

CHAPTER 5220
DEPARTMENT OF LABOR AND INDUSTRY
COMPENSATION AND REHABILITATION

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REHABILITATION OF PERSONS WITH WORK-RELATED INJURIES INCLUDING REQUIREMENTS TO BE A QUALIFIED REHABILITATION CONSULTANT OR REGISTERED REHABILITATION VENDOR

5220.0100 DEFINITIONS.

Subpart 1. **Scope.** For the purposes of parts 5220.0100 to 5220.1910, the following terms have the meanings given them.

Subp. 2. **Approved claims handler.** "Approved claims handler" means a claims handler who meets the requirements of part 5220.1910.

Subp. 3. **Assigned qualified rehabilitation consultant.** "Assigned qualified rehabilitation consultant" means the qualified rehabilitation consultant responsible for consultation, development, and implementation of the rehabilitation plan, whether the qualified rehabilitation consultant is:

A. selected by the insurer if the employee does not choose;

B. chosen by the employee if the employee exercises a choice under part 5220.0710, subpart 1; or

C. determined by a documented agreement of the parties or by the commissioner or a compensation judge in the event of a dispute.

Subp. 4. **Commissioner.** "Commissioner" means commissioner of the Department of Labor and Industry.

Subp. 5. **Department.** "Department" means the Department of Labor and Industry.

Subp. 6. [Repealed, 16 SR 2520]

Subp. 7. [Repealed, 16 SR 2520]

Subp. 8. [Repealed, 16 SR 2520]

Subp. 9. **Employer.** "Employer" means the employer at the time of injury of qualified employees, unless the context clearly indicates otherwise.

Subp. 10. Formal course of study. "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.

Subp. 10a. [Repealed, 16 SR 2520]

Subp. 11. [Repealed, 16 SR 2520]

Subp. 12. Identifying information. "Identifying information" refers to the name, current mailing address, and current phone number of a person or entity. For employees, identifying information also includes the department file number and date of injury. For employers and insurers, identifying information also includes the name of the individual to contact about the claim. For rehabilitation providers, identifying information includes the rehabilitation provider registration number.

Subp. 12a. Insurer. "Insurer" includes self-insured employers.

Subp. 13. Job analysis. "Job analysis" means a systematic study that reports work activity as follows:

- A. what the worker does in the job being analyzed in relation to data, people, and things;
- B. what methods and techniques are employed by the worker;
- C. what machines, tools, equipment, and work aids are used;
- D. what materials, products, subject matter, or services result; and
- E. what traits are required of the worker.

Depending upon the purpose for which the analysis is completed, a job analysis may describe a group of positions that are sufficiently alike to justify being covered by a single analysis or, if necessary, may describe a position that is the total work assignment of a single worker.

Subp. 14. [Repealed, 16 SR 2520]

Subp. 15. [Repealed, 16 SR 2520]

Subp. 16. Job development. "Job development" means systematic contact with prospective employers resulting in opportunities for interviews and employment that might not otherwise have existed. Job development facilitates a prospective employer's consideration of a qualified employee for employment.

Subp. 17. Job modification. "Job modification" means altering the work environment to accommodate physical or mental limitations by making changes in equipment, in the methods of completing tasks, or in job duties.

Subp. 18. Job placement. "Job placement" means activities that support a qualified employee's search for work, including the identification of job leads, arranging for job interviews, the preparation of a client to conduct an effective job search, and communication of information about, but not limited to, the labor market, programs or laws offering employment incentives, and the qualified employee's physical limitations and capabilities as permitted by data privacy laws.

Subp. 19. Job seeking skills training. "Job seeking skills training" means the formal teaching of independent work search skills including, but not limited to, the completion of applications, preparation of resumes, effectiveness in job interviews, and techniques for obtaining job leads.

Subp. 20. Medical management. "Medical management" by a qualified rehabilitation consultant means rehabilitation services that assist communication of information among parties about the employee's medical condition and treatment, and rehabilitation services that coordinate the employee's medical treatment with the employee's vocational rehabilitation services. Medical management refers only to those rehabilitation services necessary to facilitate the employee's return to work.

Subp. 21. **On-the-job training.** "On-the-job training" means training while employed at a workplace where the employee receives instruction from an experienced worker and which is likely to result in employment with the on-the-job training employer upon its completion.

Subp. 22. **Qualified employee.** "Qualified employee" means an employee who, because of the effects of a work-related injury or disease, whether or not combined with the effects of a prior injury or disability:

A. is permanently precluded or is likely to be precluded from engaging in the usual and customary occupation or in the job the individual held at the time of injury; and

B. can reasonably be expected to return to suitable gainful employment through the provision of rehabilitation services.

Subp. 23. **Qualified rehabilitation consultant.** "Qualified rehabilitation consultant" means a person who is professionally trained and experienced and who is registered by the commissioner to provide an eligibility consultation and to develop and implement an appropriate plan of rehabilitation services for an employee entitled to rehabilitation benefits under Minnesota Statutes, section 176.102.

Subp. 24. **Qualified rehabilitation consultant firm.** "Qualified rehabilitation consultant firm" means a public or private business, whether organized as a sole proprietorship, partnership, association, corporation, or other form, which is held out to the public as a business entity engaged in rehabilitation consultation and services.

Subp. 25. **Registered rehabilitation vendor.** "Registered rehabilitation vendor" means a public or private entity registered by the commissioner and existing wholly or in part for the provision of rehabilitation services in accord with an approved rehabilitation plan.

Subp. 26. **Rehabilitation consultation.** "Rehabilitation consultation" means one or both of the following consistent with Minnesota Statutes, section 176.102, subdivision 4, and parts 5220.0110 to 5220.0130.

A. "Claim screening consultation" means an assessment of the likelihood that an injured employee will uneventfully return to work without rehabilitation services. A claim screening consultation uses a report which refers the employee for an eligibility consultation, rehabilitation services, or both, or requests a waiver of rehabilitation services.

B. "Eligibility consultation" means a meeting of the employee and assigned qualified rehabilitation consultant to determine whether the employee is a qualified employee, as defined in subpart 22, to receive rehabilitation services, as defined in subpart 29.

Subp. 27. **Rehabilitation plan.** "Rehabilitation plan" means a written document completed by the assigned qualified rehabilitation consultant on a form prescribed by the commissioner describing a vocational goal and the specific services by which the qualified employee will be returned to suitable gainful employment.

Subp. 28. **Rehabilitation provider.** "Rehabilitation provider" means the following four categories of rehabilitation professionals:

- A. qualified rehabilitation consultants;
- B. qualified rehabilitation consultant interns;
- C. qualified rehabilitation consultant firms; and
- D. registered rehabilitation vendors.

Subp. 29. **Rehabilitation services.** "Rehabilitation services" means a program of vocational rehabilitation, including medical management, designed to return an individual to work consistent with Minnesota Statutes, section 176.102, subdivision 1. The program begins with the first in-person visit of the employee by the assigned qualified rehabilitation consultant, including a visit for purposes of

an eligibility consultation. The program consists of the sequential delivery and coordination of services by rehabilitation providers under an individualized plan. Specific services under this program may include, but are not limited to, vocational evaluation, counseling, job analysis, job modification, job development, job placement, labor market survey, vocational testing, transferable skills analysis, work adjustment, job seeking skills training, on-the-job training, and retraining.

Subp. 30. Required progress record. "Required progress record" means a record maintained by the rehabilitation provider that documents the rehabilitation provider's services and the employee's rehabilitation progress. The record shall include all case notes and written reports whether or not they are submitted to the commissioner and all correspondence received or prepared by the rehabilitation provider about an employee's rehabilitation.

Subp. 31. Required rehabilitation report. "Required rehabilitation report" means the claim screening consultation report, the eligibility consultation report and any other report that 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. "Retraining plan" means an individualized written plan describing the formal course of study through which the goal of the rehabilitation plan may be accomplished. Adult basic education or remedial programs may be a component of a retraining plan but do not constitute retraining in and of themselves.

Subp. 33. Review panel. "Review panel" means the rehabilitation review panel created by Minnesota Statutes, section 176.102, subdivision 3.

Subp. 34. Suitable gainful employment. "Suitable gainful employment" means employment which is reasonably attainable and which offers an opportunity to restore the injured employee as soon as possible and as nearly as possible to employment which produces an economic status as close as possible to that which the employee would have enjoyed without disability. Consideration shall be given to the employee's former employment and the employee's qualifications, including, but not limited to, the employee's age, education, previous work history, interests, and skills.

Subp. 35. Transferable skills analysis. "Transferable skills analysis" means identifying and comparing skills learned in previous vocational or avocational activities with those required by occupations which are within the qualified employee's physical and mental capabilities.

Subp. 36. Vocational evaluation. "Vocational evaluation" means the comprehensive assessment of vocational aptitudes and potential, using information about a qualified employee's past history, medical and psychological status, and information from appropriate vocational testing. The testing may use paper and pencil instruments, work samples, simulated work stations, or assessment in a real work environment.

Subp. 37. Vocational rehabilitation. "Vocational rehabilitation" means the sequential delivery and coordination of services by rehabilitation providers under a rehabilitation plan to achieve the goal of suitable gainful employment.

Subp. 38. Vocational testing. "Vocational testing" means the measurement of vocational interests, aptitudes, and ability using standardized, professionally accepted psychometric procedures.

Subp. 39. Work adjustment. "Work adjustment" means the use of real or simulated work activity under close supervision at a rehabilitation facility or other work setting to develop appropriate work behaviors, attitudes, or personal characteristics.

Subp. 40. Work hardening. "Work hardening" means a physical conditioning program in a clinical setting designed to develop strength and tolerance for work

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or a schedule of graduated resumption of employment consistent with the employee's physical condition.

Statutory Authority: *MS s 176.102; 176.83*

History: *16 SR 2520*

5220.0105 INCORPORATION BY REFERENCE.

The following documents are incorporated by reference only to the extent specifically referenced in parts 5220.0100 to 5220.1910. The documents in items A and B are not subject to frequent change, although new editions may occasionally be published. The documents in item C are revised annually. All documents are available through the Minitex interlibrary loan system.

A. The Dictionary of Occupational Titles, fourth edition, 1977, United States Department of Labor, is available for purchase through the Superintendent of Documents, United States Government Printing Office, Washington, DC 20402. A revised edition is planned for late 1991.

