CHAPTER 5220
DEPARTMENT OF LABOR AND INDUSTRY
REHABILITATION AND COMPENSATION

REHABILITATION; QUALIFIED REHABILITATION CONSULTANT OR REGISTERED REHABILITATION VENDOR REQUIREMENTS; RULES OF PRACTICE

5220.0100 DEFINITIONS.

Subpart 1. **Scope.** For the purposes of parts 5220.0100 to 5220.1900, the following terms have the meanings given them.

Subp. 1a. [Repealed, 11 SR 2237]

Subp. 2. [Repealed, 17 SR 3361]

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 provided by statute;

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

D. assigned by the commissioner under Minnesota Statutes, section 176.102, subdivision 4, paragraph (f).

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 [Repealed, 16 SR 2520]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 [Repealed, 16 SR 2520]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 [Repealed, 16 SR 2520]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 the employee, 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 [Repealed, 16 SR 2520]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 [Repealed, 16 SR 2520]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 permanently precluded from engaging in the employee's usual and customary occupation or from engaging in the job the employee held at the time of injury;

B. cannot reasonably be expected to return to suitable gainful employment with the date–of–injury employer; and

C. can reasonably be expected to return to suitable gainful employment through the provision of rehabilitation services, considering the treating physician's opinion of the employee's work ability.

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 a rehabilitation 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 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, considering the treating physician's opinion of the employee's work ability.

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, paragraph (b).

The program begins with the first in–person visit of the employee by the assigned qualified rehabilitation consultant, including a visit for purposes of a rehabilitation consultation. The program consists of the sequential delivery and coordination of services by rehabilitation providers under an individualized rehabilitation 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 rehabilitation consultation report, the plan progress 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, which 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 or a schedule of graduated resumption of employment consistent with the employee's physical condition.

Statutory Authority: *MS s 176.102; 176.83*

History: *8 SR 1777; 9 SR 1478; 16 SR 2520; 17 SR 3361*

5220.0105 INCORPORATION BY REFERENCE.

The following documents are incorporated by reference only to the extent specifically referenced in chapter 5220. 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, 1991, United States Department of Labor, is available for purchase through the Superintendent of Documents, United States Government Printing Office, Washington, DC 20402.

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, Menomonie, 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, 1992, are available for purchase at 101 North Wilmot Road, Suite 500, Tucson, Arizona 85711.

Statutory Authority: *MS s 175.17; 175.171; 176.102; 176.83*

History: *16 SR 2520; 17 SR 3361; 18 SR 2546*

5220.0110 REHABILITATION REQUEST; DISABILITY STATUS REPORT.

Subpart 1. [Repealed, 17 SR 3361]

Subp. 2. [Repealed, 17 SR 3361]

Subp. 3. [Repealed, 17 SR 3361]

Subp. 4. [Repealed, 17 SR 3361]

Subp. 5. **Rehabilitation consultation request.** The rehabilitation consultation may be requested by the employee, employer, or commissioner. A disability status report is used by the insurer to report rehabilitation consultation referral status.

Subp. 6. **Employee request for consultation.** The employee may request a rehabilitation consultation by giving written notice to the insurer requesting a rehabilitation consultation. Notification of the request shall be filed with the commissioner.

Subp. 7. **Disability status report.** The insurer shall file a disability status report to notify the commissioner of a referral for rehabilitation or to request a waiver of rehabilitation services.

A. When an employee has not returned to work following a workplace injury, the insurer shall complete a disability status report, file it with the commissioner, and serve a copy on the employee:

(1) within 14 calendar days after it becomes known that the disability will extend beyond 13 weeks from the date of injury;

(2) within 90 days of the date of injury; or

(3) within 14 calendar days after receiving a request for rehabilitation consultation, whichever is earlier.

Another disability status report shall be filed by the insurer 180 days after the injury if no party has requested a rehabilitation consultation and the employee has not returned to work. A disability status report is also required following each request for rehabilitation consultation.

B. The disability status report shall contain the following:

(1) identifying information on the employee, employer, and insurer;

(2) information about the duration of disability and the likelihood that the disability will extend beyond 13 weeks;

(3) the current work status of the employee;

(4) an indication of whether the employer will return the employee to work;

(5) information about accommodations or services being provided to the employee to assist in the return to the preinjury employer;

(6) an indication of whether a rehabilitation consultation is occurring or a request for a waiver of consultation is being made;

(7) if rehabilitation consultation is indicated, the name of the qualified rehabilitation consultant who will conduct the rehabilitation consultation; and

(8) a current treating physician's work ability report must be attached to the form.

