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March 21, 2011

Legislative Reference Library
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Re: In The Matter of the Proposed Rules of the State Department of Employment and Economic Development Governing Rehabilitation Services to the Blind and Visually Impaired, *Minnesota Rules*, 3325.0100 to 3325.0490; Governor's Tracking #AR 553

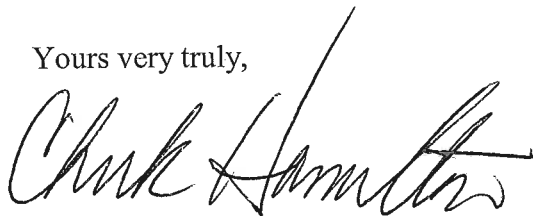
Dear Librarian:

The Minnesota Department of Employment and Economic Development intends to adopt rules governing rehabilitation services to the blind and visually impaired. We plan to publish a Dual Notice of Hearing and Intent to Adopt Rules without a Public Hearing in the March 28, 2011 State Register.

The Department has prepared a Statement of Need and Reasonableness. As required by Minnesota Statutes, sections 14.131 and 14.23, the Department is sending the Library (sonars@lrl.leg.mn) an electronic copy of the Statement of Need and Reasonableness at the same time we are mailing our Notice of Intent to Adopt Rules.

If you have questions, please contact me at (651) 649-5452.

Yours very truly,



Chuck Hamilton
Lead Rule Writer

State Services for the Blind

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Minnesota Department of Employment and Economic Development (DEED)

STATEMENT OF NEED AND REASONABLENESS

Proposed Amendment to Rules Governing Rehabilitation; Visually Disabled, Minnesota Rules, 3325.0100-3325.0490.

INTRODUCTION

State Services for the Blind (SSB), a division within DEED, initiates these rule amendments to achieve five key goals, to:

1. Conform 1986 state rule parts to federal law and regulations and make other housekeeping amendments. The federal Rehabilitation Act of 1973 was amended in 1986, 1992, and 1998. Regulations were subsequently issued. These statutory and regulatory amendments made significant changes to the federal vocational rehabilitation and independent living programs. In order to comply with these evolving federal requirements, SSB has implemented these changes through policy. State rules need to be amended to reflect these requirements.
2. Restructure and combine the self-care and independent living services rule parts. SSB has moved to a single service model for individuals not working towards competitive employment in the vocational rehabilitation program.
3. Clarify and streamline rule parts related to the purchase, maintenance and ownership of technology aids and devices. Since 1986, technology has played an increasingly critical role in the rehabilitation process. SSB proposes changes in the roles and responsibilities for both eligible individuals and SSB.
4. Strengthen requirements related to customer adjustment to blindness training. Adjustment to blindness skills are essential to achieve success in employment and independent living.
5. Remove rule parts related to direct rehabilitation services to children. SSB discontinued this program in 2002 due to reduced resources.

The 1923 legislature created an agency for the blind administered by what is now known as the Department of Human Services. The agency for the blind was known by several names over the years, ultimately being identified as “State Services for the Blind.” (See **1Sp 1985 c 14 art 9 s 12**). In 1985 the Minnesota Legislature moved State Services for the Blind from the Department of Human Services to the newly formed Department of Jobs and Training. The Department of Jobs and Training later became the Department of Economic Security, which merged with the Department of Trade and Economic Development in 2003 to become known as the Department of Employment and Economic Development.

Development of state rules governing rehabilitation for the blind and visually impaired has been, historically, complicated. Decades ago, consumers, primarily from the National Federation of the Blind (NFB) of Minnesota, were concerned about unfair and unequal treatment of blind persons applying for and receiving rehabilitation services from SSB. In response, the Department of Public Welfare (later renamed the Department of Human Services) began the rule making process for SSB in a 1982 Notice of Solicitation. The process became stalled. The NFB then went to the legislature to require rules, and in 1984 the Legislature responded with legislation (See **1984 c 516 s1**) requiring the Department of Public Welfare to adopt rules by February 1, 1985. During this same time period SSB was transferred to the Department of Jobs and Training. The state rule process culminated in rules promulgated in 1986. See **Minnesota Rules Chapter 3325**. The rules have not since been amended. The rules are out dated. Substantial changes in federal law, state budgets and customer oriented processes and policies have occurred since 1986.

There have been several attempts to update the rules since 1986. The most complete effort resulted in a letter and accompanying material to Commissioner R. Jane Brown, Minnesota Department of Jobs and Training dated February 12, 1991 from the Office of Administrative Hearings. See **Appendix 1-1991 Letter to from Bruce D. Campbell, Administrative Law Judge, to R. Jane Brown, Commissioner**. The letter, and attachments, laid the groundwork for final adoption. However, due to financial concerns which were said to have been compounded by the proposed rule amendments, the agency decided to set the changes aside. See **Appendix 2-May 30, 1991 Rule Amendments Discussion**. (Rick Hokanson was the Assistant Commissioner in charge of SSB at the time. Judy Sanders and Joyce Scanlan were members of the blind community). A later attempt occurred in 2002, which did not reach a formal status.

Today, SSB provides direct rehabilitation services to those interested in employment by administering the vocational rehabilitation program. For those not interested in employment, but who are still in need of adjustment to blindness services, SSB administers the independent living program. SSB provides Communication Center and the Business Enterprises Program services that are not part of this rule making process.

The Request for Comment, including the goals noted above, was published in the State Register on June 1, 2010. Because of a history of involving the blind community in developing rules and considering others matters related to the services SSB provides, SSB formed an Advisory Committee. The Advisory Committee included representatives of the State Rehabilitation Council for the Blind, American Council of the Blind of Minnesota, National Federation of the Blind of Minnesota, United Blind of Minnesota, BLIND, Inc., Duluth Lighthouse for the Blind, Vision Loss Resources, SSB staff and the Client Assistance Program. The Advisory Committee met eight times during the summer of 2010, including the evenings of June 9, 16, 23, and 30th; July 14, 21, and 28th; and August 4th.

Richard K. Strong, Director of SSB, sent the following message to Advisory Committee members following completion of their work:

“SSB Rule Advisory Committee Members:

On June 9th of this year I attended your first Committee meeting where I said, among other things, “Thank you all for stepping forward and volunteering on what I see is one of the most critical activities that SSB is going to be involved in over the next several years. What you will be involved in - providing input and advice to SSB about its products and services - will have lasting impact on not only the current consumers of services but also those customers of services yet to come to our doors. We sat down 25 years ago and drafted our administrative rule. Needless to say, it has long legs. And the longevity of your advice will have absolutely critical impacts on our programs in the years to come.”

You have held eight meetings. You have scoured about 100 pages of “legalese,” in the process hearing our proposals, asking questions, giving advice and providing proposals of your own. I was pleased to hear that your deliberations were completed August 4th in a marathon session. I’ve listened to some of your proceedings and I understand we achieved consensus in most areas. I note also we still need to address a few important items.

SSB will make final decisions soon, and publish the proposed amended rules and the draft statement of need and reasonableness (SONAR) in the State Register this fall. The notice in the State Register will clearly identify the next steps in the process. We will let you each know when the proposed amended rules and SONAR are published and look forward to your continued input on this important task.

Thank you for actively participating in the committee process. I want to make very clear that your input was heard, considered, and substantially integrated into the draft rule.

Because of your active participation, SSB is better positioned to improve its products and services to present and future customers. I look forward to a continuing partnership with the community on this and other important projects.”

The SSB Rule Advisory Committee supports the proposed amendments, unless indicated otherwise in this document.

In addition, federal regulations governing the vocational rehabilitation program require public meetings be held prior to the adoption or amendment of any substantive policies or procedures. SSB must conduct these meetings throughout the state to give the public, including individuals with disabilities, an opportunity to comment on the policies and procedures. These will be scheduled. See **Code of Federal Regulations, title 34, part 361.20**. These regulations also require special consultation with the Client Assistance Program (CAP), the State Rehabilitation Council for the Blind (SRC-B), and Indian tribes. CAP and the SRC-B were members of the SSB Rule Advisory Committee. Briefings were held for director of the Red Lake Tribal VR Program on September 9, 2010, and the director of the White Earth Tribal VR Program on September 20, 2010.

ALTERNATIVE FORMAT

Upon request, this Statement of Need and Reasonableness (SONAR) can be made available in an alternative format, such as large print, braille, electronic or audio formats. To make a request, contact Chuk Hamilton at State Services for the Blind, 2200 University Ave. West #240,

St. Paul, MN, 55114, chuk.hamilton@state.mn.us ; (651) 649-5452 or (800) 652-9000; FAX (651) 649-5927. TTY users may call State Services for the Blind at (651) 642-0506 or (888) 665-3276.

STATUTORY AUTHORITY

The Department's statutory authority to adopt the rules is set forth in **Minnesota Statutes section 248.07, Subd. 14a**, which provides:

“Subd. 14a.Rules.

The commissioner shall adopt rules to set standards for the provision of rehabilitative services to blind and visually disabled persons. The rules shall, at a minimum, contain program definitions and set standards for basic eligibility, including financial need eligibility and definitions of legal blindness.

The rules shall provide for the development of formal rehabilitation plans for eligible clients and shall govern the provision of direct rehabilitative services to clients, including placement in training programs, and providing tools and equipment. In addition, the rules shall set standards for appeals filed under subdivision 15 and include specific requirements for timely responses by the agency.”

This statutory authority was enacted in 1984 (See **1984 c 516 s1**) by the legislature. All sources of statutory authority were adopted and effective prior to January 1, 1996, and so **Minnesota Statutes, section 14.125**, does not apply. See **Minnesota Laws 1995, chapter 233, article 2, section 58**.

Under this statute, the Department has the necessary statutory authority to adopt the proposed rules.

REGULATORY ANALYSIS

Minnesota Statutes, section 14.131, sets out seven factors for a regulatory analysis that must be included in the SONAR. Paragraphs (1) through (7) below quote these factors and then give the agency's response.

(1) A description of the classes of persons who probably will be affected by the proposed rule, including classes that will bear the costs of the proposed rule and classes that will benefit from the proposed rule.

- the classes of affected persons by the proposed rule amendments include blind and visually impaired individuals, and their families in some cases, applying for or receiving vocational or independent living rehabilitation services from SSB and community rehabilitation programs providing services;

- those that will bear the costs of the proposed rule are tax payers. It should be noted that these rule amendments are not expected to cause an increased tax burden than currently exists; and
- those that will benefit from the proposed rule include the same classes noted above, as well as the agency by providing current, accurate and streamlined (in some cases) service delivery processes and structure.

(2) The probable costs to the agency and to any other agency of the implementation and enforcement of the proposed rule and any anticipated effect on state revenues

- there are no additional costs to the agency due to implementation and enforcement;
- there are no costs to any other agency due to implementation and enforcement; and
- there is no anticipated effect on state revenues.

(3) A determination of whether there are less costly methods or less intrusive methods for achieving the purpose of the proposed rule

- There are no other methods available for achieving the purposes of the proposed rule amendments.

(4) A description of any alternative methods for achieving the purpose of the proposed rule that were seriously considered by the agency and the reasons why they were rejected in favor of the proposed rule

- The department did not consider any other alternative methods for amending the rule language since these rules do not fall under any of the exempt exceptions under Minnesota statutes and cannot be included in the yearly obsolete rules report since these rules are not, in part, obsolete.

(5) The probable costs of complying with the proposed rule, including the portion of the total costs that will be borne by identifiable categories of affected parties, such as separate classes of governmental units, businesses, or individuals”

- The rule amendments proposed do not increase costs to affected parties with minor exception. The definition of “family income” is amended to clarify what is included in the definition. The impact may be that a few more parents have responsibility for financial participation in their student’s higher education expenses. See **3325.0110, DEFINITIONS, Subp. 22, Family income**. The independent living proposed amendments “limit” SSB expenditures for certain services, which could increase costs to those individuals should they desire services beyond those provided by SSB. See **3325.0250, SCOPE OF SERVICES TO ELIGIBLE INDIVIDUALS AND ADJUSTMENT OF LIMITATIONS, Subp. 1, Scope of services**. SSB also proposes to repeal a limitation on monthly financial participation that may affect a few individuals. See **3325.0440, FINANCIAL PARTICIPATION BY ELIGIBLE INDIVIDUALS**

IN THE VOCATIONAL REHABILITATION PROGRAM, Subp. 6, Limitation on financial participation; and REPEALER (b).

(6) The probable costs or consequences of not adopting the proposed rule, including those costs or consequences borne by identifiable categories of affected parties, such as separate classes of government units, businesses, or individuals

- The consequences of not adopting the proposed amendments are that the current rules are significantly outdated; use archaic language; in some cases are not consistent with federal requirements; do not reflect this century's budget realities; and with the passage of decades since promulgation, do not reflect the evolution of case services practices.

(7) An assessment of any differences between the proposed rule and existing federal regulations and a specific analysis of the need for and reasonableness of each difference

- There are no differences between the proposed amendments and existing federal regulations. The rules were drafted to incorporate the federal statutes and regulations into Chapter 3325, where they apply.

PERFORMANCE-BASED RULES

Minnesota Statutes, sections 14.002 and 14.131, require that the SONAR describe how the agency, in developing the rules, considered and implemented performance-based standards that emphasize superior achievement in meeting the agency's regulatory objectives and maximum flexibility for the regulated party and the agency in meeting those goals.

Throughout the development of the amended rules and this SONAR, the department made every attempt to develop rules that will be understandable and workable for applicants, eligible individuals and practitioners, resulting in efficient and effective delivery of services while achieving the best possible results.

ADDITIONAL NOTICE

DEED has gone to considerable effort to provide additional notice to persons who might be affected by the proposed rules. The Additional Notice Plan (See **Appendix 3-Additional Notice Plan**) was submitted to the Chief Administrative Law Judge of the Office of Administrative Hearings for review on May 24, 2010, and approved in a May 28, 2010 letter by Administrative Law Judge Eric L. Lipman. See **Appendix 4-Letter from Eric L. Lipman, Administrative Law Judge.**

DEED proposed, and executed the plan to mail the Request for Comments to the following interested or affected parties:

1. Members of the State Rehabilitation Council for the Blind (15) which includes a representative of the State Independent Living Council
2. The Chairs and ranking minority party members of the legislative policy and budget committees with jurisdiction over State Services for the Blind (SSB) (12)
3. All persons on the Department's rulemaking notice list for rehabilitation services
4. Centers for Independent Living in Minnesota (8)
5. Community Rehabilitation Programs and independent contractors primarily providing services to the blind and visually impaired (40)
6. Advocacy groups of the blind and visually impaired community (4)
7. Members and staff of the Commission of Deaf, DeafBlind, and Hard of Hearing Minnesotans (16)
8. The chairperson of the Governor's Workforce Development Council
9. The chairperson of each local workforce investment board (16)
10. Minnesota Department of Education-Special Education; Resource Center for the Blind and Visually Impaired; and State Vision network
11. Minnesota Board on Aging
12. A random sample size of 356 SSB vocational rehabilitation and independent living customers
13. Client Assistance Program
14. Staff of SSB responsible for implementing the rule (66)

With the exception of "All persons on the Department's rulemaking notice list for rehabilitation services," who received their notice via postal service mail, the department sent some of the notices via electronic mail, such as to the staff of SSB. In addition, two groups, the State Rehabilitation Council for the Blind and the random sample of SSB vocational rehabilitation and independent living customers, received their notice of the Request for Comments in large print and braille to assure it is in an accessible format. Braille and large print is sent surface mail with the identification of "Free Matter for the Blind" affixed.

DEED intends to provide the "Notice of Intent to Adopt Rules Without a Public Hearing Unless 25 or More Persons Request a Hearing, And Notice of Hearing If 25 or More Requests For Hearing Are Received" to the same interested and affected parties noted above. In addition, due to requirements contained in the Code of Federal Regulations, title 34, part 361.20, additional public meetings will be held. The regulation requires that prior to the adoption or amendment of any substantive policies or procedures governing the provision of vocational rehabilitation services, meetings must be conducted throughout the state to give the public, including individuals with disabilities, an opportunity to comment on the policies and procedures.

The Notice Plan did not include notifying the Commissioner of Agriculture because the rules do not affect farming operations per Minnesota Statutes, section 14.111.

CONSULTATION WITH MMB ON LOCAL GOVERNMENT IMPACT

As required by Minnesota Statutes, section 14.131, the Department will consult with the Minnesota Management and Budget (MMB). We will do this by sending the MMB copies of the

documents that we send to the Governor's Office for review and approval on the same day we send them to the Governor's office. We will do this before the Department's publishing the Notice of Intent to Adopt. The documents will include: the Governor's Office Proposed Rule and SONAR Form; the proposed rules; and the SONAR. The Department will submit a copy of the cover correspondence and any response received from Minnesota Management and Budget to OAH at the hearing or with the documents it submits for ALJ review.

DETERMINATION ABOUT RULES REQUIRING LOCAL IMPLEMENTATION

As required by Minnesota Statutes, section 14.128, subdivision 1, the agency has considered whether these proposed rules will require a local government to adopt or amend any ordinance or other regulation in order to comply with these rules. The agency has determined that they do not because these rules only apply to SSB in relation to the application for and receiving of rehabilitation services by blind and visually impaired individuals. No other part of government has this authority or responsibility.

COST OF COMPLYING FOR SMALL BUSINESS OR CITY

Agency Determination of Cost

As required by Minnesota Statutes, section 14.127, the Department has considered whether the cost of complying with the proposed rules in the first year after the rules take effect will exceed \$25,000 for any small business or small city. The Department has determined that the cost of complying with the proposed rules in the first year after the rules take effect will not exceed \$25,000 for any small business or small city. Expenditures for rehabilitation services under these rule parts are only made by SSB with funds provided by Congress and the Legislature for these purposes, and in some cases, the eligible individuals themselves. Small business and cities have no authority or responsibility to provide or expend money for these services.

LIST OF WITNESSES

If these rules go to a public hearing, SSB anticipates having the following witnesses testify in support of the need for and reasonableness of the rules. The witnesses will be available to answer questions about the development and content of the rules.

Staff of State Services for the Blind:

1. Richard K. Strong, Director
2. Jon Benson, Director of Administrative Services
3. Chuk Hamilton, State Program Administrator, Principal

RULE-BY-RULE ANALYSIS

New and updated terms, defined in **3325.0110, DEFINITIONS**, are integrated into the text as they occur. All references to **parts 3325.0480, Administrative Review**, and **3325.0490, Evidentiary**

Hearing are replaced throughout the chapter with **3325.0478, Review and Mediation of Determinations**, a new rule part.

GENERAL

3325.0100 PURPOSE AND SCOPE.

Subp. 1. Purpose. SSB proposes to replace “disabled” with “impaired” throughout this rule part and chapter to provide consistency with governing federal vocational rehabilitation program definitions and common usage, which have changed since original promulgation. The **Code of Federal Regulations, title 34, part 361.5(b)(41)(i)** defines any physiological disorder or condition, cosmetic disfigurement or anatomical loss of in one or more body system, such as “special sense organs,” as a physical or mental impairment. Further, the **Code of Federal Regulations, title 34, part 361.42(a)(1)**, in describing the eligibility for vocational rehabilitation services, requires that eligibility must be based only on:

- (i) A determination by qualified personnel that the applicant has a physical or mental impairment.
- (ii) A determination by qualified personnel that the applicant’s physical or mental impairment constitutes or results in a substantial impediment to employment for the applicant.
- (iii) ...

SSB intends to also use the term “impairment” in the independent living program to avoid any confusion regarding the terms “handicapped,” “disabled,” and “impaired.” This is reasonable because it provides consistency in usage, reflects language in the federal governing regulation, and “impairment” has been the term used by practitioners and the community for a number of years.

Subp. 2. Scope. SSB proposes to replace “client” with “eligible individual” throughout this rule part and chapter to provide consistency with federal regulation definitions that govern the vocational rehabilitation program and common usage by practitioners and the community which have changed since original promulgation. The **Code of Federal Regulations, title 34, part 361.5(b)(15)** defines “eligible individual” as an applicant for vocational rehabilitation services who meets eligibility requirements for that program. The term “eligible individual” is used throughout the governing federal regulations and this chapter. The term “eligible individual,” for purposes of this chapter, also applies to the independent living program. This is reasonable because it distinguishes “eligible individuals” from other persons based on eligibility standards contained in these rule parts and mandated pursuant to **Minnesota Statutes, 248.07, subd. 14a**. See also **SONAR 3325.0110, DEFINITIONS, Subp. 9, Client and Subp. 18a. Eligible individual**.

The Revisor’s Office has also recommended a style amendment to this subpart, striking “3325.0100 to 3325.0490” and substituting “this chapter.” This amendment makes the rule part more readable without changing its intent, and is reasonable because the Revisor’s Office is the recognized authority pursuant to **Minnesota Statutes 3C.03, Subd. 4**, to set forth proper style and

formatting in rule drafting. The Revisor's Office has made a number of similar recommendations throughout the proposed rule amendments and its recommendations are accepted.

Subp. 3. Exclusion. The definition of "exclusion" is amended by including changes in usage and style recommended by the Revisor's Office. See SONAR 3325.0100, **PURPOSE AND SCOPE, Subp. 2, SCOPE**, paragraph 2.

Subp. 4. Delayed implementation. This subpart is repealed because it is outdated and no longer has application. It would be unreasonable to retain an inapplicable rule part.