B. The Guide to Job Analysis, March 1982, is published by and available for purchase through the Materials Development Center, Stout Vocational Rehabilitation Institute, University of Wisconsin-Stout, Menomonee, WI 54751.

C. 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, are revised annually and available for purchase at 101 North Wilmot Road, Suite 500, Tucson, Arizona 85711.

Statutory Authority: *MS s 176.102; 176.83*

History: *16 SR 2520*

5220.0110 REHABILITATION CONSULTATION; CLAIM SCREENING CONSULTATION.

Subpart 1. **Purpose.** A claim screening consultation is used to assess whether an employee will return to work in the near future and to report the status of the employee with respect to rehabilitation referral.

Subp. 2. **Criteria.** An insurer shall provide a claim screening consultation so that the entire rehabilitation consultation takes place no later than five days after an employee has accumulated 60 days of lost work time due to a work injury. If an employee has a work injury to the back, the entire rehabilitation consultation shall be provided no later than five days after an employee has accumulated 30 days of lost work time. The claim screening consultation shall be provided before the lost work time requirements above in cases where an employer receives information that indicates that the employee will be unable to return to work at the job held at the time of injury. The claim screening consultation shall then be provided within five days of receipt of the information.

Subp. 3. **Procedure and documentation.** The insurer, in consultation with the employee and the medical provider, shall make an assessment of the need for rehabilitation and indicate on the claim screening consultation report, the rehabilitation referral status of the employee as listed in item C. The claim screening consultation and supplementary information shall be documented by the insurer on a claim screening consultation report form prescribed by the commissioner.

A. **Time for filing.** The claim screening consultation report shall be filed with the commissioner and mailed to the employee within five days of the claim screening consultation.

B. **Contents.** The claim screening consultation report shall contain substantially the following:

- (1) identifying information on the employee, employer, and insurer;
- (2) information describing the employee's physical limitations and capabilities and medical status;

(3) a description of the job held at time of injury, including the physical demands of the job; and

(4) information about the likelihood of the employee's return to the preinjury job in the absence of a rehabilitation plan.

C. Recommendations. The claim screening consultation report shall indicate the rehabilitation referral status of the employee by:

(1) referring the employee to a qualified rehabilitation consultant or to the employee's selection of a qualified rehabilitation consultant, if one is selected by the employee, to provide eligibility consultation;

(2) referring the employee to a qualified rehabilitation consultant or to the employee's selection of a qualified rehabilitation consultant, if one is selected by the employee, to begin rehabilitation services;

(3) requesting to waive referral for eligibility consultation and rehabilitation services, if the employee meets the criteria for a waiver of rehabilitation services under part 5220.0120, subpart 2; or

(4) indicating if there exists a dispute about medical causation or whether the injury arose out of and in the course and scope of employment, so that the commissioner may make appropriate referral under Minnesota Statutes, section 176.104, subdivision 1.

D. Objection or waiver. The employee may object to the insurer's recommendation or request a waiver of consultation and rehabilitation services by filing a rehabilitation request for assistance with the commissioner.

Subp. 4. **Commissioner's authority.** If a claim screening consultation report is not filed according to this part, the commissioner may refer the employee for an eligibility consultation by a qualified rehabilitation consultant at the insurer's expense according to Minnesota Statutes, section 176.102, subdivision 4, paragraph (b).

Statutory Authority: *MS s 176.102; 176.83*

History: *16 SR 2520*

5220.0120 WAIVER OF ELIGIBILITY CONSULTATION AND REHABILITATION SERVICES.

Subpart 1. **Purpose.** The rehabilitation waiver is used where appropriate to defer the initiation of eligibility consultation and rehabilitation services.

Subp. 2. **Criteria.** A rehabilitation waiver may be requested when (1) the employee meets the lost time requirement for a rehabilitation consultation, but there is a reasonable expectation that the employee will return to the preinjury job in the near future without rehabilitation services, or (2) information indicates that the employee would not benefit at that time from rehabilitation services.

Subp. 3. **Procedure and documentation.** Provision for a waiver request is included in the claim screening consultation report. Any waiver requested on the claim screening consultation report shall be according to the requirements of parts 5220.0110 to 5220.0130.

Subp. 4. **Effective period of waiver.** A waiver of rehabilitation services is effective for 60 days from the date of the commissioner's receipt of the request for waiver unless the commissioner denies the request.

Subp. 5. **Renewal of waiver.** If the employee does not return to work during the waiver period, the insurer shall, at the expiration of the waiver period, make a new determination and file another claim screening consultation report referring the employee for an eligibility consultation or requesting renewal of the waiver. The approval of a renewal of waiver requires a showing of the existence of one of the criteria in subpart 2. The commissioner may permit a waiver for periods longer than 60 days if the criteria in subpart 2 will exist for a period longer than 60 days.

Statutory Authority: *MS s 176.102; 176.83*

History: *16 SR 2520*

5220.0130 REHABILITATION CONSULTATION; ELIGIBILITY CONSULTATION.

Subpart 1. Purpose. An eligibility consultation is used to determine whether an employee is a qualified employee as defined by part 5220.0100, subpart 22, and, if so, to begin the development of a rehabilitation plan with the employee.

Subp. 2. Criteria. An insurer shall provide an eligibility consultation by a qualified rehabilitation consultant if the criteria of part 5220.0110, subpart 2, have been met, and:

- A. a waiver has not been requested;
- B. a request for a waiver has been denied;
- C. there is no longer a basis for a waiver;
- D. a waiver period has expired without renewal; or
- E. it is ordered by the commissioner.

Subp. 3. Consultation. The procedure and documentation for an eligibility consultation are contained in items A to E.

A. Time for referral. When an insurer refers an employee to a qualified rehabilitation consultant for an eligibility consultation or rehabilitation services, the insurer shall make that referral at the same time the claim screening consultation report is filed.

The claim screening consultation report and a copy of the first report of injury shall be sent by the insurer to the assigned qualified rehabilitation consultant for the eligibility consultation.

B. Actions. During the first in-person meeting with the employee for purposes of completing the eligibility consultation, the assigned qualified rehabilitation consultation shall:

(1) meet with the employee and, including those items in part 5220.1803, subparts 1 and 1a, explain the employee's rights and all responsibilities regarding rehabilitation, including the employee's right to choose qualified rehabilitation consultants; and

(2) gather information which will permit a determination of the employee's eligibility for rehabilitation.

C. Contents of report. The eligibility consultation and supplementary information shall be documented by the assigned qualified rehabilitation consultant on an eligibility consultation report form prescribed by the commissioner containing substantially the following:

(1) identifying information of the employee, employer, insurer, and qualified rehabilitation consultant;

(2) the eligibility consultation date;

(3) the employee's work status;

(4) information indicating the presence of factors that affect the employee's ability to return to the preinjury job, including the identification of barriers to successful rehabilitation; and

(5) a professional opinion about whether the employee can reasonably be expected to return to suitable gainful employment through the provision of rehabilitation services at this time and the basis for that opinion.

D. Time for filing. An eligibility consultation report shall be completed by the assigned qualified rehabilitation consultant in all cases. The assigned qualified rehabilitation consultant shall file the eligibility consultation report within 30 days of the first in-person meeting with the employee and concurrently mail a copy to the insurer and the employee.

E. Employee's objection. The employee may object to the qualified rehabilitation consultant's recommendations by filing a rehabilitation request for assistance with the commissioner.

Statutory Authority: *MS s 176.102; 176.83*

History: *16 SR 2520*

5220.0210 [Repealed, 16 SR 2520]

5220.0300 [Repealed, 16 SR 2520]

5220.0400 [Repealed, 16 SR 2520]

5220.0410 REHABILITATION PLAN.

Subpart 1. Purpose. The purpose of the rehabilitation plan is 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. If an employee is a qualified employee under part 5220.0100, subpart 22, the assigned qualified rehabilitation consultant shall, in consultation with the parties, develop, record, and file a rehabilitation plan on the form prescribed by the commissioner containing substantially the following:

A. information identifying the employee, employer, insurer, and assigned qualified rehabilitation consultant;

B. the employee's occupation at time of injury, the Dictionary of Occupational Titles, which is incorporated by reference in part 5220.0105, code for that occupation, and the vocational goal of the rehabilitation plan;

C. itemization of the rehabilitation services to be provided including any vendor names, anticipated dates of service initiation, anticipated service completion dates, estimated service costs, and projected total plan cost and plan completion date;

D. a summary of planned treatment or physical rehabilitation, including the treating doctor's name, the employee's diagnoses and physical restrictions, relevant medical reports documenting the restrictions or the estimated date on which restrictions will be available, other complicating factors to be considered and methods of dealing with those factors;

E. the dated signatures of the employee, insurer, and assigned qualified rehabilitation consultant if the parties are in agreement with the plan;

F. employee comments, if any; and

G. instructions to the parties that if they disagree with the plan they have 21 days from their receipt of the proposed plan to resolve the disagreement or object to the proposed plan, and that an objection must be sent to the Department of Labor and Industry for resolution.

Authoritative references for describing a vocational history and a vocational goal in the plan, and for analyzing jobs are the Dictionary of Occupational Titles and the Guide to Job Analysis. These documents are incorporated by reference in part 5220.0105.

Subp. 3. Process. Upon preparation of the proposed plan, and within 60 days of the first in-person contact between the assigned qualified rehabilitation consultant and the employee, the qualified rehabilitation consultant shall provide to all parties a copy of the proposed rehabilitation plan on a form prescribed by the commissioner.

Subp. 4. Party's response. Upon receipt of the proposed rehabilitation plan, each party must, within 21 days, either:

A. sign the plan signifying agreement and return it to the assigned qualified rehabilitation consultant; or

B. promptly notify the assigned qualified rehabilitation consultant of any objection to the plan and work with the assigned qualified rehabilitation consultant to resolve the objection by agreement.

However, if the objection is not resolved, the objecting party must file a rehabilitation request for assistance with the commissioner within 21 days of receipt of the proposed plan. These disputes will be resolved according to part 5220.0950.

If no rehabilitation request for assistance objecting to the plan is filed within 21 days of the party's receipt, the plan approval process will occur as provided in subpart 6.

