

Document: Proposed Rule

Source: May 1, 2001, Indiana Register, Volume 24, Number 8

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**TITLE 460 DIVISION OF DISABILITY, AGING, AND
REHABILITATIVE SERVICES**

Proposed Rule
LSA Document #00-215

DIGEST

Adds 460 IAC 2-4 to establish the Indiana Randolph-Sheppard Business Enterprise Program authorized by IC 12-12-5 and 20 U.S.C. 107 et seq. (the “Randolph-Sheppard Vending Stand Act”) and currently known as the “Vending Program for the Blind.” The new rule establishes the program, defines terms, and sets standards for the following: state agency functions, program participants, licensing requirements, selection of facility locations, assignment of facilities, financial matters, operation of facilities, business performance, rights and responsibilities of program participants, grievance procedures, disciplinary procedures, administrative review procedures, and the Indiana committee of licensed managers. Repeals 460 IAC 2-1. Effective 30 days after filing with the secretary of state.

460 IAC 2-1

460 IAC 2-4

SECTION 1. 460 IAC 2-4 IS ADDED TO READ AS FOLLOWS:

Rule 4. Blind and Visually Impaired Services—Indiana Randolph-Sheppard Business Enterprise Program

460 IAC 2-4-1 Purpose

Authority: IC 12-8-8-4; IC 12-9-2-3

Affected: IC 12-12-5; 20 U.S.C. 107

Sec. 1. The Indiana Randolph-Sheppard Business Enterprise Program (BEP) is established to provide blind persons with remunerative employment and to enlarge the economic opportunities for blind persons. (*Division of Disability, Aging, and Rehabilitative Services; 460 IAC 2-4-1*)

460 IAC 2-4-2 Definitions

Authority: IC 12-8-8-4; IC 12-9-2-3

Affected: IC 12-9-1-1; IC 12-12-1-2; IC 12-12-5; 20 U.S.C. 107; 34 CFR 395.1

Sec. 2. The following definitions apply throughout this rule:

(1) “Abandoned” means that a BEP facility is unattended or unoperated after an operator has failed to:

(A) notify the state licensing agency of the operator’s absence; and

(B) meet contractual obligations for the facility, including the requirement for continuous operation.

(2) “Active participation” means an ongoing process of good faith negotiation between the state licensing agency and the Indiana committee of licensed managers to achieve joint planning of rules, policies, standards, and practices prior to implementation by the state licensing agency. Active participation shall not supersede the final authority of the division to adopt program policy and to administer the BEP.

(3) “Agreement” means a written contract between the state licensing agency and an operator for the operation of a BEP facility.

(4) “Applicant” means a person who has applied to or has been referred to the BEP, but who has not been accepted as a manager trainee.

(5) “BEP” means the Indiana Randolph-Sheppard Business Enterprise Program authorized by 20 U.S.C. 107 and IC 12-12-5.

(6) “BEP facility” means automatic vending machines, cafeterias, snack bars, cart services, shelters, counters, and other

appropriate auxiliary equipment that may be used for the sale of newspapers, periodicals, confections, tobacco products, foods, beverages, and other articles or services dispensed automatically or manually and prepared on or off the premises in accordance with all applicable health laws, including the vending or exchange of chances for any lottery authorized by state law and conducted by an agency of the state within the state.

(7) “Blind and visually impaired services” or “BVIS” means the unit of services for the blind and visually impaired, established in IC 12-12-1-2(1) as a unit of the rehabilitation services bureau of DDARS, family and social services administration.

(8) “Business days” means regular business days recognized by the state. Regular business days do not include Saturday, Sunday, legal holidays as defined by state statute, or a day when state offices are closed during regular business hours.

(9) “Business Enterprise Program” or “BEP” means the Indiana Randolph-Sheppard Business Enterprise Program authorized by 20 U.S.C. 107 and IC 12-12-5.

(10) “Committee” means the Indiana committee of licensed managers established pursuant to 20 U.S.C. 107b-1.

(11) “Committee of licensed managers” means the committee established pursuant to 20 U.S.C. 107b-1.

(12) “Custodial authority” means the person or entity authorized to contract for the services at a site or facility.

(13) “DDARS” means the division of disability, aging, and rehabilitative services established in IC 12-9-1-1.

(14) “Director” means the director of DDARS.

(15) “Division” means DDARS established in IC 12-9-1-1.

(16) “Division of disability, aging, and rehabilitative services” means the division of disability, aging, and rehabilitative services established in IC 12-9-1-1.

(17) “Federal property” means any building, land, or other real property owned, leased, or occupied by any department, agency, or instrumentality of the United States.

(18) “Legal blindness” or “legally blind” means either of the following:

(A) Visual acuity of not more than 20/200 in the better eye with best corrective lenses.

(B) A limitation to the field of vision in the better eye such that the widest diameter of visual field subtends an angle of no greater than twenty (20) degrees.

(19) “License” means a written instrument that:

(A) is issued by DDARS to a blind person; and

(B) authorizes that person to operate a BEP facility as a licensed manager under this rule.

(20) “Licensed manager” means an individual who has a license issued by DDARS to operate a BEP facility under this rule.

(21) “Management services” means supervision, inspection, quality control, consultation, accounting, regulating, in-service training, and other related services provided by the state licensing agency on a systematic basis to support and improve the operations of BEP facilities. Management services do not include those services or costs that pertain to the ongoing operation of an individual BEP facility after the initial establishment period.

(22) “Manager” means a licensed manager.

(23) “Manager trainee” means a blind individual who has applied for and been found eligible for vocational rehabilitation services and has been accepted for training in the business enterprise program, but who has not received a license from the state licensing agency.

(24) “Net proceeds” means gross sales less the allowable expenses set out in section 34 of this rule that an operator has paid for the operation of the BEP facility, excluding any salary paid to the operator.

(25) “Operator” means a licensed manager, a manager trainee, or a temporary operator who has an agreement with the state licensing agency to operate a BEP facility.

(26) “Other property” has the meaning set out in 34 CFR 395.1(n).

(27) “Permit” means the official approval given to the state licensing agency by a department, agency, or instrumentality in control of the maintenance, operation, and protection of federal property, or person in control of other property, whereby the state licensing agency is authorized to establish a BEP facility under 20 U.S.C. 107.

(28) “Placement list” means an index of licensed managers and manager trainees eligible to bid on an available BEP facility.

(29) “Primary facility” means a licensed manager’s BEP facility location with the greatest amount of gross sales as determined annually on June 30 of the most recently complete state fiscal year.

(30) “Probationary period” is the period of time from a manager trainee’s placement at a BEP facility until the manager trainee is licensed under this rule.

(31) “Seniority” has the following meaning:

(A) For a licensed manager, seniority is determined from the date a licensed manager is licensed to operate a BEP facility and continues to accrue as long as the licensed manager holds a valid agreement with the state licensing agency to operate a BEP facility.

(B) For a manager trainee, seniority is determined from the date that BVIS received the manager trainee referral from

vocational rehabilitation services.

(32) "Set aside funds" means funds accruing to the state licensing agency from:

- (A) a uniform assessment against the net proceeds of assigned BEP facilities; or
- (B) vending machines on federal property under 34 CFR 395.8.

(33) "State licensing agency" means DDARS.

(34) "Temporary operator" means a licensed manager, a manager trainee, or any sighted or blind person who enters into an agreement with the state licensing agency to operate a BEP facility on a temporary basis when a licensed manager or manager trainee is not available.

(35) "Ultimate authority" means the director of DDARS.

(36) "Vocational rehabilitation services" means the unit of vocational rehabilitation established in IC 12-12-1-2(2) as a unit of the rehabilitation services bureau in DDARS.

(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 2-4-2)

460 IAC 2-4-3 State licensing agency functions

Authority: IC 12-8-8-4; IC 12-9-2-3

Affected: IC 12-12-5; 20 U.S.C. 107

Sec. 3. The state licensing agency shall:

- (1) have the ultimate responsibility for the administration of the BEP under 20 U.S.C. 107 and IC 12-12-5;
- (2) carry out the duties of planning programs and setting policies, standards, and procedures with the active participation of the Indiana committee of licensed managers;
- (3) select and develop suitable locations for BEP facilities in properties owned, leased in whole or in part, or operated by:
 - (A) the United States government;
 - (B) the state;
 - (C) a county;
 - (D) a township;
 - (E) a city;
 - (F) a town; or
 - (G) a private entity;
- (4) determine the criteria for suitable locations for BEP facility, with the criteria to include the income potential of potential locations;
- (5) designate a specific location or locations as a BEP facility;
- (6) take reasonable steps to improve the profitability of each BEP facility, including determining whether other locations or sites should be added as part of the facility;
- (7) select and supervise licensed managers for BEP facilities, giving preference to blind persons who are in need of employment;
- (8) require that all aspects of a licensed manager's operations, including fiscal matters, are in compliance with business enterprise program rules and procedures;
- (9) make suitable BEP equipment and adequate initial stock available to operators;
- (10) coordinate the state's business enterprise program with the state's vocational rehabilitation program to provide:
 - (A) initial training in aspects of BEP facility operation;
 - (B) upward mobility training, including further education, additional training, or retraining for improved work opportunities; and
 - (C) services after licensing to assure that the maximum vocational potential of each licensed manager is achieved;
- (11) provide access in Braille, recorded tape, or computer disk, if reasonably possible, to all financial data of the state licensing agency relevant to the operation of the business enterprise program, including quarterly and annual financial reports, provided that disclosure does not violate applicable federal or state laws pertaining to the disclosure of confidential information;
- (12) develop forms and written procedures necessary to implement and carry out the provisions of this rule;
- (13) conduct a biennial election of the Indiana committee of licensed managers, with no direct involvement of staff of the state licensing agency in the outcome of the election process;
- (14) meet regularly with the Indiana committee of licensed managers to ensure the committee's active participation regarding major administrative decisions, policy, and program development decisions; and
- (15) notify the Indiana committee of licensed managers in writing of decisions made or actions taken that are different from the recommendations of the committee, and the reason for the difference or differences.

