

## CHAPTER 268A

### VOCATIONAL REHABILITATION

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#### 268A.01 DEFINITIONS.

Subdivision 1. **General.** For the purposes of this chapter, the terms defined in this section shall have the meanings given them.

Subd. 2. **Department.** "Department" means the department of jobs and training.

Subd. 3. **Commissioner.** "Commissioner" means the commissioner of jobs and training.

Subd. 4. **Vocational rehabilitation services.** "Vocational rehabilitation services" means those services and goods so defined in the federal Rehabilitation Act of 1973 and section 268A.03, clause (b).

Subd. 5. **Person with a disability.** "Person with a disability" means a person who because of a substantial physical, mental, or emotional disability or dysfunction requires special services in order to enjoy the benefits of society.

Subd. 6. **Rehabilitation facility.** "Rehabilitation facility" means an entity which meets the definition of rehabilitation facility in the federal Rehabilitation Act of 1973, as amended; however, for the purposes of sections 268A.03, paragraph (a), 268A.06, 268A.08, and 268A.09, rehabilitation facility means an entity which is operated for the primary purpose of providing remunerative employment to those persons with a disability who, as a result of physical or mental disability, are unable to participate in competitive employment. A rehabilitation facility shall supply such employment (1) as a step in the rehabilitation process for those who cannot be readily absorbed in the competitive labor market, or (2) during such time as employment opportunities for them in the competitive labor market do not exist.

Subd. 7. **Work activity program.** "Work activity program" means a program which utilizes paid work and training services for the primary purpose of providing basic vocational skills development for persons with a disability and which permits a level of production below that required for a long-term employment program.

Subd. 8. **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. Boards of directors for the center for independent living are composed of community representatives. Fifty-one percent of the board members must be individuals with disabilities.

Subd. 9. **Long-term employment program.** "Long-term employment program" means a program which provides paid work on the premises of a rehabilitation facility and training services on or off the premises and which does not include work activity.

Subd. 10. **Extended employment programs.** "Extended employment programs" means the following programs which may be offered by a rehabilitation facility:

- (1) long-term employment program;
- (2) work activity program;
- (3) work component program; and
- (4) supported employment program.

Subd. 11. **Supported employment program.** "Supported employment program" means a program providing paid work and service hours in a position removed from a rehabilitation facility site.

**Subd. 12. Work component program.** "Work component program" means a cooperative effort agreed to between a rehabilitation facility for a long-term employment or a work activity program and a developmental achievement center licensed by the Minnesota department of human services or other facility to provide work activity on a limited scale so that the primary responsibility over vocational outcomes will be vested in the long-term employment or work activity program.

**Subd. 13. Supported employment.** "Supported employment" means employment of a person with a disability so severe that the person needs ongoing training and support to get and keep a job in which:

(1) the person engages in paid work in a position removed from the service vendor's site where individuals without disabilities who do not require public subsidies also may be employed;

(2) public funds are necessary to provide ongoing training and support services throughout the period of the person's employment; and

(3) the person has the opportunity for social interaction with individuals who do not have disabilities and who are not paid caregivers.

**History:** 1976 c 332 s 1; 1977 c 430 s 9; 1984 c 627 s 1; 1Sp1985 c 9 art 2 s 3; 1Sp1985 c 14 art 9 s 75; 1987 c 369 s 1; 1988 c 689 art 2 s 16-18,268; 1989 c 106 s 1; 1990 c 363 s 1-3

#### **268A.02 COMMISSIONER; CONSUMER ADVISORY COUNCIL, STAFF.**

**Subdivision 1. Commissioner.** The commissioner is the chief executive officer of the department of jobs and training and is the successor to the powers and duties of the former assistant commissioner of vocational rehabilitation.

