

06/20/86

STATE OF MINNESOTA

DEPARTMENT OF JOBS AND TRAINING

IN THE MATTER OF THE PROPOSED RULES
OF THE DEPARTMENT OF JOBS AND TRAINING
GOVERNING THE VOCATIONAL REHABILITATION
PROGRAM RELATING TO THE ESTABLISHMENT OF
CENTERS FOR INDEPENDENT LIVING, MINNESOTA
RULES, PART 3300.3100 TO 3300.3350.

STATEMENT OF NEED
AND REASONABLENESS

INTRODUCTION

These rules are presented by the Department of Jobs and Training in accordance with the provisions of the Minnesota Administrative Procedures Act (APA), Minnesota Statutes 14.05 and the Rule Hearing Procedure, Minnesota Rules, parts 1400.0300 to 1400.1200. The proposed rules have been developed as required by Minnesota Statutes Section 129A.10, subdivision 3 (1985 Supp.). Section 129A.10 requires the commissioner to establish certification criteria for funding centers for independent living.

DISCUSSION

3300.3100 SCOPE AND PURPOSE.

Minnesota Statute Section 129A.10, subdivision 3, requires the Department of Jobs and Training to promulgate rules on the certification of Centers for Independent Living. The purpose of the rules is to certify that a center is eligible to receive state funds. The law requires substantial consumer involvement to assure that the center will "improve opportunities for persons with disabilities to live and function more independently in their home, family and community."

3300.3150 DEFINITIONS.

Subpart 1. Scope. This subpart specifies the applicability of the definitions. Inclusion of definitions is reasonable and necessary to provide shorter forms of reference, to avoid unnecessary repetition of titles and explanations, to minimize ambiguity, and to introduce current and preferred terminology.

Subpart 2. Center for independent living. This definition is necessary to provide consistency in its use and clarity of the

services provided based on the nature of the program. Because of state and federal mandates which govern centers for independent living it is necessary to specify the nature of its charge and scope of services.

Subpart 3. Commissioner. This definition and use of the term "commissioner" are the same as used in other rules of the Department of Jobs and Training and are reasonable.

Subpart 4. Eligible Applicant Organization. This definition provides the structure of the organization and purpose of the services to be provided as well as board composition of applicants for certification as required by law.

Subpart 5. Independent Living. This definition outlines the goal of the services offered by centers and is therefore reasonable to distinguish as a status or condition of living.

Subpart 6. Persons with a Disability. A person with a disability must be distinguished governing the independent living program from persons eligible for other human services and to meet the intent of the federal and state laws.

3300.3200 CERTIFICATION REQUIREMENTS

Subpart 1. Purpose. This subpart indicates to applicant organizations that certain certification requirements as specified in Minnesota Statute Section 129A.10, subdivision 3 must be met before programs are granted funding by the commissioner.

Subpart 2(A). The first requirement incorporates by reference Minnesota Statutes 129A.01, paragraph (h) which states that a center for independent living must establish a governing board. This requirement is necessary since it is statutory.

Subpart 2 (B). This subpart requires a center for independent living to be incorporated under Minnesota Statutes, Chapter 317 to prove its nonprofit status.

Subpart 2 (C). The state and federal mandate to a center for independent living is to serve persons who otherwise may not be eligible for or receive vocational rehabilitation services and who, because of the severity of the disability, may not be served or benefit from services available to others. This requirement assures that those persons most in need of independent living service will not be denied the service based on the nature or severity of the disability.

Subpart 2(D). This subpart requires centers to have a risk protection program and is necessary because it affirms the public policy which encourages businesses to carry certain types of liability insurance or be self insured. The requirement is

reasonable because it assures the continuing programming for disabled persons should the center for independent living experience unforeseen losses.

Subpart 2 (E) requires a center that engages in fund raising activities to conform to laws regarding such activities.

Subpart 2 (F) requires centers to comply with Chapter 1340 of the State Building Code which requires buildings to be accessible to persons with disabilities.

Subpart 2 (G) requires that centers provide a core of 5 of the services authorized by Minnesota Statutes, Chapter 129A.10, Subdivision 1. This is reasonable in that a core group of services must be established by all centers to maintain the fundamental nature and purpose of the center and assure that a minimum level of independent living service needs are being met as dictated by the needs in the community.

Subpart 2 (H) provides assurance that the center will meet state and federal mandates to involve consumers in the policy setting, program development and service delivery of a center and provides ways to assure meeting the ongoing and changing needs of the consumer. This is reasonable in that it ensures that centers remain responsive to the consumer and the community.

3300.3250 CERTIFICATION PROCEDURE.

Purpose. This subpart makes it clear that the purpose of certification of centers for independent living is to assure that the program meets minimum requirements of operation so that disabled persons will be served adequately. It is necessary to inform program providers of Department certification procedures so that they can comply with them. It is reasonable for the Department to establish operational requirements which ensure more consistent and efficient program administration.

