



Lillian M. Lowery, Ed.D.
State Superintendent of Schools

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TO: Members of the State Board of Education
FROM: Lillian M. Lowery, Ed.D. *Lowery*
DATE: February 24, 2015
SUBJECT: COMAR 13A.11.01, .04 and .08 (AMEND)
Programs for Adults with Disabilities
PERMISSION TO PUBLISH

PURPOSE:

The purpose of this action is to request permission to publish amendments to COMAR 13A.11.01, .02, .06 and .08, Programs for Adults with Disabilities.

HISTORICAL BACKGROUND:

Amendments in Chapter .01, Vocational Rehabilitation Services have been proposed to: 1) update the sliding scale used to determine financial participation of eligible individuals in cost of services, and 2) update and incorporate by reference the Division's fee schedule.

DORS has a financial need policy which requires that consumers who have the ability to pay contribute to the cost of certain rehabilitation services, unless the consumer is a recipient of Social Security disability benefits. The consumer's contribution is based on a sliding scale which takes into account family income and the number of dependents. It is based on the Poverty Guidelines established annually by the United States Department of Health and Human Services.

The Division has a fee schedule which includes general fees for medical and rehabilitation services, fees paid to community rehabilitation programs for approved rehabilitation services, and fees which DORS charges for services provided at the Workforce & Technology Center.

Amendments in Chapter .04, Maryland Business Enterprise Program for the Blind, have been proposed consistent with other regulations in COMAR, 34CFR395, and current business practices.

Amendments in Chapter .08, Workforce and Technology Center, have been proposed to provide technical updates and clarification regarding administration and service provision.



EXECUTIVE SUMMARY:

To comply with the Federal Regulations and the Rehabilitation Act Amendments of 1998 and to implement other technical changes and clarifications, revisions are being proposed in the following chapters:

Changes in Chapter 01, Vocational Rehabilitation Services

Regulation .03-1 Incorporation by Reference

- The Division of Rehabilitation Services Fee Schedule, Rehabilitation Services Manual V (RSM V) has been updated as of August 2014. Updates reflect changes in fees paid by the Division for services for applicants and eligible individuals, and fees charged by the Division for services provided by its Workforce and Technology Center.

Regulation .15 Financial Participation Schedule

- The sliding scale has been updated consistent with the 2014 Poverty Guidelines of the U.S. Department of Health and Human Services.

Changes in Chapter 04, Business Enterprise Program for the Blind

The Committee of Blind Vendors has reviewed and agreed to the following changes while updating the program's Administrative Manual:

Regulation .02 Definitions

- Eliminated the definition of "Annex," as annex facilities are no longer available.
- Added a definition of "Combined Facility," a new facility type that requires the support of a primary facility.
- Redefined "Vending Machine Income," consistent with that of COMAR 21.11.09 and 34CFR395.1(z)

Regulation .06 Assignment of Vendors

- Eliminates the reference to annex locations

Regulation .11 Vending Machine Income

- Clarifies that unassigned vending machine income may be used for establishment and maintenance of retirement or pension plans, for health insurance contributions if so

determined by a of majority licensed vendors holding an operating agreement; consistent with 34CFR395.8(c)

Regulation .13 Administrative Review, Full Evidentiary Hearing, and Arbitration

- Establishes a timeframe of 15 calendar days for a vendor to request an Administrative Review for any action for which they are dissatisfied. Currently there is no time limit for a vendor to request an Administrative Review although time limits are imposed on all other parties through this process.

Regulation .20 Operating Agreement

- Requesting repeal of this regulation as requirements for the Operating Agreement are described in regulation 07.

Changes in Chapter 08 Workforce & Technology Center

Regulation .02 Definitions and Regulation .04 Admission Criteria

- Removed reference to the Community Living Skills Training (CLST) program as CLST has been discontinued.

Regulation .07 Services

- Changed “pre-vocational services” to “work readiness services”
- Clarifies that Room, Board and Recreation does not include therapeutic recreation services
- Clarifies that the center provides Autism Services
- Added Deaf and Hard of Hearing Services

Regulation .08 Service Plans

- Retire this regulation as WTC’s CARF accreditation no longer requires a service plan and all consumers attending WTC are either receiving assessment services or have an Individualized Plan for Employment developed with the referring DORS counselor.

Regulation .11 Disciplinary Action

- Now includes residential services staff as WTC staff authorized to impose appropriate disciplinary action.

Regulation .12 Client Orientation

- Removes mention of “client handbook” in referring to the Admission Packet WTC students receive.

Regulation .14 Career Assessment Services

- Clarifies the information to be considered in developing the specific written evaluation plan for each consumer provided this service.

Regulation .16 Records

- Removed a duplicate entry

Fiscal Impact. There will be a minor fiscal impact by these regulations.

Very few DORS consumers contribute to the cost of services; minor updates in the sliding scale are anticipated to have a negligible effect on cost of services. Regarding changes in the fee schedule, some fees saw a minor increase, while some saw a minor decrease, negating substantive impact on DORS.

Impact on Individuals with Disabilities. There will be a minor impact on individuals with disabilities. The small minority of individuals who are required to contribute financially to the cost of services may see a small change in that amount.

ACTION:

I request publication of the proposed amendments.

LML:ph

Attachment

Title 13A STATE BOARD OF EDUCATION

Subtitle 11 PROGRAMS FOR ADULTS WITH DISABILITIES

Chapter 01 Vocational Rehabilitation Services

Authority: Education Article, §§21-301—21-306 and 21-402—21-404, Annotated Code of Maryland

.03-1 Incorporation by Reference.