**Subd. 2. Consumer advisory council.** To assure that consumer concerns are a major consideration in the department's programs, policies, and decision-making process, the commissioner shall establish and appoint a consumer advisory council on vocational rehabilitation which shall be composed of no more than 13 members. A majority of the members of the council shall be persons with a disability who are current or former recipients of vocational rehabilitation services or who represent consumer/advocacy organizations that regularly serve vocational rehabilitation clients. If a qualified person is available to so serve, one person shall be appointed to the council to represent each of the following: business, labor, education, medicine, and the private not-for-profit rehabilitation industry. The remaining members shall be public members. Under the direction of the commissioner, the council shall organize itself and elect a chair and other officers as it deems appropriate. The council shall meet at the call of the chair or the commissioner as often as necessary. The terms, compensation, and removal of members of the council shall be as provided in section 15.059. The council shall not expire as provided by section 15.059, subdivision 5.

**History:** 1976 c 332 s 2; 1977 c 305 s 22; 1Sp1985 c 14 art 9 s 7; 1986 c 444; 1988 c 689 art 2 s 19

**NOTE:** See also Laws 1977, Chapter 430, Sections 9-12.

#### **268A.03 POWERS AND DUTIES.**

The commissioner shall:

(a) certify the rehabilitation facilities to offer extended employment programs, grant funds to the extended employment programs, and perform the duties as specified in section 268A.09;

(b) provide vocational rehabilitation services to persons with disabilities in accordance with the state plan for vocational rehabilitation. These services include but are not limited to: diagnostic and related services incidental to determination of eligibility for services to be provided, including medical diagnosis and vocational diagnosis; vocational counseling, training and instruction, including personal adjustment training; physical restoration, including corrective surgery, therapeutic treatment, hospitalization and prosthetic and orthotic devices, all of which shall be obtained from appropri-

ate established agencies; transportation; occupational and business licenses or permits, customary tools and equipment; maintenance; books, supplies, and training materials; initial stocks and supplies; placement; on-the-job skill training and time-limited postemployment services leading to supported employment; acquisition of vending stands or other equipment, initial stocks and supplies for small business enterprises; supervision and management of small business enterprises, merchandising programs, or services rendered by severely disabled persons. Persons with a disability are entitled to free choice of vendor for any medical, dental, prosthetic, or orthotic services provided under this paragraph;

(c) expend funds and provide technical assistance for the establishment, improvement, maintenance, or extension of public and other nonprofit rehabilitation facilities or centers;

(d) formulate plans of cooperation with the commissioner of labor and industry for providing services to workers covered under the workers' compensation act;

(e) maintain a contractual or regulatory relationship with the United States as authorized by the Social Security Act, as amended. Under this relationship, the state will undertake to make determinations referred to in those public laws with respect to all individuals in Minnesota, or with respect to a class or classes of individuals in this state that is designated in the agreement at the state's request. It is the purpose of this relationship to permit the citizens of this state to obtain all benefits available under federal law;

(f) provide an in-service training program for division of rehabilitation services employees by paying for its direct costs with state and federal funds;

(g) conduct research and demonstration projects; provide training and instruction, including establishment and maintenance of research fellowships and traineeships, along with all necessary stipends and allowances; disseminate information to persons with a disability and the general public; and provide technical assistance relating to vocational rehabilitation and independent living;

(h) receive and disburse pursuant to law money and gifts available from governmental and private sources including, but not limited to, the federal Department of Education and the Social Security Administration, for the purpose of vocational rehabilitation or independent living. Money received from workers' compensation carriers for vocational rehabilitation services to injured workers must be deposited in the general fund;

(i) design all state plans for vocational rehabilitation or independent living services required as a condition to the receipt and disbursement of any money available from the federal government;

(j) cooperate with other public or private agencies or organizations for the purpose of vocational rehabilitation or independent living. Money received from school districts, governmental subdivisions, mental health centers or boards, and private nonprofit organizations is appropriated to the commissioner for conducting joint or cooperative vocational rehabilitation or independent living programs;

(k) enter into contractual arrangements with instrumentalities of federal, state, or local government and with private individuals, organizations, agencies, or facilities with respect to providing vocational rehabilitation or independent living services;

(l) take other actions required by state and federal legislation relating to vocational rehabilitation, independent living, and disability determination programs;

(m) hire staff and arrange services and facilities necessary to perform the duties and powers specified in this section; and

(n) adopt, amend, suspend, or repeal rules necessary to implement or make specific programs that the commissioner by sections 268A.01 to 268A.10 is empowered to administer.

