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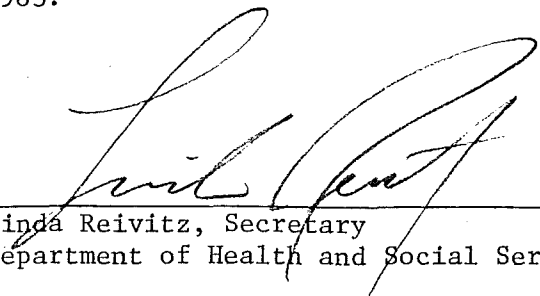
STATE OF WISCONSIN)
) SS.
DEPARTMENT OF HEALTH AND SOCIAL SERVICES)

TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETINGS:

I, Linda Reivitz, Secretary of the Department of Health and Social Services and custodian of the official records of said Department, do hereby certify that the annexed rules relating to business enterprises operated by blind persons were duly approved and adopted by this Department on March 22, 1983.

I further certify that said copy has been compared by me with the original on file in this Department and that the same is a true copy thereof, and of the whole of such original.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the official seal of the Department at the State Office Building, 1 W. Wilson Street, in the city of Madison this 22nd day of March, A.D. 1983.



Linda Reivitz, Secretary
Department of Health and Social Services

SEAL:

6-1-83

ORDER OF THE
DEPARTMENT OF HEALTH AND SOCIAL SERVICES
ADOPTING RULES

To create HSS 260, relating to supervised business enterprises operated by blind persons.

Analysis Prepared by the Department of Health and Social Services

For many years the Department has had a program of supervised business enterprises operating under the Randolph-Sheppard Act (20 USC 107) for the benefit of blind persons. The proposed chapter, HSS 260, Wis. Adm. Code, covers the legal relationships which exist between the Department's Business Enterprise Program for the Blind and its licensees. The program strives to expand employment opportunities for the blind with an emphasis on food service operations on federal and state properties. Private properties are also made use of when appropriate to program needs and resources.

Under this program, the Department evaluates proposed locations for business enterprises, selects and trains operators, and supervises the business enterprises under a system of licenses and agreements.

The Department collects fees from its licensed operators to offset some administrative costs. This currently affects approximately 35 blind individuals who are licensed operators. Set-aside funds for this purpose totaled \$80,552 in FY 81. Program revenue generated from set-aside funds is used in state-federal match formulas to generate additional program revenue. Specific dollars generated vary with matching formulas.

These rules and the related state and federal statutes and federal regulations cover the respective rights of the agency and the affected individuals in all aspects of program operation including selection of participants, terminations, the on-going responsibilities of both parties, and the appeals of adverse decisions.

The views of those persons directly affected by the rules were obtained through a series of meetings and reviews. These rules have been in effect for several years in the form of non-rule policy, procedure, and guidelines. Portions are drawn from current contracts.

Pursuant to authority vested in the Department of Health and Social Services by s.227.014(2), Stats., the Department hereby adopts rules interpreting ss.47.08 and 47.09, Stats., as follows:

SECTION 1. Chapter HSS 260 of the Wisconsin Administrative Code is created to read:

HSS 260
SUPERVISED BUSINESS ENTERPRISES OPERATED BY BLIND PERSONS

- HSS 260.01 PURPOSE AND AUTHORITY
 - HSS 260.02 DEFINITIONS
 - HSS 260.03 COMMITTEE OF OPERATORS
 - HSS 260.04 ACCESS BY OPERATORS TO INFORMATION ABOUT THE PROGRAM
 - HSS 260.05 GRIEVANCE PROCEDURES
 - HSS 260.06 LICENSEES
 - (1) Eligibility
 - (2) Issuance of License
 - HSS 260.07 SELECTION OF SUITABLE LOCATIONS
 - HSS 260.08 SELECTION OF OPERATORS
 - (1) Department responsibility
 - (2) Notification of vacancies
 - (3) Order of preference
 - (4) Inventory
 - (5) Probationary period
 - HSS 260.09 SETTING UP THE BUSINESS ENTERPRISE
 - (1) Equipment
 - (2) Initial stock
 - (3) Bonding
 - (4) Income from vending machines
 - (5) Insurance
 - (6) Licenses and permits
 - HSS 260.10 OPERATING THE BUSINESS ENTERPRISE
 - (1) Operator behavior
 - (2) Employment practices
 - (3) Cash basis and credit
 - (4) Merchandise
 - (5) Display of license
 - (6) Records and reports
 - (7) Payment of fees
 - (8) Penalty for late report or fees
 - (9) State sales tax
 - HSS 260.11 SET-ASIDE FUNDS
 - (1) Requirement
 - (2) Amount
 - (3) Accounting
 - (4) Uses
 - HSS 260.12 CORRECTIVE ACTION
 - (1) Conduct or performance shortcomings
 - (2) Corrective action alternatives
 - (3) Notice of findings
 - (4) Grounds for suspension
 - (5) Grounds for demotion
 - (6) Grounds for termination
 - (7) Informing the operator of rights
 - (8) Surrender of premises
 - (9) Inventory
 - HSS 260.13 OTHER REASONS FOR SUSPENDING OR TERMINATING A LICENSE OR TRANSFERRING AN OPERATOR TO A LESS-DEMANDING BUSINESS
 - (1) Suspension
 - (2) Termination
 - (3) Transfer of operator
 - (4) Follow-up activity
 - HSS 260.14 OPERATOR'S AGREEMENT
- APPENDIX

HSS 260
SUPERVISED BUSINESS ENTERPRISES OPERATED BY BLIND PERSONS

HSS 260.01 AUTHORITY AND PURPOSE. This chapter sets forth standards and guidelines for administration by the department of a program of supervised business enterprises operated by blind persons. The department establishes new business enterprises and, as feasible, develops, expands and upgrades existing enterprises which are not providing an adequate income to operators or not providing a level of service meeting customer demand. The chapter is promulgated pursuant to rule-making authority conferred by s.227.014(2), Stats., and implements ss.47.08 and 47.09, Stats., as well as the Randolph-Sheppard Act, as amended, 20 USC 107.

HSS 260.02 DEFINITIONS. As used in this chapter: (1) "Active participation" means a formal, ongoing process involving the mutual exchange of information and advice in regard to planning and review of proposed program policies, standards and procedures, with the understanding that only the department has the responsibility to administer the program consistent with applicable statutes, regulations and this chapter, and that the right of the committee to actively participate does not affect that responsibility.

(2) "Blind" has the meaning prescribed in s.47.01, Stats.

(3) "Business enterprise" means a vending facility or other small for-profit enterprise operated by or to be operated by one or more blind persons supervised by the department.

(4) "Committee" means a committee of operators of supervised business enterprises, the members of which are elected to represent all licensees in the state.

(5) "Competency" means fulfilling the requirements of this chapter.

(6) "Contract" means the agreement between the department and the owner or occupant of the premises where the business enterprise is located.

(7) "Department" means the department of health and social services.

(8) "Division" means the department's division of vocational rehabilitation.

(9) "Fair value" means the price acceptable to the department and the operator, or, when the two parties do not agree, the value as appraised by any person agreed to by both parties, in either case taking into account the condition of the equipment, its remaining useful life, location, installation and removal costs and other relevant factors permitted by law, to arrive at a depreciated price.

(10) "Gross sales" means all revenues received from the operation of the business enterprise, including those assigned to the operators by the department.

(11) "License" means a written document issued by the department to a blind person, authorizing the blind person to operate a business of the type named in the document.

(12) "Licensee" means a person eligible to become the operator of a business enterprise.

(13) "Management services" means supervision, inspection, quality control, consultation, accounting, regulating, inservice training and other services provided on a systematic basis to support and improve business enterprises.

(14) "Net proceeds" means the amount remaining from the sale of articles or services of business enterprises and any vending machine or other income accruing to an operator, after deducting the cost of the sales and other expenses but excluding set-aside charges required to be paid by the operator.

(15) "Operator" means a blind licensee who is operating a supervised business enterprise on federal or other property.

(16) "Operator's agreement" means the document issued by the department that authorizes an operator to conduct business at a specific location.

(17) "Permit" means the agreement with the controlling body or organization of the federal building or other property in which the business enterprise is located.

(18) "Randolph-Sheppard Act" means 20 USC 107.

(19) "Set-aside" means the money collected by the department from operators, based on a percentage of net proceeds, to be used for purposes stated in s.HSS 260.11(4).

(20) "Vendor-owner" means a business enterprise operator who has exercised the option to purchase the stock and equipment of the business enterprise.