Subp. 5. Filing the plan. The assigned qualified rehabilitation consultant shall file the rehabilitation plan and the initial evaluation narrative report, as required by part 5220.1803, subpart 5, with the commissioner within 90 days of the first in-person contact between the qualified rehabilitation consultant and the employee or within 30 days of circulation to the parties, whichever is earlier.

Subp. 6. Plan approval. A rehabilitation plan that all parties have signed is deemed approved by the commissioner upon filing.

If a party fails to sign the plan or fails to file a rehabilitation request for assistance objecting to the proposed plan within the 21 days specified in subpart 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 it was sent to each party, 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 to dispute payment of rehabilitation fees relative to the plan.

In reviewing rehabilitation plans pursuant to Minnesota Statutes, section 176.102, subdivision 6, the commissioner shall notify all interested parties of the nature of any additional information necessary for the review, any recommended modifications to the plan, and any decision approving, modifying, or rejecting a plan.

If the commissioner refers issues relating to a plan to a compensation judge or an administrative conference pursuant to Minnesota Statutes, section 176.106, all parties shall be notified of that action and of all applicable related procedures.

Commencement of a plan without objection from the commissioner shall not constitute a waiver or an estoppel of the commissioner's or compensation judge's authority over the plan.

Subp. 7. Communication with treating doctor. Upon filing of the rehabilitation plan with the commissioner, the assigned qualified rehabilitation consultant shall, within the limitations of part 5220.1802, subpart 5, send a copy of the employee's rehabilitation plan to the employee's treating doctor.

Subp. 8. Adherence to plan. The services provided by rehabilitation providers shall be according to the approved rehabilitation plan.

Subp. 9. Administration of plan. All rehabilitation services shall be provided to an employee pursuant to Minnesota Statutes, section 176.102, as stated in the rehabilitation plan and any subsequent amendments, and shall be administered exclusively by a person or business entity registered and approved by the commissioner as a qualified rehabilitation consultant or a qualified rehabilitation consultant firm.

The assigned qualified rehabilitation consultant shall monitor registered rehabilitation vendor compliance with the rehabilitation plan.

Job placement services shall be provided by rehabilitation providers registered by the commissioner or a facility accredited by the National Commission on Accreditation of Rehabilitation Facilities (CARF), Tucson, Arizona. The

CARF Directory of Accredited Organizations Serving People with Disabilities and its Standards Manual for Organizations Serving People with Disabilities are incorporated by reference in part 5220.0105.

Subp. 10. Disputes. In the case of a dispute about a rehabilitation plan, any party may file a rehabilitation request for assistance according to Minnesota Statutes, chapter 176, or part 5220.0950.

Statutory Authority: *MS s 176.102; 176.83*

History: 16 SR 2520

5220.0500 [Repealed, 16 SR 2520]

5220.0510 PLAN AMENDMENT AND CLOSURE.

Subpart 1. Reasons for amendment. Whenever circumstances indicate that the rehabilitation plan objectives are not likely to be achieved, proposals for plan amendment may be considered by the parties. A rehabilitation plan may be amended for good cause, including but not limited to:

- A. a new or continuing physical limitation that significantly interferes with the implementation of the plan;
- B. the employee is not participating effectively in the implementation of the plan;
- C. a need to change the vocational goal of the rehabilitation plan;
- D. the projected rehabilitation cost or duration, as stated in the rehabilitation plan, will be exceeded; or
- E. the employee feels ill-suited for the type of work for which rehabilitation is being provided.

Subp. 2. Procedure and responsibilities. The assigned qualified rehabilitation consultant may recommend a plan amendment when reasons for amendment are present. Parties other than the assigned qualified rehabilitation consultant may propose amendments. It is the responsibility of the assigned qualified rehabilitation consultant to facilitate discussion of proposed amendments.

The assigned qualified rehabilitation consultant shall promptly report any agreed upon amendment of the plan on the form prescribed by the commissioner. If the parties are not able to privately resolve disagreements about plan amendment, a party may request amendment of the rehabilitation plan on a form prescribed by the commissioner and the dispute shall be resolved according to subpart 8.

Subp. 3. Requirements. The rehabilitation plan amendment shall be filed on the form prescribed by the commissioner. The prescribed form shall contain substantially the following:

- A. identifying information on the employee, employer, insurer, and assigned qualified rehabilitation consultant;
- B. the proposed amendment;
- C. a rationale for the amendment;
- D. if the amendment adds rehabilitation services, an itemization of each additional rehabilitation service to be provided including any registered rehabilitation vendor names, dates of initiation and completion, and estimated costs of each service;
- E. if the amendment will result in a change in the projected plan completion date, the new completion date;
- F. if the amendment will result in a change in the projected plan cost, the new estimated cost;
- G. employee comments, if any; and
- H. the dated signatures of the employee, insurer, and assigned qualified rehabilitation consultant.

Subp. 4. **Amendment by commissioner.** If a plan is modified for good cause pursuant to Minnesota Statutes, section 176.102, subdivision 8, or as a result of an administrative conference pursuant to Minnesota Statutes, section 176.106, the commissioner shall notify all interested parties of the modification and the reasons for the modification.

Subp. 5. **Request for closure before plan completion.** At any time, the insurer or employee may request the closure of rehabilitation services by filing a rehabilitation request for assistance with the commissioner. The commissioner or a compensation judge may close rehabilitation services for good cause, including, but not limited to:

A. a new or continuing physical limitation that significantly interferes with the implementation of the plan;

B. the employee's performance indicates that the employee is unlikely to successfully complete the plan;

C. the employee is not participating effectively in the implementation of the plan; and

D. the employee is not likely to benefit from further rehabilitation services.

Subp. 6. **Commissioner's authority to initiate closure.** If the commissioner initiates the termination of rehabilitation services pursuant to Minnesota Statutes, section 176.102, subdivision 6, or through an administrative conference pursuant to Minnesota Statutes, section 176.106, all interested parties shall be provided written notice of the proposed decision and an opportunity to be heard either in person or through the submission of written information.

Subp. 7. **Closure report by assigned qualified rehabilitation consultant.** When an employee's rehabilitation plan is completed and closure of rehabilitation services is not disputed, the assigned qualified rehabilitation consultant shall file a report on a form prescribed by the commissioner. When the reason for the closure is a return to work, the qualified rehabilitation consultant shall not complete and file the closure report until the employee has continued working for at least 30 calendar days following the return to work. The form reporting plan closure must be sent to the employee and the insurer when filed with the commissioner. The form shall contain substantially the following:

A. identifying information on the employee, employer, insurer, and assigned qualified rehabilitation consultant;

B. the outcome of the rehabilitation plan;

C. the employee's employment status:

(1) if the employee is working, information identifying the employer with whom the employee returned to work, the job title and Dictionary of Occupational Titles code, the return to work date, the weekly wage, and whether the employee has continued working for 30 calendar days; or

(2) if the employee is not working, information explaining why the plan should be closed or whether additional rehabilitation services would be of benefit;

D. a summary of the rehabilitation services provided and rehabilitation costs by all qualified rehabilitation consultants, qualified rehabilitation consultant firms, and registered rehabilitation vendors; and

E. the assigned qualified rehabilitation consultant's dated signature.

Subp. 8. **Disputes.** In the case of a dispute about a plan amendment or closure, any party may file a rehabilitation request for assistance according to Minnesota Statutes, chapter 176, and part 5220.0950.

Statutory Authority: *MS s 176.102; 176.83*

History: *16 SR 2520*

5220.0600 [Repealed, 16 SR 2520]

5220.0700 [Repealed, 16 SR 2520]

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

Subpart 1. Employee right to choose. Pursuant to Minnesota Statutes, section 176.102, subdivision 4, the qualified employee has a right to choose an assigned qualified rehabilitation consultant as defined in part 5220.0100, subpart 3:

A. once:

(1) when the employee selects a qualified rehabilitation consultant before a referral by the insurer to a qualified rehabilitation consultant, or before a first in-person visit between a qualified rehabilitation consultant and the employee; or

(2) when the employee selects a qualified rehabilitation consultant before the end of 60 days following the first in-person visit between the employee and a qualified rehabilitation consultant selected by the insurer, in which case the employee shall notify the insurer and commissioner in writing of the name, address, and telephone number of the qualified rehabilitation consultant chosen; and

B. once when the employee selects a qualified rehabilitation consultant after 60 days following the first in-person visit between the employee and the assigned qualified rehabilitation consultant.

Subp. 2. Documentation. The new assigned qualified rehabilitation consultant shall promptly inform the commissioner of the change in assigned qualified rehabilitation consultant by filing the prescribed form with the commissioner. The prescribed form shall contain identifying information on the employee, employer, insurer, the new qualified rehabilitation consultant, and the former qualified rehabilitation consultant.

Subp. 3. Dispute resolution. After exhaustion of the employee's choices in subpart 1, any party may propose a change of assigned qualified rehabilitation consultant. The parties may at any time agree to a change and select a new qualified rehabilitation consultant. If a dispute about change or selection arises, and the parties are not able to resolve that dispute, the dispute shall be resolved by a determination of the commissioner or a compensation judge as provided in Minnesota Statutes, chapter 176, and part 5220.0950. If the employee's choices have not been exhausted, the determination shall be made according to the employee's choice. If the employee's choices have been exhausted, the determination shall be made according to the best interest of the parties, consistent with the objectives of Minnesota Statutes, section 176.102, subdivision 1.

Subp. 4. Employee residing or moving out of Minnesota. Qualified employees who reside outside of Minnesota or who move out of Minnesota may receive services from a rehabilitation professional qualified under that jurisdiction's workers' compensation law to provide rehabilitation services. This subpart does not require the assignment of another rehabilitation professional if the services can be reasonably furnished by a rehabilitation provider registered in Minnesota. When services are provided outside of Minnesota by a rehabilitation professional qualified in that jurisdiction, an assigned qualified rehabilitation consultant in Minnesota shall monitor the provision of services.

Subp. 5. Change of consultant not an exercise of choice by employee. A change of assigned qualified rehabilitation consultant necessitated by circumstances outside the control of the employee is not a choice by the employee and does not exhaust the employee's right to choice. Such circumstances include, but are not limited to, the assigned qualified rehabilitation consultant leaving practice or the extended illness of the assigned qualified rehabilitation consultant. Disputes about changes shall be resolved according to subpart 3.