3325.0110 DEFINITIONS

Subp. 1a. Activities of daily living. The definition of "activities of daily living" is added and applies throughout the chapter, resulting from review and repeal of the term "self care activities." See SONAR 3325.0110, **DEFINITIONS, Subp. 70, Self care activities**. This new definition is substantially the same as "self care activities" except that the elements "A. personal hygiene and grooming," and "B. eating and meal preparation for oneself" have been removed in favor of more comprehensive terminology, "A. personal management." The amendment is necessary to broaden the definition to allow for other equally important skills, such as cleaning, home repair, time-keeping, telephone dialing, money identification, reading, maintaining records, et.al. Rather than create an exhaustive list of such activities, it is more reasonable to classify such activities more generally as "personal management." "Personal management skills" is a term familiar to individuals receiving and providing such services and are part of today's vernacular.

Subp. 2. Adjustment to blindness services. The definition of "adjustment to blindness services" is amended by clarifying that "vocational" rehabilitation counseling, rather than "rehabilitation counseling" is one factor that defines adjustment to blindness services. This is necessary in order to distinguish what kind of counseling is required in the vocational rehabilitation program and because the term "rehabilitation counseling" is being repealed. (See SONAR 3325.0110, **DEFINITIONS, Subp. 61, Rehabilitation counseling**.) This clarification is reasonable because it accurately describes and identifies the required nature of the counseling. "Vocational rehabilitation counseling" is defined in part 3325.0110, **DEFINITIONS, Subp. 86a, Vocational rehabilitation counseling**.

Subp. 3. Advocacy services. The definition of "advocacy services" is amended by making non-substantive changes to improve readability.

Subp. 4. Alternative techniques. The definition of "alternative techniques" is amended by accepting the Revisor's Office recommendation to replace "which" with "that" (See SONAR 3325.0100, **PURPOSE AND SCOPE, Subp. 2, SCOPE, paragraph 2**) and replacing the term "self-care," which is being repealed, with "activities of daily living." See SONAR 3325.0110, **DEFINITIONS, Subp. 1a. Activities of daily living**.

Subp. 5. Appellant. The definition of "appellant" is amended by clarifying that the term includes, as appropriate, an appellant's designated representative. See 3325.0110, **DEFINITIONS, Subp.**

15, Designated representative. The definition is also amended to reflect changes in terminology and process in **3325.0478, REVIEW AND MEDIATION OF DETERMINATIONS**, a new rule part. The clarification is necessary and reasonable in order to properly and completely identify an appellant for purposes of **3325.0478, REVIEW AND MEDIATION OF DETERMINATIONS**.

Subp. 6. Applicant. The definition of “applicant” is amended to conform to federal regulations governing the vocational rehabilitation program. While a written request, as required in the current rule, is one appropriate method in meeting the requirements of being considered an applicant for the vocational rehabilitation program, this is not the only appropriate method. Many years ago, changes in governing federal regulations permitted other methods. The most liberal method identified by the federal regulation is that the individual “has requested services from the designated State unit,” in this case SSB, which is the language that SSB proposes. Additionally, language is proposed that mirrors federal regulations requiring individuals applying for services to provide information to determine eligibility and to be available to complete the assessment process. The updated definition is reasonable because it is consistent with the requirements of the federal regulations governing the vocational rehabilitation program.

When these rule parts were originally promulgated, the term “applicant” applied to all SSB service delivery programs. This promulgation narrows the use of the term to the vocational rehabilitation program. The independent living rehabilitation program no longer uses the term.

Subp. 8. Child rehabilitation program. The definition of “child rehabilitation program” is repealed because the program no longer exists. SSB has not provided such services since 2002 and has no plans to do so over the next several years. Direct services to children, age 0-14, were provided for many years by SSB. In 2002 a budget crisis impacted state government, including SSB. Eighteen positions at SSB were abolished and 13 individuals were laid-off. In addition to cuts in other state funded SSB services, the decision was made to stop all direct services to children. For several years thereafter, SSB had one position that provided information and referral services to parents and others. That position was subsequently abolished when additional budget cuts were required across state government. It is reasonable to repeal this term in that it is no longer used in these rule parts.

The SSB Rule Advisory Committee felt strongly that SSB should deliver services to children if, in the future, dollars are appropriated for that purpose. In that event, SSB would consider rule making for such a program, taking into account legislative intent and community and professional input.

Subp. 9. Client. The definition of “client” is repealed because the term is no longer used in this chapter. The term “eligible individual” (See SONAR **3325.0100, PURPOSE AND SCOPE, Subp. 2, SCOPE**, paragraph 1, and **3325.0110, DEFINITIONS, Subp. 18a. Eligible individual**) replaces “client” because “eligible individual” is the term used throughout **Code of Federal Regulations, title 34, section 361**, which govern the vocational rehabilitation program. The term “eligible individual” is also used in the independent living rehabilitation program to identify individuals who have met eligibility criteria for that program. This is reasonable because SSB is

required “to set standards for basic eligibility...” for all rehabilitative services. See **Minnesota Statutes, section 248.07, subd. 14a, Rules.**

Subp. 10. Client Assistance Program. The definition of “Client Assistance Program” is amended by adding the **Code of Federal Regulation** citation establishing the program, and removing language which has the effect of restricting the application to only the vocational rehabilitation program. Federal regulations governing the independent living program make it clear that CAP serves individuals in the independent living program. See **Code of Federal Regulations, title 34, section 367.4(b)(4).** This is reasonable because it informs applicants and eligible individuals of the governing federal regulations, and clarifies that CAP is a service available to individuals in the independent living program.

Subp. 11. Communication center services. The definition of “Communication center services” is amended because the media described has changed in the 24 years since original rule promulgation. The communication center now provides transcriptions digitally, provides digital equipment, and no longer utilizes or distributes phonographs. The amended definition is reasonable because it clearly and completely describes all services provided by the communication center.

Subp. 12. Communication skills training. The definition of “communication skills training” is amended by replacing “telecommunications, sensory, and other technological aids and devices” with “rehabilitation technology.” See **SONAR 3325.0110, DEFINITIONS, Subp. 67a, Rehabilitation technology.** In addition, the term “deafblind” (See **3325.0110, DEFINITIONS, Subp. 13, Deafblind**) is added to the applicability of “communication skills training.” This change is necessary to correct an omission. The definition already includes reference to “sign language and other forms of manual communication,” and of those eligible individuals SSB serves, these forms of communication would only be applicable to individuals who are deafblind. This change is reasonable because it clarifies whom the service is available to, and, because it was recommended by the Commission of Deaf, Deafblind and Hard of Hearing Minnesotans.

Subp. 12a. Community rehabilitation program. The definition of “community rehabilitation program” is added because the term has a specific meaning and appears throughout the chapter. Federal regulations governing the vocational rehabilitation program replaced the term “rehabilitation facility” with “community rehabilitation program.” Correspondingly, the definition of “rehabilitation facility” in **3325.0110, DEFINITIONS, Subp. 63, Rehabilitation facility,** is repealed. The term “community rehabilitation program” replaces “rehabilitation facility” throughout this rule part and chapter. In addition, because SSB desires to apply certain specific requirements of community rehabilitation programs in part **3325.0470** to individuals providing services to applicants and eligible individuals Minnesota, the definition of “community rehabilitation program” includes those individuals for the purposes of part **3325.0470.** This is reasonable because it clarifies what constitutes a community rehabilitation program.

Subp. 12b. Comparable services and benefits. The definition of “comparable services and benefits” is added because this term has specific meaning for the vocational rehabilitation program and appears throughout the chapter. This term is used in federal regulations governing the

vocational rehabilitation program instead of the term “similar benefits.” Adding this definition is reasonable because it comes from the federal regulations governing the vocational rehabilitation program. However, the term “similar benefits” (See SONAR **3325.0110, DEFINITIONS, Subp. 76, Similar benefits**) is not repealed. SSB intends to use the definition of “similar benefits” to apply to the independent living program. The term “comparable services and benefits” replaces “similar benefits” throughout the rule part and chapter when applicable to the vocational rehabilitation program.

Subp. 12c. Competitive employment. The definition of “competitive employment” is added because this term has specific meaning for the vocational rehabilitation program and appears throughout the rules. This term replaces the term “gainful employment” (See **3325.0110, DEFINITIONS, Subp. 23, Gainful employment**), which is being repealed due to changes in federal regulations governing the vocational rehabilitation program. This definition is reasonable because it comes from the federal regulations governing the vocational rehabilitation program.

Subp. 13. Deafblind. The definition of “deafblind” is amended by adding the term “applicant.” This is necessary because a deafblind individual may be either an applicant or an eligible individual. This addition is reasonable because it clarifies and informs all parties as to the available statuses a deafblind individual may have with SSB.

Subp. 16. Diagnostic assessment services. The definition of “diagnostic evaluation services” is amended by replacing “evaluation” with “assessment” throughout this rule part and chapter. This change is necessary to provide consistency with federal regulations governing the vocational rehabilitation program. As an example, see **Code of Federal Regulations, title 34, section 361.5 (b)(6), Assessment for determining eligibility and vocational rehabilitation needs**. The change is reasonable because it provides consistency with the governing federal regulations and avoids confusion that may result from using multiple terms for the same purpose. The term “rehabilitation goal” is replaced with “employment outcome.” See **3325.0100, DEFINITIONS, Subp. 19a, Employment outcome, and Subp. 64, Rehabilitation goal**.

Subp. 16a. Direct service staff. The definition of “direct services staff” is added because it is used throughout the chapter and has specific meaning in the vocational and independent living rehabilitation programs. “Direct service staff” have specific responsibilities in a number of rule parts. The term is not well understood and there is the potential for confusion. Therefore, the term needs to clarify which specific SSB staff is “direct service staff.” SSB employs administrative staff, counseling staff, vocational rehabilitation technicians, assistive technology staff, placement staff, managers and supervisors, and a variety of staff within the communication center. This definition is reasonable because it transcends particular job titles and includes only those staff from two SSB units that the director has designated “to interact with and assist applicants and eligible individuals in the rehabilitation process.”

Concern was expressed by some members of the SSB Rule Advisory Committee about the respective roles of the vocational rehabilitation counselor and other staff throughout the rehabilitation process. SSB started with the term “SSB staff” to describe SSB employees who have specific responsibilities in the rehabilitation process, other than those responsibilities that are

required to be performed by vocational rehabilitation counselors pursuant to federal rule. The concern then became whether any SSB staff can perform these functions. These concerns were heard, considered and caused SSB to amend the term to “direct service staff.”

Subp. 18. Disability and licensed health professional. The definition of “disability and licensed health professional” is repealed because the term is no longer used in the rule. It would be unreasonable to retain an unused term.

Subp. 18a. Eligible individual. The definition of “eligible individual” is added because it is used throughout the chapter and has specific meaning in the vocational and independent living rehabilitation programs. The term “eligible individual” replaces the term “client,” which is being repealed in this rule draft, to be consistent with governing federal regulations. The definition of “eligible individual” is reasonable because it distinguishes “eligible individuals” from all other persons based on the eligibility standards contained in these rule parts and mandated by **Minnesota Statutes, section 248.07, subd. 14a**. The term “eligible individual” is also reasonable because it is the term currently used in governing federal regulations to describe such a person for the vocational rehabilitation program. See **Code of Federal Regulations, title 34, section 361.5(b)(15)** and **SONAR 3325.0100, PURPOSE AND SCOPE, Subp. 2, Scope**.

Subp. 19. Employability. The definition of “employability” is repealed because it no longer has a specific meaning for the vocational rehabilitation program. The governing federal regulations have changed, this term is no longer used in these rule parts, and it would be unreasonable to retain an unused term.

Subp. 19a. Employment outcome. The definition of “employment outcome” is added because it is used throughout the vocational rehabilitation program rule parts and has specific meaning. The definition is reasonable because it comes from federal regulations governing the vocational rehabilitation program.

Subp. 20. Extended evaluation. The definition of “extended evaluation” is amended because it has specific meaning within the vocational rehabilitation program and governing federal regulations have altered the definition significantly. The definition is reasonable because it comes from federal regulations governing the vocational rehabilitation program.

Subp. 21. Family member. The definition of “family member” is amended because it has specific meaning within the vocational rehabilitation program and the governing federal regulations have altered the definition significantly. The definition is reasonable because it comes from the federal regulations governing the vocational rehabilitation program. In addition, language is added to apply the term to the independent living program because the concepts are sound. This is reasonable because using the same definition, but substituting “independent living goals” for “an employment outcome,” provides consistency in administering both programs.

Subp. 22. Family Income. The definition of “family income” is amended by adding a condition under which a parent or parent’s income is included in determining “family income.” The amendment requires a parent or parent’s income to be included as family income if an application

for grants at a postsecondary institution of higher learning has determined that the eligible individual is a dependent student for purposes of determining financial aid for postsecondary training. This **Subpart** already includes a parent or parent's income in the definition of family income if the eligible individual is less than 18 years of age and living with the parents, or when the eligible individual was claimed as a dependent for federal income tax purposes.

Family income is the critical component in determining whether an eligible individual is subject to financial participation. As discussed later in this document (See SONAR **3325.0440 FINANCIAL PARTICIPATION BY ELIGIBLE INDIVIDUALS IN THE VOCATIONAL REHABILITATION PROGRAM, Subp. 6, Limitation on financial participation**), SSB's threshold for financial participation by eligible individuals is significantly higher than other public programs.

In a few rare cases, where families have income above SSB's threshold for financial participation, families have chosen not to claim the eligible individual on their federal tax return so that the parent's income was not included in the calculation. This results in the eligible individual not being subject to financial participation and the public paying the full cost of the IPE. When considering an IPE for training at an institution of higher learning that may cost well over \$10,000 per year, families with high incomes can afford not claiming the eligible individual for federal tax purposes, having much to gain at the public's expense. This amendment causes the parent's income to be included in "family income," which is fairer to the public. The public can no longer afford to subsidize these IPE's. This amendment is necessary to conserve scarce resources in the vocational rehabilitation program as costs of tuition, books, and related expenses at institutions of higher learning have skyrocketed over the years.

This amendment is reasonable for two reasons. First, it does not require an eligible individual to complete any additional forms or processes. Eligible individuals are already required to apply for educational grants (financial aid) to cover the costs of tuition, supplies, and living expenses before receiving vocational training services in an institution of higher learning. See **3325.0430, COMPARABLE SERVICES AND BENEFITS; VOCATIONAL REHABILITATION, Subp. 2C, Eligible individual responsibilities**.

Most important, this amendment is reasonable because the conditions determining family income, including the proposed amendment, are already public policy for DEED's vocational rehabilitation program serving individuals with disabilities other than blindness or visual impairment. See **3300.5040, CONSUMER FINANCIAL PARTICIPATION IN COST OF VOCATIONAL REHABILITATION SERVICES, Subp. 3B, Basis for determining degree of financial participation required**.

Subp. 23. Gainful employment or gainful occupation. The definition of "gainful employment or gainful occupation" is repealed because it no longer has a specific meaning for the vocational rehabilitation program due to changes in governing federal regulations, is no longer used in this chapter, and would be unreasonable to retain this unused term.

Subp. 24. Growth and development. The definition of “growth and development” is repealed because the program within which the term was used, child rehabilitation, has not been administered since 2002 and all related rule parts are being repealed. It would be unreasonable to retain this unused term.

Subp. 25. Improvement in ability to function independently in family or community. The definition of “improvement in ability to function independently in family or community” is repealed because it is no longer the expected outcome of the independent living program, is no longer used in this chapter, and would be unreasonable to retain. The focus of the independent living program has changed over the years with the primary customer becoming an older blind person. The program focuses on individuals whose severe visual impairment makes competitive employment extremely difficult to obtain, but for whom independent living goals are feasible. See **SONAR 3325.0110, DEFINITIONS, Subp. 28, Independent Living Program, and Code of Federal Regulations, title 34, section 367.5**

Subpart 27a. Independent living counseling. The definition of “independent living counseling” is added because it has specific meaning and is used within the independent living program. The new definition is substantially the same as “rehabilitation counseling,” which is being repealed. See **3325.0110, DEFINITIONS, Subp. 61, Rehabilitation counseling.** The most significant change from the definition of “rehabilitation counseling” is that “independent living counseling” applies only to the independent living program. **Item A** of the “rehabilitation counselor” definition (“understand abilities and potential and develop self confidence and an understanding that blindness as a physical condition permits normal life activity”) has been split into **A** and **B** in the definition of “independent living counseling” and has been updated to today’s vernacular (“understand the individual’s abilities and potential; realize that blindness and visual impairment are natural parts of the human experience, and that most of the physical limitations associated with blindness and visual impairment can be overcome by learning and using alternative techniques”). See **Appendix 5-SSB Mission/Philosophy, page 15 of State Services for the Blind-2009 Annual Report.** The updated language is reasonable because the language comes from SSB’s published Mission and Philosophy, is used in staff training, is supported by the State Rehabilitation Council for the Blind, and has the support of others in the blind community. **Items C and D** in the new definition of “independent living counseling” are updated versions of the repealed **Items** in “rehabilitation counselor” by substituting current terminology used in other parts of the rule draft, which apply only to the independent living program. An example is substituting “identify and establish feasible independent living goals” for “identify and establish a rehabilitation goal and intermediate rehabilitation objectives.” (See **SONAR 3325.0110, DEFINITIONS, Subp. 28, Independent Living Program**) This is reasonable in order to promote consistency and clarity within the rule parts.

Subp. 28. Independent Living Program. The definition of “Independent Living Program” is amended because it has specific meaning within this chapter and basic elements of the program have changed. The primary, although not the only, individuals served by the independent living program today are older blind persons. The amended definition has been adapted from the federal definition of “older individual who is blind.” See **Code of Federal Regulations, title 34, section 367.5, Independent Living Services for Older Individuals Who Are Blind Program regulations.**

SSB does not adopt in these rule parts the federal age restrictions of “age 55 or older” because SSB chooses to serve eligible individuals below that age. Services for individuals under the age of 55 are paid for with state General Fund dollars, not federal or state match dollars, and are therefore not subject to the federal age restrictions or required reporting. Individuals age 55 and older are subject to federal restrictions and are federally reported. The definition is reasonable because it substantially comes from the governing federal regulations which focus on older blind individuals who are age 55 or older, and includes those individuals under age 55 whom SSB has chosen to serve in the past, and future.

Subp. 29. Individualized plan for employment or IPE. The term “individualized written rehabilitation plan or written plan” is replaced with “individualized plan for employment or IPE” throughout the rule parts and chapter and its definition is amended because it has specific meaning within the vocational rehabilitation program and governing federal regulations have altered the definition significantly. The definition is reasonable because it comes from the federal regulations governing the vocational rehabilitation program. The federal regulations require a substantial amount of information be considered in the development of the IPE and identify the documentation and process requirements in developing and amending the IPE. To avoid lengthy duplication, SSB has chosen to provide the short definition and federal citation reference.

Subp. 29a. Informed choice. The definition of “informed choice” is added because it is used extensively throughout the chapter and has meaning within the vocational rehabilitation program. The following excerpt provides meaningful background into the concept of “informed choice”:

*“The Rehabilitation Act of 1973, as amended, makes it clear in its policy statement that all programs, projects and activities funded under the Act must be “carried out in a manner consistent with the principles of respect for individual dignity, personal responsibility, self-determination, and pursuit of meaningful careers, based on informed choice, of individuals with disabilities” (section 2(c)(1) of the Act). The Rehabilitation Act Amendments of 1992 introduced the principle of “informed choice” into the statute and provided individuals with disabilities expanded opportunities for increased involvement in the direction of their vocational rehabilitation (VR) programming. The Rehabilitation Act Amendments of 1998 (the 1998 Amendments) strengthened the previous requirements related to informed choice and introduced expanded opportunities for increased participation of individuals with disabilities in developing and implementing their VR programs.” See **Appendix 6- United States Department of Education Policy Directive, RSA-PD-01-03, January 17, 2001.***

In spite of a number of significant federal regulations related to the concept and implementation of informed choice, no single definition is provided. The Policy Directive RSA-PD-01-03 noted above attempts to define the concept by stating, “Informed choice is a decision-making process that occurs throughout the individual’s experience in the VR program.” See **Appendix 6- United States Department of Education Policy Directive, RSA-PD-01-03, January 17, 2001, p. 4.**

SSB has reviewed the relevant law, regulations, and policy directives and has synthesized the material into a compact, easy to understand definition of “informed choice.” The definition incorporates essential points repeated in the material: it is a decision-making process; it involves

identifying and deliberating on a range of options and considering consequences; it involves personal responsibility and commitment to take appropriate actions in pursuit of the selected option; and SSB has a responsibility in assisting the individual in the process. The definition is reasonable because, lacking a regulatory definition, it incorporates the major elements of “informed choice” from the Rehabilitation Act of 1973, as amended, the governing federal regulations, and the applicable Policy Directive. Moreover, the SSB Rule Advisory Committee supports the definition.

SSB has chosen to use this term and definition for the Independent Living Program because the concepts are sound, federal dollars are spent on the program, and it is within Congressional intent for the program:

“The Rehabilitation Act of 1973, as amended, makes it clear in its policy statement that all programs, projects and activities funded under the Act must be “carried out in a manner consistent with the principles of respect for individual dignity, personal responsibility, self-determination, and pursuit of meaningful careers, based on informed choice, of individuals with disabilities” See Appendix 6- United States Department of Education Policy Directive, RSA-PD-01-03, January 17, 2001, p.1

Subp. 32. Intermediate rehabilitation objectives. The definition of “intermediate rehabilitation objectives” is repealed because it no longer has a specific meaning for the vocational rehabilitation program due to changes in governing federal regulations, is no longer used in this chapter, and it would be unreasonable to retain an unused term.

Subp. 33. Interpreter services. The definition of “interpreter services” is amended to clarify that applicants and eligible individuals may need this service. The clarification is necessary because the term “client,” which previously could include an applicant, is being amended to “eligible individual.” See SONAR 3325.0100, PURPOSE AND SCOPE, Subp. 2, SCOPE, paragraph 1. The definition of “interpreter services” is also expanded to include foreign language interpretation. Minnesota has experienced a significant increase in non-English speaking immigrants, some of whom are blind or visually impaired. In order for the individual and SSB direct service staff to communicate to determine eligibility and plan services, an interpreter may be necessary.

