

CHAPTER 3300**DEPARTMENT OF EMPLOYMENT AND ECONOMIC DEVELOPMENT
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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 [Repealed, 13 SR 932]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*

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Subp. 3. [Repealed, 19 SR 639]

Subp. 4. [Repealed, 22 SR 2294]

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Subp. 8. [Repealed, 22 SR 2294]

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Subp. 16. [Repealed, 22 SR 2294]

Subp. 17. [Repealed, 12 SR 2783]

Subp. 18. [Repealed, 22 SR 2294]

Subp. 19. [Repealed, 19 SR 639]

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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 [Repealed, 22 SR 2294]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 [Repealed, 22 SR 2294]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 [Repealed, 22 SR 2294]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 [Repealed, 22 SR 2294]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 [Repealed, 12 SR 2783]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 [Repealed, 22 SR 2294]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]

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Subp. 4. [Repealed, 19 SR 639]

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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 268A.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; 268A.11*

History: *11 SR 634*

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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 Employment and Economic Development.

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; 268A.11*

History: *11 SR 634; L 1989 c 304 s 137; L 1994 c 483 s 1; L 2005 c 112 art 2 s 41*

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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 268A.01, subdivision 8.

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 363A.

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 268A.11, 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; 268A.11*

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

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3300.3210 [Renumbered 3300.0050]

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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 Employment and Economic Development.

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 268A.11, 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; 268A.11*

History: *11 SR 634; L 1994 c 483 s 1; L 2005 c 112 art 2 s 41*

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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 268A.11, 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; 268A.11*

History: *11 SR 634*

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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 Employment and Economic Development. The written notice of intent to appeal must be received by the Division of Rehabilitation Services within 30 calendar days from the date that a preliminary notice of termination is sent. If the notice of intent to appeal is not received within the 30-day period,

the preliminary determination of the Division of Rehabilitation Services is final. The notice of intent to appeal must state the grounds for the appeal including relevant facts and issues that could be addressed at a contested case hearing.

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

Subp. 4. **Contested case appeal.** If an appellant has first informally discussed the appeal as provided in subpart 3 and has not been completely satisfied, the appellant may request in writing a contested case hearing before an administrative law judge as provided in Minnesota Statutes, sections 14.57 to 14.62. The contested case hearing must be initiated and conducted according to parts 1400.5100 to 1400.8401.

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; 268A.11*

History: *11 SR 634; L 1994 c 483 s 1; L 2005 c 112 art 2 s 41*

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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 116L.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 with a disability 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 116L.61; 268.61*

History: *9 SR 424; L 2004 c 206 s 52; L 2005 c 56 s 2*

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3300.4110 [Repealed, L 1985 1Sp14 art 9 s 78]

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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 agency, vendors of services under agreement with the agency, and all persons applying for or receiving vocational rehabilitation services from the agency. Parts 3300.5000 to 3300.5060 do not require expenditures for a person if funds are not available to the agency 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 by State Services for the Blind under parts 3325.0100 to 3325.0478.

Statutory Authority: *MS s 116J.035; 268.021; 268A.03*

History: *18 SR 2248; 30 SR 1129*

Published Electronically: *August 16, 2011*

3300.5010 DEFINITIONS.

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

Subp. 1a. **Agency.** "Agency" means the vocational rehabilitation program in the Department of Employment and Economic Development.

Subp. 2. **Applicant.** "Applicant" means a person who has submitted an application for vocational rehabilitation services to the agency, 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" has the meaning given to the term "assessment for determining eligibility and vocational rehabilitation needs" by Code of Federal Regulations, title 34, section 361.5, paragraph (b)(6), as amended.

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 textbooks, paper, pencils, pens, small calculators, and similar items that all students are required to purchase for participation in a training program at a postsecondary training institution.

Subp. 5. [Repealed, 30 SR 1129]

Subp. 5a. **CARF.** "CARF" means the national independent, nonprofit organization that sets standards for service and quality of rehabilitation providers, formerly known as the Commission on the Accreditation of Rehabilitation Facilities.

Subp. 6. **Comparable services and benefits.** "Comparable services and benefits" means services or financial assistance available to an eligible individual, from sources other than the agency or the eligible individual, 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 agency, and public or private educational and training grants and scholarships.

Subp. 7. [Repealed, 30 SR 1129]

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 individual.** "Eligible individual" means a person who is eligible for vocational rehabilitation services as provided by Code of Federal Regulations, title 34, section 361.42(a).

Subp. 10. **Employment goal.** "Employment goal" means:

A. an "employment outcome" as defined by Code of Federal Regulations, title 34, section 361.5, paragraph (b)(16), as amended; and

B. that is available in the labor market area where the eligible individual is willing to seek and accept employment.

Subp. 10a. **Employment plan.** "Employment plan" means an individualized plan for employment that is developed in accordance with Code of Federal Regulations, title 34, section 361.45, as amended, and that meets the requirements of Code of Federal Regulations, title 34, section 361.46, 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 words or concepts, using methods such as reading, 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 or job retention;

C. "mobility" means the physical or 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 independently plan, initiate, organize, or carry out goal-directed activities or solve problems related to working;

F. "work skills" means:

- (1) the ability to do specific tasks required to carry out job functions; or
- (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 or endurance 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. Gift aid based on academic merit is not considered when calculating the agency contribution for required tuition and mandatory fees.

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 significant disability to live and function more independently so as to achieve an employment outcome.

Subp. 17. **Individual with a most significant disability.** "Individual with a most significant disability" means an eligible individual:

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 impairments resulting from amputation, arthritis, autism, blindness, burn injury, cancer, cerebral palsy, cystic fibrosis, deafness, head injury, heart disease, hemiplegia, hemophilia, respiratory or pulmonary dysfunction, developmental disability, 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 physical or mental impairment or combination of physical or mental impairments 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 significant disability.** "Individual with a significant disability" means an eligible individual:

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 impairments resulting from amputation, arthritis, autism, blindness, burn injury, cancer, cerebral palsy, cystic fibrosis, deafness, head injury, heart disease, hemiplegia, hemophilia, respiratory or pulmonary dysfunction, developmental disability, 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 physical or mental impairment or combination of physical or mental impairments determined on the basis of an assessment for determining eligibility and vocational rehabilitation needs to cause comparable serious functional limitation.

Subp. 19. [Repealed, 30 SR 1129]

Subp. 20. **Initial stocks and supplies.** "Initial stocks and supplies" means the initial inventory of goods for direct resale to customers by an eligible individual entering into or stabilizing a small business enterprise and a start-up supply of expendable items that are necessary for the day-to-day operation of a business, excluding the ongoing replacement of inventory and supplies.

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

Subp. 21a. **Institutional aid.** "Institutional aid" means grants, scholarships, and other financial assistance a postsecondary institution awards from its own funds that are used to pay for the costs of postsecondary training and that do not have to be repaid. Institutional aid based on academic merit is not considered when calculating the agency contribution for required tuition and mandatory fees.

Subp. 22. **Job coaching.** "Job coaching" means services provided to assist an eligible individual 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 individual to retain employment.

Subp. 23. **Job related services.** "Job related services" means services that assist eligible individuals seek and obtain gainful employment. These services include job search and placement assistance, job retention services, follow-up services, and follow-along services.

Subp. 24. **Maintenance.** "Maintenance" means "maintenance" as defined by Code of Federal Regulations, title 34, section 361.5, paragraph (b)(35), as amended.

Subp. 24a. **Mileage rate.** "Mileage rate" means the amount calculated semiannually by dividing the average cost of regular gasoline in Minnesota during the preceding six months by the average fuel efficiency of all vehicles; the average cost of regular gasoline is determined using figures published by the United States Department of Energy, Energy Information Administration, and the average fuel efficiency of all vehicles is determined using figures published by the United States Department of Transportation, Federal Highway Administration, Highway Statistics Series.

When the calculated mileage rate exceeds the rate established by the Internal Revenue Service (IRS) for personal income tax deductions for mileage for charitable contributions under the Internal Revenue Code of 1986, section 170(i), as amended, the mileage rate for the next six months will be adjusted to the newly calculated rate.

When the calculated mileage rate is equal to or less than 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 170(i), as amended, the mileage rate for the next six months will be the IRS mileage rate for charitable contributions.

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

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 agency provides vocational rehabilitation services to eligible individuals when all eligible individuals 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 individual to perform daily living activities, on or off the job, that the eligible individual would typically perform without assistance if the eligible individual did not have a disability.

Subp. 28a. **Physical and mental restoration services.** "Physical and mental restoration services" means "physical and mental restoration services" as defined by Code of Federal Regulations, title 34, section 361.5, paragraph (b)(40), as amended.

Subp. 29. **Postemployment services.** "Postemployment services" means "post-employment services" as defined by Code of Federal Regulations, title 34, section 361.5, paragraph (b)(42), as amended.