HSS 260.03 COMMITTEE OF OPERATORS. (1) There shall be an elected committee of operators to actively participate with the department in the administration of the business enterprise program. The department shall call and conduct elections of committee members. Only operators may nominate candidates and only operators may vote for committee members. All operators shall be given the opportunity to nominate candidates. All operators shall be given the opportunity to vote for committee members.

(2) The committee shall have not less than 5 members nor more than 9 members, all elected by the operators. Elections shall be held each year. Each member shall serve a term of 2 years, except that at the first election at least 2 members shall be elected for 1 year terms.

(3) The committee shall meet at least 4 times a year to carry out its responsibilities.

(4) The department shall communicate with the committee and receive communications from the committee on matters within the purview of the committee.

(5) Committee responsibilities shall include but are not limited to:

(a) Active participation with the department in its work of making major administrative decisions and policy and program development decisions affecting the overall administration of the business enterprise program;

(b) Receiving and transmitting grievances to the department at the request of blind licensees and serving as an advocate for these licensees in connection with their grievances;

(c) Active participation with the department in the development and administration of a system for transfer and promotion of operators;

(d) Active participation with the department in development of operator training and retraining programs;

(e) Sponsoring, with the assistance of the department, meetings and instructional conferences for operators within the state;

(f) Active participation with the department, on at least an annual basis, in establishing the amount of set-aside funds needed for the coming year and the subsequent charges to arrive at that amount. The department shall maintain adequate records to support the reasonableness of the charges for each purpose for which the funds are spent;

(g) Active participation with the department in updating and making other revisions in the format of the operator's agreement and in this chapter. (See appendix)

(6) The committee may delegate any of its work to subcommittees or individual committee members.

HSS 260.04 ACCESS BY OPERATORS TO INFORMATION ABOUT THE PROGRAM. (1) In accordance with the Randolph-Sheppard Act, each operator under this part shall be permitted access to all program and financial data relevant to the operation of the supervised business enterprise program, including quarterly and annual financial reports, provided that this disclosure does not violate applicable federal or state laws pertaining to the disclosure of confidential information.

(2) At the request of an operator, department staff shall arrange a convenient time to assist in the interpretation of such financial data.

(3) If the department cannot provide the requested information in a routine manner, the department may charge for the services involved in obtaining the requested data on an actual cost basis.

HSS 260.05 GRIEVANCES. Grievances of operators, other licensees and applicants for licenses under this chapter shall be processed in accordance with the following procedure:

(1) Any operator or other affected party dissatisfied with any action or decision of the department may file a written grievance with the committee under s.HSS 260.03(5)(b).

(2) If the aggrieved party is dissatisfied with the outcome of the committee review, the aggrieved party or the committee may forward the written grievance to the division for administrative review by a staff member of the division. The division staff member shall arrange a mutually convenient time and place for the administrative review, and shall notify the grievant of the outcome of the review by certified mail within 10 working days following the review.

(3) If the aggrieved party is dissatisfied with the outcome of the administrative review, the aggrieved party may, within 30 working days after the date of the written notice of the outcome of the review, file a written request for a full evidentiary hearing before a panel appointed by the division administrator consisting of persons knowledgeable about rehabilitation of the blind but who are not staff members of the division. The panel shall make a recommendation to the division administrator who shall notify the grievant of his or her final decision by certified mail within 10 working days after receipt of the panel's recommendation.

(4) If the aggrieved party continues to be dissatisfied with the decision under sub. (3), the individual may, within 30 working days after the date of the notification of the fair hearing outcome, file a complaint with the secretary of the U.S. department of education who will convene an ad hoc arbitration panel to make a final and binding decision on the parties. (See 34 CFR 395.13)

HSS 260.06 LICENSEES. (1) ELIGIBILITY. The following are eligibility requirements for new licensees in the business enterprise program:

(a) The applicant shall be a citizen of the United States.

(b) The applicant shall be blind.

(c) The applicant shall have adequate training to operate the business enterprise efficiently and in accordance with this chapter, as evidenced by successful completion of a training program or equivalent experience, in either case as approved by the department. In offering training opportunities, preference shall be given by the department to persons who need employment.

(d) The applicant shall be otherwise capable of operating the business enterprise, as determined by the department.

(2) ISSUANCE OF LICENSE. (a) A license shall be issued by the department for an indefinite period subject to suspension or termination.

