security benefits.

Subp. 4. **Fundamental personnel benefits.** Workers in center-based, community, and supported employment when the provider is the payroll agent, shall receive the following fundamental personnel benefits:

A. vacation, sick leave, and holidays, provided on a proportional basis as provided to the nonexempt, full-time staff of the provider agency; at a minimum, workers will be entitled five days of paid vacation, five days of paid sick leave, and five paid holidays per calendar year; or

B. flexible paid leave, provided in lieu of vacation and sick leaves, that is provided on a proportional basis as provided to the nonexempt, full-time staff of the provider agency; at a minimum, workers will be entitled ten days of paid leave and five paid holidays per calendar year; and

C. other mandated state and federal benefits including, but not limited to:

(1) 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, as amended;

(2) time off work to vote according to Minnesota Statutes, section 204C.04, as amended;

(3) leave for jury duty as provided by United States Code, title 28, section 1875, and Minnesota Statutes, section 593.50, as amended; and

(4) military leave and reinstatement in employment as provided by United States Code, title 28, chapter 43, sections 2021 and 2024, and Minnesota Statutes, section 192.261, subdivision 6, as amended.

Workers who are self-employed are exempt from this subpart.

Subp. 5. **Comparable benefits.** At the time of placement in community employment or supported employment, the provider shall determine and document in accordance with part 3300.2025, subpart 9, item E, subitem (3), that the benefits for workers for whom the provider is not the payroll agent are comparable to the benefits provided by the employer to its workers without disabilities.

Subp. 6. **Fair and equitable pay requirements.** Workers in supported employment shall be paid at a rate equal to or greater than the state or federal minimum wage, whichever is applicable. Workers in center-based and community employment may be paid 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. A worker in extended employment who is self-employed must realize net income that is the equivalent or in excess of the hourly rate of pay required under the Minnesota Fair Labor Standards Act, Minnesota Statutes, chapter 177, as amended, and the Federal Fair Labor Standards Act, United States Code, title 29, as amended, when the number of hours worked is compared with the income realized.

Subp. 7. **Participants in day training and habilitation programs.** Participants in day training and habilitation programs funded under full-day per diem rates by the Department of Human Services are not eligible for extended employment program funding. Participants funded under part-day rates for day training and habilitation services may be reported in the community and supported employment subprograms of extended employment if the following criteria are met:

A. services provided during the hours reported to extended employment comply with the definition and requirements of parts 3300.2005 to 3300.2055;

B. ongoing employment support services provided during the hours reported to the extended employment program are provided under an extended employment support plan, as described in part 3300.2025, subpart 4 or 6, and delivered by employees of a certified provider or by agents of the worker's employer in accordance with part 3300.2025, subpart 6, not the employees of a day activity center licensed by the Department of Human Services; and

C. the participant's status as a DTH participant is reported to the extended employment program.

Subp. 8. **Other exclusions from eligibility for extended employment program funding.** Participants in employment-related programs funded through state, federal, or other sources are also excluded from eligibility for extended employment program funding when:

A. the funding source is obligated to pay for total program costs for participants; or

B. the funding source prohibits concurrent funding of program participants receiving extended employment program services.

Statutory Authority: *MS s 268.021; 268.0122; 268A.03; 268A.15*

History: *22 SR 2294*

3300.2020 REPORTING REQUIREMENTS.

Subpart 1. **Scope.** This part governs the data on workers required by the department.

Subp. 2. **Required data elements.** The following data shall be submitted to the department on each worker reported to the extended employment program:

- A. legal name;
- B. legal representative, if applicable;
- C. social security number;
- D. address;
- E. disability and categories of functional limitations;
- F. hours and wages by subprogram, by payroll agent, and by payroll period or month;
- G. referral source;
- H. date of birth;
- I. age at onset of disability;
- J. gender;
- K. ethnicity;
- L. marital status;
- M. residential status;
- N. provider's site location;
- O. job type;
- P. subprogram: center-based employment, community employment, or supported employment;
- Q. date and reason left provider's program;
- R. county of financial responsibility;

- S. years of education;
- T. special education participation;
- U. SSI or SSDI recipient status; and
- V. DTH program status.