Statutory Authority: *MS s 176.102; 176 83*

History: *16 SR 2520*

5220.0750 RETRAINING.

Subpart 1. Purpose. The purpose of retraining is to return the employee to suitable gainful employment through a formal course of study. Retraining is to be given equal consideration with other rehabilitation services, and proposed for approval if other considered services are not likely to lead to suitable gainful employment.

Subp. 2. Plan submission. A proposed retraining plan shall be filed on a form prescribed by the commissioner and must contain substantially the following:

A. identifying information on the employee, employer, insurer, and assigned qualified rehabilitation consultant;

B. the retraining goal;

C. information about the formal course of study required by the retraining plan, including:

(1) the name of the school;

(2) titles of classes;

(3) the course's length in weeks, listing beginning and ending dates of attendance;

(4) an itemized cost of tuition, books, and other necessary school charges;

(5) mileage costs; and

(6) other required costs;

D. starting and completion dates;

E. preinjury job title and economic status, including, but not limited to preinjury wage;

F. a narrative rationale describing the reasons why retraining is proposed, including a summary comparative analysis of other rehabilitation alternatives and information documenting the likelihood that the proposed retraining plan will result in the employee's return to suitable gainful employment;

G. dated signatures of the employee, insurer, and assigned qualified rehabilitation consultant signifying an agreement to the retraining plan; and

H. an attached copy of the published course syllabus, physical requirements of the work for which the retraining will prepare the employee, medical documentation that the proposed training and field of work is within the employee's physical restrictions, reports of all vocational testing or evaluation, and a recent labor market survey of the field for which the training is proposed.

Subp. 3. Amendment. The commissioner or a compensation judge may amend a retraining plan at the request of an employee if the employee believes that the occupation the employee is being trained for is not suitable, and if the employee's request is made within 90 days from the commencement date of the retraining. No more than one change shall be permitted for this reason. Other amendments may be requested by the parties according to part 5220.0510.

Subp. 4. Compensation. An employee who has been approved for retraining under Minnesota Statutes, section 176.102, subdivision 11, may petition the commissioner or a compensation judge for additional compensation, not to exceed 25 percent of the compensation otherwise payable, if the employee will incur a special, unusual, or unique circumstance during the retraining period that would otherwise reduce the likelihood that the retraining plan will be successfully completed. Additional compensation is not warranted under this subpart if the circumstance on which the request is based is compensable as a cost of the rehabilitation plan under Minnesota Statutes, section 176.102, subdivision 9. The commissioner or a compensation judge may order an award of additional com-

pensation and specify the amount to be awarded. When the employee is entitled to additional compensation for retraining, the compensation shall begin on the first day the special, unusual, or unique circumstance of the retraining is present but not before the start of the retraining program, and shall stop at any time the special, unusual, or unique circumstance is no longer present. The commissioner or compensation judge may determine the date of commencement and the date of discontinuance of the additional compensation.

Subp. 5. Retraining plan approval. When the retraining plan is submitted to the commissioner, the commissioner shall review the proposed retraining plan within 30 days of its submission and notify the parties of plan approval or denial. The commissioner may also request additional information from the parties, confer with the parties, recommend modifications and otherwise seek agreement about the plan. The commissioner may make a determination or pursue resolution of questions regarding the plan consistent with part 5220.0950, subpart 3.

Subp. 6. Disputes. In the case of a dispute about a retraining plan, any party may file a rehabilitation request for assistance according to Minnesota Statutes, chapter 176 or part 5220.0950.

Statutory Authority: *MS s 176.102; 176.83*

History: *16 SR 2520*

5220.0800 [Repealed, 16 SR 2520]

5220.0850 ON-THE-JOB TRAINING.

Subpart 1. Objective of on-the-job training. The primary objective of on-the-job training as defined in part 5220.0100, subpart 22, is gainful employment with the on-the-job training employer that is likely to restore the employee as close as possible to preinjury economic status. A proposed on-the-job training plan may be rejected by the commissioner or compensation judge if the plan is unlikely to achieve this primary objective. However, documentation that the training will increase employability with other employers may be a basis for approval.

Subp. 2. Plan submission. A proposed on-the-job training plan shall be filed on a form prescribed by the commissioner and must contain the following:

A. identifying information on the employee, employer, insurer, and assigned qualified rehabilitation consultant;

B. information identifying the on-the-job training employer;

C. the title of the job for which the employee is being trained and its Dictionary of Occupational Titles code number;

D. a job analysis of the training position;

E. information documenting that the training position is within the employee's physical restrictions;

F. a description of the skills the employee will acquire as a result of the training;

G. training commencement and completion dates;

H. the intervals at which the plan progress will be assessed;

I. information indicating whether the on-the-job training employer will provide employment to the employee upon completion of the training;

J. the employee's wage during and after training;

K. supplies and tools required by the plan and their cost;

L. weekly workers' compensation benefits to be paid by the insurer during the training;

M. dated signatures of the employee, insurer, assigned qualified rehabilitation consultant, on-the-job training employer, and training instructor signifying agreement with the plan; and

N. a narrative rationale describing the reasons why on-the-job training is proposed, including information that demonstrates that the on-the-job training will result in the employee's return to a job that produces, as close as possible, the preinjury economic status.

Subp. 3. **Duration of plan.** A plan for on-the-job training that will last longer than six months may be justified by information that a plan that exceeds six months is needed to master required skills, or that training that exceeds six months will significantly increase the likelihood that the employee will recover preinjury economic status.

Subp. 4. **On-the-job training plan approval.** When an on-the-job training plan is submitted to the commissioner, the commissioner shall review the proposed plan within 30 days of its submission and notify the parties of plan approval or rejection. The plan approval process shall be subject to the procedures under part 5220.0410, subpart 6. The commissioner may make a determination or pursue resolution of questions regarding the plan consistent with part 5220.0950, subpart 3.

Subp. 5. **Disputes.** In the case of a dispute about an on-the-job training plan, any party may request resolution according to Minnesota Statutes, chapter 176 and part 5220.0950.

Statutory Authority: *MS s 176.102; 176 83*

History: *16 SR 2520*

5220.0900 [Repealed, 16 SR 2520]

5220.0950 DISPUTES.

Subpart 1. **Request for assistance.** Where issues exist about an employee's entitlement to rehabilitation services, the appropriateness of a proposed plan, or any other dispute about rehabilitation, a party may request assistance to resolve the disputed issues by filing a form prescribed by the commissioner. The form with all its attachments must be served on all parties and be filed with the commissioner. The form must contain the following:

- A. identifying information on the employee, employer, insurer, and assigned qualified rehabilitation consultant;
- B. a statement of the rehabilitation issues to be resolved;
- C. a statement of what the requester wants and supporting evidence and arguments;
- D. a list showing that all parties were served and the date they were served;
- E. the requester's name and signature, and
- F. instructions for completion of the form.

Subp. 2. **Action by commissioner.** If the commissioner refers a dispute to a compensation judge or, based on the written submission of the parties, determines the dispute or schedules an administrative conference to determine the dispute, all parties shall be served with written notice of that action.

The commissioner may require the parties to meet and confer informally prior to a scheduled administrative conference if the facts and issues involved show that a meeting would facilitate resolution of the dispute.

When the commissioner or compensation judge makes a determination on the issues in dispute, copies shall be served on the parties. No determination will be made by the commissioner under Minnesota Statutes, section 176.106, with respect to rehabilitation entitlement if primary liability has been denied.

Subp. 3. **Commissioner's initiation of dispute resolution.** If the commissioner independently determines that issues exist regarding an employee's entitlement to rehabilitation or the appropriateness of a proposed plan, or otherwise initiates

proceedings before a compensation judge or through an administrative conference, written notice of the issues in dispute shall be served upon the parties.

Subp. 4. Formal hearing. A party that disagrees with a decision of the commissioner under Minnesota Statutes, section 176.106, may request a formal hearing pursuant to part 5220.1010. The request for hearing will be referred to the Office of Administrative Hearings pursuant to Minnesota Statutes, section 176.106, subdivision 7.

Statutory Authority: *MS s 176.102; 176.83*

History: *16 SR 2520*

5220.1000 [Repealed, 16 SR 2520]

5220.1010 REQUEST FOR A FORMAL HEARING.

Any party who disagrees with a decision of the commissioner about rehabilitation under Minnesota Statutes, section 176.106 and part 5220.0950 may request a new, formal hearing by filing a form prescribed by the commissioner within 30 days of the service and filing of the commissioner's decision. The request must state what issues continue to be in dispute and must be received by the commissioner within 30 days of service and filing of the commissioner's decision. A copy of the request for hearing shall be served on all parties at the time of filing.

Statutory Authority: *MS s 176.102; 176.83*

History: *16 SR 2520*

5220.1100 LEGAL REPRESENTATION.

When an employee or insurer is represented by an attorney and if a notice of representation has not already been filed, the attorney shall notify the commissioner as provided in part 1415.0800. The attorney will receive notices as provided in part 5220.2890. The value of rehabilitation services shall not be used in the calculation of attorney's fees. The legal fees shall be calculated in the manner provided by law. An attorney who has so advised the commissioner will be notified of any proceedings, and will receive rehabilitation reports as provided by part 5220.1802, subpart 3.

Statutory Authority: *MS s 176.102; 176.83*

History: *16 SR 2520*

5220.1200 REHABILITATION SERVICES, SETTLEMENT AGREEMENTS.

Rehabilitation services pursuant to an approved rehabilitation plan are mandatory for qualified employees. However, if a good-faith dispute exists regarding entitlement to rehabilitation services, that dispute may be converted into cash by settlement agreement between the parties pursuant to Minnesota Statutes, section 176.521. 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.

Statutory Authority: *MS s 176.102; 176.83*

History: *16 SR 2520*

5220.1250 QUALIFIED REHABILITATION CONSULTANT AND REGISTERED REHABILITATION VENDOR.

An entity may be approved either to provide rehabilitation services as a registered rehabilitation vendor or as a qualified rehabilitation consultant. The roles of vendor and consultant are distinct and, therefore, a qualified rehabilitation consultant may not be, or function as, a registered rehabilitation vendor or the agent of a vendor. There shall be no ownership or financial relationships of any kind between any registered rehabilitation vendor and qualified rehabilitation consultant or qualified rehabilitation consultant.