(b) A license is not transferable.

HSS 260.07 SELECTION OF SUITABLE LOCATIONS FOR BUSINESS ENTERPRISES. (1) The department may establish a business enterprise at a particular location only if establishment of the enterprise at that location will contribute to the maximum development of economic opportunities for the blind and will provide for the most productive use of program assets.

(2) The determination under sub. (1) shall be made by the department on the basis of an evaluation of all relevant factors disclosed and recorded as the result of a comprehensive survey of the particular location. Factors to be evaluated shall include but are not limited to population, traffic, competition, continued availability of the location, type of premises, and potential return on investment.

HSS 260.08 SELECTION OF OPERATORS. (1) DEPARTMENT RESPONSIBILITY. The department shall select operators for business enterprises from among persons licensed to operate business enterprises. The licensee deemed to be best suited for an available business enterprise shall be selected. The department may appoint a committee of operators and department staff to make a recommendation about the best suited licensee for the available business enterprise.

(2) NOTIFICATION OF VACANCIES. The department shall notify all licensees in writing of vacancies in business enterprises throughout the state with instruction for applying to fill the vacancies.

(3) ORDER OF PREFERENCE. In selecting an operator for a vacancy the department shall first consider applicants who are currently operators and thereafter applicants who are licensees but not currently operators.

(4) INVENTORY. When a new operator takes over a business enterprise, the department and the operator or the operator's representative shall immediately conduct a physical inventory of equipment, accessories and merchandise.

(5) PROBATIONARY PERIOD. All operators shall serve a probationary period of 6 months, including operators who have been promoted or transferred. The department may shorten the probationary period to 3 months following an operator's satisfactory management of the business enterprise during that period, or the department may lengthen the probationary period to one year.

HSS 260.09 SETTING UP THE BUSINESS ENTERPRISE. (1) EQUIPMENT. (a) Department responsibility. The department shall provide each business enterprise with suitable equipment and shall arrange for all normal repair and replacement of this equipment except for an enterprise which has vendor owned equipment.

(b) Title to equipment. 1. "Department ownership." All rights, title to and interest in business enterprise equipment, other than equipment owned and maintained by vending machine companies or suppliers, is vested in the department unless the operator exercises the option to purchase the equipment as provided in subd. 2.

2. "Vendor ownership." a. All rights, title to and interest in business enterprise equipment may be vested in an operator, as authorized by s.47.08, Stats., and the Randolph- Sheppard Act, provided that the operator has competently operated the business enterprise under supervision of the department for one year, and if the organization responsible for the building in which the business enterprise is located grants permission. The vendor-owner shall remain under supervision of the department.

b. The business enterprise equipment shall be sold at a fair value based on the condition and serviceability of the equipment at the time of sale. Merchandise shall be sold at the original purchase price. Total payment shall be due to the department when the bill of sale is signed.

c. A bill of sale between the operator and the department shall contain the terms and conditions of the sale, in accordance with this chapter and the conditions of any permit or contract governing the premises on which the business enterprise is located. Upon completion of the sale the operator shall be responsible for maintaining, repairing, and replacing all business enterprise equipment, and the set-aside charge for these services is suspended. In the event the operator fails to meet all obligations to provide proper maintenance, repair and replacement of equipment, the department may elect to make the necessary repair or replacement and charge the vendor-owner for such repair or replacement.

d. The department retains a first option to repurchase within 90 days the equipment and stock in the event the vendor-owner dies, ceases to be a licensee, transfers to another business enterprise, or requests in writing purchase by the department. If the option to repurchase is not exercised, the department shall, if requested, provide a written statement to the vendor-owner giving the reasons for not exercising the option.

(c) Receipt of equipment. Equipment furnished to the operator or removed by the department from the operator shall be acknowledged by a receipt signed by the operator or his or her agent or by the department's representative, as is appropriate.

(d) Care of equipment. Equipment furnished by the department shall be used only for the purpose stated in the operator's agreement. The operator shall exercise reasonable care in the use and maintenance of that equipment in order to keep it in good condition.

(e) Change or addition of equipment. The operator shall not add to or change any piece of equipment without prior written approval of the department.

(2) INITIAL STOCK. (a) Department responsibility.

1. The department shall provide each business enterprise with an adequate initial stock, including merchandise, supplies, and operating capital, as determined by the department to be adequate to begin operation. This level shall be adjusted annually by an index determined by current wholesale prices for such stock.

