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Authority

The provisions of this Chapter 2430 issued under sections 201 and 801—804 of the Public Welfare Code (62 P. S. §§ 201 and 801—804), unless otherwise noted.

Source

The provisions of this Chapter 2430 adopted March 19, 1982, effective March 20, 1982, 12 Pa.B. 980, unless otherwise noted.

GENERAL PROVISIONS

§ 2430.1. Introduction

(a) *Purpose.* The Business Enterprises Program (BEP) enables blind persons to operate small businesses known as vending facilities, under license from the Department. The Department operates this program in its role as designated State agency for Vocational Rehabilitation for the Blind. The purpose of the program is to provide additional incentives and economic opportunities for blind persons to become self-supporting.

(b) *Funding.* Funding is provided through a revolving fund established by the General Assembly as a special fund in the State Treasury. This fund is maintained by rental fees collected from licensed vendors, grants, contributions, and Federal matching funds earned through program operations.

(c) *Office of Blindness and Visual Services (BVS).* The Department's Office of Blindness and Visual Services (BVS) establishes vending facilities by providing for a suitable site, necessary construction, and purchase or lease of equipment.

(d) *Vendors.* Vendors are selected, trained, licensed, and assisted in accordance with this chapter. The vendor is responsible for the operation of the vending facility in accordance with this chapter and for contributing to the revolving fund. BVS assists the vendor as necessary to maximize profit from the operation and takes necessary action to preserve the interest of BVS in the facility.

§ 2430.2. Legal base.

The legal base for this chapter is sections 201 and 801—804 of the Public Welfare Code (62 P. S. §§ 201 and 801—804); the Randolph-Sheppard Act, 20 U.S.C.A. § 107 et seq.; and the Rehabilitation Act of 1973, 29 U.S.C.A. § 701 et seq.

§ 2430.3. Definitions.

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

Blind person—An individual who after examination by a physician skilled in diseases of the eye or by an optometrist has been determined to have:

- (i) Not more than 20/200 central visual acuity in the better eye with corrective lens; or
- (ii) An equally disabling loss of the visual field evidenced by a limitation to the field of vision in the better eye to a degree that its widest diameter subtends an angle of not greater than 20°.

Department—The Department of Human Services of the Commonwealth.

District manager—The district manager for the visually handicapped who is the official responsible for direction and management of the district Business Enterprises Program (BEP).

District office—The local administrative branch of the Office of Blindness and Visual Services (BVS) in a specified geographical area of this Commonwealth.

Elected committee of blind vendors—A State committee of blind vendors, which is elected by and fully representative of blind operators in this Commonwealth.

Facility—Cafeterias, snack bars, cart services, counters, vending machines, and other appropriate auxiliary equipment which may be operated by blind licensees to provide for the sale of newspapers, periodicals, confections, tobacco products, goods, beverages, and other articles or services dispensed automatically or manually and prepared on or off the premises in accordance with applicable health laws, including the vending or exchange of chances for lotteries authorized by State statute.

Federal property—A building, land, or other real property owned or rented by an agency, department, or instrumentality of the United States government—including the Department of Defense and the United States Postal Service—or by another instrumentality wholly owned by the United States.

Individualized Written Rehabilitation Program (IWRP)—A written program required by the Rehabilitation Act of 1973, 29 U.S.C.A. § 701 et seq., and subsequent Federal regulations which must be prepared for eligible vocational

rehabilitation client. The program is prepared jointly by the vocational rehabilitation counselor and client and establishes the employment goal.

License—A written instrument, issued by the Department to a blind client, authorizing the operation of a vending facility.

Office of Blindness and Visual Services (BVS)—The office in the Department which is responsible for providing essential management, supervision, and licensing of the Business Enterprises Program (BEP). BVS includes six district offices within assigned geographical areas.

Owner—The individual who owns the site on which a facility is located or the person designated to act for the owner.

Vacancy—A facility which has no permanent vendor or is scheduled to have no permanent operator.

Vendor—A blind person who is certified as a qualified facility operator by the Office of Blindness and Visual Services (BVS).

Cross References

This section cited in 55 Pa. Code § 2430.50 (relating to cancellation of a facility contract).

§ 2430.4. Elected Committee of Blind Vendors.

Under the provisions of the Randolph-Sheppard Act, 20 U.S.C.A. § 107 et seq., an elected committee of blind vendors shall actively participate with the Office of Blindness and Visual Services (BVS) in major administrative and policy decisions and assists BVS to implement procedures for the operation of the program. The committee is organized on a geographical basis and cooperates with the district manager in the administration of the program in that district.

§ 2430.5. Lease rental charge.

The lease rental charge is assessed against the vendor and adjusted periodically to ensure the solvency of the revolving fund. The adjustment is determined by the Department with the participation of the Elected Committee of Blind Vendors and in accordance with provisions of the Randolph-Sheppard Act, 20 U.S.C.A. § 107 et seq.

FACILITY SELECTION

§ 2430.11. Selection of facility sites.

The Office of Blindness and Visual Services (BVS) will select potential sites for the location of a facility based on the following criteria:

- (1) A facility may be located in an office building if total daily traffic is at least 300 individuals; or, if the facility is to be located outside a building, at least 2,000 individuals pass by daily during business hours.
- (2) A facility may be located in an industrial plant or department store if at least 300 employees have easy access to it; or, if the facility is to be located on

the grounds of an industrial plant, but not within a building, at least 1,000 employes have easy access to it.

(3) A facility may be located in a neighborhood, shopping, or business area of a community if the population is 2,500 or more.

(4) A facility may be located in an institution if there are at least 500 persons in the institution; or, if the facility is to be located on the grounds of an institution, at least 1,000 persons daily have easy access to it.

§ 2430.12. Agreement with owner.

(a) Upon selection of a site for a facility, the Office of Blindness and Visual Services (BVS) will sign a formal written agreement with the owner of the site.

(b) The agreement exclusively governs the relationships between the Department and the owner and contains the conditions relating to the location and operation of the facility on the property. BVS will reserve title to installed equipment.

§ 2430.13. Construction of facility.