Subp. 3. **Data elements required for payment.** Of the data elements listed in subpart 2, payment to providers is based on provider reporting of items A, C, F, and P. When a worker is reported for payment under part 3300.2025, subpart 7, subpart 2, item V, must also be reported to the department. Data elements required for payment must be reported in the format prescribed by the department.

Statutory Authority: *MS s 268.021; 268.0122; 268A.03; 268A.15*

History: 22 SR 2294

3300.2025 PROGRAM PLANNING, SERVICE DELIVERY, AND CASE RECORDS.

Subpart 1. **Scope.** This part governs program planning, service delivery, and case records for the extended employment program.

Subp. 2. **Standards for program planning, service delivery, and case records.** Standards for program planning, service delivery, and case records for the extended employment program are contained in The 1997 Standards Manual and Interpretive Guidelines for Employment and Community Support Service published by CARF, which are incorporated by reference. This publication is updated on a yearly basis and the standards applicable to any state fiscal year for which a provider is funded will be found in the most recent edition of this publication available at the beginning of the state fiscal year. Copies are available at the Educational Resource Center, 501 Capitol Square, 550 Cedar Street, Saint Paul, Minnesota 55101. The Educational Resource Center participates in the Minitex/PALS Interlibrary Loan Consortium.

Subp. 3. **Additional standards for program planning, service delivery, and case records.** In addition to the standards in subpart 2, providers shall meet the requirements in subparts 4 to 6.

Subp. 4. **Extended employment support plans.** All workers in center-based, community, and supported employment shall have an extended employment support plan. The plan, to be reviewed at yearly intervals, or as required under subpart 8, or if changes in the worker's situation require more frequent reviews, describes the worker's employment goals and the ongoing employment support services to be provided to reach the worker's goal. The plan shall include the following:

- A. the worker's goals and objectives, including:
 - (1) employment goals and goals for career advancement;
 - (2) preferences for employment setting, integration, range or level of pay, work hours, and benefits; and
 - (3) when a goal in center-based employment is selected, the plan shall state the reasons for this choice;
- B. the timeline for reaching the worker's employment goals and objectives;
- C. the worker's vocational strengths, interests and preferences, work skills, and general health status;
- D. the worker's functional areas affecting employment that require the provision of ongoing employment support services;
- E. an assessment identifying the ongoing employment support services a worker needs to work in the community;
- F. the specific ongoing employment support services to be provided, including:
 - (1) the relationship of the ongoing employment services to the worker's functional areas affecting employment;
 - (2) how the need for ongoing employment support services will be met with existing services or by a plan arranging for or developing these services;

(3) the strategies for providing ongoing employment support services including the consideration of assistive technology and natural supports;

(4) who will be providing the ongoing employment support services; and

(5) timelines for developing and providing ongoing employment support services and the estimated frequency of these services;

G. measures and procedures to assess the attainment of worker goals and objectives;

H. the names of the participants in the planning and preparation of the worker's extended employment support plan; and

I. the signature of the worker designating informed consent.

A copy of the plan and any revisions shall be promptly provided to the worker in the worker's primary language using appropriate modes of communication.

Subp. 5. Minimum contact by provider. The extended employment support plan will include assurances that the worker in community and supported employment will receive a minimum of two in-person contacts per month in the provision of planned ongoing employment support services, unless the ongoing employment support is provided through natural supports as described in subpart 6.

Subp. 6. Reporting workers receiving natural supports to the extended employment program. The ongoing employment support services for a worker must be identified in the worker's extended employment support plan and may be provided indirectly through an agent of the worker's employer when:

A. the worker is in an employer-paid integrated work site as defined in part 3300.2005, subparts 25 and 28;

B. there is a written agreement with an employer that specifies:

(1) the agent of the employer who will be involved in providing the worker's ongoing employment support services;

(2) the nature of the information, technical assistance, or other support services the provider provides to the agent of the employer;

(3) the specific ongoing employment support services that are provided to the worker by the agent of the employer; and

(4) assurances that the provider will, at a minimum, make two in-person contacts with the agent of the employer, or the worker, or a combination of the employer and worker each month to:

(a) provide information, technical assistance, or other ongoing employment support services; and

(b) evaluate the need for and effectiveness of the ongoing employment services the agent of the employer provides to the worker.