Subp. 30. **Postsecondary training.** "Postsecondary training" means training provided by a 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, barber school or college, cosmetology school, commercial driver training school, or other school as defined in Minnesota Statutes, section 136A.62, subdivision 3, or 136A.821, subdivision 5, that is registered as provided by Minnesota Statutes, chapter 154, or section 136A.63, licensed as provided by Minnesota Statutes, chapter 154, section 136A.822, or 171.34, 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. [Repealed, 30 SR 1129]

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

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

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

- A. understand the eligible individual's abilities and potential and develop self-confidence;
- B. identify and establish an employment goal;
- C. complete a program of services leading to the achievement of the employment goal established in the eligible individual's employment plan; and
- D. gather information and identify support services, if needed, to assist an eligible individual to exercise informed choice.

Subp. 36. **Rehabilitation counselor.** "Rehabilitation counselor" means a person classified by the Minnesota Department of Management and Budget as a rehabilitation counselor and employed by the agency to determine eligibility for services, provide rehabilitation counseling and guidance, develop employment plans and amendments collaboratively with eligible individuals, approve employment plans and amendments, provide and coordinate the provision of vocational rehabilitation services, and determine if an employment outcome is satisfactory.

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 individual. 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 individual 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, secure, retain, or regain employment.

Subp. 40a. **Small business enterprise.** "Small business enterprise" means a business that is owned, operated, and managed by an eligible individual who sells goods or services for the purpose of making a profit. An eligible individual is considered to be making a profit when income from the business exceeds expenses, including reasonable payment for the owner's time and efforts. Small business enterprise includes self-employment, sole proprietorships, partnerships, limited liability companies, and corporations.

Subp. 40b. **Stabilize a small business enterprise.** "Stabilize a small business enterprise" means to provide goods and services when an eligible consumer has an existing business which for disability related reasons requires changes to the product, service, or method of operation of the business, or it means to allow resumption of the operation of a business which has been disrupted, suspended, or interrupted due to disability.

Subp. 41. **State Rehabilitation Council.** "State Rehabilitation Council" means the council established under United States Code, title 29, chapter 16, section 725, as amended.

Subp. 42. **Tools and equipment.** "Tools and equipment" means implements required for participation in an employment plan that aid in accomplishing a task and the set of physical resources used to perform an operation or activity necessary in the practice of a vocation, profession, or small business enterprise, excluding the ongoing replacement or repair of tools and equipment. It includes all fixed assets other than land and buildings of a small business enterprise.

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 fee schedule.** "Tuition fee schedule" means:

A. For the regular academic year at all private postsecondary institutions and at public postsecondary institutions outside Minnesota:

(1) for postsecondary training institutions not offering baccalaureate degrees, an amount determined by averaging the cost of full-time resident tuition at each of the technical and community colleges in the Minnesota State Colleges and Universities system. This amount will be calculated annually based on figures from the Minnesota Office of Higher Education;

(2) for postsecondary training institutions offering baccalaureate degrees, an amount determined by averaging the cost of full-time undergraduate resident tuition at each of the state universities in the Minnesota State Colleges and Universities system. This amount will be calculated annually based on figures from the Minnesota Office of Higher Education; or

(3) for postsecondary training institutions when the eligible individual is enrolled in a postbaccalaureate degree program, an amount determined by averaging the cost of full-time graduate resident tuition at each of the state universities in the Minnesota State Colleges and Universities system. This amount will be calculated annually based on figures from the Minnesota Office of Higher Education.

B. For the summer session at all private postsecondary institutions and at public postsecondary institutions outside Minnesota:

(1) for postsecondary training institutions not offering baccalaureate degrees, an amount determined by averaging the cost of full-time resident summer school tuition at each of the technical and community colleges in the Minnesota State Colleges and Universities system. This amount will be calculated annually based on figures from the Minnesota Office of Higher Education;

(2) for postsecondary training institutions offering baccalaureate degrees, an amount determined by averaging the cost of full-time undergraduate resident summer school tuition at each

of the state universities in the Minnesota State Colleges and Universities system. This amount will be calculated annually based on figures from the Minnesota Office of Higher Education; or

(3) for postsecondary training institutions when the eligible individual is enrolled in a postbaccalaureate degree program, an amount determined by averaging the cost of full-time graduate resident summer school tuition at each of the state universities in the Minnesota State Colleges and Universities system. This amount will be calculated annually based on figures from the Minnesota Office of Higher Education.

C. For eligible individuals attending any postbaccalaureate degree program at the University of Minnesota:

(1) for the regular academic year, the dollar amount equal to the cost of full-time graduate resident tuition and mandatory student services fees at the Graduate School of the University of Minnesota - Twin Cities campus. This amount is available annually from the Minnesota Office of Higher Education; or

(2) for summer school, the dollar amount equal to the cost of full-time graduate resident summer school tuition and mandatory student services fees at the Graduate School of the University of Minnesota - Twin Cities campus. This amount is available annually from the Minnesota Office of Higher Education.

D. Except as provided in item C, for training in a Minnesota public postsecondary institution, an amount equal to the cost of resident tuition and mandatory academic fees at the Minnesota public postsecondary institution the eligible individual is attending.

Subp. 45. **Vehicle adaptations.** "Vehicle adaptations" means changes made to the structure or control devices of a motor vehicle for an eligible individual 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 agency 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 vocational rehabilitation program to determine and achieve an employment goal.

Subp. 49. [Repealed, 34 SR 901]

Subp. 50. **Vocational adjustment training.** "Vocational 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 116J.035; 268.021; 268A.03*

History: *18 SR 2248; L 1994 c 483 s 1; 20 SR 168; 21 SR 1779; L 2005 c 27 s 9; L 2005 c 56 s 2; L 2005 c 107 art 2 s 60; L 2005 c 112 art 2 s 41; 30 SR 1129; L 2008 c 204 s 42; L 2009 c 101 art 2 s 109; 34 SR 901; L 2015 c 69 art 2 s 46*

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3300.5020 CONDITIONS FOR IMPLEMENTING AN ORDER OF SELECTION.

Subpart 1. **Determination of open priority categories.** The director of the agency shall determine the need for an order of selection annually. The director's determination shall be made after consulting with and obtaining advice from the State Rehabilitation Council. The director'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 director shall open as many priority categories as it is projected that the agency can serve, starting with the first priority category listed in part 3300.5030. The agency retains the discretion to open and close established priority categories based on an assessment of need and resources, but the agency must not change the established order of categories.

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

Statutory Authority: *MS s 116J.035; 268.021; 268A.03*

History: *18 SR 2248; 21 SR 1779; 30 SR 1129*

Published Electronically: *October 8, 2007*

3300.5030 PRIORITY CATEGORIES FOR ORDER OF SELECTION.

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

Subp. 2. **Second priority category.** The second priority category includes all individuals with a significant 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 significant 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 individuals.

Subp. 5. [Repealed, 30 SR 1129]

Statutory Authority: *MS s 116J.035; 268.021; 268A.03*

History: 18 SR 2248; 30 SR 1129

Published Electronically: October 8, 2007

3300.5040 CONSUMER FINANCIAL PARTICIPATION IN COST OF VOCATIONAL REHABILITATION SERVICES.

Subpart 1. **Financial participation required.** An eligible individual 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 individual's gross family income exceeds the consumer financial participation threshold. For example, if an eligible individual's gross family income exceeds the consumer financial participation threshold by ten percent, the eligible individual shall pay ten percent of the cost of vocational rehabilitation services provided and the agency would pay 90 percent.

Subp. 1a. **Consumer financial participation threshold.** The agency must calculate the consumer financial participation threshold annually. The consumer financial participation threshold is 200 percent of the poverty guidelines updated annually and published 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 individual 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 individual receives. However, regardless of consumer financial participation requirements under this part, all eligible individuals are required to participate in the search for and utilization of comparable benefits and services as provided in part 3300.5050, and the agency'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 agency shall determine the degree of financial participation required for eligible individuals 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 individual's gross family income in relation to the consumer financial participation threshold.

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

- (1) cash earnings from wage or salaried positions before payroll deductions;
- (2) cash income receipts from a business, farm, or profession after deduction of operating expenses;
- (3) unearned payments from government assistance programs or other public sources such as 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 individual's family includes:

- (1) the spouse of the eligible individual; and
- (2) the parent or parents of the eligible individual if:
 - (a) the eligible individual is under 18 years of age and living with the parent or parents; or
 - (b) the parent or parents claimed the eligible individual as a dependent for federal income tax purposes in the most recent calendar year; or
 - (c) a postsecondary institution has determined that the eligible individual 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 individual is not required to pay any portion of the cost of the vocational rehabilitation services that the eligible individual receives if the eligible individual:

- (1) receives benefits under title II or title XVI of the federal Social Security Act, under Code of Federal Regulations, title 34, section 361.54(b)(3)(ii), as amended; or
- (2) has been determined eligible for a federal or state means-tested income assistance program, such as the Minnesota family investment program 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 individual has been determined eligible for a federal or state means-tested health insurance program, the agency must determine the degree of financial participation required of the eligible individual if:

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

Subp. 5. Services subject to financial participation. An eligible individual 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 agency must not require consumer financial participation for the following services:

A. assessment for determining eligibility, priority for services, and vocational rehabilitation needs, except those nonassessment services that are provided to an individual with a significant disability during either an exploration of the individual's abilities, capabilities, and capacity to perform in work situations through the use of trial work experiences or an extended evaluation;

B. vocational evaluation;

C. work adjustment training;

D. rehabilitation counseling and guidance;

E. job related 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. postemployment services consisting of the services identified in this subpart; and

L. personal assistance services.

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

- (1) the amount determined under item D; or
- (2) the maximum amount the agency 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 individual who cannot pay for vocational rehabilitation services to the extent required in subpart 1 may apply to the director of the vocational rehabilitation program or designee 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 individual or the eligible individual's legal representative. The request must provide the director of the vocational rehabilitation program or designee with evidence describing the unusual financial situation. If the director of the vocational rehabilitation program or designee requires additional information to determine eligibility for a variance, the agency must, within 15 days after receiving the written request, inform the eligible individual in writing of the specific additional information required.

B. The director of the vocational rehabilitation program or designee must determine whether the eligible individual is eligible for a variance and notify the eligible individual of the determination in writing 30 days after the director of the vocational rehabilitation program or designee receives all the information required under item A. The written notification must:

- (1) specify whether the eligible individual 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 individual of review and appeal rights under Code of Federal Regulations, title 34, section 361.57, as amended; and
- (5) be signed and dated by the director of the vocational rehabilitation program or designee.

C. The director of the vocational rehabilitation program or designee shall grant a variance only if the eligible individual demonstrates that it is impossible for the eligible individual 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 director of the vocational rehabilitation program or designee shall determine the amount of a variance by:

(1) calculating the sum of the eligible individual's extraordinary expenditures identified under item C that make it impossible for the eligible individual to make the cost contributions required under subpart 1; and

(2) subtracting the sum in subitem (1) from the financial participation amount the eligible individual would have to pay without the variance.

E. An eligible individual who receives a variance must immediately notify the director of the vocational rehabilitation program or designee in writing if the eligible individual's gross family income improves.

F. The director of the vocational rehabilitation program or designee may review the financial situation of an eligible individual who receives a variance at any time to determine whether the individual's financial situation continues to justify the variance.

Statutory Authority: *MS s 116J.035; 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; 30 SR 1129; 34 SR 901*

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3300.5050 COMPARABLE BENEFITS AND SERVICES.

Subpart 1. **Use of comparable services and benefits.** Comparable services and benefits must be used if available to an eligible individual or a member of an eligible individual's family for all vocational rehabilitation services identified in the eligible individual's employment plan, except:

A. assessment for determining eligibility and vocational rehabilitation needs;

B. rehabilitation counseling and guidance;

C. job related services;

D. referral services;

E. rehabilitation technology services;

F. when a search for comparable benefits would interrupt or delay the provision of vocational rehabilitation services to any eligible individual who is determined to be at extreme medical risk, based on medical evidence provided by an appropriate qualified medical professional;

G. the services listed in items A to F when provided as postemployment services necessary to assist eligible individuals to maintain, regain, or advance in employment;

H. when a search for comparable benefits would interrupt or delay an immediate job placement; or

I. when a search for comparable benefits would interrupt or delay the progress of the eligible individual toward achieving the employment outcome identified in the eligible individual's employment plan.

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

A. Before receiving training services in a postsecondary institution, prior to the start of each school year, an eligible individual must apply for gift aid or institutional aid to pay all or part of the costs of tuition, fees, books, supplies, tools and equipment, and living expenses; and

(1) annually provide evidence to the agency of the amount of gift aid or institutional aid available to the eligible individual; or

(2) annually provide evidence to the agency that the eligible individual is not eligible for gift aid or institutional aid.

B. If gift aid or institutional aid is not available to the eligible individual because the eligible individual is in default on repayment of a student loan or has an outstanding PELL grant repayment, the agency must not participate financially in the purchase of postsecondary training services until the agency determines that a responsible repayment effort has been made. This determination must be made by the rehabilitation counselor in consultation with the eligible individual and the holder of the loan or the postsecondary institution that awarded the PELL grant, after considering such factors as the financial resources available to the eligible individual and the attempts that have been made to work out a satisfactory repayment agreement with the holder of the loan or the postsecondary institution that awarded the PELL grant. The requirement of a responsible repayment effort will be deemed to be satisfied if the eligible individual has made payments for six consecutive months.

C. Before receiving physical and mental restoration services or durable medical equipment, an eligible individual must file a claim or application with the eligible individual's health insurer, if any. If the eligible individual has no health insurance, or if the restoration services or durable medical equipment provided are not covered by the eligible individual's health insurance, the eligible individual 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 agency determines that it is likely that the eligible individual 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 individual shall apply or provide evidence of having already applied for any comparable benefit that the agency determines may be available to the eligible individual. The agency must not purchase a service when the eligible individual refuses to make formal application for a comparable benefit to pay all or part of the cost of the service, or when the eligible individual refuses to accept a comparable benefit that is available to the eligible individual.

Statutory Authority: *MS s 116J.035; 268.021; 268A.03*

History: 18 SR 2248; 20 SR 168; 21 SR 1779; 30 SR 1129; 34 SR 901

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3300.5060 TERMS AND CONDITIONS FOR PROVISION OF VOCATIONAL REHABILITATION SERVICES.

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

A. The agency 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 361.42 and 361.45(f); and

(2) to assist an eligible individual to achieve an employment goal in accordance with the eligible individual's approved employment plan.

B. The agency must follow applicable state, Department of Employment and Economic Development, and agency purchasing policies and procedures when purchasing goods or services for eligible individuals.

C. The agency must not make payments to reduce legal financial obligations incurred by the eligible individual.

Subp. 1a. Auxiliary aids and services for effective communication. The agency must provide auxiliary aids and services for effective communication necessary to enable an applicant or eligible individual to access agency services or participate in vocational rehabilitation services under an employment plan, except that the agency 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, or the Minnesota Human Rights Act, Minnesota Statutes, chapter 363A, sections 363A.02 and 363A.11 to 363A.13.

Subp. 2. Child care.

A. Before the agency 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 individual must, with the assistance of the agency, 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 individual to lose an immediate job placement.

C. The agency must not provide child care unless an eligible individual would be unable to participate in vocational rehabilitation services if child care is not provided. The agency 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. Agency payments for child care must not exceed the rate established by the Department of Human Services under part 3400.0130.

Subp. 3. Computer hardware and software.

A. Before the agency provides 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 individual must, with the assistance of the agency, 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 individual to lose an immediate job placement.

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

D. Before the agency provides computer software or hardware, including modems, printers, and other peripherals, an assessment to determine the eligible individual'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, if either the counselor or the eligible individual is uncertain regarding the eligible individual's needs.

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

Subp. 3a. Durable medical equipment.

A. Before the agency 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 individual must, with the assistance of the agency, 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 individual to lose an immediate job placement.

C. The agency's expenditures for durable medical equipment must not exceed the amount paid by the Minnesota medical assistance program.

Subp. 4. [Repealed, 20 SR 168]

Subp. 5. **Maintenance.**

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

B. The eligible individual must, with the assistance of the agency, 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 individual to lose an immediate job placement.

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

D. The agency must not pay for maintenance if the provision of maintenance would result in a reduction of payments to the eligible individual 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 individual cannot receive needed vocational rehabilitation services without relocation; or

(2) a rehabilitation counselor, in consultation with the eligible individual, 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 individuals participating in postsecondary training may be provided only when the eligible individual cannot receive postsecondary training without incurring added living costs and:

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

(2) it is necessary for the eligible individual to leave subsidized housing in order to participate in postsecondary training under an employment plan; or

(3) a rehabilitation counselor, in consultation with the eligible individual, has determined that the eligible individual is unable to find work because the postsecondary training program is 16 weeks or less in duration.

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

(1) the eligible individual 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 individual's employment plan terminates.

I. Maintenance payments for ongoing monthly living expenses for eligible individuals 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 employment plan while a primary residence is maintained by the eligible individual or the eligible individual's family.

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

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

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

K. For eligible individuals receiving maintenance under item I, agency 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 agency must not provide personal assistance services unless an eligible individual is receiving one or more other vocational rehabilitation services.

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

C. The agency must purchase personal assistance services only from a personal care assistant who meets the requirements established by the Department of Human Services.

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

E. Agency 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.

F. The agency 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.

G. The agency must provide eligible individuals with training in managing, supervising, and directing personal assistance services when the eligible individual and a rehabilitation counselor jointly determine that the training is necessary.