(a) The Office of Blindness and Visual Services (BVS) will design the facility. The design must be acceptable to the owner of the proposed site as witnessed by his signature. The design must be in accordance with the following:

(1) The special requirements imposed by the owner.

(2) The applicable Federal, State, and local statutes and regulations with specific emphasis on standards imposed by section 504 of the Rehabilitation Act of 1973, 29 U.S.C.A. § 794.

(b) Equipment must be in accordance with appropriate Federal, State, and local statutes and regulations. The equipment and its installation must conform to the special conditions, if any, imposed by the owner of the site for the facility.

(c) Equipment may be either purchased or leased. BVS procures equipment and retains title to all purchased equipment regardless of its location. An inventory of equipment is done by BVS at least annually, but normally every 6 months.

FUNDING AND MAINTENANCE OF FACILITY

§ 2430.21. Inventory.

The funds for the initial inventory of stock and supplies for a new vendor are furnished through one or a combination of three sources dependent on economic need as follows:

(1) Personal funds from the vendor.

(2) Grants from vocational rehabilitation program funds.

(3) Loans from the Employment Fund for the Blind—under section 803 of the Public Welfare Code (62 P. S. § 803)—which are repayable at 2.0% of the gross monthly sales, may be provided by the Office of Blindness and Visual Services (BVS) after a determination of need based on an equitable formula.

(b) The vendor shall replenish the initial inventory from income generated by the operation of the vending facility.

§ 2430.22. Equipment for facility.

The Office of Blindness and Visual Services (BVS) will determine the equipment needs of the facility as part of the construction design and plan. Standard equipment, consisting of those items which experience has shown are basic requirements of a facility, are used to develop the equipment schedule.

§ 2430.23. Maintenance of equipment.

The Office of Blindness and Visual Services (BVS) will acquire, maintain and, when necessary, replace the items of the inventory to ensure that the vending facility equipment is in good repair and in attractive condition.

(b) BVS will provide for routine maintenance and repairs of equipment. Special repairs are provided as required except in instances of flagrant abuse and negligence on the part of the vendor. In the latter instance, a determination of abuse and negligence shall be made by the district manager, and the cost of repairs or replacement assessed against the vendor. Regardless of the determination of responsibility, the damaged equipment shall be repaired or replaced by BVS in accordance with standard procurement practices in a timely fashion without interruption of service by the facility. There may be no closure or suspension of operation at a facility due to lack of properly operating equipment unless operation poses a hazard to the health and safety of the vendor and the customers.

VENDOR SELECTION

§ 2430.31. Generally.

(a) The district office shall select a blind person as a potential vendor for the Business Enterprise Program (BEP) during the time the individual is engaged in a vocational rehabilitation program. The selection shall be made in accordance with the standard procedure for the vocational rehabilitation program with the appropriate entries completed on the IWRP. The Office of Blindness and Visual Services (BVS) will provide the selected potential vendor with necessary services, including special training as preparation for placement as a full time operator of a facility.

(b) The training of a potential vendor consists of a formal course of practical instruction followed by a probationary period of 90 days on the job as the vendor at a facility. Upon the successful completion of the probationary period, BVS will issue a qualified vendor certificate which is the sole valid authorization for the vendor to participate in the program as the operator of a facility.

§ 2430.32. Qualified vendor certificate.

(a) The qualified vendor certificate states that the named vendor has completed the educational and training requirements for the Business Enterprise Program (BEP) and is qualified to operate a BEP facility. The certificate is valid for an indefinite period and may be revoked only for cause, or if the vendor leaves the program—see § 2430.161 (relating to disciplinary action). The vendor must receive a written advance notice of 30 calendar days if the Office of Blindness and Visual Services (BVS) decides to revoke the certificate. The vendor must be afforded the opportunity for an appeal and fair hearing in accordance with §§ 2430.201—2430.203 (relating to fair hearing procedure).

(b) During the 30-day period, the vendor may ask BVS to reconsider the revocation of the certificate. BVS may reinstate the vendor's certificate after satisfactory compliance with conditions mutually agreed upon by the vendor and the district manager, if it is determined that necessary correction to the operation of the facility has been made or that an agreed plan of correction will be implemented.

ADVERTISEMENT OF FACILITY VACANCY**§ 2430.41. Generally.**

The Office of Blindness and Visual Services (BVS) will advertise vacancies with a request for submission of bids to fill the vacancy. Upon receipt of the bids, the process outlined in §§ 2430.42—2430.52 (relating to advertisement of a facility vacancy) will be followed until the senior vendor or qualified trainee is awarded the facility.

Cross References

This section cited in 55 Pa. Code § 2430.71 (relating to placement on roster); and 55 Pa. Code § 2430.91 (relating to generally).

§ 2430.42. Advertisement of vacancy.

Except as provided in §§ 2430.81 and 2430.82 (relating to district office roster), the Office of Blindness and Visual Services (BVS) will notify qualified vendors and qualified trainees of a vacancy. The notification is by a standard letter accompanied by a bid proposal form and detailed information regarding the facility and instructions for action to be taken by interested vendors/trainees. The letter includes, but is not limited to, information about location, sales volume, and hours of operation.

Cross References

This section cited in 55 Pa. Code § 2430.41 (relating to generally); 55 Pa. Code § 2430.71 (relating to placement on roster); and 55 Pa. Code § 2430.91 (relating to generally).

§ 2430.43. Reply to advertisement of vacancy.

To bid for an advertised vacancy, a vendor/trainee shall return to the Office of Blindness and Visual Services (BVS) the completed bid proposal. The completed bid must be received by the date indicated in the advertisement. BVS will not consider a reply received after the indicated date, regardless of the reasons for its late arrival. At the option of the vendor/trainee, the completed bid and accompanying statement may be returned by registered, certified, or regular first class mail.

Cross References

This section cited in 55 Pa. Code § 2430.41 (relating to generally); 55 Pa. Code § 2430.71 (relating to placement on roster); and 55 Pa. Code § 2430.91 (relating to generally).

§ 2430.44. Visits to the advertised facility.

Before reply to a bid advertisement the vendor/trainee may visit the advertised facility at a time arranged by the appropriate district office, which will assign a district business enterprises agent to conduct the visit and answer questions regarding the operation of the facility. The visit must be conducted with a minimum of disturbance to the routine operation of that facility.