C. The employee may object to the insurer's recommendation by filing a rehabilitation request for assistance with the commissioner.

Subp. 8. **Commissioner's authority.** If a disability status report is not filed according to this part, the commissioner may order a rehabilitation consultation by a qualified rehabilitation consultant at the insurer's expense, according to Minnesota Statutes, section 176.102, subdivision 4, paragraphs (b) and (f).

Statutory Authority: *MS s 176.102; 176.83*

History: *16 SR 2520; 17 SR 3361*

5220.0120 WAIVER OF CONSULTATION AND REHABILITATION SERVICES.

Subpart 1. **Purpose.** A rehabilitation waiver is used to defer the initiation of rehabilitation services including the consultation.

Subp. 2. **Criteria.** A rehabilitation waiver is granted when the employer documents that the otherwise qualified employee will return to suitable gainful employment with the date–of–injury employer within 180 days after the injury. The waiver shall not be effective more than 180 days following the injury unless a renewal is granted under subpart 4.

Subp. 3. **Procedure and documentation.** A request for a rehabilitation waiver shall be documented on the disability status report form provided for in part 5220.0110, subpart 7.

Subp. 4. **Renewal of waiver.** If a waiver is in effect but the employee does not return to work within 180 days after the injury, the insurer may request a renewal of the waiver by filing another disability status report. A copy of the request for renewal shall be served on the employee who may object to the renewal by filing a rehabilitation request as provided in part 5220.0950. The renewal of a waiver will be granted only upon additional documentation that convinces the commissioner that a consultation is not necessary because the otherwise qualified employee's return to suitable gainful employment with the date–of–injury employer is imminent.

Subp. 5. **Commissioner's order.** If 180 days have passed since the date of injury and the employee has not returned to work, no rehabilitation consultation has taken place, and no waiver of rehabilitation services has been granted, the commissioner shall order a rehabilitation consultation at the insurer's expense under Minnesota Statutes, section 176.102, subdivision 4, paragraph (f), to be provided by the vocational rehabilitation unit of the department.

Statutory Authority: *MS s 176.102; 176.83*

History: *16 SR 2520; 17 SR 3361*

5220.0130 REHABILITATION CONSULTATION.

Subpart 1. **Purpose.** A rehabilitation consultation is used to determine whether an employee is a qualified employee for rehabilitation services. An employee must be a qualified employee as defined in part 5220.0100, subpart 22, before a rehabilitation plan is implemented.

Subp. 2. **Criteria.** If the employer requests a rehabilitation consultation or receives a request for a rehabilitation consultation from the commissioner, the insurer shall arrange for a rehabilitation consultation by a qualified rehabilitation consultant to take place within 15 calendar days of the receipt of the request.

If the insurer receives a request for a rehabilitation consultation from an employee and does not request a waiver of rehabilitation services, the insurer shall arrange for a rehabilitation consultation by a qualified rehabilitation consultant to take place within 15 days of the receipt of the rehabilitation consultation request.

If the insurer requests a waiver of rehabilitation services, and no waiver of rehabilitation services is granted under part 5220.0120, the insurer shall arrange for a rehabilitation consultation by a qualified rehabilitation consultant to take place within 15 days of the notification that the waiver request has not been granted.

The rehabilitation consultation shall be held at a location not more than 50 miles from the employee's residence.

Subp. 3. **Consultation.** The procedure and documentation for a rehabilitation consultation are contained in items A to E.

A. Preconsultation actions. A copy of the first report of injury, the disability status report, and the accompanying current treating physician's work ability report shall be sent by the insurer to the assigned qualified rehabilitation consultant prior to the rehabilitation consultation.

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

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

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

C. Contents of report. The rehabilitation consultation shall be documented by the assigned qualified rehabilitation consultant on a rehabilitation 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 rehabilitation consultation date;

(3) an indication of the likelihood that the employee will return to the preinjury employer or preinjury occupation; and

(4) an assessment of whether or not the employee is a qualified employee for rehabilitation services.

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

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

Statutory Authority: *MS s 176.102; 176.83*

History: *16 SR 2520; 17 SR 3361*

5220.0200 [Repealed, 9 SR 1478]

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.