Statutory Authority: *MS s 176.102; 176.83*

History: *16 SR 2520*

5220.1300 [Repealed, 16 SR 2520]

5220.1400 QUALIFYING CRITERIA FOR REHABILITATION CONSULTANT.

Subpart 1. **Requirement.** To become registered as a qualified rehabilitation consultant, the certification, education, and internship requirements of subparts 2 to 5 must be met.

Subp. 2. **Certification and education.** A qualified rehabilitation consultant shall possess at least one of the following credentials:

A. a baccalaureate degree, together with certification by the Board of Rehabilitation Certification as a certified rehabilitation counselor or a certified insurance rehabilitation specialist; or

B. a baccalaureate degree together with certification by the Association of Rehabilitation Nurses as a certified rehabilitation registered nurse.

Persons who were qualified rehabilitation consultants on June 15, 1987, must have obtained the certification described in item A or B by June 15, 1989. If a qualified rehabilitation consultant lacks two years or more of the experience required to meet the certifying body's minimum experience or internship requirement, the time for becoming certified shall equal the time remaining for completion of the certifying body's minimum experience or internship requirement. If a qualified rehabilitation consultant must also obtain a baccalaureate degree to meet the certifying body's minimum education requirements, the qualified rehabilitation consultant shall have an additional four years to become certified. If an examination is required for certification, the time allowed for certification under this part must include two scheduled examinations which the applicant is eligible to take. Persons who were qualified rehabilitation consultant interns on June 15, 1987, may become qualified rehabilitation consultants under the requirements in place before that date. Upon becoming qualified rehabilitation consultants, such persons must obtain certification as required by this subpart.

Subp. 3. **Qualified rehabilitation consultant intern.** The purpose of internship is to provide a supportive, structured period of professional supervision and case review following registration. An individual who meets the requirements of subpart 2, item A or B may be registered as a qualified rehabilitation consultant intern. An individual who meets the requirements of subpart 2, item A or B, except that two years or less of internship or experience remains as a requirement for certification, may be registered as a qualified rehabilitation consultant intern. A qualified rehabilitation consultant intern must complete an introductory training session sponsored by the department within six months of approval of registration. A qualified rehabilitation consultant intern shall not be a solo practitioner. When the intern is registered, the intern's employer shall provide the commissioner with the name of the qualified rehabilitation consultant under whose direct supervision the intern will work, and shall submit a plan of supervision on forms prescribed by the commissioner. Direct supervision means that the supervisor is directly responsible for the rehabilitation work on any case, and for monitoring progress toward the certification required by this subpart. The intern supervisor need not maintain an office at the same location as the intern. The supervisor shall cosign all written work being done by the intern. There shall be no billing by the supervisor for these supervisory duties. The supervisor shall attend all administrative conferences with the intern and shall arrange for training as required by the commissioner. The intern shall be designated as an "intern" on all documents bearing the name of the intern.

The failure to comply with the standards of performance and professional

conduct contained in parts 5220.1800 and 5220.1801 or the violation of any of the provisions of Minnesota Statutes, chapter 176, Minnesota Rules, parts 5220.0100 to 5220.1910, or orders issued under the statutes or rules constitute grounds for denial of registration as a qualified rehabilitation consultant under Minnesota Statutes, section 176.102, subdivision 3, discipline under Minnesota Statutes, section 176.102, subdivision 3a, or delay of completion of internship. The intern may appeal the decision of the commissioner denying registration as provided in part 5220.1500, subpart 2.

In cases where an intern has been supervised by a qualified rehabilitation consultant who leaves the organization with which the intern has been employed and no other qualified rehabilitation consultant is available to supervise the intern, the intern may, with the prior written approval of the commissioner, sign all required documents in the capacity of a qualified rehabilitation consultant for a period of time deemed appropriate by the commissioner. Past performance and overall experience shall be taken into consideration for this approval.

Subp. 4. Completion of internship. The burden of proof of experience shall be on the applicant. The intern must work at least one year full time as an intern in the rehabilitation of injured workers under Minnesota Statutes, section 176.102. Evidence of experience shall include documentation of a history of employment in a position of vocational rehabilitation. For purposes of this subpart, "full-time employment" is consistent with the employment experience requirement of the certifying body chosen by the qualified rehabilitation consultant intern. Where there is no definition of full-time employment by the certifying body chosen by the qualified rehabilitation consultant intern, full-time employment means a minimum of 37 hours per week during a 52-week period. Any part-time employment will be prorated based on this definition. The intern may make application for completion of internship when the minimum requirements in subparts 2 to 5 have been met.

The commissioner's action on the intern's application for completion of internship shall be based in part on the report of the qualified rehabilitation consultant intern supervisor about the competence of the intern to practice independently. The commissioner shall also consider information about the intern's professional competence including that obtained in the course of any investigation about professional conduct, and on any substantiated complaints regarding professional conduct.

Subp. 5. General criteria. All persons who are qualified rehabilitation consultants shall be self-employed or employed by a single organization that is approved for the employment of qualified rehabilitation consultants as a qualified rehabilitation consultant firm or an employer or insurer. Qualified rehabilitation consultants must be available to clients, and for administrative conferences or hearings during normal business hours. A qualified rehabilitation consultant employed by an employer or insurer that is not registered as a qualified rehabilitation consultant firm is permitted to provide rehabilitation consultation and services only for the claims being handled by the entity by whom the consultant is employed. A qualified rehabilitation consultant shall notify the department immediately upon changing employment. Notification shall include the name of the former place of employment, the name, address, and telephone number of the new place of employment and the effective date of new employment.

Registration shall require Minnesota residency. The commissioner may grant an exception for persons who reside no more than 100 miles by road from the Minnesota border. Any such qualified rehabilitation consultant agrees, as an additional condition of registration, to appear at any administrative conference or hearing when requested, in the same manner as if subpoenaed. A qualified rehabilitation consultant shall notify the department immediately upon any change in residency to or from Minnesota.

Statutory Authority: *MS s 176.102; 176.83*

History: *16 SR 2520*

5220.1500 PROCEDURE FOR REGISTRATION AS QUALIFIED REHABILITATION CONSULTANT.

Subpart 1. Application to become a qualified rehabilitation consultant intern. An individual desiring to receive approval and registration as a qualified rehabilitation consultant intern shall submit to the commissioner, a complete application consisting of the following:

- A. completed, signed, and notarized application form;
- B. copy of any pertinent license or certification;
- C. documentation supporting any applicable experience requirements;
- D. official transcripts of all pertinent postsecondary education;
- E. list of services and fees. This filing shall not constitute an approval or disapproval of the services or fees;
- F. the annual registration application fee of \$100; and
- G. a plan of supervision as required by part 5220.1400, subpart 3.

Subp. 1a. Approval of registration as qualified rehabilitation consultant intern. Where the requirements for registration are met, the commissioner shall issue a letter to the applicant so indicating within 60 days of receiving the completed application. After registration has been approved, the registration application fee is not refundable. If the requirements for qualified rehabilitation consultant intern are not met, the commissioner shall issue a decision and order denying registration to the applicant within 60 days of receipt of the completed application. If the application for registration is not approved, one-half of the registration application fee may be refunded.

Subp. 2. Appeal process. The appeal process provides a mechanism for applicants to request reconsideration of a decision and order denying registration or renewal of registration.

A written notice of appeal shall be filed with the commissioner within 30 days of filing and service of the order. If the appeal is for denial of renewal of registration, the filing will stay the effect of the denial until final disposition.

The appeal shall be referred to the rehabilitation review panel according to Minnesota Statutes, section 176.102, subdivision 3.

Subp. 3. Registration number and renewal. The commissioner shall assign a registration number to each registered rehabilitation provider.

Registration must be renewed annually. A rehabilitation provider shall request renewal on a form prescribed by the commissioner. Application for renewal is due 60 days before expiration of registration, accompanied by the appropriate registration fee. Registration renewal applications that are not complete, are not accompanied by the registration renewal fee, or are not accompanied by documentation of certification or satisfactory documentation of continuing education will be returned to the applicant for completion. Completed registration renewal applications received later than the due date shall be assessed a \$25 late fee. Registration renewal applications received more than 30 days after the due date shall be assessed an additional \$10 per day late fee for each day after the request is 30 days late. No late fee in excess of \$125 may be assessed.

Substantiated complaints about activities or services, or failure to comply with laws, rules, or orders under Minnesota Statutes, chapter 176, are grounds for denial of renewal of registration as a qualified rehabilitation consultant under Minnesota Statutes, section 176.102, subdivision 3, discipline under Minnesota Statutes, section 176.102, subdivision 3a, or delay of completion of internship. The decision of the commissioner may be appealed as provided in subpart 2. "Substantiated complaints about activities or services" for purposes of denial of renewal of registration means there has been a stipulation or order of discipline.

Service and fee schedules shall be filed with the commissioner whenever there is a change and no less than once each calendar year at the time of renewal

of registration. This filing shall not constitute an approval or disapproval of the services and fees.

Subp. 3a. Continuing education. To retain registration, a qualified rehabilitation consultant or qualified rehabilitation consultant intern shall submit satisfactory documentation of current certification required by part 5220.1400, subpart 2. A qualified rehabilitation consultant or qualified rehabilitation consultant intern who is not yet certified shall submit satisfactory documentation of continuing education pertinent to the workers' compensation rehabilitation field equivalent to 20 contact hours each year at the time registration is renewed. Continuing education includes, but is not limited to, the following:

A. postsecondary course work in rehabilitation related fields, including vocational rehabilitation, medical rehabilitation, psychology of disability, and occupational safety;

B. publicly or privately sponsored training in rehabilitation related fields, including vocational rehabilitation, medical rehabilitation, psychology of disability, and occupational safety;

C. continuing legal education courses about workers' compensation law; and

D. rehabilitation related training sponsored and approved by the commissioner.

Satisfactory documentation shall include legible certificates of attendance bearing the name of the participant that are signed and dated by the sponsoring institution or organization. Receipts for tuition are not acceptable as satisfactory documentation of attendance.

Continuing education units must be obtained in the 12-month period immediately preceding the date on which registration renewal forms are due.

The department of labor and industry's annual rehabilitation provider update sessions are mandatory for all rehabilitation providers.

Nonattendance at the mandatory orientation or update sessions is prohibited conduct for rehabilitation providers, but may be allowed only for emergency situations and must be reported to the commissioner.