Subp. 7. Worker information on program planning and service delivery.

A. The department shall provide information, in the worker's primary language using appropriate modes of communication, on program planning and service delivery in extended employment. This information will be ready for distribution to providers by January 1, 1999, and shall include:

(1) individual service planning process provided in the CARF standards, including:

(a) the content of a typical plan as identified in the CARF interpretive guidelines;

(b) the ongoing employment support services available in extended employment;

(c) the role and rights of the worker and the worker's legal representative in the development of an extended employment support plan;

(d) fundamental personnel benefits;

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(e) examples of persons from social service agencies and others in the community who can be involved in planning services; and

(f) the requirement to assess the worker's potential for working in the community on a semiannual basis and identify in writing the reasons a worker is not working in the community;

(2) worker rights to reasonable accommodation in accessing ongoing employment support services in extended employment;

(3) worker rights to review, appeal, and grievance procedures;

(4) the summary level performance information available on provider outcomes;

(5) worker rights under the federal Rehabilitation Act of 1973, as amended; and

(6) worker rights under the Americans with Disabilities Act.

B. Providers shall distribute information on the extended employment program planning and service delivery to the worker and the worker's legal representative on a yearly basis. This information shall be made available to workers using appropriate modes of communication in the primary language of the worker and the worker's legal representative.

This information shall include:

(1) a description of the provider's center-based, community, and supported employment programs, including:

(a) the right to have all program and service information provided in an accessible manner, and the right to reasonable accommodation for accessing the provider's services and activities;

(b) the names of staff persons responsible for key aspects of the worker's center-based, community, or supported employment program;

(c) a statement describing the rights to review records, and descriptions of the processes of grievance and appeal, and examples of the situations in which either or both can be used; and

(d) a summary of the benefits available to the worker; and

(2) the information on program planning and service delivery identified in item A.

Subp. 8. Annual reassessment of extended employment support plans. Extended employment support plan review with interdisciplinary team involvement, unless waived by the worker, shall occur at least yearly. A plan with a goal of community or supported employment that has not been achieved or maintained shall be reviewed every six months. A written report of this review or an updated extended employment support plan shall summarize this review and shall be maintained in the case file. The record of the reassessment shall include the names of the participants in the reassessment of the worker's extended employment support plan and the signature of the worker designating informed consent. A copy of the reassessment shall be promptly provided to the worker in the worker's primary language using appropriate modes of communication.

This reassessment must address:

A. the worker's satisfaction with employment and ongoing employment support services;

B. the effectiveness of the worker's extended employment support plan in achieving the worker's vocational objective;

C. the worker's continuing need for ongoing employment support services to maintain or advance employment; and

D. the worker's interest in changing or advancing in employment.

Subp. 9. Case records. A confidential record shall be maintained for each person served in the extended employment program. The case record of the worker communicates appropriate information in a form that is complete, clear, and current. The case

record shall be retained for a minimum of three years after the completion of the audit process for the state fiscal year when the worker was last a reported worker in the extended employment program. The provider shall maintain written documentation of the worker's extended employment services that may include electronic documentation and file systems.

Case records must include the information listed in items A to H. Case records of workers in community or supported employment shall also include the information in either item I or J. The items are:

A. personal identification data, including: social security number, legal status, date of birth, residential status and address, and, if applicable, name of guardian or conservator;

B. eligibility for extended employment, using the criteria in part 3300.2015, subpart 2, determined by either:

(1) the provider and documented in the provider's intake reports; or

(2) the rehabilitation services branch counselor and documented in the rehabilitation services branch eligibility information and referral reports given to the provider;

C. written diagnosis of a severe disability by a qualified health care professional who is not employed by the rehabilitation facility, and referral source reports, unless eligibility in item B is determined by a counselor from the rehabilitation service branch of the department;

D. the worker's extended employment support plan;

E. employment data, including: employers, supervisors, job duties, rates of pay, benefits, start dates, termination dates, and evidence that the provider maintains compliance with certification requirements by providing to the worker the following:

(1) fundamental personnel benefits as described in part 3300.2015, subpart 4;

(2) contribution to the worker's social security account as described in part 3300.2015, subpart 3;