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. 2. **Requirements.** If a rehabilitation consultation results in a determination that an employee is a qualified employee for rehabilitation services, 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 service completion dates, estimated service costs, and projected total plan cost and plan completion date;

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

E. employee comments, if any; and

F. instructions to the parties that if they disagree with the plan they have 15 days from their receipt of the proposed plan to resolve the disagreement or object to the proposed plan, and that an objection must be filed with the commissioner.

Subp. 3. **Process.** Upon preparation of the proposed plan, and within 30 days of the first in–person contact between the assigned qualified rehabilitation consultant and the employee, the assigned qualified rehabilitation consultant shall provide to all parties a copy of the proposed rehabilitation plan.

Subp. 4. **Party's response.** Upon receipt of the proposed rehabilitation plan, each party must, within 15 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 15 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 15 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 with the commissioner within 45 days of the first in–person contact between the qualified rehabilitation consultant and the employee or within 15 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 15 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 assigned qualified rehabilitation consultant shall file the plan with the commissioner along with evidence of the date the plan was sent to each party 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 the rehabilitation plan with the commissioner, the assigned qualified rehabilitation consultant shall, within the lim-

itations 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 development and job placement services shall be provided either by rehabilitation providers registered by the commissioner or by 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. The insurer may select the vendor of job development or job placement services.

Subp. 10. **Disputes.** In the case of a dispute about a rehabilitation plan or any rehabilitation services provided, 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; 17 SR 3361*

5220.0450 PLAN PROGRESS REPORT.

Subpart 1. **Purpose.** The purpose of a plan progress report is to inform parties of the current status of the rehabilitation plan and provide a current estimate of plan cost and duration to completion.

Subp. 2. **Requirements.** Three months after the assigned qualified rehabilitation consultant has filed an approved rehabilitation plan with the commissioner, three months thereafter, and every six months thereafter, the assigned qualified rehabilitation consultant shall complete a plan progress report on the form prescribed by the commissioner that contains the following:

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

B. the employee's current medical status and work status;

C. the costs to date for rehabilitation services by all rehabilitation providers and the estimated costs to plan completion;

D. the duration of the rehabilitation plan to date and the estimated duration to plan completion; and

E. the identification of barriers to successful completion of the rehabilitation plan and measures to be taken to overcome those barriers.

Subp. 3. **Filing.** The assigned qualified rehabilitation consultant shall file the six–month plan progress report with the commissioner, and provide copies to the employee, employer, and insurer within 15 days after six months have passed from the date of the filing of the rehabilitation plan. The three–month plan progress report shall be sent to the insurer only. Subsequent plan progress reports are to be filed with the commissioner within 15 days after every six month anniversary of the plan filing, with copies sent to the employee, employer, and insurer.

Subp. 4. **Commissioner's actions.** Based on the information contained in the current plan progress report and in other reports available to the commissioner, the commissioner may decide to initiate further activities if the review indicates that the plan is inadequate to carry out the objectives of rehabilitation under Minnesota Statutes, section 176.102, subdivision 1, paragraph (b). These activities may include, but are not limited to the following:

A. requesting additional information from the assigned qualified rehabilitation consultant, the qualified rehabilitation consultant firm, and the registered rehabilitation vendor;

B. conducting an on–site inspection during normal business hours of the assigned qualified rehabilitation consultant's records for documentation of service provision according to the rehabilitation plan; and

C. other actions pursuant to Minnesota Statutes, section 176.102, subdivision 6, paragraph (b), and parts 5220.1800 to 5220.1806.

Statutory Authority: *MS s 176.102; 176.83*

History: *17 SR 3361*

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.

Subp. 2a. **Process.** Upon preparation of the proposed plan amendment the assigned qualified rehabilitation consultant shall provide a copy to all parties.

Subp. 2b. **Party's response.** Upon receipt of the proposed rehabilitation plan amendment, each party must, within 15 days, either:

A. sign the plan amendment 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 amendment 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 15 days of receipt of the proposed amendment. These disputes will be resolved according to part 5220.0950.

If no rehabilitation request for assistance objecting to the plan amendment is filed within 15 days of the party's receipt, the approval process will occur as provided in subpart 2d.

Subp. 2c. **Filing.** The assigned qualified rehabilitation consultant shall file the rehabilitation plan amendment with the commissioner within 15 days of circulation to the parties.

Subp. 2d. **Approval.** A rehabilitation plan amendment that all parties have signed is deemed approved by the commissioner upon filing.