Subp. 4. Inactive status. If an interval of one year occurs without providing direct case service to workers' compensation recipients or without providing supervision to qualified rehabilitation consultants or qualified rehabilitation consultant interns who provide direct case service to workers' compensation recipients, the registration will not be renewed upon expiration. A qualified rehabilitation consultant or qualified rehabilitation consultant intern may apply for reinstatement of registration by providing verification to the commissioner of current certification as required by part 5220.1400, continued attendance at all annual update sessions, and fulfillment of continuing education requirements as provided by subpart 3a. The applicant must complete an orientation training session before acceptance is final. An order regarding renewal of registration may be appealed to the rehabilitation review panel according to Minnesota Statutes, section 176.102, subdivision 3.

Subp. 5. Monitoring. The commissioner shall review the professional activities and services of rehabilitation providers to determine if they are reasonable and comply with laws, rules, or orders under Minnesota Statutes, chapter 176.

Subp. 6. Revocation. The revocation process shall be conducted as provided in Minnesota Statutes, section 176.102, subdivision 3a.

Statutory Authority: *MS s 176.102; 176.83*

History: *16 SR 2520*

5220.1600 PROCEDURE FOR APPROVAL AS QUALIFIED REHABILITATION CONSULTANT FIRM.

Subpart 1. Criteria. The qualified rehabilitation consultant firm shall be

licensed to do business in Minnesota and shall maintain an administrative office within the state. Each office of the qualified rehabilitation consultant firm that provides services to injured employees under Minnesota Statutes, chapter 176, shall be listed on the application described in subpart 2 and shall employ on the premises at least one qualified rehabilitation consultant or qualified rehabilitation consultant intern. The management staff shall consist of at least one member who is registered as a qualified rehabilitation consultant. Eighty percent of the nonclerical staff shall be qualified rehabilitation consultants or qualified rehabilitation consultant interns; any firm that is not in an office sharing arrangement with another firm may have one nonclerical employee who is not a qualified rehabilitation consultant or qualified rehabilitation consultant intern. Any branch office openings or closings shall be reported to the department immediately.

Subp. 2. Application. A private or public entity desiring to be approved as a qualified rehabilitation consultant firm shall submit to the commissioner a complete application consisting of the following:

- A. a completed, signed, and notarized application;
- B. any data or information attached to support the application;
- C. a list of services and fees. This filing shall not constitute an approval or disapproval of the services or fees; and
- D. the annual registration application fee of \$200 per firm.

Subp. 2a. Approval of registration as a qualified rehabilitation consultant firm. The approval process shall be conducted the same as provided in part 5220.1500, subpart 1a.

Subp. 3. Appeal process. The appeal process shall be conducted the same as that provided in part 5220.1500, subpart 2.

Subp. 4. Renewal. The renewal process shall be conducted the same as that provided in part 5220.1500, subpart 3.

Subp. 5. Revocation. The revocation process shall be conducted as provided in Minnesota Statutes, section 176.102, subdivision 3a.

Statutory Authority: *MS s 176.102; 176.83*

History: *16 SR 2520*

5220.1700 PROCEDURE FOR APPROVAL AS REGISTERED REHABILITATION VENDOR.

Subpart 1. Application. A private or public entity desiring to be approved as a registered rehabilitation vendor shall submit to the commissioner a complete application consisting of all of the following:

- A. A completed, signed, and notarized application.
- B. Any data or information to support an application should be attached.
- C. A list of services and fees. This filing shall not constitute an approval or disapproval of the services or fees.
- D. The annual registration application fee of \$200 for each registered rehabilitation vendor.

Subp. 1a. Approval as registered rehabilitation vendor. The approval process shall be conducted the same as provided in part 5220.1500, subpart 1a.

Subp. 2. Appeal process. The appeal process herein shall be conducted as provided in part 5220.1500, subpart 2.

Subp. 3. Renewal. The renewal process herein shall be conducted the same as that provided in part 5220.1500, subpart 3.

Subp. 4. Revocation. The revocation process herein shall be conducted as provided in Minnesota Statutes, section 176.102, subdivision 3a.

Subp. 5. Restriction. Registered rehabilitation vendors shall not employ or otherwise engage the services of qualified rehabilitation consultants.

Statutory Authority: *MS s 176.102; 176.83*

History: *16 SR 2520*

5220.1800 STANDARDS OF PERFORMANCE.

The standards of conduct described in parts 5220.1801 to 5220.1806 establish minimum standards concerning the professional activities and services of rehabilitation providers. Performance evaluations and monitoring of rehabilitation providers by the commissioner, and the administration of rehabilitation provider discipline under Minnesota Statutes, section 176.102, subdivision 3a, will be based upon these standards, as well as on adherence to Minnesota Statutes, chapter 176, rules adopted to administer it, and orders of the commissioner or a compensation judge.

Statutory Authority: *MS s 176.102; 176.83*

History: *16 SR 2520*

5220.1801 PROFESSIONAL CONDUCT.

Subpart 1. Prompt provision of service and assessment of progress. The assigned qualified rehabilitation consultant and any registered rehabilitation vendor providing services under a plan shall provide prompt and necessary rehabilitation services to assist a qualified employee to return to suitable gainful employment. The qualified rehabilitation consultant shall periodically assess progress toward plan objectives.

Subp. 2. Assigned qualified rehabilitation consultant. Only the assigned qualified rehabilitation consultant, or a qualified rehabilitation consultant designated by the assigned qualified rehabilitation consultant to function in an advisory capacity to the assigned consultant, shall be involved at any given time in the employee's rehabilitation plan, except as stated in subparts 6 and 7. The assigned qualified rehabilitation consultant shall advise the insurer before involving or requesting advisory services from any other qualified rehabilitation consultant. No qualified rehabilitation consultant or qualified rehabilitation consultant firm shall provide rehabilitation services to a case assigned to a qualified rehabilitation consultant employed by another qualified rehabilitation consultant firm. This subpart shall not apply to a qualified rehabilitation consultant acting on behalf of the reinsurance association in a monitoring or advisory capacity on a reinsurance claim file.

Subp. 3. [Repealed, 16 SR 2520]

Subp. 4. [Repealed, 16 SR 2520]

Subp. 4a. Objectivity. Good faith disputes may arise among parties about rehabilitation services or about the direction of a rehabilitation plan. A rehabilitation provider shall remain professionally objective in conduct and in recommendations on all cases.

Subp. 5. Evaluation of employee by other than assigned qualified rehabilitation consultant. Except as provided in subpart 7 and in Minnesota Statutes, section 176.102, subdivision 13 as ordered, a rehabilitation provider is prohibited from performing an independent evaluation of an employee at any time unless litigation pursuant to part 1415.0100, is pending. If that litigation is pending, a qualified rehabilitation consultant who is not the assigned qualified rehabilitation consultant may perform an evaluation of the employee at the request of one of the parties solely for the purpose of the proceeding.

Subp. 6. Qualified rehabilitation consultant as witness. A qualified rehabilitation consultant who has testified as an expert witness for any party in a hearing related to the employee's case before a compensation judge may not function thereafter as the assigned qualified rehabilitation consultant on the case unless agreed to by the employee.

Subp. 7. Referrals. An assigned qualified rehabilitation consultant may make recommendations for referrals to appropriate resources.

Subp. 8. Separate roles and functions. The roles and functions of a claims agent and a rehabilitation provider are separate. A qualified rehabilitation consultant, qualified rehabilitation consultant intern, registered rehabilitation vendor, or an agent of a rehabilitation provider, shall engage only in those activities designated in Minnesota Statutes, section 176.102, and rules adopted thereunder. A qualified rehabilitation consultant, qualified rehabilitation consultant intern, or registered rehabilitation vendor shall not act as an advocate for or advise any party about a claims or entitlement issue. Qualified rehabilitation consultants, qualified rehabilitation consultant interns, and registered rehabilitation vendors shall not engage in claims adjustment, claims investigation, or related activities. Activities unrelated to rehabilitation services include, but are not limited to, making recommendations about the determination of workers' compensation monetary benefits, the reasonableness of medical charges, or arranging for an independent medical examination and are prohibited. This part shall not prohibit a qualified rehabilitation consultant acting on behalf of the reinsurance association from consulting with the assigned qualified rehabilitation consultant regarding the rehabilitation plan.

Subp. 9. Prohibited conduct. The conditions and restrictions of practice as a rehabilitation provider are contained in parts 5220.0100 to 5220.1900 and Minnesota Statutes, section 176.102. The following conduct is specifically prohibited and is also grounds for discipline:

A. Reporting or filing false or misleading information or a statement in connection with a rehabilitation case or in procuring registration or renewal of registration as a rehabilitation provider, whether for oneself or for another.

B. Conviction of a felony or a gross misdemeanor reasonably related to the provision of rehabilitation services.

C. Conviction of crimes against persons. For purposes of this chapter, a crime against a person means a violation of any of the following sections: Minnesota Statutes, section 609.185, 609.19, 609.195, 609.20, 609.205, 609.21, 609.215, 609.221, 609.222, 609.223, 609.224, 609.23, 609.231, 609.235, 609.24, 609.245, 609.25, 609.255, 609.265, 609.26, 609.342, 609.343, 609.344, 609.345, 609.365, 609.498, 609.50, 609.561, 609.562, or 609.595.

D. Restriction, limitation, or other disciplinary action against the rehabilitation provider's certification, registration, or right to practice as a rehabilitation provider in another jurisdiction for offenses that would be subject to disciplinary action in this state, or failure to report to the department the charges which have been brought in another state or jurisdiction against the rehabilitation provider's certification, registration, or right to practice.

E. Failure or inability to perform professional rehabilitation services with reasonable skill because of negligence, habits, or other cause, including the failure of a qualified rehabilitation consultant to monitor a vendor or qualified rehabilitation consultant intern, or the failure of a rehabilitation provider to adequately monitor the performance of services provided by a person working at the rehabilitation provider's direction.

F. Engaging in conduct likely to deceive, defraud, or harm the public or demonstrating a willful or careless disregard for the health, welfare, or safety of a rehabilitation client.

G. Engaging in conduct with a client that is sexual or may be reasonably interpreted by the client as sexual or in any verbal behavior that is seductive or sexually demeaning to a client or engaging in sexual exploitation of a client or a former client.