2. The department shall reimburse the operator if he or she leaves a particular location due to transfer, resignation or dismissal, for any usable and salable stocks and supplies above the current adjusted level. The operator shall reimburse the department if the closing inventory is less than the current adjusted level. In the event of an operator's death, the estate shall be reimbursed accordingly or the estate shall reimburse the department. The department shall determine the amount to be paid to or collected from an operator or an operator's estate within 60 calendar days after completion of the closing inventory. Payment or collection shall occur within 30 days after determination of the amount to be paid or collected.

(b) Operator responsibility. 1. The operator shall acknowledge initial stock furnished by the department by signing a receipt to that effect.

2. The operator shall maintain a stock level and amount of operating capital adequate to conduct the business enterprise efficiently and effectively, as determined by the department.

(3) BONDING. All operators except vendor-owners shall be bonded and shall be assessed an annual bonding charge by the department.

(4) INCOME FROM VENDING MACHINES. (a) Income from vending machines on state or other property within reasonable proximity to and in direct competition with a business enterprise shall be assigned to the operator of such business enterprise. A vending machine is in reasonable proximity to and in direct competition with a business enterprise if it vends articles of a type authorized in the permit and is so located that it attracts customers who would otherwise patronize the business enterprise.

(b) Income from vending machines not within reasonable proximity to or in direct competition with a business enterprise may be used for management services for the business enterprise program.

(c) In all cases, income from vending machines shall be distributed as provided under the Randolph-Sheppard Act and 34 CFR 395.8.

(5) INSURANCE. (a) Every business enterprise shall have adequate liability and fire insurance at levels established by the State of Wisconsin office of risk management.

(b) If the department obtains the necessary insurance coverage, the operator shall reimburse the department.

(c) Unless otherwise agreed, the first premium for insurance coverage for each new business enterprise shall be paid by the department as a part of the initial installation costs.

(6) LICENSES AND PERMITS. (a) Each business enterprise shall have all licenses and permits required by law for the conduct of the business enterprise.

(b) If the department obtains the required licenses and permits, the operator shall reimburse the department for them.

HSS 260.10 OPERATING THE BUSINESS ENTERPRISE. (1) OPERATOR BEHAVIOR. (a) General. The operator shall:

1. Perform faithfully and to the best of his or her ability all duties necessary to the proper conduct and operation of the business enterprise;

2. Operate the business in compliance with all applicable provisions of federal, state, and local law;

3. Operate the business in accordance with this chapter and the permit or contract with the controlling body or organization of the building or property in which the business is located; and

4. Cooperate with duly authorized representatives of the department in the performance of their official responsibilities.

(b) Prohibited behavior by operator and employees. The operator or any employee of the operator, while engaged in the pursuit of duties and responsibilities as operator on the premises where the business enterprise is located or elsewhere, shall refrain from any action or conduct which may bring or reflect discredit to the business enterprise operation, to the owner or manager of the premises where the business enterprise is located or to the department's business enterprise program. Such prohibited action or conduct shall include, but shall not be limited to, the following:

1. Use of alcoholic beverages, controlled substances as defined in ch. 161, Stats., or other drugs unless prescribed by a physician for the user;

2. The presence or possession of alcoholic beverages, except as these relate to the business, on the premises where the business enterprise is located;

3. Conduct offensive under current community standards;

4. The use of language blatantly offensive to a reasonable person;
5. Embezzlement;
6. The making of false reports; or
7. The commission of a felony or a misdemeanor.

(c) Prohibited absences. Except as otherwise provided in this chapter, absentee management, supervision and operation of the business enterprise and the realization of its net proceeds by the operator in absentia for other than brief, non-routine periods is prohibited.

(d) Relief periods. The operator may establish a schedule of relief periods for employees during business hours, subject to the approval of the department.

(e) Vacations. The operator may take a maximum of 30 working days vacation each calendar year after notifying the department of the name, address, and telephone number of the relief operator.

(f) Illness. Necessary absence of the operator due to personal illness is allowable if the absence does not exceed one period of 30 consecutive working days in any calendar year, or 2 or more periods totaling not more than 45 working days in any calendar year. The department may extend the allowable period of absence where special circumstances exist.