A. In this chapter, the following documents are incorporated by reference.

B. Documents Incorporated.

(1) Division of Rehabilitation Services Fee Schedule, Rehabilitation Services Manual V (RSM V) (Maryland State Department of Education, updated through [June 2012] August 2014).

(2) (text unchanged)

.15 Financial Participation Schedule.

[Annual Amount of Individual/Family Financial Participation]								
Available Income	1	2	3	4	5	6	7	8
\$23,000 and below	\$ 0	\$ 0	\$ 0	\$ 0	\$ 0	\$ 0	\$ 0	\$ 0
\$23,001—\$27,000	219	0	0	0	0	0	0	0
\$27,001—\$31,000	363	254	0	0	0	0	0	0
\$31,001—\$35,000	536	413	0	0	0	0	0	0
\$35,001—\$39,000	740	602	324	0	0	0	0	0
\$39,001—\$43,000	974	820	513	0	0	0	0	0
\$43,001—\$47,000	1,238	1,069	731	394	0	0	0	0
\$47,001—\$51,000	1,531	1,348	980	613	0	0	0	0
\$51,001—\$55,000	1,855	1,656	1,259	861	464	0	0	0
\$55,001—\$59,000	2,209	1,995	1,568	1,140	713	0	0	0
\$59,001—\$63,000	2,593	2,364	1,906	1,449	991	534	0	0
\$63,001—\$67,000	3,006	2,762	2,275	1,787	1,300	813	0	0
\$67,001—\$71,000	3,450	3,191	2,674	2,156	1,639	1,121	604	0
\$71,001—\$75,000	3,924	3,650	3,103	2,555	2,008	1,460	913	0
\$75,001—\$79,000	4,428	4,139	3,561	2,984	2,406	1,829	1,251	674
\$79,001—\$83,000	4,961	4,658	4,050	3,443	2,835	2,228	1,620	1,013
\$83,001—\$87,000	5,525	5,206	4,567	3,931	3,294	2,656	2,019	1,381
\$87,001+ *	6.5%	6.125%	5.375%	4.625%	3.875%	3.125%	2.375%	1.625%

* To determine amount of individual/family participation when the available income is above \$87,000, multiply the individual/family income times the percentage. The Financial Participation Scale is based on 2012 Poverty Guidelines of the U.S. Department of Health and Human Services.]

Annual Amount of Individual/Family Financial Participation								
Available Income	1	2	3	4	5	6	7	8
\$24,000 and below	\$ 0	\$ 0	\$ 0	\$ 0	\$ 0	\$ 0	\$ 0	\$ 0
\$24,001—\$28,000	228	0	0	0	0	0	0	0
\$28,001—\$32,000	375	263	0	0	0	0	0	0

\$32,001—\$36,000	553	425	0	0	0	0	0	0
\$36,001—\$40,000	760	616	333	0	0	0	0	0
\$40,001—\$44,000	998	840	525	0	0	0	0	0
\$44,001—\$48,000	1,265	1,093	748	345	0	0	0	0
\$48,001—\$52,000	1,563	1,375	1,000	625	0	0	0	0
\$52,001—\$56,000	1,890	1,688	1,283	878	473	0	0	0
\$56,001—\$60,000	2,248	2,030	1,595	1,160	725	0	0	0
\$60,001—\$64,000	2,635	2,403	1,938	1,473	1,008	543	0	0
\$64,001—\$68,000	3,053	2,805	2,310	1,815	1,320	825	0	0
\$68,001—\$72,000	3,500	3,238	2,713	2,188	1,663	1,138	0	0
\$72,001—\$76,000	3,978	3,700	3,145	2,590	2,035	1,480	648	0
\$76,001—\$80,000	4,485	4,193	3,608	3,023	2,438	1,853	975	0
\$80,001—\$84,000	5,023	4,715	4,100	3,485	2,870	2,255	1,333	718
\$84,001—\$88,000	5,590	5,268	4,623	3,978	3,333	2,688	1,720	1,075
\$87,001+ *	6.5%	6.125%	5.375%	4.625%	3.875%	3.125%	2%	1.25%

* To determine amount of individual/family participation when the available income is above \$88,000, multiply the individual/family income times the percentage. The Financial Participation Scale is based on 2014 Poverty Guidelines of the U.S. Department of Health and Human Services.

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Title 13A

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* To determine amount of individual/family participation when the available income is above \$88,000, multiply the individual/family income times the percentage. The Financial Participation Scale is based on 2014 Poverty Guidelines of the U.S. Department of Health and Human Services.

Chapter 04 Business Enterprise Program for the Blind

Authority: State Finance and Procurement Article, §14-109; Education Article, §§21-301-21-303; Annotated Code of Maryland

.02 Definitions.

A. (text unchanged)

B. Terms Defined.

(1) (text unchanged)

(2) (text unchanged)

(3) (text unchanged)

[(4) "Annex" means an additional vending facility, other than a primary or satellite, which is assigned to a vendor for a minimum of 24 months as long as the vendor remains on the vendor's primary facility, except that all annexes shall convert to satellites as of June 30, 2005.]

(4[5]) "Blind person" means a person who, after examination by a physician skilled in diseases of the eye or by an optometrist, whichever the person shall select, has been determined to have not more than 20/200 central visual acuity in the better eye with correcting lenses; or an equally disabling loss of the visual fields to the extent that the visual field in the better eye is constricted to an angle of 20 degrees or less.