H. Obtaining money, property, or services other than reasonable fees for services provided to the client through the use of undue influence, harassment, duress, deception, or fraud.

I. Engaging in fraudulent billing practice.

J. Knowingly aiding, assisting, advising, or allowing an unqualified person to engage in providing rehabilitation services.

K. Engaging in adversarial communication or activity. Adversarial communication includes, but is not limited to:

(1) requesting or reporting information not directly related to an employee's rehabilitation plan;

(2) deliberate failure or delay to report to all parties pertinent information regarding an employee's rehabilitation;

(3) misrepresentation of any fact or information about rehabilitation; or

(4) failure to comply with an authorized request for information about an employee's rehabilitation.

L. Providing an opinion on settlement and recommending entering into a settlement agreement.

M. Making a recommendation about retirement; however, a rehabilitation provider may assist an employee in contacting resources about a choice of retirement or return to work.

N. Failure to take due care to ensure that a rehabilitation client is placed in a job that is within the client's physical restrictions.

O. Failure to maintain service activity on a case without advising the parties of the reason why service activity might be stopped or reduced.

P. Failure to recommend plan amendment, closure, or another alternative when it may be reasonably known that the plan's objective is not likely to be achieved.

Q. Unlawful discrimination against any person on the basis of age, gender, religion, race, disability, nationality, or sexual preference, or the imposition on a rehabilitation client of any stereotypes of behavior related to these categories.

Subp. 10. Professional competence. Rehabilitation providers shall limit themselves to the performance of only those services for which they have the education, experience, and qualifications.

Rehabilitation providers shall accurately represent their level of skill and competency to the department, the public, and colleagues.

Rehabilitation providers shall not administer or interpret tests without proper training, experience, or credentials. Administration of tests must be supervised by a person who is so trained, experienced, or credentialed.

A rehabilitation provider shall understand the areas of competence of other professional persons with whom the rehabilitation client establishes relationships, 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. A rehabilitation provider shall not use alcoholic beverages, medication, or controlled substances in a manner that impairs the provider's ability to perform the rehabilitation services.

Rehabilitation providers shall not use a professional relationship to further personal, religious, political, or financial interests, although adherence to ethical norms shall not be construed as personal or religious interest.

A rehabilitation provider must not undertake or continue a professional relationship in which the objectivity of the provider is or would be impaired due to a familial, social, emotional, economic, supervisory, or political interpersonal relationship.

The registered provider shall disclose any potential conflicts of interest to the parties to the case and their attorneys.

Adjudication of a rehabilitation provider as mentally incompetent, mentally ill, chemically dependent, or dangerous to the public by a court in any state is grounds for suspension or revocation of registration.

Statutory Authority: *MS s 176 102; 176.83*

History: *16 SR 2520*

5220.1802 COMMUNICATIONS.

Subpart 1. Legibility and content of required reports. All required rehabilitation reports and required progress records prepared by a rehabilitation provider shall be legible and show the employee's name, department file number, and date of injury.

Subp. 2. Submission of reports. All required rehabilitation reports shall be submitted on department forms prescribed by the commissioner.

Subp. 3. Copies of reports and records. The assigned qualified rehabilitation consultant shall file all required rehabilitation reports with the commissioner, and provide copies to all parties and their attorneys as the reports are created by the consultant. The qualified rehabilitation consultant shall also provide a copy of required progress records to all parties and their attorneys upon the party's request. The qualified rehabilitation consultant may not charge for the initial copy or photocopy of required rehabilitation reports or required progress records. If additional copies are requested by any party, the qualified rehabilitation consultant is entitled to reasonable compensation for cost from the requesting party. A dispute about cost is not a basis for a provider to withhold required reports or records when requested.

The requesting party shall pay for reasonable costs incurred by a rehabilitation provider in creating a report not required by rule or requested by the commissioner or compensation judge.

Subp. 4. Registered rehabilitation vendor reporting. At least each 30 days, the registered rehabilitation vendor shall submit all required progress records, required rehabilitation reports and cost information on an employee's case directly to the assigned qualified rehabilitation consultant.

Subp. 4a. Transfer of information. Whenever there is a change of assigned qualified rehabilitation consultants or consultant firms, the former qualified rehabilitation consultant firm shall cooperate in transferring to the new assigned qualified rehabilitation consultant or qualified rehabilitation consultant firm all data, required rehabilitation reports, required progress records, and incurred rehabilitation cost information along with other relevant information within 15 days from the receipt of notice that a new consultant is assigned under part 5220.0710. The former qualified rehabilitation consultant firm may not charge a party for the transfer of information to the new assigned qualified rehabilitation consultant or qualified consultant firm.

Subp. 5. Data privacy. A rehabilitation provider must comply with Minnesota Statutes, chapters 175 and 176, the rules adopted under those chapters, Code of Federal Regulations, title 42, part 2, Minnesota Statutes, sections 129A.05; 144.335; 144.651; 147.091; 181.954; 181.960; 268A.05; 363.03, subdivision 1a; and 595.02, as applicable, and all other applicable data privacy laws.

A rehabilitation provider shall not engage in communications with health care providers about an employee without the written consent of the employee.

A rehabilitation provider shall safeguard and maintain under conditions of security all information obtained in the course of providing rehabilitation consultation and services and shall limit records access to those parties for whom access is prescribed by Minnesota Statutes, section 176.102, subdivision 7, this chapter, or other applicable law.

When permitted by data privacy laws, disclosure of information obtained in the course of providing rehabilitation services is restricted to what is necessary, verified, and relevant to implementation of the rehabilitation plan.

A rehabilitation provider shall request only the information and data that will assist the parties in developing and carrying out the rehabilitation plan.

Subp. 6. [Repealed, 16 SR 2520]

Subp. 7. [Repealed, 16 SR 2520]

Subp. 8. [Repealed, 16 SR 2520]

Subp. 9. [Repealed, 16 SR 2520]

Subp. 10. **Providing records.** The rehabilitation provider assigned to a case shall maintain all required progress records and copies of all required rehabilitation reports regarding a case and shall make these records available upon request to the commissioner. This subpart shall not apply to the reinsurance association, unless the reinsurance association has assumed primary responsibility for the claim pursuant to Minnesota Statutes, section 79.35, clause (g).

Subp. 11. **Access to medical and rehabilitation reports.** The assigned qualified rehabilitation consultant shall furnish other rehabilitation providers designated by the rehabilitation plan with copies of all appropriate medical and rehabilitation reports necessary for effective service provision by the other providers.

Statutory Authority: *MS s 176.102; 176.83*

History: *16 SR 2520*

5220.1803 RESPONSIBILITIES.

Subpart 1. **Instruction by qualified rehabilitation consultant.** The assigned qualified rehabilitation consultant shall, at the first in-person contact, instruct employees of their rights and responsibilities relating to rehabilitation and of the purpose of rehabilitation services. The assigned qualified rehabilitation consultant shall sign and date the prescribed rehabilitation rights and responsibilities form at the first in-person contact with the employee, and provide the employee, insurer, and commissioner with a copy.

Subp. 1a. **Disclosure of information.** The disclosures required by Minnesota Statutes, section 176.102, subdivision 4, must be made at the first meeting or written communication with an employee. For purposes of the disclosures, the following terms shall have the meanings given them.

A. "Ownership interest" includes, but is not limited to, any partnership or holding, subsidiary, or corporate relationship as well as ordinary ownership interest.

B. "Business referral" means any referral arrangement, whether documented or not.

Subp. 2. **Knowledge of laws and rules.** A rehabilitation provider shall be knowledgeable and informed regarding portions of the workers' compensation law and rules that directly relate to the provision of rehabilitation services. Communication of inaccurate information regarding workers' compensation is grounds for discipline.

Subp. 3. [Repealed, 16 SR 2520]

Subp. 4. [Repealed, 16 SR 2520]

Subp. 5. **Reporting requirements.** The assigned qualified rehabilitation consultant shall file with the commissioner, by attaching to all rehabilitation plans, an initial evaluation narrative report about the employee that includes the following information in summary fashion: medical status, vocational history, educational history, social history, relevant economic factors, transferable skills, employment barriers, and recommendations. The qualified rehabilitation consultant shall file additional progress summaries, if requested by the commissioner.

The assigned qualified rehabilitation consultant shall periodically report progress and case activity in writing to the parties at reasonable intervals or as requested by the parties.

The rehabilitation provider registration number assigned by the commissioner shall be on all reports submitted by the rehabilitation provider.

The assigned qualified rehabilitation consultant shall maintain individual employee files containing required rehabilitation reports and required progress records about an employee's case and shall provide copies to the commissioner, a compensation judge, or the parties at their request or as required by rule. For the purpose of Minnesota Statutes, chapter 176, and parts 5220.0100 to 5220.1910, individual employee files containing all required rehabilitation reports and required progress records must be maintained by the qualified rehabilitation consultant firm for five years from the date of file closure. This requirement is in addition to and does not otherwise change or alter any other data retention time period required by law.

The assigned qualified rehabilitation consultant must provide the commissioner with any other requested pertinent information about a qualified employee's rehabilitation for purposes of rehabilitation monitoring by the department.

Statutory Authority: *MS s 176.102; 176.83*

History: *16 SR 2520*

5220.1805 BUSINESS PRACTICES.

All rehabilitation providers shall abide by the following rules concerning a provider's business practices:

A. Rehabilitation providers shall adhere to all applicable federal, state, and local laws.

B. Rehabilitation providers shall not misrepresent themselves, their duties, or credentials. Rehabilitation providers must not promise or offer services or results they cannot deliver or have reason to believe they cannot provide. Advertising must be factually accurate and must avoid exaggerating claims as to costs, results, and endorsements by other parties.

C. A rehabilitation provider shall not solicit referrals directly or indirectly by offering money or gifts. De minimis gifts are not considered the offering of money or gifts. De minimis gifts are those that have a fair market value of less than \$25.

D. A rehabilitation provider shall not request or authorize a rehabilitation client to solicit other business on behalf of the rehabilitation provider.

E. A rehabilitation provider shall advise the referral source and payer of its fees and reporting procedures in advance of rendering any services and shall also furnish, upon request, detailed and accurate time records regarding any bills in question.

Rehabilitation providers shall fully disclose to a payer the basis for computing and prorating a fee so that the payer may determine the reasonableness of the fee charged. When more than one employee is served during the same time period, the rehabilitation provider shall prorate the fee.