Providing interpreter services is a reasonable, and possibly the only, method to properly carry out such activities. This approach is also reasonable in light of governing federal regulations which require information to be “in the native language or mode of communication of the individual or the individual’s representative.” See Code of Federal Regulations, title 34, sections 361.45(c); 361.45(d)(4); 361.51(c)(1) and (2); and 361.52(b)(1).

Subp. 34. Job placement services. The definition of “job placement services” is repealed because the term no longer has specific meaning in the rules and has been superseded in the federal regulations governing the vocational rehabilitation program by the broader term “job-related services,” which is defined elsewhere in the rules. The repeal is reasonable because it removes an unused term.

Subp. 34a. Job-related services. The definition of “job-related services” is added because it has specific meaning within the vocational rehabilitation program and is used in the governing federal regulations. “Job placement services,” which is repealed in this chapter, becomes one of a number of services that define “job-related services.” While some thought has been given to append Items A-L of “job placement services” to “job-related services,” examples of these specific placement activities are more the province of a staff policy manual.

Subp. 37. Low vision aids. The definition of “low vision aids” is amended adding the phrase “but not limited to” after “These aids include.” This is necessary and reasonable because it provides clarity that other low vision aids may exist in addition to those listed.

Subp. 39. Low vision services. The definition of “low vision services” is amended by accepting the Revisor’s Office recommendations for changes in language. These changes do not alter the meaning of the definition. See SONAR 3325.0100, **PURPOSE AND SCOPE, Subp. 2, Scope,** paragraph 2.

Subp. 40. Low vision specialist. The definition of “low vision specialist” is amended because SSB now utilizes other staff, in addition to rehabilitation counselors, to act as low vision specialists. Therefore, the term “SSB direct service staff person,” a new definition in these rule parts, has been included in this definition. Since this rule part was promulgated, significant changes have occurred regarding the types and methods of delivering rehabilitation services. Those changes include designating which personnel can become effective low vision specialists. This change is reasonable because SSB has found from years of experience that staff, other than rehabilitation counselors, can be effective low vision specialists. Another change in this definition is removing reference to an optometric or ophthalmologic consultant. This is reasonable because SSB has not contracted with an optometric or ophthalmologic consultant for decades, finding it unnecessary in carrying out daily operations. The definitions of “optometric consultant” and “ophthalmologic consultant” are being repealed. See SONAR 3325.0110, **DEFINITIONS, Subp. 52, Optometric consultant,** and **Subp. 48, Ophthalmologic consultant.**

Subp. 41. Maintenance. The definition of “maintenance” is amended to more closely match the definition in **Code of Federal Regulations, Title 34, section 361.5(b)(35).** SSB has added the word “minimum” in order to convey the expectation that when there is a range of choices in providing monetary support for maintenance, the less expensive option is chosen. An example is shelter. If an individual is away from home and needs shelter in order to participate in a rehabilitation service, the options may be an expensive hotel or an inexpensive hotel. Adding the word “minimum” requires that, all other factors equal, the choice is the inexpensive hotel. This is reasonable because it conserves scarce resources and prevents the unnecessary expenditure of tax dollars.

Subp. 42. Medical consultant. The definition of “medical consultant” is repealed because it no longer has a specific meaning, is no longer used in this chapter, and it would be unreasonable to retain an unused term. SSB has not had a medical consultant under contract for decades.

Subp. 43. Mental disorder. The definition of “mental disorder” is repealed because it no longer has a specific meaning, is no longer used in this chapter, and it would be unreasonable to retain an unused term.

Subp. 44. Note taking services. The definition of “note taking services” is amended to remove unnecessary and confusing language. The words “braille or writing” are unnecessary. Requiring the note taking in braille or writing is not a complete listing of all recording possibilities, such as audio. The essential concept is that oral or written communication is recorded for later use. The term “client” is replaced with “eligible individual.” See SONAR 3325.0100, **PURPOSE AND SCOPE, Subp. 2 SCOPE**, paragraph 1. The term “applicant” is added to indicate this service is available for that group of individuals. Note taking services may be necessary and reasonable to determine whether applicants are eligible for services.

Subp. 45. Occupational equipment, and Subp. 47, Occupational tools. The definitions of both terms are amended by eliminating unnecessary, archaic references to “nonhandicapped persons.” This is reasonable because the essential concept is that the occupational equipment or tools are normally required for entry into employment or for efficient job performance. **Subpart 45, Occupational equipment**, is also amended by replacing the phrase “a business or maintain employment,” the purpose of purchasing the occupational equipment, with “for entry into employment or for efficient job performance.” The latter language is taken from **Subpart 47, Occupational tools**, and is reasonable for the purpose of consistency between the subparts.

Subp. 48. Ophthalmologic consultant. The definition of “ophthalmologic consultant” is repealed because it no longer has a specific meaning in this chapter, is no longer used in this chapter, and it would be unreasonable to retain an unused. SSB has not had an ophthalmologic consultant under contract for decades.

Subp. 50. Orientation and mobility services. The definition of “orientation and mobility services” is amended to improve readability without changing the core meaning. This is reasonable because it increases understanding of the term.

Subp. 52. Optometric consultant. The definition of “optometric consultant” is repealed because it no longer has a specific meaning in this chapter, is no longer used in this chapter, and it would be unreasonable to retain an unused. SSB has not had an optometric consultant under contract for decades, if at all.

Subp. 53a. Personal assistance services. The definition of “personal assistance services” is added because it is used and has specific meaning within the vocational rehabilitation program. The definition is reasonable because it comes from the federal regulations governing the vocational rehabilitation program.

Subp. 53b. Physical and mental restoration services. The definition of “physical and mental restoration services” is added because it is used in the chapter and has a specific meaning for the vocational rehabilitation program. The federal regulations governing the vocational rehabilitation program have changed and have modified the name of the former term, “restoration services.”

Correspondingly, **3325.0110, DEFINITIONS, Subp, 68, restoration services** is being repealed. The definition is reasonable because it summarizes the federal governing regulation. The term “restoration services” is replaced with “physical and mental restoration services” throughout the rule part and chapter.

Subp. 55. Post employment services. The definition of “post employment services” is amended because it has specific meaning within the vocational rehabilitation program and governing federal regulations have altered the definition significantly. The definition is reasonable because it comes from the federal regulations governing the vocational rehabilitation program.

Subp. 56. Psychiatrist. The definition of “psychiatrist” is repealed because it no longer has a specific meaning in this chapter, is no longer used in this chapter, and it would be unreasonable to retain an unused term.

Subp. 57. Psychologist. The definition of “psychologist” is repealed because it no longer has a specific meaning in this chapter, is no longer used in this chapter, and would be unreasonable to retain an unused term.

Subp. 58. Reader services. The definition of “reader services” is amended by adding the term “applicant” to indicate this service is available for that group of individuals. Reader services may be necessary for applicants in the process of determining eligibility for services. It is reasonable that this communication method be available for that purpose in order to make SSB services accessible to applicants.

Subp. 59. Referral. The definition of “referral” is amended by eliminating the clause, “the act of directing a blind person or a person with a visual disability to SSB for assistance.” This clause is removed because it is unnecessary in the operation of vocational and independent living rehabilitation programs and would be unreasonable to retain. The only reason for including the definition of “referral” in these rules is to identify the criteria which define a referral. This is accomplished with the amended definition.

Subp. 60. Referral services. The definition of “referral services” is amended by replacing the terms “referral, applicant, or client” with “individual.” This reduces the amount of language in the definition and contributes to easier reading and greater understanding.

Subp. 61. Rehabilitation counseling. The definition of “rehabilitation counseling” is repealed because the term no longer has a specific meaning in this chapter, is not used in the chapter, and it would be unreasonable to retain an unused term. Elements of the term “rehabilitation counseling” are used in two new definitions. See **3325.0110, DEFINITIONS, Subp. 27a, Independent living counseling**, and **Subp. 86a, Vocational rehabilitation counseling**.

Subp. 62. Rehabilitation counselor. The definition of “rehabilitation counselor” is repealed because the term no longer has a specific meaning in this chapter, is not used in the chapter, and it would be unreasonable to retain an unused term. Elements of the term “rehabilitation counselor” are included in **3325.0110, DEFINITIONS, Subp. 86b, Vocational rehabilitation counselor**.

Subp. 63. Rehabilitation facility. The definition of “rehabilitation facility” is repealed because the term has been superseded in federal vocational rehabilitation governing regulations with “community rehabilitation program,” which is defined in **3325.0110, DEFINITIONS, Subp. 12a, Community rehabilitation program.** The repeal is reasonable because it removes an unused term.

Subp. 64. Rehabilitation goal. The definition of “rehabilitation goal” is repealed because the term has been changed in federal vocational rehabilitation governing regulations to “employment outcome,” which is defined in **3325.0110, DEFINITIONS, Subp. 19a, Employment outcome.** The repeal is reasonable because it removes an unused term.

Subp. 65. Rehabilitation services. The definition of “rehabilitation services” is amended to reflect the changes in rehabilitation programs and outcomes expected. This is reasonable because SSB no longer administers the self-care and child programs, and the outcomes of the vocational rehabilitation and independent living programs have been modified.

Subp. 66. Rehabilitation teaching services. The definition of “rehabilitation teaching services” is amended to increase clarity with no change in meaning. This is reasonable because it makes the definition clear and easier to understand.

Subp. 67a. Rehabilitation technology. The definition of “rehabilitation technology” is added because it is used throughout the chapter and has specific meaning within the vocational rehabilitation program. Governing federal regulations use this term as a method to group technology-related devices and services. The term “rehabilitation technology” replaces “telecommunications, sensory, and other technological aids and devices,” which is repealed, throughout this rule part and chapter. The definition is reasonable because it comes from two applicable federal regulations governing the vocational rehabilitation program.

Subp. 68. Restoration services. The definition of “restoration services” is repealed because the term has been changed in federal regulations governing the vocational rehabilitation program to “physical and mental restoration services,” which is defined in **3325.0110, DEFINITIONS, Subp. 53b, Physical and mental restoration services.** The repeal is reasonable because it removes an unused term.

Subp. 69. Secretary. The definition of “secretary” is repealed because the term is not, and never has been, used in the chapter. The repeal is reasonable because it removes an unused term.

Subp. 70. Self care activities. The definition of “self care activities” is repealed because the term has been replaced with “activities of daily living.” See **SONAR 3325.0110, DEFINITIONS, Subp. 1a, Activities of daily living.** The repeal is reasonable because it removes an unused term.

Subp. 71. Self care program. The definition of “self care program” is repealed because the term no longer has a specific meaning in this chapter and all rule parts specifically having to do with the program are repealed. See **SONAR- INDEPENDENT LIVING PROGRAM** discussing the

evolution of the independent living program which incorporated the self care program. The repeal is reasonable because this specific program has not been administered for more than a decade and the SSB Rule Advisory Committee approved its repeal. All similar services are now administered within the Independent Living Program. Further, the repeal removes an unused term.

Subpart 72. Services to family members. The definition of “services to family members” is amended to reflect updated program terms, improve readability, and remove restrictive conditions. The term “rehabilitation goal” is replaced with “employment outcome” (See SONAR **3325.0110, DEFINITIONS, Subp. 19a, Employment outcome**). The limitation that services to family members must be from **Items A-E** is inconsistent with the federal regulations cited and therefore are repealed. These changes are reasonable because they promote consistency within the rule parts, make the overall definition easier to read, and conform to federal regulations governing the vocational rehabilitation program.

Subp. 73. Severe disability. The definition of “severe disability” is repealed because the term is no longer used in federal regulations governing the vocational rehabilitation program and this chapter. The repeal is reasonable because it removes an unused term.

Subp. 74. Severely handicapped. The definition of “severely handicapped” is repealed because the term is no longer used in federal regulations governing the vocational rehabilitation program and this chapter. The repeal is reasonable because it removes an unused term.

Subp. 75. Severe limitation in ability to function independently in family or community. The definition of “severe limitation to function independently in family or community” is repealed because the term is no longer used in this chapter. The term described one element of the eligibility requirement for the Independent Living Program. See **Minnesota Rules 3325.0210, Conditions of eligibility, B**. The current Independent Living Program adopts eligibility criteria from the federal Older Individual’s Who Are Blind Program, with the exception of age criteria. See **Code of Federal Regulations, title 34, section 367.5**, and SONAR **3325.0110, DEFINITIONS, Subp. 28, Independent Living Program**. The repeal is reasonable because it removes an unused term.

Subp. 75a. Severe visual impairment. The definition of “severe visual impairment” is added because it has specific meaning within the independent living rehabilitation program. SSB has chosen to use the elements of the federal definition of “an older individual who is blind” (See **Code of Federal Regulations, title 34, section 367.5**) as eligibility criteria for the independent living program. Current rule parts already define a “visual impairment.” See **3325.0110, DEFINITIONS, Subd. 84, Visual Impairment**. A “severe” visual impairment, for purposes of the independent living program, is a visual impairment that makes “competitive employment extremely difficult to obtain,” and for the individual with a severe visual impairment, for whom “independent living goals are feasible.” An individual may have a visual impairment but not find employment extremely difficult to obtain. This individual would not have a “severe visual impairment” as it relates to the independent living program. Additionally, for a number of reasons including other disabilities, the individual may not be interested in employment. This definition is

reasonable because it is based on the federal regulations cited above. In addition, the SSB Rule Advisory Committee supports the definition.

Subp. 76. Similar benefits. The definition of “similar benefits” is amended to reflect a limitation in the use of the term, as well as a replacement of terms. The term “similar benefits” was originally used because it had a specific meaning in the federal vocational rehabilitation program. SSB chose to apply this concept and term in other programs as well. Governing federal regulations changed years ago, substituting the term “comparable services and benefits” (See **3325.0110, DEFINITIONS, Subp. 12b, Comparable services and benefits**) and modifying the definition. SSB continues to see value in applying the concept of “similar benefits” in the independent living rehabilitation program, which is reasonable because the definition and application serve as a method to conserve scarce state resources.

Subp. 77. State Services for the Blind or SSB. The definition of “State Services for the Blind” is amended to “State Services for the Blind or SSB” by adding the abbreviation “SSB” in the title. This is a housekeeping change that does not alter the meaning of the term and is reasonable because it promotes consistency within the definition. In addition, federal regulation citations are corrected. This is reasonable because it provides accurate information.

Subp. 78. Substantial impediment to employment. The title and definition of “substantial handicap to employment” is amended to “substantial impediment to employment” because it has specific meaning within the vocational rehabilitation program and governing federal regulations have altered the title and definition significantly. The definition is reasonable because it comes from federal regulations governing the vocational rehabilitation program.

Subp. 79. Suitable employment. The definition of “suitable employment” is repealed because governing federal regulations have changed, it no longer has a specific meaning for the vocational rehabilitation program, is no longer used in this chapter, and it would be unreasonable to retain an unused term.

Subp. 80. Supervisory staff. The definition of “supervisory staff” is amended by removing archaic language. The language remaining is reasonable because it is sufficient to accurately identify those classified as “supervisory staff.”

Subp. 80a. Supported employment. The definition of “supported employment” is added because it has specific meaning within the vocational rehabilitation program. The definition is reasonable because it comes from the federal regulations governing the vocational rehabilitation program.

Subp. 80b. Supported employment services. The definition of “supported employment services” is added because it has specific meaning within the vocational rehabilitation program. The definition is reasonable because it comes from the federal regulations governing the vocational rehabilitation program.

Subp. 81. Supportive services. The definition of “supportive services” is amended by clarifying that “supportive services” may be appropriately used in the determination of eligibility for rehabilitation services, in addition to “the provision of other rehabilitation services.” For example, an individual who is deafblind may need an interpreter in order to communicate with their vocational rehabilitation counselor to provide requested information or ask questions. The same is true in the independent living program. This is reasonable because it provides equal access to SSB’s programs and services and does not discriminate on the basis of disability. The final sentence, “The services must be necessary to determine eligibility for rehabilitation services or to the achievement of an employment outcome or independent living goal and may be provided only while the individual is receiving other vocational or independent living rehabilitation services,” is added to emphasize that “support services” must be necessary and are time limited. This is reasonable in order to promote clarity in providing “support services” and conserve valuable resources.

Subp. 81a. Technical assistance and other consultation services. The definition of “technical assistance and other consultation services” is added because it has specific meaning within the vocational rehabilitation program. The definition is reasonable because it comes from the federal regulations governing the vocational rehabilitation program.

Subp. 82. Telecommunications, sensory, and other technological aids and devices. The definition of “telecommunications, sensory, and other technological aids and devices” is repealed because the term is no longer used in the chapter and has been superseded in governing federal regulation by the term “rehabilitation technology,” which is defined. See **3325.0110, DEFINITIONS, Subp. 67a, Rehabilitation technology.** The repeal is reasonable because it removes an unused term.

Subp. 82a. Transition services. The definition of “transition services” is added because it has a specific meaning within the vocational rehabilitation program. The definition is reasonable because it comes from the federal regulations governing the vocational rehabilitation program.

Subp. 83. Transportation services. The definition of “transportation services” is amended because it has specific meaning within the vocational rehabilitation program and governing federal regulations have altered the definition significantly. The definition is reasonable because it is paraphrased from the federal regulations governing the vocational rehabilitation program. In addition, language has been included to clarify that the transportation services for an applicant, mentioned in the federal definition, are for the purpose of determining eligibility. While this is a given, SSB has decided to provide as much clarity on the issue as possible. SSB also has chosen to apply the definition to the Independent Living Program. This is reasonable because the concepts are sound, were applicable under the previous rule, and save scarce Independent Living Program resources by ensuring that funds are not expended for transportation services other than those identified.

Subp. 85. Visually disabled. The definition of “visually disabled” is repealed because the term is no longer used in this chapter. The repeal is reasonable because it removes an unused term.

Subp. 86. Vocational assessment. The definition of “vocational assessment” is repealed because the term is no longer used in these rule parts. The repeal is reasonable because it removes an unused term.

Subp. 86a. Vocational rehabilitation counseling. The definition of “vocational rehabilitation counseling” is added because it has specific meaning in the vocational rehabilitation program, and replaces the term “rehabilitation counseling” wherever “rehabilitation counseling” was used in the vocational rehabilitation program throughout this rule part and chapter. The new definition is substantially the same as “rehabilitation counseling,” which is being repealed. See **3325.0110, DEFINITION, Subp. 61, Rehabilitation counseling.** The most significant change from the definition of “rehabilitation counseling” is that the application of the term “vocational rehabilitation counseling” is limited to the vocational rehabilitation program. **Item A** of the “rehabilitation counseling” definition, “understand abilities and potential and develop self confidence and an understanding that blindness as a physical condition permits normal life activity,” has been split into **subitems A and B** in the definition of “vocational rehabilitation counseling” and has been updated to today’s vernacular of, “understand the individual’s abilities and potential; realize that blindness, visual impairment and other impairments including combined vision and hearing loss are natural parts of the human experience, and that most of the physical limitations associated with blindness, visual impairment including combined vision and hearing loss can be overcome by learning and using alternative techniques.” See **Appendix 5-SSB Mission/Philosophy, page 15 of State Services for the Blind-2009 Annual Report.** The updated language is reasonable because most of the language comes from SSB’s published Mission and Philosophy, is used in staff training, is supported by the State Rehabilitation Council for the Blind, and has the support of others in the blind community. **Items C-E** in the new definition of “vocational rehabilitation counseling” are updated by adding a federal citation and terms used in current federal regulations governing the vocational rehabilitation program. This is reasonable to promote consistency with the governing federal regulations.

Subp. 86b. Vocational rehabilitation counselor. The definition of “vocational rehabilitation counselor” is added because it has a specific meaning in the vocational rehabilitation program. The definition is substantially taken from **3325.0110, DEFINITIONS, Subp. 62, Rehabilitation counselor,** which is being repealed. The new term, “vocational rehabilitation counselor,” is more limited in application and replaces the term “rehabilitation counselor” wherever “rehabilitation counselor” was used in the vocational rehabilitation program. The term “rehabilitation counselor” applied to all SSB programs. The term “vocational rehabilitation counselor” only applies to the vocational rehabilitation program.

Updated federal regulations allow an eligible individual to choose a vocational rehabilitation counselor not employed by SSB to assist them in writing their individualized plan for employment (IPE). Specific language is included in this definition to require the same qualifications for these vocational rehabilitation counselors as those qualifications required of vocational rehabilitation counselors employed by SSB.

This definition is reasonable because it references the Department of Management and Budget, which has final authority for standards and qualifications of state employees. Also, applying the

same qualification standards to vocational rehabilitation counselors not employed by SSB, but chosen to assist eligible individuals in writing their own IEP, assures that only qualified individuals with appropriate knowledge, skills and abilities are utilized.

Subp. 87. Vocational rehabilitation program. The definition of “vocational rehabilitation program” is amended by removing archaic language, substituting language from the governing vocational rehabilitation regulations, and referencing the regulations. This is reasonable to assure that the rules are current and consistent with governing federal regulations.

Subp. 88. Vocational training services. The definition of “vocational training services” is amended by removing archaic and unnecessary language that does not alter the meaning. This is reasonable because the definition reflects current terms and style in a more abbreviated and readable fashion.

Subp. 89. Work activity. The definition of “work activity” is repealed because governing federal regulations have changed, the term no longer has a specific meaning for the vocational rehabilitation program, and it is no longer used in this chapter. It would be unreasonable to retain an unused term.

Subp. 90. Work evaluation. The definition of “work evaluation” is repealed because governing federal regulations have changed, the term no longer has a specific meaning for the vocational rehabilitation program, and it is no longer used in this chapter. It would be unreasonable to retain an unused term.