(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 2-4-3)

460 IAC 2-4-4 Program participants; nondiscrimination

Authority: IC 12-8-8-4; IC 12-9-2-3

Affected: IC 12-12-5; 20 U.S.C. 107; 34 CFR 395.1

Sec. 4. No licensed manager or manager trainee in, or applicant for, the business enterprise program shall be discriminated against on the basis of sex, age, disability, race, creed, color, national origin, organizational affiliation, or political affiliation.

(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 2-4-4)

460 IAC 2-4-5 Qualifications of applicant

Authority: IC 12-8-8-4; IC 12-9-2-3

Affected: IC 12-12-5; 20 U.S.C. 107

Sec. 5. In order to be accepted for training in the business enterprise program, an applicant must:

- (1) be legally blind;**
- (2) be at least eighteen (18) years of age;**
- (3) be a United States citizen;**
- (4) hold a high school diploma or equivalent;**
- (5) be a client of vocational rehabilitation services;**
- (6) be referred for the business enterprise program by vocational rehabilitation services;**
- (7) have adequate orientation and mobility skills to travel independently;**
- (8) have skills sufficient to communicate with the public in a courteous manner and the ability to develop and maintain working relationships with others;**
- (9) be able to maintain required records and reports;**
- (10) have mathematical skills sufficient to operate a small business; and**
- (11) have independent daily living skills sufficient to allow the applicant to meet personal care and facility maintenance needs.**

(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 2-4-5)

460 IAC 2-4-6 Effect of nonqualification for the business enterprise program

Authority: IC 12-8-8-4; IC 12-9-2-3

Affected: IC 12-12-5; 20 U.S.C. 107

Sec. 6. (a) If the state licensing agency determines that an applicant does not meet the qualifications set out in section 5 of this rule and does not accept the applicant as a manager trainee, the provisions in this section apply.

(b) The state licensing agency shall refer the applicant to the office of vocational rehabilitation services for other services.

(c) The state licensing agency shall notify an applicant in writing of the following:

- (1) The specific grounds for the agency's determination that the applicant:**
 - (A) does not meet the qualifications set out in section 5 of this rule; and**
 - (B) is not accepted as a manager trainee in the business enterprise program.**
- (2) The applicant's right to a full evidentiary hearing on the agency's determinations upon filing a written request with the deputy director of blind and visually impaired services within fifteen (15) business days of service of the notice.**

(d) The applicant has the right to a full evidentiary hearing on the state licensing agency's determination that an applicant does not meet the qualifications set out in section 5 of this rule and is not accepted as a manager trainee in the BEP. For purposes of conducting a full evidentiary hearing, the procedures established in sections 29 and 30 of this rule apply; provided, however, that the provisions of section 30(w)(4) of this rule do not apply to this subsection. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 2-4-6)*

460 IAC 2-4-7 Manager trainees; training requirements

Authority: IC 12-8-8-4; IC 12-9-2-3

Affected: IC 12-12-5; 20 U.S.C. 107

Sec. 7. (a) Except as provided in section 8 of this rule, a manager trainee must successfully complete training for the BEP before being licensed as a manager.

(b) Training for the BEP includes the following:

(1) Classroom training in the skills necessary for the general operation of any type of BEP facility, including such topics as:

- (A) accounting;**
- (B) banking;**
- (C) business administration;**
- (D) cash handling;**
- (E) communication;**
- (F) customer service;**
- (G) machine training;**
- (H) sanitation;**
- (I) marketing and inventory control; and**
- (J) orientation to all types of BEP facility operations.**

(2) Training on specific types of BEP facilities.

(3) On-the-job training with a licensed manager or at a facility approved by the state licensing agency.

(4) Training on business enterprise program rules, requirements, policies, and procedures.

(5) Training on the application of federal, state, and local laws relating to operating a facility.

(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 2-4-7)

460 IAC 2-4-8 Waiver or modification of training requirements

Authority: IC 12-8-8-4; IC 12-9-2-3

Affected: IC 12-12-5; 20 U.S.C. 107

Sec. 8. (a) A manager trainee may submit a written request to the state licensing agency for a waiver, in whole or in part, or a modification of the training requirements described in this rule. A manager trainee must also submit supporting documentation required by the state licensing agency.

(b) With the active participation of the Indiana committee of licensed managers, the state licensing agency may waive, in whole or in part, or modify the training requirements for a manager trainee on the basis of the manager trainee's previous work experience, knowledge, skills, or training.

(c) The probationary period for a manager trainee required under section 9 of this rule shall not be waived.

(d) If a manager trainee has received a waiver or modification of training requirements under this section, the manager trainee's ranking on the placement list shall be determined by the date when BVIS received the manager trainee referral from vocational rehabilitation services. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 2-4-8)*

460 IAC 2-4-9 Manager trainee; probationary period

Authority: IC 12-8-8-4; IC 12-9-2-3

Affected: IC 12-12-5; 20 U.S.C. 107

Sec. 9. (a) A manager trainee must successfully complete a probationary period before being licensed as a manager in the business enterprise program.

(b) The purpose of the probationary period is to improve the performance of the manager trainee by:

(1) assisting the manager trainee to achieve the most effective adjustment to the business enterprise program and to the assigned facility;

(2) assuring that the manager trainee is aware of and complies with:

(A) the rules and requirements of the BEP; and

(B) the terms of the permit for, or the agreement between the state licensing agency and the custodial authority of, the BEP facility to which the manager trainee is assigned;

(3) evaluating the manager trainee's performance in the work setting or at an assigned BEP facility; and

(4) referring a manager trainee in need of other or additional services to the office of vocational rehabilitation services.

(c) The probationary period begins when a manager trainee is placed in a BEP facility.

(d) The probationary period continues for at least ninety (90) calendar days after a manager trainee is placed in a BEP facility. In addition, the state licensing agency may extend the probationary period for a maximum of sixty (60) calendar days in order to:

- (1) provide the manager trainee with additional or remedial training; or
- (2) achieve any purpose described in subsection (b).

(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 2-4-9)

460 IAC 2-4-10 Manager trainees; disciplinary procedures

Authority: IC 12-8-8-4; IC 12-9-2-3

Affected: IC 12-12-5; 20 U.S.C. 107

Sec. 10. (a) This section applies to a manager trainee who is:

- (1) receiving initial training, including classroom or on-the-job training; or
- (2) in the probationary period.

(b) A manager trainee receiving initial training may be subject to disciplinary action as set out in this section for a violation of, or failure to comply with, a written rule or regulation of the training institution.

(c) A manager trainee in the probationary period may be subject to disciplinary action as set out in this section for a violation of, or failure to comply with:

- (1) the provisions of this rule applicable to a licensed manager;
- (2) the terms of an agreement between the state licensing agency and the manager trainee for operation of a BEP facility; or
- (3) the terms of the permit for, or the agreement between the state licensing agency and the custodial authority of, the BEP facility to which the manager trainee is assigned.

(d) Documentation of disciplinary action shall be kept in the individual's personnel file.

(e) Disciplinary actions shall include the following:

- (1) Formal counseling.
- (2) Written action plan.
- (3) Suspension from training.
- (4) Termination of training and participation in the BEP.

(f) Disciplinary action will progress through the steps listed in subsection (e) for:

- (1) the first violation or noncompliance under subsection (b) or (c);
- (2) a failure to correct a violation or noncompliance under subsection (b) or (c); or
- (3) a repeated violation or noncompliance under subsection (b) or (c).

(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 2-4-10)

460 IAC 2-4-11 Termination of manager trainee's participation in the business enterprise program

Authority: IC 12-8-8-4; IC 12-9-2-3

Affected: IC 12-12-5; 20 U.S.C. 107

Sec. 11. (a) The state licensing agency may terminate a manager trainee's participation in the BEP:

- (1) for cause in accordance with 460 IAC 2-4-10; or
- (2) if a manager trainee does not meet performance standards during the probationary period.

(b) The state licensing agency may terminate a manager trainee's participation in the BEP at any of the following times:

- (1) During training.
- (2) During the probationary period.

(3) At the end of the probationary period and before licensing.

(c) If the state licensing agency determines that the participation of a manager trainee should be terminated, the following apply:

(1) The state licensing agency shall refer the manager trainee to the office of vocational rehabilitation services for other services.

(2) The state licensing agency shall notify the manager trainee, in writing, of the following:

(A) The specific grounds for the agency's determination that the manager trainee's participation in the BEP should be terminated.

(B) The manager trainee's right to a full evidentiary hearing on the agency's determination by filing a written request with the deputy director of blind and visually impaired services within fifteen (15) business days of service of the notice.

(3) The manager trainee has the right to a full evidentiary hearing on the state licensing agency's determination that the manager trainee's participation in the BEP should be terminated.

(4) For purposes of conducting a full evidentiary hearing, the procedures established in sections 29 and 30 of this rule apply; provided, however, that the provisions of section 30(w)(4) of this rule do not apply to this section.

(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 2-4-11)

460 IAC 2-4-12 Issuance of license

Authority: IC 12-8-8-4; IC 12-9-2-3

Affected: IC 12-12-5; 20 U.S.C. 107

Sec. 12. (a) The state licensing agency shall issue a license to a manager trainee in the BEP who has successfully completed training and a probationary period.

(b) Upon licensing, a manager trainee becomes a licensed manager in the BEP.

(c) A license is issued for an indefinite period of time, but is subject to suspension or termination, after affording the licensed manager an opportunity for a full evidentiary hearing, except as provided in section 24 of this rule. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 2-4-12)*

460 IAC 2-4-13 Determination of visual status

Authority: IC 12-8-8-4; IC 12-9-2-3

Affected: IC 12-12-5; 20 U.S.C. 107

Sec. 13. (a) The state licensing agency has the right to request and to obtain from a licensed manager periodic visual evaluations in order to determine continuing compliance with visual requirements.

(b) Agency request for current evidence of visual status include the following:

(1) Upon the written request of the state licensing agency, a licensed manager must provide the state licensing agency with current ophthalmologic or optometric evidence documenting the manager's visual status within sixty (60) days of the agency's request. As used in this subdivision, "current" means evidence of an examination no more than six (6) months old from the date of submitting the evidence to the state licensing agency.