If a party fails to sign the plan amendment or fails to file a rehabilitation request for assistance objecting to the proposed plan within the 15 days specified in subpart 2b, it shall be presumed that the party is in substantial agreement with the plan amendment's vocational objective and the services that are proposed. In this event the assigned qualified rehabilitation consultant shall file the plan amendment with the commissioner along with evidence of the date the plan amendment was sent to each party and, upon receipt, the plan amendment

will be deemed approved. A party's failure to sign a plan amendment shall not constitute a waiver of any right to subsequently dispute it or to dispute payment of rehabilitation fees relative to it.

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; or

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 job code from the Dictionary of Oc-

cupational Titles described in part 5220.0105, the return to work date, the weekly wage upon return to work, 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 rehabilitation providers; 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; 17 SR 3361*

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 a qualified rehabilitation consultant as defined in part 5220.0100, subpart 23, once during the period commencing before a referral by the insurer or commissioner to a qualified rehabilitation consultant, or before a first in–person visit between a qualified rehabilitation consultant and the employee and continuing until 60 days after filing of the rehabilitation plan. If the employee chooses a qualified rehabilitation consultant under this part, the employee shall notify the insurer in writing of the name, address, and telephone number of the qualified rehabilitation consultant chosen.

Subp. 2. **Documentation.** When a change of qualified rehabilitation consultant occurs, 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 assigned qualified rehabilitation consultant, and the former assigned 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 choice has not been exhausted, the determination shall be made according to the employee's choice. If the employee's choice has been exhausted, the determination shall be made according to the best interest of the parties. The best interest of the parties shall be determined based on the goals of rehabilitation as provided in Minnesota Statutes, section 176.102, subdivision 1, paragraph (b). If the commissioner or compensation judge determines the qualified rehabilitation consultant's work to be unsatisfactory or the qualified rehabilitation consultant withdraws from the case, and the parties are unable to agree on the selection of a qualified rehabilitation consultant, the commissioner or compensation judge shall assign a new qualified rehabilitation consultant.

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 con-

trol 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; 17 SR 3361*

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. [Repealed, 17 SR 3361]

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; 17 SR 3361*

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 21, is suitable 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 progress of the on-the-job training plan 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; 17 SR 3361*

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 1415.0700. 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; 17 SR 3361*

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 ROLES OF REGISTERED REHABILITATION PROVIDERS.

An entity may be approved to provide rehabilitation services either as a registered rehabilitation vendor or as a qualified rehabilitation consultant firm. An individual may be approved to provide rehabilitation services as a qualified rehabilitation consultant intern or, in cases of completion of internship and registration renewal, as a qualified rehabilitation consultant.

A qualified rehabilitation consultant and a qualified rehabilitation consultant intern are approved for the purpose of developing, administering, and implementing a rehabilitation plan, including the provision of rehabilitation services, in accordance with Minnesota Statutes, chapter 176 and the rules adopted to administer it.

A qualified rehabilitation consultant firm is approved for the purpose of employing qualified rehabilitation consultants, qualified rehabilitation consultant interns, and other professional staff as provided in part 5220.1600.

A registered rehabilitation vendor is approved for the purpose of providing the workers' compensation rehabilitation services of job development and job placement under an approved rehabilitation plan.

The roles of vendor and consultant are distinct and, therefore, a registered rehabilitation vendor or its employee may not be, or function as, a qualified rehabilitation consultant firm, a qualified rehabilitation consultant, or a qualified rehabilitation consultant intern. Nor may a qualified rehabilitation consultant firm, qualified rehabilitation consultant, or qualified rehabilitation consultant intern be or function as a registered rehabilitation vendor or as the agent of a vendor.

The distinction of roles between registered rehabilitation vendor and qualified rehabilitation consultant means the following: A registered rehabilitation vendor and its employees may provide job development and job placement services under an approved rehabilitation plan for any qualified employee; a qualified rehabilitation consultant firm and its employees may provide job development and job placement services only in cases for which a qualified rehabilitation consultant or qualified rehabilitation consultant intern employed by that firm is the assigned qualified rehabilitation consultant.

There shall be no ownership or financial relationships of any kind between any registered rehabilitation vendor and qualified rehabilitation consultant firm, qualified rehabilitation consultant, or qualified rehabilitation consultant intern.