VOCATIONAL REHABILITATION PROGRAM

The vocational rehabilitation program consists of rule parts **3325.0120 to 3325.0200** and **3325.0440 to 3325.0478**. Rule parts **3325.0440 to 3325.0478** are also applicable to the independent living program. Unless stated otherwise, the amendments proposed in parts **3325.0120 to 3325.0200** conform rule parts to governing federal regulations that have been issued on multiple occasions since 1986. To remain in compliance, SSB has updated local policy and guidance as each new federal regulation was issued over the years. Therefore, changes in policy contained in parts **3325.0120 to 3325.0200** were actually implemented years ago. Streamlining of processes and removal of unneeded or archaic language is also proposed. New and updated terms, defined in **3325.0110, DEFINITIONS**, are integrated into the text as they occur.

3325.0120 ACCESSING VOCATIONAL REHABILITATION PROGRAM SERVICES.

The title of this rule part “APPLICATION PROCEDURE FOR REHABILITATION SERVICES” has been amended to “ACCESSING VOCATIONAL REHABILITATION PROGRAM SERVICES” to limit the application of the rule part to the vocational rehabilitation program. Because SSB operates only two direct service rehabilitation programs, vocational and independent living services, and these two programs have substantially different eligibility standards, service and process requirements, and anticipated outcomes, it is reasonable to have separate rule parts specifically tailored to each direct service program.

Subp. 1. Referral. This subpart is amended by reducing necessary information for a referral and only requiring the person's name and a method of contact to start the vocational rehabilitation process. This applies to individuals referring themselves, or others making a referral of an individual to the vocational rehabilitation program. It is reasonable and good public policy to only require information that is necessary to start the vocational rehabilitation process. If additional information is necessary, it is requested in later steps of the process.

Subp. 2. Written application. This subpart is amended to include additional methods to apply for vocational rehabilitation services. These methods are reasonable because they are consistent with federal regulations governing the vocational rehabilitation program. See **Code of Federal Regulations, title 34, section 361.41(b)(2)**. Consistent with **Subpart 1**, information that is unnecessary at this point in the vocational rehabilitation process is no longer required. It is reasonable and good public policy to only require information that is necessary. If additional information is necessary, it is requested in later steps of the process.

Subp. 3. Legal representative. This subpart is amended by accepting recommendations regarding format and style from the Revisor's Office. See **SONAR 3325.0100, PURPOSE AND SCOPE, Subp. 2, SCOPE**, paragraph 2.

Subp. 5. Initial interview. This **Subpart** is amended to make it clear that applicants, in addition to persons referred to SSB, are interviewed within the identified time frame. SSB has required interviews of referrals and applicants within 30 days since the 1986 rule promulgation. This is particularly necessary and reasonable because governing federal regulations require SSB to have prompt and equitable handling of referrals (See **Code of Federal Regulations, title 34, section 361.41(a)**) and to make eligibility determinations of applicants within 60 days of referral. See **Code of Federal Regulations, title 34, section 361.41(b)(1)**. In order to make timely eligibility determinations, an applicant must be interviewed early in the process.

This **Subpart** is also amended by adding a new **Item A**, which requires a vocational rehabilitation counselor to explain the purpose and expected outcome of the vocational rehabilitation program. This is necessary because referrals and applicants are not always clear about the purpose and the expected outcome. **Item A** is reasonable because the concepts are drawn from federal regulations governing the vocational rehabilitation program. See **Code of Federal Regulations, title 34, sections 361.42(a)(4)(i), and 361.45(b)(2)**.

Other changes in this subpart are reasonable because they improve readability without changing substance, provide parties with data privacy citations for later reference, and provide important information to referrals and applicants. Added to new **Item E** is a requirement that SSB must provide information regarding support and advocacy groups to referrals and applicants. This is a current rule requirement as part of the plan (See **3325.0170, INDIVIDUALIZED WRITTEN REHABILITATION PLAN, Subp.2.J**), but, along with the rule part within which it is contained, is being repealed. (See **SONAR 3325.0170 INDIVIDUALIZED WRITTEN REHABILITATION PLAN**) This requirement, originally inserted into the 1986 rule as a result of public comment, continues to be necessary and reasonable because it helps ensure that referrals and applicants are aware of additional sources of support and positive role models.

Subp. 6. Selection of program. This subpart is amended by removing reference to SSB programs which are repealed. In addition, the focus of the subpart is changed to referrals, rather than applicants. The original model for this rule was that there was a common application process for four rehabilitation programs. This, however, has not been the case for over a decade. Rather, the vocational rehabilitation program has a specific application and process, while the independent living program does not require an application. This subpart remains, albeit modified, to reflect the blind community's continuing desire that SSB first consider employment for all individuals. Too often individuals of all ages either leave employment or will not consider employment solely because of vision loss. Individuals are usually unaware of services available to them that could assist them in competing on an equal basis with their sighted peers in the workplace. Unfortunately, thousands of years of social conditioning have produced a stereotype that says "if you can't see, you can't do." This amended language expects work to be the goal for a referred individual, unless they choose not to pursue work. The rule changes are reasonable in order to have consistency within the rule parts, and to set an expectation that blind individuals can and will work. This position is also reasonable because it maintains a requirement already in rule, although modified to apply to referrals, and the SSB Rule Advisory Committee supports this position. Additionally, to ensure that the individual is aware of all services available to them and to empower them to make an informed choice about their next step(s), the subpart requires SSB to provide information about other SSB programs to individuals who choose not to apply for vocational rehabilitation services.

Subp. 7. Residency. This subpart is amended by accepting recommendations regarding format and style from the Revisor's Office. See SONAR 3325.0100, PURPOSE AND SCOPE, Subp. 2 SCOPE, paragraph 2.

Subp. 8. Access to contents of record of services. The title of this subpart is amended by replacing "Access to contents of case record" with "Access to contents of record of services." This change in language is included in this subpart and throughout the chapter. This change is reasonable because "record of services" is terminology used by federal regulations governing the vocational rehabilitation program. See **Code of Federal Regulations, title 34, sections 361.47 and 361.56**. This subpart is also amended by accepting recommendations regarding format and style from the Revisor's Office. See SONAR 3325.0100, PURPOSE AND SCOPE, Subp. 2 SCOPE, paragraph 2.

Subp. 9. Written communication. This is a new subpart that requires written material to be accessible to applicants and eligible individuals. SSB has practiced this requirement for years and administers a communication center which sole purpose is to make written materials accessible, upon request. This requirement is reasonable because federal regulations governing the vocational rehabilitation program require that materials be accessible. See **Code of Federal Regulations, title 34, sections 361.45(c), 361.45(d)(4), 361.51(c), and 361.52(b)(1)**. In addition, this is reasonable because the SSB Rule Advisory Committee advocated for and supports such a provision.

3325.0130 CONDITIONS OF ELIGIBILITY

This rule part is amended in several ways. New terms, defined in **3325.0110, DEFINITIONS**, are amended into the text as they occur. The introductory sentence is amended to clarify that a vocational rehabilitation counselor determines eligibility.

Item A is one process for eligibility determination, and has as its basis **Code of Federal Regulations, title 34, sections 361.42(a)(1), 361.42(e), and 361.42(f)**. **Item B** is an alternative method to determine eligibility, based on the receipt of certain Social Security benefits and is required by **Code of Federal Regulations, title 34, section 361.42(a)(3)**. A determination of eligibility within 60 days of application and any exceptions are consistent with the **Code of Federal Regulations, title 34, 361.41(b)(1)**. This rule part is reasonable because the eligibility conditions, time frame and exceptions are taken from federal regulations governing the vocational rehabilitation program.

3325.0135 PRIORITY FOR SERVICES UNDER AN ORDER OF SELECTION

This rule part is necessary because it references a document that identifies the order in which applicants and eligible individuals will be served if SSB has insufficient funds to serve all current and potential applicants and eligible individuals in a given federal year. See **Appendix 7-Minnesota’s Unified Plan for the Workforce Investment Act-Vocational Rehabilitation/State Services for the Blind pp.14-17**. Additionally, federal regulations governing the vocational rehabilitation program require that an eligible individual assigned to a priority of services status must be provided a description of and information on how to contact the client assistance program. See **Code of Federal Regulations, title 34, section 361.57(b)(2)(ii)**. This rule part is reasonable because the requirements are taken from federal regulations governing the vocational rehabilitation program and are part of SSB’s approved state plan for vocational rehabilitation.

3325.0140 INFORMATION REQUIRED TO DETERMINE ELIGIBILITY AND PRIORITY FOR SERVICES.

The title of the rule part “PRELIMINARY EVALUATION” is replaced with “INFORMATION REQUIRED TO DETERMINE ELIGIBILITY AND PRIORITY FOR SERVICES” to reflect changes in federal regulations governing the vocational rehabilitation program, specifically those related to “priority of services.” See **SONAR 3325.0135, PRIORITY FOR SERVICES UNDER AN ORDER OF SELECTION**.

Subp. 1. Purpose. This subpart is amended by adding a requirement of assessment related to an applicant’s priority for services. See **SONAR 3325.0135, PRIORITY FOR SERVICES UNDER AN ORDER OF SELECTION**. These amendments are reasonable because they are consistent with other rule parts based on federal regulations governing the vocational rehabilitation program.

Subp. 2. Scope. This subpart is amended by adding a requirement of assessment related to an applicant’s priority for services. See **SONAR 3325.0135, PRIORITY FOR SERVICES**

UNDER AN ORDER OF SELECTION. This amendment is reasonable because it is consistent with other rule parts based on federal regulations governing the vocational rehabilitation program.

Items A-C are amended in several ways. Certain information is not required in every case. This change is based on the concept of using only assessment and existing data, including counselor observations and information gathered from the individual, to the extent necessary to determine eligibility. See **Code of Federal Regulations, title 34, section 361.42(d)**. Second, the term “handicap” is replaced with “impediment.” See **SONAR 3325.0110, Subp. 78. Substantial impediment to employment.** A previous requirement, that there was reasonable expectation that providing services would enable the eligible individual to obtain or retain suitable gainful employment, is changed to a requirement that the applicant requires vocational rehabilitation services to prepare for, secure, retain or regain employment. See **Code of Federal Regulations, title 34, section 361.42(a)(1)(iii)**. Lastly, the requirement that an applicant who has or may have a mental disorder be examined by a psychiatrist or psychologist is repealed. SSB, as an agency for the blind, providing vocational rehabilitation services consistent with **Code of Federal Regulations, title 34, section 361.13(b)(2)**, is first and foremost interested in a visual impairment in terms of eligibility. If an applicant becomes an eligible individual, a vocational rehabilitation counselor will conduct a comprehensive assessment and a multitude of factors, including any “mental disorder,” will be assessed. See **SONAR 3325.0165, DEVELOPMENT OF INDIVIDUALIZED PLAN FOR EMPLOYMENT (IPE), Subp. 1, Purpose.** The amendments are reasonable because they are based on federal regulations governing the vocational rehabilitation program.

Subp. 3. Notice of eligibility. This subpart is amended to properly identify the vocational rehabilitation counselor. See **SONAR 3325.0110, DEFINITIONS, Subp. 86b. Vocational rehabilitation counselor.** A responsibility that SSB inform the applicant that individuals who receive services must intend to achieve an employment outcome, is added because it is required by **Code of Federal Regulations, title 34, section 361.42(a)(4)(i)**. These amendments are reasonable because they are consistent with federal regulations governing the vocational rehabilitation program.

The reference to federal regulations in the subpart regarding a ten day notice is removed because the regulation no longer exists. The ten day notice requirement is retained and is reasonable because it assures timely notice to applicants.

Subp. 3a. Procedures for ineligibility determination. This subpart is added because the requirements have changed. The requirements identified, except for **Subp. 3a. E.** (“provide information and referral to other organizations or programs from which the applicant might benefit, including independent living services”) are reasonable because they are required by **Code of Federal Regulations, title 34, section 361.43. Subpart 3a. E.** “provide information and referral to other organizations or programs from which the applicant might benefit, including independent living services,” is added to provide the applicant with additional choices they may consider, including SSB’s independent living program. This is reasonable because other services, including independent living services, may offer some applicants who have severe impairments the opportunity for training that may eventually lead back to vocational rehabilitation.

Subp. 4. Prior consultation. This subpart is repealed because it has been superseded by **Subp. 3a.A.** of this rule part, and is reasonable because it is based on federal regulations governing the vocational rehabilitation program and removes an unneeded rule subpart.

Subp. 5. Notice of ineligibility. This subpart is repealed because it has been superseded by **Subparts 3a.B. and 3a.C.** of this rule part, and is reasonable because it is based on federal regulations governing the vocational rehabilitation program and removes an unneeded rule subpart.

Subp. 6. Referral to independent living program. This subpart is repealed and the requirement to refer an individual under certain circumstances to the independent living program has been integrated into **Subp. 3a.E.** of this rule part. The repeal is reasonable because it removes an unneeded rule subpart.

Subp. 7. Review of ineligibility determination. This subpart is repealed because it has been superseded by **Subp. 3a.F.** of this rule part, and is reasonable because it is based on federal regulations governing the vocational rehabilitation program and removes an unneeded rule subpart.

3325.0142 CLOSURE WITHOUT AN ELIGIBILITY DECISION.

This is a new rule part that results from a change in federal regulations and identifies conditions where an applicant's record of services may be closed without an eligibility decision. The rule part is reasonable because it comes from the **Code of Federal Regulations, title 34, section 361.44.** SSB strengthens the federal language in describing the attempts SSB should make to contact an applicant whose record is going to be closed. The rule draft uses the phrase "multiple and varied attempts," and not the federal language of "a reasonable number of attempts." Members of the SSB Rule Advisory Committee, and the Commission of Deaf, Deafblind and Hard of Hearing Minnesotan's felt strongly in this case of the need to use the phrase "multiple and varied attempts" because it goes beyond the parameter of the number of attempts made, and requires SSB to try various methods. Their position was that multiple and varied attempts will result in more positive outcomes in these rare occurrences. SSB agreed.

3325.0145 TRIAL WORK EXPERIENCE

This is a new rule part that results from a change in governing federal regulations. The trial work experience, or if necessary, the extended evaluation described in **3325.0150**, are activities that are used in rare circumstances where the vocational rehabilitation counselor has concerns regarding the presumption that an applicant can benefit from services in terms of employment. This subpart is reasonable because the requirements come from the federal regulations governing the vocational rehabilitation program. See **Code of Federal Regulations, title 34, section 361.42(e).**

3325.0150 EXTENDED EVALUATION

This rule part is amended substantially, and **Subp. 4** is repealed, because the governing federal regulations have changed. Extended evaluation, if an applicant cannot participate in or benefit from a trial work experience described in 3325.0145, is now used in very limited circumstances where the vocational rehabilitation counselor has concerns regarding the presumption that an applicant can benefit from services in terms of employment. These amendments are reasonable because the requirements come from the federal regulations governing the vocational rehabilitation program. See **Code of Federal Regulations, title 34, section 361.42(f)**.

Subpart 5, Supports during extended evaluation, is added to this rule part. The amendment is duplicated, with appropriate modification, from **3325.0145, TRIAL WORK EXPERIENCE, Subp. 4, Supports during trial work experience**. This is reasonable because it clarifies that providing supports are also applicable during extended evaluation.

3325.0160 THOROUGH EVALUATION

This rule part is repealed because governing federal regulations have changed. Some elements of this rule part are blended into **3325.0165 DEVELOPMENT OF INDIVIDUALIZED PLAN FOR EMPLOYMENT (IPE)**, a new rule part. The repeal is reasonable because federal terms and requirements have changed so significantly that a new rule part, **3325.0165 DEVELOPMENT OF INDIVIDUALIZED PLAN FOR EMPLOYMENT (IPE)**, is needed to clearly understand the requirements.

3325.0165 DEVELOPMENT OF INDIVIDUALIZED PLAN FOR EMPLOYMENT (IPE)

This is a new rule part that replaces part 3325.0160 which is being repealed because federal regulations governing the vocational rehabilitation program have changed significantly over the years. This is a very prescriptive and extensive rule part describing a comprehensive assessment leading to the development of the Individualized Plan for Employment (IPE). The subparts are reasonable because they are a restatement of corresponding parts of the federal regulations governing the vocational rehabilitation program. See **Code of Federal Regulations, title 34, sections 361.45(b) to (d) and (f)**.

The federal regulation requires “prompt development” of the IPE, although a specific time standard is not identified. See **Code of Federal Regulations, title 34, section 361.45(e)**. For many years, SSB has successfully used a standard of 90 days, following the determination of eligibility, in which to develop the IPE. **Subpart 4** establishes this well accepted standard in rule. The SSB Rule Advisory Committee supports this standard.

SSB has chosen to summarize **Items E to H** of the repealed **3325.0160, Subp. 2**, related to travel, communication, self-care, and use of residual vision, and to include a parallel, but more general requirement in **Subp. 5D** of the new rule part. The general requirement is, that in preparing the IPE, “The alternative techniques of blindness of all eligible individuals must be assessed, and any deficits identified addressed in the IPE.” This inclusion is strongly supported by the SSB Rule Advisory Committee. While not adding any additional requirements that were not applicable in the

past, SSB Rule Advisory Committee members felt this statement focused the IPE development process on factors extremely important for an agency serving the blind to consider.

3325.0170 INDIVIDUALIZED WRITTEN REHABILITATION PLAN

This rule part is repealed because federal regulations governing the vocational rehabilitation program have significantly changed. This rule part is replaced by **3325.0175, CONTENT OF IPE**. The repeal is reasonable because federal terms and requirements have changed so significantly that a new rule part needed to be written in order to be clearly understood.

3325.0175 CONTENT OF IPE.

This is a new rule part that replaces part **3325.0170** which is being repealed because federal regulations governing the vocational rehabilitation program have changed significantly over the years. This is another very prescriptive, extensive rule part describing required components of the IPE. The subparts are reasonable because they are a restatement of corresponding parts of the federal regulations governing the vocational rehabilitation program. See **Code of Federal Regulations, title 34, section 361.46**.

3325.0180 SCOPE OF SERVICES

This part is amended by updating the scope of services including the following:

-the term “rehabilitation counseling” is replaced with “vocational rehabilitation counseling.” See SONAR **3325.0110, DEFINITIONS, Subp. 86a, Vocational rehabilitation counseling**.

-the term “diagnostic evaluation services” is replaced with “diagnostic assessment services.” See SONAR **3325.0110, DEFINITIONS, Subp. 16, Diagnostic assessment services**.

-the term “job placement” is replaced with “job-related” services. See SONAR **3325.0110, DEFINITIONS, Subp. 34a., Job-related services**.

-the term “personal assistance services” is added because it is an identified service in the federal regulations governing the vocational rehabilitation program. See **Code of Regulations, title 34, section 361.48(n)**. See also SONAR **3325.0110, DEFINITIONS, Subp. 53a, Personal assistance services**.

-the term “restoration services” is replaced with “physical and mental restoration services.” See SONAR **3325.0110, DEFINITIONS, Subp. 53b, Physical and mental restoration services**.

-the term “supported employment services” is added because it is an identified service in the federal regulations governing the vocational rehabilitation program . See **Code of Federal**

Regulations, title 34, section 361.48(m). See also SONAR 3325.0110, **DEFINITIONS, Subp. 80b, Supported employment services.**

-the term “technical assistance and other consultation services” is added because it is an identified service in the federal regulations governing the vocational rehabilitation program. See **Code of Federal Regulations, title 34, section 361.48(s).** See also SONAR 3325.0110, **DEFINITIONS, Subp. 81a, Technical assistance and other consultation services.**

-the term “telecommunications, sensory, and other technological aids and devices” is replaced with “rehabilitation technology.” See SONAR 3325.0110, **DEFINITIONS, Subp. 67a, Rehabilitation technology.**

- the term “transition services” is added because it is an identified service in the federal regulations governing the vocational rehabilitation program. See **Code of Federal Regulations, title 34, section 361.48(r).** See also SONAR 3325.0110, **DEFINITIONS, Subp. 82a, Transition services.**

These changes are reasonable because the terms are identified services in the federal regulations governing the vocational rehabilitation program scope. See **Code of Federal Regulations, title 34, section 361.48.**

3325.0190 CLOSING THE RECORD OF SERVICES

The title of the rule part “TERMINATION OF SERVICES” is replaced with “CLOSING THE RECORD OF SERVICES.” This change in language is reflected throughout all four subparts. This change is reasonable because “record of services” is terminology used by federal regulations governing the vocational rehabilitation program. See **Code of Federal Regulations, title 34, sections 361.47 and 361.56.**

Subp. 1. Closing the record of services of individuals who have not achieved an employment outcome. This subpart is amended by including specific language recommended by the SSB Rule Advisory Committee to be integrated throughout the rule draft, that SSB make “multiple and varied” attempts to contact an applicant or eligible individual. This is included in Item B. This is reasonable because it requires different types of contact and the chances of making contact are increased as a result. Item B also clarifies that “days” means “calendar” days.

Subp. 2. Conditions for closing the record of services of individuals who have achieved an employment outcome. There are a number of policy amendments in this subpart that reflect changes in governing federal regulations, including waiting at least 90 days after an employment outcome is achieved before closing the record of services. These policy changes are reasonable because they come from the federal regulations governing the vocational rehabilitation program. See **Code of Federal Regulations, title 34, section 361.56.**

3325.0200 RECORD OF SERVICES

The title of this rule part “CASE RECORD” is replaced with “RECORD OF SERVICES.” This change is reasonable because “record of services” is terminology used by federal regulations governing the vocational rehabilitation program. See **Code of Federal Regulations, title 34, sections 361.47 and 361.56**. Additionally, a reference to **Code of Federal Regulations, title 34, section 361** is corrected.

