

**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 subsequent 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 nonprofit 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 1Sp14 art 6 s 67*

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