Cross References

This section cited in 55 Pa. Code § 2430.41 (relating to generally); 55 Pa. Code § 2430.71 (relating to placement on roster); and 55 Pa. Code § 2430.91 (relating to generally).

§ 2430.45. Bid for award of facility.

Returned bids will constitute an unconditional offer to accept award of the advertised vacancy. The bids will be opened at the advertised time. In awarding the facility, the Office of Blindness and Visual Services (BVS) will consider the following:

- (1) The position on the promotion roster.
- (2) The seniority in the program.
- (3) The promptness in filing daily and monthly reports and timely payments of rental fees.
- (4) The seniority as a qualified vendor.

Cross References

This section cited in 55 Pa. Code § 2430.41 (relating to generally); and 55 Pa. Code § 2430.71 (relating to placement on roster); and 55 Pa. Code § 2430.91 (relating to generally).

§ 2430.46. Notice of award.

The Office of Blindness and Visual Services (BVS) will notify the vendor or trainee, in writing, of the award and its effective date. Acceptance of the bid offer and the award of the facility constitute a legally binding contract between the

vendor/trainee and BVS. A copy of the award letter is distributed to vendors/trainees who bid for the facility.

Cross References

This section cited in 55 Pa. Code § 2430.41 (relating to generally); 55 Pa. Code § 2430.71 (relating to placement on roster); and 55 Pa. Code § 2430.91 (relating to generally).

§ 2430.47. Issuance of license.

After the contract between the vendor/trainee and the Office of Blindness and Visual Services (BVS) has been made, BVS will issue a license for operation of the facility. The license is valid until revoked by BVS upon cancellation of the contract—see § 2430.50 (relating to cancellation of facility contract). The license is restricted to the operation by a specific vendor of a specific facility. A new license is issued for a transfer or promotion of the vendor.

Cross References

This section cited in 55 Pa. Code § 2430.41 (relating to generally); 55 Pa. Code § 2430.71 (relating to placement on roster); and 55 Pa. Code § 2430.91 (relating to generally).

§ 2430.48. Failure to implement contract.

The award of the contract is irrevocable. The Office of Blindness and Visual Services (BVS) may allow cancellation if the vendor is placed on medical leave for at least 3 months. Another failure of the vendor to implement the contract shall result in the vendor being suspended from receipt of bid proposals for future vacancies. The vendor's suspension shall be for 1 year from the date of the letter of award, after which time the vendor may make a written request to again receive bid proposals.

Cross References

This section cited in 55 Pa. Code § 2430.41 (relating to generally); 55 Pa. Code § 2430.71 (relating to placement on roster); and 55 Pa. Code § 2430.91 (relating to generally).

§ 2430.49. Restriction after award of facility.

After the award of a facility and for a period of 9 months beginning on the first day of its operation, the vendor shall be eligible for award of another facility only if his bid is the only one received. In the event that two or more bids are received from nonrestricted vendors, the vendor with the most seniority shall receive the award.

Cross References

This section cited in 55 Pa. Code § 2430.41 (relating to generally); 55 Pa. Code § 2430.71 (relating to placement on roster); and 55 Pa. Code § 2430.91 (relating to generally).

§ 2430.50. Cancellation of a facility contract.

(a) Other than under the conditions set forth in § 2430.48 (relating to failure to implement contract), the Office of Blindness and Visual Services (BVS) may cancel a contract only in the following instances:

- (1) Gross misconduct or mismanagement of the facility.
- (2) Request of the owner of the premises on which the facility is located.
- (3) Incapacity of the vendor for an extended period of time to the extent that the vendor cannot conduct the affairs of the facility.
- (4) Restoration of vendor's sight to better than legal blindness, which is the basis of eligibility for participation in the Business Enterprises Program (BES)—see § 2430.3 (relating to definitions).
- (5) Voluntary withdrawal or resignation from the program by the vendor.
- (6) Violation of a portion of this chapter.
- (7) Violation of applicable State or Federal statutes.

(b) Upon cancellation of the contract, all rights, and privileges related to operation of the facility are terminated and BVS is authorized to occupy the facility and assume complete control of stock, supplies, equipment, and operations and make those arrangements which are necessary to protect the interest of the parties involved. The occupation may be only for the time required to assure that proper actions are taken including:

- (1) Preparation of, or assistance in the preparation of, a complete inventory of the stock and supplies.
- (2) Preparation of financial statement of the vendor's account with BVS.
- (3) Provision of technical assistance for disposition of vendor-owned stock and supplies.
- (4) Technical assistance in the reconciliation and settlement of vendor's accounts.

(c) BVS also is authorized to take action necessary to maintain full-time operation of the facility pending its award to another qualified vendor or its removal from the premises.

(d) Proceeds from the temporary continued operation of the facility would go to the temporary vendor. The disposition of stock and supplies remain the property of the previous vendor or his heirs or estate, after settlement of outstanding obligations to the Business Enterprises Program (BEP) and other debts.

Cross References

This section cited in 55 Pa. Code § 2430.41 (relating to generally); 55 Pa. Code § 2430.71 (relating to placement on roster); and 55 Pa. Code § 2430.91 (relating to generally).

§ 2430.51. Promotion roster.

(a) *Application for entry to promotion roster.* Vendors may apply in writing to the district manager for entry to the roster. The letter must include:

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(1) The date of the vendor's initial assignment and first day of work as the operator of a facility.

(2) The section of the promotion roster, that is, Statewide, Statewide east, Statewide west, for which the vendor wishes to be considered.

(3) A statement of special conditions applicable to the vendor or the facility.

(b) *Review of application.* The Office of Blindness and Visual Services (BVS) will review the application and the record of the vendor's operation of the currently-assigned facility or prior assigned facilities, if any. The monthly contract reports for at least the past 3 years shall be reviewed to determine the efficiency and effectiveness of the current operation of the vendor. If the vendor was previously assigned to another district, the comments and recommendations regarding the vendor must be obtained from the district manager of that district. BVS will notify the vendor of approval or disapproval of the request and if approved, note the date of seniority and enter the vendor's name at the appropriate seniority interval in the selected part of the roster.

