

EE Certification Index w/ Recommended Changes

Statute 268A	EE Rule 3300.201	Topic	Current language w/ Proposed changes	Issue	EEAC Recommendation
Subd.01.13b		Integrated setting - Supported employment	If DEED has certified a rehabilitation facility setting as integrated, then employment at that site <i>may</i> be considered supported employment.	There is no reference in rule to this provision. Nor are there defined standards to assess a site or grant certification.	
Subd.01.14		Affirmative Business Enterprise	<p>ABE means employment which provides paid work on the premises on the premises of an affirmative business enterprise as certified by the commissioner.</p> <p>ABE employment is considered community employment for purposes of funding under M.Rules, parts 3300.<del>1000</del>2005 to 3300.2055, provided that the wages for individuals reported must be at or above customary wages for the same employer. The employer must also provide one benefit package that is available to all employees at the specific site certified as an affirmative business enterprise.</p>	<p>ABE doesn't exist in the EE Rules.</p> <p>There are no standards for certifying ABE.</p> <p>The Rule reference 3300.1000 is wrong - should be 3300.2005.</p>	
Subd.01.6		Rehabilitation facility- Community rehabilitation provider	<p><del>For purposes of EE, means an entity operated for the primary purpose of providing or facilitating employment for persons with a severe disability.</del></p> <p>J. Sherman (9/17/14): current embargo prevents him from discussing current language being proposed by department.</p>	<p>1: Eliminates healthcare providers from EE system (Allina)</p> <p>2: negative connotation w/ rehabilitation facility</p>	Consensus agreement in concept: (1) delete "operated for the primary purpose of providing or facilitating employment for persons with a disability," and (2) replace with CRP (VR Act), but for-profit corporations continue to be barred from becoming EE providers, per Minn. Stat. 268A.06.1.
Subd.03		Certification-authority	DEED's authority to certify providers	none	
Subd.03(a)		DEED powers and duties	Certify <del>rehabilitation facilities</del> <u>community rehabilitation providers</u> , grant EE funds, perform duties in 268A.15	eliminate "rehabilitation facilities" - negative connotation	Consensus agreement.

EE Certification Index w/ Recommended Changes

Statute 268A	EE Rule 3300.201	Topic	Current language w/ Proposed changes	Issue	EEAC Recommendation
Subd.06.1		Application [Certifiable entities]	Any city, town, county, nonprofit corporation, <del>regional treatment center</del> , or any combination thereof, may apply to the commissioner for assistance in establishing or operating a community rehabilitation facility. Application for assistance must be on forms prescribed by the commissioner.  <del>An applicant is not eligible for a grant under this section unless its audited financial statement of the prior fiscal year have been approved by the commissioner.</del>	1: "regional treatment center" is obsolete language  2: Receipt of the audit is a prerequisite to the application process, and should be moved to 268A.07 (Certification Requirements) consistent with current practice.	Consensus approval.
Subd.07.1		Certification-benefits	A <del>rehabilitation facility</del> <u>community rehabilitation provider</u> must, as a condition for receiving program certification, provide employees <u>who are paid by the community rehabilitation provider and reported to the Extended Employment Program (268A.15) in center based employment</u> with personnel benefits prescribed in rules adopted by the commissioner of the Department of Employment and Economic Security.	Current EE rules require fundamental personnel benefits to be provided to all workers in the EE program when the EE provider is the payroll agent. This change to statute reflects current practice.	Consensus agreement.
Subd.07.2		Certification-Grievance procedure	A <del>rehabilitation facility</del> <u>community rehabilitation provider</u> must, as a condition for receiving program certification, provide employees <u>who are paid by the community rehabilitation provider and reported to the Extended Employment Program (268A.15) in center based employment subprograms</u> with a grievance procedure which has as its final step provisions for final and binding arbitration.	Current EE rules require grievance procedures with binding arbitration to be provided to all workers in the EE program when the EE provider is the payroll agent. This change to statute reflects current practice.	Consensus agreement.
Subd.07.3 (new)		Certification-audit requirement	<u>"A community rehabilitation provider must, as a condition for receiving program certification, submit its audited financial statement of its prior fiscal year for approval by the commissioner."</u>	Currently exists in 268A.06.01 (application), but should move to certification process.	Consensus agreement.