**History:** 1975 c 359 s 23; 1976 c 332 s 3; 1983 c 312 art 1 s 15; 1Sp1985 c 9 art 2 s 4; 1987 c 369 s 2; 1988 c 689 art 2 s 20

**268A.04 DISABILITY DETERMINATIONS; PRIVILEGED INFORMATION.**

No communication or statement furnished by a physician or other professional person to the department or any other agency of the state for use in connection with an agreement or contractual relationship as contemplated in section 268A.03, clause (d), shall be made the subject of any slander, libel or defamation action.

**History:** 1976 c 332 s 4

**268A.05 REPORTS, DISCLOSURE.**

Subdivision 1. The employees of the department specifically authorized by the commissioner shall have the right to receive from any public records the names, addresses and information pertinent to their vocational rehabilitation of persons injured or otherwise disabled. Except as provided in subdivision 2, no information obtained from these reports, nor any copy of the same, nor any of the contents thereof, nor other confidential information as defined by the commissioner shall be open to the public, nor shall be disclosed in any manner by any official or clerk or other employee of the state having access thereto, but the same may be used, except as provided in subdivision 2, solely to enable the department to offer the benefits of vocational rehabilitation to the persons injured or otherwise disabled.

Subd. 2. When the employees of the department have knowledge relating to the nature and extent of an injury or disability or have knowledge of other relevant or material facts with respect to any claim made pursuant to chapter 176 by an injured employee, the commissioner shall first obtain the written consent of the injured employee to the release of the information and shall then report to any party to the claim under the workers' compensation law and to the workers' compensation division or the workers' compensation court of appeals, as the case may be, all of the facts within ten days after the department has received written request for such information from the workers' compensation division or the workers' compensation court of appeals, as the case may be. At a hearing before a compensation judge or the workers' compensation court of appeals on appeal, an employee of the department may, upon the written consent of the injured employee, disclose the facts and conclusions upon which the vocational rehabilitation evaluation of the injured employee was made.

**History:** 1975 c 359 s 23; 1976 c 134 s 78; 1976 c 332 s 5

**268A.06 REHABILITATION FACILITIES.**

Subdivision 1. Any city, town, county, nonprofit corporation, state regional center, or any combination thereof, may apply to the commissioner for assistance in establishing or operating a community rehabilitation facility. Application for assistance shall be on forms supplied by the commissioner. Each applicant shall annually submit to the commissioner its plan and budget for the next fiscal year. No applicant shall be eligible for a grant hereunder unless its plan and budget have been approved by the commissioner.

Subd. 2. In order to provide the necessary funds for extended employment programs offered by a rehabilitation facility, the governing body of any city, town, or county may expend money which may be available for such purposes in the general fund, and may levy a tax which, except when levied by a county, shall not exceed in any one year the following amounts per capita of the population, based upon the last federal census: Cities of the first class, not to exceed ten cents per capita; cities of other than the first class, and towns, not to exceed 30 cents per capita. Any city, town, county, or nonprofit corporation may accept gifts or grants from any source for the rehabilitation facility. Any money appropriated, taxed, or received as a gift or grant may be used to match funds available on a matching basis.

**History:** 1976 c 332 s 6; 1978 c 522 s 1; 1987 c 369 s 3; 1988 c 689 art 2 s 21, 268; 1Sp1989 c 1 art 5 s 5

**NOTE:** Subdivision 2, as amended by Laws 1989, First Special Session chapter 1, article 5, section 5, is effective for taxes levied in 1992, payable in 1993 and thereafter. See Laws 1989, First Special Session chapter 1, article 5, section 52, as amended by Laws 1990, chapter 604, article 3, section 47.