Subp. 7a. Physical and mental restoration services.

A. Before the agency 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 individual must, with the assistance of the agency, 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 individual at extreme medical risk, or if the search would cause the eligible individual to lose an immediate job placement.

C. The agency must not pay for recurring, ongoing physical or mental restoration services that an eligible individual would require regardless of participation in an employment plan, such as group or individual psychotherapy, prescription drugs, or physical therapy.

D. Eligible individuals 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) for the provision of prosthetics and orthotics:
 - (a) any practitioner of prosthetics or orthotics who is certified by the American Board for Certification (ABC) in Orthotics and Prosthetics or the Board for Orthotist/Prosthetist Certification (BOC); or a graduate of a program accredited by the National Commission on Orthotic and Prosthetic Education (NCOPE) and the Commissioner on Accreditation of Allied Health Education Programs (CAAHEP) who is working under the supervision of a certified practitioner;
 - (b) any physical therapist licensed by the Minnesota State Board of Physical Therapy or the equivalent body in another state;
 - (c) any occupational therapist licensed by the Minnesota Department of Health or the equivalent body in another state; or
 - (d) any podiatrist licensed by the Minnesota Board of Podiatric Medicine or the equivalent body in another state.

Subp. 8. [Repealed, 20 SR 168]

Subp. 9. Rehabilitation technology.

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

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

(1) before the agency purchases vehicle adaptations for an eligible individual that has not previously driven an adapted vehicle, or when the individual's physical or cognitive conditions have changed since the individual last drove an adapted vehicle, a predriving evaluation is required. Predriving evaluations must be conducted by an occupational therapist or physical therapist. The therapist must have experience and training in the area of driver's assessment or have a minimum of one year full-time experience in the evaluation and treatment of adults with cognitive and physical limitations;

(2) before the agency purchases vehicle adaptations, an evaluation of the eligible individual's needs must be conducted by a qualified driver specialist who meets the qualifications necessary to apply for ADED certification, the certification of the Association for Driver Rehabilitation Specialists, or similar organization, who is not a vendor of vehicle adaptations;

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

(4) the agency must only purchase vehicle adaptations for a vehicle that is owned by the eligible individual;

(5) the agency will contribute no more than the amount necessary for the least costly vehicle adaptations that will facilitate the mechanical ability to operate the vehicle. Least costly will be determined by an evaluation by a qualified driver specialist who meets the qualifications necessary to apply for ADED certification, the certification of the Association for Driver Rehabilitation Specialists, or similar organization and by obtaining bids through the state Department of Administration Materials Management Division;

(6) the agency must consider the availability of transportation provided by a public entity, including paratransit, in determining whether to provide vehicle adaptations. If transportation provided by a public entity, including paratransit, will allow the eligible individual to achieve the individual's employment goal, the agency must not provide vehicle adaptations; and

(7) the agency must only purchase vehicle adaptations that have not been previously owned, except that the agency 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 agency;

(b) the used equipment meets the eligible individual's needs as identified in subitem (2);

(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 agency and the eligible individual 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 individual'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;

(8) the agency must only purchase vehicle adaptations from vendors that agree to adhere to the guidelines of the National Mobility Equipment Dealers Association (NMEDA); and

(9) if a vehicle will be structurally adapted so that the eligible individual can independently drive the vehicle, before the agency purchases vehicle adaptations, the eligible individual must:

(a) successfully complete any training recommended by the qualified driver specialist in subitem (2) using a vehicle equipped with the recommended modifications. Training must be provided by an instructor meeting the requirements of the Department of Public Safety; and

(b) have a valid driver's license. If the license was obtained prior to the onset of disability, the eligible individual must retake and pass the road test required for a Minnesota driver's license.

Subp. 10. [Repealed, 20 SR 168]

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

A. Before the agency makes purchases to establish or stabilize a small business enterprise, the amount of consumer financial participation in the costs must be determined under part 3300.5040.

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

C. Agency assistance in the establishment or stabilization of a small business enterprise is for the purchase of:

(1) occupational licenses;

- (2) tools and equipment;
- (3) initial stocks and supplies;
- (4) other items that are identified on a business plan approved by the agency that are necessary for the start-up or stabilization of the small business enterprise;
- (5) technical assistance and other consultation services to conduct market analyses and develop business plans; and
- (6) other resources, to the extent such resources are authorized to be provided through the statewide workforce investment system, authorized under the Work Force Investment Act of 1998, to eligible individuals who are establishing a small business enterprise.

D. Before the agency makes purchases to assist an eligible individual to establish or stabilize a small business enterprise, the eligible individual must develop and submit to the eligible individual's rehabilitation counselor a proposed business plan for review that includes:

- (1) a description of the business, including the product and/or service, the type of legal entity for the business, location, and hours of the business;
- (2) financial data, including sources of funding, capital equipment list, balance sheet, break even analysis, net and gross income projections, and cash flow projections;
- (3) a market analysis, including business competition and a marketing plan;
- (4) a description of the technical and management expertise of the person or persons expected to manage and operate the business;
- (5) zoning, licensing, taxation, and insurance requirements;
- (6) an implementation schedule, including initial start-up costs, or a stabilization schedule including stabilization costs; and
- (7) a projection of possible risks and problems along with proposed strategies for addressing them.

E. Proposed business plans must be considered as follows:

- (1) For total projected expenditures that are equal to or less than the authority for local purchase given to a rehabilitation counselor by the Materials Management Division of the state Department of Administration, the agency may provide assistance only after the agency's small business development specialist has reviewed the business plan and found it to be complete, conducted a risk assessment of the business plan, and found the proposed business to be viable.
- (2) For total projected expenditures that are greater than the authority for local purchase given to a rehabilitation counselor by the Materials Management Division of the state Department of Administration, the agency may provide assistance only after a state or nationally chartered lending institution or a micro-lender has reviewed the business plan and found it to be complete, conducted a risk assessment of the business plan, and found the proposed business to be viable.

The lending institution or micro-lender completing the review must be separate from anyone assisting the eligible individual with the development of the business plan.

F. Total agency expenditures for the stabilization or establishment of a small business enterprise for items C, subitems (1) to (4), and J, must not exceed the lesser of:

- (1) the actual amount necessary to establish or stabilize a small business enterprise; or
- (2) an amount calculated annually by applying the percentage of increase, if any, in the Consumer Price Index, published by the United States Department of Labor, Bureau of Labor Statistics, to the total agency expenditure allowed for the previous year, where 1994 was the base year, rounded to the nearest hundred dollars.

G. The agency must not pay costs associated with the ongoing operation of a business.

H. The agency must not pay any costs of bankruptcy proceedings or costs due to the bankruptcy of an eligible individual's small business enterprise.

I. A vehicle may be provided for a small business enterprise only when it is an integral part of the business and the business cannot be run without it.

J. The cost of a vehicle, if any, must be included in the total agency expenditures under item F.

Subp. 12. Transportation services.

A. Before the agency 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 individual must, with the assistance of the agency, 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 individual to lose an immediate job placement.

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

D. The agency must not purchase, lease, or otherwise obtain, maintain, or insure vehicles for applicants or eligible individuals except according to subpart 11, item I.

E. If transportation provided by a public entity, including paratransit, is available and used by the eligible individual, agency payments for transportation must not exceed the actual cost of the transportation. When the public entity has more than one cost level that will meet the transportation needs of the eligible individual, the agency payments must not exceed the lowest cost level.

F. If transportation that will meet the needs of the eligible individual is available from a public entity, including paratransit, but the eligible individual chooses alternate transportation, agency payments for transportation must not exceed the lesser of the lowest cost level of transportation provided by a public entity or the cost of gasoline as determined in item G.

G. When transportation provided by a public entity, including paratransit, is unavailable and the eligible individual is being transported by personal vehicle, the agency's payments must not exceed the costs of gasoline and parking plus the cost of a driver if required. The agency's payments for gasoline costs must be determined by multiplying the mileage rate by the actual miles driven. The agency's payments for a driver must be determined by the usual and customary rate for the area.

H. The agency must limit transportation payments in support of postsecondary training to the amount that would apply if the eligible individual attended the Minnesota public institution closest to the eligible individual's residence which offers the broad field of study required by the employment plan.

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

J. Agency purchases of vehicle repairs must be made as follows:

(1) repair to a vehicle owned by an eligible individual must not be provided unless an eligible individual would be unable to participate in vocational rehabilitation services if vehicle repair is not provided. The agency may provide vehicle repair only if no other means of transportation, such as public transportation, including paratransit, is available and the repair is necessary for the safe and legal operation of the vehicle;

(2) the agency must not provide assistance with routine vehicle maintenance;

(3) agency payments for vehicle repairs must not exceed \$1,000 for an eligible individual in a 12-month period; and

(4) the agency will only pay for repairs when the vehicle is owned by the eligible individual.