INDEPENDENT LIVING PROGRAM

SSB proposes to streamline agency direct service activities to individuals who are not interested in employment, by formalizing various program changes made over the last ten years. In 2000, extensive focus groups and interviews commenced regarding all SSB programs. Just prior, SSB experienced a state general fund budget deficiency which the Legislature subsequently addressed. The focus groups and interviews led to significant change, including:

- separation of programs and staff into three groups: (1) “Workforce Development Unit,” also known as vocational rehabilitation; (2) “Self-Sufficiency Unit,” an independent living group for individuals not aimed at employment (the combination of the previous Independent Living and Self-Care programs); and (3) children age 0-14.
- serving more seniors in the Self-Sufficiency Unit, who were previously served as “homemakers” in the vocational rehabilitation program.
- services within the Self-Sufficiency Unit becoming “tiered,” with streamlined process and procedure requirements that were a substantial break with the past. Three tiers of service were designed: Tier 1 included information and referral to individuals and groups about vision loss and services; Tier 2 included direct services to individuals to the extent SSB staff provided the services and there was no purchase of services from an outside vendor; and Tier 3 included intensive services, provided through a plan that was more consistent with the historical service model. The tiered approach was met with approval by both staff and eligible individuals because significant bureaucracy was taken out of the process. Seniors had been reluctant to get involved with a state agency related to blindness that involved significant process and procedure. The Self-Sufficiency Unit in later years became known as the “Senior Services Unit,” reflecting the predominant customer.

As a result of a change in reporting requirements made by the U.S. Department of Education, Rehabilitation Services Administration, and SSB’s desire to make services and procedures more uniform and standardized across the state without introducing too much bureaucracy back into the process, the tiered service system began evolving again in 2007.

SSB is proposing rule modifications: (1) to reflect the current independent living policies which have resulted from promulgation of **Code of Federal Regulations, title 34, part 367, INDEPENDENT LIVING SERVICES FOR OLDER INDIVIDUALS WHO ARE BLIND (OIB)**; (2) which have proven to be “best practices” over the last ten years; and (3) that restrict and limit certain services. Following the identified governing federal regulations is reasonable because the majority of individuals served in the independent living program are over age 55 and are part

of the federal-state OIB funding stream and reporting requirements. In fact, 96.7% of individuals served in the independent living program in federal fiscal year 2009 were over age 55.

New and updated terms, defined in **3325.0110, DEFINITIONS**, are integrated into the text as they occur.

3325.0205 ACCESSING INDEPENDENT LIVING REHABILITATION SERVICES

This is a new rule part necessitated because the structure and relationship of the chapter rule parts, overall, have changed. The original promulgated rule was structured so that part **3325.0120, APPLICATION PROCEDURE FOR REHABILITATION SERVICES**, applied to all programs. SSB proposes to disconnect that relationship and create **3325.0205 ACCESSING INDEPENDENT LIVING REHABILITATION SERVICES**, which applies only to accessing independent living rehabilitation services. Over the years there has been confusion regarding the structure and application of rule parts.

Similarities will remain with the requirements in **3325.0120, APPLICATION PROCEDURE FOR REHABILITATION SERVICES**, but there are also significant differences. For example, the requirement for a written application, **3325.0120, APPLICATION PROCEDURE FOR REHABILITATION SERVICES, Subp. 2**, has not been required for ten years when working with seniors. This proposal continues that “best practice” in the independent living program. Therefore, an individual is either a “referral” (See **3325.0110, DEFINITIONS, Subp. 59**) or an “individual” (which is commonly understood) and not an “applicant” in the independent living program. Another similarity will be in the use of the term “direct services staff” rather than “rehabilitation counselor.” See **SONAR 3325.0110, DEFINITIONS, Subp. 16a, Direct service staff**.

This proposed restructuring is reasonable because it clarifies for practitioners and the public the specific requirements related to accessing services that are only applicable to the independent living program.

Subp. 1. Referral. This subpart is necessary to clarify the means by which a prospective individual’s involvement in independent living rehabilitation services may be initiated. This subpart is reasonable because it does not require more information than is needed to enable SSB to satisfy the requirements of **Subp. 2** and facilitate the progression through the independent living rehabilitation process. This subpart has been fashioned after the previous applicable rule part, **3325.0120, APPLICATION PROCEDURE FOR REHABILITATION SERVICES, Subp.1**, and is updated to require only a name and method of contact. The additional information, the nature of the referred persons disability and the source of the referral, have not proven to be essential information at this point in the process. The date of the referral is the date it is received by SSB.

Subp. 2. Initial Interview. This is a new subpart that mirrors **Subp. 5** of the original 1986 promulgation. For the past ten years, SSB has continued to rely on an initial interview to identify eligibility and service planning information, and to inform the individual regarding information

about SSB. SSB proposes to continue that practice in this new subpart. SSB proposes to continue the practice of not requiring a written application for independent living customers. The initial interview becomes paramount in gathering information to determine eligibility, and transmitting information to the individual about SSB. This is reasonable because ten years of experience has shown the practice to be acceptable to visually impaired individuals, and in meeting service and reporting requirements needed for SSB and federal partners. Therefore, the term “applicant” is not used in the independent living program. The terms “individual” (which is commonly understood) or “referral” (which is defined, See **3325.0110, DEFINITIONS, Subp. 59**) are substituted throughout the applicable rule parts.

The 30-day time limit set forth in this subpart, continued from the original 1986 rule promulgation, is reasonable because it helps avoid excessive delay in the rehabilitation process. Except when impossible due to circumstances beyond SSB’s control, 30 days is a reasonable period of time based on the experience of SSB staff who have accomplished most interviews within 30 days. Although earlier contact is desirable and often occurs, it cannot be reasonably required in every case given the large caseloads of most staff and varying logistic concerns such as geography.

SSB proposes that in the initial interview, SSB direct service staff will be required to explain independent living services, gather eligibility information, explain and determine interest in workforce development and communication center services, and to inform the individual of their rights regarding data privacy, appeal, and access to the Client Assistance Program (CAP) consistent with **Code of Federal Regulations, title 34, section 364.30**. Members of the SSB Rule Advisory Committee explicitly asked the agency to include the phrase “... and determine interest in...” as part of **Item C** related to workforce development and the communication center. They felt this was the time, especially related to work, that a direct question be asked of the individual so that, if they were interested, a referral could be made. Additionally, SSB must provide information regarding support and advocacy groups to individuals as part of the initial interview. This is a current rule requirement as part of the plan (See **3325.0240, INDIVIDUALIZED WRITTEN REHABILITATION PLAN, Subp.2.F**). Providing this information during the initial interview, rather than later as part of a plan, is more reasonable because the information is provided sooner in the process. This requirement, originally inserted into the 1986 rule as a result of public comment, continues to be necessary and reasonable because it helps ensure that individuals are aware of additional sources of support and positive role models. These requirements are reasonable because they ensure that the proper information is gathered from the individual to determine eligibility, including the impact of their vision loss on employment, and that SSB provides the essential information to the individual upon which they can make an informed decision. In addition, representatives of the community felt the requirement was necessary and reasonable.

The term “direct services staff” means “SSB employees in the independent living and vocational rehabilitation units of SSB designated by the director to interact with applicants and eligible individuals and assist them in the rehabilitation process.” SSB has two classifications within the state employment classification system that currently serve referrals and eligible individuals in the independent living program. While some SSB Rule Advisory Committee members expressed concern about not employing only “counselors,” SSB’s experience over the past decade has made it clear that persons other than counselors are able to provide quality services to referrals and

eligible individuals. This change resulted from the lack of availability of master's degreed counselors and rehabilitation teachers, the fact that higher education institutions did not teach the level of staff adjustment to blindness skills required by SSB, prompting SSB to develop its own training program, and dwindling resources. SSB's current training for direct service staff, including vocational rehabilitation counselors, includes six weeks of under-the blindfold, blindness skills training, and one week of training using various levels of partial vision.

Subp. 3. Legal Representative. This is a new subpart that mirrors **part 3325.0120, subp. 3** of the original 1986 promulgation. SSB provides rehabilitation services to persons who may have been placed under guardianship because of mental illness or other disabilities. Therefore, this subpart is necessary to establish the means by which signature and notice requirements may be satisfied with respect to individual's adjudicated incompetent and placed under guardianship. This subpart is reasonable in that it only allows a person with recognized legal authority over an individual to make decisions for that individual.

Subp. 4. Designated Representative. This is a new subpart that mirrors **3325.0120, Subp. 4** of the original 1986 promulgation. During the rehabilitation process, referrals and eligible individuals often rely on representatives, including legal counsel, relatives and friends. This subpart recognizes this fact but places two important limitations on the use of representatives.

The first limitation is that the requirement of choice of representative be indicated in writing and signed. This requirement is reasonable because it helps to ensure that SSB does not violate the Minnesota Data Practices Act by providing private data to unauthorized individuals. In general, the Data Practices Act does not allow SSB to release private data on an individual without the individual's informed consent. See **Minnesota Statutes, section 13.05, subd. 4, (d)**. The second limitation is on the number of representatives an applicant or eligible individual may have at any one time. This restriction is reasonable because it protects the individual and SSB direct service staff relationship, which is a critical element of the rehabilitation process. A multitude of representatives, each purporting to speak for the same applicant or eligible individual, endangers the individual or SSB direct service staff relationship by interfering with communication between the parties. Twenty-four years of experience since the original rule was promulgated has shown this requirement to be practical, and reasonable.

Subp. 5. Residency. This is a new subpart that mirrors **3325.0120, subp. 7** of the original promulgation. This subpart is necessary in order to be sure that if an individual physically presents themselves within the state for services, their eligibility will be considered. This is reasonable as it helps insure consistency across SSB's programs. Federal law already prohibits SSB from denying rehabilitation services to a person on the basis of duration of residency in the vocational rehabilitation program. See **Code of Federal Regulations, title 34, section 361.42(c)(1)**.

Subp. 6. Access to contents of record of service. This is a new subpart that mirrors Subp. 8 of the original 1986 promulgation. It is necessary to ensure that data on individuals is maintained in accordance with laws protecting privacy. This subpart is a reasonable means of ensuring compliance with privacy laws because it informs SSB staff as well as referrals, applicants and eligible individuals of the specific chapter of Minnesota Statutes that governs data privacy and of the

existence of other laws that also apply.

3325.0208 PRIORITY FOR SERVICES IF FUNDS ARE NOT AVAILABLE

This is a new rule part that is necessary because the scarcity of state resources could preclude SSB from meeting its obligations to every eligible individual in the independent living program. While part **3325.0100, PURPOSE AND SCOPE, Subp. 2** (as amended), clearly states, “This chapter does not require expenditures for an eligible individual if funds are not available to SSB from federal and state appropriations for the provision of rehabilitation services under the program in which the eligible individual is being served,” the method used to determine which eligible individuals will be served and which will not be served if there are insufficient funds is not identified. This new rule part provides the method to prioritize services. SSB must serve, in this order: (1) all eligible individuals it is already serving; (2) all eligible individuals living alone in a home or apartment; (3) all eligible individuals living with others in a home or apartment; and (4) all other eligible individuals. Without training, those living alone are in the greatest jeopardy, because, too often, they believe their only choice is to move to a less independent living arrangement. This choice is often a more expensive one and it might involve the expenditure of other public dollars. There is also greater concern regarding safety. These priorities are reasonable because they are, after working with eligible individuals already involved in the process, based upon the premise that eligible individuals having less support around them to deal with the effects of vision loss need training first to remain in their homes. Other eligible individuals with some or significant support around them are better positioned to wait until resources are available. This prioritization is also reasonable because the SSB Rule Advisory Committee supports this provision.

3325.0210 CONDITIONS OF ELIGIBILITY

This rule part is amended to conform to federal regulations governing the Independent Living Services for Older Individuals Who are Blind (OIB) Program. See **Code of Federal Regulations, title 34, section 367**. Currently, the federal government provides one quarter of the independent living program funding and requires adherence to federal regulations. The balance of independent living program support comes from the state general fund. This federal regulation places few requirements on the state compared to the vocational rehabilitation program, allowing for greater creativity and flexibility in operating the independent living program.

With one exception, the **Code of Federal Regulations, title 34, section 367.5** identifies the eligibility criteria proposed for the state independent living program. The federal regulations require the eligible individual be age 55 or older and have a severe visual impairment that makes competitive employment extremely difficult to obtain, but for whom independent living goals are feasible. The term “severe visual impairment” is proposed and defined in **3325.0110, DEFINITIONS, Subp. 75a**. Minnesota has a long history of serving blind and visually impaired individuals of all ages. This practice continues with this rule amendment, setting a minimum age of 18 for eligibility for the independent living program, rather than age 55 or older. For individuals under age 18, and for some a few years older, a local school district may retain responsibility for

these services under the Individuals with Disabilities Education Act (See **United States Code, title 20, chapter 33**) and corresponding Minnesota law. See **Minnesota Statutes, section 125A**.

State general fund dollars finance expenditures for eligible individuals under the age of 55 and served in the independent living program. As noted above, most eligible individuals are over age 55 and are part of the federal-state Older Individuals Who Are Blind funding stream and reporting requirements. In fact, 96.7% of eligible individuals served in the independent living program in federal fiscal year 2009 were over age 55. It is necessary and required by **Minnesota Statutes, section 248.07, Subd. 14a**, to identify the eligibility for the independent living program, and to ensure that individuals and other organizations have a clear understanding of who is eligible for the program. The eligibility criteria are reasonable because they match the federal requirements to obtain federal funding and, in the case of individuals from aged 18 to 54, continue a long-standing and appropriate practice to provide independent living services to a small group of blind individuals in need. In addition, the SSB Rule Advisory Committee supports this position.

3325.0220 PRELIMINARY INTERVIEW AND ASSESSMENT

The title of this part is amended by replacing “**PRELIMINARY EVALUATION**” with “**PRELIMINARY INTERVIEW AND ASSESSMENT**” to reflect the continuing requirement of an initial interview identified in **Subp. 1**, and by replacing “evaluation” with “assessment.” The term “assessment” has been added within the vocational rehabilitation program. It is reasonable to make this change in the independent living program to promote consistency within and among the rule parts. See **SONAR 3325.0110, DEFINITIONS, Subp. 16. Diagnostic assessment services**.

Subp. 1. Purpose of interview and assessment. This subpart is amended to make it clear that an initial interview is required to determine eligibility. While an interview has always been required pursuant to **3325.0120, APPLICATION PROCEDURE FOR REHABILITATION, Subp. 5**, this amendment will continue the requirement in that the noted rule part is amended to apply only to the vocational rehabilitation program. SSB feels it is necessary to add this requirement so that individuals and others are knowledgeable of the eligibility process. It is reasonable because an interview offers the individual the greatest opportunity to provide information about their vision loss and its impact in their life.

Subp. 2. Scope of interview and assessment. This subpart is amended to require SSB to gather the information identified in part **3325.0210, CONDITIONS OF ELIGIBILITY**. This is necessary in order to be sure appropriate information is gained during the initial interview to determine eligibility. It is reasonable in that both SSB direct services staff and the individual have a shared understanding of what information is required during the interview.

As already stated in this SONAR, substantial changes have occurred in SSB’s independent living service system since original promulgation in 1986. One of those changes is a more streamlined eligibility process. There has been a change toward requiring less secondary evidence, such as medical or optometric reports, in favor of relying more on self-reported data for determining eligibility related to visual impairment. Federal support of that streamlining is evidenced, for example, in **Appendix 8-UNITED STATES DEPARTMENT OF EDUCATION, FISCAL**

YEAR 2005 ANNUAL REPORT FOR INDEPENDENT LIVING SERVICES FOR OLDER INDIVIDUALS WHO ARE BLIND. In the instructions, PART III, DATA ON INDIVIDUALS SERVED DURING THIS FISCAL YEAR, it states: “[A) through (I) are self-reported data]” The referenced items are age, gender, race and ethnicity, visual impairment and major cause of impairment at time of intake, non-visual impairments/conditions at time of intake, onset of significant vision loss, highest level of education completed, type of living arrangement at intake, and setting of residence at time of intake. Therefore, SSB allows an oral description of the individual’s impairment as one way to gather information about the individual’s visual impairment to be considered for an eligibility determination. Many times observation by trained SSB direct services staff can assist in discussing the self- report, as well as reviewing any medical or optometric reports the individual decides to provide for the interview.

Similarly, other information is gained through discussion regarding the individual’s employment status and its relation to the individual’s visual impairment, status with the local school district, and the feasibility of independent living goals.

Subp. 3. Notice of eligibility. This subpart is amended by streamlining the notice process. SSB no longer requires written notice of eligibility. This requirement has not been enforced for at least ten years. This change is necessary because there is no longer a federal requirement of a written notice that is provided within a ten day period. While SSB could still have such a requirement, the proposed change is reasonable because at least ten years of experience has shown that individuals are satisfied with an oral notice of eligibility, and do not request the notice be in writing.

Subp. 5. Notice of ineligibility. This subpart is amended by removing the reference to a federal rule regarding a notice of ineligibility. This federal requirement no longer exists. Although very few interested individuals are ineligible, SSB believes that retaining the notice provision in writing within ten working days is good public policy. Should the individual wish to appeal a decision, they have the necessary documentation with which to move forward. Other amendments include replacing “rehabilitation counselor” with “direct services staff” and replacing “applicant” with “individual.” (See SONAR 3325.0110, **Subp. 16a, Direct service staff** and SONAR 3325.0205 **ACCESSING INDEPENDENT LIVING REHABILITATION SERVICES.**)

Subp. 6. Review of ineligibility determination. This rule part is repealed. This is necessary because very few interested individuals are determined ineligible. The few individuals who are ineligible based on feasibility are individuals who are in memory care units within nursing homes, and whose prognosis is progressive. These determinations of ineligibility would probably not require a review under the current language, “if the applicant’s medical condition is rapidly progressive or terminal.” This is reasonable because there is no federal requirement, and it is unreasonable to have a requirement that is unlikely to be applied. If an individual desires services in the future, they only need be referred for the process to begin anew.

3325.0230 THOROUGH ASSESSMENT.

Subp. 2. Scope of assessment. This subpart is amended by removing original **Item A** because, following a discussion of employment status in the process of determining eligibility, it has no

bearing on the independent living goals that an eligible individual may choose. This is reasonable because had the individual indicated a desire to be employed, the individual would have been referred to the vocational rehabilitation program.

New **Item B** is amended by accepting input provided by the Commission of Deaf, Deafblind and Hard of Hearing Minnesotans, which is that reference be made to individuals with “combined vision and hearing loss” when considering the need for counseling. The amendment is reasonable because it identifies other impairments that impact the rehabilitation process.

Original **Item H** is removed because the reports and results referred to in this item are no longer required in **3325.0220, subpart 2**, as a result of amendments identified in that rule part. It is reasonable to remove **Item H** because it no longer applies. Additionally, SSB is proposing to remove “restoration services” as a service in the independent living program from **3325.0250 SCOPE OF SERVICES TO ELIGIBLE INDIVIDUALS**, to which **Item H** refers.

3325.0240 INDEPENDENT LIVING CUSTOMER SERVICE RECORD (ILCSR)

The title of the rule part is amended by replacing “INDIVIDUALIZED WRITTEN REHABILITATION PLAN” with “INDEPENDENT LIVING CUSTOMER SERVICE RECORD (ILCSR).”

Subp. 1. Preparation of plan. This subpart and chapter are amended by replacing “individualized written rehabilitation plan” or “written plan” wherever it occurs related to the independent living program with “independent living customer service record (ILCSR).” As a result of streamlining that has taken place in the program over the last ten years, it is necessary to remove the requirements of a written plan and a signature. The decision to not enforce those requirements over the last ten years has been well received by eligible individuals and has proven not to be a detriment to the eligible individual or SSB. Retaining those requirements in the rule would be unreasonable as it would reinstitute unnecessary bureaucracy into the rehabilitation process in this particular program. The ILCSR is an electronic system used to record information regarding an individual’s interaction with and services from SSB. Should an individual or eligible individual desire a written copy of this ILCSR, it is readily available in print and will be made accessible.

Subp. 2. Contents of ILCSR. It is necessary and reasonable to remove reference to “intermediate rehabilitation objectives” because this federal terminology no longer applies to this independent living program. In addition, SSB’s independent living program, of which 96.7% of the eligible individuals are over age 55, tends to be fairly short-term in nature. Most of the independent living goals are reached in weeks or months, thus making intermediate rehabilitation goals unnecessary.

As noted above, the ILCSR is an electronic record that is not printed or signed. This has been the practice in this particular program for many years, and is well accepted by eligible individuals. Additionally, because the ILCSR is paperless, the requirements that the views of the eligible individual and a summary of appeal rights be part of the record are removed. SSB provides written information to the individual early in the rehabilitation process regarding appeal processes and advocacy groups, although this is not considered part of the ILCSR.

Subp. 4. Assessment of progress. This subpart is amended by removing irrelevant requirements. As already noted, most of the independent living goals are reached in weeks or months, thus making intermediate rehabilitation goals unnecessary. At closure, the ILCSR requires the eligible individual to disclose their functional gains or maintenance, as a result of training, of their ability to travel safely and independently in their residence or community and to engage in their customary life activities. They are also asked if they feel greater control and more confidence, no change in their control and confidence, or less control and confidence, in their ability to maintain their current living situation as a result of services they received. These questions are required by the federal reporting instrument. See **Appendix 9- ED (RSA)-7-OB Form-Instructions, Expiration Date: May 31, 2011, pps. 13-14.**

Subp. 5. Amendment to ILCSR. This subpart is amended by substituting current terminology, removing archaic language, and removing a signature requirement for a plan amendment. There is no written plan that is signed or provided to the eligible individual. These amendments are reasonable because they provide clarity regarding current requirements and terminology.