**268A.07 REQUIREMENTS FOR CERTIFICATION.**

Subdivision 1. **Benefits.** A rehabilitation facility must, as a condition for receiving program certification, provide employees in a long-term employment program the personnel benefits prescribed in rules adopted by the commissioner of the department of jobs and training.

Subd. 2. **Grievance procedure.** A rehabilitation facility must, as a condition for receiving program certification, provide to employees in a long-term employment program a grievance procedure which has as its final step provisions for final and binding arbitration.

*History: 1Sp1985 c 9 art 2 s 5; 1Sp1985 c 14 art 9 s 75; 1988 c 689 art 2 s 268*

**268A.08 REHABILITATION FACILITY BOARDS.**

Subdivision 1. Every city, town, county, nonprofit corporation, or combination thereof establishing a rehabilitation facility shall appoint a rehabilitation facility board of no fewer than nine members before becoming eligible for the assistance provided by sections 268A.06 to 268A.09. When any city, town, or county singly establishes such a rehabilitation facility, the board shall be appointed by the chief executive officer of the city or the chair of the governing board of the county or town. When any combination of cities, towns, counties, or nonprofit corporations establishes a rehabilitation facility, the chief executive officers of the cities, nonprofit corporations and the chairs of the governing bodies of the counties or towns shall appoint the board. If a nonprofit corporation singly establishes a rehabilitation facility, the corporation shall appoint the board of directors. Membership on a board shall be representative of the community served and shall include a person with a disability. One-third to one-half of the board shall be representative of industry or business. The remaining members should be representative of lay associations for persons with a disability, labor, the general public, and education, welfare, medical, and health professions. Nothing in sections 268A.06 to 268A.09 shall be construed to preclude the appointment of elected or appointed public officials or members of the board of directors of the sponsoring nonprofit corporation to the board, so long as representation described above is preserved. If a state regional center establishes an extended employment program, the chief executive officer of the state regional center shall perform the functions of the rehabilitation facility board as prescribed in subdivision 2. The regional center is not required to establish a separate governing body as a board. The state regional center shall establish an advisory committee following the membership representation requirements of this subdivision. If a county establishes an extended employment program and manages the program with county employees, the governing board shall be the county board of commissioners and other provisions of this chapter pertaining to membership on the governing board do not apply.

Subd. 2. Subject to the provisions of sections 268A.06 to 268A.09 and the rules of the department, each rehabilitation facility board shall:

(a) Review and evaluate the need for extended employment programs offered by the rehabilitation facility provided pursuant to sections 268A.06 to 268A.09 and report thereon to the commissioner and, when indicated, the public, together with recommendations for additional extended employment programs;

(b) Recruit and promote local financial support for the extended employment programs from private sources such as community chests, business, industrial and private foundations, voluntary agencies and other lawful sources and promote public support for municipal and county appropriations;

(c) Promote, arrange, and implement working agreements with other educational and social service agencies both public and private and any other allied agencies;

(d) Advise the commissioner on the adoption and implementation of policies to stimulate effective community relations;

(e) Review the annual plan and budget and make recommendations thereon;

(f) When the extended employment program offered by the rehabilitation facility

is certified, act as the administrator of the rehabilitation facility and its programs for purposes of this chapter.

**History:** 1976 c 332 s 7; 1Sp1985 c 9 art 2 s 6; 1986 c 444; 1987 c 369 s 4; 1988 c 689 art 2 s 22,268

### **268A.09 EVALUATION AND FUNDING OF EXTENDED EMPLOYMENT PROGRAMS.**

**Subdivision 1. Grants.** The commissioner may make grants to assist cities, towns, counties, nonprofit corporations, state regional centers, or any combination thereof in the establishment, operation, and expansion of the extended employment programs offered by rehabilitation facilities. The commissioner may accept federal grants or aids and shall cooperate with federal agencies in any reasonable manner necessary to qualify for federal grants or aids for rehabilitation facilities or their programs.