Cross References

This section cited in 55 Pa. Code § 2430.41 (relating to generally); 55 Pa. Code § 2430.71 (relating to placement on roster); and 55 Pa. Code § 2430.91 (relating to generally).

§ 2430.52. Seniority.

(a) The vendors on the roster shall be listed in order of seniority. Seniority is based on the length of actual operation of a facility and calculated from the date of the first daily report—less time absent for medical leave. Seniority will accrue at other times the vendor participates in the program and will be discontinued only when the vendor voluntarily leaves or is removed from the program. The seniority acquired prior to medical leave will be restored to the vendor upon return to the program; however, prior seniority may not be restored if the vendor returns after removal or voluntarily leaving.

(b) Commonwealth blind veterans shall be given first preference for vending stand locations within the Commonwealth.

Cross References

This section cited in 55 Pa. Code § 2430.41 (relating to generally); 55 Pa. Code § 2430.71 (relating to placement on roster); and 55 Pa. Code § 2430.91 (relating to generally).

DISPLACED VENDORS

§ 2430.61. Placement on list.

(a) A vendor who is forced by circumstances beyond his control to discontinue operation of the assigned facility is placed on the displaced vendors list.

(b) Operation of a facility may be discontinued for several reasons such as diminished activity, demolition of the site of the facility, or substantial change in the characteristics of the site due to the relocation or closing of adjacent sources of customers.

(c) The vendor on the displaced vendors list shall retain all benefits and privileges held at the time of displacement, including listing on the promotion roster if otherwise eligible and shall accrue seniority in the usual manner for 1 year following the date of displacement.

(d) The displaced vendor shall be eligible for immediate award of a facility for a period of 30 months after the date of displacement. After this 30 month period, the Office of Blindness and Visual Services (BVS) will suspend his qualified vendor certificate pending retraining and orientation.

§ 2430.62. Reinstatement of displaced vendor.

The Office of Blindness and Visual Services (BVS) will notify the displaced vendor by letter 30 days prior to the date for suspension of the qualified vendor certificate. The notice will advise the vendor that continued participation in the program requires retraining at a site agreed to by the vendor and BVS. The retraining shall consist of activities mutually determined by the vendor and BVS as being necessary to prepare the vendor for immediate award of an available facility. The displaced vendor shall accrue appropriate seniority while in training provided training is successfully completed. Upon successful completion of training, the suspension of the qualified vendors certificate is removed, and the vendor reinstated to the displaced vendors list.

QUALIFIED TRAINEE ROSTER

§ 2430.71. Placement on roster.

(a) Graduates of the vendor training program who are not assigned to a facility at the completion of training are placed on the qualified trainee roster. The roster is maintained to identify the special status of the unassigned trainee and to permit easy referral of vacancies to the trainee, based on the date of his signature on the IWRP. Upon successful completion of the training program, the Office of Blindness and Visual Services (BVS) will certify the trainee to the qualified trainee roster so that he will receive advertisements of a vacancy. The award of a facility to the qualified trainee is made in accordance with §§ 2430.41—2430.52 (relating to placement as a vendor in facility) and §§ 2430.81 and 2430.82 (relating to district office roster).

(b) The qualified trainee shall be removed from the qualified trainee roster after failure to bid on three specific opportunities for the award of an available facility within the district in which the trainee resides.

DISTRICT OFFICE ROSTER**§ 2430.81. Maintenance of list.**

(a) The Office of Blindness and Visual Services (BVS) will maintain a roster of qualified vendors within the district. The roster will consist of:

- (1) Vendors who are assigned to facilities within the district.
- (2) Displaced vendors who are residents of the district.
- (3) Unassigned qualified trainees who are residents of the district.

(b) The roster is arranged by seniority within each of the three groups and will be used in situations restricted to a given district when its use does not conflict or interfere with the operation of the Statewide roster.

Cross References

This section cited in 55 Pa. Code § 2430.71 (relating to placement on roster).

§ 2430.82. Advertisement of facility.

(a) The Office of Blindness and Visual Services (BVS) will advertise an operating facility with gross sales of \$4,800 or less per month which becomes vacant only in the district in which it is located. BVS will advertise the vacancy to vendors on the district roster. The award is made in the same manner as for the Statewide roster.

(b) If no bids are received for the facility, BVS will review the operation of the facility and its potential for substantial increase in gross sales. Upon a conclusion that there is no potential for substantial increased earnings BVS may close and remove the facility from the premises.

Cross References

This section cited in 55 Pa. Code § 2430.71 (relating to placement on roster).

SATELLITE FACILITY**§ 2430.91. Generally.**

(a) A satellite facility is one operated by a vendor at the same time that the vendor is operating another assigned facility. This situation may occur when no qualified vendor, displaced vendor, or qualified trainee accepts award of a vacancy.

(b) The Office of Blindness and Visual Services (BVS) will advertise a vacant satellite facility within the district in which it is located. The letter is the standard one used for vacancies with a statement added to note that the offer is for a satellite facility. The special conditions of the satellite shall be noted in the letter as follows:

- (1) The satellite operation is a temporary condition with the vendor being assured of the assignment for at least 90-consecutive days before a further

action may be taken regarding the assignment. An action within the 90-day period may be taken only after appropriate notice to the vendor operating the satellite.

(2) The vendor shall apportion his time between the two facilities as necessary to assure proper operation of both facilities. Consideration shall be given to vendors who apply; however, a basic consideration for selection shall be the proximity of the satellite to the base location of the vendor in order that the shared time between the facilities is practical and efficient.

(3) The satellite shall be assigned by the regular promotion procedure with primary consideration being given to the senior interested vendor in good standing.

(c) BVS will review the satellite program at least every 90 days and distribute a Statewide list of satellite stands to vendors and trainees. The list shall be in a form similar to the standard bid proposal and note that the satellites are being offered for award in accordance with the standard procedure for assignment of a vending facility as set forth in §§ 2430.41—2430.52 (relating to advertisement of facility vacancy).

§ 2430.92. Termination of satellite operation.