(2) EMPLOYMENT PRACTICES. (a) Operator responsibility. The operator shall:

1. Employ and compensate such employees as are necessary to the effective and efficient operation of the business enterprise;
2. Employ and compensate a relief operator to insure continuous operation of the business enterprise during an absence of the licensed operator;
3. Comply with all applicable labor and civil rights laws;
4. Limit the persons employed to preclude unnecessarily excessive costs;
5. Terminate the employment of any person whose continued employment is detrimental to the business enterprise;
6. Keep and preserve legally required detailed records of payroll and payroll deductions; and
7. Observe the following order of preference in hiring qualified persons:
 - a. Severely disabled applicants.
 - b. Non-severely disabled applicants.
 - c. Non-disabled applicants.

(b) Department responsibility. The department shall:

1. Assist each operator in identifying qualified disabled persons to be considered for employment; and

2. Notify the operator of any situation arising from the operator's employment practices which is detrimental to the operation and requires prompt and immediate correction.

(3) CASH BASIS AND CREDIT. (a) The operator shall transact all business on a 30 calendar day cash basis and shall pay all obligations promptly when due.

(b) The operator shall pay and discharge any obligations within 30 days after written notice from the department that:

1. The operator is delinquent in the payment of any business accounts; or

2. The department has received a complaint concerning monies due a business creditor of the operator, or has been asked to provide assistance in the collection of these monies.

(4) MERCHANDISE. Only merchandise of a class or type authorized by the permit or contract shall be sold by the operator or the operator's employees.

(5) DISPLAY OF LICENSE. The operator shall at all times conspicuously display at the business enterprise location the license issued by the department and shall neither cause nor permit the license to be covered or removed.

(6) RECORDS AND REPORTS. (a) Operator responsibility. The operator shall:

1. Establish and maintain a business checking account in a depository commercial bank chartered to do business in the state of Wisconsin, deposit all business receipts and revenues therein, and insure that business and personal funds shall not become mingled in the account;

2. Keep and preserve a full and complete record of all receipts and disbursements required by internal revenue service guidelines;

3. Prepare and submit to the department, on or before the 5th working day of each month, a sales report for the previous month along with all bills paid that month;

4. Make available to the department during regular business hours all records and books of account for the purpose of review or audit; and

5. Provide or report to the department in the form prescribed information about the business enterprise required by this chapter or otherwise requested by the department.

(b) Department responsibility. The department shall assist the operator in the establishment of proper books of account and record-keeping procedures.

(7) PAYMENT OF FEES. The operator shall, within 30 days from the date of invoice, send all fees to the department which are owed to the department for the preceding month. Fees may be paid by check or money order made payable to the department's business enterprise program and sent to the address on the invoice.

(8) PENALTY FOR LATE REPORT OR FEES. (a) All reports required pursuant to sub. (6)(a) received after the due date shall be assessed a late penalty charge as determined annually by the department in consultation with the committee.

(b) All fees required pursuant to s.HSS 260.11 received after the due date shall be assessed an interest charge of 1% per month (12% per annum) of the unpaid balance.

(c) If the reports or fees are late due to reasons beyond the operator's control, the penalty may be waived by the department upon receipt of the set-aside fees or fully completed reports accompanied by a statement justifying the lateness.

(9) STATE SALES TAX. (a) Every operator shall obtain a Wisconsin seller's permit in the operator's name.

(b) If the department obtains the seller's permit, the operator shall reimburse the department for the permit.

(c) The operator shall pay in full within prescribed time limits all state sales tax due and shall comply with the provision of ss.77.51 and 77.52, Stats.

HSS 260.11 SET-ASIDE FUNDS. (1) REQUIREMENT. The department shall collect, maintain and administer funds from the net proceeds of the operation of each business enterprise, including vendor-owned enterprises, in accordance with provisions of this section.

(2) AMOUNT. (a) Funds that the department requires be set aside shall be computed on the basis of a percentage of the individual operator's net proceeds for a given month. The department may each year reconsider and change that percentage to ensure that set-aside funds are sufficient for the uses made of these funds. Set-aside charges for vendor-owned enterprises shall be at a reduced rate to reflect vendor-owner responsibility for maintenance, repair and replacement of all business enterprise equipment.

(b) The department shall bill operators each month for the set-aside charge.

(3) ACCOUNTING. Set-aside funds maintained by the department shall be accounted for in accordance with generally accepted principles of fund accounting.