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

A. Before the agency 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 individual must, with the assistance of the agency, participate in the search for and use of comparable benefits under part 3300.5050, subpart 2, items A, B, and D.

C. Agency 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 agency shall consider any gift aid or institutional aid in excess of tuition and fees as a comparable benefit when determining the amount the agency will pay for required books, supplies, tools and equipment, transportation, and maintenance.

Subp. 13. Postsecondary training tuition and mandatory fees.

A. Before the agency 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 individual must, with the assistance of the agency, 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 individual'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 individual's postsecondary training during the regular academic year and the estimated costs of tuition and mandatory fees for the eligible individual's summer school postsecondary training must be determined separately, based on information from the postsecondary training institution.

D. The tuition fee schedule for an eligible individual 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 individual will attend. The summer school tuition fee schedule must be prorated based on the number of summer school sessions which the eligible individual will attend if the eligible individual is attending a postsecondary institution where there are two summer school sessions.

E. The tuition fee schedule for an eligible individual 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. If the undergraduate broad field of study required by the eligible individual's employment plan is not available at a Minnesota public postsecondary institution, the agency must not apply the tuition fee schedule in determining the amount of agency payments for tuition and mandatory fees.

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

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

I. The amount, if any, the agency will pay for the cost of tuition and mandatory fees is determined by:

- (1) subtracting institutional aid from the actual cost of tuition and mandatory fees;

(2) subtracting gift aid from the remaining tuition and mandatory fees or the tuition fee schedule, if applicable, whichever is less; and

(3) subtracting consumer financial participation from the balance.

J. Regardless of the provisions in items A to I and subpart 12a, the agency 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 agency payments do not reduce the amount of gift aid or institutional aid available to the eligible individual.

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

L. The agency must only fund training at schools and/or programs that are licensed, registered, or exempt from licensing or registration requirements by, as appropriate:

(1) the Minnesota Office of Higher Education;

(2) the Minnesota Board of Barbers and Cosmetology Examiners;

(3) the Minnesota Department of Public Safety;

(4) the Minnesota Department of Transportation;

(5) the Minnesota Department of Commerce; or

(6) if the eligible individual is attending a postsecondary training program that is not in Minnesota, an equivalent agency in the state where the school is located.

Subp. 14. Job related services. Payments for job related services may be made only to:

A. CARF accredited providers;

B. providers that are in the process of applying for CARF accreditation;

C. non-CARF accredited providers with whom the agency has signed a limited-use vendor operating agreement specifying the maximum dollar amount the provider may receive annually; or

D. any vendor when the total annual dollar amount to be authorized is less than the authority for local purchase given to a rehabilitation counselor by the Materials Management Division of the state Department of Administration.

Subp. 15. Vocational adjustment training.

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

B. Payments for vocational adjustment training may be made only to:

- (1) CARF accredited providers;
- (2) providers that are in the process of applying for CARF accreditation;
- (3) non-CARF accredited providers with whom the agency has signed a limited-use vendor operating agreement specifying the maximum dollar amount the provider may receive annually; or
- (4) any vendor when the total annual dollar amount to be authorized is less than the authority for local purchase given to a rehabilitation counselor by the Materials Management Division of the state Department of Administration.

Subp. 16. **Vocational evaluation services.** Payments for vocational evaluation services may be made only to:

- A. CARF accredited providers;
- B. providers that are in the process of applying for CARF accreditation;
- C. non-CARF accredited providers with whom the agency has signed a limited-use vendor operating agreement specifying the maximum dollar amount the provider may receive annually;
- D. any vendor when the total annual dollar amount to be authorized is less than the authority for local purchase given to a rehabilitation counselor by the Materials Management Division of the state Department of Administration;
- E. an evaluation center at a postsecondary institution in the Minnesota State Colleges and Universities system; or
- F. an employer who has not hired the eligible individual.

Statutory Authority: *MS s 116J.035; 268.021; 268A.03*

History: *18 SR 2248; L 1994 c 483 s 1; 20 SR 168; 21 SR 1779; L 2005 c 112 art 2 s 41; 30 SR 1129; 34 SR 901*

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EXTENDED EMPLOYMENT PROGRAMS

3300.6000 DEFINITIONS.

Subpart 1. **Scope.** When used in parts 3300.6000 to 3300.6070, the terms defined in this part have the meanings given them.

Subp. 2. **CARF.** "CARF" means CARF International, the independent, nonprofit organization that sets standards and provides accreditation for service and quality of community rehabilitation providers.

Subp. 3. **Center-based employment.** "Center-based employment" means employment for which an individual:

A. works at a location that is owned or operated by the individual's extended employment provider;

B. receives wages and benefits from an employer who is, directly or indirectly, the individual's extended employment provider;

C. performs work that does not meet all of the conditions of either the supported employment subprogram or the community employment subprogram.

Subp. 4. **Commissioner.** "Commissioner" means the commissioner of the Department of Employment and Economic Development or the commissioner's designee.

Subp. 5. **Community employment.** "Community employment" means employment for which an individual:

A. works at a location that is not owned or operated by the individual's extended employment provider;

B. receives wages and benefits from an employer who is or is not, directly or indirectly, the individual's extended employment provider;

C. performs work that does not meet all the conditions of the supported employment subprogram.

Subp. 6. **Community employment subprogram.** "Community employment subprogram" means the commissioner's service category for individuals in community employment under subpart 5.

Subp. 7. **Competitive, integrated employment.** "Competitive, integrated employment" means work performed on a full- or part-time basis, with or without supports, for which an individual:

A. works at a location that:

(1) for state fiscal years 2019 and 2020, is or is not owned or operated by the individual's service provider, and where the individual with a disability interacts, for purpose of performing job duties, with people without disabilities in similar positions within the work unit and the entire work site, not including supervisors or individuals providing services to the employee; and

(2) for state fiscal year 2021 and thereafter, is not owned or operated by the individual's extended employment provider, and where the individual with a disability interacts, for purpose of performing job duties, with people without disabilities in similar positions within the work unit and the entire work site, not including supervisors or individuals providing services to the employee;

B. receives wages and benefits from an employer who:

(1) for state fiscal years 2019 and 2020, is or is not, directly or indirectly, the individual's extended employment provider; and

(2) for state fiscal year 2021 and thereafter, is not, directly or indirectly, the individual's extended employment provider;

C. is paid at or above the federal, state, or local minimum wage, whichever is highest, as defined in this chapter; and

D. is compensated at or above the customary wage and benefits as defined in subpart 8.

Subp. 8. **Customary wage and benefits or customary rate.** "Customary wage and benefits" or "customary rate" means the wage paid and the level of benefits provided by the employer to an individual without disabilities performing the same or similar work with comparable training, skills, and experiences with that employer.

Subp. 9. **Department.** "Department" means the Department of Employment and Economic Development.

Subp. 10. **Employer.** "Employer" has the meaning given in United States Code, title 29, section 203(d).

Subp. 11. **Extended employment provider or provider.** "Extended employment provider" or "provider" means a community rehabilitation provider that receives funding through the extended employment program.

Subp. 12. **Extended employment services.** "Extended employment services" means the development of an extended employment support plan and the delivery of ongoing employment support services.

Subp. 13. **Individual receiving extended employment services or individual.** "Individual receiving extended employment services" or "individual" means an individual who meets the eligibility requirements in this chapter and who receives extended employment services under the extended employment program. Any reference in parts 3300.6000 to 3300.6070 to an individual receiving extended employment services includes the individual's legal representative.

Subp. 14. **Minimum wage.** "Minimum wage" means an hourly wage rate not less than the higher of the rate specified in section 6(a)(1) of the United States Fair Labor Standards Act of 1938, United States Code, title 29, section 206(a)(1), or the rate specified in the Minnesota Fair Labor Standards Act, Minnesota Statutes, section 177.24, or local minimum wage law, and that is not less than the customary wage and benefits.

Subp. 15. **Ongoing employment support services.**

A. "Ongoing employment support services" means any of the services in item B that are:

- (1) identified in the individual's extended employment support plan;
- (2) related to the individual's serious functional limitations to employment; and
- (3) necessary and required to maintain or advance the individual's current employment.

B. Ongoing employment support services include:

- (1) rehabilitation technology, job redesign, or environmental adaptations;
- (2) disability awareness and accommodations training for the individual, or the individual's employer, supervisor, or coworkers, including related services to increase the individual's inclusion at the work site;
- (3) job skill training at the work site;
- (4) regular observation or supervision of the individual;
- (5) behavior and symptom management;
- (6) coordination of support services;
- (7) job-related safety training;
- (8) job-related self-advocacy skills training to advance employment;
- (9) training in independent living skills including money management, grooming and personal care, social skills, orientation and mobility, and using public transportation or drivers' training;
- (10) communication skills training including sign language training, Braille, speech reading, and the use of communication devices or other adaptive methods for the individual, or the individual's employer, supervisor, or coworkers;
- (11) follow-up services including contact with the individual's employer, supervisor, or coworkers; the individual's parents, family members, advocates, or legal representatives; and other suitable professional and informed advisors, in order to reinforce and stabilize the job placement;
- (12) training in job-seeking skills;
- (13) career planning to advance in employment; and
- (14) any other service that is identified in the individual's extended employment support plan related to the individual's serious functional limitations to employment that is needed to maintain or advance the employment of an individual in the extended employment program.