(2) A licensed manager who does not provide the requested ophthalmologic or optometric evidence is presumed not to be legally blind. Action must be taken under section 20(b)(1) of this rule to terminate the manager's license.

(3) If a licensed manager is determined to be not legally blind on the basis of the submitted evidence, action must be taken under section 20(b)(1) of this rule to terminate the manager's license.

(4) A licensed manager shall pay the cost of obtaining ophthalmologic or optometric evidence required by this subsection.

(5) A licensed manager may enter as an allowable expense on the monthly financial report submitted to the state licensing agency, the cost of obtaining ophthalmologic or optometric evidence required by this subsection.

(c) Agency's right to obtain second opinion as to visual acuity include the following:

(1) Upon the written request of the state licensing agency, a licensed manager must submit to a visual acuity examination by an optometrist or physician selected by the state licensing agency, if the agency has information that a manager's vision has improved or does not meet the requirements of section 2(18) of this rule.

(2) The cost of an examination under this subsection shall be paid by the state licensing agency.

(3) A copy of all records of an examination under this subsection shall be provided to the licensed manager.

(4) If a licensed manager is determined to be not legally blind after an examination under this subsection, the provisions of section 20(b)(1) of this rule apply.

(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 2-4-13)

460 IAC 2-4-14 Selection of business enterprise program facility locations

Authority: IC 12-8-8-4; IC 12-9-2-3

Affected: IC 12-12-5; 20 U.S.C. 107

Sec. 14. (a) Determination of BEP facility locations include the following:

(1) The state licensing agency may establish a BEP facility at a particular location only if establishment of a facility at that location is likely to:

(A) contribute to the development of significant economic opportunities for blind persons; and

(B) provide for the productive use of program assets.

(2) The state licensing agency's determination under subsection (a) shall be made on the basis of an evaluation of relevant factors in a survey of the location. Factors to be evaluated include the following:

(A) Population.

(B) Traffic.

(C) Competition.

(D) Continued availability of the location.

(E) Type of premises.

(F) Potential return on investment.

(b) If the sales productivity of a BEP facility is adversely affected by factors beyond the control of the state licensing agency or of the operator, the state licensing agency must review and determine whether the location remains suitable for a BEP facility or for the current type of operation. The state licensing agency shall evaluate all relevant factors, including those set out in subsection (a)(2) in a review of the location. On the basis of this review, the state licensing agency may close a BEP facility or convert the existing facility to another type of operation. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 2-4-14)*

460 IAC 2-4-15 Assignment of a business enterprise program facility

Authority: IC 12-8-8-4; IC 12-9-2-3

Affected: IC 12-12-5; 20 U.S.C. 107

Sec. 15. (a) The assignment of a BEP facility shall be made by the state licensing agency with the active participation of the Indiana committee of licensed managers. A bidding process is used to promote upward mobility and to assign available BEP facilities.

(b) When a BEP facility becomes available, the state licensing agency will solicit bids for the facility from eligible persons on the placement list.

(c) Except as provided in subsection (d), the following persons will be placed on the placement list for the assignment of an available BEP facility and are eligible to bid for an available BEP facility:

(1) A licensed manager who has been operating the manager's current BEP facility for a minimum of one (1) year as of the date the bid on an available facility is due.

(2) A manager trainee who has successfully completed the training specified at section 7 of this rule, subject to the provisions of section 8 of this rule.

(3) A licensed manager who submits a letter requesting placement to the state licensing agency during an approved leave of absence.

(d) The following persons will not be placed on the placement list for the assignment of an available BEP facility and are not eligible to bid for an available BEP facility:

(1) A licensed manager who has been operating the manager's current BEP facility for less than one (1) year as of the date the bid on an available facility is due.

(2) A licensed manager or manager trainee who:

(A) accepts the award or assignment of a BEP facility; and

(B) subsequently refuses placement at, or withdraws acceptance of the award or assignment of, that BEP facility; is not eligible to bid for another BEP facility for a period of one (1) year from the date of acceptance; provided, however, that a licensed manager or manager trainee who has been awarded and has accepted a BEP facility, but who has not been placed in that facility through no fault of his or her own, will be placed on the placement list and is eligible to bid on an available BEP facility.

(e) Eligible bidders shall be evaluated by the state licensing agency, with the active participation of the Indiana committee of licensed managers, according to the following criteria and scoring system:

(1) One hundred percent (100%) of the bidder's seniority as defined in section 2(31) of this rule.

(2) Minus a deduction of twenty-five percent (25%) of the bidder's seniority for either of the following:

(A) The bidder has been on a disciplinary action plan during the ten (10) month period ending on the date the bid is due.

(B) The bidder's license has been suspended during the ten (10) month period ending on the date the bid is due.

(3) Minus a deduction of one percent (1%) of the bidder's seniority for any monthly financial report that is not submitted to the state licensing agency when due during the ten (10) month period ending on the date the bid is due, for a maximum deduction of ten percent (10%) of the bidder's seniority.

(4) Minus a deduction of ten percent (10%) of the bidder's seniority if all of the following occur during the ten (10) month period ending on the date the bid is due:

(A) The custodial authority of the bidder's BEP facility has made a written complaint to the state licensing agency or to BVIS alleging that the bidder has violated the terms of the permit, or contract between the custodial authority and the state licensing agency, for the bidder's BEP facility.

(B) The state licensing agency or BVIS has given the bidder written notice of the complaint.

(C) The bidder has not corrected, or taken reasonable steps to correct, the alleged violation.

(D) The state licensing agency or BVIS has given the bidder written notice of the bidder's failure to correct the problem.

(5) Minus a deduction of five percent (5%) of the bidder's seniority if the bidder has not attended or participated in a training activity or conference sponsored in whole or in part, or approved in advance, by the state licensing agency during the ten (10) month period ending on the date the bid is due.

(f) The state licensing agency or BVIS shall offer the assignment of the facility to the eligible bidder with the highest numeric score. The state licensing agency or BVIS shall notify the successful bidder in writing of the offer of an available facility position to that bidder. By 3 p.m. on the tenth business day after receipt of the agency's letter, the successful bidder must notify the state licensing agency or BVIS, in writing, that the offer is accepted or refused. Refusal of an offer is final and irrevocable. A failure to respond within the required time period is deemed a refusal of an offer.

(g) If the bidder with the highest numeric score does not accept the assignment of the facility, the state licensing agency or BVIS shall continue to offer the assignment of the facility to eligible bidders in declining numeric order from the highest numeric score until:

(1) an eligible bidder accepts the assignment; or

(2) all eligible bidders have been offered the assignment.

(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 2-4-15)

460 IAC 2-4-16 Temporary operators; assignment of temporary location

Authority: IC 12-8-8-4; IC 12-9-2-3

Affected: IC 12-12-5; 20 U.S.C. 107

Sec. 16. (a) The state licensing agency, with the active participation of the Indiana committee of licensed managers, may place a temporary operator in a BEP facility under any of the following circumstances:

(1) No eligible person bids on a BEP facility.

(2) No eligible person accepts the assignment of a BEP facility.

(3) An operator for a BEP facility is not otherwise available.

(b) If a BEP facility is temporarily not assigned to a licensed manager or manager trainee, or if a temporary operator is needed for a BEP facility, the following priorities will be used in assigning a temporary operator to the facility:

(1) A licensed manager displaced from the manager's facility through no fault of the manager, for example, due to the permanent or temporary closing of a BEP facility, is given first priority on any unassigned temporary location. If more

than one (1) displaced licensed manager is eligible, selection will be based on seniority.

(2) If a displaced licensed manager is not available for placement or does not accept the placement, the location will be offered next to eligible manager trainees. If more than one (1) manager trainee is eligible, the manager trainee with the most seniority will be selected.

(3) If a manager trainee is not available for placement or does not accept the placement, the location will be offered next to the licensed manager whose legal residence is closest in physical proximity to the unassigned temporary location. If more than one (1) licensed manager meets the proximity requirement, the licensed manager with the most seniority will be selected.

(4) In selecting a temporary operator, the state licensing agency shall give priority to qualified blind persons. A qualified sighted person may be placed as a temporary operator only after the state licensing agency determines that a qualified blind person is not available.

(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 2-4-16)

460 IAC 2-4-17 Operator agreement

Authority: IC 12-8-8-4; IC 12-9-2-3

Affected: IC 12-12-5; 20 U.S.C. 107

Sec. 17. An operator must enter into a written agreement with the state licensing agency for the operation of an assigned BEP facility. A new agreement must be executed each time an operator moves or transfers to another BEP facility. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 2-4-17)*

460 IAC 2-4-18 Leave of absence

Authority: IC 12-8-8-4; IC 12-9-2-3

Affected: IC 12-12-5; 20 U.S.C. 107

Sec. 18. (a) A licensed manager may request and take an approved leave of absence for a period up to twenty-four (24) months for the following purposes:

(1) Medical leave for a licensed manager's own serious health condition that prevents the licensed manager from performing any of the essential functions at the manager's assigned BEP facility.

(2) Medical leave to care for the licensed manager's spouse, parent, child, or other legal dependent, who has a serious health condition and who is dependent on the manager for care.

(3) Leave in conjunction with the birth or placement of a child for adoption or foster care, as long as the leave concludes within twelve (12) months following the birth or placement.

(4) Vision rehabilitation.

(b) At least fifteen (15) business days in advance, the licensed manager shall submit a written notice to the state licensing agency of the following:

(1) Manager's intent to take a leave of absence.

(2) The purpose of the leave.

(3) The dates and expected duration of the leave.

If fifteen (15) business days' notice is not possible, the manager shall give notice as soon as practicable. The state licensing agency shall send a written response to the manager and shall indicate whether the leave is approved as requested. Upon request from the state licensing agency, the licensed manager shall provide medical documentation of the need for the leave and concerning the duration of the leave.

