

DEPARTMENT OF LABOR AND INDUSTRY
WORKERS' COMPENSATION DIVISION
REHABILITATION AND MEDICAL AFFAIRS UNIT

In the matter of the proposed
amendment to the Rules Relating
to the Rehabilitation of Persons
with Work-Related Injuries

**STATEMENT OF NEED
AND REASONABLENESS**

INTRODUCTION

As the result of legislative changes in 1979, provision of rehabilitation services to injured workers was largely shifted from the public sector vocational rehabilitation agency to private sector rehabilitation consultants. The original rules setting forth the standards and procedures for this provision of rehabilitation services to injured workers under Minnesota Statutes, section 176.102 were promulgated on January 21, 1980. Revision to the Rehabilitation Rules occurred in 1984 as a response to 1983 legislation. Another revision occurred in 1987 when the methods for establishing the educational and experiential requirements for qualified rehabilitation consultants were changed. Legislation enacted in 1987 affecting an injured employee's right to change qualified rehabilitation consultants gave the initial impetus to this rule-writing effort and the Department then undertook the first systematic review of the Rehabilitation Rules for purposes of clarifying procedures, expectations, and defining performance standards. A primary objective of this effort is to

make the rehabilitation system in Minnesota more accountable to employers and the injured employees who are served by the rehabilitation system.

OVERVIEW

Significant revisions are summarized below:

- **Expanded definitions:** A common detailed professional language to describe the rehabilitation process.
- **Rehabilitation referral procedures:** Responsibilities are set forth in a claim screening consultation procedure, a method of waiving rehabilitation services, and in an eligibility consultation process.
- **Rehabilitation plan:** Provides greater specificity in defining content, filing and approval requirements.
- **Change of qualified rehabilitation consultants:** Distinguishes employee's statutory choice of rehabilitation consultant from change situations by defining when change of qualified rehabilitation consultant is not deemed an exercise of choice.
- **Retraining and on-the-job training:** Details the reasons and requirements for retraining and on-the-job training programs.

Professional ethics for rehabilitation providers: Includes a detailed description of prohibited conduct including adversarial communications, impaired objectivity, and failure to perform professional rehabilitation services with reasonable skill.

CONTENT REVIEW

5220.0100 "Definitions." Many of the added definitions are necessary simply to have an adequate language describing the rehabilitation process. Other changes include terms which aid in the administration of rehabilitation. Terms defined because of their use in a rehabilitation professional vocabulary include the following: job analysis, job development, job modification, job placement, job seeking skills training, medical management, on-the-job training, transferable skills analysis, vocational evaluation, vocational rehabilitation, vocational testing, work adjustment, and work hardening.

Definitions added or changed which assist an administration include: assigned qualified rehabilitation consultant, department, employer, formal course of study, identifying information, insurer, qualified employee, qualified rehabilitation consultant, qualified rehabilitation consultant firm, registered rehabilitation vendor, rehabilitation consultation, rehabilitation plan, rehabilitation services, required progress record, required rehabilitation report, and review panel.

Further explanation of definitions added or changed follows:

Subp. 3. "Assigned qualified rehabilitation consultant." This subpart defines the operative term for the qualified rehabilitation consultant who has the statutory and rule authority to provide rehabilitation services to an injured worker.

Subp. 4. "Commissioner." This subpart simply states that the term "commissioner" as used in the rules refers to the commissioner of the Department of Labor and Industry.

Subp. 5. "Department." This subpart simply clarifies that the term "department" as used in the rules means the Department of Labor and Industry.

Subp. 9. "Employer." The revised definition restricts the usage of the term "employer" to the predominant meaning in the statute, namely the employer at the time of injury of a qualified employee. Formerly, in these rules "employer" was an inclusive term meaning both the pre-injury employer and the insurer. The usage of this term in the statute and Workers' Compensation Rules of Practice is adopted as applicable to these rules as well.

Subp. 10. "Formal course of study." The term "formal course of study"

is added to provide a specific criteria for the term as it is used in subp. 32 of this part, the definition of retraining plan.

Subp. 12. "Identifying information." This subpart defines the information needed by the Department to administer the reporting of rehabilitation services. This specificity of common data elements will permit systematic analysis and assessment of rehabilitation services.

Subp. 12a. "Insurer." This subpart, consistent with subp. 5 and subp. 12 is the operative term for the party responsible for payment and administration of an injured worker's compensation claim. The usage of this term in the statute and Workers' Compensation Rules is adopted as applicable for these rules as well.

Subp. 13. "Job analysis." This subpart provides a definition of the term "job analysis" consistent with its usage in the rehabilitation profession.

Subp. 16. "Job development." This subpart provides a definition of the term "job development" consistent with its usage in the rehabilitation profession.

Subp. 17. "Job modification." This subpart provides a definition of the term "job modification" consistent with its usage in the rehabilitation

profession.

Subp. 18. "Job placement." This subpart provides a definition of the term "job placement" consistent with its usage in the rehabilitation profession.

Subp. 19. "Job seeking skills training." This subpart provides a definition of the term "job seeking skills training" consistent with its usage in the rehabilitation profession.

Subp. 20. "Medical management." This subpart provides a definition of "medical management" in an appropriate return to work context. The purpose of this definition is characterize the nature of medical management activities that are appropriately a part of a vocational rehabilitation process.

Subp. 21. "On-the-job training." This subpart provides a definition of the term "on-the-job training" consistent with its usage in the rehabilitation profession.

Subp. 22. "Qualified employee." This subpart sets forth the statutory understanding of eligibility for rehabilitation services. In this revision the language of B is changed from "can reasonably be expected to

benefit from rehabilitation services which would significantly reduce or eliminate the decrease in employability" to "can reasonably be expected to return to suitable gainful employment through the provision of rehabilitation services." This change in language replaces awkward language with a clear statement of purpose and defines commissioner discretion consistent with Minnesota Statutes, section 176.102, subd. 4d.

Subp. 23. "Qualified rehabilitation consultant." This subpart is changed to include the term "registered" as the operative term for persons who are approved by the commissioner to provide rehabilitation services to an injured worker under Minnesota Statutes, section 176.102. Additionally, the definition includes the provision of an eligibility consultation which is a new service defined in subpart 29 of this part, rehabilitation services.

Subp. 24. "Qualified rehabilitation consultant firm." This subpart adds "rehabilitation services" to the statement of what may be provided by a qualified rehabilitation consultant firm.

Subp. 25. "Registered rehabilitation provider." This subpart defines one of the varieties of rehabilitation provider listed in subpart 28 rehabilitation provider, formerly not defined by rule.

Subp. 26. "Rehabilitation consultation." This subpart defines the rehabilitation consultation including the claims screening consultation and the eligibility consultation defined further in parts 5220.0110 to 5220.0130 and consistent with Minnesota Statutes, section 176.102, subd. 4.

Subp. 27. "Rehabilitation plan." This subpart includes new language focusing the rehabilitation process more specifically on the vocational goal and the specific services by which an injured worker will be returned to suitable gainful employment.

Subp. 29. "Rehabilitation services." This subpart is revised to include a more comprehensive list of the services which are appropriately provided by rehabilitation providers to injured workers. Vocational evaluation, labor market survey, vocational testing, transferable skills analysis, and work adjustment were not included in the former rehabilitation services definition. Additionally, the eligibility consultation defined in subpart 26 of this part and in 5220.0130 is also added to the definition.

Subp. 30. "Required Progress Record." This subpart defines the specific requirements of the documents which must be maintained as a case record by the rehabilitation provider providing rehabilitation

services to an injured worker.

Subp. 31. "Required rehabilitation report." This subpart defines the specific documents which must be submitted to the commissioner whenever a rehabilitation plan is initiated, proposed to be amended, suspended or closed, or when a change of assigned qualified rehabilitation consultant occurs on a case.

Subp. 32. "Retraining plan." This subpart provides an operative understanding of "retraining plan" consistent with professional rehabilitation practices and the workers' compensation system.

Subp. 33. "Review panel." This subpart is revised to clarify that the reference is to the rehabilitation review panel created by Minnesota Statutes, section 176.102, subd. 3.

Subp. 35. "Transferable skills analysis." This subpart provides a definition of the term "transferable skills analysis" consistent with its usage in the rehabilitation profession.