(3) comparable benefits as described in part 3300.2015, subpart 5; and

(4) fair and equitable payment of wages as described in part 3300.2015, subpart 6;

F. the reassessment of the worker's extended employment support plan;

G. documents of the payroll agents which verify the hours of paid work reported to the extended employment program for the worker;

H. program summaries and termination or discharge reports;

I. the ongoing employment support services provided to supported employees by the provider that includes, at a minimum, the date and service record of two in-person contacts per month with the worker; and

J. the written natural supports agreement between the provider and the agent of the supported worker's employer including, at a minimum, a date and service record of two in-person contacts with the agent of the employer, or the worker as described in subpart 6.

Statutory Authority: *MS s 268.021; 268.0122; 268A.03; 268A.15*

History: *22 SR 2294*

3300.2030 NEW OR EXPANDED PROGRAMS.

Subpart 1. **Funding for new or expanded programs.** The department shall provide notice of the availability of funding for new or expanded programs through a request for proposals published in the State Register. The department shall make copies of the request for proposals available to a city, town, county, nonprofit corporation, state regional center, or combination thereof. Applicant organizations shall submit an application for a new extended employment program or for expansion of an existing

extended employment program. The commissioner shall use the following criteria in reviewing applications for a new or expanded program:

- A. the need for the new or expanded program;
- B. the relationship of the new or expanded individual program to any current programs in terms of identified needs;
- C. the performance of current programs;
- D. the geographic distribution of the current programs and the new or expanded program in relationship to geographic needs;
- E. efforts to foster innovation and promote state-of-the-art best practices in supported employment consistent with Minnesota Statutes, section 268A.15, subdivision 6; and
- F. the availability or funding for new or expanded programs.

Subp. 2. **Department review of proposals.** The department shall base its decisions on proposals upon objective criteria and a review process that includes representatives of affected county social service agencies, the local vocational rehabilitation office, providers outside the affected service area, representation from racial and ethnic minorities, and advocacy organizations as defined in part 3300.2005, subpart 3.

Subp. 3. **Exception to contract procedures and adjustment of state grant funds for new or expanded programs.** New or expanded programs under this part may be exempt from the contracting procedures in part 3300.2035, subpart 4, item A, and the adjustment of state grant funds in part 3300.2035, subpart 8, for up to three years.

Statutory Authority: *MS s 268.021; 268.0122; 268A.03; 268A.15*

History: *22 SR 2294*

3300.2035 ALLOCATION OF EXTENDED EMPLOYMENT PROGRAM FUNDS.

Subpart 1. **Unit of distribution of extended employment program funds.** The unit of distribution of extended employment program funding is the payment for one work hour performed by an eligible worker and reported to the department in the extended employment program.

Subp. 2. **Notice of availability of funding.** The department will publish a notice of availability of state grant funds in the State Register for each state fiscal year. The notice will include a description of the funds available, the application procedure for these funds, a statement of the funding criteria in parts 3300.2005 to 3300.2055, and the timetable for the allocation of state grant funds.

Subp. 3. **Application and guidelines for funding.** The department will make the form of application and guidelines for extended employment program funding available to all interested parties upon request. The department's guidelines shall include information on priorities for program funding, including target populations or geographic distribution of services, that will be addressed in the allocation of state grant funds. Certified providers must apply for grant funds on the form specified by the department.

Subp. 4. **Procedures for contracts with providers for center-based, community, and supported employment.** Each fiscal year, the department will enter into annual contracts with providers for a specific allocation from the center-based fund or the community support fund according to items A to C.

A. A provider's contract starting point each year will be determined by the previous year's contract and the previous year's reported contract production, as follows: (i) when the provider's reported contract production in the previous year is equal to or greater than 95 percent of the contract, the provider's starting point shall be the previous year's contract; or (ii) when the provider's reported contract production in the previous year is less than 95 percent of the contract, the provider's starting point will be the reported contract production plus five percent of the previous contract.