The Office of Blindness and Visual Services (BVS) will terminate the satellite operation as soon as possible following the award of the facility to a qualified vendor or trainee. BVS will notify the vendor who is operating the satellite facility that he must vacate the facility within 30 days of the date of the award. The vendor may vacate the satellite at an earlier date if agreed with the person to whom the satellite is awarded.

OPERATION OF FACILITY

§ 2430.101. Standards.

(a) The vendor shall operate the facility in the manner necessary to achieve the goal of economic independence. The items to be sold and their sales price are to some extent determined under the agreement with the owner; however, the vendor shall have sufficient flexibility within those limitations to make an adequate profit. The vendor shall establish controls over sales and expenses necessary to produce a reasonable profit. An assigned business enterprises agent from the Office of Blindness and Visual Services (BVS) shall advise and counsel the vendor; however, final decisions shall be made by the vendor.

(b) The vendor shall be physically present whenever possible to the facility to provide full-time supervision and to operate the facility in accordance with the following standards:

(1) *Generally.* The vendor shall comply with applicable Federal, State, and local statutes and regulations.

(2) *Facility standards.* The facility shall be attractive, clean, and sanitary and meet the following standards:

(i) *Attractive atmosphere.* The interior must be well lighted, with convenient access to service points and movable equipment placed to produce a pleasant and visually-pleasing effect.

(ii) *Cleanliness.* Surfaces must be free from dust and litter, with furniture and displays neatly arranged, in good repair and free of stains and discoloration. Waste containers must be conveniently placed and free of litter overflow, stains, grease, and unpleasant odors.

(iii) *Sanitary conditions.* Food preparation areas and accessories must be clean and free of objects other than food being prepared. Food preparation vessels and utensils must be free of dirt, grime, stains, and discoloration and stored in protected areas; garbage and trash disposal must be made in clean containers in a protected area without litter overflow and free of noxious odors.

(3) *Personnel.* Staff must be neatly groomed and display pleasant demeanor with customers and visitors. Uniforms are encouraged but not required.

(4) *Management.* Reports, with supporting records, payment for goods and services, with supporting receipts, and request for maintenance and repair of equipment must be timely. The stock must be adequate and of appropriate variety. Service must be effective and timely.

§ 2430.102. Pricing policy for facility.

The successful operation of a facility requires at a minimum a 40% gross 20% net profit to provide gainful employment for the vendor. The competitive factors involved and the economic factors related to the profitable operation of the facility along with the needs of the owner shall be the basis for the determination of prices. The Office of Blindness and Visual Services (BVS) will provide intensive assistance to a vendor who consistently operates below the stated profit margin. If the persistent efforts of the vendor and the staff fail to raise the level of profits, BVS will consider closing the facility.

§ 2430.103. Operating expenses.

The vendor shall contract for only those expenses necessary for the safe and efficient operation of the facility. The allowable operating expenses include wages, utilities, fees for services directly related to operation of the facility, insurance, and taxes. Expenses must be paid on a cash—or check—basis with an exception permitted only with the express approval of the Office of Blindness and Visual Services (BVS).

§ 2430.104. Wages.

Wages paid to the employees of the facility must conform to the appropriate Federal and State statutes and to the standards of the community in which the facility is located. Wages which grossly exceed those for similar type employment in a given community will be disallowed as an allowable operating expense and will be reduced to the standard rate for determination of net profit and related rental fees.

§ 2430.105. Insurance.

The vendor shall carry public and product liability, workers compensation, and other necessary insurance to protect the vendor, the vendor's employees, and the Office of Blindness and Visual Services (BVS) against claims or losses arising from the operation of the facility. The insurance shall be in a reasonable amount, as agreed between the vendor, the owner, and BVS, and cover the normal activities related to the operation of the facility. The certificate of insurance shall be maintained in the appropriate district office.

§ 2430.106. Gross income.

The vending facility must be operated on a cash basis with income and expenses including vending machine and lottery income, being maintained in cash except for credit accounts which may be authorized by the Office of Blindness and Visual Services (BVS). Sales must be for cash with any rebate, commission, or bonus received by the vendor being reported as cash income. Merchandise taken from the stock in trade for personal use of the vendor is also considered a cash sale at cost price and must be reported as cash income for computation of net proceeds.

§ 2430.107. Budgeting and accounting.

The vendor shall conduct the facility in accordance with standard business practices. This includes maintaining an accounting system. The exact amount of income and expenditures must be recorded along with their source or destination. The system must be organized to provide the information required for the monthly report and other financial reports required by Federal, State, and local statutes and regulations. See §§ 2430.111—2430.115 (relating to reports).

§ 2430.108. Audit of operations.

(a) The vendor may retain a licensed certified accounting firm to conduct an audit. Audits are suggested annually. The cost of an audit is an allowable operating expense.

(b) The vendor shall require the auditor to review the operation of the facility in detail with a complete analysis and reconciliation of recorded income and expenditures. The purchase of goods and their sales shall be examined and rec-

onced; the expenditures supported by invoice as well as those not so supported such as wages shall also be examined. The personal activities related to the operation of the facility also shall be reviewed to present a complete description of the operation of the facility.

(c) The operation of a facility may also be audited at the discretion of the Department or the Auditor General in accordance with existing statutes and regulations. In the event of a scheduled audit by either organization, the vendor shall be notified and shall provide convenient access to appropriate records and reports.

REPORTS

§ 2430.111. Daily reports.

The daily reports, Form OB 112, is a mandatory report of the financial transactions for each day of operation of a facility. The vendor shall complete applicable items of the report each day and collect and submit the reports on a weekly basis. The weekly collection of reports shall be forwarded to the district office in time to reach that office on or before Wednesday of the week following that covered by the reports. When a week extends into the subsequent month, the weekly collection of reports shall be submitted in the usual manner. It is not necessary to split the daily reports into a group for each month.

(b) Failure to complete and submit the reports in a timely fashion will result in disciplinary action including a written reprimand, probation, or possible dismissal from the program. See § 2430.171 (relating to daily report).

Cross References

This section cited in 55 Pa. Code § 2430.107 (relating to budgeting and accounting).

§ 2430.112. Monthly report.