**Subd. 2. Evaluation; state funding.** At the beginning of each fiscal year, the commissioner shall allocate available funds to extended employment programs for disbursement during the fiscal year in accordance with approved plans or budgets. The commissioner shall study and recommend to the legislature by March 1, 1985, new allocation formulas which take into consideration effectiveness of the rehabilitation facility extended employment programs. In its recommendation the commissioner shall calculate the fiscal impact of the various formulas on each rehabilitation facility and the extent to which a rehabilitation facility can utilize new allocation formulas. The commissioner shall develop forms to assist the rehabilitation facilities in collecting data necessary to complete the program evaluation. Information needed to conduct the evaluations must be submitted by the rehabilitation facilities along with the annual requests for funding. Failure to submit documentation requested by the commissioner shall result in the withdrawal of all state funding for the extended employment programs offered by the rehabilitation facility.

The commissioner shall from time to time during the fiscal year review the budgets and expenditures of the rehabilitation facilities and programs. If funds are not needed for the program to which they were allocated, the commissioner may, after reasonable notice and opportunity for hearing, withdraw such funds as are unencumbered and reallocate them to other programs. The commissioner may withdraw funds from any rehabilitation facility or program which is not being administered in accordance with its approved plan and budget unless a modified plan and budget is submitted to and approved by the commissioner, and implemented within a reasonable time.

The commissioner shall also withdraw funds from a rehabilitation facility or program not being administered according to department rules, or not meeting mandatory standards for certification, unless a plan bringing the rehabilitation facility or program into compliance with the rules and standards is submitted to and approved by the commissioner and implemented within a reasonable time.

**Subd. 3. Evaluation of programs.** The program evaluation must include, but not be limited to, the following considerations:

- (a) Wages and benefits paid to workers and number of hours worked;
- (b) Rate of placement in competitive employment;
- (c) Opportunities for workers to participate in decisions affecting their employment;
- (d) Rehabilitation facility responsiveness to workers' grievances;
- (e) Increases in individual workers' productivity;
- (f) Efficiency of the rehabilitation facilities; and
- (g) Types and levels of disability of the workers and willingness of the rehabilitation facility to accept and assist persons with serious behavioral, mental, sensory, or physical disabilities.

The evaluation must take into account the disability levels of the workers, the geographic location and size of the rehabilitation facility, and the economic conditions of the surrounding community.

Subd. 4. **Fund allocation.** Funds appropriated for the extended employment program shall be distributed to rehabilitation facilities in a manner prescribed in rule, provided that 15 percent shall be allocated based on economic conditions as defined in rule and that, for funding purposes, no credit can be given for full-time equivalents, as defined in rule, in excess of the number of persons in the program.

Subd. 5. **Rule authority.** In addition to the powers already conferred by law, the commissioner shall promulgate rules on:

- (a) state certification of all rehabilitation facilities;
- (b) allocation of state grant funds to extended employment programs;
- (c) standards for qualification of personnel and quality of professional service and for in-service training and education leave programs for personnel;
- (d) eligibility for service so that no person will be denied service on the basis of race, creed, or color;
- (e) regulatory fees for consultation services;
- (f) standards and criteria by which persons with a disability are to be judged eligible for the services;
- (g) evaluation criteria for extended employment programs; and
- (h) program evaluation criteria for work activity programs in order to determine the extent to which these programs meet the goals and objectives established in state and federal law relating to work activity programs.

The rules on evaluation criteria for rehabilitation facilities must be in effect by July 1, 1986. The rules must be used in making allocations for fiscal years beginning after June 30, 1987.

Subd. 6. **Technical assistance.** The commissioner shall provide technical assistance within available resources to rehabilitation facilities and programs based on the need reflected in an evaluation.

Subd. 7. **Grants.** The commissioner may use money allocated to the division of vocational rehabilitation for management information systems to provide grants to rehabilitation facilities to finance and purchase equipment necessary to: (1) provide the information required to comply with the evaluation criteria developed under subdivision 5; (2) increase sheltered worker productivity; and (3) train severely disabled people in computer and other high-technology applications. As a condition of receiving a grant for the purposes of (2) or (3), the commissioner shall require rehabilitation facilities to provide matching money.

**History:** 1976 c 332 s 8; 1984 c 627 s 2; 1Sp1985 c 9 art 2 s 7; 1986 c 369 s 1; 1986 c 444; 1987 c 369 s 5; 1988 c 689 art 2 s 23-26,268; 1989 c 35 s 1

#### 268A.10 EXPENDITURE OF FEDERAL FUNDS.

Any additional federal funds which become available to the state of Minnesota for vocational rehabilitation or independent living purposes as a result of a reallocation of funds returned by other states or release of additional funds may be carried over and expended in the next fiscal year.

**History:** 1976 c 332 s 11; 1988 c 689 art 2 s 27

#### 268A.11 INDEPENDENT LIVING SERVICES.

Subdivision 1. **Services offered.** Independent living services are those services designed to materially improve opportunities for persons with disabilities to live and function more independently in their home, family, and community, and the services include:

- (1) intake counseling to determine the individual's needs for services;
- (2) referral and counseling services with respect to attendant care;
- (3) counseling and advocacy with respect to legal and economic rights and benefits;

- (4) independent living skills, training, and counseling;
- (5) housing and transportation referral and assistance;
- (6) surveys, directories, and other activities to identify appropriate housing and accessible transportation and other support services;
- (7) peer counseling;
- (8) education and training necessary to living in the community and participating in community affairs;
- (9) individual and group social and recreational activities;
- (10) attendant care and training of personnel to provide the care; and
- (11) other necessary services which are not inconsistent with sections 62A.26 and 62E.06, subdivision 1.

Subd. 2. **Administration.** This section shall be administered by the department of jobs and training through the division of rehabilitation services. The department may employ staff as reasonably required to administer this section and may accept and receive funds from nonstate sources for the purpose of effectuating this section.

Subd. 3. **Certification.** No applicant center for independent living may receive funding under this section unless it has received certification from the division of rehabilitation services.

The division of rehabilitation services shall involve persons with a disability and other interested persons to consider performance evaluation criteria in order to formulate rules by which centers will be certified by July 1, 1986.

The division of rehabilitation services shall review the programs for centers of independent living receiving funds from this section to determine their adherence to standards adopted by rule and if the standards are substantially met, shall issue appropriate certifications.

Subd. 4. **Application of centers for independent living.** The division of rehabilitation services shall require centers for independent living to complete application forms, expenditure reports, and proposed plans and budgets. These reports must be in the manner and on the form prescribed by the division. When applying, the center for independent living shall agree to provide reports and records, and make available records for audit as may be required by the division of rehabilitation services.

The applicant center for independent living shall be notified in writing by the division concerning the approval of budgets and plans.

**History:** *1Sp1985 c 9 art 2 s 8; 1Sp1985 c 14 art 9 s 75; 1988 c 689 art 2 s 28*

#### **268A.12 ACCESSIBLE HOUSING INFORMATION.**

The commissioner of jobs and training may make accessible housing information grants to eligible organizations to develop, maintain, and publicize a list of accessible housing units within their area of operation, based on recommendations of the disability council. For purposes of this section, accessible housing unit means an accessible housing unit that meets the handicapped facility requirements of the state building code, Minnesota Rules, chapter 1340. The list may also include housing units that do not meet handicapped facility code requirements, but that are accessible to disabled persons. The list must be made available at no cost to persons seeking accessible housing and must be updated at least every two months. An eligible organization must have the capability to develop, maintain, and publicize a list of accessible housing units within the organization's area of operation.

**History:** *1989 c 328 art 1 s 2*