(1) The starting point for contracts to providers for state fiscal year 1999 shall be calculated using the following method:

(a) for the community support fund, the lesser of each provider's total contracted or reported hours of work and service in supported employment as defined under the prior extended employment rule in part 3300.2050, subpart 31a, in state fiscal year 1998 shall be multiplied by \$2.04 to determine the provider's contract starting point from the community support fund for state fiscal year 1999; and

(b) for the center-based fund, the lesser of each provider's total contracted or reported hours of work and service in center-based employment in state fiscal year 1998 shall be multiplied by \$1.13 to determine the provider's contract starting point from the center-based fund for state fiscal year 1999.

B. Two and one-half percent of a provider's contracted allocation from either the center-based fund or the community support fund can be earned by reported production that exceeds the provider's contracted allocation in the other fund. This reported contract production cannot be used to adjust the contract starting point under item A. This provision cannot be exercised in the subsequent fiscal year.

C. The redistribution of allocation from underproduction to providers is as provided in subitems (1) to (3).

(1) Where a provider's underproduction in the center-based fund or the community support fund is over five percent of the contracted level of allocation, the allocation in excess of five percent shall be redistributed to other providers, unless a variance for economic hardship has been approved under part 3300.2040.

(2) Allocation from underproduction shall be redistributed to other providers on the basis of guidelines established by the department for that funding year. The guidelines shall consider unmet needs of target populations and the geographic distribution of center-based employment, community employment, and supported employment.

(3) When the allocation to be redistributed under department guidelines is at least one percent of the total allocation for either the center-based fund or the community support fund, the department shall issue a request for proposals under part 3300.2030, subparts 1 and 2. Alternatively, the allocation to be redistributed may, at the commissioner's discretion, be used to adjust the statewide uniform rates under subpart 6, item B.

Subp. 5. **Annual survey.** The department shall conduct an annual survey of extended employment program needs for center-based, community, and supported employment, including the geographic distribution of these services. The results of this survey shall be considered in the department's application and guidelines for funding in subpart 3, and in the department's issuance of requests for proposals under parts 3300.2030, subparts 1 and 2, and 3300.2052, subpart 1, item C. This information shall be available to public officials, workers, providers, advocacy organizations, and social service agencies.

Subp. 6. **Statewide uniform rates.** Effective July 1, 1998, the allocation and distribution of extended employment program funds to center-based employment, community employment, and supported employment will be based on the work hour rates in items A and B.

A. There shall be three statewide uniform rates. The rate for a work hour in supported employment shall be \$2.40 per hour. The rate for a work hour in community employment shall be \$2.13 per hour. The rate for a work hour in center-based employment shall be \$1.19 per hour.

B. The statewide uniform work hour rates for center-based employment, community employment, and supported employment may, at the commissioner's discretion, be adjusted to account for changes in the Consumer Price Index (CPI).

Subp. 7. **Statewide allocation of extended employment funds to center-based employment fund and community support fund.** For each state fiscal year, the department shall determine the statewide allocation for the center-based fund and the community support fund according to items A to D.

A. From the state appropriation, the department shall reserve for the community support fund an amount of dollars equal to the sum of the allocations for the starting point for all providers with contracts and making application for funding.

B. From the state appropriation, the department shall reserve from the center-based fund an amount of dollars equal to (1) the sum of the allocations for the starting point for all providers with contracts and making application, less (2) any allocation withheld resulting from the request for proposals process, multiplied by the statewide uniform rate for center-based employment. However, no future statewide allocation of extended employment funds to the center-based fund shall exceed \$4,279,000, the funding allocation for center-based employment in state fiscal year 1997.

C. Adjustments to the statewide allocation may be made based on shifts of dollars from the center-based fund to the community support fund as requested by providers. Shifts will be adjusted at the starting point for each provider requesting shifts.

D. The remainder of the state appropriation, after items A to C are completed, will be subject to distribution according to the department's application and guidelines for funding under subpart 3.

Subp. 8. Adjustment of state grant funds allocated to providers.

A. The department must distribute state grant funds based on provider reporting of work hours provided to workers in center-based employment, community employment, and supported employment.

B. Beginning in state fiscal year 2000, provider contracts must also be adjusted for the wage level performance incentives in part 3300.2045.

C. Compliance audits of eligible work hours shall be performed and adjustments made to the allocation of state grant funds to providers after the close of the funding year as provided in subitems (1) and (2).