(c) If a leave of absence is for six (6) months or less, a licensed manager has the right to retain the assigned BEP facility throughout the period of the leave. A licensed manager must select an individual, approved in advance by the state licensing agency, to operate the facility in the manager's absence. During the leave, the licensed manager shall remain responsible for the submission of monthly reports and all related duties of the licensed manager. If the licensed manager requests an extension of a leave beyond six (6) months from the beginning of the approved leave, the provisions of subsection (d) shall apply.

(d) Leave of absence for a period greater than six (6) months and up to two (2) years. If the leave of absence is for period greater than six (6) months, a licensed manager shall not have the right to retain the manager's assigned BEP facility, and the following requirements apply:

(1) The state licensing agency shall assign a temporary operator to the BEP facility until the bidding and assignment process set out in section 15 of this rule is completed.

(2) At any time before the end of an approved leave period, the licensed manager may submit to the state licensing agency a written request for reinstatement in the business enterprise program and for assignment to a BEP facility. At the manager's written request, the state licensing agency shall place the licensed manager's name on the placement list for assignment to an available BEP facility.

(3) The licensed manager must notify the state licensing agency, in writing, at least thirty (30) days before the end of the approved leave period of the following:

(A) That the manager requests to be placed on the placement list for assignment to a BEP facility.

(B) That the manager does not wish to participate in the business enterprise program and agrees to the termination of the manager's license.

(e) The manager's license may be suspended for thirty (30) days according to disciplinary procedures under any of the following circumstances:

(1) The manager fails to return to the facility upon completion of the leave.

(2) The manager fails to comply with subsection (d)(3).

(3) The manager fails to obtain prior approval from the state licensing agency for a leave extension allowable under this section.

(f) The state licensing agency may require specific training of a licensed manager upon returning from a leave of absence of one (1) year or more.

(g) After a leave of absence, a licensed manager requesting assignment to a BEP facility may request additional training, subject to the provisions of section 19 of this rule concerning continuing education. (*Division of Disability, Aging, and Rehabilitative Services; 460 IAC 2-4-18*)

460 IAC 2-4-19 Continuing education

Authority: IC 12-8-8-4; IC 12-9-2-3

Affected: IC 12-12-5; 20 U.S.C. 107

Sec. 19. (a) In-service training activities will be conducted for licensed managers to:

(1) develop business management and marketing skills; and

(2) enhance their ability to run a profitable facility.

(b) Training requests may be approved by the state licensing agency based on:

(1) the availability of training resources; and

(2) a licensed manager's need to receive requested training.

(c) If training is provided to a licensed manager at the manager's request, the licensed manager has the right to retain the assigned BEP facility upon the completion of training.

(d) Specific training may be required of the licensed manager in any of the following situations:

(1) The assigned BEP facility changes or expands to include management responsibilities in which the licensed manager is not qualified or has not had experience or training within the past one (1) year period.

(2) Equipment is placed in the location with which the licensed manager has had no training or experience within the past one (1) year period.

(3) A licensed manager is transferred to a new location that includes management responsibilities in which the licensed manager has not had experience within the past one (1) year period.

(4) A licensed manager returns from a leave of absence of one (1) year or more.

(5) Training is required by the state licensing agency under a written action plan.

(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 2-4-19)

460 IAC 2-4-20 Termination of manager's license

Authority: IC 12-8-8-4; IC 12-9-2-3

Affected: IC 12-12-5; 20 U.S.C. 107

Sec. 20. (a) A manager's license terminates automatically, without further notice, if any of the following occur:

- (1) Death of a licensed manager.**
- (2) A licensed manager's resignation or withdrawal from the business enterprise program.**
- (3) A licensed manager's retirement from the business enterprise program.**

(b) A manager's license will be terminated if:

- (1) the manager's vision improves to the extent that the manager is no longer legally blind; or**
- (2) extended illness or incapacity of the manager prevents the manager's personal operation of the facility, when there is no reasonable expectation, based on medical evidence, that the manager will be able to return to work.**

(c) A manager's license may be terminated for cause as set out in section 27 of this rule. (*Division of Disability, Aging, and Rehabilitative Services; 460 IAC 2-4-20*)

460 IAC 2-4-21 Disciplinary procedures for licensed managers

Authority: IC 12-8-8-4; IC 12-9-2-3

Affected: IC 12-12-5; 20 U.S.C. 107

Sec. 21. (a) Disciplinary actions shall include the following:

- (1) Formal counseling.**
- (2) Written action plan.**
- (3) Immediate suspension without notice.**
- (4) Disciplinary suspension.**
- (5) Loss of assigned BEP facility.**
- (6) Termination of license.**

(b) At any time discipline is imposed, a licensed manager shall be informed of the right to file a grievance under section 28 of this rule.

(c) Except as provided in section 24 of this rule (immediate suspension), a licensed manager shall be advised of the opportunity for a full evidentiary hearing before:

- (1) disciplinary suspension;**
- (2) loss of the manager's facility; or**
- (3) termination of the manager's license.**

(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 2-4-21)

460 IAC 2-4-22 Disciplinary procedures; formal counseling

Authority: IC 12-8-8-4; IC 12-9-2-3

Affected: IC 12-12-5; 20 U.S.C. 107

Sec. 22. (a) Formal counseling is a discussion, in person or by telephone, between a licensed manager and a business counselor or other staff of the state licensing agency. The discussion must be documented, in writing, in the state licensing agency's file for the manager.

(b) In formal counseling, a licensed manager will be advised of the following:

- (1) That the discussion is a formal counseling session under the state licensing agency disciplinary procedures.**
- (2) The specific nature of the action or violation complained of.**
- (3) The corrective action required.**
- (4) The date when corrective action must be completed.**
- (5) The consequences of failure to comply with corrective action.**
- (6) The consequences of repeated violation.**

(c) Formal counseling shall be used for the first violation of a rule, policy, or the terms of an agreement or permit for a BEP facility, except for any of the following, for which a higher level of discipline may result:

- (1) The state licensing agency reasonably determines that public health, safety, or welfare is in danger due to the manager's operations.**

(2) The state licensing agency reasonably determines that the permit for a BEP facility is in jeopardy due to the manager's operations.

(3) The state licensing agency reasonably determines that a BEP facility contract between the custodial authority of the facility and the state licensing agency is in jeopardy due to the manager's operations.

(d) The state licensing agency staff member conducting a formal counseling session shall send a written report of the session to the licensed manager. The report shall include the information required in subsection (b). A copy of the report will be kept in the manager's file in the state licensing agency.

(e) A licensed manager shall have the right to submit written comments regarding the report to the state licensing agency. If the manager does so, the written comments will be kept in the manager's file in the state licensing agency.

(f) An action or violation that results in formal counseling may be the basis for a written action plan if the action or violation:

(1) is not corrected as requested in the formal counseling report; or

(2) that is the basis for formal counseling is repeated.

(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 2-4-22)

460 IAC 2-4-23 Disciplinary procedures; written action plan

Authority: IC 12-8-8-4; IC 12-9-2-3

Affected: IC 12-12-5; 20 U.S.C. 107

Sec. 23. (a) A written action plan must notify a licensed manager of the following:

(1) The specific nature of the action or violation complained of.

(2) The corrective action required.

(3) The date for completing corrective action.

(4) The consequence of failure to correct the problem.

(5) The consequence of a repeated violation.

(b) A written action plan shall be presented to a licensed manager in a meeting between the licensed manager and a business counselor or the business enterprise program director of the state licensing agency. The licensed manager may be represented at this meeting at the manager's expense.

(c) The licensed manager will be required to correct the action or violation within a specific, reasonable time period.

(d) The licensed manager must remain free of the action or violation complained of in the written action plan for a period of one hundred eighty (180) days from the date in the action plan when corrective action must be completed.

(e) A licensed manager who receives three (3) written action plans within a twelve (12) month period may be subject to disciplinary suspension.

(f) An action or violation that results in an action plan may be the basis for disciplinary suspension if the action or violation is:

(1) not corrected in accordance with the action plan; or

(2) repeated or occurs again.

(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 2-4-23)

460 IAC 2-4-24 Disciplinary procedures; immediate suspension

Authority: IC 12-8-8-4; IC 12-9-2-3

Affected: IC 4-21.5-4; IC 12-12-5; 20 U.S.C. 107

Sec. 24. (a) The state licensing agency may seek from the director of the division the authority, IC 4-21.5-4, to immediately suspend the manager's facility operation, without a hearing prior to suspension, if the state licensing agency reasonably determines that:

(1) the public health, safety, or welfare is in danger due to the manager's operations;

- (2) the permit for the BEP facility is in jeopardy due to the manager's operations;
- (3) the BEP facility contract between the custodial authority of the facility and the state licensing agency is in jeopardy due to the manager's operations; or
- (4) a licensed manager has abandoned the manager's assigned BEP facility.

(b) Pursuant to such authorization, the licensed manager's operation of the facility shall be suspended immediately. The manager shall cease operation of the facility during the period of suspension. The operation of the facility shall continue under the authority of the state licensing agency.

(c) The state licensing agency shall promptly notify the licensed manager of the immediate suspension by certified mail or personal service. The notice of suspension shall inform the licensed manager of the following:

- (1) The effective date of the suspension.
- (2) The duration of the suspension.
- (3) The violation or action that is the basis for the suspension.
- (4) The consequence of failure to correct the violation or action after the suspension.
- (5) The consequence of a repeated violation after the suspension.
- (6) The manager's right to:
 - (A) file a grievance or to appeal the state licensing agency's action; and
 - (B) a full evidentiary hearing.

(d) An immediate inventory of all stock, equipment, and documents shall be taken and recorded. The state licensing agency shall provide the suspended manager with a copy of the inventory.

(e) The state licensing agency, with the active participation of the Indiana committee of licensed managers, shall select and place a temporary operator in the facility. The costs of a temporary operator will be charged to, and paid from, the facility's gross sales.

(f) The net proceeds from the facility shall be paid to the suspended manager on a monthly basis.