(5[6]) "Committee" means the Committee of Blind Vendors elected by the vendors in accordance with Regulation .14 of this chapter.

(6) "Cost of Goods" means the inventory cost of the products sold.

(7) "Combined Facility" mean a facility that is unable to effectively operate independently without the support of a Primary Facility for purposes of inventory replenishment, storage, and other factors. Criteria for the establishment of a "Combined Facility" will be detailed in the Specific Criteria section of the facility bid sheet of the Administrative Manual.

(8[7]) "Division" means the Division of Rehabilitation Services of the State Department of Education, the State licensing agency designated to administer the Business Enterprise Program for the Blind.

(9[8]) "License" means a written instrument issued by the Division to a blind person who has successfully completed the provisional period, or who has been a licensed vendor before July 1, 2003, authorizing the blind person to operate vending facilities.

(10) "Licensed blind vendor" means a blind person who has been licensed by the Division to operate a vending facility on federal, State, or other property.

(11[9]) Management Services.

(a) (text unchanged)

(b) (text unchanged)

(11[1]2) "Minority groups" means African Americans, Hispanics, Latinos, American Indians, Alaska Natives, Asians, Native Hawaiians, or other Pacific islanders, and women.

(11[1]3) "Net proceeds" means the amount remaining from the sale of merchandise or services at a vending facility and any vending machine or other income accruing to a vendor after deducting the actual cost of products for resale and other business expenses excluding set-aside charges, if any.

(11[1]4) "Nominee agency" means a nonprofit organization designated in accordance with Regulation .01 as agent of the Division to furnish management services.

(11[1]5) "Operating Agreement" means a written instrument entered into between the Division and a vendor authorizing the vendor to operate a vending facility at a specific location and setting forth the respective responsibilities of the parties with respect to the vending facility.

(11[1]6) "Permit" or "contract" means a written instrument entered into between the Division and a property managing agency authorizing the establishment of a vending facility and setting forth the terms and conditions for the operation of the vending facility.

(11[1]7) "Primary location" means a vending facility which is assigned to a vendor under an operating agreement that allows that vendor to operate other facilities as a satellite [or annex].

(11[1]8) "Program" means the Maryland Business Enterprise Program for the Blind.

(11[1]9) "Program funds" means income available in accordance with *these regulations* [Regulation .08] to pay for program expenses.

(11[1]20) "Property managing agency" means the agency that *owns, manages, or leases any building, land or real property and is responsible for authorizing the establishment of a vending facility on federal, State, county, municipal, or private property.*

(11[1]21) "Provisional license" means a written instrument issued by the Division to a blind person who has successfully completed the new vendor training program authorizing the blind person to operate vending facilities before being issued a license.

(2[0]2) "Ready-for-assignment list" means a roster of licensed blind persons awaiting assignment to a vending facility in the program.

(23) "*Reasonable service and maintenance costs in accordance with customary business practices*" means personnel and repairs costs, including equipment and transportation costs, taxes, overhead and administration costs and vendor profit.

(24) "*Receipts*" means commissions paid by a commercial vending concern which operates services, and maintains vending machines on property controlled by the property managing agency.

(21[1]5) "Satellite location" means a vending facility which, is assigned to a vendor for a minimum of 12 months; and after 12 months, may be released to a qualified unassigned vendor upon request of the unassigned vendor as the unassigned vendor's primary.

(2[2]6) "Seniority" means accrued time for a vendor counting only those days during which the vendor holds an effective Operating Agreement.

(2[3]7) "Set-aside charges" means fees, if any, assessed against the net proceeds of each vending facility under the program.

(2[4]8) "Trainee" means a blind person who has met the eligibility requirements for entry into the Program for training to become a licensed vendor.

(2[5]9) "Training" means organized programs of instruction for the purpose of assisting blind persons to acquire those skills and knowledge necessary for the operation of vending facilities.

(30[2]6) "Upward mobility" means training which would enable a licensed vendor to achieve increased skill levels necessary to enhance the vendor's current business operations and for transfer or promotion to more complex facilities.

(31[2]7) "Vending facility" means vending machines, cafeterias, snack bars, and other [concession stands] *retail facilities* for the sale of foods, beverages, newspapers, periodicals, confections, [tobacco products,] and other merchandise including the sale or exchange of chances for any lottery authorized by State law and conducted by an agency of the State.

(32) "*Vending machine*" means a currency-operated machine that dispenses products or services.

(33[2]8) "Vending machine income" means receipts, [(other than those of a blind vendor)], from vending machine operations on [federal, State, county, municipal or private] property *controlled by the property managing agency* after deducting the costs of goods sold, [(including reasonable service and maintenance costs in accordance with customary business practices [of] or commissions paid by a commercial vending concern[s])], *other than to a blind vendor, which operates, services, and maintains vending machines on property controlled by the property managing agency.*

(34[2]9) "Vendor" means a licensed blind person who operates or has operated vending facilities and is on the seniority list.

.04 Training.

A. Establishment

(1) The Division with the active participation of the Committee shall develop training, retraining, and upward mobility programs for blind persons who are vendors or potential vendors.

(2) The Division shall ensure that effective programs of vocational and other training services are provided to blind persons as vocational rehabilitation services under the Rehabilitation Act of 1973, as amended.

