

**Elected Committee of Blind Vendors' Statement**

before the  
North Carolina Rules Review Commission  
January 17, 2019

**1. 10A NCAC 63C .0203(c)(6)**

ECBV objects to the term “vending cash sales deposits receipts” as it is vague and ambiguous and not reasonably necessary to implement or interpret DHHS’s administration of the Business Enterprise Program in violation of N.C. Gen. Stat. 150B-21.9(a)(2) & (3). The facilities that comprise the Business Enterprise program include a variety of food service businesses, ranging from cafes to rest stop vending machines. A substantial portion of the income from these businesses comes from cash sales. Facility operators have been tracking these cash sales on a form that is provided to DHHS called a D-Sheet. There is now some concern and confusion on the part of the ECBV members as to what this rule, and a similar rule .0601(a)(8), now require the vendors to do with the cash from their sales. First, does this rule only apply to vending machines, or does it apply to all cash sales from any facility? Second, the ECBV members believe that cash sales are sufficiently accounted for in the D-Sheets that every operator must complete. Does this rule require operators to deposit all cash from its business into a bank account? Requiring operators to generate deposit receipts for all cash intake from a facility, which this rule seems to mandate, would create an undue burden on operators and would be duplicative.

**2. 10A NCAC 63C .0601(a)(8)**

Same comment as above.

**3. 10A NCAC 63C .0601(a)(8)**

ECBV objects to the term “business consultation” as being unclear and ambiguous and not reasonably necessary to implement or interpret DHHS’s administration of the Business Enterprise Program in violation of N.C. Gen. Stat. 150B-21.9(a)(2) & (3). This term was previously objected to by the ECBV during the RRC’s September meeting. The RRC agreed and objected to the language as being vague and ambiguous. The deficiencies in the rule with respect to the term “business consultation” have not been resolved.

The scope, purpose, and limits of a “business consultation” remain undefined in this rule or otherwise in the subchapter.

DHHS’s authority with respect to the Business Enterprises Program derives from N.C. Gen. Stat. § 111.27.1:

For the purpose of **assisting** blind and visually impaired persons to become self-supporting the Department of Health and Human Services may carry on activities to **promote** the rehabilitation and employment of the blind and visually impaired, including

in or the operation of various business enterprises suitable for the blind and visually impaired....Purchases of sales of merchandise or equipment...shall be **supervised** by the Department of Health and Human Services. Randolph-Sheppard vendors are **not** State employees....[they] are independent contractors.

As you can see, within the authorizing statute itself there are conflicting directives regarding the role of DHHS in administering the Business Enterprise Program. On the one hand, DHHS has a mandate to supervise central aspects of the Program's facilities, such as purchases and sales. On the other hand, operators are not employees of the State and are considered independent contractors. The terms "assisting" and "promote" in the statute suggest that DHHS is supposed to take a more supportive, not controlling, role in the operation of the facilities. Because of these conflicting directives, it is even more important that DHHS's rules are clear as to which directive it is executing.

The ECBV membership is concerned that a "business consultation," without any defined parameters, could be used as a pretext to initiate an enforcement action against a vendor. This concern is legitimate because, as written, there is an audit component to business consultations. If business consultations are intended to support business operations (i.e. provide constructive criticism and guidance), then the rules should be tailored to that intended purpose and operators should not be subject to enforcement during that process.

Additionally, there is concern that operators could be subject to enforcement if operators do not follow the guidance or advice that DHHS provides during a consultation. That execution of power by DHHS would violate operators' status as independent contractors. As written and without a clear definition for "business consultation," .0601 would allow this type of overreach.

#### **4. 10A NCAC 63C .0601(a)(9)**

ECBV objects to the term "consultation to support operations" on the same grounds as #3 above. Further, it is unclear whether a "consultation to support operations" is the same as a "business consultation." Regardless, the scope, purpose, and limits of a "consultation to support operations" is not defined.