

Legislative Regulation Review Committee

2011-004

Board of Education & Services for the Blind

BUSINESS ENTERPRISE PROGRAM (BEP)

M-39 REV. 1/77

Important: Read Instructions on bottom of Certification Page before completing this form. Failure to comply with instructions may cause disapproval of proposed regulations.

2010 DEC 21 PM 1 41
2010 DEC 16 AM 7 50

STATE OF CONNECTICUT
REGULATION

of the
Board of Education and Services for the Blind
Name of Agency

concerning
The Income Incentive Program of the Business Enterprise Program
Subject Matter of Regulation

Section 1. Section 10-303-13 of the Regulations of Connecticut State Agencies is amended to read as follows:

[Sec. 10-303-13. Minimum income base

The minimum base net annual income for each facility shall be recommended by the operators committee and approved by the executive director and the agency board. When a facility's net income for the preceding year, as reported by the vendor on the internal revenue service form 1040, schedule C is below such minimum base, the vendor may request that:

- (a) the board pays the difference between the preceding year's net income and the minimum base net annual income, divided into biweekly or other periodic payments, until such time as the annual net income equals or exceeds such minimum base income; or
- (b) at the option of the vendor and with approval of the executive director or his designee,
 - (1) the vendor will operate the facility, paying all expenses out of income received and remitting to the board any weekly excess difference between income and expenses paid; and
 - (2) the board will issue a biweekly payment to the vendor equal to one-twenty-sixth (1/26) of the annual minimum base net income.
- (c) payment by the board under either of the two preceding subsections shall be contingent upon:
 - (1) compliance by the vendor with all terms and conditions of the vending facility operating agreement;
 - (2) provision by the division of industries and acceptance by the vendor of management services and supervisory assistance to improve operation of the facility;
 - (3) the efficient operation of the facility by the vendor. Effective July 23, 1987]]

NEW

Sec. 10-303-13. Income Incentive Plan

(a) Annual Net Income Incentive Plan

The annual net income incentive standard for every facility shall be recommended by the operators committee and approved by the executive director and the agency board. The annual net income incentive standard shall be the same amount for every facility.

b) Income Incentive Payment Plan

- (1) when a facility's net income for the current year, as reported by the vendor on business reports approved by the agency, is one half or less than one half of the annual net income incentive standard, the vendor may request that the board pay the vendor an amount equal to the facility's net income for the current year.
- (2) when a facility's net income for the current year, as reported by the vendor on business reports approved by the agency, is less than the annual net income incentive standard but greater than one half of the annual net income incentive standard, the vendor may request that the board pay the vendor an amount equal to the difference between the annual net income incentive standard and the facility's net income for the current year.
- (3) incentive payments to vendors under the provisions of this section shall be made semi-annually. The first payment shall be made in October covering the first six months of that calendar year. The second payment shall be made in April of the succeeding year covering the second six months of the preceding calendar year.
- (4) the amount of incentive payments granted under this section shall be adjusted on a semi-annual basis according to the facility's performance as presented in the business reports covering the previous six months.
- (5) in no event shall total incentive payments for an income year to a vendor by the agency under this section be greater than that facility's net income for that year and in no event shall the total of a facility's net income for a

year and incentive payments for that income year to a vendor by the agency under this section exceed the annual net income incentive standard.

(6) Payment by the board under this section shall be contingent upon:

(A) compliance by the vendor with all terms and conditions of the vending facility operating agreement;

(B) provision by the agency and acceptance by the

vendor of management services and supervisor assistance to improve operation of the facility;

(C) the efficient operation of the facility by the vendor;

(D) the vendor's provision to the agency of full access to all of the vendor's financial records regarding operation of the facility.

(7) Payments made under this section are attached to the facility, not to the vendor. Therefore, if a vendor who receives a payment under this section ceases to operate a facility for which a payment was granted, then a new vendor for that facility can request that the agency continue payment to him or her, on a pro-rated basis, in the same amount and under the same terms as were offered to the previous vendor.

(8) A vendor may receive payments under this section for the operation of only one facility, regardless of the number of facilities operated. The income of any satellite or other facility shall be considered when computing whether payments should be paid under this section, unless the vendor, for the benefit of operational continuity for the program and at the request of the agency, temporarily assumes the operation of an additional facility or facilities. In such cases, the profit from such satellite operation(s) shall not be considered when computing whether a payment should be made under this section for the operation of the primary facility.

Statement of Purpose

The Board of Education and Services for the Blind (BESB) proposes to amend existing Regulations of State Agencies (see Sec. 10-303-13) to rationalize and clarify the financial payment system for certain eligible participants with blindness in the agency's Business Enterprise Program (BEP). BESB administers the BEP program to assist persons with blindness who operate vending facilities at government-owned locations across Connecticut. Currently, the agency's regulations – dating from 1987 – provide for payments to vendors with blindness whose income falls below a certain level. These payments are drawn from the agency's vending machine income account as consistent with federal regulations [see 34CFR395.8(c)].