B. (text unchanged)

C. Training for Potential Vendors.

(1) (text unchanged)

(2) *Classes.*

(a) Trainees shall complete standardized classes and on-the-job training in accordance with procedures established in the Administrative Manual.

(b) Training shall be flexible enough to terminate training in a particular area once the trainee has demonstrated mastery of the area.

(c) Trainees may be given additional training in areas of deficiency.

(3) *Training Standards.*

(a) The Division with the active participation of the Committee shall establish and maintain standards to be met by trainees for entry into the training program, and for satisfactory completion of the training program.

(b) The Division shall certify as qualified to operate a vending facility all trainees who have met the standards.

(4) (text unchanged)

(5) (text unchanged)

D. (text unchanged)

E. [Inservice] *In-Service Training*

(1) The Division and the Committee shall jointly sponsor and establish a specific agenda, time, and place for an [inservice] *in-service* training conference for all vendors and licensed blind persons on the Ready-For-Assignment List.

(2) Funding for the conference shall be in accordance with funds budgeted by the Division and Committee for this purpose in the annual budget for the program. Conferences shall be designed to provide those attending with up-to-date information concerning developments and procedures within the program, changes in applicable laws, merchandising techniques, and such other matters as the Committee and the Division may determine to be desirable.

.06 Assignment of Vendors.

A. Ready-for-Assignment List.

(1) The Division with the active participation of the Committee shall establish and maintain a Ready-for-Assignment List of all licensed blind persons awaiting assignment to a vending facility by ranking the persons in the order in which they were licensed *or accrued seniority, whichever applies.*

(2) (text unchanged)

B. (text unchanged)

C. Assignment Procedures.

(1) (text unchanged)

(2) If a property managing agency relocates an existing vending facility *within the building or to a new building*, the Division shall reassign the vendor who was assigned to the existing vending facility to the new vending facility unless the property managing agency or the Division shows cause why the reassignment should not take place.

(3) (text unchanged)

(4) (text unchanged)

D. Assignment Criteria.

(1) (text unchanged)

(2) The Division shall assign applicants to vending facilities based on qualifications, described in §D(1) of this regulation, and seniority unless the Division or the Committee can show that the senior applicant does not qualify based on the assignment criteria. If the most senior applicant does not qualify for the vending facility, the Division shall assign the next most senior applicant who qualifies to the vending facility *only after the most senior applicant is given an opportunity to present their case to the Division and the Committee as to why they do meet the assignment criteria.*

E. Assignment Procedures.

(1) *Announcement.*

(a) The Division shall send announcements, including pertinent data defined in the Administrative Manual of all vending facilities not subject to assignment under §C of this regulation, by *email and* first class mail to all licensed vendors, including those holding provisional licenses.

(b) The announcements shall contain a statement of the assignment criteria under §D which an applicant shall meet in order to qualify for assignment on the basis of seniority and the due date for responses.

(2) *Evaluation.*

(a) After the due date for responses, the Division shall submit to the Committee Chair the name of the applicant recommended for the assignment.

(b) If the recommended applicant is not the most senior applicant, the Division shall also submit to the Committee Chair a report identifying any applicants with more seniority and the reasons for finding the applicants unqualified.

(c) The Division shall also notify the applicant who is found unqualified of the reasons for the finding and the applicant's right to appear before the Committee to present information supporting qualifications for the assignment.

(3) *Committee Meeting.* Upon receipt of the Division's recommendation, the Committee shall schedule a meeting with the Division and the applicant found unqualified if the applicant wishes to show that the applicant is qualified.

(4) *Committee Review and Recommendation.*

(a) The Committee shall agree or disagree with the Division's recommendation, or *make its own recommendation* within 7 [calendar] *business* days after receipt of the recommendation, unless the time is extended by mutual agreement. .

(b) If the Committee does not respond within this period, *in writing*, the Division's recommendation shall be effective.

(c) If the Committee disagrees with the Division's recommendation, the Division and the Committee shall hold a conference to resolve the disagreement.

(d) If the Division and the Committee do not resolve the disagreement, the Division's recommendation shall be effective. An aggrieved applicant may appeal under Regulation .13 of this chapter.

F. *Satellite Locations.* The Division shall assign satellite locations in accordance with procedures described in the Administrative Manual.

.07 Operating Agreement.

A. *An Operating Agreement shall be developed with the active participation of the Committee of Blind Vendors and shall be made part of the Administrative Manual.*

B. *Terms.*

(1) The Division and the vendor shall enter into an Operating Agreement [(Regulation .20)] each time a vendor is assigned to a vending facility.

(2) The Operating Agreement shall be effective on the first day that the vendor is required to be on the location and signed by the Division and the vendor.

(3) On the effective date of the Operating Agreement, the Division shall provide the vendor a complete inventory of all equipment, a list of saleable merchandise, and petty cash provided by the Division.

(4) The Division shall provide the vendor the current value of all saleable merchandise and determine any financial obligations as described in the Administrative Manual.

(5) Payment to the vendor or to the program shall be made as provided in the Administrative Manual.

C. *Period for Operating Agreement.*

(1) (text unchanged)

(2) (text unchanged)

(3) (text unchanged)

(4) *Termination.*

(a) The Division shall ensure that the termination of any permit or contract with the property managing agency is in compliance with applicable [federal and State] laws and regulations.

(b) In the event of termination of the permit or contract with the property managing agency, the Division shall notify the vendor in advance and afford the vendor an opportunity for an administrative review before the proposed termination of the agreement.