(4) USES. Set-aside funds may be expended only for the following purposes:

(a) To maintain and replace equipment;

(b) To purchase new equipment;

(c) To pay for management services;

(d) To assure a fair minimum return to operators; and

(e) To establish and maintain retirement or pension funds, health insurance contributions and provisions for paid sick leave and vacation time.

HSS 260.12 CORRECTIVE ACTION. (1) CONDUCT OR PERFORMANCE SHORTCOMINGS. If the operator fails to conduct the business enterprise in compliance with the operator's agreement or to maintain reasonable performance levels as demonstrated by comparison with prior periods of operation in the same location or other business enterprises of a similar type, the department shall review the evidence with the committee and solicit the committee's recommendations for corrective action.

(2) CORRECTIVE ACTION ALTERNATIVES. Corrective action alternatives available to the department include but are not limited to:

- (a) Specific or additional management and supervision services;
- (b) Suspension of the license for a period not to exceed 30 days;
- (c) Demotion of the operator to a less-demanding business enterprise; and
- (d) Termination of the license.

(3) NOTICE. (a) Except as provided in par. (b), no suspension, demotion or termination shall be made until the department gives notice to the operator, by registered or certified mail, with return receipt requested, of facts or conduct which warrant the intended action, and the operator has been given an opportunity to show compliance with all lawful requirements for the retention of the license.

(b) The department may immediately suspend an operator's license, followed by notice and the opportunity to contest the action, if in the judgement of the department there is a substantial probability that the behavior of the operator will result in harm to the health, safety or welfare of other persons.

(4) GROUNDS FOR SUSPENSION. An operator's license may be suspended for a period not to exceed 30 calendar days, except in cases of extended illness or incapacity, on one or more of the following grounds:

- (a) Failure to operate the business enterprise in compliance with the operator's agreement;
- (b) Failure to maintain acceptable performance levels after being provided the opportunity for additional training; or
- (c) Refusal to accept needed training without cause.

(5) GROUNDS FOR DEMOTION. An operator may be demoted to a less-demanding business enterprise on one or both of the following grounds:

- (a) Recurring noncompliance with terms of the operator's agreement; or
- (b) Repeated failure to maintain acceptable levels of performance in operation of the business enterprise.

(6) GROUNDS FOR TERMINATION. An operator's license may be terminated for one or more of the following reasons:

- (a) Withdrawal of the operator without notice;

(b) Withdrawal of the permit or contract by the controlling body or organization of the building or property in which the business enterprise is operating, due to fault of the operator;

(c) Decision by the department after recommendation of the committee that an enterprise is not being operated in accordance with the law or this chapter or within the terms and conditions of the agreement between the department and the operator;

(d) Any willful or malicious destruction of any equipment furnished to the operator;

(e) Willful falsification of any record or report required to be kept or made by the operator; or

(f) Misconduct specified in s.HSS 260.10(1).

(7) INFORMING THE OPERATOR OF RIGHTS. In the event of suspension, demotion or termination, the operator shall be informed of his or her right to review of the decision as provided in s.HSS 260.05.

(8) SURRENDER OF PREMISES. (a) Upon suspension, demotion or termination, the operator shall vacate the business enterprise premises upon the effective date of that action.

(b) If a vendor-owner does not vacate the premises as required under par. (a), the department may remove any of the property of the business enterprise owned by the vendor-owner and place this property in storage at the expense of the vendor-owner or else deliver it to the vendor-owner at that person's expense.

(9) INVENTORY. Upon suspension, demotion or termination, a physical inventory and valuation of equipment, accessories and merchandise shall be made by the department and the operator or the operator's representative. If the operator chooses not to be present and not to be represented by an agent, the department may engage the assistance of a third party.

HSS 260.13 OTHER REASONS FOR SUSPENDING OR TERMINATING A LICENSE OR TRANSFERRING AN OPERATOR TO A LESS-DEMANDING BUSINESS. (1) SUSPENSION. An operator's license may be suspended by the department for an indefinite period in the event of extended illness or incapacity when there is reasonable expectation, based on medical evidence, that the operator will return to the business. The operator shall be reinstated when the period of incapacity has ended as certified by a physician.