(1) After the close of each funding year, an audit of each provider must be conducted using the department's compliance audit standards according to generally accepted auditing standards as follows:

(a) The audits must be performed by independent auditors at the expense of the providers.

(b) The department must seek input from providers and independent auditors in the development of the compliance audit standards.

(c) The department must review the compliance audit standards on an annual basis and seek the input of providers and independent auditors in the review of the standards. The department will make the standards available no later than 30 days prior to the end of each state fiscal year.

(d) The extended employment program factors subject to the department's compliance audit must include hours and wages and evidence of ongoing employment support consistent with the worker's extended employment support plan.

(e) Completed audits must be submitted to the department within 90 days from the close of the funding year. Audits submitted after the due date will not adjust allocations beyond the allocation earned by the reported work hours during the contract period.

(2) Audit adjustments to provider allocations must be made as follows:

(a) Within 45 days from the receipt of an accepted final audit report, the department shall make final audit adjustments to provider allocations.

(b) Based on the results of the compliance audit, the department must seek repayment from providers for hours of employment in center-based employment, community employment, or supported employment that were not provided according to the provider's contract.

(c) The department's determination of the amount of repayment and the reasons for the repayment is subject to the appeal provisions of part 3300.2055.

(d) The funds repaid by providers as a result of the final audit adjustments must be distributed as a wage level incentive under part 3300.2045.

Statutory Authority: *MS s 268.021; 268.0122; 268A.03; 268A.15*

History: 22 SR 2294

3300.2040 CONSIDERATION OF ECONOMIC CONDITIONS.

The department must provide a variance to the contract starting point in part 3300.2035, subpart 4, for a provider that establishes that it was unable to produce the number of hours required by the provider's contract during the previous contract period due to circumstances beyond the control of the provider's management.

A. Circumstances beyond the control of the provider's management include conditions such as fire or natural disaster, the cessation of a major contract, the movement of a major employer out of the area, or a local unemployment level substantially higher than the statewide average.

B. A provider seeking a variance to the contract starting point must request this variance in the annual application for state grant funds in part 3300.2035. The request for variance to the contract starting point must state the reasons for the request and the plan for corrective action to meet contracted hours during the next contract period.

C. A provider who requests and is granted a variance to the contract starting point will retain the work hour level from the previous contract period. However, the underproduction of contracted hours is subject to repayment in the adjustment of the allocated state grant funds in part 3300.2035, subpart 8.

Statutory Authority: *MS s 268.021; 268.0122; 268A.03; 268A.15*

History: 22 SR 2294

3300.2045 WAGE LEVEL INCENTIVE.

All funds not paid out to providers as a result of underproduction and all funds repaid to the department by providers as the result of final audit adjustments must be used as a performance fund for extended employment providers whose workers' wages meet or exceed the federal minimum wage.

The incentive fund must be distributed to each extended employment provider based on the proportionate share of hours of work where the statutory minimum or a higher wage was paid. The ratio is the provider's hours divided by the total hours meeting minimum wage reported by all extended employment providers.

The incentives are calculated and paid separately for the center-based fund and the community support fund.

Statutory Authority: *MS s 268.021; 268.0122; 268A.03; 268A.15*

History: 22 SR 2294

3300.2050 Subpart 1. [Repealed, 22 SR 2294]

Subp. 2. [Repealed, 22 SR 2294]

Subp. 3. [Repealed, 19 SR 639]

Subp. 4. [Repealed, 22 SR 2294]

Subp. 5. [Repealed, 22 SR 2294]

Subp. 6. [Repealed, 22 SR 2294]

Subp. 7. [Repealed, 22 SR 2294]

Subp. 8. [Repealed, 22 SR 2294]

Subp. 9. [Repealed, 22 SR 2294]

Subp. 10. [Repealed, 22 SR 2294]

Subp. 11. [Repealed, 22 SR 2294]

Subp. 12. [Repealed, 22 SR 2294]