The proposed amendments would bring the regulations into concert with existing policy adopted by the agency's Board of Directors with the participation of the Statewide Committee of Blind Vendors. The new regulations include six adjustments to achieve conformity with Board and Committee policy - 1) The first change instructs the agency to set an income standard that is the same for all facilities rather than allow for the possibility that a different minimum is set for each and every facility. 2) The second change creates a motivational incentive to encourage participating operators to increase productivity and earn more through improved business practices and innovations. 3) The third change simplifies the payment system by providing for only one available payment schedule and, therefore, simplifies the administrative processing of payments. 4) The fourth change adds another criterion of compliance and agency oversight for entrepreneurs to maintain their eligibility for the program. 5) The fifth change makes it clear that acceptance into the program accrues to the facility, not the operator, and that, if and when a facility changes hands, the new operator may make application to the income incentive program under the same conditions. 6) The sixth change makes it clear that if an entrepreneur operates more than one facility, the income of all of those facilities shall be taken into account in determining program eligibility unless the operator has taken over the additional facility or facilities at the agency's request to maintain continuity of service where a prior operator has left.

Projected outlays for the current year are predicted to fall between \$30,000-35,000 and will not change as a result of the adoption of these regulation changes.

Be it known that the foregoing:

Regulations Emergency Regulations

Are:

Adopted Amended as hereinabove stated Repealed

By the aforesaid agency pursuant to:

Sections 4-168 and 10-294 and 10-303(c) of the General Statutes and

Section _____ of the General Statutes, as amended by Public Act No. _____ of the _____ Public Acts.

Public Act No. _____ of the _____ Public Acts.

CERTIFICATION

M-39 REV. 1/77

After publication in the Connecticut Law Journal on October 19, 2010 of the notice of the proposal to:

Adopt Amend Repeal such regulations

(If applicable): And the holding of an advertised public hearing on the 9th day of November, 2010

WHEREFORE, the foregoing regulations are hereby:

Adopted Amended as hereinabove stated Repealed

Effective:

When filed with the Secretary of the State.
(OR)

The _____ day of _____ 19 ____.

In Witness Whereof:	DATE <u>12/11</u> 2010	SIGNED (Head of Board, Agency or Commission) 	OFFICIAL TITLE, DULY AUTHORIZED EXECUTIVE DIRECTOR-BESB
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Approved by the Attorney General as to legal sufficiency in accordance with Sec. 4-169, as amended, C.G.S.: <u>12/17/10</u>	SIGNED 	OFFICIAL TITLE, DULY AUTHORIZED <u>Assoc Atty Gen</u>
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- Approved
- Disapproved
- Disapproved in part, (Indicate Section Numbers disapproved only)
- Rejected without prejudice.

By the Legislative Regulation Review Committee in accordance with Sec. 4-170, as amended, of the General Statutes	DATE	SIGNED (Clerk of the Legislative Regulation Review Committee)
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Two certified copies received and filed, and one such copy forwarded to the Commission on Official Legal Publications in accordance with Section 4-172, as amended, of the General Statutes.

DATE	SIGNED (Secretary of the State)	BY
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INSTRUCTIONS

One copy of all regulations for adoption, amendment or repeal, except emergency regulations, must be presented to the Attorney General for his determination of legal sufficiency. Section 4-169 of the General Statutes.

Seventeen copies of all regulations for adoption, amendment or repeal, except emergency regulations, must be presented to the standing Legislative Regulation Review Committee for its approval. Section 4-170 of the General Statutes.

Each regulation must be in the form intended for publication and must include the appropriate regulation section number and section heading. Section 4-172 of the General Statutes.

Indicate by "(NEW)" in heading if new regulation. Amended regulations must contain new language in capital letters and deleted language in brackets. Section 4-170 of the General Statutes.

M-39 REV. 1/77

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2010 DEC 21 PM 1 41

2010 DEC 16 AM 7 50

STATE OF CONNECTICUT REGULATION

of the
Board of Education and Services for the Blind
Name of Agency

concerning
The Provision of Health Insurance to Certain Clients of the BESB's
Business Enterprise Program
Subject Matter of Regulation

Section 1. Subsection (d)(4) of section 10-303-12 of the Regulations of Connecticut State Agencies is amended to read as follows:

Sec. 10-303-12. Operating expenses and insurance

The vendor may contract only for those expenses necessary to the safe and efficient operation of the facility. Allowable operating expenses include wages, utilities, fees for services directly related to the operation of the facility, insurance and taxes.

(a) Method of Payment

Payment of expenses by the vendor shall be on a cash or check basis except as allowed by express prior written approval of the executive director or his designee.

(b) Rent and Utilities

Payment of charges for utilities and any charge for rent of facility space will be made by the board either directly or by reimbursement of the vendor.

(c) Telephone

Payment of charges for initial telephone installation will be made by the board. The vendor will be responsible for payment of all telephone costs thereafter.

(d) Insurance

(1) vendors at scheduled locations, may be included as an additional named insured for liability coverage to the limit of \$1,000,000 each occurrence/\$1,000,000 aggregate for bodily injury liability and \$100,000 each occurrence/\$100,000 aggregate for property damage liability on the state insurance policy, which is purchased through the state insurance purchasing board.