Subpart 1. Eligible Applicants Organizations provides that the commissioner will designate specific times when applications for state funding may be submitted and specifies the entities that are eligible to apply for funding.

Subpart 2. Application forms specifies that applicants must use forms as provided by the department in the certification process and informs of the availability of Department assistance.

Subpart 3. Reports, plans and budgets requires applicants to submit reports, plans and budgets as required by law and as reasonable to carry out the operation of the program.

Subpart 4. Time Limitation. This subpart notifies centers that the certificate will be issued for a period not to exceed three years. It is necessary to inform centers of this procedure so that they are aware of the need for recertification and take the

necessary steps attendant to this process. Three years is a reasonable period because it is consistent with past Department practices and is also the time period that most national accrediting bodies establish for accreditation of rehabilitation facilities.

3300.3300 TERMINATION OF PROGRAM CERTIFICATION AND PRELIMINARY NOTICE.

This subpart makes clear that program certification is a prerequisite for receipt of state funds. Termination of program certification results in the withdrawal of any allocated funds and creates the right of appeal. It is reasonable that certification should constitute a threshold for receiving state funds and that termination of program certification should permit the withdrawal of such funds. Termination of program certification occurs where the program fails to meet the appropriate legal requirements.

Subpart 1. Termination of Certification is appropriate when it fails to comply with state law and these rules as specified in paragraphs A, B and C.

Subpart 2. Preliminary Determination of a Termination of Certification is provided to take into account situations beyond the control of the center and for which reasonable and timely steps can be taken to remedy the cause of the preliminary determination.

Subpart 3. Withdrawal of State Funds is necessary in instances where a center's certification is terminated. These criteria are reasonable because it is expected that use of state funds will be guided by established criteria.

3300.3350 RIGHT OF APPEAL

This subpart provides that an entity has the right to appeal the commissioner's decision to withdraw funds from any of its centers for independent living. It is necessary to establish appeal rights because Minnesota Statutes 129A.08, Subdivision 2 provides for "reasonable notice and opportunity for hearing" before allocated funds which are not needed for a program may be withdrawn. The Department has determined that the appeal rights should also be provided in other situations when funds are withdrawn from programs. This is reasonable because a tenet of administrative law allows an agency to provide for more due process than is specifically set out in the governing statute.

Subpart 1. Scope. This subpart is necessary to inform centers for independent living of the applicability of the appeals process.

Subpart 2. Notice of Intent to Appeal. This subpart is necessary

in order to inform the Division of Rehabilitation Services that a center intends to appeal the withdrawal of state funds. It is reasonable that the notice be in writing so that a record may be retained. A 30-day period to exercise the right to appeal is reasonable since that is ample time to organize and compile facts and issues relevant to an appeal. A deadline for exercising the right of appeal is necessary so that contested issues may be addressed in a timely manner.

Subpart 3. Informal Contact. The informal mechanism provided in this subpart is reasonable because it is both time-and-cost efficient for the Department and the aggrieved party.

Subpart 4. Contested Case Appeal. This subpart conforms the appeal procedure to the Administrative Procedures Act. A formal hearing is necessary to maximize the due process afforded the appellant. It is reasonable because it provides for an evidentiary hearing before a disinterested party.

Subpart 5. Proposal for Decision. This subpart conforms to the requirements of the Administrative Procedures Act.

Subpart 6. Decision and Order. This subpart specifies that the final decision in an appeal is to be made in writing by the Commissioner as required by the Administrative Procedures Act.

Subpart 7. Legal Representation. This subpart is reasonable because it affords an aggrieved party the benefit of legal representation at every step of the appeals process.

SMALL BUSINESS CONSIDERATIONS

Many of the Centers for Independent Living are small businesses as defined in Minnesota Statutes, Section 14.115, Subdivision 1. Whenever proposed rules may affect small businesses, an agency must consider methods for reducing the impact of the proposed rules on small businesses.

DRS has considered each of the methods listed in Minnesota Statutes, Section 14.115, Subdivision 2. Under the proposed rules:

A. There are no compliance or reporting requirements for small businesses;

B. Nor are there any schedules or deadlines for the requirements in A.;

C. Thus, consolidation or simplification of the requirements of A. does not apply to the proposed rules;

D. There are no required design or operational standards to replace with performance standards for small, businesses; and

E. Small businesses cannot be exempted from any or all requirements of the proposed rules because Minnesota Statutes, Section 129.A.10, subdivision 3 (1985 Supp.), requires center's for independent living to be certified. To exempt centers from

Section 129A.10 because they are small businesses would defeat the statutory mandate to certify centers for funding purposes.

Thus, pursuant to Minnesota Statutes, Section 14.115, Subdivision 3, the Minnesota Department of Jobs and Training finds that it is not feasible to incorporate any of the methods listed above (Items A through E) into the proposed rules.