- Subp. 13. [Repealed, 22 SR 2294]
- Subp. 14. [Repealed, 22 SR 2294]
- Subp. 15. [Repealed, 22 SR 2294]
- Subp. 16. [Repealed, 22 SR 2294]
- Subp. 17. [Repealed, 12 SR 2783]
- Subp. 18. [Repealed, 22 SR 2294]
- Subp. 19. [Repealed, 19 SR 639]
- Subp. 20. [Repealed, 22 SR 2294]
- Subp. 21. [Repealed, 22 SR 2294]
- Subp. 22. [Repealed, 19 SR 639]
- Subp. 22a. [Repealed, 19 SR 639]
- Subp. 23. [Repealed, 22 SR 2294]
- Subp. 24. [Repealed, 22 SR 2294]
- Subp. 25. [Repealed, 22 SR 2294]
- Subp. 26. [Repealed, 22 SR 2294]
- Subp. 27. [Repealed, 22 SR 2294]
- Subp. 28. [Repealed, 22 SR 2294]
- Subp. 28a. [Repealed, 22 SR 2294]
- Subp. 28b. [Repealed, 22 SR 2294]
- Subp. 29. [Repealed, 22 SR 2294]
- Subp. 30. [Repealed, 22 SR 2294]
- Subp. 31. [Repealed, 12 SR 2783]
- Subp. 31a. [Repealed, 22 SR 2294]
- Subp. 32. [Repealed, 12 SR 2783]
- Subp. 33. [Repealed, 22 SR 2294]
- Subp. 34. [Repealed, 19 SR 639]
- Subp. 35. [Repealed, 22 SR 2294]
- Subp. 36. [Repealed, 22 SR 2294]

3300.2052 WITHDRAWAL OF ALLOCATED FUNDS.

Subpart 1. **Criteria for withdrawal of allocated state funds.** The commissioner may withdraw allocated state funds from a provider when:

A. an extended employment program is not being administered according to the extended employment program rule;

B. program certification has been terminated as provided in part 3300.2010, subpart 8; or

C. a review of an existing provider's programs demonstrates a need for new or alternative services. The commissioner may then withdraw funding from the existing extended employment provider and issue a request for proposals. The commissioner shall consider the following factors in determining the need for new or alternative services:

(1) the results of the department's annual survey or program evaluation indicates dissatisfaction with an existing provider's services;

(2) the existing provider has not complied with department requests to implement changes in ongoing employment support services to workers in the extended employment program;

(3) the local vocational rehabilitation office requests new or alternative extended employment program services; and

(4) a request from a county social service agency that the department issue a request for proposals for existing extended employment program funds; the issuance of a request for proposals for extended employment services by a county social services agency; or a change in the vendor for extended employment services by the county social services agency.

Where there is a demonstrated need for new or alternative services, the department shall consult with the county social services agency and the local vocational rehabilitation office in developing the request for proposals and issue a request for proposals under part 3300.2030, subparts 1 and 2. The request for proposals shall identify the needs to be addressed by new or alternative services. The department shall also notify the existing provider of the request for proposals and of the right of the existing provider to apply for funding under the request for proposals.

Subp. 2. Notice of withdrawal. Except where there is an imminent danger to the health or safety of workers, the commissioner must give written notice at least 45 days before allocated state funds may be withdrawn from a provider. The notice must state the reasons for the withdrawal of funds. If program certification is to be terminated in addition to the withdrawal of funds, the notice must also state the reasons for termination of certification.

Subp. 3. Right of appeal. A provider has the right to appeal the commissioner's withdrawal of allocated state funds. The appeal procedure is provided for in part 3300.2055.

Subp. 4. Reallocation. When the withdrawn allocation to be redistributed is less than one percent of the total allocation for either the center-based fund or the community support fund, the reallocation shall take place under the department guidelines in part 3300.2035, subpart 3. When the reallocation to be redistributed is one percent or more of the total allocation in either the center-based fund or the community support fund, the withdrawn funds shall be reallocated by the commissioner through the request for proposals process in part 3300.2030, subparts 1 and 2. Withdrawn funds may be reallocated by the commissioner on an interim basis for up to 120 days when that is necessary to continue the employment of workers in the extended employment program until the request for proposals process in part 3300.2030, subparts 1 and 2, can be completed.

Statutory Authority: *MS s 268.021; 268.0122; 268A.03; 268A.15*

History: 22 SR 2294

3300.2055 APPEAL PROCEDURE.

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

A. appeals of the department's withdrawal of allocated state funds from a provider in part 3300.2052, subpart 1; and

B. the appeal of a decision of the department concerning the provider's allocation of state grant funds in part 3300.2035, including actions resulting from the department's monitoring of the extended employment program that affect the status of the provider's certification or the provider's funding under the extended employment program.