(g) After an immediate suspension under this section, the suspended manager shall have the right to a full evidentiary hearing under section 30 of this rule. To exercise that right, the suspended manager must file a written request with the director of the division for a full evidentiary hearing. The written request must be filed within fifteen (15) business days after service of the written notice of immediate suspension.

(h) If an immediate suspension is found to be contrary to law after a full evidentiary hearing and after formal administrative review is complete, the licensed manager shall be reimbursed for the costs of the temporary operator. (*Division of Disability, Aging, and Rehabilitative Services; 460 IAC 2-4-24*)

460 IAC 2-4-25 Disciplinary procedures; disciplinary suspension

Authority: IC 12-8-8-4; IC 12-9-2-3

Affected: IC 12-12-5; 20 U.S.C. 107

Sec. 25. (a) Disciplinary suspension of a licensed manager's operation of an assigned BEP facility for a minimum of thirty (30) calendar days may result from any of the following:

- (1) Failure to comply with a written action plan.
- (2) An action or a violation that is the basis of a written action plan is repeated following the written action plan.
- (3) A licensed manager receives three (3) action plans within a period of twelve (12) months.
- (4) A licensed manager is imprisoned after conviction of a criminal offense.
- (5) A licensed manager fails, without reasonable justification, to:
 - (A) give the notice required section 18 of this rule, regarding the end of a leave of absence;
 - (B) return to the manager's facility upon completion of an approved leave of absence; or
 - (C) obtain prior approval from the state licensing agency for an extension of a leave of absence allowable under section 18 of this rule.

(b) The state licensing agency shall promptly notify by certified mail or personal service a licensed manager whose license

is proposed to be suspended. The notice of proposed suspension shall inform the licensed manager of the following:

- (1) The action or violation that forms the basis for the proposed suspension.
- (2) The duration of the proposed suspension.
- (3) The consequence of a failure to correct the violation or action after the proposed suspension.
- (4) The consequence of repeated violations after the proposed suspension.
- (5) The manager's right to a full evidentiary hearing before suspension of the manager's license.

(c) Except as provided in section 24 of this rule (immediate suspension without notice), a licensed manager must be afforded an opportunity for a full evidentiary hearing before suspension of the manager's license.

(d) If a licensed manager's operations are suspended after a full evidentiary hearing, the manager shall cease operation of the facility during the period of suspension. The operation of the facility shall continue under the authority of the state licensing agency.

(e) An immediate inventory of all stock, equipment, and documents shall be taken and recorded. The state licensing agency shall provide the suspended manager with a copy of the inventory.

(f) The state licensing agency, with the active participation of the Indiana committee of licensed managers, shall select and place a temporary operator in the facility. The costs of a temporary operator will be charged to, and paid by, the suspended manager from the facility's gross sales.

(g) The net proceeds from the facility shall be paid to the suspended manager on a monthly basis. (*Division of Disability, Aging, and Rehabilitative Services; 460 IAC 2-4-25*)

460 IAC 2-4-26 Disciplinary procedures; loss of facility

Authority: IC 12-8-8-4; IC 12-9-2-3

Affected: IC 12-12-5; 20 U.S.C. 107

Sec. 26. (a) A licensed manager shall lose the manager's assigned BEP facility, and the facility agreement between the manager and the state licensing agency shall be terminated and canceled, if any of the following occurs:

- (1) An action or violation resulted in a suspension and was not corrected.
- (2) An action or violation resulted in a suspension, and the action or violation was repeated.
- (3) A licensed manager has a repeated violation or failure to comply with the terms of a:
 - (A) permit for a BEP facility assigned to the licensed manager; or
 - (B) contract between the state licensing agency and the custodial authority of a BEP facility assigned to the licensed manager.

(b) The state licensing agency shall promptly notify a licensed manager by certified mail or personal service if the agency proposes to terminate the manager's operations in the manager's assigned BEP facility under this section. The notice of proposed loss of facility shall inform the licensed manager of the following:

- (1) The action or violation that forms the basis for the proposed loss of the manager's assigned BEP facility.
- (2) The consequence of a repeated violation after the manager's loss of the assigned BEP facility.
- (3) The manager's right to a full evidentiary hearing before loss of the manager's assigned BEP facility.

(c) A licensed manager must be afforded an opportunity for a full evidentiary hearing before loss of the assigned BEP facility under this rule.

(d) The loss of a facility by a licensed manager under this section shall not restrict the manager from bidding on another available facility; however, the manager shall not be awarded the facility that was lost under this section. (*Division of Disability, Aging, and Rehabilitative Services; 460 IAC 2-4-26*)

460 IAC 2-4-27 Disciplinary procedures; termination of license

Authority: IC 12-8-8-4; IC 12-9-2-3

Affected: IC 12-12-5; 20 U.S.C. 107

Sec. 27. (a) The state licensing agency may terminate a manager's license for any of the following reasons:

- (1) An action or violation that resulted in a loss of a licensed manager's BEP facility is not corrected.**
- (2) An action or violation that resulted in a loss of a licensed manager's BEP facility is repeated.**
- (3) Violation of the BEP facility agreement between the state licensing agency and a licensed manager.**
- (4) Violation of the terms of the permit issued to the state licensing agency by the custodial authority of the BEP facility for the manager's assigned BEP facility.**
- (5) Violation of the terms of the BEP facility agreement between the state licensing agency and the custodial authority of the BEP facility for the manager's assigned BEP facility.**
- (6) Violation of this rule.**
- (7) Inability of a licensed manager to substantially comply with this rule for any reason.**
- (8) Conviction of a felony or misdemeanor that involves fraud, deceit, or misrepresentation.**
- (9) Continuing violation of state or local government health codes or laws, or failure to correct a violation of the health codes or laws.**

(b) The state licensing agency shall promptly notify a licensed manager of a proposed license termination by certified mail or personal service. The notice shall inform a licensed manager of the following:

- (1) The action or violation that is the basis for the proposed termination.**
- (2) The licensed manager's right to a full evidentiary hearing before termination of the manager's license.**

(c) A licensed manager will be afforded an opportunity for a full evidentiary hearing before termination of the manager's license.

(d) If a manager's license is terminated, the state licensing agency shall refer the manager to the office of vocational rehabilitation services for other services. (*Division of Disability, Aging, and Rehabilitative Services; 460 IAC 2-4-27*)

460 IAC 2-4-28 Grievance procedures for licensed managers

Authority: IC 12-8-8-4; IC 12-9-2-3

Affected: IC 4-21.5-5; IC 12-12-5; 20 U.S.C. 107

Sec. 28. (a) At the time of licensing, a manager shall be informed of the right to, and the procedures for obtaining, administrative review, including a full evidentiary hearing, regarding a decision of the state licensing agency. A licensed manager shall be given access to this information in the manager's choice of Braille, large print, or recorded tape.

(b) If a licensed manager disagrees with an action taken by the state licensing agency arising from the operation or administration of the BEP facility program, the licensed manager may file a written grievance with the deputy director of blind and visually impaired services within fifteen (15) business days of notification of the agency action complained of. The grievance must be filed in accordance with the procedures established in this section.

(c) Upon receiving a written grievance, the deputy director of blind and visually impaired services shall conduct informal administrative review under section 29 of this rule.

(d) If the aggrieved party is dissatisfied with the outcome of informal administrative review, the aggrieved party may file a written request with the director of DDARS for a full evidentiary hearing. The written request must be filed within fifteen (15) business days after service of the written notice of the decision from informal administrative review. The hearing must be held before a hearing officer appointed by the director or the director's delegate. The hearing officer shall conduct proceedings, and file a recommended order with the parties and the director of DDARS under section 30 of this rule.

(e) If a party is dissatisfied with the recommended order of a hearing officer, a party may file written objections with the director of DDARS within fifteen (15) business days of service of the hearing officer's recommended order. The director shall conduct proceedings and enter a final order under section 30 of this rule.

(f) If the aggrieved party is dissatisfied with the final order of the director of DDARS under subsection (e), the aggrieved party may either:

- (1) seek judicial review of the final order under IC 4-21.5-5; or**
- (2) request that an arbitration panel be convened by filing a written complaint with the secretary of the United States**

Department of Education, as authorized by 20 U.S.C. 107d-1 and 34 CFR 395.13, within thirty (30) business days of service of the final order of the director or the director's designee.

(g) This section applies only to licensed managers. (*Division of Disability, Aging, and Rehabilitative Services; 460 IAC 2-4-28*)

460 IAC 2-4-29 Informal administrative review

Authority: IC 12-8-8-4; IC 12-9-2-3

Affected: IC 12-12-5; 20 U.S.C. 107

Sec. 29. (a) A licensed manager may file a written grievance with the deputy director of blind and visually impaired services within fifteen (15) business days of notification of the agency action complained of. The deputy director or deputy director's designee must hold an informal conference with the licensed manager within fifteen (15) business days of the receipt of the request, or within such other period of time agreed to by the licensed manager and the deputy director.

(b) Transportation, reader, or other communication services, if needed and requested, must be arranged for the licensed manager by the state licensing agency.

(c) The deputy director of blind and visually impaired services, or the deputy director's designee, shall file a written decision from the informal conference on the licensed manager within ten (10) business days of the conference.

(d) If the licensed manager disagrees with the written decision from the informal conference with the deputy director of blind and visually impaired services, or the deputy director's designee, the licensed manager may request a full evidentiary hearing. The request must be:

(1) made in writing; and

(2) filed with the director of DDARS within fifteen (15) days after service of the deputy director's decision in subsection

(c).

(*Division of Disability, Aging, and Rehabilitative Services; 460 IAC 2-4-29*)

460 IAC 2-4-30 Formal administrative review; full evidentiary hearing procedures

Authority: IC 12-8-8-4; IC 12-9-2-3

Affected: IC 4-21.5; IC 12-8-8-5; IC 12-12-5; 20 U.S.C. 107

Sec. 30. (a) This section controls proceedings governed by IC 4-21.5 for which the director of DDARS is the ultimate authority.

(b) An affected person who is aggrieved by a determination of the deputy director of BVIS, or the deputy director's delegate, under section 29 of this rule may request formal administrative review and a full evidentiary hearing under IC 4-21.5 and this rule.