.08 Vending Facility Equipment and Merchandise.

A. (text unchanged)

B. *Initial Merchandise and Petty Cash.*

(1) *Initial Merchandise and Petty cash.*

(a) The Division shall furnish each vending facility with adequate, suitable initial stock of merchandise and petty cash sufficient for the establishment and operation of the vending facility.

(b) The vendor shall maintain an inventory of saleable merchandise equal to or exceeding the value of the initial stock of merchandise furnished by the Division or the cash equivalent.

(c) The initial petty cash provided by the Division and the stock of merchandise remains the property of the Division.

(2) *When a vendor vacates a vending facility:*

(a) (text unchanged)

(b) (text unchanged)

(c) Within [30] 45 calendar days after the vendor vacates the vending facility, the vendor shall provide to the Division the current wholesale value of saleable merchandise contained in the inventory on the vending facility;

(d) If the vendor fails to comply with this provision, the vendor shall pay a penalty [of \$20 per day which shall be deducted from the value of the inventory at the time of settlement] *as set forth in the Administrative Manual;*

(e) (text unchanged)

(f) (text unchanged)

(g) (text unchanged)

(3) (text unchanged)

(4) *When a vendor accepts an existing vending facility:*

(a) (text unchanged)

(b) The manager shall have [30] 45 calendar days to review and dispute any discrepancies; otherwise, the inventory value is accepted as correct.

C. (text unchanged)

.10 Set-Aside Charges.

A. Determination and Use of Set-Aside Charges. *On or before June 1 of each fiscal year, the [The] Division with the active participation of the Committee, shall [on or before June 1 of each fiscal year] determine the extent, if any, to which funds shall be set aside from the net proceeds of each vending facility during the [ensuing] following State budget year.*

B. [The Division shall publish and submit the schedule of set-aside charges to the Commissioner of the Rehabilitation Services Administration, United States Department of Education for approval.] *If the Division and the Committee determine that set-aside charges shall be assessed, the Division shall publish and submit the schedule of set-aside charges to the Commissioner of the Rehabilitation Services Administration, United States Department of Education for approval.*

C. *Set-Aside [the] charges may only be used in the extent necessary to achieve the following purposes:*

(1) (text unchanged)

(2) (text unchanged)

(3) (text unchanged)

(4) *Establishment and maintenance of a retirement and health insurance plan and provision of paid sick leave and vacation time, if a majority of licensed vendors in the State holding an Operating Agreement, after having been provided full program and financial information on the benefits, determine that the benefits be provided.*

[B]D. Reasonable Charges and Records. *If the Division with the active participation of the Committee determines that set aside charges are necessary, the charges may not be assessed for any purpose in an amount greater than that which may reasonably be required for the purpose. The Division shall maintain adequate records to support the reasonableness of the charge for each purpose including any reserves necessary to assure that the purpose can be achieved on a consistent basis.*

[C]E. Schedule of Payments.

(1) *Vendors shall pay set-aside charges in accordance with a schedule determined annually by the Division with the active participation of the Committee.*

(2) *If a vendor fails, without good cause, to pay set-aside charges in accordance with the established schedule, the Division shall assess penalties as outlined in the Administrative Manual.*

(3) *If the vendor fails to pay the set-aside charges and accumulated penalties, if any, the Division may elect to use vending machine income due the vendor as payment.*

(4) *The vendor is not eligible for transfer to another facility until the set-aside charges are paid.*

(5) *As a final recourse, the Division may suspend the vendor's Operating Agreement, or terminate the vendor's license in accordance with Regulation .12 of this chapter.*

[D]F. Documentation of Reported Set-Aside Expense.

(1) (text unchanged)

(2) (text unchanged)

.11 Vending Machine Income.

A. Distribution of Assigned Vending Machine Income.

(1) *The Division shall remit monthly, if available, or otherwise quarterly vending machine income which accrues from vending machines on federal, State, Local, or private property to the vendor operating a vending facility on the property in accordance with 34 CFR 395.32.*

(2) *Vending machine income remitted to a vendor shall be reported separately from gross sales and shall be included in calculating the net proceeds of the vending facility.*

B. Limitations on Vending Machine Income.

(1) *A vendor is entitled to vending machine income not to exceed the [State or] national average income of blind vendors for the previous year[, whichever is less].*

(2) *Limitations may not be imposed on income from vending machines when the machines are maintained, serviced, and operated by a vendor within the confines of the vending facility.*

(3) *Vending machines may not be maintained, serviced, and operated by a vendor unless authorized by the Division.*

C. Use of Unassigned Vending Machine Income.

(1) *Vending machine income that does not accrue to a vendor in accordance with .11 A (1) from federal, State, Local or private properties [in excess of the amount remitted to the vendors] shall be used for:*

(a) *Establishment and maintenance of retirement or pension plans, for health insurance contributions if so determined by a majority licensed vendors holding an operating agreement.*

([a]b) *Maintenance and replacement of equipment;*

([b]c) *The purchase of new equipment; and*

([c]d) *Management services.*

(2) *Any vending machine income from federal property not used for the purposes authorized in §C(1) of this regulation shall be used in accordance with 34 CFR §395.9(b)(1)8—(4) and Regulation .10[A]C(1)—(4) of this chapter.*

(3) *Set-aside charges, if any, shall be reduced pro-rata in an amount equal to the total of any vending machine income used for [those] the purposes in Regulation .10C(1)—(4) of this chapter.*

([3]4) *Vending machine income from vending machines not on federal property in excess of the amount disbursed to vendors may be used for program purposes.*

.12 Resignation, Extended Illness, and Suspension and Termination of Licenses.