Subp. 16. **Qualified professional.** "Qualified professional" means a professional who is licensed, certified, or registered in the state where the professional practices, and who provides a diagnosis of a disability or disabilities within the scope of the professional's license, certification, or registration for an individual in the extended employment program.

Subp. 17. **Serious functional limitations to employment.** "Serious functional limitations to employment" means an individual experiences significant barriers to employment in three or more of the functional areas listed in items A through G that affect an individual's ability to maintain or advance in employment, and the individual requires ongoing employment support services to mitigate the effect of the limitations and achieve the individual's employment goals.

A. "Communication" means the ability to effectively give and receive information through words or concepts, using methods such as reading, 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, including 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 working.

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 or endurance to effectively and efficiently perform jobs requiring various levels of physical demands, psychological demands, or both.

Subp. 18. **Supported employment subprogram.** "Supported employment subprogram" means the commissioner's service category for individuals who are in competitive, integrated employment.

Subp. 19. **Work hours.** "Work hours" means the hours for which an individual performs paid work, including hours of paid holidays, paid sick time, paid vacation time, and other paid leaves of absence. The payment of a bonus or commission is not included in the computation of work hours.

Statutory Authority: *MS s 268A.15*

History: *43 SR 993*

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3300.6005 INDIVIDUAL ELIGIBILITY.

Subpart 1. Individual eligibility.

A. An individual is eligible for extended employment services if the individual:

- (1) is a Minnesota resident;

(2) has documentation of a diagnosed disability or disabilities by a qualified professional according to part 3300.6000, subpart 16;

(3) has a serious functional limitation to employment in three or more functional areas according to part 3300.6000, subpart 17; and

(4) requires ongoing employment support services to maintain and advance in employment.

B. For state fiscal year 2021 and thereafter, an individual on a medical assistance waiver, regardless of the waiver service the individual is receiving, is not eligible to receive extended employment services through the extended employment program. Individuals on a medical assistance waiver receiving extended employment services prior to state fiscal year 2021 are exempt from this provision and remain eligible to receive extended employment services.

Statutory Authority: *MS s 268A.15*

History: *43 SR 993*

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3300.6010 EXTENDED EMPLOYMENT SERVICES DELIVERY.

Subpart 1. **Person-centered practices.** A provider must deliver extended employment services in the extended employment program using person-centered practices. "Person-centered practices" means practices that help an individual set goals and develop action steps that enhance the individual's quality of life, where control over decisions rests with the individual. The provider must not influence an individual's decision making but instead serve as a facilitator of decision making.

Subp. 2. **Employment first.** A provider must consider employment first in delivering extended employment services in the extended employment program. "Employment first" means the expectation that a working age Minnesotan with a disability can work, wants to work, and can achieve competitive employment, and each person must be offered the opportunity to work and earn a competitive wage before being offered other supports and services.

Subp. 3. **Informed choice.**

A. The provider must facilitate an individual's ability to make an informed choice about the individual's employment. "Informed choice" means the individual is able to make decisions regarding the individual's employment. Informed choice requires:

(1) that the individual understands all employment options, methods to overcome barriers to employment, and the potential risks and benefits of those decisions;

(2) employment options that are not limited to disability-specific programs;

(3) community resources and supports are included in options; and

(4) the individual is provided community-based experiences on which to base employment choices on an ongoing basis using person-centered practices.

B. For an individual required to participate in a career counseling, information, and referral services consultation by the Workforce Innovation and Opportunity Act (WIOA), section 511, part 397, a provider is not required to provide duplicative informed choice information for purposes of the extended employment program. A provider must consider the career counseling, information, and referral services consultation summary report when developing an individual's extended employment support plan and retain a copy in the case record.

Statutory Authority: *MS s 268A.15*

History: *43 SR 993*

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3300.6015 EXTENDED EMPLOYMENT SUPPORT PLANS.

Subpart 1. **Extended employment support plan.** The provider must develop an extended employment support plan with each individual in the extended employment program.

Subp. 2. **Requirements of extended employment support plan.** The plan must include the following:

- A. the individual's employment goals and objectives, including:
 - (1) employment goals and goals for career advancement;
 - (2) the individual's preferences for employment setting, integration, range or level of pay, work hours, work schedules, and benefits, including reference to the individual's decision from the career counseling, information, and referral meeting regarding whether an individual expressed interest in pursuing competitive, integrated employment; and
 - (3) the timeline for reaching the individual's employment goals;
- B. the individual's vocational strengths, education, and work skills;
- C. the individual's interests and preferences for jobs and work environments;
- D. the individual's serious functional limitations to employment and how they impact an individual's ability to maintain employment;
- E. the individual's preferences for when, where, and how the required two in-person meetings per month will occur;
- F. identification of the specific ongoing employment support services that will be provided;
- G. the person or persons who will be providing the ongoing employment support services, and a plan that describes how the individual will be notified and the impact on scheduled services in the event the identified person or persons are absent or unavailable to provide scheduled services;
- H. the individual's decision to disclose or not disclose disability-related information to the individual's employer and how supports will be provided in either scenario;

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

J. the signature of the individual.

Subp. 3. **Annual review and update of extended employment support plan.** A provider must facilitate a review of an individual's extended employment support plan and update the plan at least once per year. The new or updated extended employment support plan shall be maintained in the case file. The review and update of the plan shall include the individual, the provider, and anyone else the individual would like involved. The review and update of the plan must include a discussion of each element of the extended employment support plan and must itemize each of the following:

A. the individual's satisfaction with his or her employment and the ongoing employment support services that are being provided;

B. the effectiveness of the individual's extended employment support plan in achieving the individual's vocational goals;

C. the individual's interest in changing or advancing in employment; and

D. the individual's continuing need for ongoing employment support services to maintain or advance in employment going forward.

Statutory Authority: *MS s 268A.15*

History: *43 SR 993*

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3300.6020 CASE RECORD DOCUMENTATION.

Subpart 1. **Case records.** An extended employment provider must maintain a current confidential case record for each individual served in the extended employment program. The provider shall retain each case record for a minimum of three years after the completion of the compliance audit process.

Subp. 2. **Case record elements.** Case records must include the following information:

A. personal identification data, including the individual's legal name, Social Security number, legal status, date of birth, residential status and address, and, if applicable, the name and contact information of the individual's legal representative;

B. documentation of eligibility for extended employment, including:

(1) independent source documentation of the individual's diagnosed disability by a qualified professional; and

(2) documentation identifying the individual's specific significant functional limitations to employment by one of the following:

(a) a disability examiner, employed by the department's Disability Determination Services, or other state department that evaluates claims for disability benefits using Social Security Administration guidelines to determine the significant functional limitations to employment of individuals;

(b) a vocational rehabilitation professional, employed by a state department or county unit, who is authorized by the government unit to determine the significant functional limitations to employment of individuals; or

(c) an extended employment provider, as provided in the intake paperwork;

C. pay statements from the individual's payroll agent demonstrating:

(1) start and end dates of the pay period;

(2) hours worked during the pay period;

(3) hours of paid leave used in the pay period;

(4) amount of gross wages paid in the pay period;

(5) payroll agent of record; and

(6) the individual's and the employer's contribution to the individual's federal Social Security program;

D. the date the individual was referred to the extended employment provider for extended employment services, the referral source, and the name and contact information of the person who made the referral;

E. employment data, including contact information for supervisors, job duties, work schedules, rate of pay, benefits, start dates, and termination dates;

F. the current extended employment support plan updated annually; and

G. the ongoing employment support services provided to the individual including, at a minimum, the date and services provided to the individual by the provider during the two in-person meetings per month.

Subp. 3. **WIOA, section 511.** If an individual's employment requires an annual WIOA, section 511, career counseling session, then the case record must include documentation of that session.

Statutory Authority: *MS s 268A.15*

History: *43 SR 993*

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3300.6025 PROVIDER REPORTING REQUIREMENTS.

Subpart 1. **Individual data.** A provider must submit data requested by the commissioner, including identification and contact information, eligibility information, demographic information,

intake and exit information, and work record data in a manner prescribed by the commissioner on each individual reported to the extended employment program.