(2) the vendor shall be responsible for the purchase of any other insurance coverage for his protection.

(3) each vendor shall be responsible for payment of unemployment compensation taxes, workers compensation insurance or other insurance coverage for persons in his employ.

(4) [medical insurance coverage may be purchased and provided by the board to a vendor at no cost to the vendor. At the option of the vendor medical insurance coverage may be provided to the vendor's family members and/or his employees.] medical insurance coverage that is provided by the state to state employees may be provided by the board to a vendor provided the vendor shall make the same contribution towards the cost of the insurance coverage as state employees do. Such insurance coverage may also be provided by the board to blind persons employed in workshops, established pursuant to section 10-298a, on December 31, 2002, provided such persons shall make the same contribution towards the cost of the insurance coverage as state employees do. The board may decide, upon consideration of financial hardship, to lower the amount of the required contribution for vendors and eligible blind persons. A vendor shall also have the option to purchase the same [who elects] medical insurance

coverage for [his] eligible family members [and/or his employees]. The vendor shall reimburse the board for the full cost of such medical insurance for these persons.

(5) the board may purchase and provide life insurance coverage with a disability provision to vendors. (Effective July 23, 1987)

Statement of purpose

(A) Conn. Gen Stat. Sec. 5-259(e) requires the Board of Education and Services for the Blind (BESB) to provide state employee health insurance to two client groups who are not state employees – Vending Stand Operators and Former Workshop Employees. The proposal above makes changes to the existing regulations that govern the execution of that statutory provision.

The proposed regulation change would bring existing regulations, which are 22 years old, into alignment with current agency practice in four respects. First, the new regulation would make clear that the client recipients of BESB-provided state employee health insurance shall contribute a premium co-payment just as state employees do. Second, the regulation would now include guidelines for the provision of health insurance to Former Workshop Employees as enacted into law since these regulations were last amended. Third, the new regulation would specify that the agency may take into account the financial hardship of any of these participants and lower the standard premium co-payment. Fourth, the regulation change would delete the provision which allows for health insurance coverage for employees of the Vending Stand Operators. Providing health insurance for the Operators' employees has not been agency practice since at least the Vending Stand Operators have been covered under the state health insurance system (c. 1990) which is not constructed to extend to persons who are not family members or dependents of the Vending Stand Operator.

(B) There are currently 45 Vending Stand Operators, 41 of whom participate in this health insurance program. Each of them currently contributes a premium co-payment. The average co-payment is roughly \$61 per month (\$731 per year). This partially offsets the agency's average total cost of roughly \$565 per month (\$6,789 per year) for each participant. The new regulation would not change that situation although the hardship provision would allow for an adjustment.

(C) There are currently 85 Former Workshop Employees. They worked for BESB Industries before it closed in 2003. The agency provides state employee health insurance for the 23 of them who have elected to participate in the program. They currently make a co-payment of roughly \$17 per month (\$204 per year) against a total average cost of \$565 per month (\$6,789 per year) for each participant. These clients are now generally placed in supported employment or sheltered workshops; these placements have been funded by the legislature since the closure of the Industries program, although the cost of the program, especially including health insurance, does at times exceed the legislative appropriation. When the SEBAC agreement raised co-payments last year from \$17 per month to \$61 per month, the agency, in recognition of their financial hardship, continued to collect only the previous, lower co-payment. The proposed regulation change will align with, but not require, that practice.

(D) In a handful of cases, the Vending Stand Operators purchase additional health insurance for family members, as is currently provided for in the regulations, at full cost. This practice is not changed in the proposal.

(E) The agency has never provided health insurance for the employees of Vending Stand Operators. The proposed change accordingly deletes this provision in the existing regulation.

Be it known that the foregoing:

Regulations Emergency Regulations

Are:

Adopted Amended as hereinabove stated Repealed

By the aforesaid agency pursuant to:

Sections 4-168 and 10-294, 10-303 (c) and 5-259 (e) of the General Statutes and
 Section _____ of the General Statutes, as amended by Public Act No. _____ of the _____ Public Acts.
 Public Act No. _____ of the _____ Public Acts.

After publication in the Connecticut Law Journal on October 19, 2010 of the notice of the proposal to:

Adopt Amend Repeal such regulations

(If applicable): And the holding of an advertised public hearing on the 9th day of November, 2010

WHEREFORE, the foregoing regulations are hereby:

Adopted Amended as hereinabove stated Repealed

Effective:

When filed with the Secretary of the State.
(OR)

The _____ day of _____ 19 _____.

In Witness Whereof:	DATE 12/1 / 2010	SIGNED (Head of Board, Agency or Commission) 	OFFICIAL TITLE, DULY AUTHORIZED EXECUTIVE DIRECTOR-BESB
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Approved by the Attorney General as to legal sufficiency in accordance with Sec. 4-169, as amended, C.G.S.: 12/17/10	SIGNED 	OFFICIAL TITLE, DULY AUTHORIZED Assoc Atty Gen
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- Disapproved
- Disapproved in part, (Indicate Section Numbers disapproved only)
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