A. Resignation.

(1) *Notice.*

(a) When a vendor resigns from a vending facility or the program, the vendor shall give the Division written notice at least 90 calendar days in advance of the effective date of resignation unless the vendor is reassigned to another vending facility.

(b) The Division may waive this requirement in an emergency.

(c) If a vendor fails to comply with this requirement, the Division may terminate the vendor's license and the vendor shall be disqualified from reapplying for a license for 2 years.

(2) [Voluntary resignation from a vending facility without good cause shall constitute grounds for termination of the vendor's license and the vendor shall be disqualified from reapplying for a license for 2 years.

(3) When a vendor resigns from the program, the Division shall terminate the vendor's license.

B. (text unchanged)

C. (text unchanged)

D. Temporary Removal.

(1) The Division may remove a vendor temporarily from a vending facility in advance of a hearing only under emergency conditions.

(2) The Division shall give the vendor written notice of the temporary removal personally or by certified mail, return receipt requested, stating the reasons for the action and the vendor's right to appeal the action.

(3) The temporary removal shall be effective immediately after receipt of the notice by the vendor.

(4) The vendor's license and the Operating Agreement shall remain in effect during the period of the temporary removal.

(5) If the vendor appeals the action, the vendor shall continue to receive the net proceeds from the vending facility less the cost of substitute personnel until the final decision, resulting from the full evidentiary hearing, issued pursuant to Regulation .13B(12) of this chapter.

.13 Administrative Review, Full Evidentiary Hearing, and Arbitration.

A. Administrative Review.

(1) A vendor who is dissatisfied with any action, or actions, arising from the operation or administration of the program may obtain an administrative review of the action, or actions, by filing a written request *within 15 calendar days of such action* with the Director of the Office for Blindness and Vision Services (OBVS), Division of Rehabilitation Services stating the action, or actions, with which the vendor is dissatisfied and any remedy that the vendor seeks from the Division.

(2) Upon receipt of the written request, the Director of OBVS and the vendor shall determine a suitable date for the administrative review conference which shall be within 15 *calendar* days of the date on which the written request was received. The Director of OBVS shall provide written confirmation of the date, time, and place of the conference to the vendor and the availability of the Committee to assist in the appeal.

(3) *Conduct of Administrative Review.*

(a) The Director of OBVS shall conduct the administrative review conference in an informal manner in order to determine the merits of the dispute.

(b) The vendor may be accompanied to the conference by any person of the vendor's choosing.

(c) The Director of OBVS shall allow the vendor to fully explain the reasons for the request and the nature and type of any remedy that the vendor seeks from the Division.

(d) The conference may be recorded by any means if the parties determine that a recording is needed. If a record is made, the vendor shall be entitled to receive a copy promptly.

(4) *Written Decision.*

(a) After fully exploring the matter at the administrative review conference and considering the views of the vendor, the vendor's representative, and any representative of the Division, the Director of OBVS shall prepare a written determination affirming, reversing, or modifying the action, or actions, reviewed or make any other determination necessary to fully and fairly implement the purposes of the Randolph Sheppard Act and this chapter.

(b) The Director of OBVS shall set forth in the written determination a brief statement of the reasons for the determination.

(c) The Director of OBVS shall deliver or mail the written determination to the vendor and vendor's representative within 15 calendar days from the date of the conference.

(5) (text unchanged)

B. Full Evidentiary Hearing.

(1) (text unchanged)

(2) (text unchanged)

(3) (text unchanged)

(4) The Assistant Superintendent may conduct the hearing *or transfer the appeal to the Office of Administrative Hearings* [appoint a hearing officer who has not been involved with the subject of the appeal] to conduct the hearing.

(5) (text unchanged)

(6) (text unchanged)

(7) (text unchanged)

(8) *Evidence.*

(a) The hearing officer shall admit into the record all relevant evidence.

(b) The hearing officer may exclude incompetent, irrelevant, immaterial, and unduly repetitious evidence.

(c) Documentary evidence may be received in the form of copies unless the hearing officer determines that production of the original document is required to ensure a full and fair hearing.

(9) (text unchanged)

(10) *Ex parte communication.*

(a) The hearing officer and any other Division official or employee authorized to participate in the decisional process, may not communicate outside the presence of the vendor or the vendor's representative with any person not authorized to participate in the decisional process regarding any issue of fact or law in the case.

(b) If the hearing officer or any official or employee involved in the decisional process becomes personally aware of the prohibited communication, that person shall follow the procedures of the State Government Article, §10-213, Annotated Code of Maryland, concerning these communications.

(11) *Written Decision.*

(a) Upon conclusion of the hearing the hearing officer shall issue a written decision.

(b) If the hearing officer is the Assistant Superintendent, the decision shall contain final findings of fact and conclusions of law, separately stated.

(c) If the hearing officer is not the Assistant Superintendent, the decision issued shall contain proposed findings of facts and conclusions of law, separately stated.

(d) The decision shall affirm, modify, or reverse the administrative review determination and shall be delivered or mailed to the vendor and the vendor's authorized representative within 15 calendar days after the conclusion of the hearing.