Subp. 2. Notice of intent to appeal. A provider appealing department decisions must provide a written notice of intent to appeal to the department. The written notice of intent to appeal must be received by the department within 30 days from the date that the provider received notice from the department of the action that the provider wishes to appeal. If the notice of intent to appeal is not received from the provider within the 30-day period, the decision of the department 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 review. Within 30 days after the department receives a notice of intent to appeal, the commissioner or the commissioner's designee shall contact the

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provider and discuss the reasons for the appeal. The contact by the department's representative may be oral or written. Before the end of the 30-day period for informal review, the department's representative must make a written decision concerning the provider's appeal. The decision by the department's representative must state the department's position on the issue under appeal, the basis of that position, and the provider's right to request a contested case hearing under subpart 4.

Subp. 4. Contested case. If the issue in the informal review as provided in subpart 3 has not been resolved, the provider may make a written request for 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 department no more than 30 days after the date when the provider received written notice of the decision of the department's representative following the informal review in subpart 3. Within 15 days from the date the department receives a provider's request for a contested case hearing, the department must request the Office of Administrative Hearings to assign an administrative law judge to hear the appeal and schedule a hearing. The contested case hearing must be initiated and conducted according to parts 1400.5100 to 1400.8500.

Subp. 5. Decision. The decision of the administrative law judge will be recommended for the commissioner's adoption. The commissioner's decision on the issue under appeal is the final decision of the department.

Statutory Authority: *MS s 268.021; 268.0122; 268A.03; 268A.15*

History: 22 SR 2294

3300.2100 [Repealed, 11 SR 394]

3300.2150 [Repealed, 22 SR 2294]

3300.2200 [Repealed, 11 SR 394]

3300.2250 Subpart 1. [Repealed, 22 SR 2294]

Subp. 2. [Repealed, 22 SR 2294]

Subp. 3. [Repealed, 22 SR 2294]

Subp. 4. [Repealed, 19 SR 639]

Subp. 5. [Repealed, 22 SR 2294]

Subp. 6. [Repealed, 22 SR 2294]

Subp. 7. [Repealed, 22 SR 2294]

3300.2300 [Repealed, 11 SR 394]

3300.2350 Subpart 1. [Repealed, 22 SR 2294]

Subp. 2. [Repealed, 22 SR 2294]

Subp. 3. [Repealed, 22 SR 2294]

Subp. 4. [Repealed, 19 SR 639]

Subp. 5. [Repealed, 22 SR 2294]

Subp. 6. [Repealed, 22 SR 2294]

3300.2400 [Repealed, 11 SR 394]

3300.2450 Subpart 1. [Repealed, 19 SR 639]

Subp. 2. [Repealed, 22 SR 2294]

Subp. 3. [Repealed, 22 SR 2294]

3300.2500 [Repealed, 11 SR 394]

3300.2550 Subpart 1. [Repealed, 22 SR 2294]

Subp. 2. [Repealed, 22 SR 2294]

Subp. 3. [Repealed, 22 SR 2294]

Subp. 4. [Repealed, 22 SR 2294]

Subp. 5. [Repealed, 19 SR 639]

Subp. 6. [Repealed, 22 SR 2294]

Subp. 7. [Repealed, 22 SR 2294]

3300.2600 [Repealed, 11 SR 394]

3300.2650 [Repealed, 22 SR 2294]

3300.2700 [Repealed, 11 SR 394]

3300.2750 [Repealed, 22 SR 2294]

3300.2800 [Repealed, 11 SR 394]

3300.2850 [Repealed, 22 SR 2294]

3300.2900 [Repealed, 11 SR 394]

3300.2950 [Repealed, 22 SR 2294]

3300.3000 [Repealed, 11 SR 394]

3300.3050 [Repealed, 22 SR 2294]

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

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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 neces-

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sary, 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 individuals 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;

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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;

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(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 unemployment 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.

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; L 1999 c 107 s 66; L 2000 c 343 s 4*

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;
- 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

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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, 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

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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

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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*