Statutory Authority: *MS s 176.102; 176.83*

History: *16 SR 2520; 17 SR 3361*

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;

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

C. a baccalaureate degree together with certification by the American Occupational Therapy Certification Board as a registered occupational therapist. Certification by the American Occupational Therapy Certification Board shall have been held for five years prior to application.

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.

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, B, or C, may be registered as a qualified rehabilitation consultant intern. If an individual meets the requirements of subpart 2, item A or B, except for obtaining certification, that individual may be registered as a qualified rehabilitation consultant intern by documenting how the certification will be obtained within three years from the date of registration. 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.

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, parts 5220.0100 to 5220.1900, or orders issued under the statutes or rules constitute grounds for denial of registration as a qualified rehabilitation consultant or qualified rehabilitation consultant intern 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. 3a. **Commissioner's approval for supervised internship.** 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 addressing the following items: the evaluation methods used; frequency of supervisory reviews and communication; procedures for dealing with administrative conferences or hearings and file reviews; procedures for review of the rules of practice; and procedures for review of progress toward obtaining certification, including the date the intern will be eligible to take the certification examination. "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 subpart 2. 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.

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. "Substantiated complaints" for purposes of denial of completion of internship means there has been a stipulation or order of discipline.

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.

Effective January 1, 1995, both registration and renewal of registration shall require current membership in a professional rehabilitation organization which provides in its constitution or bylaws for a process of review by peers of its members' professional conduct and services.

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: *8 SR 1777; 9 SR 1478; 10 SR 17; 11 SR 2237; 16 SR 2520; 17 SR 3361*

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 3a.

Qualified rehabilitation consultant applicants employed by the vocational rehabilitation unit of the Department of Labor and Industry are exempt from payment under this subpart.

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.

Qualified rehabilitation consultant's employed by the vocational rehabilitation unit of the Department of Labor and Industry are exempt from payment under this subpart.

Failure to meet the standards of performance and professional conduct contained in parts 5220.1800 and 5220.1801, or the violation of any provisions of Minnesota Statutes, chapter 176, parts 5220.0100 to 5220.1900, or orders issued under the statutes or rules, constitute grounds for denial of registration renewal as a qualified rehabilitation consultant or qualified rehabilitation consultant intern 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.

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 rehabilitation provider update sessions when held 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 the standards of performance and professional conduct contained in parts 5220.1800 and 5220.1801, the provisions of Minnesota Statutes, chapter 176, parts 5220.0100 to 5220.1900, and orders issued under the statutes or rules.

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

Statutory Authority: *MS s 16A.128; 176.102; 176.83*

History: *8 SR 1777; 9 SR 1478; 11 SR 2237; 14 SR 375; 16 SR 2520; 17 SR 3361*

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 employee who is registered as a qualified rehabilitation consultant.

At least 60 percent of qualified rehabilitation consultant firm employees providing rehabilitation services to qualified employees shall be qualified rehabilitation consultants or qualified rehabilitation consultant interns.

Any firm employing four or fewer full–time qualified rehabilitation consultants or qualified rehabilitation consultant interns may employ up to two employees who are not qualified rehabilitation consultants or qualified rehabilitation interns who may, under the direct supervision of the assigned qualified rehabilitation consultant or qualified rehabilitation

consultant intern, provide the services of job analysis, job seeking skills training, job development, and job placement. However, as restricted by part 5220.1250, employees who are not qualified rehabilitation consultants or qualified rehabilitation consultant interns may provide these prescribed services only in cases for which a qualified rehabilitation consultant or qualified rehabilitation consultant intern employed by the same firm is the assigned qualified rehabilitation consultant. Any branch office openings or closings shall be reported to the department within two weeks of the occurrence. Any change of staff who provide direct services to injured workers under a rehabilitation plan or of staff who directly supervise those persons shall be reported to the department within two weeks of the change.

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.

The vocational rehabilitation unit of the Department of Labor and Industry is exempt from payment under this subpart.

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 16A.128; 176.102; 176.83*

History: *9 SR 1478; 11 SR 2237; 14 SR 375; 16 SR 2520; 17 SR 3361*

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 16A.128; 176.102; 176.83*

History: *8 SR 1777; 14 SR 375; 16 SR 2520*

5220.1800 STANDARDS OF PERFORMANCE.

Monitoring and supervision of rehabilitation providers by the commissioner shall include an assessment of rehabilitation provider professional competence and effectiveness of rehabilitation services based upon substantial noncompliance with prevailing norms of the profession to be established by rule from data collected by the department regarding duration of service, cost of service, and case outcomes.