EE Certification Index w/ Recommended Changes

Statute 268A	EE Rule 3300.201	Topic	Current language w/ Proposed changes	Issue	EEAC Recommendation
Subd.085		Board composition	Governing boards' composition of nonprofit corporations: "Membership on a board shall be representative of the community served <b>and shall include a person w/ a disability.</b> "	<p>1: Some providers report difficulty recruiting suitable candidates for board seats among the disability population.</p> <p>2: Some board members may be reluctant to disclose a disability.</p> <p>3: How to determine compliance without violating ADA, HIPPA &amp; privacy laws?</p> <p>Current practice = attestation of compliance by board officer.</p>	<p><i>No consensus.</i></p> <p><i>Most providers present want to drop the requirement to have a person with a disability on the board. However, all advocates and public partners, and some providers want the requirement to remain. There was discussion to mandate CARF's governance standards and all providers were in favor, particularly if in lieu of the membership requirement.</i></p>
Subd.085.2		Board duties	Governing board duties	none	
Subd.15		EE Program - DEED authority	Administration, purpose, rule authority, evaluation, technical assistance, grants, withdrawal of fund, funding authority, and certification of paid work on the premises of a <del>rehabilitation facility</del> <b>community rehabilitation provider as an integrated setting.</b>	No standards for certifying in-house work as an integrated setting.	
Subd.15.1		Admin	DEED administers the EE program; may employ staff as required to administer this section and may accept and receive funds from nonstate sources for the purpose of implementing this section.	none	
Subd.15.2		EE Program - Purpose	The purpose of the EE program for persons with severe impairment to employment is to provide the ongoing support services necessary to secure, maintain, and advance in employment. Employment must encompass the broad range of employment choices available to all persons and promote an individual's self-sufficiency and financial independence.	none	

EE Certification Index w/ Recommended Changes

Statute 268A	EE Rule 3300.201	Topic	Current language w/ Proposed changes	Issue	EEAC Recommendation
Subd.15.3		Adopt rules	DEED shall adopt rules on an individual's eligibility for the EE program; <b>certification</b> of rehab facilities; and methods, criteria, and units of distribution for the allocation of state grant funds to certified rehab facilities. In determining the allocation, DEED must consider the economic conditions of the community and the performance of rehabilitation facilities relative to their impact on the economic status of workers in the EE program.	none	
Subd.15.4		EE Program - Evaluation	DEED shall evaluate the EE program to determine whether the purpose of EE as defined in Subd. 2 is being achieved. The evaluation must include information for the preceding funding year derived from the independent compliance audits of EE providers submitted to DEED by Oct 31, yearly. <b>The evaluation must include an assessment of whether workers in the EE program are satisfied with their employment. A written report of this evaluation must be prepared at least every two years and made available to the public.</b>	No evaluation of whether EE program is achieving purpose; no assessment of worker satisfaction performed.	
Subd.15.5		Technical assistance		none	
Subd.15.6		Innovation & expansion grants	DEED may provide innovation and expansion grants to rehab facilities to encourage the development, demonstration, or dissemination of innovative business practices, training programs, and service delivery methods that...	none	
Subd.15.7		Withdraw funds	Withdraw fund if not administered in accordance with <u>the EE Program contract, <del>plan &amp; budget</del></u> , rules, or certification.	Remove "plan & budget" - language left over from old cost-based funding system. Add contract requirements.	Consensus agreement.
Subd.15.8		Funding authority & carry forward	24 months following end of fiscal year to allow for submission of final grant data reports, completion of audit adjustments of payments to grantees including grantee appeals of final audit adjustments, and the redistribution of remaining balances in grant accounts to other grantees who meet or exceed their contracts.	none	