F. Any fee arrangement which prevents or compromises individualized assessment and services for each employee is grounds for discipline. This may include any fee arrangement which provides employees with standardized services whether or not the services are necessary.

G. A rehabilitation provider shall not incur profit, split fees, or have an ownership interest with another rehabilitation provider outside of the firm that employs the provider.

H. Qualified rehabilitation consultants shall not incur profit, split fees, or have an ownership interest with health care providers. "Health care providers" means those defined in Minnesota Statutes, section 176.011, subdivision 24.

I. The prohibitions of items F, G, and H shall not be construed to prevent married couples or family members from engaging simultaneously in rehabilitation or health care.

Statutory Authority: *MS s 176.102; 176.83*

History: *16 SR 2520*

5220.1806 DISCIPLINARY ACTION.

Subpart 1. Discipline. A rehabilitation provider is subject to disciplinary action, including a fine as provided by statute, suspension, and revocation of registration. Failure to comply with the standards of performance and professional conduct contained in parts 5220.1800 and 5220.1801 or the violation of any of the provisions of Minnesota Statutes, chapter 176, Minnesota Rules, parts 5220.0100 to 5220.1910, or orders issued under the statutes or rules constitute grounds for discipline.

Subp. 2. Complaints. The commissioner shall review the activities of rehabilitation providers. Complaints about activities or services of rehabilitation providers relating to noncompliance with laws, rules, or orders shall be made in writing to the commissioner. A complaint may be submitted by any party who becomes aware of a violation, including designees of the commissioner, administrative law judges, and presiding officials at judicial proceedings.

If a rehabilitation provider violates Minnesota Statutes, chapter 176, or the rules adopted thereunder, a rehabilitation provider having knowledge of the violation must so advise the commissioner.

Subp. 3. Review and investigation. The commissioner shall investigate all complaints to determine whether there has been a violation of the workers' compensation act, rules, or orders as alleged. If the matter is outside the jurisdiction of the commissioner, the commissioner may refer the matter to a forum or agency that has jurisdiction.

If an investigation indicates that discipline is warranted, the commissioner shall begin a contested case for disciplinary action under Minnesota Statutes, section 176.102, subdivision 3a, and the Minnesota Administrative Procedure Act. The report of the administrative law judge shall be made to the rehabilitation review panel which shall make the determination on disciplinary action.

If the commissioner determines that discipline is not warranted, but if the facts and issues involved warrant instruction of the provider, the commissioner shall issue the instruction in writing. The commissioner shall notify the complaining party of the disposition of the case.

Subp. 4. Cooperation with disciplinary proceedings. A rehabilitation provider who is the subject of a complaint investigated by the commissioner under Minnesota Statutes, section 176.102, subdivisions 3 and 3a, shall cooperate fully with the investigation. Cooperation shall include responding fully and promptly to any questions raised by the commissioner relating to the subject of the investigation, and providing copies of records, reports, logs, data, and cost information as requested by the commissioner to assist in the investigation. Cooperation shall also include attending, in person, a meeting scheduled by the commissioner for the purposes in subpart 5.

Subp. 5. In-person meeting. When conferring with the parties to a complaint is deemed appropriate for clarification or settlement of issues, the commissioner may schedule a meeting. The commissioner may conduct a meeting for the purpose of obtaining information, instructing parties to the complaint, or for the purpose of resolving issues.

Subp. 6. Resolution written agreement. The commissioner may enter into stipulated consent agreements regarding discipline with complaint subjects in lieu of initiating contested case proceedings.

Statutory Authority: *MS s 176.102; 176.83*

History: *16 SR 2520*

5220.1900 REHABILITATION SERVICE FEES AND COSTS.

Subpart 1. Monitoring. The insurer has the primary responsibility for monitoring and paying the cost of necessary rehabilitation services provided.

The commissioner shall monitor rehabilitation services and costs and shall

also conduct periodic audits of costs, services, case outcomes, and compliance with reporting and record keeping requirements. The insurer and the rehabilitation provider shall furnish the commissioner with itemized listings of case services and costs upon request.

Subp. 1a. Billing. All rehabilitation provider billings shall be on the uniform billing form prescribed by the commissioner.

Subp. 2. Reasonable and necessary services. A rehabilitation provider shall bill for only those necessary and reasonable services which are rendered in accordance with Minnesota Statutes, section 176.102 and the rules adopted to administer that section. A dispute about reasonable and necessary services and costs shall be determined by the commissioner or a compensation judge. The commissioner's or a compensation judge's review must include all the following factors:

A. the employee's unique disabilities and assets in relation to the goals, objectives, and timetable of the rehabilitation plan;

B. the type of rehabilitation services provided and the actual amount of time and expense incurred in providing the service;

C. an evaluation of whether services provided were unnecessary, duplicated other services, were available at no charge to public, or were excessive relative to the actual needs of the employee; and

D. an evaluation of whether services rendered were expressly called for by the employee's rehabilitation plan.

Subp. 3. [Repealed, 16 SR 2520]

Subp. 4. [Repealed, 16 SR 2520]

Subp. 5. [Repealed, 16 SR 2520]

Subp. 6. [Repealed, 16 SR 2520]

Subp. 7. Case activities requiring insurer consent for payment. The rehabilitation provider must obtain the consent of the insurer before billing for the following case activities, however, the presence or absence of consent shall not preclude the commissioner or a compensation judge from determining the reasonable value or necessity of these case activities:

A. when not directed by the plan, phone calls, or visits to health care providers and accompanying employee to appointments or examinations;

B. follow-up activity with employers during job placement services to verify employee applications or applications not arranged by the rehabilitation provider;

C. phone calls to the department regarding general procedures or questions on rehabilitation direction not related to a specific rehabilitation plan;

D. unanswered attempted phone calls;

E. time spent for report writing not required by rules or requested by a party;

F. assigned qualified rehabilitation consultant service during vendor activity periods beyond required reporting or specific problem solving activity;

G. time for attendance at an administrative conference by the supervisor of the qualified rehabilitation consultant intern who is providing services to the employee;

H. before a determination of eligibility, services rendered when a rehabilitation waiver has been requested and was not denied or when the insurer disputes the employee's eligibility for rehabilitation services;

I. time spent reviewing the file and initial contact to establish rapport with interested parties by an assigned qualified rehabilitation consultant or registered rehabilitation vendor when a case has been transferred from another qualified rehabilitation consultant or vendor within the same rehabilitation firm;

J. time spent by a supervisor, another qualified rehabilitation consul-

tant, or support staff in addition to the assigned qualified rehabilitation consultant;

K. job placement activities beyond 90 days from the start of the job placement effort without a formal plan review or case planning meeting with the employee and insurer;

L. wait time for a visit without a prearranged meeting or early arrival for a prearranged appointment;

M. services that duplicate services already provided;

N. charges beyond the hourly fee for testimony at a judicial hearing when the qualified rehabilitation consultant or registered rehabilitation vendor has provided rehabilitation services under the plan;

O. travel costs beyond those needed to develop or complete a plan; or

P. services after a request to suspend or terminate the rehabilitation plan has been filed.

Subp. 8. Disputes. In the event of a dispute about the reasonableness and necessity or cost of a rehabilitation service, the insurer or a rehabilitation provider may make a request for a determination by the commissioner or a compensation judge of reasonable costs and necessity of services. Such a request may be made by filing a request for resolution of a dispute according to Minnesota Statutes, chapter 176 or part 5220.0950.

Subp. 9. Collection prohibited. No rehabilitation provider shall attempt to collect a fee or reimbursement for an unnecessary or unreasonable service from any party, including the employee, another insurer, the special compensation fund, or any government program. This prohibition shall apply to any fee determined excessive in amount by the commissioner or a compensation judge.

Statutory Authority: *MS s 176.102, 176.83*

History: *16 SR 2520*

5220.1910 APPROVED CLAIMS HANDLER.

Subpart 1. Qualifications. A person meeting all the requirements of this subpart is eligible for certification as an approved claims handler:

A. at least one year of experience handling Minnesota workers' compensation claims and making decisions on acceptance or denial of Minnesota workers' compensation claims;

B. completion of a training session conducted by the commissioner; and

C. the person is not a rehabilitation provider as defined in part 5220.0100, subpart 28.

Subp. 2. Procedure for obtaining approval. The insurer shall certify to the commissioner on a form prescribed for that purpose that the claims handler meets the requirements of this part. Approval is effective upon the commissioner's receipt of the certification. The approval remains in effect until the claims handler leaves the employ of the certifying entity, or the certification is withdrawn by the certifying entity. At the request of the commissioner, the certifying entity must consult with the commissioner regarding withdrawal of certification. The commissioner is authorized to withdraw approval if the claims handler does not meet the requirements of subpart 1.

Statutory Authority: *MS s 176.102; 176.83*

History: *16 SR 2520*

5220.2650 RETURN TO WORK CONFERENCES.

[For text of subpart 1, see M.R.]

Subp. 2. Scope. This part applies when an employee has received temporary total or temporary partial compensation for a total of at least 45 work days

whether continuously or intermittently; and no rehabilitation plan in effect at the time the 14-day check is due has been approved under part 5220.0410, subpart 6. In addition, a return to work conference is also available when properly requested by the employee under subpart 4 and Minnesota Statutes, section 176.2421 because of an inability to work at least 14 work days upon the employee's return to work.

[For text of subps 3 to 8, see M.R.]

Statutory Authority: *MS s 176.102, 176.83*

History: *16 SR 2520*

5220.2780 FAILURE TO PAY UNDER ORDER OR PROVIDE REHABILITATION; PENALTY.

Subpart 1. **Basis.** Where payment of compensation is not made within 14 days following an order as required by Minnesota Statutes, section 176.221, subdivisions 6a and 8, the division may assess the penalties provided in Minnesota Statutes, section 176.221, subdivisions 3 and 3a. Where rehabilitation services are not provided as required by Minnesota Statutes, sections 176.102, 176.221, subdivision 6a, and parts 5220.0130, subpart 2 and 5220.0410, subpart 2, the division may assess the penalty provided in Minnesota Statutes, section 176.221, subdivision 3a.

[For text of subps 2 and 3, see M.R.]

Statutory Authority: *MS s 176.102; 176.83*

History: *16 SR 2520*