The Department prepares a summary of the daily reports at the end of each month for each facility in the form of the monthly income statement, Form OB-113. The statement consists of a summary of each item of the daily report and the calculation of the gross profit and net proceeds which serves as the basis for computing the monthly charges due from the vendor. The statement also provides the data which indicate the progress or lack of progress in the operation of a facility and is used to devise remedies to improve the operation and profit of the facility. See § 2430.171 (relating to daily report).

Cross References

This section cited in 55 Pa. Code § 2430.107 (relating to budgeting and accounting).

§ 2430.113. Equipment inventory reports.

The Office of Blindness and Visual Services (BVS) must maintain a record of the equipment it has placed in the facility. This record shall be compiled by the district office and signed by the vendor and the business enterprises agent, with a copy of the signed report forwarded to the central office for review and approval. Equipment reported damaged or missing shall be replaced or repaired by the office with payment determined by mutual agreement between the vendor and the district under the procedure in § 2430.132 (relating to repair of equipment).

Cross References

This section cited in 55 Pa. Code § 2430.107 (relating to budgeting and accounting).

§ 2430.114. Monthly contact report.

(a) The Office of Blindness and Visual Services (BVS) staff will visit each facility at least once each month. The visit is designed to verify operating conditions, the adequacy of services being provided, the condition and efficiency of the equipment and the need of the vendor for improving the profits of the operation.

(b) BVS staff will complete a contact report on each visit, which shall be signed by the vendor. The signature of the vendor shall not be considered an approval or acceptance of findings of the report, but is intended only as an acknowledgement of the fact that a visit was completed.

Cross References

This section cited in 55 Pa. Code § 2430.107 (relating to budgeting and accounting).

§ 2430.115. Records maintenance.

(a) The vendor shall maintain appropriate records for the Internal Revenue Service, State and local taxing bodies and other Federal, State and local agencies which mandate the maintenance of certain records, see §§ 2430.101—2430.108 (relating to operation of a facility). The required records include, but are not limited to:

- (1) Payroll records including gross salary, fringe benefits, if any, and payroll tax deductions.
- (2) Payment records supported by related orders, invoices and receipts.
- (3) Sales records supported by price lists and inventory reports.
- (4) Bank records which substantiate the transactions noted in paragraphs (1)—(3).

(b) The vendor shall retain these records and others which may be required for the necessary period but in no case less than five years. The retained records also must be available for review and audit by the Department or the Auditor General.

Cross References

This section cited in 55 Pa. Code § 2430.107 (relating to budgeting and accounting).

RENOVATION OF FACILITY**§ 2430.121. Generally.**

Renovation of facilities is done by the Office of Blindness and Visual Services (BVS) according to its schedule. Renovation includes a review of the construction of the stand, replacing obsolete and worn equipment, and generally rearranging the stand as necessary, according to the stated needs of the vendor. A vendor may request renovation prior to its scheduled time.

§ 2430.122. Notice of renovation.

The Office of Blindness and Visual Services (BVS) will notify the vendor by memorandum that the facility is scheduled for renovation during the next 6 months. BVS staff prepares the plans for renovations in cooperation with the vendor and the owner. The final plans shall be approved and signed by the vendor and the owner. BVS then completes renovations in accordance with the procedure for the initial design and construction of the facility.

ROUTINE MAINTENANCE AND REPAIRS**§ 2430.131. Generally.**

(a) The Office of Blindness and Visual Services (BVS) will provide for the routine repair and maintenance of the equipment placed in the facility. Upon establishment of a facility, the completed inventory of equipment is used to establish a maintenance schedule for the equipment which includes the replacement date.

(b) BVS will replace the equipment as indicated by the replacement date or at the next scheduled renovation of the facility, whichever is the most economical and makes the greater contribution to the benefit of the vendor.

§ 2430.132. Repair of equipment.

(a) The vendor shall immediately notify the district office when equipment repairs are required.

(b) The Office of Blindness and Visual Services (BVS) in cooperation with the vendor shall arrange for necessary emergency repairs. If emergency repairs are not required, BVS shall arrange with the vendor to inspect the item needing repair to determine whether to repair or replace it. If the repairs are estimated to cost \$50 or less, the district office will authorize the vendor to have the repairs made with the payment from the daily receipts. The vendor shall submit the paid invoice for repairs along with the daily report. BVS will make credit adjustment for the repair cost in the vendor's account.

(c) For repairs which are estimated to cost over \$50, BVS will make arrangements in cooperation with the vendor. The vendor shall pay the cost of the repairs if the amount will not disrupt the cash position of the facility. The vendor shall submit the paid invoice to BVS for credit against lease rental charges.

(d) The vendor has the option to order additional minor repairs himself; however, if this option is exercised the vendor shall pay for the repairs, which are considered normal operating expenses.

(e) BVS will provide routine maintenance services through service contracts, and services provided by BVS staff. Additional services may be obtained at the discretion of the vendor; however, these services are considered normal operating expenses to be paid by the vendor.

LEAVE OF ABSENCE AND ANNUAL LEAVE

§ 2430.141. Leave of absence.

The vendor is entitled to leave of absence upon the approval of the district manager. Approval of the leave shall be based primarily on acceptable arrangements being made for the proper operation of the vending facility with scheduled services being provided during the absence of the vendor. The vendor shall request the leave in writing, noting the type of leave requested, the time, place and duration of the proposed leave and the arrangements for operation of the facility during the absence of the vendor. The vendor shall submit the request at least 5 work days prior to the beginning date of the requested leave. Supporting documents may be required depending upon the type of leave requested.

§ 2430.142. Annual leave.

(a) The vendor after at least 3 years in the program shall be eligible for annual leave for vacation, personal need, or for other reasons which require no justification in the amount of 25 days, including up to 15 consecutive working days for each calendar year. The vendor shall report, in writing if possible, to the district manager an expected absence from the facility in excess of one-half of a usual work day. During the first year in the program the vendor is eligible for up to 10 days of annual leave and during the second and third year up to 15 days.

(b) An absence for a purpose directly concerned with facility operation is not considered a leave of absence.