Subp. 36. "Vocational evaluation." This subpart provides a definition of the term "vocational evaluation" consistent with its usage in the rehabilitation profession.

Subp. 37. "Vocational rehabilitation." This subpart provides a definition of the term "vocational rehabilitation" consistent with its usage in the workers' compensation context.

Subp. 38. "Vocational testing." This subpart provides a definition of the term "vocational testing" consistent with its usage in the rehabilitation profession.

Subp. 39. "Work adjustment." This subpart provides a definition of the term "work adjustment" consistent with its usage in the rehabilitation profession.

Subp. 40. "Work hardening." This subpart provides a definition of the term "work hardening" consistent with its usage in the rehabilitation profession.

5220.0105 Incorporation by Reference. The authoritative references for describing a vocational history and a vocational goal or for analyzing jobs under the rehabilitation plan in 5220.0410, are the Dictionary of Occupational Titles and the Guide to Job Analysis. These are standard, well accepted resources for defining and analyzing jobs in the rehabilitation profession. Their incorporation is necessary for a common method of describing vocational goals and outcomes. The

National Commission on Accreditation of Rehabilitation Facilities (CARF) is a unique national organization that evaluates and registers qualifying facilities providing rehabilitation services. Under 5220.0410, subp. 9, Administration of the Plan, CARF accredited facilities are permitted to provide job placement services to injured workers under a rehabilitation plan. Thus, the Commission on Accreditation of Rehabilitation Facilities (CARF) Directory of Accredited Organizations Serving People with Disabilities and its Standards Manual for Organizations Serving People with Disabilities, 1991 is incorporated by reference.

5220.0110-0130

Rehabilitation consultation: Specific authority for the commissioner to amend the rules on rehabilitation consultation is set out at Minnesota Statutes, section 176.83, subd. 2. The process for referring an injured employee to rehabilitation is set forth in 5220.0110 "Claim Screening Consultation", 5220.0120 "Waiver of Eligibility Consultation and Rehabilitation Services", and 5220.0130 "Eligibility Consultation" and described below:

5220.0110

"Rehabilitation Consultation; Claim Screening Consultation" defines the responsibilities of an insurer to an injured employee who has 30 days of lost work time due to a back injury or 60 days of lost work time due to other injuries under Minnesota Statutes, section 176.102, subd. 4. The purpose is to identify a clear decision point and decision

criteria for referral of the employee to a qualified rehabilitation consultant for an "eligibility consultation", or, in the case of an employee able to return to work without formal assistance to request a "waiver of eligibility consultation and rehabilitation services." Although the statute at Minnesota Statutes, section 176.102, subd. 4(b) and (d) allows waiver of consultation or services at the commissioner's discretion, and there has been an administrative procedure for waiving rehabilitation, constituents have complained that waivers of rehabilitation are underutilized because of the complications involved in the administrative procedure and the rules describing it in the now deleted section 5220.0210, Work Status Report.

5220.0120 **"Waiver of Eligibility Consultation and Rehabilitation Services."** The statute provides for a 30/60 day lost time period before the consideration of rehabilitation services in a consultation. At the same time, the inclusion of authority to waive rehabilitation at Minnesota Statutes, section 176.102, subd. 4 (b) and (d) indicates expectation that judgment be made on the basis of an injured employee's individual circumstances as to whether rehabilitation services are needed and provided. The intent of 5220.0110 through 5220.0130 is to provide an accountable structure for this analysis, decision-making, and referral process. The waiver of rehabilitation is intended for use by employers and insurers where, based on their knowledge of an employee's prospects for returning to the pre-injury job, the time line for referral

to rehabilitation may be delayed for an additional 60 days by requesting a waiver of rehabilitation. The waiver is designed for those injured employees who are expected to return to their pre-injury job without the intervention of rehabilitation services. If the employee has not returned to work within this extended time frame, the insurer will have to seek a renewal of the waiver and provide additional information or refer the injured employee to a qualified rehabilitation consultant for an "eligibility consultation."

5220.0130 **"Rehabilitation Consultation; Eligibility Consultation."** The eligibility consultation is intended to focus the question of the employee's need for rehabilitation services and the specific potential to benefit from rehabilitation services. With the historic 30/60 day mandatory consultation, a critique of constituents has been that every time an employee is referred to rehabilitation, rehabilitation services always commence and are provided. The eligibility consultation provides a structured analysis of whether the employee is reasonably expected to return to suitable gainful employment and requires the qualified rehabilitation consultant to define why the employee should receive rehabilitation services or why rehabilitation services are not required.

5220.0410 **"Rehabilitation Plan."** This part provides greater detail about the content and use of this key document in the rehabilitation process.

Subp. 1. "Purpose." This subpart sets forth a statement of purpose for the rehabilitation plan: "To communicate to all interested parties the vocational goal, the rehabilitation services, and the projected amounts of time and money that will be needed to achieve the vocational goal."

Subp. 2 "Requirements." This subpart details the information required on the rehabilitation plan. In subp. 2G a 21 day presumption of approval is introduced to administratively assist the process of plan review discussion and modification by the parties. At present the Department has an administrative problem created when parties who receive a rehabilitation plan fail to act on it promptly, delaying the rehabilitation process.

Subp. 3. "Process." This subpart describes the responsibility of the qualified rehabilitation consultant to prepare a rehabilitation plan for presentation to the parties within 60 days of the first in-person contact with the employee.

Subp. 4. "Party's response." This subpart sets forth the responsibility of the parties to respond to the rehabilitation plan after it is presented by the qualified rehabilitation consultant, thereby keeping rehabilitation moving.

Subp. 5. "Filing the plan." This subpart sets forth the time frame for

filing a plan with the commissioner. Under the current rules, the qualified rehabilitation consultation has 30 days from the first inperson contact. A more thorough assessment, allowed by a longer period (up to 90 days) would benefit rehabilitation objectives. This revision extends the number of days for filing the plan.

Subp. 6. "Plan approval." This subpart sets forth the standards for rehabilitation plan approval, including presumption of agreement mentioned in subp. 2: "If a party fails to make a response to the proposed plan within the 21 days specified in subp. 4, item B, it shall be presumed that the party is in substantial agreement with the plan's vocational objective and the services that are proposed. In this event the plan, with evidence of the date received by all parties, shall be filed with the Department by the assigned qualified rehabilitation consultant and, upon receipt, the plan will be deemed approved. A party's failure to sign a plan shall not constitute a waiver of any right to subsequently dispute the plan or dispute the payment of rehabilitation fees relative to the plan." The purpose of this presumption of approval is to prevent delays of the rehabilitation process.

Subp. 7. "Communication with treating doctor." This subpart defines the expectation that with a properly executed consent document, the qualified rehabilitation consultant shall provide a copy of the

rehabilitation plan to the employee's treating doctor to inform and assist the health care provider's participation in the vocational rehabilitation process.

Subp. 8. "Adherence to plan." This subpart states that services provided by the assigned qualified rehabilitation consultant or registered rehabilitation vendor must be provided according to the written rehabilitation plan so that services are consistent with those planned and anticipated by the parties.

Subp. 9. "Administration of the plan." This subpart clarifies that all rehabilitation services provided pursuant to Minnesota Workers' Compensation Law be provided exclusively by a person or business entity registered by the commissioner. The assigned qualified rehabilitation consultant's responsibility to monitor services provided by the registered rehabilitation vendor is described. Finally, to insure quality and accountability, the provision of job placement services is limited to those persons registered as a rehabilitation vendor or by those facilities accredited by the National Commission on Accreditation of Rehabilitation Facilities.

5220.0510 "Plan Amendment and Closure." This part is needed to describe the responsibilities of the qualified rehabilitation consultant and the parties when rehabilitation plans are amended or closed.

Subp. 1. "Reasons for amendment." The primary change in this subpart is to clarify why rehabilitation plans should be amended or closed. Beyond the statement of purpose, "Whenever circumstances indicate that the rehabilitation plan objectives are not likely to be achieved, proposals for plan amendment may be considered by the parties", greater specificity is achieved in A through E, concepts formerly included in 5220.0500 A through D. These are revised to use more objective, functional language understood in the rehabilitation community. For example, "The employee is not participating effectively in the implementation of the plan" is used in place of the more subjective phrase, "The employee is not cooperating with the plan."