Subp. 2. **Work record data.** A provider must submit work record data evidenced by pay statements from an individual's employer in order to receive payment. Work record data must include:

- A. start and end dates of the pay period or the month;
- B. hours worked during the pay period or the month;
- C. amount of gross wages paid during the pay period or the month;
- D. type of subprogram where hours are reported;
- E. payroll agent of record; and
- F. job type, as an O*Net code.

Subp. 3. **Monitoring.** The commissioner is authorized to conduct monitoring visits as a part of the contracting process to ensure the accuracy of reported data. The provider must make individual records and performance data available to the commissioner for monitoring. A provider may appeal the loss of hours and earnings resulting from the commissioner's assessment of allowable hours under part 3300.6065.

Statutory Authority: *MS s 268A.15*

History: *43 SR 993*

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3300.6030 REQUIREMENTS FOR EXTENDED EMPLOYMENT FUNDING.

Subpart 1. **Requirements for funding.** To receive funding under the extended employment program, a community rehabilitation provider must:

- A. be a public or nonprofit entity registered with the Minnesota secretary of state;
- B. comply with Minnesota Statutes, sections 268A.06 to 268A.085, regarding requirements of the board;
- C. hold accreditation in the CARF standards in this item.

(1) To provide services through the supported employment subprogram, the community employment subprogram, or the center-based employment subprogram, a community rehabilitation

provider must hold accreditation in the CARF administrative and program standards for community employment services, including job development and employment supports.

(2) To provide services through the center-based employment subprogram, a community rehabilitation provider must hold accreditation in the CARF administrative and program standards for organizational employment services; and

D. maintain CARF conformance between CARF surveys.

Subp. 2. Funding in special circumstances.

A. If a community rehabilitation provider submits evidence of any of the circumstances listed in item B, the commissioner must grant funding under the extended employment program even if the requirements for funding in subpart 1 are not met. Funding under this subpart is only valid for up to one year and cannot be used in any two consecutive fiscal years.

B. The following are special circumstances warranting grant funding:

(1) CARF cannot schedule a timely survey;

(2) CARF has completed a survey but has not delivered the results of the survey to the provider; or

(3) an extraordinary and catastrophic circumstance has occurred. For the purposes of this part, an "extraordinary and catastrophic circumstance" means a fire or other natural disaster that is beyond the control of a provider that has adversely affected or completely halted operations such that the extended employment provider has been unable to maintain the requirements for funding.

C. If a community rehabilitation provider is not a current extended employment provider and has been awarded a contract for new or expanded extended employment services and is in compliance with all requirements for funding except the requirement for accreditation by CARF, then the commissioner must grant funding under the extended employment program even if the CARF requirement for funding in subpart 1 is not met. If the provider is not accredited by CARF, the provider must demonstrate the likelihood that the provider will meet the requirements for accreditation by CARF and will receive accreditation within one year.

Statutory Authority: *MS s 268A.15*

History: *43 SR 993*

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3300.6035 FUNDING.

Subpart 1. Continuation funding.

A. Each fiscal year, a provider who held a contract with the commissioner for extended employment funding in the previous fiscal year, and maintains compliance with the requirements for funding, is eligible for continuation of the provider's funding within the limits of available appropriations for this purpose.

B. If a community rehabilitation provider held a contract for new or expanded services in the previous fiscal year, has met the identified outcomes of the new or expanded services within the time frame specified in the contract, and maintains compliance with the requirements for funding, then the provider is eligible for continuation of the provider's funding within the limits of available appropriations for this purpose.

Subp. 2. Starting point for initial extended employment contract allocations. The starting point for a provider's initial extended employment contract allocation for each subprogram in a particular fiscal year must be determined by the provider's prior fiscal year extended employment contract allocation for each subprogram, as amended.

Subp. 3. Contracted allocation subprogram distribution.

A. The commissioner must specify a provider's funding allocation amount by subprogram in the provider's contract.

B. The starting point for a provider's allocation amount by subprogram in a new fiscal year contract is a provider's allocation amount by subprogram in the previous fiscal year contract.

C. A provider may adjust the distribution of the provider's total funding allocation among the subprograms in developing the new fiscal year contract as follows:

(1) a provider may shift a portion of the provider's center-based employment subprogram allocation to the provider's community employment subprogram allocation or the provider's supported employment subprogram allocation, or both;

(2) a provider may shift a portion of the provider's community employment subprogram allocation to the provider's supported employment subprogram allocation;

(3) before May 1, 2020, a provider may make one request to shift a portion of any of the provider's subprogram allocations to any other subprogram allocation; and

(4) in state fiscal year 2021 and thereafter, a provider must not shift a portion of the provider's supported employment subprogram allocation to the provider's community employment subprogram allocation or the provider's center-based subprogram allocation. A provider must not shift a portion of the provider's community employment subprogram allocation to the provider's center-based employment subprogram allocation.

Subp. 4. Cap on funding for certain employment. The commissioner must set a cap on employment that does not meet the definition of competitive, integrated employment for each provider. The cap for each provider is set as the sum of a provider's fiscal year 2020 contract allocations for the center-based employment subprogram and the community employment subprogram. The cap is effective beginning in state fiscal year 2021.

Subp. 5. Center-based employment subprogram phaseout.

A. Beginning in fiscal year 2021, the commissioner must reduce each provider's center-based employment subprogram contract allocation as described in this subpart. The basis for each provider's

reduction each year is the provider's fiscal year 2020 center-based employment subprogram contract allocation.

B. A provider may shift the funds reduced from the center-based employment subprogram to either its community employment subprogram contract allocation or its supported employment subprogram contract allocation. The provider may also forfeit the funds. Of the funds reduced from the center-based employment subprogram allocation each year, no more than 50 percent of the funds can be shifted to the community employment subprogram.

(1) In fiscal year 2021, a provider's center-based employment subprogram contract allocation must be reduced by at least five percent of the provider's center-based employment subprogram fiscal year 2020 contract allocation.

(2) In fiscal year 2022, a provider's center-based employment subprogram contract allocation must be reduced by at least 15 percent of the provider's center-based employment subprogram fiscal year 2020 contract allocation.

(3) In fiscal year 2023, a provider's center-based employment subprogram contract allocation must be reduced by at least 20 percent of the provider's center-based employment subprogram fiscal year 2020 contract allocation.

(4) In fiscal year 2024, a provider's center-based employment subprogram contract allocation must be reduced by at least 25 percent of the provider's center-based employment subprogram fiscal year 2020 contract allocation.

(5) In fiscal year 2025, a provider's center-based employment subprogram contract allocation must be reduced by at least 35 percent of the provider's center-based employment subprogram fiscal year 2020 contract allocation.

(6) The commissioner must not provide funding to a provider for the center-based employment subprogram in fiscal year 2026 and later.

Statutory Authority: *MS s 268A.15*

History: *43 SR 993*

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3300.6040 CONTRACT ADJUSTMENTS.

Subpart 1. **Voluntary shifts.** After the extended employment contract has been executed, a provider may request voluntary shifts in the distribution of the total allocation amount among the subprograms. Voluntary shifts may be made according to the parameters in part 3300.6035, subpart 3, item C. A shift in the distribution of the allocation requires a renegotiated provider contract.

Subp. 2. Underproduction penalty.

A. After the compliance audit reconciliation process under part 3300.6060 for a previous fiscal year is complete, the commissioner must determine if a provider is subject to an underproduction penalty for a particular subprogram.

B. A provider is subject to an underproduction penalty for a particular subprogram when the provider's audited production for a particular subprogram in a fiscal year is less than 95 percent of the provider's allocation for that subprogram in the fiscal year.

C. An underproduction penalty means the commissioner must adjust a provider's subprogram allocation for that subprogram in the subsequent fiscal year's contract downward, except as provided by subpart 3.

D. The downward adjustment for that subprogram's allocation must be the audited subprogram production in the audited fiscal year plus five percent of the audited fiscal year's subprogram contract allocation.

Subp. 3. **Waiver from underproduction penalty.** If a provider is subject to an underproduction penalty in a particular subprogram as described in subpart 2, the provider is eligible for either a one-year waiver or a catastrophic waiver from the underproduction penalty.

A. If a provider earns 90 percent to 95 percent of a subprogram allocation, the provider is eligible for a one-year waiver from the underproduction penalty for a particular subprogram. The commissioner must provide the waiver without a request process. A provider is ineligible to receive the one-year waiver for a particular subprogram in any two consecutive fiscal years. A provider is eligible for the one-year waiver in each particular subprogram.

B. If a provider earns less than 90 percent of a subprogram allocation and demonstrates it is experiencing an extraordinary and catastrophic circumstance under this item, the commissioner may issue a catastrophic waiver from the underproduction penalty.

(1) For purposes of this subpart, an "extraordinary and catastrophic circumstance" means a fire or other natural disaster that is beyond the control of the provider that has adversely affected or completely halted operations such that extended employment individuals have been unable to work or extended employment provider staff have been unable to provide extended employment services.