(12) *Exceptions.*

(a) Upon receipt of a decision containing proposed findings of fact and conclusions of law, the vendor shall have 15 calendar days to file written exceptions to the decision with the Assistant Superintendent.

(b) If written exceptions are filed, the vendor shall state in writing whether the vendor desires to present argument before the Assistant Superintendent on the points of exception.

(c) If a request for argument is timely filed or if the Assistant Superintendent determines that argument would assist in resolving the appeal, the Assistant Superintendent shall schedule the case for argument.

(i) The argument before the Assistant Superintendent shall be limited to oral presentation of reasons for the points of exception.

(ii) New or additional evidence may not be allowed into the record.

(c) After consideration of the exceptions and oral argument, if any, the Assistant Superintendent shall issue the final written decision in the case.

(i) The decision shall affirm, reverse, or modify the hearing officer's decisions.

(ii) The final decision shall be delivered or mailed to the vendor and the vendor's representative within 20 calendar days of receipt of the written exception or oral argument, whichever is later, and implemented promptly.

(13) When a final decision of the Division is issued, the Assistant Superintendent shall include with the decision a written statement of [any further] *the right* [of appeal] to file a complaint with the Secretary of the United States Department of Education, which is available to the vendor under [the State law and the right] 34 CFR 395.13, to request the Secretary of the United States Department of Education to convene an ad hoc arbitration panel pursuant to federal law.

(14) (text unchanged)

(15) (text unchanged)

.14 Committee of Blind Vendors.

A. Biennial Election.

(1) The Division shall convene a meeting of all vendors in [May] *the Spring* of each even-numbered year to elect a Committee of Blind Vendors.

(2) (text unchanged)

(3) (text unchanged)

(4) All licensed vendors holding an Operating Agreement are required to attend the bi-annual meeting.

(a) *Failure to attend shall result in disciplinary actions as prescribed in section 23 of the Administrative Manual.*

(b) All other licensees, trainees, and other interested parties may attend this meeting.

(c) *Only* [However, only] active licensees holding an Operating Agreement [may] *are eligible to vote.*

B. (text unchanged)

C. Functions of the Committee.

(1) The Committee shall perform all functions and obligations imposed on it pursuant to these regulations, the Constitution adopted by the vendors, *the Administrative Manual*, and 34 CFR 395.14.

(2) (text unchanged)

(3) (text unchanged)

.15 Access to Program and Financial Information.

A. The Division shall provide vendors with program and financial reports including audits to the extent that the disclosure does not violate the laws pertaining to disclosure of confidential information.

B. The Division shall prepare and submit to the Committee in accordance with time periods specified in the Administrative Manual written annual financial reports.

C. The reports shall set forth revenues received and available from all sources, program expenses, and changes in fund balances for the period covered by the reports. [The Division shall also submit to the Committee in accordance with the time periods specified in the Administrative Manual a copy of the certified annual audit of the program and provide the Committee an opportunity to review the audit findings with the Division.]

D. Financial Audit.

(1) A financial audit of the program will be conducted annually.

(2) The scope of the annual audit will be agreed to by the Division and the Committee of Blind Vendors.

.16 Explanation of Rights and Responsibilities.

A. The Division shall provide each vendor with a copy of this chapter, the Operating Agreement, applicable permits or contracts between the Division and property managing agency, the Administrative Manual, and the Nominee Agreement *and any other documents relating to the operation of the facility*, if any.

B. The Division with the active participation of the Committee shall also provide in writing to each vendor an explanation of the vendor's rights and responsibilities under the program including the right to an administrative review, a full evidentiary hearing, *and arbitration*[, and judicial review] under Regulation .13 of this chapter, if the vendor is dissatisfied with any action arising from the operation or administration of the program.

C. Each vendor shall acknowledge in writing that the vendor has been supplied with a copy of the documents listed above, and a written explanation of the vendor's rights and responsibilities under the program upon assignment to a vending facility.

.17 Division Responsibilities.

A. (text unchanged)

B. Vending Facilities.

(1) The Division with the active participation of the Committee shall make decisions regarding the opening, closing or consolidating of vending facilities and the number of facilities to be established at any given site in accordance with the Administrative Manual.

(2) The Division shall give preference to expansion of the program, but every effort shall be made to assure that a vendor on the same premises will not be adversely affected by the expansion.

C. (text unchanged)

D. Nominee Agency.

(1) The Division may, with the active participation of the Committee of Blind Vendors, enter into an agreement with a nominee agency to furnish management services.

(2) The Division shall clearly explain in writing any responsibilities that are delegated to a nominee agency.

.18 Administrative Manual.

A. The Division, with the active participation of the Committee, shall develop policies and procedures as required to assure the efficient operation and administration of the program.

B. The policies and procedures shall be contained in an Administrative Manual which shall be binding on both the Division and the vendors.

C. The Division and the Committee shall review the Manual every 3 years, *or when circumstances necessitate a review.*

.20 [Operating Agreement.

.21] Procurement.

The State procurement regulations for the operation of vending facilities on property controlled by the Department of General Services are found in COMAR 21.11.09.

Chapter 08 Workforce and Technology Center

Authority: Education Article, §§21-301—21-304, Annotated Code of Maryland

.02 Definitions.