3325.0250 SCOPE OF SERVICES TO ELIGIBLE INDIVIDUALS AND ADJUSTMENT OF LIMITATIONS.

This rule part is amended by substituting updated terminology, reducing the scope of services, and placing limitations on certain services. The limits on certain services are proposed for budgetary reasons. Services are funded by state, federal and donated funds. Thus far Minnesota has been able to request and utilize all the federal funding available for this program. General state funding has been cut by \$263,000 over the last several years, increasing pressure on all SSB programs and necessitating cuts to the independent living program. The Governor and the 2011 Legislature are faced with a \$6.2B deficit, which will likely impact SSB and the independent living program further. While SSB has requested additional resources for seniors over the years, there have been other state priorities.

The demographics are clear. By 2030 the number of Minnesotans over the age of 65 will double. The numbers of blind people will more than double by 2020. Vision loss increases by about 400 percent from the 18 – 44 age group up through the 70 – 84 age group. In 2004 SSB made a deliberate decision to carry out assertive outreach efforts to seniors based on the need for residents to know about the services of their state government. That effort, coupled with increases in the aging population, had the expected result. The number of seniors served increased from about 2,000 in FFY2003 to nearly 3,500 in FFY2010.

With dwindling resources and an increasing number of elderly blind individuals, SSB must first prioritize and limit service expenditures. If that fails, SSB must prioritize eligible individuals needing services. See **3325.0208, PRIORITY FOR SERVICES IF FUNDS ARE NOT AVAILABLE.**

SSB believes that services listed in **Subp. 1, Item A** (independent living counseling, rehabilitation teaching services, and orientation and mobility services), which can be costly, are “core” services that impact large numbers of eligible individuals and have the greatest likelihood of improving one’s personal independence. **Item C** (communication center services), which provides audio or

braille access to newspapers, periodicals and books, are also “core” services, essential for eligible individuals to remain current in their surroundings. The majority of the customers of the communication center customers are elderly blind persons. Lesser used services, with minimal impact on the budget, are not limited. These include **Item B** (advocacy services), **Item D** (diagnostic assessment services), **Item G** (maintenance), new **Item H** (referral services), and new **Item K** (transportation services). **Items H** (note-taking services), **Item I** (reader services) and former **Item K** (restoration services) are proposed to be removed as they are unused and unnecessary.

The remaining services, including **Item F** (low vision services), new **Item I** (services to family members), and new **Item J** (rehabilitation technology) are proposed to have limitations because of their expense, and that they are not core services. An individual may still avail themselves of these services, above the limitation, but at their own expense.

While these amendments will be detailed in **Subp. 1**, all amendments are necessary to conserve resources within the independent living program in order to not limit the higher priority “core” services to eligible individuals. This is a reasonable compromise when faced with dwindling resources and increased need. This is also reasonable because the SSB Rule Advisory Committee fully considered and supports the prioritization and the amendments, with one area of concern, new **Item J (3)**, discussed below.

Subp. 1. Scope of services.

Item A. This Item is amended by clarifying that blindness training services can be provided either individually or in a group. This is reasonable because it is accurate, and was requested by members of the SSB Rule Advisory Committee who felt it was not well understood. Additionally, “rehabilitation counseling” is replaced with “independent living counseling”. This clarification is necessary because the rules have been restructured for both programs. The vocational rehabilitation program involves “vocational rehabilitation counseling” (See SONAR **3325.0110, DEFINITIONS, Subp. 86a**) that is aimed at employment, and is not appropriate for the independent living program. Therefore, the term “independent living counseling” was developed and defined. See SONAR **3325.0110, DEFINITIONS, Subp. 27a**. These amendments are reasonable in order to clarify the intended services.

Item F (1). “Low vision services” is amended by placing limitations on services. First, a \$300 limit per period of eligibility is placed on spectacle mounted low vision aids with a strength of at least a +4.00 diopter add. SSB provides low vision aids (magnifiers) that are hand held, or are on a short stand. These are generally less than \$100, durable, and reusable. These are not limited by this amendment. Occasionally, for an eligible individual who appears to be motivated to use spectacles with magnifiers and benefits from magnification, SSB will arrange for a low vision exam. Spectacle mounted lenses’ with significant magnification (+4.00 diopters or more) may cost from \$200 to \$600. They are difficult to adjust to and require training and significant personal commitment to be used consistently. The limitation of \$300 was chosen because higher priced lenses’ are usually of higher magnification and present greater risk in being successfully used on a regular basis. SSB proposes to expend up to \$300, with any additional cost being the

responsibility of the eligible individual. The magnification level of at least +4.00 diopters of correction was chosen because of SSB's decades of experience in low vision aids. Spectacles prescribed for the average individual without eye pathology are almost always less than + 4.00 diopters of correction. With the + 4.00 diopter add requirement, SSB is assured that the spectacle mounted lens is of a strength and would only be prescribed for a severely visually impaired individual. Additionally, professional low vision educational materials state, "*Low vision spectacles can range in power from 4D to 64D.*"¹ These amendments are necessary to conserve resources within the independent living program so as not to limit the higher prioritized "core" services to eligible individuals. This is reasonable compromise when faced with dwindling resources and increased need. This is also reasonable because the SSB Rule Advisory Committee fully considered and supports these limitations.

Item F (2). "Low vision services" is amended by not allowing purchase of electronic magnification systems for individuals. Electronic magnification systems, also known as "closed circuit TV's" or "CCTV's", magnify a print image as high as 40 times. They are helpful to many individuals where large amounts of magnification are needed to complete a task. They have advantages and disadvantages. They are very expensive, ranging from \$500-\$3700. For most seniors, macular degeneration is the most common cause of vision loss, and worsens over time. Their use of an electronic magnification system becomes more limited as the disease progresses. Because of the high cost, SSB proposes to no longer purchase electronic magnification systems for individuals. An individual will certainly be provided information about them, but will have to purchase them without SSB's assistance. This is reasonable when faced with dwindling resources and increased need. This is also reasonable because the SSB Rule Advisory Committee fully considered and supports these limitations.

Old **Item H** (note-taking services), old **Item I** (reader services), and old **Item K** (restoration services) are removed from the scope of services. These services have not been used within the independent living program for many years. This is because the rehabilitation period is brief for individuals in this program, as compared to those in the vocational rehabilitation program. Even in the vocational rehabilitation program, these services are used infrequently compared to others. Removing these three services is reasonable because they are not needed. This is also reasonable because the SSB Rule Advisory Committee fully considered and supports repeal.

New **Item I** (services to family members identified in part **3325.0110, subpart 72**) is amended by striking the reference to items that are being stricken in the definition, and by limiting expenditures for this service to \$300 per period of eligibility. With dwindling resources, SSB will not be able to afford to provide services to family members at prior levels. However, some seniors may not attend concentrated rehabilitation training unless a family member is in attendance. The most likely expense for a family would be maintenance in the form of expenditure for lodging at a motel or hotel, and occur in greater Minnesota. SSB, wanting to support an eligible individual's attendance where "core" services such as rehabilitation teaching, orientation and mobility training are taught, has determined that it would cost \$300 for five nights of lodging and related expenses

¹ Barbara Brown, *The Low Vision Handbook for Eyecare Professionals* (Thorofare, NJ: SLACK Incorporated, 2007) p. 12.

and would likely meet the needs of the eligible individual and family members for training programs currently offered. This limitation is reasonable when faced with dwindling resources and increased need, yet supporting the independent living rehabilitation process for the eligible individual. This is also reasonable because the SSB Rule Advisory Committee fully considered and supports this limitation.

New **Item J** (Rehabilitation technology) is amended by identifying and limiting several types of expenditures. Since the original rule promulgation in 1986, the world of technology has changed the daily lives of Americans. Today, computers, smart phones and other technology devices help us communicate, keep track of our schedules, search the web, and enjoy music, among other things. Everything that was once only available in writing is now available electronically. Technology designed to assist blind and visually impaired persons to access the electronic world has also been developing and evolving. Most seniors in the independent living program do not use this electronic access technology today. As the “baby boomers” retire and experience vision loss, however, they are going to want to continue using email to communicate with family, search the web in lieu of the yellow pages, and pay their bills online. With the anticipated growth in eligible individuals, reasonable limitations on expenditures for such services are proposed, given greater interest in rehabilitation technology. The breadth of technology and software, their cost, and short life-cycle require limitation to assure unlimited “core” services (independent living counseling, rehabilitation teaching, and orientation and mobility).

Subitem (1), limiting to \$100 each purchase of a nonelectronic technology device, is not anticipated to have much impact today. Most eligible individuals receive a variety of these devices, whether they be enlarged telephone dials, needle threaders, specialized cooking devices, or other devices that allow independent function with decreased or no vision. Most all nonelectric devices are under \$100 each today. There is concern that future costs will rise, which prompts the limitation.

Subitem (2), limiting to \$1,000 total, per period of eligibility, the purchase of adaptive software is necessary because adaptive software, and upgrades, are never ending expenses, and SSB does not have sufficient resources to fund every request. The limit is set high enough to purchase the most robust screen reading and screen enlargement software. This software allows, with training, access to the electronic world.

Subitem (3), limiting training purchased by SSB to ten hours is necessary because extensive amounts of training are necessary to be proficient in the use of computerized aids and devices, and SSB does not have sufficient resources to fund every eligible individual’s training. Ten hours of training is sufficient to introduce an eligible individual to keyboarding, computer literacy, or to a computerized aid or device. Among the **Subitems**, this **Subitem** surfaced the most discussion by the SSB Rule Advisory Committee. The original language discussed with the Committee proposed that the limitation be ten hours. Some members of the Committee proposed the limitation should be ten hours, or a dollar amount, whichever is greater. Some felt this latter approach might drive down costs, resulting in more hours of training. Others felt this may result in higher costs than anticipated. For example, let’s say the limitation was ten hours, or \$750, whichever is greater. All factors equal, if vendor A charges \$60/hour, the eligible individual could

receive 12.5 hours of training. On the other hand, if vendor B charges \$85/hour, ten hours would cost \$850. The SSB Rule Advisory Committee did not come to consensus on this issue. The SSB internal rule committee wrestled with these same issues before forming the SSB Rule Advisory Committee. After listening carefully to both groups, SSB proposes to set the limitation at ten hours. A set period of time will guarantee equal application across the state, irrespective of varying rates, and will be easier to administer. The discussion was never that there shouldn't be a limitation, or that it shouldn't be ten hours. There was recognition that significant training might be necessary and that after the introductory ten hour maximum, the eligible individual would have to invest in their own rehabilitation.

Subitem (4), SSB not purchasing computers, related accessories, or other electronic aids and devices is necessary because SSB does not have sufficient resources to purchase them, most of which are quite expensive. Costs range from computer packages costing \$1,500 to 80 cell braille displays costing around \$10,000.

In summary, these limitations are necessary because SSB does not have sufficient resources to fund the full range of rehabilitation technology services in the independent living program, and to maintain unlimited "core" services. Both purchase of and training on devices are expensive. These limitations are reasonable because the eligible individual is introduced to certain levels of rehabilitation technology, and if motivated and financially able, has the option to invest further in their own rehabilitation. Most importantly, and except for the one area where consensus was not reached, the SSB Rule Advisory Committee supports these limitations.

Subp. 2. Adjustment of limitations. This subpart is proposed in order to provide a mechanism for the adjustment of the limitations imposed in **Subp. 1**. The SSB Rule Advisory Committee recommended SSB develop such a mechanism in order to keep the dollar values of the limitations current with economic changes, without amending a rule on every occurrence. SSB considered a number of possibilities, including reviewing several models used by the state Department of Human Services. The mechanism chosen is based on the federal model used for determining percentage change in appropriation authorization for the vocational rehabilitation program. See **Rehabilitation Act of 1973, as amended, section 100(c)**. The method is reasonable because it, while not applying directly to the independent living program, is based on sound reasoning and public data, and is used for adjustment purposes by another rehabilitation program authorized by the same public law.

3325.0260 CLOSING THE RECORD OF SERVICES

The title of the rule part is amended by replacing "TERMINATION OF SERVICES" with "CLOSING THE RECORD OF SERVICES." This change is reflected throughout all four subparts. It is reasonable because the concepts and requirements are the same as, and it provides consistency with, the parallel rule parts in the vocational rehabilitation program. See SONAR **3325.0190, CLOSING THE RECORD OF SERVICES**.

Subp. 1. Closing the record of services of eligible individuals who have not achieved independent living goals. This subpart is amended by including specific language recommended

by the SSB Rule Advisory Committee regarding a concept that the committee wanted integrated throughout the rule draft. The concept is that when an applicant or eligible individual is not responding to SSB, “multiple and varied attempts to contact” must take place. This is reasonable because it requires different methods of contact and the chances of making contact may be increased as a result. **Item B** is amended and is reasonable in order to clarify that the 15 day time period identified, is 15 “calendar” days.

Subp. 2. Conditions for closing the record of services of individuals who have achieved independent living goals. This subpart is amended by adding a 30-day period before a record of services for an individual who has achieved independent living goals may be closed. This has been an SSB requirement for a number of years. The requirement, formulated after years of experience with a similar (but longer) requirement in the vocational rehabilitation program, allows time for the eligible individual to utilize new skills and to determine for themselves whether their rehabilitation program is complete. The 30-day period has proven to be a reasonable period of time for the eligible individual to make this determination.

Subp. 3. Consultation prior to closure of the record of services. This subpart is amended by removing a reference to a federal regulation that no longer exists.

Subp. 4. Notice of closure of the record of services and amendment to plan. This subpart is amended by not requiring notice of closure when the reason for closure is death of the individual. No purpose is served in sending notice to an individual who has died, and it would be unreasonable and inappropriate to send the notice to the family.

3325.0270 RECORD OF SERVICES

This rule part is amended by removing a reference to a federal regulation that no longer exists, and mandates information required under applicable rule parts to be part of the record of services. This is reasonable to properly identify what information must be included in the record of services.

SELF-CARE PROGRAM

3325.0280 CONDITIONS OF ELIGIBILITY

3325.0290 PRELIMINARY EVALUATION

3325.0300 THOROUGH EVALUATION

3325.0310 INDIVIDUALIZED WRITTEN REHABILITATION PLAN

3325.0320 SCOPE OF SERVICES

3325.0330 TERMINATION OF SERVICES

3325.0340 CASE RECORD

All rule parts related to the **SELF-CARE PROGRAM** are repealed. This is necessary because SSB no longer administers a self-care program, and it would be unreasonable to retain inapplicable and unnecessary rule parts. Greater background in the evolution of SSB’s program for individuals not interested in employment is provided in this SONAR in the **INDEPENDENT LIVING PROGRAM** section.

CHILD REHABILITATION PROGRAM

3325.0350 CONDITIONS OF ELIGIBILITY

3325.0360 PRELIMINARY EVALUATION

3325.0370 THOROUGH EVALUATION

3325.0380 INDIVIDUALIZED WRITTEN REHABILITATION PLAN

3325.0390 SCOPE OF SERVICES

3325.0400 TERMINATION OF SERVICES

3325.0410 CASE RECORD

All rule parts related to the **CHILD REHABILITATION PROGRAM** are repealed. This is necessary because SSB no longer has, nor expects to administer a like program in the near future. Direct services to children, age 0-14, were delivered until 2002. A budget crisis resulted in the elimination of eighteen positions including 13 lay-offs within SSB. In addition to cuts in other state funded SSB services, the decision was made to stop all direct services to children. For several years thereafter SSB had one position that provided information and referral services to parents and others; that position was later abolished as additional budget cuts were required across state government. SSB is now proposing to repeal all rule parts related to services to children. SSB has taken additional base cuts totaling \$208,000 effective July 1, 2010, and the state of Minnesota faces a nearly \$6B deficit. This repeal is reasonable because it removes inapplicable and unnecessary rule parts.

The SSB Rule Advisory Committee felt strongly that SSB should deliver services to children if, in the future, dollars are appropriated for that purpose. In that event, SSB would consider rule making for such a program, taking into account legislative intent, and community and professional input.

PROGRAM ADMINISTRATION

New and updated terms, defined in **3325.0110, DEFINITIONS**, are incorporated into the text as they occur.

3325.0420 CONDITIONS OF SERVICE

Subpart 1. Sources of services. This subpart is amended by adding a provision requiring SSB staff and third parties to be properly trained in the services they provide. While this expectation is a given, members of the SSB Rule Advisory Committee felt it was necessary to clearly reflect this in the rule part. SSB provides training to its direct service staff in adjustment to blindness training, deafblindness, and other more targeted areas. Other subparts address specific requirements of SSB direct services staff and third parties related to training, including low vision services, orientation and mobility services, and rehabilitation teaching services.

Subp. 2. Conditions governing the provision of all rehabilitation services. This subpart is amended in several ways.

Item A is added to clarify that SSB services to determine eligibility (applicants) are subject to conditions imposed in this rule part, including “informed choice.” There is no reason to differentiate services provided to applicants or eligible individuals. It may be necessary to provide a service, such as note-taking, in order to participate in either the eligibility determination process or as part of an IPE. The note-taking process itself remains the same.

Item B is amended by incorporating the concept of “informed choice” (See SONAR 3325.0110, **DEFINITIONS, Subp. 29, Informed choice**) into the conditions affecting SSB services. This is reasonable because it is consistent with federal regulations governing the vocational rehabilitation program. See **Code of Federal Regulations, title 34, section 361.46(a)(1) and (2)**. **Item B** is reorganized to provide better clarity, and replaces outdated language related to a school district with language referencing an interagency agreement with the Minnesota Department of Education that identifies each party’s roles, responsibilities, and financial obligations. This change is reasonable because such an agreement is required by **Code of Federal Regulations, title 34, section 361.22(b)**. See **Appendix 10-Interagency Agreement Among The Minnesota Department of Employment and Economic Development (DEED) Rehabilitation Services and State Services for the Blind and The Minnesota Department of Education (MDE)**.

Item C is added and has been SSB policy for some time. There is the potential of role confusion between the family and the applicant or eligible individual when a family member is the service provider. If a family member is an interpreter, for example, they may filter the communication from the individual regarding sensitive personal, family, or other matters. Moreover, the family member may not want the individual to be aware of certain information provided by SSB or others. While SSB may allow such a practice, it must only do so in the most unusual circumstances. These might include a situation where a family member is the only person that speaks English, or knows sign language, and no one else is available in a small town in greater Minnesota. This policy is reasonable because it intends to preserve unfiltered communication between the applicant or eligible individual and SSB or others.

Subp. 3. Communication center services. This subpart is amended by updating a federal citation, thereby providing accurate information.

Subp. 4. Interpreter services. This subpart is amended in two ways. First, a requirement in **Item A**, that an individual be diagnosed as deaf by an audiologist or physician before SSB provides interpreter services, is removed because it is unnecessary. The 1986 promulgation included a number of requirements that were designed to protect SSB from expending funds for unnecessary services. Interpreter services is one example. Over 24 years it has become clear that individuals do not request unneeded interpreter services and SSB staff do not approve unnecessary interpreter services. Actual practice for over a decade has been to ignore this provision. It is reasonable to remove an unnecessary requirement whose only impact may be to increase unwarranted expenditures.

Second, **Item B** is amended by clarifying that interpreter services may also be used for assessment purposes, in addition to IPE or independent living services. This clarification is made throughout the rule draft. This change is reasonable because SSB must be able to communicate

with an individual to properly consider their application or referral, and determine their eligibility for rehabilitation services.

Subp. 6. Maintenance. This subpart is repealed because it is unnecessary and redundant. This is reasonable because “maintenance” is sufficiently defined in **3325.0110, DEFINITIONS, Subp. 41**, and no further clarification is needed.

Subp. 7. Note-taking services. Item B is amended to clarify that note-taking services may be used for assessment purposes, in addition to being included as a service in the individual’s IPE. This change is reasonable because SSB must be able to communicate with an individual to properly consider their application or referral and to determine eligibility for rehabilitation services.

Subp. 8. Orientation and mobility services. Item A is amended by clarifying that the requirement of outdoor cane travel instruction applies to eligible individuals who are legally blind, and not others. This clarification is necessary and reasonable because Minnesota law states that “*It shall be unlawful for any person to carry a white painted cane unless said person is a blind person.*” See **Minnesota Statutes, section 169.202, Subd. 1**.

Item B is amended by acknowledging that additional expertise may be necessary on the part of an individual teaching outdoor travel techniques. Eligible individuals may have multiple disabilities, such as legal blindness combined with hearing loss that significantly impacts the teaching of outdoor travel techniques. This change is reasonable because it highlights the breadth of mastery that may be required to teach orientation and mobility skills to eligible individuals with additional disabilities. The Commission of Deaf, Deafblind, and Hearing Minnesotans recommended inclusion of such language in many parts of the rule draft.

Subp. 9. Post employment services. This subpart is repealed because it is unnecessary and redundant. “Post employment services” is sufficiently defined in **3325.0110, DEFINITIONS, Subp. 55** and no further clarification is needed.

Subp. 10. Reader services. **Item A(2)** is amended in two ways. First, technology has changed since 1986 and additional methods of transcription need to be identified. It is reasonable for the rules to reflect current technology and the SSB Rule Advisory Committee recommended this amendment. Second, language is added to acknowledge that printed material may be available in a particular format, but the format may not effectively or efficiently convey information contained in educational reading requirements. Thus, “reader services” may be necessary. One example is a dictionary or manual that may have been recorded on audio tape (new recordings are recorded digitally using DAISY format) and extensive maneuvering to find entries is not efficient. Also, tests and other materials that consist of pictures, diagrams, or other depictions that are not sufficiently labeled, if labeled at all, may not effectively convey information when recorded on audio tape. The amendment change is reasonable because it allows the use of reader services in order to implement the eligible individual’s IPE when reader services are necessary to effectively or efficiently convey information.