(2) A provider seeking a catastrophic waiver to the contract starting point must request this variance in a manner prescribed by the commissioner and shall:

- (a) state the reasons for the request;
- (b) submit independent documentation of the extraordinary and catastrophic circumstances;
- (c) demonstrate how the extraordinary and catastrophic circumstances resulted in the loss of work hours of extended employment individuals; and
- (d) submit a measurable work plan for corrective action to meet contracted hours during the next contract period.

(3) A provider is eligible for the catastrophic waiver in each particular subprogram. A provider is ineligible for the catastrophic waiver for a particular subprogram in any two consecutive fiscal years.

Statutory Authority: *MS s 268A.15*

History: *43 SR 993*

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3300.6045 DISTRIBUTION OF AVAILABLE FUNDS.

Subpart 1. **Available funds.** The commissioner must distribute funds that become available due to any of the following:

- A. a general increase in the state appropriation;
- B. the underproduction penalty process as described in part 3300.6040; or
- C. unspent funds due to termination of a contract.

Subp. 2. Distribution of available funds; considerations.

A. The commissioner must consider the factors in this subpart when determining which method of distribution of additional available funds under subpart 3 will be used.

(1) Priority for allocation of funds must go toward the service needs of individuals who would benefit from ongoing employment support services.

(2) The commissioner must consider input from stakeholders such as current extended employment providers, other community rehabilitation providers, representatives of county social service agencies, vocational rehabilitation staff, and representatives from advocacy organizations.

(3) The commissioner must consider the amount of one-time funds or ongoing funds available for distribution.

(4) The commissioner must consider the relationship of additional extended employment services to current services.

(5) The commissioner must consider the performance of current extended employment services.

(6) The commissioner must consider the geographic distribution of current extended employment services and the distribution method's ability to respond to needs for geographic distribution of extended employment services.

B. When funds are available for distribution, the commissioner must distribute funds on a one-time basis, a time-limited basis, or by adding to a provider's subsequent year initial extended employment contract starting point.

Subp. 3. **Distribution method; supported employment overproduction.** If the commissioner distributes available funds through the supported employment overproduction provision, the commissioner must distribute funds to extended employment providers that have overproduced in the supported employment subprogram based on a proportionate share of the total supported employment subprogram overproduction by all extended employment providers. Overproduction

means an extended employment provider's audited supported employment subprogram hours exceed the provider's supported employment contract allocation in a given fiscal year.

Subp. 4. **Distribution method; supported employment incentive.** If the commissioner distributes available funds through the supported employment incentive provision, the commissioner must distribute funds to extended employment providers based on each provider's audited supported employment hours divided by the total audited supported employment hours of all extended employment providers in the audited fiscal year.

Subp. 5. **Distribution method; new or expanded services.** If the commissioner distributes available funds through the new or expanded services provision, the commissioner must develop and publish a request for proposals for new or expanded services. New or expanded services must only be to provide ongoing employment support services to individuals in competitive, integrated employment. Community rehabilitation providers may apply for distribution of available funds by responding to a request for proposals for new or expanded services issued by the commissioner.

A. In developing the request for proposals for new or expanded extended employment services, the commissioner shall consider how to foster innovation and promote state-of-the-art best practices in providing ongoing employment support services to individuals in competitive, integrated employment. The commissioner may waive program requirements as outlined in this chapter to conduct pilot projects, foster innovation, and promote state-of-the-art best practices in competitive, integrated employment.

B. The underproduction penalty in part 3300.6040 does not apply to a new or expanded services contract allocation. A contract for new or expanded services must include production goals within identified time frames. If a provider's audited production for the new or expanded services in an audited fiscal year is less than the production goals identified in the contract for new or expanded services, the provider must develop and implement a corrective action plan to meet the goals in the contract. The commissioner must approve and monitor the corrective action plan. If the provider does not administer extended employment services according to the corrective action plan approved by the commissioner, the commissioner must withdraw allocated state funds for new and expanded services under part 3300.6055.

Subp. 6. **Distribution method; supported employment subprogram rate adjustment.** If the commissioner distributes available funds through a supported employment subprogram rate adjustment, the commissioner must use the available funds to adjust the statewide uniform reimbursement rates for the supported employment subprogram as provided under part 3300.6050.

Statutory Authority: *MS s 268A.15*

History: *43 SR 993*

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3300.6050 RATES.

A. The unit of distribution of extended employment program funding is the payment for one work hour performed by an eligible individual and reported to the commissioner in the extended employment program.

B. For each subprogram, the statewide uniform reimbursement rates apply for each reported work hour up to the maximum contracted allocation for that subprogram.

C. The commissioner must set statewide uniform reimbursement rates each fiscal year. The commissioner must determine rates by adjusting rates of the previous fiscal year in proportion to available funding. Rate increases are available for the supported employment subprogram only.

D. The commissioner must publish statewide uniform reimbursement rates for each subprogram as part of the information provided during the contracting process.

Statutory Authority: *MS s 268A.15*

History: *43 SR 993*

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3300.6055 WITHDRAWAL OF FUNDS.

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

A. extended employment services are not being administered according to:

(1) this chapter and Minnesota Statutes, chapter 268A;

(2) the terms, conditions, or duties of the extended employment program grant contract;

or

(3) a corrective action plan approved by the commissioner; or

B. the provider has not complied with the commissioner's written requests to implement changes to extended employment services.

An extended employment provider must submit information requested by the commissioner to carry out the duties in this chapter.

Subp. 2. **Notice of withdrawal.** Except where there is an imminent danger to the health or safety of individuals, 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.

Statutory Authority: *MS s 268A.15*

History: *43 SR 993*

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3300.6060 PROVIDER COMPLIANCE AUDIT.**Subpart 1. Compliance audit examinations conducted.**

A. After June 30 of each year, each provider must undergo a compliance audit for the previous fiscal year. The audit must be conducted according to the requirements of this subpart and the commissioner's Compliance Audit Standards, which are incorporated by reference, not subject to frequent change, and available on the department's extended employment web page. The commissioner 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 commissioner must make updated standards available on the department's website no later than May 31 of each year.

B. The audit must be performed by independent auditors at the provider's expense.

C. The provider must submit a completed compliance audit report to the commissioner by October 31 of each year.

Subp. 2. **Reconciliation payments.** Based on the results of the compliance audit, the commissioner must reconcile the value of reported work hours previously paid but found ineligible or work hours previously not paid but found eligible according to the provider's independent auditor's compliance audit report.

Statutory Authority: *MS s 268A.15*

History: *43 SR 993*

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3300.6065 PAY AND BENEFITS.

A. An individual in the extended employment program 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, and the federal Fair Labor Standards Act, when the number of hours worked is compared with the income realized. Self-employed individuals must pay timely self-employment taxes on income from employment and, if necessary during the provider's compliance examination, provide documentation of reported self-employment tax obligation.

B. An extended employment provider that is the employer of record for an individual must provide the following minimum personnel benefits:

(1) either:

(a) vacation, sick leave, and holidays, provided on a proportional basis as provided to the nonexempt, full-time staff of the provider agency, provided that, at a minimum, individuals are entitled to 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, provided

that, at a minimum, individuals must be entitled to ten days of paid leave and five paid holidays per calendar year; and

(2) other mandated state and federal leave benefits.

Statutory Authority: *MS s 268A.15*

History: *43 SR 993*

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3300.6070 APPEAL PROCEDURE.

Subpart 1. **Notice of intent to appeal.** A community rehabilitation provider appealing commissioner decisions must provide a written notice of intent to appeal to the commissioner. The written notice of intent to appeal must be received by the commissioner within 30 days from the date that the community rehabilitation provider received notice from the commissioner of the action that the community rehabilitation 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 commissioner is final. The notice of intent to appeal must state the grounds for the appeal, including facts and issues that will be addressed at a contested case hearing.

Subp. 2. **Informal review.** Within 30 days after the commissioner receives a notice of intent to appeal, the commissioner shall contact the community rehabilitation provider and informally review the reasons for the appeal. The informal review by the commissioner may be oral or written. Before the end of the 30-day period for informal review, the commissioner must make a written decision regarding the community rehabilitation provider's appeal. The decision by the commissioner must state the commissioner's position on the issue under appeal, the basis of that position, and the community rehabilitation provider's right to request a contested case hearing.

Subp. 3. **Contested case.** After the informal review under subpart 2, the community rehabilitation 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 commissioner no more than 30 days after the date when the community rehabilitation provider received written notice of the decision of the commissioner following the informal review. Within 15 days from the date the commissioner receives a community rehabilitation provider's request for a contested case hearing, the commissioner 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 Minnesota Statutes, sections 14.57 to 14.62.

Subp. 4. **Decision.** The decision of the administrative law judge must be recommended for the commissioner's adoption. The commissioner's decision on the issue under appeal is the final decision.

Statutory Authority: *MS s 268A.15*

History: *43 SR 993*

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