Additionally, a proviso is added in item D to bring greater accountability by including as reasons for plan amendment both rehabilitation costs and time duration that exceed the original rehabilitation plan estimate.

Subp. 2. "Procedure and responsibilities." This subpart clarifies responsibilities of the qualified rehabilitation consultant in the plan amendment process. While parties other than the qualified rehabilitation consultant may propose amendments, it is the responsibility of the assigned qualified rehabilitation consultant to facilitate discussion of proposed amendments and report those agreed

upon to the commissioner. If there is disagreement that parties are unable to resolve privately, the procedure for requesting the amendment and resolving the dispute is defined through a cross-reference to subp. 8 which describes the dispute resolution options.

Subp. 3. "Requirements." This subpart defines the specific information to be included in a rehabilitation plan amendment. Information listed from A to H is specified to clarify responsibilities and to provide information to the Department and other parties so that the amendment can be understood and evaluated at the time it is proposed.

Subp. 4. "Amendment by commissioner." This clarifies to all parties the statutory authority of the commissioner to amend the plan under Minnesota Statutes, sections 176.102 and 176.106.

Subp. 5. "Request for closure before plan completion." Formerly, 5220.0600, "Completion of Plan," this part of the rule was entirely lacking in specificity of detail or direction to the parties. As a result, there has been confusion about the reasons for filing a rehabilitation plan closure form. This subpart now lists the specific reasons for requesting closure of the rehabilitation plan when rehabilitation goals have not been reached.

Subp. 6. "Commissioner's authority to initiate closure." This subpart describes the commissioner's authority to initiate an order of closure of rehabilitation services for good cause after notice to the parties of the proposed closure and after an opportunity for interested parties to submit information.

Subp. 7. "Closure report by the assigned qualified rehabilitation consultant." This new subpart describes the expectations of a qualified rehabilitation consultant for closing an employee's rehabilitation services when the plan is completed and when closure of rehabilitation services is not disputed. Due to lack of specificity in the previous rule, there was often confusion by parties about whether rehabilitation closure procedures should be initiated when rehabilitation services were in dispute. Information to be included with the closure report is defined with greater clarity. The rule clarifies that rehabilitation services should not be closed when a party disagrees with closure. This information will permit the Department to assess the overall effectiveness of the rehabilitation services provided.

Subp. 8. "Disputes." As indicated earlier, this subpart provides direction for parties who have a dispute regarding either amendment or closure and cross-references part 5220.0950 of this rule which defines the dispute resolution process in more detail.

5220.0710 "Employee Choice of Qualified Rehabilitation Consultant; Change of Qualified Rehabilitation Consultant." Changes to the workers' compensation statute by the 1987 legislature necessitated revision in what was formerly 5220.0700, "Change of Consultant/Vendor," and this new section brings Department rules into conformity with the 1987 statutory changes. Those changes set forth a standard for the employee's right to change qualified rehabilitation consultants.

Subp. 1. "Definition." The definition for "assigned qualified rehabilitation consultant" is integral to the process of choice and identifying who may legitimately work with an injured employee on the rehabilitation plan. This definition, through its listing of options under A through C, refers both to the administrative action of an insurer assigning a qualified rehabilitation consultant to work with an injured employee as well as to an employee's right to exercise choice of qualified rehabilitation consultants.

Subp. 2. "Employee right to choose." This subpart explains procedurally the statutory right under Minnesota Statutes, section 176.102, subd. 4 for an employee to choose rehabilitation consultants: The employee may select a qualified rehabilitation consultant before there is a referral by the insurer or after the employee has been referred to a qualified rehabilitation consultant by the insurer. The injured employee may exercise the right to change rehabilitation

consultants once in the first 60 days following the first in-person contact with the insurer referred qualified rehabilitation consultant. There is another opportunity for the employee to change rehabilitation consultants after the first 60 day period after the first inperson contact with the assigned qualified rehabilitation consultant has passed.

Subp. 3. "Documentation." This subpart requires the new assigned qualified rehabilitation consultant to notify the commissioner and other parties that there has been a change in qualified rehabilitation consultants and specifies the information to be included with that notification so that all may know who is responsible for qualified rehabilitation consultation functions.

Subp. 4. "Dispute resolution." This subpart describes the administrative procedure after the employee has exhausted the change options described in subp. 2. This section acknowledges that parties may at any time agree to a change and select a new rehabilitation consultant and report that to the Department. However, if a dispute about the change arises, this subpart sets forth the standard for determination of such disputes, directing that the determination be made according to the best interest of the parties consistent with Minnesota Statutes, section 176.102, subd. 1 which describes the purpose of rehabilitation.

Subp. 5. "Penalty." This is a new subpart is intended to prevent delaying the rehabilitation process by frivolous objection to employee's exercise of statutory choice.

Subp. 6. "Employee residing or moving out of Minnesota." This subpart describes the options applicable to injured employees receiving rehabilitation services who either reside outside of Minnesota or move out of Minnesota. It includes the proviso that services may be provided by a rehabilitation professional who is not registered in Minnesota but requires that a Minnesota assigned qualified rehabilitation consultant shall monitor that provision of those services to take reasonable care that the services are rendered according to Minnesota Workers' Compensation Statute and Rules. This subpart also permits a rehabilitation provider registered in Minnesota to furnish services to a qualified employee living in a border area of another state.

Subp. 7. "Change of consultant not an exercise of choice by employee." This subpart distinguishes the concept of "change" of rehabilitation consultant from "choice" of rehabilitation consultant. There are circumstances such as an assigned qualified rehabilitation consultant leaving a practice or being absent because of an extended illness. Such circumstances require that another qualified rehabilitation consultant assume those duties but should this necessity not exhaust the statutory

choice options for the injured employee. At the same time, this subpart is cross-referenced to subp. 4 for clarification in situations where disputes about change of rehabilitation consultants need to be resolved.

5220.0750 **"Retraining."** This part of the rule replaces a brief and inadequate paragraph on retraining in the old rules at 5220.1000 which addressed only the concept of additional compensation for retraining. This expanded section defines the purpose, criteria, and procedural requirements for retraining, more clearly distinguishing retraining from other forms of rehabilitation planning.

Subp. 1. **"Purpose."** The purpose statement indicates that retraining is to return the employee to suitable gainful employment through a formal course of study. A formal course of study is defined in Definitions 5220.0100 under subp. 10 and gives specificity to the type of programs acceptable as training. "A formal course of study" means a program described by a published syllabus with established time parameters for completion which results in a diploma or other certification that is accepted as a credential of basic competence in a vocation. Additionally, the purpose statement explains retraining's relationship to other rehabilitation options; that is, retraining is given equal consideration with other rehabilitation services but proposed for approval only if other considered services are not likely to lead to

suitable gainful employment.

Subp. 2. "Plan submission." This subpart lists the specific information required by the Commissioner when a plan for retraining is proposed for approval by the commissioner. The specificity of the information required will permit all parties to understand and evaluate a proposed retraining plan including the specific costs and probable outcomes of the retraining.

Subp. 3. "Amendment." This subpart retains and relocates a concept formerly located in the last paragraph of 5220.0500 that permits an employee to change a retraining plan if the employee believes that the occupation which is the goal of retraining is not suitable and permits a 90 day time frame for this type of amendment. Other amendments to the plan are cross-referenced to the new section of the rules dealing with amendment to the rehabilitation plan in part 5220.0510.

Subp. 4. "Compensation." Minnesota Statutes, section 176.102, subd. 11 describes the process whereby an employee may petition the commissioner or compensation judge for additional compensation, not to exceed 25% of the compensation otherwise payable during retraining. Heretofore, criteria or reasons for permitting the additional 25% have not been defined. This subpart proposes broad criteria for this judgment: "If the employee will incur an unusual or unique

circumstance during the retraining period that would otherwise reduce the likelihood that the training plan will be successfully completed."

Subp. 5. "Retraining plan approval." This subpart defines the administrative procedure that the commissioner uses in reviewing retraining plans for approval.

Subp. 6. "Disputes." This subpart describes the procedure for handling disputes about a retraining plan, namely that any party may file a rehabilitation request for assistance according to Minnesota Statutes, Chapter 176 or through the dispute resolution procedures described in 5220.0950, Disputes.

5220.0850 "On-The-Job Training." The previous rehabilitation rules simply did not address standards or procedures for on-the-job training. This new part defines the purpose, procedural requirements and plan approval process for on-the-job training.

Subp. 1. "Objective of on-the-job training." This subpart defines the primary objective of on-the-job training as gainful employment with the on-the-job training employer that is likely to restore the employee as close as possible to pre-injury economic status.

Subp. 2. "Plan submission." This subpart details the information which

must be presented on a form prescribed by the commissioner for approval of an on-the-job training proposal.

Subp. 3. "Duration of the plan." This subpart sets a six month parameter for on-the-job training plans in general but permits training which will exceed six months if such training would significantly increase the likelihood that the employee would recover pre-injury economic status.

Subp. 4. "On-the-job training plan approval." This subpart sets a 30 day period following submission to the Department for plan review and approval including the notification of the parties.

Subp. 5. "Disputes." This subpart provides direction for parties requesting a resolution of a dispute about on-the-job training and cross-references to part 5220.0950, "Disputes."

5220.0950 "Disputes." This part replaces 5220.0800 in the previous rehabilitation rules. This part serves as a comprehensive description of the dispute resolution possibilities present within the workers' compensation system relative to disputes about rehabilitation services.

Subp. 1. "Request for assistance." This subpart defines the procedure whereby a party may request assistance with a dispute about

entitlement to rehabilitation services, the appropriateness of a proposed plan, or any other dispute about rehabilitation. Under this subpart, items A through F define the information to be included on a form prescribed by the commissioner for the resolution of disputes.

Subp. 2. "Action by commissioner." This subpart defines the commissioner's options in handling a dispute by referring it to the appropriate dispute resolution forum, whether a compensation judge or an administrative conference. It also permits the commissioner to request that parties meet and confer informally before a conference, and to order reasonable medical and rehabilitation evaluations at the expense of an employer. Finally, this subpart clarifies that no determination will be made by the commissioner with respect to rehabilitation entitlement if primary liability for the workers' compensation injury has been denied by the employer/insurer.

Subp. 3. "Commissioner discretion to initiate dispute resolution." This subpart defines the commissioner's ability to intervene in disputes and to identify such issues through the commissioner's responsibility for monitoring and oversight of rehabilitation services.

Subp. 4. "Formal hearing." This subpart states the right of a party who disagrees with a decision of the commissioner to request a formal hearing.

5220.1010 **"Request for a Formal Hearing."** This part sets forth the procedure and time frame for parties who wish to request a formal hearing to appeal a decision of the commissioner.

5220.1100 **"Legal Representation."** This part is modified to clarify that the standard obligations of filing Notice of Representation (Minn. Rules, part 1415.0800) are applicable where there is representation in a rehabilitation matter only to the extent they have not already been accomplished. This part further indicates that hereafter the attorney will receive notice as provided in part 5220.2890, which sets forth the procedure for serving documents in workers' compensation matters and will receive rehabilitation reports as provided in these rehabilitation rules. Finally, this part is amended to reflect the decisions in the cases of Heaton v. J. E. Fryer & Co., 36 W.C.D., 316 (1983) and Weisser v. Country Club Markets, 39 W.C.D. 282, 397 N.W.2d 891 (1987) concerning attorney fees in these matters.

5220.1200 **"Rehabilitation Services; Settlement Agreements."** This part sets forth that an employee's right to rehabilitation services shall not be subject to compromise and shall not be convertible into cash or other benefits by settlement and release agreement or otherwise. However, when a good faith dispute exists, the possible right to rehabilitation services may be converted into cash by settlement agreement. In any event, any settlement agreement purporting to compromise all rehabilitation

services must be approved by the commissioner, a compensation judge, or the Workers' Compensation Court of Appeals.

5220.1250 "Qualified Rehabilitation Consultant and Registered Rehabilitation Vendor." The language in this part was formerly in part 5220.1300, which is being repealed. The change in this part incorporates the new definition of "registered rehabilitation vendor."

The deleted part 5220.1300, subp. 1, Provision of Services is now addressed in part 5220.0110 Claim Screening Consultation Report; part 5220.0120 Waiver of Eligibility Consultation and Rehabilitation Services; and part 5220.0130 Rehabilitation Consultation; Eligibility Consultation. Additionally, part 5220.0410 Rehabilitation Plan, part 5220.1800 Standards of Performance, and part 5220.1801, Professional Conduct addresses issues pertinent to the provision of rehabilitation services. Subpart 2, Delivery of Services of deleted part 5220.1300 is now addressed by part 5220.0410, subp. 9 Administration of Plan. Deleted part 5220.1300, subp. 4 Dispute Over Charges, is now addressed in 5220.1900, subp. 2 Reasonable and Necessary Services and subp. 8, Disputes. Deleted part 5220.1300, subp. 5 Reports, is now addressed in 5220.1803, subp. 5 Reporting Requirements. Deleted part 5220.1300, subp. 6 Following the Plan, is now addressed in 5220.0410, subp. 8, Adherence to Plan. Deleted part 5220.1300, subp. 7, Monitoring Vendor Performance, is now addressed in part 5220.1500,

subp. 5; part 5220.1800, Standards of Performance; and part 5220.1900, subp. 1. Deleted part 5220.1300, subp. 8, Employee Moves to Another State, is now addressed in 5220.0710, subp. 5.

5220.1400 "Qualifying Criteria for Rehabilitation Consultant." This part describes the qualifying criteria for registration as a qualified rehabilitation consultant.

Subp. 2. "Certification and education." This subpart takes out the words "affiliated/independent" because "qualified rehabilitation consultant affiliated" and "qualified rehabilitation consultant independent" were taken out of the definitions. The use of the terms "affiliated" or "independent" in the definition of qualified rehabilitation consultant in the former rules made a distinction in the nature of the entity employing the qualified rehabilitation consultant. "Affiliated" qualified rehabilitation consultants were employed by employers or insurers and "independent" qualified rehabilitation consultants were employed by qualified rehabilitation consultant firms. Administratively, the only difference between these types of qualified rehabilitation consultants was in the restrictions on the rehabilitation claims that could be handled by a qualified rehabilitation consultant working for an employer or insurer. That restriction is contained in subpart 5 of this part.

This subpart also clarifies that a candidate for registration as a

qualified rehabilitation consultant intern need not possess all of the credentials in the rule, only one of the credentials.

Subp. 2b. This language was removed because licensure as a nurse is not necessary for a person to perform qualified rehabilitation consultant work. Also, the certifying body (Association of Rehabilitation Nurses) requires a current RN license as one of their eligibility requirements. It is not necessary for the Department to duplicate this.

The changes in the remaining paragraphs of this subpart are necessary in order to clarify that this language was effective with the latest rule change, June 15, 1987.

This subpart also removes the requirement that qualified rehabilitation consultants advise the Department, on their next annual application for renewal of registration, of which certifying body they are selecting. All persons who were registered qualified rehabilitation consultants on the effective date of the latest rule change (June 15, 1987) have so advised the Department of which certifying body they have selected.

Subp. 3. "Qualified rehabilitation consultant intern." This subpart includes the added requirement (moved from Minn. Rules, pt. 5220.1500) that an intern must complete an introductory training

session sponsored by the Department.

The language stricken here, that an intern must work for at least one year as a qualified rehabilitation consultant/intern, was moved to Minn. Rules, pt 5220.1400, subp. 4.

The added language that an intern shall not be a solo practitioner merely clarifies the existing requirement in this rule that an individual must have completed an internship under the direct supervision of a registered full status qualified rehabilitation consultant before beginning unsupervised work with injured workers.

The added language that the qualified rehabilitation consultant intern's supervisor need not be located in the same office as the intern is necessary because the majority of qualified rehabilitation consultants' work is done in the community rather than at their office location. A qualified rehabilitation consultant supervisor may supervise more than one intern, and these interns may be at different office locations.

The language describing the process for completion of internship, deleted at the end of the paragraph, was moved to subp. 4, "Completion of internship."

The added language in the next paragraph is necessary to clarify the

statutory intent of Minnesota Statutes, section 176.102, subd. 3 and 3a, regarding the discipline of qualified rehabilitation consultants. The language added clarifies the commissioner's statutory discretion in registering qualified rehabilitation consultants and states that the commissioner may deny full status (completion of internship) to a qualified rehabilitation consultant/intern if there are substantiated complaints about professional behavior.

The word "affiliated", as it refers to qualified rehabilitation consultants, is removed in the next paragraph because it was removed from the definitions. The added language is necessary to clarify that an intern must obtain prior written approval of the commissioner in order to temporarily sign as a full qualified rehabilitation consultant if the supervising qualified rehabilitation consultant leaves the firm and there is no other person to supervise the intern. The added language also clarifies that the commissioner will determine the length of time allowed because the word "temporary" was too ambiguous.

The language added about monitoring progress toward certification is necessary in order to clarify that the intern's supervisor is also responsible for monitoring the intern's obligation under the rules to obtain certification within two years or less.

Subp. 4. "Completion of internship." The added language at the beginning of the subpart was moved from subp. 3 because it more logically belongs in the subpart dealing with completion of internship.

The deleted language removes the requirement that a qualified rehabilitation consultant can obtain the year's experience only by working full time. Many people in today's work world want to work part time, and a person may obtain the requisite experience by working part time and prorating it based on the added language defining full time employment. Thus, a qualified rehabilitation consultant/intern working half time, for example, may complete the experience requirements by working two years at half time instead of one year working full time.

The last sentence added to the paragraph was moved from subp. 3 because it more logically belongs in the subpart with completion of internship.

The deleted language about signed statements by previous employers as supporting documentation of experience is no longer necessary. When the rules named a list of degrees which were the qualifying eligibility criteria for registration, the rules also required one or two years of prior experience depending on whether the applicant possessed a baccalaureate or master's degree. The certifying bodies

require documentation of prior work experience where necessary, and it is not necessary for the Department to duplicate this effort.

The added language in the last paragraph of this subpart is reasonable and necessary because it is the qualified rehabilitation consultant supervisor who is familiar with the intern's readiness to assume full responsibility for work done after the requisite supervised internship. Minn. Rules, pt. 5220.1400, subp. 3 states that the qualified rehabilitation consultant supervisor is directly responsible for all of the rehabilitation work done by the intern, and the supervisor will now be required to report to the commissioner to assist in the determination of whether the internship is completed.

Subp. 5. "General criteria." In this subpart, the word "exclusively" was removed because it may have precluded a qualified rehabilitation consultant from other employment outside of the rehabilitation field. Minn. Rules, pt. 5220.1300 and Minnesota Statutes, section 176.102, subd. 10 are clear that the roles of qualified rehabilitation consultant and registered rehabilitation vendor are separate, so a qualified rehabilitation consultant may not be employed elsewhere by an entity registered as a rehabilitation vendor. The added language, however, clarifies that any outside employment held by a qualified rehabilitation consultant must not interfere with the work necessary as a qualified rehabilitation consultant.

The added language stating that a qualified rehabilitation consultant employed by an entity other than a registered qualified rehabilitation consultant firm may do qualified rehabilitation consultant work only on the claims being handled by the entity employing the qualified rehabilitation consultant simply continues this requirement for qualified rehabilitation consultants employed by employers or insurers.

The added language about notifying the Department upon changing employment is necessary in order for the Department to keep accurate and up-to-date records of all registered qualified rehabilitation consultants.

The deleted language in the next paragraph was ambiguous because there was no definition of what constituted living contiguous to a Minnesota catchment area. The Department believes that, if the qualified rehabilitation consultant resides outside of Minnesota, that residence should be not more than 100 miles by road so the qualified rehabilitation consultant will be reasonably available to Minnesota's injured workers. It is also necessary that the qualified rehabilitation consultant notifies the Department immediately upon changing residence to or from Minnesota so the Department can monitor compliance with this rule.

The deleted language in the next paragraph is no longer necessary

because it was used to "grandfather" those qualified rehabilitation consultants who did not have a college degree when that requirement became effective in the rules on February 7, 1984. The rule required those who were interns, however, to obtain at least a baccalaureate degree in one of the fields of study named in that rule. All qualified rehabilitation consultants who were registered were grandfathered, and all interns who were registered obtained the required degree, and the rule is no longer necessary.

5220.1500 "Procedure for Registration as Qualified Rehabilitation Consultant."

This part outlines the procedure for registering as a qualified rehabilitation consultant. The changes in this part are addressed at their respective subparts.

Subp. 1. "Application to become a qualified rehabilitation consultant intern." In this subpart, it is necessary to add the word "intern" to clarify that any individual applying for registration must apply as a qualified rehabilitation consultant intern. Minn. Rules, pt. 5220.1400, subp. 4 requires at least one year of full time employment as a qualified rehabilitation consultant/intern as part of the requirement for completion of internship in order to work unsupervised as a qualified rehabilitation consultant. All applications for registration, therefore, are for an internship.

The added and deleted language in the next paragraphs is for clarification only. The change in D is necessary so that the Department is certain that the college transcripts submitted as documentation of education are official transcripts and not subject to falsification.

The language in E was deleted because a baccalaureate degree and eligibility for certification within two years are the minimum requirements for registration as a qualified rehabilitation consultant/intern. It is not necessary to submit any additional continuing education until renewal of registration.

The language in G was added as one of the items which must be submitted with the application for registration, as called for in Minn. Rules, pt. 5220.1400, subp. 3.

Subp. 1a. "Approval of registration as a qualified rehabilitation consultant." The added language in this subpart is necessary to clarify that when registration is approved, the registration fee is not refundable if the individual at some later date during the registration year no longer wishes to maintain registration. The Department would be unduly bogged down in administering the return of a portion of the registration fee based on the number of months or days a person maintained the registration. A fee is paid to obtain registration. The

costs of administering this are mainly incurred at the beginning and end of registration, regardless of the length of the registered period. The individual's choice to not maintain the registration is beyond the Department's control or responsibility.

The added language stating that where registration is not approved, one-half of the registration fee will be refunded is reasonable and necessary. A clearly unqualified individual may submit an application and the Department must issue a decision accepting or rejecting the application. Minnesota Statutes, section 16A.128, subd. 1a, requires that a registration fee must be sufficient to cover the Department's costs of registering. Refunding the money to an unqualified candidate would mean that the Department would have to raise its registration fee for qualified candidates; the burden of this cost should be shared by those who may be unqualified candidates.

Subp. 2. "Appeal process." The changes in this subpart reflect the statutory change of Minnesota Statutes, section 176.102, subd. 3 made on July 1, 1987.

Subp. 3. "Registration number and renewal." The deleted language was moved to 5220.1400, subp. 3, which deals with the qualified rehabilitation consultant/intern, which is where it more logically belongs.

The remaining changes just incorporate the defined terms of qualified rehabilitation consultant, qualified rehabilitation consultant/intern and qualified rehabilitation consultant firm.

The changes in the next paragraph are reasonable and necessary because, although the rule states that registration renewal forms are due 60 days prior to expiration of registration, there was nothing in the rule to enforce this. In 1989 and 1990 approximately half of the qualified rehabilitation consultants submitted registration renewal forms after the date the forms were due. The Department incurs the additional expense of sending out a second computer letter, and once the late forms are received, extra administrative work is required in order to process the application before the actual date of expiration of registration. One of the main reasons given by qualified rehabilitation consultants for being late is that they need more time to complete the continuing education requirements. Since documentation of continuing education will no longer be necessary for qualified rehabilitation consultants who have certification (according to the new requirements in 5220.1500, subp. 5) there should be less cause for late renewal forms. A \$25.00 late fee is a nominal sum. Renewal forms received more than 30 days after the due date will be assessed an additional penalty, and this is reasonable and necessary because of the extra administrative burden incurred by the Department when renewal forms are more than 30 days late. This provision is in keeping with the

department's obligation to document that injured workers are serviced by persons meeting the criteria for registration.

The change in the last paragraph clarifies that the annual filing of service and fee schedules shall be done at the time of renewal of registration.

Subp. 3a. "Continuing education." The change in this subpart eliminates the need for qualified rehabilitation consultants who have certification (pursuant to 5220.1400) to submit documentation of 30 continuing education hours each year in order to be renewed and retain registration each year. The certifying bodies have continuing education requirements for certification maintenance, and it is not necessary for the Department to duplicate this. This rule states that qualified rehabilitation consultants who do not yet have certification must submit documentation of 20 (instead of 30) contact hours. The reduction in the number of hours is to bring it in line with the number of contact hours required by the professional certifying bodies.

The change from ten to six contact hours which must be approved by the commissioner as directly pertinent to the Minnesota workers' compensation law is reasonable and necessary in that it coincides with the number of contact hours of continuing education for the Department's annual update session for all registered providers. (Later

language in this rule states that attendance at the annual update session is mandatory for all registered providers.)

The added language at the bottom of the paragraph lists examples of what the Department considers to be continuing education which would be approved.

The added language about satisfactory documentation was moved from the first paragraph of subp. 5.

The deleted language was placed in 5220.1400, subp. 3, which deals with qualified rehabilitation consultant/interns. It more logically belongs there since it deals with the introductory training session for new qualified rehabilitation consultants and vendors.

The changes in the next paragraph reasonably incorporate the defined terms.

The new language in this paragraph deals with allowing for non-attendance at the mandatory annual update sessions for emergency situations and advises the qualified rehabilitation consultants that they must report to the commissioner if they do not attend.

Subp. 4. "Inactive status." The change in this subpart removes the

negative connotation of "suspension" and deals with a procedure for qualified rehabilitation consultants to have their registration inactivated if they do not renew registration annually. Another change in this subpart makes clear that if a qualified rehabilitation consultant wishes to be reinstated, the qualified rehabilitation consultant must provide verification of current certification required by Minn. Rules pt. 5220.1400. The change at the end of the paragraph is necessary so the July 1, 1987 statutory change in Minnesota Statutes, section 176.102, subd. 3 about appeals is reflected in this rule.

Subp. 5. "Monitoring." This subpart states the authority of the commissioner in reviewing the activities and services of rehabilitation providers to determine their reasonableness and compliance with Minnesota Statutes, section 176.102.

Subp. 6. "Revocation." This subpart was added to reflect the statutory change of Minnesota Statutes, section 176.102, made on July 1, 1987.

5220.1600 "Procedure for Approval as Qualified Rehabilitation Consultant Firm."

This part contains the procedure for registration as a qualified rehabilitation consultant firm. The changes in this part are addressed at their respective subparts.

Subp. 1. "Criteria." The first change in this subpart simply adds the

complete defined term of "qualified rehabilitation consultant firm." The rest of the change in that sentence adds the requirement that the qualified rehabilitation consultant firm must list all of its office addresses on the application for registration or renewal. This is necessary so the Department may keep an accurate register of all office locations of qualified rehabilitation consultant firms and who works at each location. The word "eligible" was removed because it was not necessary. The words "at least" were removed because they imply that the rule would allow more than one nonclerical employee within the 80 percent qualified rehabilitation consultant staffing ratio. A qualified rehabilitation consultant firm with fewer than four qualified rehabilitation consultants may have (no more than) one nonclerical employee and still be in compliance with the 80 percent qualified rehabilitation consultant staffing ratio. The deleted language is not necessary because 5220.1300 now deals with the separate roles of vendor and qualified rehabilitation firm. The added language is necessary so the Department is immediately advised of qualified rehabilitation consultant firm branch office openings and closings so an accurate and up-to-date register for the public is maintained.

Subp. 2. "Application." The changes in this subpart incorporate the defined term of "qualified rehabilitation consultant firm." The remaining changes are merely for clarification.

Subp. 2a. "Approval of registration as a qualified rehabilitation consultant firm." The added requirement of this subpart is necessary to make clear that the Department will conduct processing applications for registration of qualified rehabilitation consultant firms using the same procedure as that outlined for qualified rehabilitation consultants in 5220.1500. Prior to this, there was no requirement in the rule for the Department to respond to a qualified rehabilitation consultant firm application within any set time, although the Department's procedure was to respond within 60 days of receipt of a completed application. This added subpart also means a qualified rehabilitation consultant firm's registration application fee is non-refundable once registration has been approved, as outlined in this Statement for Part 5220.1500, subp. 1a. of these rules and that, if the application is denied, one half of the fee will be refunded. This is necessary because the department would be unduly bogged down in administering the portion of the registration fee based on the number of months or days a firm maintained the registration. A fee is paid to obtain registration. If a firm chooses to not maintain registration, this is beyond the department's control.

The added language stating that where registration is not approved, one-half of the registration fee will be refunded is reasonable and necessary. A clearly unqualified firm may submit an application and the Department must issue a decision accepting or rejecting the

application. Minnesota Statutes, section 16A.128, subd. 1a, requires that a registration fee must be sufficient to cover the Department's costs of registering. Refunding the money to an unqualified firm would mean that the Department would have to raise its registration fee for qualified firms; the burden of this cost should be shared by those who may be unqualified candidates for firm status.

Subp. 5. "Renovation." The change in this subpart is necessary to reflect the change on July 1, 1987 of Minnesota Statutes, section 176.102, subds. 3 and 3a dealing with discipline and revocation of registration.

5220.1700 "Procedure for Approval as Registered Rehabilitation Vendor." The rules regarding vendor registration remain unchanged, except for minor clarifications.

Subp. 1. "Application." The change in this subpart will add a minor requirement that the completed application be notarized. Applications for registration of qualified rehabilitation consultants and qualified rehabilitation consultant firms must be notarized, and this requirement for rehabilitation vendors will make the application process more uniform.

Subp. 2. Appeal process. The change in this subpart is for ease of readability only.

Subp. 4. "Revocation." This subpart was changed to reflect the statutory change of Minnesota Statutes, section 176.102, made on July 1, 1987.

Subp. 5. "Restriction." The language in this new subpart was formerly contained in 5220.0100, subp. 11, which was a definition. Restriction of a practice more appropriately belongs with the part dealing with the requirements of registration.

5220.1800 **"Standards of Performance."** This brief section continues to serve as an introduction to parts 5220.1801 to 5220.1806 which set forth the standards of conduct and establish minimum standards for the activities and services of rehabilitation providers. Greater specificity is added by the statement "Performance evaluations and monitoring of rehabilitation providers by the commissioner, and the administration of rehabilitation provider discipline under Minnesota Statutes, section 176.102, subd. 3a will be based upon these standards as well as on adherence to Minnesota Statutes, Chapter 176, the rules adopted to administer it, and orders of the commissioner or compensation judge."

5220.1801 "Professional Conduct." This part is significantly expanded to include specific directives and prohibitions which constitutes a code of ethics for rehabilitation providers comparable to conduct codes for other related professions, such as psychology, social work and other counseling professions.

Subp. 1. "Prompt provision of service and assessment of progress." This subpart sets forth the guideline that rehabilitation providers shall provide prompt and necessary rehabilitation services to injured workers and shall periodically assess progress toward rehabilitation plan objectives on a basis agreed to among the parties and as required by the commissioner.

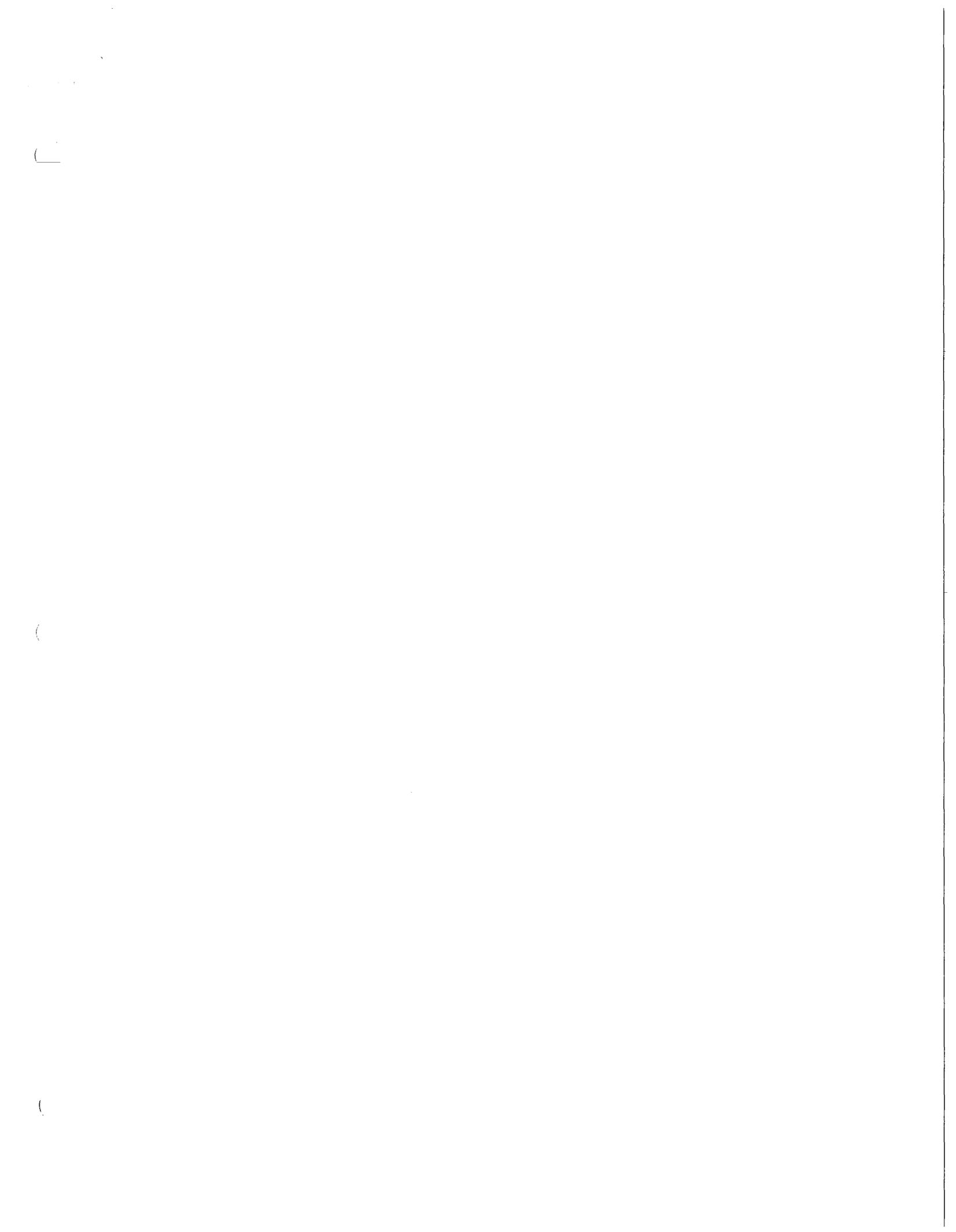
Subp. 2. "Assigned qualified rehabilitation consultant." This subpart is a further clarification of the role of the rehabilitation consultant, and limits the instances of consultants who work in an advisory capacity to another qualified rehabilitation consultant who has primary responsibility for the case. Qualified rehabilitation consultants are required to advise the employer/insurer before involving or requesting advisory services from another qualified rehabilitation consultant. With the exception of a qualified rehabilitation consultant acting on behalf of the Reinsurance Association, such practice of using qualified rehabilitation consultants in an advisory capacity is limited to rehabilitation activity within a rehabilitation firm.

Subp. 4a. "Objectivity." This subpart recognizes that while good faith disputes may arise about rehabilitation services, the rehabilitation provider must remain professionally objective, thereby maintaining effective working relationships with all parties.

Subp. 5. "Evaluation of the employee by other than the qualified rehabilitation consultant." This subpart further defines the practice stated in the prior rules of limiting independent rehabilitation evaluations to situations where litigation before the Office of Administrative Hearings has been initiated. In that context, the rehabilitation provider may perform an evaluation of the employee at the request of one of the parties solely for the purpose of that proceeding. The interest of all parties are served by limiting the practice of "experts" contending with "experts" to formal proceedings only.

Subp. 6. "Qualified rehabilitation consultant as witness." This subpart continues a prohibition in the former rehabilitation rules that a qualified rehabilitation consultant who has testified as an expert witness for any party in a hearing related to a case before a compensation judge, may not function thereafter as the assigned rehabilitation provider unless agreed to by the employee.

Subp. 8. "Separate roles and functions." This subpart states a concept



central to the role definition and distinction of the qualified rehabilitation consultant or registered rehabilitation vendor. Rehabilitation providers must focus on rehabilitation service to workers and employees and cannot engage in the insurance claims adjustment activities examples of which are given in this section. This subpart thereby eliminates a potential conflict of interest. The detail included is intended to provide specificity of expectations for rehabilitation providers and guidelines for Department staff in investigating claims about rehabilitation provider conduct or behavior. In this process, important concepts such as "adversarial communication or activity" is defined. The subpart also elaborates an affirmative obligation of the rehabilitation provider to amend a plan or recommend its closure when it is reasonably known that the rehabilitation plan objectives are not likely to be achieved.

Subp. 9. "Prohibited conduct." This subpart results from Department analysis of ethical codes and rules governing conduct for similar professions, such as social work or family counseling. This subpart identifies specific behaviors common to these conduct codes that are prohibited.

Subp. 10. "Professional competence." To protect injured workers and employers, this subpart requires that rehabilitation providers limit themselves to the performance of services for which they have the

education, experience, and qualifications. Since the provision of rehabilitation services is a broad field which utilizes specialization, it is important that rehabilitation providers accurately represent their level of skill and competence with the Department, the public and colleagues. A specific area of concern is addressed with the prohibition that rehabilitation providers shall not administer or interpret tests without proper training, experience, or credentials. Vocational aptitude and interest tests are widely used in rehabilitation planning and it is reasonable that the personnel administering and explaining such instruments are appropriately trained, experienced, or credentialed. Finally, rehabilitation providers are enjoined to understand the areas of competence of other professional persons and act with due regard for the needs, privileged nature, special competencies, and obligations of colleagues and other professionals and not disparage their qualifications.

Subp. 11. "Impaired objectivity." This subpart reflects the need for rehabilitation providers to maintain professional objectivity as a function of competency. It prohibits the use of substances or engaging in activities that would impair professional objectivity. This subpart also precludes professional relationships in which the objectivity of the provider would be impaired due to familial, social, emotional, economic, supervisory, or political interpersonal relationships. The sometimes adversarial climate of workers' compensation can create

conflicts of interest for service providers that place the quality of service to injured workers and employers at risk. The inherent importance of rehabilitating injured persons and the extraordinary cost to both employers and injured workers if this activity is not carried out with diligence and skill dictate that no undue influence enter into rehabilitation decision making.

5220.1802 **"Communications."** This part updates and elaborates a similar part in the previous rules defining the rehabilitation consultant's reporting and communication requirements.

Subp. 1. "Legibility and content of required reports." This subpart states that standards regarding legibility and content apply to all required rehabilitation reports and all required progress reports. Further, it is required that each report include the employee's name, Department file number, and date of injury.

Subp. 3. "Copies of reports and records." This subpart states the obligation of the assigned qualified rehabilitation consultant to file required rehabilitation reports with the commissioner and provide copies to all parties.

Subp. 4. "Registered rehabilitation vendor reporting." This subpart establishes specific expectations for rehabilitation vendors whose

reporting requirements to the qualified rehabilitation consultant were not specified in previous rules. Since the qualified rehabilitation consultant assigned to the case has the duty for overall monitoring of case progress, it is imperative that this person receive copies of applicable reports from the rehabilitation vendors who are providing job placement services.

Subp. 4a. "Transfer of information." This subpart addresses an issue which has been a problem administratively, namely the transfer of information when a case is transferred from one qualified rehabilitation consultant to another. It details the responsibility of the former qualified rehabilitation consultant firm to transfer all data including the required rehabilitation reports, progress records, and incurred rehabilitation costs information to the new qualified rehabilitation consultant within a 15 day time limit so that rehabilitation may continue unimpeded.

Subp. 5. "Data privacy." This subpart sets forth the expectation that rehabilitation providers comply with all applicable data privacy laws.

Subp. 10. "Providing records." This subpart specifies the obligation of the rehabilitation provider to maintain all required progress records and copies of all required rehabilitation reports, and to make these records available to the commissioner.

Subp. 11. "Access to medical and rehabilitation reports." This subpart defines the responsibility of the assigned qualified rehabilitation consultant to furnish appropriate information (specifically, copies of all medical and rehabilitation reports necessary for effective service provision by the other provider) to other rehabilitation providers designated in a rehabilitation plan

5220.1803 "Responsibilities." This part continues instruction to rehabilitation providers about their role and responsibilities in the workers' compensation system.

Subp. 1. "Instruction by qualified rehabilitation consultant." This subpart sets forth the obligation that the qualified rehabilitation consultant shall, during the first in-person contact, instruct employees of their rights and responsibilities relating to rehabilitation and of the purpose of rehabilitation services. Specifically, the assigned qualified rehabilitation consultant is required to sign and date a prescribed Rehabilitation Rights and Responsibilities form at this first in-person meeting with the employee and subsequently provide the employee, employer, and commissioner with a copy.

Subp. 1a. "Disclosure of information." This subpart requires disclosure regarding ownership interests and business referral arrangements. Both "ownership interests" and "business referral arrangements" are

defined in this subpart.

Subp. 2. "Knowledge of laws and rules." This subpart requires a rehabilitation provider to be knowledgeable about the areas of the workers' compensation law and rules that directly relate to the provision of rehabilitation services. Further, the communication of any inaccurate information regarding workers' compensation is defined as grounds for discipline.

Subp. 5. "Reporting requirements." This subpart sets forth the qualified rehabilitation consultant's responsibility to file an initial evaluation narrative report at the time of the filing of the rehabilitation plan. Specific content of the narrative report is defined to include the following information in summary fashion: medical status, vocational history, educational history, social history, relevant economic factors, transferable skills, employment barriers, and recommendations. Additionally, the assigned qualified rehabilitation consultant is required to periodically report progress of case activity in writing to the employer at reasonable intervals or as requested by the parties. Further, the assigned qualified rehabilitation consultant's responsibility for maintaining employee files containing the required rehabilitation reports and required progress records is set forth, including the standard that such files be maintained by the qualified rehabilitation consultant firm for a period of five years from the date

of file closure. Finally, the qualified rehabilitation consultant is required to provide the commissioner with any other requested pertinent information about the qualified employee's rehabilitation for the purposes of Department monitoring.

5220.1805 **"Business practices."** This part sets forth the expectation that rehabilitation providers shall abide by applicable federal, state and local laws regulating business practices. Most of the changes are revisions in wording for better clarity of meaning. The term "rehabilitation provider" is used, as defined, as an inclusive phrase in place of the three terms "registered qualified rehabilitation consultants", "qualified rehabilitation consultant interns", and "vendors."

5220.1806 **"Disciplinary action."** This new part sets forth the administrative procedure for investigation of complaints and the application of discipline for rehabilitation providers.

Subp. 1. "Discipline." This subpart sets forth the range of options included in disciplinary actions and specifies assessment of a fine as provided by statute, suspension, and revocation of registration as disciplinary actions. It further states that discipline shall be based upon substantiated complaints about activities or services which violate laws, rules, or orders.

Subp. 2. "Complaints." This subpart sets forth the authority of the commissioner to review activities of rehabilitation providers for the purpose of determining compliance with laws, rules, or orders. Further, it specifies that complaints about activities or services of rehabilitation providers shall be made in writing to the commissioner. Finally, this part sets forth the expectation that if a rehabilitation provider violates Minnesota Statutes, Chapter 176, or the rules adopted thereunder, a rehabilitation provider having knowledge of the violation must report this to the commissioner.

Subp. 3. "Review and investigation." This subpart sets forth the standard that the commissioner shall review all complaints to determine if the complaint alleges a violation of the workers' compensation law, rules, or orders. In the process of an investigation, the commissioner may dismiss complaints or refer a matter outside the Department's jurisdiction to a forum or agency that has jurisdiction. The party bringing the complaint is notified of a dismissal or referral. Resolving a complaint through informal instruction of a provider is set forth as a method of resolution. Finally, this subpart states the commissioner's authority to begin a contested case disciplinary action under Minnesota Statutes, section 176.102, subd. 3a, which provides for commissioner's investigation of complaints against qualified rehabilitation consultants and vendors, and the Administrative Procedures Act. The process of having the report from the

Administrative Law Judge made to the Rehabilitation Review Panel, which is the final determiner of disciplinary action, is also described consistent with that statutory responsibility.

Subp. 4. "Cooperation with disciplinary proceedings." This subpart sets forth the expectation that a rehabilitation provider who is the subject of a complaint investigated by the commissioner shall fully cooperate with the investigation, including responding to questions raised in the course of the investigation and providing copies of records, reports, logs, data and costs and other information as requested by the commissioner.

Subp. 5. "In-person meeting." This subpart sets forth the administrative procedure of scheduling a meeting as a method of conferring with the parties to a complaint when this is deemed appropriate for the clarification or settlement of issues. Such a meeting may be conducted for the purpose of obtaining information, instructing the parties to a complaint, or for the purpose of resolving issues.

Subp. 6. "Resolution written agreement." This subpart sets forth the commissioner's authority to enter into stipulated agreements regarding discipline with complaint subjects in lieu of initiating contested case proceedings.

5220.1900 "Rehabilitation Service Fees and Costs." This part describes the primary responsibility of the insurer for monitoring and paying the costs of necessary rehabilitation services. Additionally, the commissioner's responsibility for monitoring rehabilitation services is again stated.

Subp. 1. "Monitoring." This subpart identifies the insurer as having primary responsibility for monitoring and paying the costs of rehabilitation services. The commissioner's role in monitoring is also described including the commissioner's authority to conduct periodic audits, require uniform billing information, and to request invoices and itemized billings from rehabilitation providers describing their services.

Subp. 2. "Reasonable and necessary services." This subpart states that a rehabilitation provider shall bill only for those necessary and reasonable services which are rendered in accordance with Minnesota Statutes, section 176.102 and the rules adopted to administer that section. The authority of the commissioner and compensation judge to make a determination about reasonable and necessary services and costs is also set forth, including factors to consider in that analysis, such as whether the services were expressly called for by the employee's rehabilitation plan.

Subp. 7. Case activities requiring insurer consent for payment. This subpart lists specific areas where the rehabilitation provider must obtain the consent of the insurer before billing for the activity. The purpose of this listing is to provide scrutiny of activities and costs control for services generally not integral to the employee's rehabilitation plan. Also, this part of the rules reflects some modification for clarity of meaning. The changes are not substantial.

Subp. 8. "Disputes." The dispute resolution process for these issues is repeated at this subpart.

Subp. 9. "Collection Prohibited." Minnesota Statutes, section 176.83, subd. 5 provides the basis for this rule which details the statutory directive. Rehabilitation providers may not attempt to collect for fees or services which are excessive.

5220.1910 **"Approved Claims Handler."** This part, which sets forth the qualifications and procedures for becoming an approved claims handler has not been changed. The requirements of this certification include one year of experience in handling Minnesota workers' compensation claims and completion of a training program conducted by the commissioner. This is unchanged from previous rules.

DEPARTMENT OF FINANCE APPROVAL

Because the rules may be construed to be setting or adjusting fees under Minnesota Statutes, section 16A.128, the approval of the rules by the Commissioner of Finance is attached to this Statement.

Because the rule amendments, other than exempted ones, do not add substantive requirements for small businesses but generally modify procedures, they will not have impact on small businesses under Minnesota Statutes, section 14.115. This is because the rule amendments generally involve the scope and practice of the rehabilitation professional. While the qualified rehabilitation consultant may well be in contact with the small businesses employing qualified employees, the rehabilitation provider's obligations and rights are set by the statute rather than by these rule amendments.

The rules will impact the scope and practice of rehabilitation providers and that affect is excluded from the provision of Minnesota Statutes, section 14.115 under subd. 7(3). Furthermore, those groups have been provided opportunity to participate in these rules through the Notice of Intention to Solicit Outside Opinion, through the Rehabilitation Review Panel rule review process and professional groups concerning the rules. Finally, the mailing for the rules notice has included all registered rehabilitation providers.