Subp. 11. Rehabilitation teaching services. The subpart is amended in three ways.

First, **Item A** is amended by stating that SSB must provide braille instruction “leading to proficiency...” This is added to identify the expected outcome of braille instruction. Braille is a critical ingredient in attaining the highest level of personal and vocational independence in a blind person’s life. In order to integrate the use of braille into one’s life, the goal of braille instruction must be proficiency in its use. This is reasonable because it clarifies the intended outcome. The SSB Rule Advisory Committee recommended this amendment.

Second, **Item B** is amended by replacing “grade 2” with “contracted” wherever it appears in the text when describing the level of necessary proficiency for an individual teaching braille. This is necessary and reasonable because the Braille Authority of North America has changed the title of the level of mastery intended in this subpart.

Finally, **Item C** is amended by requiring individuals providing rehabilitation teaching services to have additional expertise under certain circumstances. Eligible individuals may have multiple disabilities, such as legal blindness combined with hearing loss that significantly impacts rehabilitation teaching. This amendment is reasonable because it highlights the breadth of mastery that may be required to teach eligible individuals with additional disabilities. The Commission of Deaf, Deafblind, and Hard of Hearing Minnesotans recommended the inclusion of such language.

Subp. 12. Physical and mental restoration services. **Item C(1)** is amended by acknowledging the identified organization’s name change to the “National Blue Cross and Blue Shield Association Medical Advisory Panel.”

Subp. 13. Transportation services. **Item A** is amended by adding parallel language from the definition of “transportation” in describing whom is eligible for transportation services and under what circumstances “transportation services” apply. See definition and SONAR **3325.0110, DEFINITIONS, Subp. 83, Transportation services.** For example, an applicant or referral may need transportation services in order to participate in a diagnostic assessment to determine eligibility, and if eligible, to participate in other vocational rehabilitation services. This amendment provides consistency among the rule parts. **Item B** of this subpart is amended by identifying that the managerial plan published by the Minnesota Department of Management and Budget is available at “SSB’s headquarters office,” rather than at “the Minnesota State Law Library.” This amendment is reasonable because it has been determined that the Minnesota State Law Library does not catalog this document, and SSB has the capacity to make the document available.

Subp. 14. Vocational training services. This subpart is amended in two significant ways. First, the amendments are made to provide internal consistency in the rules. They make it clear that the two policy considerations embodied in this subpart (eligible individual capability and private or non-Minnesota expenditures not exceeding Minnesota public institutions) apply equally to tuition, supplies, maintenance and transportation. This was the intent of the original rule and has been SSB’s interpretation and practice. The amendments clarify and formalize the original and subsequent administrative practice. Second, there has been an issue over the years in determining

which “public Minnesota institution” should be used as a benchmark when comparing costs with a private or non-Minnesota institution. A program may be available to an individual at multiple public institutions across the state, with varying costs for tuition. SSB proposes to use as the benchmark, that Minnesota public institution offering the “same program nearest the eligible individual’s residence.” This approach is reasonable because many individuals, involved with SSB or not, choose to attend an institutions based, in large part, on location. No other approach offered any better rationale nor was as easy to administer. The SSB Rule Advisory Committee supports these amendments.

3325.0430 COMPARABLE SERVICES AND BENEFITS; VOCATIONAL REHABILITATION

This rule part is amended in the title and text by applying only to the vocational rehabilitation program and by replacing “similar benefits” with “comparable services and benefits.” See **SONAR 3325.0110, DEFINITIONS, Subp. 12b, Comparable services and benefits.**

Subp. 1. Scope. The amendments are necessary and reasonable to make the list of services exempt from the exploration of comparable benefits consistent with federal regulations governing the vocational rehabilitation program. See **Code of Federal Regulations, title 34, section 361.53(b).**

Subp. 2 Eligible individual responsibilities. Item D is amended by changing the requirements for the application and use of comparable services and benefits. One new requirement is that the service must be available when the individual is in need of it. If not, the application is not required. Second, if the comparable services and benefits become available, the individual must use them. These amendments are necessary and reasonable because they are required by federal regulations governing the vocational rehabilitation program. See **Code of Federal Regulations, title 34, section 361.53(c)(2).**

3325.0435 SIMILAR BENEFITS; INDEPENDENT LIVING SERVICES

This new rule part, applying only to independent living services, is conceptually and structurally fashioned after the original part 3325.0430. The original 1986 rule applied to all four SSB rehabilitation programs and was consistent with federal regulations governing the vocational rehabilitation program at the time. This new rule applies only to independent living services and uses a number of the concepts that have shown to be sound requirements.

Subp. 1. Scope. This scope statement parallels the updated scope language used for the vocational rehabilitation program in part **3325.0430, Subp. 1.** The language has been used in all of SSB’s programs for at least ten years. This amendment is reasonable because it forms a solid base, in that the similar benefits that would “contribute toward and not interfere with an eligible individual’s independent living rehabilitation must be used if available...” and conserves scarce public resources.

Advocacy, communication center, diagnostic assessment and referral services are exempt from similar benefits for two reasons. First, SSB provides advocacy, communication center and referral

services. There are no additional expenses incurred and therefore no scarce public resources to conserve. Second, while there is the potential that other service providers may cover the costs of certain diagnostic procedures, such as eye exams, in actuality, SSB expends very little for these procedures. Sometimes, doctors make referrals that contain eye information. While this may be helpful information, proposed amendments in **3325.0220, subp. 2.A** negate the need for an exam because acceptable information to determine a severe visual impairment includes an oral description by the individual and observation by the SSB direct services staff. Exempting these four services from the application for and use of similar benefits is reasonable because there are few, if any, scarce public resources that would otherwise be conserved.

SSB reviewed the balance of independent living scope of services (See **3325.0250, SCOPE OF SERVICES TO ELIGIBLE INDIVIDUALS AND ADJUSTMENT LIMITATIONS, Subp. 1. Scope of services.**) and determined that there was the possibility, albeit small, that other resources might be available. Therefore, consideration of similar benefits was deemed advisable.

Subp. 2. Eligible individual responsibilities. Item A requires an eligible individual to apply for, or provide evidence of applying for, public assistance programs identified by SSB direct service staff as benefits for which they may be eligible. This is reasonable as no one else, other than the eligible individual's legal representative, may apply for such benefits. Without such application, the determination of benefits is not possible. In accordance with **Item B**, the application or use of similar benefits must not be required if they would significantly delay services to the detriment of the eligible individual. As noted in previous sections, services within the independent living program tend to be delivered rapidly, over a short time period. Therefore, any significant delay for the purposes of similar benefits would be unreasonable and detrimental for the eligible individual.

3325.0440 FINANCIAL PARTICIPATION BY ELIGIBLE INDIVIDUALS IN THE VOCATIONAL REHABILITATION PROGRAM.

The rule part title and text are amended to only apply to the vocational rehabilitation program. The vocational rehabilitation and independent living programs have significant differences, including eligibility criteria, planning, costs, scope of service, outcome and funding resources so it is reasonable to approach financial participation in each program separately.

Subp. 1. Services exempted from financial participation. Item A of this subpart is amended by adding "trial work experience" as an experience where non-diagnostic services to an applicant are not exempt from financial participation. This change is necessary and reasonable because it is a requirement of federal regulations governing the vocational rehabilitation program. See **Code of Federal Regulations, title 34, section 361.54 (b)(3)(i)(A)**.

Item E is amended by removing the reference to the "deaf-blind," as this restriction is contrary to federal regulations governing the vocational rehabilitation program. These types of services, identified as an "auxiliary aid or service" in federal regulation, are necessary for some eligible individuals to participate in other services within the vocational rehabilitation program. For example, some blind persons may need note-taking services, in addition to reader services which are already classified as exempt, at a point in their rehabilitation. These services are exempt from

financial participation, irrespective of specific disability. See **Code of Federal Regulations, title 34, section 361.54(b)(3)(i)(G)**.

Subp. 4. No required financial participation. This subpart is amended by adding two new conditions under which an eligible individual is exempt from financial participation.

Item B exempts eligible individuals who have been determined eligible for one or both of the identified Social Security benefit programs. One program is means tested and one is not. This amendment is necessary and reasonable because exemption from financial participation for these recipients is required by federal regulations governing the vocational rehabilitation program. See **Code of Federal Regulations, title 34, section 361.54(b)(3)(ii)**.

Item C exempts an eligible individual who has been determined eligible for an individual or family means-tested Department of Human Services public assistance program. A review of the Department of Human Services means-tested public assistance and health programs current monthly income limits, adjusted for family size, indicates that the monthly limits are significantly below those of SSB's. This would result in eligible individuals being declared exempt for purposes of financial participation if the paperwork were completed. See **Appendix 11-SSB and Department of Human Services Income Guidelines**. Additionally, this exemption already exists in **Minnesota Rules 3300.5040, Subp. 4.A(2)**, applicable to DEED's vocational rehabilitation program for individuals with a disability other than blindness or visual impairment. This exemption is reasonable because it reduces burdensome and unnecessary paper work, and takes advantage of means-testing already performed by another branch of state government.

Subp. 6. Limitations on financial participation. This subpart is repealed effective July 1, 2011, applying to all individualized plans for employment, including those in effect on that date. See **REPEALER (b)**. This rule part was confusing to SSB staff, eligible individuals, and families. If an eligible individual was subject to financial participation, their participation in any month was limited to the lesser of two computations. Any balance due carried forward to the next month, and so forth. Where applicable, SSB collected monthly installment payments. During the month of July, 2010, SSB vocational rehabilitation counselors were surveyed to determine: how many individuals active in the program were subject to financial participation; if the eligible individual was subject to financial participation; the participation rate of eligible individuals subject to financial participation; and how many participating individuals benefited from this subpart (known as the "10% rule"). Counselors reported that of 704 active cases, eight cases (1.1%) were subject to financial participation (with rates of participation ranging from 2-92%), and two cases (.28%) were subject to this subpart. These two cases involved college tuition and related expenses. While this subpart is applicable in rare circumstances, SSB should not be administering a loan operation, tracking payments and balances. As can be seen in **Appendix-11-SSB and Department of Human Services Income Guidelines**, SSB's income limits are already significantly higher than all other public programs. This results in only 1% of all eligible individuals being subject to financial participation. Only one-fourth of those in the 1% are subject to this rule part. These few cases are individuals whose family income is very high, comparatively, and SSB believes they should be making other arrangements to cover their financial participation

for college, just like other families. SSB reviewed rules applicable to DEED's vocational rehabilitation program for individuals with disabilities other than blindness or visual impairment, and found no such "10%" rule. See **3300.5040, CONSUMER FINANCIAL PARTICIPATION IN COST OF VOCATIONAL REHABILITATION SERVICES.**

This repeal is reasonable because the subpart rarely applies, it requires SSB to act as a banker which is not supported by law, and the rule part is difficult to administer. SSB's income limits are already comparatively high. SSB anticipates that individuals and families will be able to make alternate financial arrangements, similar to other families in the same financial condition. It is reasonable to delay the effect of the repeal until after the 2010-11 school year has been completed in order to not disrupt the plans already in place. Rehabilitation plans of this sort are reviewed and planning for the next school begins during the summer. The SSB Rule Advisory Committee supports this repeal.

Subp. 10. One source payments; conditions and reimbursement. This subpart is new and added to reflect current business practices and expectations, while meeting the needs of eligible individuals. Vendors often require purchases be made by credit card and will not accept "split" payments. Where applicable, SSB is usually responsible for most of the cost of the purchase, and the eligible individual's financial participation is small. Under these circumstances, it is reasonable to first require the eligible individual to pay SSB the amount of the eligible individual's financial participation, and then SSB to pay the total amount to the vendor.

3325.0445 FINANCIAL PARTICIPATION BY ELIGIBLE INDIVIDUALS IN THE INDEPENDENT LIVING PROGRAM.

The inclusion in these rule parts of provisions governing financial participation by eligible individuals in the independent living program is necessary and reasonable to comply with **Minnesota Statutes, section 248.07, subd. 14a.**

Subp. 1. Services exempted from financial participation. SSB has chosen to list all services identified in the independent living scope of services (See **3325.0250, SCOPE OF SERVICES TO ELIGIBLE INDIVIDUALS AND ADJUSTMENT TO LIMITATIONS, Subp. 1, Scope of services**), including limitations imposed on certain services that are exempt from financial participation. The independent living program has evolved from a bureaucratic, paperwork intensive program into a nimble, reactive, and streamlined program relatively free of consumer paperwork. This has been well received by eligible individuals, mainly seniors, and their families. The program is also easier for SSB to administer. During the last decade, enforcement of financial participation requirements has ceased. SSB considered a number of possibilities to increase enforcement, working with the rule requirements, and scarce program resources. These include: reinstating paperwork requirements that establish an eligible individual's financial participation, requiring some services to be subject to financial participation, requiring no services to be subject to financial participation but be subject to limits, creating a "priority of services" if funds were not sufficient to serve all eligible individuals, and reduce the scope of services.

After a number of internal discussions, four important goals emerged: (1) to maintain a streamlined process for eligible individuals; (2) to retain the ease of administration of the independent living program by SSB; (3) to provide as many services as possible, with an emphasis on adjustment to blindness “core” services; and (4) to introduce eligible individuals to other services, with some limitations.

With these goals in mind, SSB proposes a strategy to balance these goals with the availability of scarce public resources for the independent living program. The strategy includes: slightly reducing the scope of services (See SONAR **3325.0250, SCOPE OF SERVICES TO ELIGIBLE INDIVIDUALS AND ADJUSTMENT OF LIMITATIONS**); imposing limitations on certain non-core services (ibid.); imposing a priority for services if funds are not available (See **3325.0208, PRIORITY FOR SERVICES IF FUNDS ARE NOT AVAILABLE**); including the full scope of independent living services as not subject to financial participation (this subpart); and requiring any costs for services not exempted, or exempted with limitations, to be the sole responsibility of the eligible individual (**Subparts 2 and 3** of this rule part). This rule part is reasonable, taking into account the other measures listed above, because it balances the needs of the eligible individual and SSB’s need to administer the program easily, with the scarce resources available to fund the independent living program. Equally important, it is reasonable because the SSB Rule Advisory Committee supports the changes.

3325.0450 RECOVERY OF MONETARY ASSISTANCE OVERPAYMENTS

Subp. 2. Repayments. This subpart is amended by correcting an erroneous legal citation.

3325.0460 PURCHASE, TRANSFER, AND MAINTENANCE OF EQUIPMENT

SSB proposes to significantly amend this rule part by removing unmanageable and unnecessary requirements and by streamlining the purchase, transfer, and maintenance of equipment. These changes are necessary and reasonable for the reasons identified below. The SSB Rule Advisory Committee strongly supports these changes.

Subp. 1. Scope. This subpart is amended by adding “software” to the definition of “equipment” for the purposes of this rule part. This is necessary because eligible individuals and staff are presently uncertain if “equipment” includes “software.” Adding the term “software” is reasonable to clarify it is to be considered to be “equipment” under this rule part.

Subp. 2. Written lease agreement.

Subp. 3. Lease payments.

Subp. 4. Lease renewal.

Subp. 5. Total client financial obligation.

SSB proposes to repeal **Subparts 2 to 5**. These provisions are administratively burdensome and SSB has not enforced them for many years. Most eligible individuals are provided equipment costing more than \$300, which is the threshold for this rule part. Eligible individuals sign a Receipt of Property, but it does not include information identified in **Subp. 2**.

As of July, 2010, ninety-nine percent of SSB's eligible individuals were not subject to financial participation. There is no reason to believe the number of individuals exempt from financial participation has changed over the years. Virtually no eligible individuals are subject to the lease payments in **Subp. 3**. Leases are not completed consistent with **Subp. 2**, so **Subpart 4**, "lease renewal" is unnecessary. **Subpart 5, Total client financial obligation** is also unnecessary because so few eligible individuals are subject to financial participation. This repeal is reasonable because SSB does not have the capacity to perform these tasks and few benefits would result from their performance.

Subp. 6. Transfer of title. This subpart is amended by changing the policy regarding title to equipment. This policy change will make the process easier to manage, increase accountability, and increase acceptability to eligible individuals. Equipment titles will transfer to eligible individuals when SSB purchases equipment for the permanent use of eligible individuals. Former eligible individuals receive title to their permanent use equipment within one year after the effective date of this rule part. Upon title transfer to eligible individuals, SSB's administrative responsibilities for equipment cease. If equipment is purchased for trial purposes, SSB will retain title. These changes are reasonable because a large portion of purchased equipment is software, and the inherent use of software becomes so personalized to the eligible individual that it is not useable by others. Additionally, the world of technology changes frequently, requiring SSB to purchase the most current models on the market and not redistributing older, outdated models. The current rule requires SSB to maintain equipment years after purchase, and possibly, years after closing the record of services. This is an unreasonable financial and administrative burden.

Subp. 7. Lease extension in lieu of transfer. SSB proposes to repeal this subpart because, with the repeal of **Subparts 2 to 5**, resulting in no lease, and amendments to **Subp. 6**, resulting in a transfer of title when purchased for permanent use of the eligible individual, **Subp. 7** becomes a moot point. The repeal is reasonable because it removes an inapplicable provision.

Subp. 8. Maintenance responsibility. This subpart is amended by requiring SSB to purchase, if available, initial maintenance, service, or extended warranty agreements for equipment and the eligible individual to maintain and repair the equipment thereafter. This is reasonable because SSB cannot be responsible equipment it does not own, nor can it afford to do so for the thousands of eligible individuals, but does provide several years of maintenance, service, or extended warranty agreements for equipment to get the eligible individual started.

Subp. 9. Employer responsibility. This subpart is amended by indicating that financial participation requirements in part **3325.0440** apply to any purchase of equipment, including equipment purchased for use on the job. This change is reasonable because it clarifies that financial participation requirements continue to apply when equipment is purchased by SSB to be used at a job site. In actuality, this will only apply to relatively few eligible individuals. See data provided in SONAR **3325.0440, Subp. 6, Limitations on financial participation.**

Subp. 10. Recovery of equipment. This subpart is repealed. This repeal is necessary and reasonable because ownership rights will be transferred to the eligible individual after purchase, if

purchased for the eligible individual's permanent use. This is consistent with **Subp. 6**, negating any "recovery" rights by SSB.

3325.0470 STANDARDS FOR COMMUNITY REHABILITATION PROGRAMS

Subpart 1. Written operating agreement. This subpart is amended in two ways. First, language is added to acknowledge that SSB may engage a "sole proprietor" to provide rehabilitation services to eligible individuals. This sole proprietor must sign an agreement with SSB to provide services. This concept is supported and explained in rule definitions. See SONAR and **3325.0110, DEFINITIONS, Subp. 12a, Community rehabilitation program.** SSB currently has two dozen agreements with sole proprietors to provide rehabilitation services. Second, such sole proprietors are exempt from the standards in **Subp.3** and **Subp. 6D** for these reasons: (1) **Subpart 3** requires the governing bodies of community rehabilitation programs for the blind and visually impaired to include blind and visually impaired persons. It is reasonable to exclude sole proprietors from this requirement because they have no governing body as envisioned by this subpart; (2) **Subpart 6D** requires that eligible individuals must be provided the opportunity to interact with employed or otherwise independent blind persons who are not in need of rehabilitation services. While advisable, many sole proprietors providing rehabilitation services under an agreement with SSB do not have the resources to provide this opportunity in every case; and (3) sole proprietors provide services that are very narrow in nature and usually of short duration, as compared to the full range of rehabilitation services offered at a rehabilitation center over many months. Therefore, it is reasonable to exclude sole proprietors from this requirement.

Subp. 2. Applicable state and federal laws. This subpart is amended by adding the requirements of **Subp. 5, Protection of client records**, which is repealed. Both subparts pertain to "applicable state and federal laws." Combining these subparts removes an unnecessary rule part.

Subp. 3. Representation and employment of the blind. This subpart is amended by requiring community rehabilitation programs to document affirmative attempts to employ "blind persons with additional impairments such as combined vision and hearing loss," in addition to "blind persons." This requirement is reasonable because it is intended to highlight and promote employment of individuals with multiple disabilities, a group traditionally underrepresented in competitive employment. Additionally, the Commission of Deaf, Deafblind and Hard of Hearing Minnesotans recommends this amendment.

Subp. 5. Protection of client records. This subpart is repealed, as its requirements are being added to **Subp. 2, Applicable state and federal laws**. This is reasonable because both subparts pertain to do "applicable state and federal laws," and combining them removes an unnecessary rule part.

Subp. 6. Adjustment to blindness training services. This subpart is amended in several ways. **Item A** adds "activities" as a method "designed to help eligible individuals develop a positive attitude toward blindness." This is reasonable because it expands the opportunities to develop a positive attitude toward blindness and being both blind and deaf, if applicable. Since 1986, activities have proven to be a successful method of developing positive attitudes.

Item B is amended to be more precise in the applicability of certain low vision and adjustment to blindness references of part **3325.0420** to community rehabilitation programs. The requirements of **3325.0420, Subp. 5**, related to low vision services, are amended to exclude **Item 5C** (“SSB must not provide low vision services to an eligible individual who is likely to become legally blind in place of instruction in the use of alternative techniques necessary for achievement of the eligible individual’s employment outcome or independent living goal”-language as amended.). This is necessary and reasonable because **Item 5C** is a requirement of SSB, not a community rehabilitation program requirement. SSB and eligible individuals, together, are responsible to identify the services that are necessary and provided in a plan.