EE Certification Index w/ Recommended Changes

Statute 268A	EE Rule 3300.201	Topic	Current language w/ Proposed changes	Issue	EEAC Recommendation
Subd.15.9		Integrated setting	At commissioner's discretion, paid work on the premises of a rehabilitation facility may be <b>certified as an integrated setting</b> after a site review by DEED.	No EE program standards or EE rule language to certify in-house work as an integrated setting.  No definition of "integrated" in EE Rules.	
	Subp. 2	Certification-purpose	Compliance w/ min standards required before funding EE program	none	
	Subp.3	Certification-procedure	A rehabilitation facility seeking a certification as a provider, including a provisional certification, must complete an official application form available from the department. When a <del>rehabilitation facility</del> <u>community rehabilitation provider</u> has been found in compliance with all certification requirements, a <del>single</del> <u>Certificate of Operation as an Extended Employment Program Provider</u> certificate will be issued to a provider <u>for each certified location, listing all certified locations and programs. The provider will post the certificate at each certified location throughout the certified period.</u>	1: Actual practice: a certificate is issued for each location, listing all certified locations & programs.  2: <b>Certificates should be posted to inform stakeholders of State-certified programs.</b>	1: Consensus approval of change for actual practice.  2: <b>Review needed from EEAC for posting requirement.</b>

EE Certification Index w/ Recommended Changes

Statute 268A	EE Rule 3300.201	Topic	Current language w/ Proposed changes	Issue	EEAC Recommendation
	Subp.4(A)	Certification- CARF	<p>To be certified as a provider of CBE, an organization must achieve <del>and maintain</del> <u>CARF accreditation in, and maintain conformance with,</u> current <u>applicable administrative and program standards governing center-based employment</u> <u>Organizational Employment Services.</u></p> <p>To be certified as a provider of CE and SE, an organization must achieve <del>and maintain</del> <u>CARF accreditation in, and maintain conformance with,</u> current <u>applicable administrative and program standards governing community and supported employment-Community Employment Services, including job development, job site training, and job supports.</u></p> <p>The provider must <u>provide to the department copies of all application materials, survey schedules, survey reports, and accreditation decisions when the materials are delivered to CARF, or received from CARF by the provider.</u> <del>notify the department of the upcoming date of each CARF survey, and provide standing written permission to CARF to allow release to the department of the results of the accreditation process and of site surveys, resurveys, supplemental surveys, reviews, and return visits. The provider must maintain compliance each year with the following provisions of the 1997 CARF Standards Manual and Interpretive Guidelines for Employment and Community Support Services, or with comparable sections in subsequent CARF manuals: Section 1, Promoting Organizational Quality; Section 2, Promoting Individual Service Quality; and Section 3, Organizational Employment Services and Community Employment Services. The provider must make its worker records and performance data available to DEED for spot checks.</del></p>	<p>1: references obsolete (service areas and sections of the CARF Standards Manual). Consider including OES and CES definitions in rule definitions to eliminate obsolescence.</p> <p>2: some providers don't seek accreditation in JD, JST &amp; JS and may be missing out on best practices in the field. DEED expects accreditation in all 3 specialties as EE should be facilitating career ladders.</p> <p>3: In practice, CARF doesn't release reports/info to DEED, but DEED requests updates as expiration dates approach</p> <p>4: No reference to ABE</p> <p>5: last line, regarding worker data and spot checks is inconsistent with this part (CARF accreditation) and should be moved to the data section of EE rules (3300.2020).</p>	<p><b>Consensus approval of concept - final language review needed.</b></p>