(c) The director of DDARS is the ultimate authority for the state licensing agency and DDARS under IC 4-21.5, under IC 12-8-8-5.

(d) As soon as practicable after the initiation of administrative review under this subsection, the director of DDARS shall appoint a hearing officer to conduct proceedings under IC 4-21.5 and this rule. The hearing officer shall be an impartial and qualified person who has no involvement either with the agency action at issue in the proceeding or with the administration or operation of the state licensing agency.

(e) A licensed manager has the right to be represented by counsel at the manager's own expense.

(f) Transportation, reader, or other communication services, if needed and requested, must be arranged for the licensed manager by the state licensing agency.

(g) The hearing shall be held during regular business hours at the state licensing agency, or at such other location as the parties agree. The hearing shall be open to the public.

(h) The hearing officer shall notify the parties, in writing, of the time and place of the hearing. The hearing officer shall also notify the licensed manager of the manager's right to be represented by counsel at his or her own expense.

(i) If the issues in the proceeding are not otherwise resolved, the hearing officer shall conduct a full evidentiary hearing. The hearing officer shall govern the conduct of a hearing and the order of proof.

(j) The hearing officer shall avoid delay, maintain order, and make sufficient record of the proceedings for a full and true disclosure of the facts and issues. To accomplish these ends, the hearing officer shall have all powers authorized by law and may make all procedural and evidentiary rulings necessary for the conduct of the hearing. Unless inconsistent with IC 4-21.5 or this rule, the hearing officer may apply the Indiana Rules of Trial Procedure or the Indiana Rules of Evidence.

(k) Both the licensed manager and the state licensing agency are entitled to present oral or documentary evidence, to submit rebuttal evidence, and to conduct such examination and cross-examination of witnesses as may be necessary for a full and true disclosure of all facts bearing on the issues.

(l) All papers and documents introduced into evidence at the hearing shall be filed with the hearing officer at the hearing, and a copy shall be provided to the other party. All such documents and other evidence submitted shall be open to examination by the parties, and opportunities shall be given to refute facts and arguments advanced on either side of the issues.

(m) A transcript shall be made of the oral evidence and shall be made available to the parties. The state licensing agency shall pay all transcript costs and shall provide the manager with one (1) copy of the transcript.

(n) The record required to be kept by a hearing officer under IC 4-21.5-3-14 commences when a proceeding is initiated and includes the items described in IC 4-21.5-3-33.

(o) The hearing officer shall issue a written recommended order within thirty (30) business days after the receipt of the official transcript. The recommended order shall be mailed promptly to the licensed manager, the state licensing agency, and the ultimate authority of the agency.

(p) The recommended order of the hearing officer shall set forth the principal issues and relevant facts adduced at the hearing, and the applicable provisions in law, regulation, and agency policy. The order and decision shall contain findings of fact and conclusions with respect to each of the issues, and the reasons and basis therefor. The decision shall also set forth any remedial action necessary to resolve the issues in dispute.

(q) Subject to the provisions of subsections (s) through (u), after a hearing officer issues a recommended order under this section, the director or the director's designee shall issue a final order within thirty (30) business days. The final order shall:

- (1) affirm;**
- (2) modify; or**
- (3) dissolve;**

the hearing officer's order. The director or the director's designee may remand the matter, with or without instructions, to the hearing officer for further proceedings.

(r) In the absence of a party's objection or notice from the director of intent to review any issue related to the order under subsection (s) or (t), the director or the director's designee shall affirm the order.

(s) To preserve an objection to an order of a hearing officer for judicial review, a party who is dissatisfied with the order must not be in default under IC 4-21.5 and must object to the order, in writing, that:

- (1) identifies the basis of the objection with reasonable particularity; and**
- (2) is filed with the director responsible for reviewing the order within fifteen (15) days after the order is served on the party.**

(t) If an objection is filed, the director of DDARS or the director's designee will conduct proceedings to issue a final order. In these proceedings, the director or the director's designee shall afford each party an opportunity to present briefs. The director or the director's designee may:

- (1) afford each party an opportunity to present oral argument;
- (2) exercise the powers of a hearing officer to hear additional evidence under IC 4-21.5-3-25 and IC 4-21.5-3-26; or
- (3) allow nonparties to participate in the proceeding in accordance with IC 4-21.5-3-25.

(u) If no objection to the order of the hearing officer is filed, the director of DDARS or the director's designee may serve written notice of the director's intent to review any issue related to the order within thirty (30) days of service of the hearing officer's recommended order. The notice shall be served on all parties. The notice must identify the issues that the director or the director's designee intends to review. In these proceedings, the director or the director's designee shall afford each party an opportunity to present briefs. The director or the director's designee may:

- (1) afford each party an opportunity to present oral argument;
- (2) exercise the powers of a hearing officer to hear additional evidence under IC 4-21.5-3-25 and IC 4-21.5-3-26; or
- (3) allow nonparties to participate in the proceeding in accordance with IC 4-21.5-3-25.

(v) A final order disposing of the proceeding, or an order remanding an order to the hearing officer for further proceedings shall be issued within thirty (30) days after the latter of:

- (1) the date that the hearing officer's order was issued;
- (2) the receipt of briefs or written comments; or
- (3) the close of oral arguments.

After remand of an order to a hearing officer under this subsection, the hearing officer's subsequent order is also subject to review under this section.

(w) The final order of the director of DDARS or the director's designee must:

- (1) identify any differences between the director's final order and the recommended order issued by the hearing officer;
- (2) include findings of fact or incorporate the findings of fact in the hearing officer's recommended order by express reference to the recommended order;
- (3) inform a party of the right to seek judicial review of the final order pursuant to IC 4-21.5-5; and
- (4) inform a licensed manager that, if the licensed manager is dissatisfied with the final order issued by the director of DDARS or the director's designee, the licensed manager may request that an arbitration panel be convened by filing a complaint with the Secretary of the Department of Education, as authorized by 20 U.S.C. 107d-1 and 34 CFR 395.13, within thirty (30) business days of service of the final order of the director or the director's designee.

(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 2-4-30)

460 IAC 2-4-31 Business enterprise program facility equipment and inventory

Authority: IC 12-8-8-4; IC 12-9-2-3

Affected: IC 12-12-5; 20 U.S.C. 107

Sec. 31. (a) Ownership of inventory and equipment requirements are as follows:

- (1) Start-up inventory purchased by the state licensing agency as part of the vocational rehabilitation plan is the property of the licensed manager.
- (2) The state is the owner of the BEP facility equipment purchased by the state licensing agency for BEP facilities under 20 U.S.C. 107b and 34 CFR 395.4.
- (3) The use of BEP equipment is limited to the purposes designated by the state licensing agency for the business enterprise program.

(b) Repair of facility equipment requirements are as follows:

- (1) A licensed manager is responsible for the periodic maintenance of equipment furnished by the state licensing agency and shall provide the care necessary to maintain the equipment in good condition and repair, excluding ordinary wear.
- (2) A licensed manager who fails to maintain the BEP facility and equipment in good repair will be subject to disciplinary action.
- (3) The state licensing agency shall give written notice to a licensed manager to perform or to make arrangements for, necessary maintenance or repairs within a specific, reasonable period of time. If the manager does not comply with the notice, the state licensing agency shall make arrangements for necessary maintenance or repairs.
- (4) If the state licensing agency has arranged for necessary maintenance or repairs subdivision (3), the licensed manager shall reimburse the state for the costs thereof within:
 - (A) thirty (30) days of the manager's receipt of the bill; or

(B) a longer time period agreed to by the licensed manager and the state licensing agency.

(c) Replacement of facility equipment requirements are as follows:

(1) The state licensing agency will replace worn out, severely damaged, or obsolete equipment in a BEP facility, subject to the requirements of subdivision (2).

(2) Replacement of equipment described in subdivision (1) will be based on consideration of all of the following criteria:

(A) The need for equipment replacement as determined by the state licensing agency.

(B) If requested, the manager's providing the state licensing agency with written documentation of the need for equipment replacement.

(C) A request from the custodial authority of the BEP facility.

(D) The approval of the custodial authority of the BEP facility if the equipment is not listed among the equipment allowed under the permit for the facility or the contract between the state licensing agency and the custodial authority.

(E) The availability of funding.

(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 2-4-31)

460 IAC 2-4-32 Relocation, installation, renovation of a business enterprise program facility

Authority: IC 12-8-8-4; IC 12-9-2-3

Affected: IC 12-12-5; 20 U.S.C. 107

Sec. 32. (a) The installation, modification, relocation, removal, or renovation of a BEP facility shall be subject to the prior approval and supervision of the state licensing agency and the custodial authority responsible for the property on which the facility is located, in consultation with the licensed manager.

(b) The cost of relocation initiated by the state licensing agency shall be paid by the state licensing agency.

(c) The cost of relocation initiated by the custodial authority shall be paid by that entity, subject, however, to the terms of the permit for the BEP facility, or to the terms of the facility agreement entered into by the custodial authority and the state licensing agency. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 2-4-32)*

460 IAC 2-4-33 Set-aside funds

Authority: IC 12-8-8-4; IC 12-9-2-3

Affected: IC 12-12-5; 20 U.S.C. 107

Sec. 33. (a) Operator-assessed set-aside funds accrue for use in the BEP for only the following purposes:

(1) Maintenance and replacement of equipment.

(2) The purchase of new equipment.

(3) Management services, including administrative costs of the Indiana committee of licensed managers.

(4) Assuring a fair minimum return to licensed managers.

(5) The establishment and maintenance of retirement or pension funds, health insurance contributions, and provision for paid sick leave and vacation time, if a majority vote of managers licensed by the state licensing agency determines that funds should be set aside for such purposes.

(b) Every operator of a BEP facility, including licensed managers, manager trainees, and temporary operators, must set aside a portion of the net proceeds from the operator's assigned BEP facility or facilities in accordance with the following:

(1) The percentage of net proceeds to be set aside will be determined and reviewed annually by the state licensing agency with the active participation of Indiana committee of licensed managers in accordance with 34 CFR 395.9.