The requirements of **3325.0420, Subp. 8**, related to orientation and mobility, are amended to exclude **Item 8A**. This is reasonable because **Item 8A** (“SSB must provide outdoor cane travel instruction to an eligible individual who is legally blind unless..”-language as amended) is a requirement of SSB, not a requirement of community rehabilitation programs. SSB and eligible individuals, together, are responsible to identify the services that are necessary and provided as part of a plan.

Similarly, the requirements of **3325.0420, Subp. 11**, related to rehabilitation teaching, are amended to exclude **Item 11A**. This is reasonable because **3325.0420, Subp. 11A** (“SSB must provide an eligible individual with instruction leading to proficiency in braille unless the eligible individual can read print with enough proficiency to successfully complete the eligible individual’s plan unless the eligible individual has a medical condition which prevents the eligible individual from reading braille”- language as amended) is an SSB requirement, not a requirement of community rehabilitation programs. SSB and eligible individuals, together, are responsible to identify the services that are necessary and will be provided as part of a plan.

Item C is amended by requiring that deafblind persons, in addition to blind persons, be provided the opportunity to engage in a wide range of activities for the purpose of building self-confidence and overcoming doubts and fears concerning what they can do. This is reasonable because it identifies a subgroup of blind persons who have severe impairments and who are in need of such interaction to better prepare for employment. The Commission of Deaf, Deafblind, and Hard of Hearing Minnesotans recommended this amendment.

Items D is amended by requiring that deafblind persons be provided with the opportunity to interact with employed or otherwise independent deafblind persons who are not in need of rehabilitation services. This is reasonable because it identifies a subgroup of blind persons who have severe impairments and who are in need of such interaction to better prepare for employment. The Commission of Deaf, Deafblind, and Hard of Hearing Minnesotans recommended this amendment.

Item E is amended by replacing the terms “areas of cooking, shopping, financial matters, housekeeping, and upkeep of clothing” with “the activities of daily living and use of rehabilitation technology. “ “Activities of daily living” and “rehabilitation technology” are reasonable substitutes because they are defined terms and are more comprehensive in nature than those terms

they replace. See **3325.0110, DEFINITIONS, Subp. 1a, Activities of daily living** and **3325.0110, DEFINITIONS, Subp. 67a, Rehabilitation technology**.

Subp. 7. Progress reports. This subpart is amended by adding language that amends the timing of progress reports from “each month” to “timely...as required by SSB...” This requirement is necessary to assure that both SSB and the eligible individual have up to date information regarding the eligible individual’s progress. “Monthly” progress reports may be appropriate for eligible individuals attending a comprehensive, lengthy course of services at community rehabilitation programs, while not being appropriate for eligible individuals receiving a total of three sessions of rehabilitation teaching over a week’s time. In the latter case, a report due shortly thereafter is more timely and reasonable. SSB is responsible to identify the time requirement of a progress report in advance so that the community rehabilitation program can properly plan its work.

3325.0478 REVIEW AND MEDIATION OF DETERMINATIONS

This rule part is new, replacing and expanding upon **3325.0480, ADMINISTRATIVE REVIEW**, and **3325.0490, EVIDENTIARY HEARING**, which are repealed. The impetus for this overhaul includes changes to federal regulations governing the vocational rehabilitation program and SSB’s desire to make the review process as simple and understandable as possible. Too many people find the sections confusing. Staff, applicants and eligible individuals are unclear on the applicability and relationship of the processes. The new language includes many previous concepts which are still good policy. The new language is logically organized and less complex. Further, the new language makes clear the relationship and applicability of the parts and conforms to federal regulations governing the vocational rehabilitation program.

SSB has chosen to administer the same review and mediation processes for both the vocational rehabilitation and independent living programs. The original 1986 rule was based on this premise and no legislative action has occurred since that would alter this approach. See **Minnesota Statutes 248.07, Subd. 14a, Rules**, and **Subd. 15, Appeals from agency action**. These statutes, the federal regulations governing the vocational rehabilitation program, and certain elements of the 1986 rule related to reviews, provide the foundation, necessity and reasonableness of this rule part.

This rule part has been developed in consultation with the Client Assistance Program (established pursuant to **Code of Federal Regulations, title 34, section 370**), which is required by **Code of Federal Regulations, title 34, section 361.20**. One of CAP’s responsibilities is to assist appellants in reviews, if requested. CAP supports this rule part in whole.

Subpart 1. Written Request. This subpart identifies requirements for a request for review and mediation of determinations. Consistent with the **Code of Federal Regulations, title 34, section 361.57(a)**, an applicant, eligible individual, or representative, if applicable, who is dissatisfied with any determination made by SSB personnel that affects the provision of services, may request a timely review or mediation of that determination. The request must be in writing to the director, and must identify the disputed SSB determination. This is reasonable because it states the specific determination with which the appellant is dissatisfied, and starts a 60 day time period within which

SSB must hold an impartial hearing, unless both parties agree to a specific extension of time. See **Code of Federal Regulations, title 34, section 361.57(e)(1)**.

Since 1986, appellants have had 30 days within which to contact the director to request a review. The SSB Rule Advisory Committee heard persuasive testimony from CAP. One of CAP's responsibilities is to assist appellants in reviews, if requested. CAP's position is to increase the period of time within which to understand a decision and in which to determine whether an individual wishes to have a decision reviewed. An increased period of time also allows for more time for CAP involvement. This amendment increases to 60 calendar days after a determination, the time period in which an individual may request review or mediation of a decision with which they are dissatisfied. The increased time period is reasonable because it provides sufficient time for an applicant or eligible individual to evaluate any determination made by SSB, contact the Client Assistance Program if they choose, and file a request for review or mediation.

Finally, if the disputed SSB determination is a proposed change in an eligible individual's plan, the change must be delayed until completion of the review and mediation process. This is reasonable because it is required by federal regulations governing the vocational rehabilitation program. See **Code of Federal Regulations, title 34, section 361.57(b)(4)**.

Subp. 2. Review and mediation options. This subpart identifies requirements of notice, types of reviews and mediation, and the availability of CAP services. SSB must contact the appellant within five calendar days of a request for review and mediation, to inform the appellant of the review and mediation options available, and to provide a description available from and information on how to contact CAP. Years of experience have established that five calendar days is a reasonable period of time in which to contact an appellant. SSB gives high priority to determination reviews and mediation and acknowledges the relatively short period of time that governing federal regulations provide to hold an impartial hearing. Additionally, setting five calendar days in which to contact an appellant is consistent with state law that requires these rules "*...set standards for appeals filed under subdivision 15 and include specific requirements for timely responses by the agency.*" See **Minnesota Statutes 248.07, Subd. 14a. Rules**.

There are three review and mediation options: (1) informal review; (2) mediation; and (3) an impartial hearing. These options are reasonable because governing federal regulations allow SSB to have an "informal dispute resolution" (See **Code of Federal Regulations, title 34, section 361.57(c)**), require SSB to offer mediation (See **Code of Federal regulations, title 34, section 361.57(d)**), and also require an impartial due process hearing. See **Code of Federal Regulations, title 34, section 361.57(b)(1)(i) and 361.57(e)**. Appellants may choose one or more of these options for review. No matter which, or all, appellants choose, if the appellant remains dissatisfied, SSB must hold an impartial hearing within 60 calendar days of the request for review and mediation, unless both parties agree to a specific extension of time. See **Code of Federal Regulations, title 34, section 361.57(e)(1)**.

Subp. 3 Communication. This subpart identifies the communication requirements of SSB, a mediator, an impartial hearing officer, and the commissioner of employment and economic development during the review and mediation process. First, SSB and other state public bodies

must, if the appellant is disabled in communication, appoint an interpreter. This is necessary and reasonable because it is required by state law. See **Minnesota Statutes, sections 546.42 to 546.44.**

Second, review and mediation process information, decisions and reports, agreements, and any required supporting documentation must be provided to the appellant in writing. Providing documents in writing is a necessary and reasonable method of assuring that all parties have a concrete, reproducible record for scrutiny and reflection. These records will become the basis for any further action, if applicable. Further, written reports are required for mediation and impartial hearings pursuant to federal regulations governing the vocational rehabilitation program. See **Code of Federal Regulations, title 34, section 361.57 (d)(4) and 361.57(e)(3)(ii).**

Third, the documents must be provided in the native language of the appellant, supplemented as necessary by other appropriate modes of communication. Federal regulations governing the vocational rehabilitation program specifically identify this requirement during the development of the IPE (See **Code of Federal Regulations, title 34, section 361.45(c)**), at facilities and providers of services (See **Code of Federal Regulations, title 34, section 361.51(c)**), and in the process of an eligible individual making an informed choice (See **Code of Federal regulations, title 34, section 361.52(b)(1)**). While federal regulations governing the vocational rehabilitation program do not specifically identify this as a requirement for the review and mediation process, SSB believes the requirement to be essential for the appellant to be informed and fully able to participate in the review and mediation process. SSB has a history of providing documents in an accessible format to applicants and eligible individuals. Further, this is reasonable because public bodies, or individuals under contract as part of the review and mediation process and paid with public funds already have obligations to provide “effective communication” for individuals with a disability under the Americans with Disabilities Act (ADA). See **Code of Federal Regulations, title 28, section 35.160.**

Subp. 4. Informal review. This subpart identifies the requirements of an informal review. SSB has administered an informal administrative review process consistent with **3325.0480** since 1986. The process is now renamed “informal review.” While federal regulations governing the vocational rehabilitation program allow, but do not require an informal review process (See **Code of Federal Regulations, title 34, section 361.57(c)**), SSB proposes to maintain such a process because experience since 1986 has shown that an informal process resolves most of the requests for review and mediation of determinations. This saves valuable time for appellants and SSB, and conserves scarce resources that might be consumed with mediations or impartial hearings. This same federal regulation governing the vocational rehabilitation program is clear that an informal review must not be used to deny the right of an appellant to pursue mediation or an impartial hearing.

Item A clarifies that informal review is voluntary for both parties. This is a change from **3325.0480, Administrative review.** On rare occasions, SSB has been confronted with a request for informal review from an appellant who has had previous informal reviews and problems continue. These amendments allow SSB to hold an impartial hearing rather than to conduct another informal review. This approach to informal reviews is reasonable because it parallels the same requirements for mediation that are contained in federal regulations governing the vocational

rehabilitation program. See **Code of Federal Regulations, title 34, section 361.57(d)(2)(i)**. Further, the termination and pursuit of other processes provisions are reasonable because they are consistent with mediation provisions in **Code of Federal Regulations, title 34, section 361.56(d)(2)(ii)**.

Item B requires SSB to conduct an informal review by SSB supervisory staff not involved in the original determination. This continues a requirement from **3325.0480, Subp. 3, Review and redetermination**, which is repealed. This is reasonable because the SSB supervisory staff not involved in the original determination, bring an experienced, objective, and open mind to the informal review. Appellants are offered two types of informal reviews. **Subitem (1)** describes an informal review of written records only, and **Subitem (2)** describes an informal review consisting of written records and a review conference. These options continue the policy set forth in **3325.0480, Subp. 2, Review and redetermination**, and **Subp. 3, Review conference**, which are repealed. Over the years, appellants have chosen each of these, indicating to SSB that both remain viable and meaningful to appellants and are, therefore, reasonable to retain.

Item C identifies the timeliness, notice, and product requirements for SSB supervisory staff to consider when making a final decision regarding informal review. SSB reviewing supervisory staff are required to make a final decision, within ten calendar days following a request for an informal review, of written materials only, or within ten calendar days following the conclusion of an informal review conference, unless the parties agree to a specific extension of time. A timeliness requirement is necessary and reasonable because it is mandated by statute. See **Minnesota Statutes, section 248.07, Subd. 14a. Rules**. Based on experience administering informal reviews (“Administrative reviews”) since 1986, ten days is a reasonable period of time within which the reviewing supervisory staff can review written and oral testimony, make a decision, and properly transmit the decision to the appellant. Notifying appellants in writing by mail is reasonable because it is a generally accepted method to transmit decisions. As noted in **Subp. 2**, there is also a requirement that the decision be in the native language of the appellant, supplemented as necessary by other appropriate modes of communication, such as braille, or audio. The decision must contain the nature and basis of the decision, which is necessary and reasonable in order for the appellant to understand the factors determining the decision. The decision must contain additional review rights. This is reasonable so that appellants can understand available review options and make informed decisions.

Subp. 5. Mediation. This subpart clarifies the process, mediator, confidentiality, agreement and expense requirements. Mediation is not identified in current state rules applicable to SSB. Requiring a mediation process stems from changes in federal regulations governing the vocational rehabilitation program over a decade ago. These regulations clarify that mediation must not be used to deny the right of an appellant to pursue an impartial hearing. See **Code of Federal Regulations, title 34, section 361.57(d)(2)(ii)**.

Item A identifies participation as voluntary on the part of both parties. This is reasonable because it is required by federal regulations governing the vocational rehabilitation program. See **Code of Federal Regulations, title 34, section 361.57(d)(2)(i)**. Further, either party, or the mediator may terminate mediation at any time. In the event that mediation is terminated, the

appellant and SSB may pursue resolution through an impartial hearing. See **Code of Federal Regulations, title 34, section 361.57(d)(2)(ii)**.

Item B identifies the qualifications of the mediator and the selection process. These requirements are reasonable because they are required by federal regulations governing the vocational rehabilitation program. See **Code of Federal Regulations, title 34, section 361.57(d)(2)(iii)**. Mediation sessions must be held in a timely manner and at a location convenient to both parties. This requirement is reasonable because it is required by federal regulations governing the vocational rehabilitation program. See **Code of Federal Regulations, title 34, section 361.57(d)(2)(iv)**.

Item C identifies mediation confidentiality, agreement and expense requirements. Confidentiality requirements are reasonable because they are required by federal regulations governing the vocational rehabilitation program. See **Code of Federal Regulations, title 34, section 361.57(d)(3)**. The requirements related to an agreement are reasonable because they are required by federal regulations governing the vocational rehabilitation program. See **Code of Federal Regulations, title 34, section 361.57(d)(4)**. Finally, SSB must pay for the cost of mediation, but not for any costs related to representation of the appellant, consistent with federal regulations governing the vocational rehabilitation program. See **Code of Federal Regulations, title 34, section 361.57(d)(5)**.

Subp. 6. Impartial hearing. This subpart identifies the method for choosing an impartial hearing officer, the process for conducting the hearing, the decision requirements, and the process for review of an impartial hearing officer's decision.

Item A requires that an impartial hearing officer must be selected on a random basis from a list of qualified impartial hearing officers who have been jointly identified by SSB and the State Rehabilitation Council for the Blind. This process is necessary and reasonable because it is required by federal regulations governing the vocational rehabilitation program because SSB has a State Rehabilitation Council. See **Code of Federal Regulations, title 34, section 361.57(f)(1)(ii)**.

Item B requires that the hearing be conducted in accordance with Minnesota's contested case procedures and federal regulations governing the vocational rehabilitation program. The original 1986 rule only included reference to Minnesota law and rules related to contested case procedures. Those provisions are used throughout the state and remain relevant. Federal regulations governing the vocational rehabilitation program require that SSB "*must establish and implement formal review procedures...*" Minnesota's contested case procedures, and these rules serve to meet this federal requirement. See **Code of Federal Regulations, title 34, section 361.57(e)**. In addition, federal regulations governing the vocational rehabilitation program have changed. They now impose specific requirements on the impartial hearing process and therefore it is reasonable to reference and incorporate those requirements into these rules.

Item C requires the impartial hearing officer to provide to the parties a full written report of the findings and grounds for the decision within 30 calendar days of the completion of the

hearing. These requirements are reasonable because they are required by federal regulations governing the vocational rehabilitation program. See **Code of Federal Regulations, title 34, section 361.57(e)(3)(ii)**. **Item C** also states that the impartial hearing officer's decision is final, unless a review of the impartial hearing officer's decision is requested, which is reasonable because it is required by federal regulations governing the vocational rehabilitation program. See **Code of Federal Regulations, title 34, section 361.57(e)(4)**.

Item D offers an appellant a review of the impartial hearing officer's decision if they are dissatisfied. A review of the impartial hearing officer's decision is not required by governing federal regulations, but, if offered, SSB must establish procedures that meet specific requirements. See **Code of Federal Regulations, title 34, section 361.57(g)**. SSB did adopt this additional review mechanism years ago. While impartial hearings are rare, reviews of impartial hearing officer's decisions are even more rare. Still, SSB proposes to continue offering the appellant the option to request a review of an impartial hearing officer's decision out of concern for due process and consistency with past practice.

Item D identifies the procedural requirements if the appellant requests a review of the impartial hearing officer's decision. These procedural requirements are taken from the **Code of Federal Regulations, title 34, section 361.57(g)**.

Subitem D(1) provides a 20 calendar day period, after the mailing of the impartial hearing officer's decision to the appellant, within which to request a review. This is reasonable because it is required by federal regulations governing the vocational rehabilitation program. See **Code of Federal Regulation, title 34, section 34, section 361.57(g)(1)**. The review must be conducted by the commissioner of employment and economic development, and not be delegated to any employee of SSB. There are two options in federal regulations governing the vocational rehabilitation program regarding who must conduct a review of an impartial hearing officer's decision. Since Minnesota has both a "designated state agency" for vocational rehabilitation (employment and economic development) and a "designated state unit" (SSB), federal regulations governing the vocational rehabilitation program require the option of the chief official of the designated state agency, the commissioner of employment and economic development, to conduct the review of an impartial hearing officer's decision. See **Code of Federal Regulations, title 34, section 361.57(g)(2)(i)**. The commissioner may not delegate the making of the final decision to any employee of SSB. See **Code of Federal Regulations, title 34, section 361.57(g)(3)(iv)**.

Subitem D(2) allows both parties to submit additional evidence and information relevant to a final decision concerning the matter under review. This is reasonable because it is required by federal regulations governing the vocational rehabilitation program. See **Code of Federal Regulations, title 34, section 361.57(g)(3)(i)**.

Subitem D(3) does not allow the commissioner to overturn a decision, or any part of the decision, that supports the appellant unless there is "clear and convincing evidence" that the impartial hearing officer's decision is clearly erroneous, on the basis of being contrary to the approved state plan, federal law and regulations, or state rules and policies that are consistent with federal requirements. This provision is reasonable because it is required by federal regulations

governing the vocational rehabilitation program. See **Code of Federal Regulations, title 34, section 361.57(g)(3)(ii)**.

Subitem D(4) requires the commissioner to make an independent, final decision within 30 calendar days of the request for review, after reviewing the entire hearing record, and to provide the decision in writing, including a full report of the findings and the statutory, regulatory, or policy grounds for the decision to both parties. This provision is reasonable because it is required by federal regulations governing the vocational rehabilitation program. See **Code of Federal Regulations, title 34, section 361.57(g)(3)(iii)**.

Subitem D(5) states that the commissioner's decision is final unless either party disagrees and brings civil action, in which case the commissioner's decision must be implemented pending review by the court. This provision is reasonable because it is required by federal regulations governing the vocational rehabilitation program. See **Code of Federal Regulations, title 34, section 361.57(g)(4) and section 361.57(h)**.

Subitem D(6) informs the parties that if they are dissatisfied with the commissioner's decision, they may bring civil action. This provision is reasonable because it is required by federal regulations governing the vocational rehabilitation program. See **Code of Federal Regulations, title 34, section 361.57(i)**. The foregoing regulatory citation contains additional information regarding the civil action itself which is not replicated in these rule parts.

3325.0480 ADMINISTRATIVE REVIEW 3325.0490 EVIDENTIARY HEARING

SSB repeals these rule parts and replaces them with **3325.0478, REVIEW AND MEDIATION OF DETERMINATIONS**. The impetus for this overhaul includes changes in federal regulations governing the vocational rehabilitation program and SSB's desire to make the review process as simple and understandable as is possible. Too many people find the sections confusing. Staff and eligible individuals are unclear as to the applicability and relationship of the processes. Rule part 3325.0478 includes many concepts of the repealed rule parts which are still good policy. Rule part 3325.0478 is logically organized, and less complex due to collapsing common provisions into one subpart. Further, the new language makes the relationship and applicability of the parts clear and conforms to federal regulations governing the vocational rehabilitation program. For these reasons, repeal of these rule parts is reasonable.

LIST OF EXHIBITS

In support of the need for and reasonableness of the proposed rules, the Department anticipates that it will enter the following exhibits into the hearing record:

- Appendix 1-1991 Letter from Bruce D. Campbell, Administrative Law Judge, to R. Jane Brown, Commissioner
- Appendix 2-May 30, 1991 Rule Amendments Discussion
- Appendix 3-Additional Notice Plan

- Appendix 4-Letter from Eric L. Lipman, Administrative Law Judge.
- Appendix 5-SSB Mission/Philosophy, page 15 of State Services for the Blind-2009
Annual Report
- Appendix 6- United States Department of Education Policy Directive, RSA-PD-01-03,
January 17, 2001
- Appendix 7- Minnesota's Unified Plan for the Workforce Investment Act-Vocational
Rehabilitation/State Services for the Blind pp.14-17
- Appendix 8-UNITED STATES DEPARTMENT OF EDUCATION, FISCAL YEAR 2005
ANNUAL REPORT FOR INDEPENDENT LIVING SERVICES FOR OLDER
INDIVIDUALS WHO ARE BLIND
- Appendix 9- ED (RSA)-7-OB Form-Instructions, Expiration Date: May 31, 2011, pp.
13-14
- Appendix 10-Interagency Agreement Among The Minnesota Department of Employment
and Economic Development (DEED) Rehabilitation Services and State Services for the
Blind and The Minnesota Department of Education (MDE)
- Appendix 11-SSB and Department of Human Services Income Guidelines

CONCLUSION

Based on the foregoing, the proposed rules are both needed and reasonable.

January 6, 2011

Paul A. Moe
Acting Commissioner