(2) TERMINATION. An operator's license may be terminated by the department for any of the following reasons:

(a) Improvement of the operator's vision to the extent that the operator is no longer legally blind;

(b) Delivery to the department of a written request from the operator for cancellation of the license;

(c) Extended illness or incapacity of the operator preventing personal operation of the business enterprise, when there is no reasonable expectation, based on medical evidence, that the operator can return to work; or

(d) Death of the operator.

(3) TRANSFER OF OPERATOR. On written request of the operator, the department may transfer that person to a smaller or otherwise less-demanding business enterprise.

(4) FOLLOW-UP ACTIVITY. (a) At the time that an operator is notified that the operator's license is being suspended or terminated, the operator shall be informed of his or her right to challenge the decision as provided in s.HSS 260.05.

(b)1. The operator shall vacate the business enterprise premises on the effective date of the suspension, termination or transfer.

2. If a vendor-owner does not vacate the premises as required under subd.1., the department may remove any of the property of the business enterprise owned by the vendor and place it in storage at the vendor-owner's expense or else deliver it to the vendor-owner at that person's expense.

(c) Upon suspension, termination or transfer, a physical inventory and valuation of equipment, accessories and merchandise shall be made by the department and the operator or the operator's representative. If the operator chooses not to be present and not to be represented by an agent, the department may engage the assistance of a third party.

(d) Upon notification of the death of an operator, the department shall arrange with the representatives of the estate for the settlement of accounts on the basis of the interests of affected parties.

HSS 260.14 OPERATOR'S AGREEMENT. (1) The form for the agreement between the department and an operator shall be as found in the appendix to this chapter.

(2) The agreement between the department and an operator shall include, as attachments, the following exhibits specific to the business enterprise:

(a)1. An inventory of the equipment which shall state the purchase price of each item, and

2. An inventory of the initial stock of merchandise and supplies which shall state the total purchase price of the initial stock;

(b) A copy of this chapter;

(c) A copy of the permit or contract between the department and the owner or occupant of the premises where the business enterprise is located; and

(d) Any other documents which in the judgment of the department are required by the particular circumstances.

(3) The department shall ensure that the department and the operator each have a signed copy of the agreement including all attachments.

APPENDIX

DIVISION OF VOCATIONAL REHABILITATION
STATE DEPARTMENT OF HEALTH AND SOCIAL SERVICES
OPERATOR'S AGREEMENT

THIS AGREEMENT is made on this _____ day of _____ 19__ between the Department of Health and Social Services, hereafter referred to as "Department," and _____ residing in the township, county, or city of _____ in the State of Wisconsin, hereinafter referred to as "operator."

The Department has arranged for or leased the right and privilege of placing _____ as the operator of a business enterprise to be located on the premises at _____ known as _____.

THESE parties do hereby mutually agree as follows:

ARTICLE I. The Department agrees, subject to Chapter HSS 260, Wis. Adm. Code, to grant to the operator the right to conduct business at this location with the understanding that the agreement is, and shall remain, personal only to the operator named in this agreement and may be terminated at any time with due cause or notice by the Department or on the decision of the operator upon 30 days written notice.

ARTICLE II. The operator accepts the agreement and shall conduct the business enterprise described above, subject to Chapter HSS 260, Wis. Adm. Code, with the express understanding that the operator is not an employee of the Department but is an operator occupying business premises under license and agreement.

ARTICLE III. In the event that the operator shall breach any of the terms or conditions hereof or any of Chapter HSS 260, Wis. Admin. Code, all rights of the operator hereunder shall cease and terminate, and the department is hereby authorized to enter into and upon said business enterprise and to take full and complete charge thereof and to evict the operator. An operator may appeal this action as outlined in Chapter 260, Wis. Adm. Code.

IN WITNESS WHEREOF, the parties have caused this agreement to be executed

_____ Date:
DHSS Representative

_____ Date:
Operator

This agreement and Chapter HSS 260, Wis. Admin. Code, have been read and explained to the operator and he or she has received copies of the same.

WITNESS _____

WITNESS _____

The rules contained in this order shall take effect on the first day of the month following publication in the Wisconsin Administrative Register as provided in s. 227.026(1), Stats.

Wisconsin Department of Health and
Social Services

Date:

Linda Reivitz
Secretary

SEAL:

The rules contained in this order shall take effect on the first day of the month following publication in the Wisconsin Administrative Register as provided in s. 227.026(1), Stats.

Wisconsin Department of Health and
Social Services

Date: March 22, 1983



Linda Reivitz
Secretary