A. (text unchanged)

B. Terms Defined.

(1) (text unchanged)

(2) (text unchanged)

(3) (text unchanged)

(4) (text unchanged)

(5) (text unchanged)

(6) (text unchanged)

(7) (text unchanged)

(8) (text unchanged)

(9) (text unchanged)

(10) (text unchanged)

(11) (text unchanged)

- (12) (text unchanged)
- (13) (text unchanged)
- (14) (text unchanged)
- (15) (text unchanged)
- (16) (text unchanged)
- (17) (text unchanged)
- (18) (text unchanged)
- (19) (text unchanged)
- (20) (text unchanged)
- (21) (text unchanged)
- (22) (text unchanged)
- (23) (text unchanged)
- (24) (text unchanged)
- (25) (text unchanged)
- (26) (text unchanged)
- (27) (text unchanged)

(28) "Residential services" means the provision of room, board, recreation, and other support services in the dormitory of the Center[,] or the supported residence dormitory[, or the community living skills training program dormitory].

- (29) (text unchanged)
- (30) (text unchanged)
- (31) (text unchanged)

.04 Admission Criteria.

- A. (text unchanged)
- B. (text unchanged)
- C. (text unchanged)
- D. (text unchanged)

E. An applicant may be admitted for residential services in the:

(1) Supported residence dormitory (SRD) of the Center, if the admission committee, case manager, or residential supervisor determines that the applicant needs assistance with activities of daily living and/or requires supervision to be able to function in a residential setting; or

(2) Dormitory of the Center, if the admission committee or case manager determines that the applicant is independent in the applicant's activities of daily living and will be able to function in a residential setting with minimal supervision[]; or

(3) Community living skills training (CLST) dormitory of the Center, if the admission committee or case manager determines that the applicant meets the standards for admission into the CLST program].

- F. (text unchanged)
- G. (text unchanged)
- H. (text unchanged)

.07 Services.

The Center shall provide the following services, depending on the needs of the client and the individualized program of services developed with the client:

- A. (text unchanged)
- B. (text unchanged)
- C. (text unchanged)
- D. (text unchanged)
- E. (text unchanged)
- F. [Prevocational] *Work Readiness Services*;
- G. (text unchanged)
- H. Room, board, and [therapeutic] recreation;
- I. (text unchanged)
- J. (text unchanged)
- K. Special programs for clients including:
 - (1) Blindness and vision services;
 - (2) [Cognitive skills; and] *Autism Services*
 - (3) Services for transitioning youth[.]; and
 - (4) *Deaf and Hard of Hearing Services*.

.08 [Service Plan.

.09] Discharge Planning.

.[10].09 Discharge.

.1[1]0 Disciplinary Action.

A. (text unchanged)

B. Restrictions on Privileges. The case manager *and/or residential services staff, as appropriate*, may impose appropriate disciplinary actions involving restrictions on privileges and shall inform the client of the disciplinary action and the reasons for the action. The case manager *and/or residential services staff, as appropriate*, shall, in a timely manner, notify the referral source of the disciplinary action and reasons for the action.

C. (text unchanged)

D. (text unchanged)

E. (text unchanged)

F. (text unchanged)

.1[2]1 Client Orientation.

A. (text unchanged)

B. The Center's [Consumer Handbook and] Admission Packet which includes the rules and regulations shall be presented in writing to the client during the admission process. The client or, as appropriate, the client and the client's representative, shall acknowledge receipt of a copy of the regulations and procedures associated with participation in a program of services at the Center by signing the document.

C. (text unchanged)

D. (text unchanged)

E. The Center's [Consumer Handbook and] Admission Packet which includes the Consumer Bill of Rights shall be presented in writing to the client during the admission process. The client or, as appropriate, the client and the client's representative, shall acknowledge receipt of a copy of the Consumer Bill of Rights and confirm that they have been provided the opportunity for clarification of their rights at the Center and of the methods and procedures available to present a complaint, seek review or appeal of any decisions involving the provision or denial of services, or address any other matter which may be of concern while enrolled in the Center, by signing the document.

.1[3]2 Employment Skills Training

.1[4]3 Career Assessment Services.

A. (text unchanged)

B. (text unchanged)

C. (text unchanged)

D. (text unchanged)

E. (text unchanged)

F. (text unchanged)

G. Based on referral information, *referral questions to be answered, questions from the person served*, the initial interview, *pre-evaluation assessment of potential modifications required to meet a person's specific needs*, and the stated purpose of the evaluation, a specific written evaluation plan shall be developed with each client which shall identify:

(1) (text unchanged)

(2) (text unchanged)

(3) (text unchanged)

(4) (text unchanged)

H. (text unchanged)

.1[5]4 Medical Services.

.1[6]5 Records.

A. (text unchanged)

B. The record for each client shall include:

(1) (text unchanged)

(2) (text unchanged)

(3) (text unchanged)

(4) (text unchanged)

[(5) Evaluation and progress reports from each Center department providing service;]

(5[6]) Reports of staff conferences;

(6[7]) The individual service plans;

(7[8]) Signed and dated service and progress reports from each Center department providing service;

(8[9]) Release forms;

(9[10]) Reports from outside consultation including laboratory, radiology, medical, or related services;

(10[11]) Designation of the case manager for the client;

(11[2]) Evidence of the client's, and when appropriate, the family's participation in the decision-making process of the client's program;

(12[3]) Discharge information; and

(13[4]) Other information relating to the planning, provision, and management of services to the client.

- C. (text unchanged)
- D. (text unchanged)
- E. (text unchanged)
- F. (text unchanged)

.1[7]6 Protection, Use, and Release of Personal Information.

.1[8]7 Accreditation and Licensing.

.1[9]8 Administrative Operations.