(c) Practices, such as persistent outside visits, late arrival and early departure during work hours are allowed only with the express approval of the district manager. These absences which aggregate less than one-half the established work day may be reported and recorded at the district office at the discretion of the district manager except that business absences in excess of 4 days in a calendar month must be reported to the district manager. The district manager shall review the circumstances and decide whether to approve them or take action to require the vendor to spend more time at the facility.

(d) Flagrant abuse of annual leave benefits may result in disciplinary action and possible removal of the vendor from the program.

SICK AND MEDICAL LEAVE

§ 2430.151. Sick leave.

(a) Upon notice to the district manager the vendor is entitled to sick leave for personal illness in the amount of 6 months or 130 work days per calendar year. The vendor shall support a request for sick leave of 5 or more consecutive work days with a doctor's certificate noting the date of the illness and the expected time of recovery. A doctor's certificate may be required for sick leave of fewer than 5 consecutive work days at the discretion of the district manager. The district manager may approve sick leave in excess of 10 days only after appropriate consultation with the district medical consultant. The vendor shall notify the district manager as soon as possible after the onset of illness in order that appropriate action may be taken as necessary to safeguard the interest of the vendor, the Office of Blindness and Visual Services (BVS) and the owner.

(b) Regardless of the nature of the illness and the amount of sick leave involved, care must be exercised in the management of the illness and the leave to assure that the vendor and his customers are not unduly exposed to dangerous disease. The uninterrupted operation of the vending facility is a paramount consideration; however, this operation must be safe for both vendor and customer. The vendor shall report a serious illness to the district manager along with the request for approval of sick leave so that the responsible parties can participate in making appropriate arrangements for the operation of the facility during the absence of the vendor. The district manager shall seek the advice of the district medical consultant, as necessary, to assure that the presence of the vendor at the facility is consistent with proper health care practices as well as to get advice on possible abuse of sick leave benefits. The vendor shall make satisfactory arrangements for the timely submission of daily reports. Flagrant abuse of sick leave benefits may result in disciplinary action and possible removal of the vendor from the program. Payment of the rental fee and continued satisfactory day-to-day operation of the facility during his absence must be assured.

§ 2430.152. Medical leave.

(a) The vendor is entitled to medical leave, for an illness of longer than 6 months' duration during which time the vendor is unable to be present at the vending facility at least 50% of the normal work week. A request for medical leave shall be in writing, supported by a general medical examination form, OB-R-3, completed at the vendor's expense.

(b) The Office of Blindness and Visual Services (BVS) may grant the vendor medical leave for no longer than 2 years and not less than 3 months. On the date medical leave begins, the vendor shall be removed from the promotion roster and

the acquisition of the seniority shall be suspended. BVS, in the usual manner, will advertise and award the facility being operated by the vendor.

§ 2430.153. Return from medical leave.

(a) The vendor may return from medical leave at any time after 3 months or before 2 years following the effective date of that leave. The written statement of intent to return shall be sent to the Office of Blindness and Visual Services (BVS). Upon acceptance of the return notice, the vendor shall be reinstated to the promotion roster or the displaced vendor's list with adjusted seniority and full veteran's preference if appropriate.

(b) The vendor on medical leave who is not able to return to the program at the expiration of the leave shall be separated from the program effective with the last day of medical leave. BVS will notify the vendor in writing of his removal from the program and of the conditions for re-entry, such as return to active VR case status, retraining, loss of seniority, and placement of the vendor on the qualified trainee roster.

DISCIPLINARY ACTION

§ 2430.161. Generally.

(a) In view of the cooperative nature of the program, and the need to maintain the solvency of the employment fund, a system of disciplinary action has been established to assure conformity to the more critical elements for cooperation. These elements are:

- (1) Timely submission of daily reports.
- (2) Timely payment of rental fees.
- (3) Satisfactory performance.

(b) The three disciplinary steps for nonconformity are in order of severity:

- (1) Removal from the promotion roster.
- (2) Placement on probation.
- (3) Removal from the program.

Cross References

This section cited in 55 Pa. Code § 2430.32 (relating to vendor certificate).

SUBMISSION OF DAILY REPORTS

§ 2430.171. Daily report.

(a) The daily report is a critical item which provides the operating data necessary for management and supervision and is the basis for determination of the rental fee. The vendor shall submit the report for a given week to the district office in time to reach that office on or before Wednesday, following the week covered in the report. The report must be received by the due day regardless of

the circumstances. The Office of Blindness and Visual Services (BVS) will not approve an absence by the vendor from the facility unless satisfactory arrangements are made for timely submission of these reports.

(b) If BVS does not receive the report at the designated time, BVS will contact the vendor for an explanation of the delay. If the delinquent report is not received on or before the following Wednesday, BVS will send a letter of warning to the delinquent vendor. The letter shall state that if the report is not received before the following Wednesday, the vendor shall be removed from the promotion roster or placed on probation.

(c) If the report is not received by the following Wednesday, 3 weeks after the due date, the vendor shall be removed from the promotion roster and placed on probation for 30 days effective the date of the notice from BVS. BVS will notify the vendor by letter of the aforementioned action, instructing the vendor that he must apply by letter for reinstatement to the promotion roster.

(d) If the reports are not received by the following Wednesday, 4 weeks after the due date, action shall be initiated to remove the vendor from the program. BVS will notify the vendor by letter. The vendor shall also be advised of his right to an appeal from fair hearing.

(e) BVS will make every effort during the period of delinquency to establish and maintain contact with the vendor and provide services necessary to assist the vendor to correct the delinquency and make whatever adjustments are necessary for proper operation of the facility.

PAYMENT OF RENTAL FEE

§ 2430.181. Rental invoice.

The monthly rental fee is payable by the vendor upon receipt of the rental charge invoice and must be paid not later than 30 days following the issue date of the invoice. If payment is not received on or before that due date, the Office of Blindness and Visual Services (BVS) will:

- (1) Specify the amount due and payable immediately.
- (2) Remove the vendor from the promotion roster or make him ineligible to bid for a vacancy for a minimum of 90 days effective the date overdue.
- (3) Inform the vendor that he must make a written request for reinstatement to the promotion roster.
- (4) Inform the vendor that further disciplinary action will be taken if payment of the amount due is not received within the next 30 days.