(2) The percent of net proceeds required to be set aside will be based on the estimated amount of revenue needed by the state licensing agency to fund only the following:

(A) The maintenance and replacement of equipment.

(B) The purchase of new equipment, subject, however, to the requirement that the state licensing agency will use funds from the office of vocational rehabilitation to purchase new equipment whenever possible.

(C) Management services performed by the state licensing agency.

(D) Assuring a fair minimum return to licensed managers.

(E) The establishment and maintenance of retirement or pension funds, health insurance contributions, and provision for paid sick leave and vacation time if a majority vote of managers licensed by the state licensing agency determines that

funds should be set aside for the purposes set out in this clause.

(3) The percentage determined in subdivision (2) shall become effective upon:

(A) approval by the Secretary of the United States Department of Education; and

(B) written notification to all operators of the approval by the Secretary of the United States Department of Education.

(4) The percentage approved under this subsection will remain in effect until changed in accordance with this section.

(c) Each operator shall pay the approved set-aside to the state licensing agency for any given month by the fifteenth of the following month, if assessed in accordance with this section. (*Division of Disability, Aging, and Rehabilitative Services; 460 IAC 2-4-33*)

460 IAC 2-4-34 Allowable business expenses

Authority: IC 12-8-8-4; IC 12-9-2-3

Affected: IC 12-12-5; 20 U.S.C. 107

Sec. 34. (a) Each operator must file with the state licensing agency a written monthly report of the gross income, the allowable business expenses paid by the operator, and the net proceeds of the assigned BEP facility or facilities. The report must be filed in a form set by the state licensing agency.

(b) Allowable business expenses include the following expenses paid by an operator for the operation of a BEP facility:

(1) Stock, which means merchandise purchased for resale in the BEP facility.

(2) Supplies, which means expendable items that are necessary for day-to-day facility operation, but are not for resale.

(3) Merchandise delivery charge, which means an additional cost, above the cost of stock or supplies, assessed for making a delivery to a BEP facility.

(4) Pest exterminating service.

(5) Janitorial service, which means a commercial firm or independent contractor to clean the facility or to remove trash. Such costs are deductible unless the state licensing agency or the custodial authority assigns this responsibility to someone other than the operator.

(6) Bookkeeping and bank fees directly related to the facility operation.

(7) Required business licenses.

(8) Telephone charges, which means the cost for any reasonably necessary business telephone service, including long distance telephone calls for BEP facility business and in fulfillment of BEP committee responsibilities.

(9) Purchase, rental, or laundry costs for uniforms and linens used in the BEP facility provided that the costs for uniforms are allowed if uniforms are worn only for work at the BEP facility.

(10) Business advertising not to exceed, in a calendar year, the greater of:

(A) one percent (1%) of the facility's gross annual income for the prior year; or

(B) three hundred dollars (\$300).

(11) Premiums for insurance coverage for business vehicles or for merchandise, inventory, and cash loss due to public liability, food hazard, fire, theft, and flood, except that the insurance premiums for state-owned equipment shall not be deductible. If insurance coverage does not cover the complete loss, then the documented loss is not to exceed the amount of the deductible benefit, under the policy in effect at the time of the loss. If a deduction had been claimed for lost money that is later found, either the amount claimed or the actual money found, whichever is less, shall be reported as gross monthly income for the month in which it is found.

(12) Rent if required by contract for space.

(13) Utilities for the facility when not included in rent.

(14) Wages, paid leave time, and other fringe benefits for an employee who is not a party to an agreement or a temporary operator agreement with the state licensing agency.

(15) Coverage for Social Security, workers' compensation, and unemployment compensation, as required by law for an employee who is not a party to an operator agreement with the state licensing agency.

(16) Sales taxes.

(17) Business-related legal fees.

(18) Short term training expenses of reasonable cost for operators and employees if the training is directly related to the job.

(19) Temporary operator fees paid in accordance with this rule.

(20) Travel expenses if required for BEP business purposes, including the following:

(A) Travel costs allowed by the Internal Revenue Service and in the amounts allowed by the Internal Revenue Service.

(B) For businesses requiring vehicles, the actual operating costs for commercial vehicles may be deducted, excluding depreciation, commuter miles, and personal use of vehicle. Such costs must be commensurate with vehicle expenses in other similar work in the local economy. Operating costs include gasoline, oil, and other maintenance costs, including monthly lease or purchase costs. Operating costs can also include any down payment on a vehicle purchase, but not a security deposit for a vehicle lease. The business portion of a down payment may be expensed at a mutually beneficial rate (not to exceed thirty-six (36) months) agreed upon by the operator and the BEP business counselor. If a previously expensed vehicle is traded in for a replacement vehicle, the trade-in value is not an allowable expense. If a previously expensed vehicle is sold, the prorated business share of such proceeds must be reinvested in the purchase of any replacement vehicle and such reinvestment is not an allowable expense. Lease default or vehicle loan repossession related costs are not allowable deductions.

(21) Air conditioner filter service and fire extinguisher service.

(22) A vision exam if required in accordance with section 13(b) of this rule.

(23) Payments to the custodial authority of the assigned BEP facility if the payments are required under:

(A) the permit issued to the state licensing agency for the BEP facility; or

(B) the facility agreement between the state licensing agency and the custodial authority of the BEP facility.

(24) Payment of an expense that is the responsibility of the state licensing agency with the prior approval of the BEP business counselor or program director. The person giving such approval shall document the approval, in writing, in the facility file.

(25) Personal property taxes assessed by a governmental entity.

(26) Business dues not to exceed, in a calendar year, the greater of:

(A) one percent (1%) of the facility's gross annual income for the prior year; or

(B) three hundred dollars (\$300).

(27) Charitable contributions, grants, and other donations to 501(c)(3) organizations.

(28) Entertainment expenses directly related to BEP facility operations, and as allowed by the Internal Revenue Service.

(29) Postage expenses required to support BEP facility operations.

(30) Cost of equipment repairs or maintenance.

(31) Any other reasonable and necessary expense the state licensing agency approves in writing.

(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 2-4-34)

460 IAC 2-4-35 Distribution and use of income from vending machines not designated as part of a manager's facility on federal property

Authority: IC 12-8-8-4; IC 12-9-2-3

Affected: IC 12-12-5; 20 U.S.C. 107

Sec. 35. (a) The state licensing agency shall disburse income received from vending machines on federal property, when those machines are not designated as part of a BEP facility, in accordance with the requirements in this section.

(b) The state licensing agency shall disburse that income to a licensed manager or managers operating a BEP facility on the same federal property. However, the total amount of income disbursed to a licensed manager shall not exceed the maximum amount allowed under 34 CFR 395.32 and 34 CFR 395.8(a).

(c) If the income from such vending machines exceeds the maximum amount that may be disbursed to a licensed manager under subsection (a), the additional income shall accrue to the state licensing agency for the following purposes:

(1) The income shall be used first for:

(A) the establishment and maintenance of retirement or pension plans;

(B) health insurance contributions; or

(C) the provision of paid sick leave and vacation time for licensed managers in the state;

if a majority vote of managers licensed by the state licensing agency determines that funds should be used for such purposes.

(2) Any vending machine income not necessary for the purposes set out in subdivision (1), shall be used by the state licensing agency for the following purposes:

(A) The maintenance and replacement of equipment.

(B) The purchase of new equipment.

(C) Management services.

(D) Assuring a fair minimum return to licensed vendors.

(3) Any assessment or set-aside charged to licensed managers shall be reduced pro rata in an amount equal to the total of such remaining vending machine income.

(d) If there is no licensed manager operating a BEP facility on the same federal property, the income shall accrue to the state licensing agency for the purposes set out in subsection (c).

(e) The state licensing agency shall disburse vending machine income under this section on at least a quarterly basis. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 2-4-35)*

460 IAC 2-4-36 Operation of facility; business requirements

Authority: IC 12-8-8-4; IC 12-9-2-3

Affected: IC 12-12-5; 20 U.S.C. 107

Sec. 36. (a) A licensed manager must comply with the business requirements set forth in this section. Failure to comply with these business requirements will result in disciplinary action under section 21 of this rule.

(b) A licensed manager and the manager's employees shall not discriminate against any person in furnishing, or by refusing to furnish, to such person the use of any BEP facility, including any and all goods, services, privileges, accommodations and activities provided by the facility, on the basis of sex, race, age, creed, color, national origin, physical or mental disability, or political affiliation.

(c) A licensed manager is responsible for the operations and profitability of the assigned BEP facility.

(d) A licensed manager must comply with the terms of:

(1) the agreement between the state licensing agency and the licensed manager; and

(2) either:

(A) the permit issued to the state licensing agency for the BEP facility; or

(B) the facility agreement between the custodial authority of the facility and the state licensing agency.

(e) A licensed manager is a self-employed person and must comply with all applicable federal, state, and local laws, regulations, and ordinances, including, but not limited to, those applicable to taxes, worker's compensation, unemployment insurance, and Social Security.

(f) A licensed manager must operate the BEP facility in compliance with applicable health, sanitation, and building codes and ordinances.

(g) The accounting records for a BEP facility shall be kept separate from the accounting records for any other business venture.

(h) A BEP facility shall not be used for the operation of any business venture except a business operated under IC 12-12-5, this rule, or the facility agreement between the licensed manager and the state licensing agency. BEP money, product, equipment, and assets shall not be used in, or commingled with the assets of, any other business venture.

(i) A licensed manager must:

(1) accurately complete all reports and forms approved by the state licensing agency and developed with the active participation of the Indiana committee of licensed managers; and

(2) submit the reports and forms to the state licensing agency within established time frames.

(j) A licensed manager must file with the state licensing agency a written monthly report of the gross income, the allowable business expenses paid, and the net income of the assigned BEP facility or facilities. The report must be filed in a form set by the state licensing agency. The report for any month is due and must be filed with the state licensing agency by the close of business on the fifteenth day of the following month, except that, if the fifteenth day is on a Saturday, a Sunday, a legal holiday as defined by state statute, or a day when state offices are closed during regular business hours, the report shall be due on the following business day.

