

CR 86-169

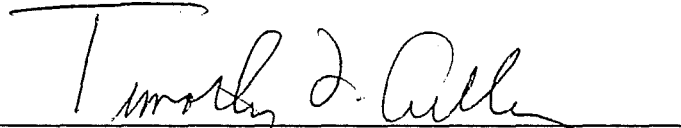
CERTIFICATE

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

I, Timothy F. Cullen, Secretary of the Department of Health and Social Services and custodian of the official records of the Department, do hereby certify that the annexed rules relating to supervision of business enterprises operated by blind person were duly approved and adopted by this Department on March 17, 1987.

I further certify that this copy has been compared by me with the original on file in the Department and that this copy is a true copy of the original, and of the whole of the 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 17th day of March, 1987.



Timothy F. Cullen, Secretary
Department of Health and Social Services

SEAL:

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ORDER OF THE
DEPARTMENT OF HEALTH AND SOCIAL SERVICES
RENUMBERING, AMENDING, REPEALING AND RECREATING, AND CREATING RULES

To renumber HSS 260.08(4) and (5); to amend HSS 260.01 and 260.08(1) and (3); to repeal and recreate HSS 260.07; and to create HSS 260.08(4), relating to selecting locations for supervised business enterprises operated by blind persons and giving preference for transfer to a new location to an operator whose sales have declined sharply due to factors beyond his or her control.

Analysis Prepared by the Department of Health and Social Services:

The Department's rules for its program of business enterprises operated by blind persons are modified to take account of changing conditions at particular business enterprise locations that result in a substantial decline of sales for a business due to factors beyond the control of the Department or of the operator. A substantial decline in sales is understood as a decline of at least 35% from the end of one 3-month period to the end of the next 3-month period or a reduction to zero sales in a shorter period of time. When sales fall by that much, the Department is permitted to close the business or convert it to a vending machine operation. When there is a substantial decline in sales, the operator must be given priority for transfer when the Department selects operators for the next two program vacancies that occur in the state.

The rules are further modified by addition of a procedure for notifying a successful applicant that he or she has been selected for a vacant operator position and for that person to accept or refuse the offer.

The Department's authority to revise its business enterprise program rules is found in s.227.11(2)(a), Stats., as this relates to the Department's program responsibilities set out in s.47.03(4) to (8), Stats.

Pursuant to authority vested in the Department of Health and Social Services by ss.47.03(4) to (8) and 227.11(2)(a), Stats., the Department hereby renumbers, amends, repeals and recreates and creates rules interpreting s.47.03(4) to (8), Stats., as follows:

SECTION 1. HSS 260.01 is amended to read:

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)~~ 227.11(2)(a), Stats., and implements ~~ss. 47.08 and 49.09~~ s. 47.03(4) to (8), Stats., as well as the Randolph-Sheppard Act, as amended, 20 USC 107.

SECTION 2. HSS 260.07 is repealed and recreated to read:

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

(b) The determination under par. (a) shall be made on the basis of an evaluation of relevant factors disclosed and recorded as the result of a survey of the location. Factors to be evaluated shall include population, traffic, competition, continued availability of the location, type of premises and potential return on investment.

(2) EFFECT OF LOSS OF SALES. (a) Closing or converting the business. If the business enterprise established under sub. (1) is adversely affected by factors beyond the control of the department or of the operator so that there is at least a 35% decline in sales at that location from one 3-month period to the next or a reduction to zero sales in a shorter period of time, the department may close that business enterprise or convert it to a vending machine operation and may establish a new business enterprise under sub. (1) at a different location. The amount of loss shall be reviewed and verified by the department.

(b) Transfer following loss of sales. 1. The operator affected by par. (a) may request transfer to another location, and, subject to par. (c), shall be given preference in the selection process under s. HSS 260.08 when the next 2 program vacancies occur, regardless of income or location of the program vacancies within the state, except that preferential transfer rights shall not apply to seasonal operators.

2. If the operator affected by par. (a) elects not to transfer to one of the next 2 available openings, his or her priority for transfer shall be exhausted and further transfer shall be in accordance with s. HSS 260.08.

(c) Transfer dependent on satisfactory performance and ability to handle new tasks. An operator may transfer under this subsection only if his or her past performance is judged satisfactory by the department with the active participation of the committee and with consideration of the views of building management in the affected location, and if the department finds that the operator is able to perform the anticipated new tasks. The new tasks may result from a change in management responsibilities, increased scope of the business, change in number and type of employees or change in overall job duties. If an otherwise competent operator lacks the skills needed in the new enterprise, the department shall help the operator acquire those skills through an appropriate retraining program.

(d) Probationary period following transfer. An operator who transfers to a new location under this subsection shall serve a probationary period as described in s. HSS 260.08(6).

SECTION 3. HSS 260.08(1) and (3) are amended to read:

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 ~~licensees~~ licensee for the available business enterprise.

(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, except that preference shall be given to a licensee who was an operator and has requested transfer to a new location in accordance with s. HSS 260.07(2)(b).

SECTION 4. HSS 260.08(4) and (5) are renumbered HSS 260.08(5) and (6).

SECTIONS 5. HSS 260.08(4) is created to read:

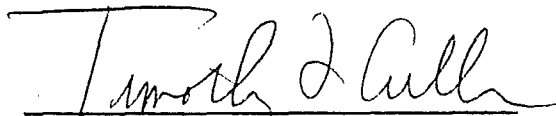
HSS 260.08(4) METHOD OF NOTIFYING A SUCCESSFUL APPLICANT. The department shall notify the successful applicant in writing by return receipt requested mail of its offer of a vacant operator position to that individual. Within 5 working days after receipt of an offer, the successful applicant shall notify the department in writing by return receipt requested mail that he or she accepts or refuses the offer. Refusal of an offer is final and irrevocable. An applicant who changes his or her mind after accepting an offer and who was an operator at another location at the time of acceptance is not permitted to recover the operator position vacated upon acceptance of the new position unless all affected licensees, the committee and the department agree.

The repeal and rules contained in this order shall take effect on the first day of the month following their publication in the Wisconsin Administrative Register, as provided in s. 227.22(2), Stats.

WISCONSIN DEPARTMENT OF HEALTH AND
SOCIAL SERVICES

DATE: March 17, 1987

By:


Timothy F. Cullen, Secretary

SEAL:



State of Wisconsin

DEPARTMENT OF HEALTH AND SOCIAL SERVICES
1 West Wilson Street, Madison, Wisconsin 53702

Tommy G. Thompson
Governor

RECEIVED

Timothy F. Cullen
Secretary

March 17, 1987

MAR 18 1987

Mailing Address:
Post Office Box 7850
Madison, WI 53707

Revisor of Statutes
Bureau

Mr. Orlan Prestegard
Revisor of Statutes
9th Floor - 30 on the Square
Madison, Wisconsin 53702

Dear Mr. Prestegard:

As provided in s. 227.20, Stats., there is hereby submitted a certified copy of HSS 260, administrative rules relating to supervision of business enterprises operated by blind persons.

These rules are also being submitted to the Secretary of State as required by s. 227.20, Stats.

These rule changes do not have a significant impact on a substantial number of small businesses as defined in s. 227.114(1)(a), Stats.

Sincerely,

Timothy F. Cullen
SECRETARY

Enclosure