§ 2430.182. Delinquent payments.

(a) If payment is not received at the end of the following 30-day period—(60 days after issue date of the invoice)—or if the vendor is repeatedly delinquent in payment during a 6 month period, the vendor shall be placed on probation for 90 days effective that date. The vendor shall be advised of the action by letter from

the Office of Blindness and Visual Services (BVS) and that removal action will be taken if all rental payments are not current by the end of the probation period—180 days after issue date of rental invoice.

(b) If the vendor account is not current at the end of the probationary period, BVS will forward a letter to the vendor with the following information:

- (1) The vendor is to be dismissed from the program effective on the date that a replacement vendor is selected.
- (2) The vendor may appeal his dismissal and receive a Fair Hearing.
- (3) The amount due for nonpayment of rental fees will be deducted from the proceeds of the sale of the inventory of the facility.

(c) The delinquency of the vendor for the rental fee shall be fully investigated from its outset by BVS, and every effort shall be made to resolve the problems of the delinquency before a decision is made to dismiss the vendor.

ADMINISTRATIVE REVIEW PROCEDURE

§ 2430.191. Generally.

The administrative review provides an informal procedure through which the Office of Blindness and Visual Services (BVS) provides a vendor or his representative an opportunity to express and seek remedy for his dissatisfaction with an action by BVS arising from the operation or administration of the facility program. The staff of BVS at both the district and central levels shall make every effort to resolve vendor complaints. These efforts may not, however, discourage or interfere in any way with a vendor exercising the right to pursue the formal evidentiary fair hearing process in accordance with §§ 2430.201—2430.203 (relating to fair hearing procedure).

§ 2430.192. Request for administrative review.

A vendor may request an administrative review in writing, within 15 working days of the occurrence of the action with which the vendor is dissatisfied. The vendor shall send the request to the district manager and shall specify as clearly as possible:

- (1) A description including the date and the time of the action which is the basis for the request.
- (2) The alleged adverse effect of the action.
- (3) The remedy being sought to correct or relieve the adverse effect.

§ 2430.193. Acknowledgement of request and notice of review meetings.

(a) The district manager will acknowledge the receipt of the request for the administrative review by written notice to the vendor within 2 working days after its receipt.

(b) This notice must state the time and place for the review, the availability at no cost of transportation, reader's service, and other necessary services to the vendor and the specific documents the vendor shall bring to the review meeting.

(c) The notice and other communication with the vendor must clearly indicate that the administrative review is not an adversary proceeding and is intended only to settle the problem as expeditiously as possible. This review shall be held within 15 days from the date of the request unless postponed for good reason. Effort shall be made by the Office of Blindness and Visual Services (BVS) staff to assist the vendor in providing a clear definition of the complaint and the remedy being sought.

§ 2430.194. Administrative review.

(a) The Office of Blindness and Visual Services (BVS) will designate a member of its administrative staff who has not in any way participated in the action in question to conduct the review. The administrative review meeting shall be conducted in an informal manner. Effort shall be made to assure that the complaint is fully stated. Likewise the written policies, regulations and instructions upon which the disputed action was based shall be presented and fully explained. Points of apparent conflict shall be fully discussed and mutually agreeable remedies sought. Reasonable effort shall be made to resolve the complaint.

(b) Prior to adjourning the review meeting, the presiding OVH staff member shall make a concluding statement regarding the decision reached on each issue raised in the complaint and shall advise the vendor or his representative that the review decisions will be confirmed in writing within the next 5 working days.

§ 2430.195. Administrative review report.

Within 5 working days after the administrative review meeting, the Office of Blindness and Visual Services (BVS) shall:

- (1) Prepare a written summary report of the review including the decisions made.
- (2) Send a copy of the summary report and decisions to the vendor and his representative, if any, with a written notice of the vendor's right to request a formal evidentiary fair hearing in accordance with §§ 2430.201—2430.203 (relating to fair hearing procedure) regardless of whether the administrative review decision was in his favor.

FAIR HEARING PROCEDURE

§ 2430.201. Generally.

(a) The Department will provide a fair hearing procedure in accordance with 1 Pa. Code Chapter 35 (relating to formal proceedings) for participants in all programs administered by the Department. The fair hearing procedure is in confor-

mity with applicable Federal and State regulations and, as such, provides the opportunity for a full evidentiary hearing for participants of the Business Enterprise Program (BEP).

(b) The fair hearing procedure is basically a method of quasijudicial public review of an unsatisfied complaint from a participant in the program. The review is conducted by an impartial, competent individual with appropriate witnesses being heard and pertinent evidence reviewed prior to rendering a decision. The decision may either be appealed to Commonwealth Court or to the Secretary of the U.S. Department of Education.

Cross References

This section cited in 55 Pa. Code § 2430.32 (relating to qualified vendor certificate); 55 Pa. Code § 2430.191 (relating to generally); and 55 Pa. Code § 2430.195 (relating to administrative review report).

§ 2430.202. Request for a fair hearing.

A vendor who wishes a fair hearing shall send a written request to the commissioner within 15 working days after either the receipt of the decision of the administrative review or the occurrence of the action which is the subject of the complaint, if no administrative review is requested. The request shall contain a statement of the specific action which is the subject of the request and the specific remedy which is being sought.

Cross References

This section cited in 55 Pa. Code § 2430.32 (relating to qualified vendor certificate); 55 Pa. Code § 2430.191 (relating to generally); and 55 Pa. Code § 2430.195 (relating to administrative review report).

§ 2430.203. Acknowledgement of request and notice of fair hearing date.

(a) The Commissioner will acknowledge a fair hearing request within 2 days of its receipt and will forward the request to the Office of Hearing and Appeals. When acknowledging the receipt of the fair hearing request, the Commissioner will advise the vendor of the supportive services available without cost to enable him to pursue his appeal.

(b) The Office of Hearing and Appeals will schedule the hearing and notify the vendor directly of the time and place of the hearing and other pertinent information.

Cross References

This section cited in 55 Pa. Code § 2430.32 (relating to qualified vendor certificate); 55 Pa. Code § 2430.191 (relating to generally); and 55 Pa. Code § 2430.195 (relating to administrative review report).

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