(k) A licensed manager must establish procedures to:

- (1) maintain inventory control;
- (2) maintain adequate inventory; and
- (3) ensure correct charges by the suppliers of articles sold at the BEP facility.

(l) Because one (1) purpose of the business enterprise program is to demonstrate the competence of blind persons, a licensed manager must maintain a physical presence and personal involvement in the daily management and operation of the BEP facility.

(m) A licensed manager shall employ other persons as necessary for the following purposes:

- (1) The effective and efficient operation of the BEP facility.
- (2) Compliance with all contractual obligations.
- (3) Maintaining continuous operation of the facility.

(n) A licensed manager must assure that the terms of employment of any employee are commensurate with the terms of employment of other persons engaged in similar work in the local economy.

(o) A licensed manager is responsible for the conduct of the manager's employees and must ensure that any employee is aware of and complies with the business practices set out in this rule. The manager is responsible for correcting actions of an employee and enforcing the business practices that apply to an employee.

(p) If a licensed manager becomes or is unable to personally operate the BEP facility and to perform under provisions of the agreement between the manager and the state licensing agency, the manager must:

- (1) notify the state licensing agency promptly; and
- (2) select an individual, approved in advance by the state licensing agency, and make arrangements for that individual, to operate the facility in the operator's absence.

If a manager fails or is unable to comply with this subsection, the state licensing agency shall have the right to place a temporary operator in the BEP facility and to assess the costs of the temporary operator to the manager.

(q) A licensed manager shall:

- (1) obtain each policy of insurance required, in the amount required, pursuant to the operating agreement with the state licensing agency;
- (2) upon approval of the state licensing agency, obtain any additional policies of insurance considered necessary for the BEP facility;
- (3) ensure that each policy of insurance names (DDARS as an additional insured;
- (4) provide the state licensing agency with a copy of each policy of insurance, if requested; and
- (5) immediately notify the state licensing agency if either an insurer or the licensed manager cancels any required insurance.

(r) A licensed manager must ensure that each BEP facility will be open during the days and hours:

- (1) specified in:
 - (A) the permit issued to the state licensing agency for the BEP facility; or
 - (B) the agreement between the state licensing agency and the custodial authority of the BEP facility; or
- (2) otherwise agreed upon by the state licensing agency, the manager, and the custodial authority of the BEP facility.

(s) Articles sold at a BEP facility may consist of newspapers, periodicals, publications, confections, tobacco products, foods, beverages, and any other articles or services suitable for a particular location as determined by the state licensing agency, in consultation with the custodial authority and the licensed manager. However, the state licensing agency, in consultation with the custodial authority and the licensed manager, may exclude the sale of various types of merchandise or products at a particular site.

(t) A licensed manager has the right to make the ultimate decision as to particular brands of articles sold.

(u) A licensed manager shall select suppliers of merchandise to be sold at the assigned BEP facility.

(v) A licensed manager has full responsibility for all financial arrangements necessary to obtain merchandise for the BEP facility, except for the initial stock.

(w) A licensed manager must pay all bills, including purchases for goods or services, in a timely manner.

(x) The possession, consumption, or use of alcoholic beverages or illegal drugs at a BEP facility by a licensed manager or by an employee of the manager is not permitted. A licensed manager or an employee of a manager shall not work under the influence of alcohol or illegal drugs at a BEP facility. No alcoholic beverages or illegal drugs shall be allowed at a BEP facility.

(y) A licensed manager must maintain fresh stock and must not sell out-of-date product.

(z) A licensed manager must assure that services are provided to customers and the public in a courteous and professional manner at all times. Any contact with the custodial authority or management of the BEP facility must be conducted in a professional and courteous manner. (*Division of Disability, Aging, and Rehabilitative Services; 460 IAC 2-4-36*)

460 IAC 2-4-37 Business performance of a business enterprise program facility

Authority: IC 12-8-8-4; IC 12-9-2-3

Affected: IC 12-12-5; 20 U.S.C. 107

Sec. 37. (a) A BEP facility must produce a reasonable amount of net proceeds in order to:

- (1) provide a significant economic opportunity for a licensed manager or manager trainee;
- (2) provide for a productive use of program assets; and
- (3) be suitable as a BEP facility.

(b) The state licensing agency, with the active participation of the Indiana committee of licensed managers, shall select criteria to determine whether a BEP facility produces a reasonable amount of net proceeds. The criteria includes, but is not limited to, the following:

- (1) The criteria set out in section 14(a)(2) of this rule.
- (2) An operator's need for assistance in performing any operational responsibility under this rule.

(c) The state licensing agency will perform periodic evaluations of each BEP facility to determine whether a facility is producing a reasonable amount of net proceeds. (*Division of Disability, Aging, and Rehabilitative Services; 460 IAC 2-4-37*)

460 IAC 2-4-38 Indiana committee of licensed managers

Authority: IC 12-8-8-4; IC 12-9-2-3

Affected: IC 12-12-5; 20 U.S.C. 107

Sec. 38. (a) The Indiana committee of licensed managers shall be fully representative, to the extent possible, of all licensed managers in the Indiana program on the basis of geography, facility type, and designation as a federal or nonfederal facility. The committee shall consist of a total of nine (9) members selected from the following categories in the number or numbers indicated:

- (1) By geographic location of a licensed manager's primary facility primary facility located:
 - (A) north of I-70 and west of US 31, one (1) committee member;
 - (B) north of I-70 and east of US 31, one (1) committee member; and
 - (C) south of I-70, one (1) committee member.
- (2) By facility type of a licensed manager's primary facility:
 - (A) highway vending, one (1) committee member;
 - (B) nonhighway vending, one (1) committee member;
 - (C) snack bar, cafeteria, and other type of facility, one (1) committee member.
- (3) By designation of a licensed manager's primary facility as a federal or nonfederal facility:
 - (A) federal facility, one (1) committee member; and
 - (B) nonfederal facility, two (2) committee members.

(b) Election of committee requirements are as follows:

- (1) All members of the committee shall be elected every two (2) years at a conference sponsored by the state licensing

agency.

(2) Only licensed managers may nominate, vote for, and elect members to the committee.

(3) A licensed manager may vote for and elect only committee members to serve in the same three (3) categories as the licensed manager's primary facility. For example, if the primary facility of a licensed manager is located south of I-70, is a snack bar, and is a nonfederal facility, the licensed manager may vote for and elect committee members only in those three (3) categories.

(4) The participation of a licensed manager in the election of committee members shall not be conditioned upon the payment of dues or any fees.

(c) The state licensing agency shall notify all licensed managers, in writing, at least thirty (30) days before the election of the committee at a biennial conference. The notice must include the following information:

(1) The date, time, and place of the election of members of the Indiana committee of licensed managers.

(2) The three (3) categories in which a licensed manager may vote as determined from a primary facilities list enclosed in the notice.

(3) The process whereby the manager may contact the state licensing agency within ten (10) days of receipt of the notice if the manager believes that the primary facilities list contains an error concerning the manager's primary facility or the categories in which the manager may vote.

(4) Notice that a licensed manager may submit written nominations prior to the conference for any position on the committee, and the process for doing so.

(5) Notice that nominations for all positions on the committee will also be taken from the floor at the election.

(d) Official committee action requirements are as follows:

(1) A quorum of the committee shall consist of five (5) members.

(2) Motions shall be passed by a majority of those members present.

(e) The duties of the committee are as follows:

(1) To actively participate with the state licensing agency in major administrative decisions and policy and program development decisions affecting the business enterprise program.

(2) To receive and transmit grievances of licensed managers to the state licensing agency, and to serve as advocate for licensed managers in connection with the grievances.

(3) To actively participate with the state licensing agency in decisions regarding the transfer and promotion of licensed managers.

(4) To actively participate with the state licensing agency in the development of training and retraining programs for licensed managers.

(5) To sponsor meetings and instructional conferences for licensed managers with the state licensing agency.

(6) To keep confidential any confidential information concerning program participants that is disclosed to committee members during the exercise of their duties under this section.

(f) The payment of any expenses incurred by the committee in conjunction with the duties of the committee shall be subject to the prior approval of the state licensing agency. Committee members will be reimbursed in accordance with state travel and administrative policies. (*Division of Disability, Aging, and Rehabilitative Services; 460 IAC 2-4-38*)

SECTION 2. 460 IAC 2-1 IS REPEALED.

Notice of Public Hearing

Under IC 4-22-2-24, notice is hereby given that on May 22, 2001 at 9:00 a.m., at Gary Public Library Auditorium, 220 West Fifth Avenue, Gary, Indiana; AND on May 22, 2001 at 2:30 p.m., at St. Joseph County Public Library Auditorium, 304 South Main Street, South Bend, Indiana; AND on May 23, 2001 at 9:00 a.m., at Allen County Public Library Auditorium, 900 Webster Street, Fort Wayne, Indiana; AND on May 23, 2001 at 3:00 p.m., at the Indiana Government Center-South, 402 West Washington Street, Conference Center Room B, Indianapolis, Indiana; AND on May 24, 2001 at 10:30 a.m., at the Work One Evansville Center, 700 East Walnut Street, Room 152, Evansville, Indiana the Division of Disability, Aging, and Rehabilitative Services will hold a public hearing on proposed new rules to establish the Indiana Randolph-Sheppard Business Enterprise Program, currently known as the Vending Program for the Blind, to define terms and set standards for state agency functions, program participants, licensing requirements, selection of facility locations, assignment of facilities, financial matters, operation of facilities, business performance,

rights and responsibilities of program participants, grievance procedures, disciplinary procedures, administrative review procedures, and the Indiana committee of licensed managers.

If an accommodation is required to allow an individual with a disability to participate in a public hearing, please contact Gregory Jinks at (317) 232-1441 at least forty-eight (48) hours before the hearing.

Copies of these rules are now on file at the Indiana Government Center-South, 402 West Washington Street, Room W451 and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.

Barbara A. Nardi
Staff Attorney
Division of Disability, Aging, and Rehabilitative Services