

CR 93-131

CERTIFICATE

STATE OF WISCONSIN)
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DEPARTMENT OF HEALTH AND SOCIAL SERVICES)

I, Gerald Whitburn, Secretary of Department of Health and Social Services and custodian of the official records of the Department do hereby certify that the annexed rules relating to co-management of supervised business enterprises operated by visually impaired persons were duly approved and adopted by this Department on March 22, 1994.

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 22nd day of March, 1994.



SEAL:

Gerald Whitburn, Secretary
Department of Health and Social Services



6-1-94

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

To renumber HSS 260.02 (4) to (20) and 260.14(2)(d); to amend HSS 260.14 (2)(c); and to create HSS 260.02 (4), (10), (15) and (16), 260.08 (7) and 260.14 (2)(d), relating to supervised business enterprises operated by blind persons.

Analysis Prepared by the Department of Health and Social Services

This revision of the Department's rules for its program of supervised business enterprises operated by blind persons addresses several issues related to co-management. The issues include deciding when more than one manager is needed at a location to provide the desired level of service and resolving conflicts between co-managers about respective responsibilities.

The rulemaking order adds definitions for co-manager, management need, duty list and existing management deficiencies; makes enterprise co-managers equally responsible for business operations and for complying with ch. HSS 260, and provides that they share equally in profits unless they and Department staff agree on a different distribution; provides that need for two or more managers will be determined by Department staff based on an assessment of operational requirements and with participation of the elected Committee of Blind Vendors; specifies the times when an assessment may be performed; and requires each co-managed enterprise to have a managerial duty list developed by the co-managers and approved by Department staff.

The Department's authority to renumber, amend and create these rules is found in ss. 47.03 (4) to (8) and 227.11 (2)(a), Stats. The rules interpret s. 47.03 (4) to (8), Stats.

SECTION 1. HSS 260.02 (4) to (20) are renumbered (5) to (9), (11) to (14) and (17) to (24).

SECTION 2. HSS 260.02 (4), (10), (15) and (16) are created to read:

HSS 260.02 (4) "Co-manager" means an operator who shares the duties and responsibilities of operating a business enterprise with another operator or other operators.

(10) "Existing management deficiencies" means deficiencies in operational requirements rather than in individual operator performance, which may occur when the operator is working at full capacity but is unable to fulfill all operational requirements of the business.

(15) "Managerial duty list" or "duty list" means a comprehensive descriptive statement of the co-managers' shared

and individual duty assignments and mutual performance expectations.

(16) "Management need" means the number of operators necessary to maintain or improve efficiency, profits or food handling and safety.

SECTION 3. HSS 260.08 (7) is created to read:

HSS 260.08 (7) CO-MANAGEMENT. (a) Definition. In this subsection, "assessment" means an examination of operational requirements that include but are not limited to operating hours or days, volume of merchandise sold, number of peak sales periods per day, complexity and extensiveness of product line and inventory, number of employees, total labor hours per day, ratio of employee hours to management hours, sales generated per employee, required management skill level, the scope of managerial responsibilities and stipulations of agreement with building management.

(b) Need. 1. A co-manager position may be established only when department staff, with participation of the committee, determines that an additional operator is necessary to satisfy the management needs of the enterprise.

2. Department staff shall determine management need on the basis of an assessment of operational requirements undertaken with participation of the committee.

3. A new facility shall have an assessment before any vacancy is posted. If the need for co-management is uncertain, the vacancy announcement shall indicate that co-management may be needed in the future.

4. A facility that is operational shall have an assessment when department staff determine that an assessment is appropriate or when an operator requests an assessment.

(c) Criteria for co-management. 1. At an existing facility, a co-manager position may be added when department staff determine it is needed for facility management, as identified in one of the following ways:

a. Through an assessment done in accordance with par. (b);
or

b. Through an assessment after department staff have determined that existing management deficiencies threaten the ongoing operation of the business.

2. A co-manager position may be eliminated only when that position is vacant and department staff, with participation of

the committee, determine that the management need of the business is satisfied without it. This assessment shall indicate the need for any additional employe hours with the elimination of the co-manager position. The position may not be eliminated if additional employe hours exceed 9 hours per day or 45 hours per week.

(d) Managerial duty list. 1. When a co-manager position is announced, the announcement shall contain an existing or proposed managerial duty list. The duty list may not be revised while the position is vacant.

2. For a facility opened after the effective date of this subsection [revisor to insert effective date] the approved co-managers shall submit the managerial duty list to the department within 60 days after the opening date of the business. Department staff may, within 30 days after receiving the duty list, and with the advice of the committee, reject the duty list or require that it be revised. If a co-manager disagrees with the action of the department, he or she may file a grievance in accordance with s. HSS 260.05.

3. For a facility that is in operation on the effective date of this subsection [revisor to insert effective date] the approved co-managers shall submit the managerial duty list to the department within 60 days after the effective date of this subsection [revisor to insert effective date].

4. Co-managers of a business that has had a duty list previously approved by the department may revise the duty list, subject to approval of the department. The revised duty list shall reflect a new co-manager's previous work experience and shall be further revised as his or her skill level progresses. The committee may participate in the approval process at the request of an affected operator or the department. Within 30 days after receiving a revised duty list, department staff may reject that list or require additional changes in it. If a co-manager disagrees with the action of the department, he or she may file a grievance under s. HSS 260.05. Pending a decision on the grievance, the original duty list shall remain in effect except for those items that are not in dispute.

(e) Equal responsibility and equal income sharing. 1. Co-managers shall be equally responsible for business operations and for complying with this chapter.

2. Co-managers shall equally share the income of the business unless they and the department agree on a different distribution or if the effect of equal sharing is to reduce the percentage or share of the income of the business received by a co-manager who was a co-manager on the effective date of this subsection [revisor to insert effective date].

SECTION 4. HSS 260.14 (2)(c) is amended to read:

HSS 260.14 (2)(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

SECTION 5. HSS 260.14 (2)(d) is renumbered 260.14 (2)(e).

SECTION 6. HSS 260.14 (2)(d) is created to read:

HSS 260.14 (2)(d) In the case of a co-managed business enterprise, a managerial duty list developed by the co-managers of the business and approved by the department; and

The rule 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. 227.22(2), Stats.

Wisconsin Department of Health and
Social Services

Dated: March 22, 1994

By: _____

Gerald Whitburn
Gerald Whitburn
Secretary

SEAL:

