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

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

STATEMENT OF NEED AND REASONABLENESS

OVERVIEW
NEED AND REASONABLENESS

The statutory authority for these amendments is found in Laws of Minnesota for 1992 Chapter 510, article 4, sections 2, 3, 4, and 5, and Minn. Stat. §176.102 and 176.83, subds. 1, 2, 3, 5, 14 and 15. The subjects of these amendments include: Rehabilitation consultation only upon request, waiver of rehabilitation, definition of qualified employee, rehabilitation cost reduction, time frames within which an initial rehabilitation plan must be developed and filed, choice or change of qualified rehabilitation consultant (QRC) by the injured worker or other parties, means of limiting the fees of rehabilitation providers, providing for the registration of occupational therapists (OTR's) as QRC's and clarification of the roles of registered vendor and qualified rehabilitation consultant.

These proposed amendments will both implement legislation enacted in 1992 and make adjustments recommended by a decade of experience in rehabilitation administration, to longstanding rules governing workers' compensation rehabilitation. Development of these proposed rules was commenced by the Department following passage of the 1992 Workers' Compensation Law. A task force was formed within the department and met to consider rule amendments. Public input was obtained, including a public forum and meeting conducted by the Department on July 16, 1992. The input received was considered in the development of the amendments. These revisions have been aided by rehabilitation rules revision discussions and meetings within the agency and by consultation with the rehabilitation provider community and other parties interested in the delivery of effective rehabilitation services to injured workers in Minnesota.

The 1992 legislature amended Minnesota Statutes, §176.102 regarding the delivery of workers' compensation rehabilitation services. Most notably, the legislation repealed the mandatory referral of injured workers with specified lost time from work, for a rehabilitation consultation. Mandatory referral had been implemented by rule through a process of consultation involving both a claim screening consultation and an eligibility consultation. These proposed rules address the conflicts between the 1992 legislation and the existing rule provisions for procedures, forms and reports implementing mandatory rehabilitation consultation. In addition, the legislation directed the Department to develop a fee schedule or other means of limiting rehabilitation fees.

Existing rules pay scant attention to the need for focusing rehabilitation and Departmental resources on the cases of greatest need. It is the dual theme of reducing unnecessary or untimely utilization of the statutory rehabilitation benefit, and the reduction of that benefit's cost that emerges throughout these rules. The primary procedural protections for injured workers who need or may request rehabilitation are retained, while providing new means of cost effective utilization of those services.

In general support of these amendments, the following are attached as Appendices A-D:

A. Department of Labor and Industry Rehabilitation System Statistics.

B. "Report of the Making Rehabilitation Work Committee" of the Workers' Compensation Congress.

C. Rehabilitation in the Minnesota Workers' Compensation System, Report to the Legislature on Workers' Compensation in Minnesota, Background Research Studies, Department of Labor and Industry, January 1988.

D. Memorandum of Brian Zaidman, Senior Research Policy Analyst, dated December 18, 1992.

Witnesses and Staff Presenters

Appearing at the public hearing to present the amendments will be Stephen Serkland, Rehabilitation Policy Analyst, Rehabilitation and Medical Affairs Unit of the Department. Brian Zaidman, Senior Research Analyst, Research and Education Section of the Department will appear as a witness on behalf of the Department. The Commissioner reserves the right to call upon the Commissioner or any of his designees in support of these amendments.

SMALL BUSINESS CONSIDERATIONS

Although rehabilitation providers, almost all of whom qualify as small businesses, will be affected by the proposed amendments, these are service providers who are regulated in regard to their standards and costs. Therefore, these rules are excluded from the requirements of Minn. Stat. §14.115 by Minn. Stat. §14.115, subd. 7 (3). The rules may have an impact on small business employers in general, but do not impose any substantive requirements on employers and are anticipated to provide overall workers' compensation rehabilitation cost savings within the workers' compensation system. The impact of these rules on the regulated small businesses is lessened by the allowance for firms of under four professionals to employ nonprofessional staff of up to two. This represents less stringent business regulation than in the past. Furthermore, any impact on small rehabilitation businesses is reduced by replacing design operational standards with the performance standards set out at part 5220.1800. This change will increase the quality of rehabilitation

services provided while reducing direct regulation to the constituency.

OTHER CONSIDERATIONS

The proposed rule amendments do not require the expenditure of public monies by local public bodies, do not adversely impact agricultural land, and do not have their primary effect on Spanish speaking people.

NEED AND REASONABLENESS

5220.0100 DEFINITIONS

Subp. 1. Scope. A citation is changed here to conform with the amendment of the rules elsewhere. Subp. 2 is repealed as the rule which utilized the term "approved claims handler" is being repealed.

Subp. 3. Assigned qualified rehabilitation consultant. Paragraph B of this subpart is being amended to reasonably delete reference to a rule made defunct by legislative changes at Minnesota Statute §176.102 (1992). Replacement of the defunct rule reference by the appropriate statutory reference is more informative to the reader, and is accurate. Paragraph D is added to inform the reader of the additional possibility of assignment by the Commissioner, reflecting the Commissioner's statutory authority to refer an injured worker for rehabilitation consultation and to determine the assignment of a qualified rehabilitation consultant in the event of a dispute.

Subp. 9. Employer. This amendment clarifies the rule's language and does not alter its present meaning.

Subp. 22. Qualified employee. The existing rule provides an operational definition of worker eligibility for the statutory rehabilitation benefit that follows from legislative expression of the purpose of rehabilitation at Minnesota Statutes Chapter 176.102, Subd. 1 (1992). This subdivision outlines that rehabilitation is intended to restore an injured worker so that the worker may return to a related job or to a different job. However the existing rule, by not requiring an analysis of the likelihood of the employee's return to work with the date-of-injury employer, has brought about a rehabilitation utilization pattern in which 25% of all rehabilitation closures (1991 Department data) represent return to work with the same employer to the same job. Such cases are not only objectively cases of less rehabilitation need, but, as noted, the statute does not direct that the rehabilitation benefit with its attendant procedures and Department regulation, hence cost, apply to them. The proposed, additional element of eligibility for rehabilitation added at Item B will serve to correct this excessive utilization.

Because it is phrased in terms of the reasonable expectation of a return to work with the same employer, eligibility would exist in cases for which that outcome is desired but would be in jeopardy if formal rehabilitation intervention were not provided.

This definition thereby increases the likelihood that rehabilitation services will ultimately be utilized in cases of greatest need, in accordance with the terms of the statute.

This is certainly not to say that the outcome of a return to the same job is undesirable for an injured worker. Rather, formal rehabilitation services as provided by statute is not an appropriate or necessary means to achieve such an outcome. Indeed, in no small part flowing from the self interest of the employer and insurer, it is reasonable to expect such outcomes can be effectively managed through the offices of the employer's human resource function or the insurance carrier's claims management function with programs at their own discretion.

Subp. 23. Qualified rehabilitation consultant. This amendment clarifies the rule's meaning and does not alter its present meaning.

Subp. 26. Rehabilitation consultation. This subpart is proposed for amendment because its two primary defined terms are based upon mandatory rehabilitation referral provisions of the statute that were repealed effective October 1, 1992. The existing rule sets forth procedural requirements for a twofold rehabilitation consultation implementing the mandatory rehabilitation statute in effect until October 1, 1992. Its procedures, reporting and data collection requirements for the purpose of implementing the earlier statute are no longer necessary. The proposed amendment restores the simple construct of the consultation, which pre-dated the existing rule, as an in-person meeting between the qualified rehabilitation consultant to determine rehabilitation eligibility.

Subp. 29. Rehabilitation services. To conform with the 1992 amendments to the statute this amendment corrects a rule citation and clarifies the language of the rule without altering its present meaning.

Subp. 31. Required rehabilitation report. To conform with the 1992 amendments to the statute, this amendment corrects a rule citation.

Subp. 36. Vocational evaluation. The amendment is proposed to correct a rule citation and to clarify language of the rule without altering its present meaning.

5220.0105 INCORPORATION BY REFERENCE

This amendment corrects and clarifies citation of a rule without altering its present meaning. The changes made are to incorporate by reference the most recent editions of those documents. The new editions do not change in any substantial way so that their incorporation merely updates the rules.

5220.0110 REHABILITATION REQUEST; DISABILITY STATUS REPORT.

This part of the rules is amended to modify provisions for procedures, forms

reporting and data collection that implemented the earlier mandatory rehabilitation system. The old rule language being repealed in subparts 1 through 4 was descriptive of the first part of a two-fold rehabilitation consultation implementing the mandatory rehabilitation statute that was in effect until October 1, 1992. Its procedures, reporting, and data collection requirements that existed for the purpose of implementing the earlier statute are no longer necessary. The language is being replaced with language describing the new process for review of the rehabilitation status of a case by the employer/insurer. This amendment is intended to clarify the rehabilitation referral process by assisting the reader to understand 1) who may request rehabilitation under the statute, 2) how rehabilitation may be requested, 3) what documentation is required to request rehabilitation, 4) what information is required, and 5) when the Commissioner may exercise statutory authority to request rehabilitation. The information requested by this part is reasonable because it is limited to the minimum information necessary 1) to assess an employee's need for rehabilitation services, 2) to document the basis of an employer's or insurer's request for rehabilitation waiver, 3) to establish a procedure for disputing the consultation outcome, and 4) for the Commissioner to determine the need for Department intervention.

5220.0120 WAIVER OF CONSULTATION AND REHABILITATION SERVICES

This part is proposed for amendment for reasons similar to those stated above regarding Part 5220.0110 and to more clearly set forth the means whereby the waiver provided by statute at Chapter 176.102, subd. 4 may be utilized. The legislature, by this provision, affords the Commissioner authority to defer rehabilitation if the employee is likely to return to work in the near future or if rehabilitation services will not be useful in assisting a return to work. A waiver of up to six months is provided for, thereby specifying a time period for the statutory phrase "near future." That is, if the employee will return to work within six months of the work injury a waiver may be granted. Six months is reasonable because it conforms with the Department's experience regarding the time period following injury within which the referral for rehabilitation is most likely to occur voluntarily, by which rehabilitation intervention is most helpful, and after which it is more likely to fail. It also conforms with studies such as those summarized by the Workers' Compensation Congress, "Report of the Making of Rehabilitation Work Committee" attached as Appendix B. This committee pointed to studies indicating the need for rehabilitation intervention no later than six months after injury. This proposed rule outlines the Commissioner's basis for approval of an employer or insurer request for a waiver of rehabilitation, thereby providing an operational means for the insurer to defer rehabilitation when such rehabilitation would not be helpful in returning the employee to work. The rule necessarily and reasonably requires documentation by the employer who is requesting a waiver in justification of the waiver, regarding the nature of the injury, whether a job will be made available, and what actions the employer is taking to assist the employee's return to work. This requirement is necessary to prevent abuse of the waiver, and to assist the commissioner in judging the appropriateness of a waiver.

5220.0130 REHABILITATION CONSULTATION

This rule is intended to guide the reader regarding the purpose of rehabilitation, the status of the consultation as a prerequisite for a rehabilitation plan and the procedural

requirements for completing the consultation.

The existing rules involve both a claim screening consultation by an adjuster and an eligibility consultation to be conducted by a QRC. Instead of the dual consultation process a single consultation is the focus of these amendments. The changes proposed, including these at 5220.0130 simplify the process by replacing the screening consultation with the preparation of review for the disability status report and referring to the consultation by the QRC simply as a rehabilitation consultation. Sentences referring to the claim screening consultation are stricken. The QRC's role of proceeding with development of a rehabilitation plan only for those employees who meet the definition of a qualified employee is clarified.

The 1992 legislative amendments providing for the rehabilitation consultation upon request is incorporated into this part of the rules as well, at the point in time at which it would occur. How the Commissioner's authority to waive rehabilitation will be utilized is clarified in this part at subpart 2 as well as in 5220.0120, where its need and reasonableness is explained. The last sentence of subp. 2 is added to deal with situations in which injured workers have been required to attend rehabilitation consultations many miles from their homes. The added language reasonably provides that any rehabilitation consultation is to take place within 50 miles of the employee's residence. Because more efficient and effective rehabilitation services can be provided by QRC's who are fully informed of the facts and circumstances of a situation, an amendment at subp. 3 provides that copies of reports required to be filed with the Commissioner be provided to the QRC as preparation for the rehabilitation consultation. A clarification of what is meant by "work status" is added at subd. 3 C (3) and at (4) the addition of documentation of the QRC's plan for overcoming any barriers to completion of rehabilitation is set out. Because this information will be detailed in the rehabilitation plan it will be preliminary only but will give an indication to the parties of what is before them in the process of rehabilitation. Because the criteria that is currently set out in subp. 3 C (5) has now been incorporated into the definition of qualified employee, it is reasonable to simply use that term instead of setting out the detail. The time limit in subpart 3 D is shortened to meet the more rapid filing times of the 1992 legislative amendments.

5220.0410 REHABILITATION PLAN

This rule describes the purpose, content and procedures relating to an injured workers written rehabilitation plan. The proposed amendments discussed below do not alter the substance of the rule except to change only the days within which the written rehabilitation plan must be prepared, circulated to interested parties and filed with the Department.

Subps. 1 and 2. Changes of a purely housekeeping nature were made at Minnesota Rule Part 5220.0410, subp. 1 where the language was moved from subp. 2; and at subp. 2 where the citation was redundant.

Subp. 2. Requirements. The added language at the beginning of this subpart simply sets out more clearly the QRC's obligation to go through the process of reviewing

that an employee is eligible for rehabilitation services before undertaking their planning. Part 5220.0410, subp. 2 D is deleted in response to the legislature's deletion of physical rehabilitation from the rehabilitation process.

Subp. 3. Process. The proposed amendment of this subpart would reasonably replace the 60 day plan preparation timeline in the rules with the new 30 day requirement in the 1992 legislative amendments. Minnesota Statutes §176.102 (1992) sets a 30 day plan preparation requirement effective October 1, 1992. It is reasonable that the rule conform with the known and specific direction of the legislature.

Subp. 2f, subp. 4, and subp. 6. Similarly, amendment of these subparts is proposed to replace a 21 day response with a 15 day response, consistent with the new rapid 30 day time limitations for entering in to a program of rehabilitation under Minnesota Statutes §176.102 subd. 4 (1992).

Subp. 5. Filing the plan. Similarly, amendment of this subpart is proposed to replace a 90 day plan filing requirement with one of 45 days, to meet the new requirements set out in the previous paragraph and the new 15 day deadline for filing of the plan after it has been developed.

Subp. 6. Plan approval. In addition to the change already detailed above, another amendment to subpart 6 adds language which clarifies the responsibility for filing the plan with the Commissioner. The previous language set out the obligation that the document be filed but did not specify who was to do the filing.

Subp. 9. Administration of plan. While the Commissioner has the authority to regulate all rehabilitation vendors, regulation of the field has been limited. Most recently the rules required registration, and therefore compliance with the rehabilitation rules, of all job placement vendors except those entities that are certified by a national accrediting agency. This amendment adds the requirement that job development services must be provided by either a registered entity or by a facility accredited by the National Commission on Accreditation of Rehabilitation Facilities (CARF). The addition of job development services by facilities accredited by the Commission on Accreditation of Rehabilitation Facilities utilizes a widely recognized certification of competence in the rehabilitation profession as an alternative to Department registration, potentially reducing the regulatory role when it is reasonable. The public served is protected by insuring that the provider is in compliance with the professional standards imposed by Minn. Rules Part 5220.0100 - 5220.1900 or, in the case of CARF accredited facilities, that the high standards of that accrediting body are met. Finally, this amendment reasonably provides that the insurer may elect to choose a job placement/job development vendor, should that be necessary. Insurers by their experience as payers for services are in a position to be knowledgeable regarding the competence and cost effectiveness of vendors. This

provision, by permitting a third party discretion to choose the vendor, serves as a means of checking or limiting potential conflict of interest referral relationships between qualified rehabilitation consultants and vendors.

Subp. 10. Disputes. The additional language in this subpart clarifies the existing practice, based on the authority under M.S. Chapter 176.106, subd. 2, of filing a rehabilitation request with the department for assistance in resolving a rehabilitation issue where there are disputes which involve only a rehabilitation issue.

5220.0450 PLAN PROGRESS REPORT

The 1992 legislative amendments provided for a plan progress report on a rehabilitation plan at six months after its initiation, or earlier at the Commissioner's discretion. The provisions of this new rule language implement that new requirement. The Commissioner's discretion to provide for an earlier report is utilized at subp. 2. The purpose of the plan progress report as implemented is set out at subpart 1 of the rule. Subpart 2 sets out for all readers what information is important to record and receive at the reporting times. A three month progress report to the insurer is required of the provider in order to advise the insurer, early in the rehabilitation process, any difficulties or barriers which may impede successful completion of the rehabilitation plan. This three month report is needed and may reasonably be expected to reduce the number of cases in which the Commissioner must intervene after the subsequent six month progress report is filed.

Under the new rule the Commissioner may upon receipt of the plan progress reports use the authority to monitor and supervise rehabilitation of Minnesota Statutes Chapter 176.102, subd. 2 to review whether the plan is adequate to meet the statutory goals of rehabilitation. If it is not, the Commissioner may take steps needed, including those set out in the new rule, to ensure that the employee is rehabilitated. What is expected from all parties under the new legislation is set out in detail.

5220.0510 PLAN AMENDMENT AND CLOSURE

Subp. 2a through 2d. At subps. 2a through 2d the process which has been utilized for rehabilitation plan approval has been totally incorporated in the process for rehabilitation plan amendment. Through rehabilitation dispute resolution experience the progress has been shown to be an effective method for keeping the parties involved in the process of an employee's rehabilitation and for keeping situations from stalemate due to disagreements over details of a rehabilitation plan. Consequently the language of Minn. Rules Part 5220.0410, subp. 3 through 6 has been adopted here virtually verbatim.

Subp. 7 - Items C and D. The new rule language requiring the Dictionary of Occupational Titles code number for the job to which an employee returns will assist the Department's rehabilitation data collection and research function, permitting database input of rehabilitation outcomes in a widely accepted, standardized numerical form. The additional modifications in Item C and D are housekeeping

clarifications only. They add detail to clarify what is meant (Item C) or make the language more concise (Item D).

5220.0710 EMPLOYEE CHOICE OF QUALIFIED REHABILITATION CONSULTANT; CHANGE OF QUALIFIED REHABILITATION CONSULTANT

The 1992 legislative changes modified the substance of the selection and change of a QRC as well as the timelines for those steps. Minn. Stat. §176.102, subd. 4(a) and (d) (1992). The changes to this part of the rules incorporate those changes. It should be noted here that a problem of interpretation arises only in the relatively small number of cases in which there is an early disagreement as to the QRC who shall handle an employee's rehabilitation. Most frequently an employee is referred to a QRC who services the case effectively without problem. Because of the potential for dispute, however, the Commissioner determines that there is a need for clarification in the rules in the area.

The language of the 1992 legislation in this area has been read to mean different things by different readers. First, when looked at initially and out of context, some of the language of Minn. Stat. §176.102, subd. 4 (1992) could be read to provide for exclusive right to initial appointment of all QRC's by the employer/insurer on the case. The Department first attempted to discern the legislative intent for the statutory changes. Three factors lead to the reading reflected in these rules:

1. Language throughout the statute similar to the new "must be provided by" language has been and continues to be interpreted to mean must be funded by the employer/insurer, rather than meaning a hands-on appointment by the employer/insurer. An example is found at Minn. Stat. §176.135, subd. 1, where the language "employer shall furnish any medical . . ." has been consistently interpreted in case law to mean that the employer/insurer must pay for the medical expenses rather than that the employer/insurer has the right to choose the treating doctor.

2. Minn. Stat. §176.102, subd. 4(d) allows for later requests for a different QRC after language that states "After the initial provision or selection of a QRC as provided under paragraph (a) . . . ." The only language referring to a "selection" of a QRC in paragraph (a) is that providing for the employee's selection of a QRC of the employee's own choosing. This provision, referencing initial provision or selection indicates that the statute envisions choice being made by either the employer/insurer or the employee.

3. The statutory language that existed before the 1992 amendment clearly provided for the employee to select a QRC of the employee's choosing at least two points in time in the rehabilitation process and it could have been read to allow that choice at three points in time. In light of this, a Legislative change from potentially three choices to one choice is more reasonable than to interpret the language as a change from potentially three choices on the

part of the employee to none.

Secondly, the Department examined the result of the two possible interpretations. One interpretation would involve the assignment of a QRC who, despite the employee's objection, would become familiar with the injured worker, study all necessary information, perform any testing and draft a rehabilitation plan only to allow employee to then choose their own QRC who might well completely redo all of those tasks.

A second interpretation would allow the employee's choice, which everyone agrees is a choice by matter of right, beginning at least the first day after the filing of a rehabilitation plan, to be available from the initiation of rehabilitation services in order to save the likely potential expense and confusion of duplicate choices.

Thirdly, an argument for a reading requiring initial employer/insurer selection is their desire to have an up front opportunity to determine whether rehabilitation is, in fact, needed at all. This concern is already dealt with in these rule amendments, however, by the employer/insurer review for purposes of the disability status report which can be used to totally and automatically defer rehabilitation on a case in which the employer/insurer documents that the employee will return to suitable gainful employment within six months of the inquiry. A renewal of that waiver for another six months is also provided for.

The provision clarifying the option of appointment or selection is needed because all parties to the system need clarity. This approach is reasonable for the reasons set out above and because one of the prime directives of the legislature was cost savings. The avoidance of potentially duplicative services provides further support for the approach taken in the rule amendment.

The standard to be used in considering a change of QRC after initial choice or selection was also changed by the legislature and the new standard of "best interest of the parties" is incorporated in the rules at this part as well. The other addition to subpart 3, which incorporates the statutory allowance for the assignment of a QRC by the Commissioner or a compensation judge in specified situations, is for purposes of keeping the employee's rehabilitation progressing should the process stop for one of the reasons stated in the rule. The responsibility for a replacement QRC is set out.

5220.0750 RETRAINING

Subp. 4. Compensation. The proposed repeal and transfer of this subpart, is responsive to the 1992 legislature's indication, by the moving of statutory language and clarifying the compensation judges' discretion at Minn. Stat. §176.102, subd. 11, of the potential additional 25% benefit as similar to other monetary benefits. The transfer of this subpart to the Workers' Compensation Rules of Practice is necessary and reasonable because the scope of the rehabilitation rules is limited to procedural matters and to the direct costs required to implement a rehabilitation plan, exclusive of weekly and other monetary benefits payable to the employee. Appropriately, this

subject will be taken up by a separate rule promulgation process governing procedures for the payment of monetary and other weekly benefits directly to the employee. In the interim, the statute alone will govern payment of additional compensation. Disputes in this regard will be subject to resolution by the Commissioner or a compensation judge under the applicable statute and rules.

5220.0850 ON-THE-JOB TRAINING

Subp. 1. Objective of on-the-job training. In response to questions that the Department has received concerning the nature of the job goal of an on-the-job training plan, the Department is clarifying by rule that the goal of this plan is that set out in the statute, of suitable gainful employment. Minnesota Statutes Chapter 176.101, subd. 3e sets out criteria for the long term return to work of an employee in a provision labeled "suitable employment." Furthermore, the change is consistent with the goal of rehabilitation sent out at Minn. Stat. §176.102, subd. 1. It is from this statutory language that this rule addition is borrowed.

Subp. 2. Plan submission. The addition at Item H of this subpart is for clarification only and adds nothing of substance to the rules.

5220.1100 LEGAL REPRESENTATION.

Attorneys are most familiar with the notices provided them under the joint litigation rules of Minnesota Rules Part 1415.0700. For this reason, the change from the little known provision at 5220.2890 to the better known and expected notice provision is needed. The substance of the two rules is virtually identical.

5220.1250 ROLES OF REGISTERED REHABILITATION PROVIDERS

Amendments proposed to this part do not alter the historic sharing and balancing of roles in the rehabilitation system between qualified rehabilitation consultants and registered vendors. However, the lack of clarity provided by the existing rule regarding the separate and distinct functions of the various registered entities has complicated consideration of role boundaries, made regulation of registered entities more difficult and, consequently, encouraged disputes in this area. This additional language clarifies both the shared and distinctive roles of the various registered entities and reflects the dominant and established patterns of practice followed by workers' compensation rehabilitation providers over the years.

5220.1400 QUALIFYING CRITERIA FOR REHABILITATION CONSULTANT

Subp. 2. Item C. Criteria qualifying occupational therapists for registration by the Department as qualified rehabilitation consultants is provided by this rule addition. This amendment recognizes the significant role occupational therapists have played and can potentially play in assisting employers and injured workers with return to work planning. The curriculum in which occupational therapists are professionally prepared provides emphases upon vocational rehabilitation, medical rehabilitation

and adaptive systems and technologies useful in workers' compensation rehabilitation. The present registration criteria, however, virtually precludes the registration of an occupational therapist because the dominant certifying body for rehabilitation counselors (CRC) does not certify occupational therapists. The requirement that occupational therapists be registered by their national certifying body and possess five years of practice in the field ensures that these practitioners are professionally experienced and qualified to competently carry out the functions of a qualified rehabilitation consultant.

Subp. 3. Qualified rehabilitation consultant intern. This subpart is amended to conform it to the amendment of subpart 2, Item C, above. This rule further reasonably adds a requirement of interns that they document the means (i.e. school attendance, certification exam) whereby the requisite certification will be attained. This is needed because the Department's registration approval of providers has frequently become burdensome in the instances of providers failing to meet certification requirements within the required time. Early identification of this responsibility will reduce these problems and the agency cost incurred in handling them. Other language (lines ending the first paragraph) has been moved to subpart 3a of this part, with changes that are discussed below, in the section on that subpart. Changes in the second paragraph of this subpart merely correct a rule citation and clarify meaning without substantive change of the rule itself.

Subp. 3a. Commissioner's approval for supervised internship. This amendment adds all new language that clarifies the purpose and procedural requirements of internship supervision. Supervision of consultant interns is provided for by existing rules but is without definition of what constitutes adequate supervision and how a period of internship may be satisfactorily completed. This amendment represents in substance recommendations from owners and managers of rehabilitation firms on this subject. Of most note and benefit to the system is the increased weight which may be given by the Commissioner to the supervisor's estimate of the readiness of the intern to practice independently.

Subp. 4. Completion of internship. This amendment moves a definition of "substantiated complaints" from Part 5220.1500, subp. 3 because of its application to the Commissioner's decision regarding completion of internship and the increased standards imposed by these rules on that subject.

Subp. 5. General criteria. This subpart is amended to include a provision regarding membership in a professional organization that provides for a process of review by peers. The Department has, by policy, encouraged the development of a professional peer review process for rehabilitation service providers that would serve as an alternative means of problem solving and dispute resolution in the area of rehabilitation services. The benefit would be a less costly alternative to formal proceedings or even to the less formal settings within the Department. Processes and procedures for review by peers are under development by Minnesota's professional

rehabilitation organizations. Prescribing membership in a professional organization that provides for professional review of its members by peers is a necessary prerequisite to effectively establishing the role of peer review within the workers' compensation rehabilitation system.

The Department is aware that it may take time for these professional organizations to have effective review processes in place and so reasonably sets a January 1, 1995 effective date for this new rule requirement.

5220.1500 PROCEDURE FOR REGISTRATION AS QUALIFIED REHABILITATION CONSULTANT

A 1991 legislative change moved the State of Minnesota's direct service vocational rehabilitation unit for workers' compensation to the Department of Labor and Industry from the Department of Jobs and Training. The requirements that QRC's pay a fee for registration and application no longer make sense when the fee is to be paid by the Department to the Department. For this reason, the fee payment requirements of this rule are made not applicable in new rule language to those applicants and qualified rehabilitation consultants employed by the Department of Labor and Industry, though all other qualifications and requirements for registration remain applicable.

Subps. 3. Registration number and renewal, and 5 monitoring. The basis for denying renewal by registration is clarified, as well as the basis for monitoring by the commissioner, by changing the more general language regarding substantiated complaints or violation of law to more specific citation of the rules or law violations which would justify denial of registration or review of provider activities and services.

5220.1600 PROCEDURE FOR APPROVAL AS QUALIFIED REHABILITATION CONSULTANT FIRM.

Subp. 1. Criteria. This rule part is amended to address two problems or issues frequently encountered since this provision was first adopted approximately ten years ago: (1) The degree to which Department regulation of staffing ratios in rehabilitation provider firms hinders their business health and growth and (2) the need for registered provider firms to promptly notify the Department of staff changes. The proposed rule would change the ratio of registered professional staff to non-registered staff. The present requirement is that 80% of staff be registered as QRCs or QRC interns. During the past decade under this rule, numerous private sector rehabilitation firms have come into existence serving primarily the rehabilitation needs of injured workers under workers' compensation law. As these firms have matured as rehabilitation facilities, some have sought to broaden the rehabilitation population served, to populations outside the workers' compensation field. The rule requiring 80% of professional staff be registered to service a workers' compensation population has been found limiting and unnecessarily burdensome, in part because experienced rehabilitation professionals who meet workers'

compensation registration criteria are in limited supply. Further, it has been the history of enforcement of this rule that a professionally competent rehabilitation firm, otherwise in good standing with the Department, can easily fall out of compliance with the higher 80% requirement due, for example, to unanticipated staff resignations. A relaxation of this ratio will diminish this problem while still maintaining the dominance of registered persons in provider firms. Separately provided for, and unamended, are rules that continue to restrict the development of a rehabilitation plan to a qualified rehabilitation consultant.

Similarly, in the last paragraph of subpart 1 this rule amendment reasonably takes into account the need for the smallest firms to diversify service. It allows all firms up to the size of four QRCs or interns to employ up to two other staff persons, a change from the present limitation to one other staff person.

Finally, the changes to the last sentence of subpart 1 are made because enforcement of this rule requires that the Department be kept up to date on staffing changes as they take place within firms, so changes that affect a firm's compliance may be dealt with as they occur rather than only on the anniversary date of a firm's registration. This reduces the period of noncompliance.

The language regarding firms in office sharing arrangements has been deleted as unnecessary regulation.

5220.1800 STANDARDS OF PERFORMANCE

Amendment of this rule clarifies that failure to meet the specified standards of performance and conduct required of registered rehabilitation providers is a basis both for initiating discipline and for monitoring providers. Such a rule is necessary to protect injured workers and employers from poor performance or misconduct of providers. Reasonably, this amendment provides that not only misconduct is a basis for denial of registration but also significantly poor performance when compared with the industry norms for case duration, cost and outcomes. This rule redresses an imbalance in the Commissioner's authority regarding the approval of rehabilitation providers. Without this amendment, potentially any provider who meets the minimum standards may be registered and if no professional misconduct is subsequently adjudicated, renewal of registration follows. This rule allows for the Commissioner's approval of registration, subsequent to initial approval, to be based in part upon the actual performance of the provider in rehabilitating injured workers.

5220.1801 PROFESSIONAL CONDUCT

Subp. 2. The amendments to wording of this subpart clarify without changing meaning.

Subp. 6. Qualified rehabilitation consultant as witness. This subpart is repealed because the provisions of the statute and Part 5220.0710 of these rules provide ample

procedure for selection and change of QRC where that is desired.

5220.1802 COMMUNICATIONS

Subp. 3. Copies of reports and records. This amendment is for clarification only. The previous language was confusing.

Subp. 4a. Transfer of Information. The amendment of this rule would reasonably conform the rule citation reference to the changes discussed above and cite the appropriate statutory reference. The rule is not substantively changed.

5220.1803 RESPONSIBILITIES

Subp. 5. Reporting requirements. The amendment changes a rule citation to conform with rule amendments and makes a word change that clarifies but does not alter the rule's meaning.

5220.1805 BUSINESS PRACTICES

A word change is made to clarify the rule without altering its meaning.

5220.1806. DISCIPLINARY ACTION.

Amendments to this part merely correct rules citations in light of these rule revisions, and make clear to providers and other parties in subparts 2 and 3 the specific texts in which the standards of performance and conduct that apply to providers may be found.

5220.1900 REHABILITATION SERVICE FEES AND COSTS

Subp. 1a. Billing. This section sets forth, as directed by the 1992 legislature, the procedures and forms to establish uniform billing of rehabilitation services. The information requested is the minimum necessary to ensure that the uniform billing of rehabilitation services permits monitoring and auditing of rehabilitation case costs, comparison of rehabilitation service costs among providers and cases, and the collection of data in consideration of a fee schedule to which the legislature also directed the Department's attention. The minimum necessary number of common service category codes, developed after consultation with providers, insurers and other interested parties, is prescribed by these rule amendments.

Billing information is reasonably required to go the QRC to provide oversight to the services and to see that all rehabilitation costs are accounted for on the uniform billing form. Vendors should reasonably bill the payor.

Subp. 1b. Fees. This rule is proposed as an initial freeze of rehabilitation costs while further study of a fee schedule or other means of limiting rehabilitation costs proceeds. It is reasonable to freeze billing rates at the amount in effect and on file with the Department prior to the effective date of these proposed rules. This will

prevent cost increases to the system from providers who, anticipating fee limitations, would raise their rates to the maximum allowed, thereby defeating the intent of the legislature's directive. The rates at which providers' rates are frozen are those being billed by the providers themselves, with the exception of providers billing over $65.00 per hour as will be discussed below for subpart 1c. An annual adjustment of fees is provided for but reasonably limited to the annual increase in benefits for injured workers. This formula for an annual limit on fee increases prevents the timely, costly, and unpredictable re-regulation of fees on an annual basis by rule. The impact on these small businesses is thereby lessened.

Subp. 1c. Consultants. As noted, the 1992 legislature directed the Department to develop means of limiting fees. This rule limits the hourly billing rate of a qualified rehabilitation consultant to $65. This amount is reasonable in that it is the median rate now charged by providers in the system, and is the rate around which the majority of rates charged by QRC firms cluster. See Appendix D.

The rules amendments at this subpart also provide that one half of this hourly rate may be charged for time spent traveling to and from the delivery of a service, and in waiting prior to the delivery of the service. This element of the rule is deemed a reasonable means of limiting fees due to the following: A substantial amount of time is presently billed within the system for travel and wait time alone. While no study has been undertaken by the Department, a reasonable estimate is that from 20% to 30% of all rehabilitation costs fall in this category. This amendment serves as a disincentive for the expenditure of resources that do not directly serve injured workers. Restriction of billing in this way will encourage better planning, increase the proportion of time spent in direct service to injured workers, and encourage the location of rehabilitation providers closer to the person served. Additionally, in developing this rule notice has been taken that it is the practice of a substantial number of providers already to bill 50% of the professional rate for travel and wait time or to do so on request of the payor.

Subp. 1d. Interns. This rule sets the upper limit on the hourly billing rate of qualified rehabilitation consultant interns at $10 less than the QRC's hourly rate, reasonably recognizing that the intern is a less experienced provider within the workers' compensation system and is thus compensated at a lesser rate.

In addition, at present a substantial number of qualified rehabilitation consultants utilize the maximum internship period allowable to acquire full status because when initially registered they had not acquired the certifications required for full status. This rule will serve as a financial incentive, encouraging interns themselves to more rapidly acquire these certifications while also encouraging provider firms to recruit into the system the most qualified persons.

Subp. 1e. Job development and placement services. Job development and job placement costs are both reasonably and necessarily a focus of fee limitation as they are the services which represent the highest single component of long term rehabilitation case costs. These services are often provided by persons who are qualified by experience, but are without professional education or training in rehabilitation, working under the supervision or oversight of providers registered with the Department. It is, therefore, reasonable that their hourly rate be set at a lower amount than the professional service rate. Indeed, providers of job placement services do generally charge less for this service. The rate is set at $50 hourly as this is the median rate charged by these providers for this service. An annual adjustment to these hourly rates is also reasonably provided for.

Subp. 1f. Fee reduction. This rule is reasonably proposed as a means of fee limitation because it serves as a strong incentive for rehabilitation casework by the qualified rehabilitation consultants and qualified rehabilitation consultant interns to be accomplished as early as possible. Cases of longest duration represent the highest rehabilitation and indemnity benefit costs. A financial incentive of hourly fee reduction to increase rehabilitative, return to work efforts early during the case process is intended to shorten the duration and, thereby, the cost of rehabilitation. The duration and cost thresholds have been selected to capture somewhat more than half of rehabilitation cases, that is, approximately 60% of cases would be subject to this fee reduction. Incentive to focus casework and the development of an effective plan during the first nine months or $3,500 of qualified rehabilitation consultant service is reasonably intended to decrease the number of cases that reach this threshhold to less than one half of rehabilitation cases, securing earlier return to work and the concomitant cost reduction.

Subp. 1g. Payment. This rule clarifies the responsibility of employers and insurers to effect payment or deny payment within thirty days of receiving the billing, consistent with their responsibility for payment of other benefits under the statute. In the absence of such a rule, fee disputes have been complicated by the absence of a specific "date due." This rule is also consistent with the 1992 statute's provision that providers must promptly bill all services, permitting denial of payment to any service not billed within 45 days of delivery. A strict requirement of more rapid attention to billing on the part of the provider reasonably requires more rapid attention on the part of the payor. It is a reasonable expectation that, promptly attended to, questions about services or billing are less likely to become more costly formal disputes.

Subp. 6a. Billing limits on qualified rehabilitation consultant services. This rule addresses costs during periods of job placement and job development case services. Typically, the primary provider during these periods is the job placement service provider, with the qualified rehabilitation consultant providing oversight. It is reasonably intended by this rule to limit unnecessary service or duplication of costs

and services by limiting the time spent by the qualified rehabilitation consultants during periods in which the rehabilitation plan focuses on active job placement, where that work is done by a rehabilitation provider other than the QRC. Reasonably, the rule provides for exceptions when agreed upon by the parties or when so determined by the Commissioner or compensation judge.

5220.1910 Approved Claims Handler

This part is repealed in the repealer section because it has been found, in the experience of the Department, to be ineffective in the administration of workers' compensation rehabilitation. First, qualifying criteria provided in the rules for this purpose did not appreciably affect the handling of claims by the claims handlers. Secondly, the training function was unduly burdensome on the department and upon insurance carriers when compared with the benefit derived. Finally, the one purpose of the provision was that it was to be utilized in allowing claims to waive rehabilitation. In that clear definition of the bases and procedure for granting of a rehabilitation waiver is now provided in these rule amendments, no additional regulation or procedural requirements are reasonable or necessary.

5220.2510 AND 5220.2660

The only change in these two parts is the change of a citation to conform the rules to the repealer of 5220.1910 explained above.

5220.2780 FAILURE TO PAY UNDER ORDER OR PROVIDE REHABILITATION; PENALTY

Subp. 1. The proposed amendments of this rule would reasonably conform the rule citation reference to the changes discussed above. The rule is not substantively changed.

Subp. 3. This language is changed to reflect a 1992 change in the statute in this area. This new rule language shows that the penalty money is now, by statute, payable in to the assigned risk safety account.