EE Certification Index w/ Recommended Changes

Statute 268A	EE Rule 3300.201	Topic	Current language w/ Proposed changes	Issue	EEAC Recommendation
	Subp.4(B)	Certification- benefits	Providers must provide fundamental personnel benefits to <u>reported</u> workers in the EE Program <del>CBE, CE, and SE</del> when the provider is the payroll agent, <u>employer, or employer of record</u> .	<p>1. More comprehensive than statute (268A.07) which only requires payment of benefits to workers in CBE.</p> <p>2. Drop subprogram titles to avoid obsolescence if ABE or other subprograms are added.</p> <p>3. Expand payroll agent - potential expansion in employment models</p>	<p>Consensus approval of concept, but review needed for "employer, or employer of record."</p> <p><i>Employer of record</i> means the entity that serves as the employer for tax purposes while the employee performs work for a different company. The employer of record is responsible for issuing W-2s to the employee, shoulders the responsibility for all the traditional employment tasks and liabilities.</p>
	Subp.4(C)	Certification- Grievance procedure	Providers shall have written grievance procedures for workers in CBE, CE and SE. <del>Grievance may be appeal to DEED for review. DEED shall complete its review of a grievance that has been appealed to DEED within one month of the date the appeal is requested.</del> The grievance procedure for workers must include, as a final step, binding arbitration as defined in MS 268A.07.2. The following must be subject to the grievance procedure: (a) working conditions...; (b) EE Support Plan...; (c) access to work in the community...; (d) quality and effectiveness of the workers ongoing employment support services.	<p>No appeal ever received by DEED.</p> <p>Recommendation: delete language permitting appeal to DEED</p>	Consensus approval.
	Subp.4(D)	Certification- Information on program planning and service delivery	Providers must comply with the requirements to provide workers with information on program planning and service delivery in 3300.2025.7, in the worker's primary language using appropriate modes of communication.	none	
	Subp.4(E)	Certification- EE Support Plan	Providers must provide workers with the <i>EE Support Plan</i> in 3300.2025.4 in the worker's primary language using appropriate modes of communication.	none	

EE Certification Index w/ Recommended Changes

Statute 268A	EE Rule 3300.201	Topic	Current language w/ Proposed changes	Issue	EEAC Recommendation
	Subp.4(F)	Governing board	The governing body of the provider must comply with M.S. 268A.085	Incorrectly reference to 268A.08	Consensus agreement.
	Subp.4(G)	Governing board & mgmt staff	<del>Members of the governing board and management staff of providers shall be provided a minimum of 8 hours of continuing education/training each year over a 3 year cycle concurrent with the provider's three year accreditation cycle with CARF. Members of the governing board and management staff of EE provider shall completed training in each of the three subject areas listed during the course of the 3 year training cycle. At a minimum 2/3 of the board and management staff shall complete the training. The provision of this training shall be documented in he record of meetings of the provider's board of directors. Subjects for continuing education and training include: (1) legal mandates affecting the provider's programs... (2) practices to improve outcomes and increase the availability of EE services to persons with the most severe disabilities; and (3) understanding the programmatic and ethical responsibilities of nonprofit organizations to the communities they serve.</del>	Originally put in as response to allegations/investigations of fraud by two providers in the 1980's.  Reportedly overly burdensome to providers, and difficult for DEED staff to monitor.  Recommendation - delete in full.	Consensus agreement.

EE Certification Index w/ Recommended Changes

Statute 268A	EE Rule 3300.201	Topic	Current language w/ Proposed changes	Issue	EEAC Recommendation
	Subp.4(H)	Governing board - fiduciary training	<p><del>In addition to the continuing education requirement in G, the</del> governing board of providers must provide training for all members on the fiduciary responsibilities of the directors of nonprofit organizations. Training on fiduciary responsibilities shall be provided to new board members within the first year of their term. In addition, members of the board must receive copies of the provider's financial audits and review all management letters that accompany the financial audit. The record of board meetings shall document the provision of training and the receipt and review of the provider's financial audit and management training.</p> <p><u>Providers shall submit to DEED the prior year's audited financial statements and management letter within 6 months of the provider's year end. DEED shall review and approve the audited financial statements before issuing the provider's Certificate of Operation.</u></p>	<p>Strikeout removes reference to language recommended for deletion (board training).</p> <p>New language implements statutory requirement (268A.06.1) requiring DEED's receipt and approval of a provider's prior-year financial audit before becoming eligible to apply for EE funds.</p>	Consensus agreement.