In addition, the standards of conduct described in parts 5220.1801 to 5220.1806 which establish minimum standards concerning the professional activities and services of rehabilitation providers shall be taken into account.

The administration of rehabilitation provider discipline under Minnesota Statutes, section 176.102, subdivision 3a, will also be based upon the standards in parts 5220.1801 to 5220.1806, 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: *8 SR 1777; 16 SR 2520; 17 SR 3361*

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 5 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 that has an assigned 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, where retraining has been recommended, or 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. [Repealed, 17 SR 3361]

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 rehabilitation 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: *8 SR 1777; 9 SR 1478; 16 SR 2520; 17 SR 3361*

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 any party and their attorney upon that 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 and Minnesota Statutes, section 176.102. 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: *8 SR 1777; 9 SR 1478; 16 SR 2520; 17 SR 3361*

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 5220.1900, individual employee files containing all required rehabilitation reports and required progress records must be maintained by the qualified rehabilitation consultant firm for five years after 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: *8 SR 1777; 16 SR 2520; 17 SR 3361*

5220.1804 [Repealed, 11 SR 2237]

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 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 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: *8 SR 1777; 9 SR 1478; 16 SR 2520; 17 SR 3361*

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, parts 5220.0100 to 5220.1900, 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 fails to comply with the standards of performance and professional conduct contained in parts 5220.1800 and 5220.1801 or any of the provisions of Minnesota Statutes, chapter 176, parts 5220.0100 to 5220.1900, or orders issued under the statutes or rules, 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 standards of performance and professional conduct contained in parts 5220.1800 and 5220.1801 or any of the provisions of Minnesota Statutes, chapter 176, parts 5220.0100 to 5220.1900, or orders issued under the statutes or rules. 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; 17 SR 3361*

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 vocational rehabilitation invoice prescribed by the commissioner containing substantially the following:

A. identifying information on the insurer, rehabilitation providers, employee and employer, including the insurer file number;

B. information about the cost and duration of the rehabilitation plan, including the date the plan was filed and cost–to–date amounts billed by the qualified rehabilitation consultant firm, job placement vendor, and previous qualified rehabilitation consultant firms and job placement vendors;

C. a listing of the services billed, including date of service, service description, service category code, time units, mileage, and expenses. Service category codes are available from the department upon request; and

D. a summary of the charges billed, including a total of the professional services provided, the professional hourly rate, a total of the nonprofessional services provided, the nonprofessional hourly rate, the number of miles driven, the mileage rate, and the total expenses.

Sample vocational rehabilitation invoice forms are available from the department upon request. Billing information on job placement costs shall be provided to the qualified rehabilitation consultant who shall report those costs on a monthly basis on the vocational rehabilitation invoice. The job placement vendor shall bill the insurer directly.

Subp. 1b. **Fees.** Fees for rehabilitation services for the period from June 28, 1993 to September 30, 1993, shall not be increased beyond the level of the hourly rates on file with the commissioner as of July 15, 1992. Fees may be increased annually beginning October 1, 1993, but any annual increase is limited by the annual adjustment under Minnesota Statutes, section 176.645.

Subp. 1c. **Consultants.** When billing on an hourly basis for the services of qualified rehabilitation consultants, a qualified rehabilitation consultant or qualified rehabilitation consultant firm shall bill at an hourly rate not to exceed $65 per hour as adjusted under subpart 1b. A rehabilitation provider shall bill one–half of the hourly rate for travel and wait time. Travel time shall be prorated as outlined in part 5220.1805, item E.

Subp. 1d. **Interns.** When billing on an hourly basis, the upper billing limit for qualified rehabilitation consultant interns shall be $10 per hour less than the hourly rate charged for services provided by qualified rehabilitation consultants employed by that qualified rehabilitation consultant firm.

Subp. 1e. **Job development and placement services.** Whether provided by registered rehabilitation vendors or qualified rehabilitation consultant firms, job development and job

placement services, when billed on an hourly basis, shall be billed at an hourly rate not to exceed $50 per hour as adjusted under subpart 1b.

Subp. 1f. **Fee reduction.** Billing for services by the qualified rehabilitation consultant or qualified rehabilitation consultant intern based upon an hourly rate shall be reduced by $10 per hour when:

A. the duration of the rehabilitation case exceeds 39 weeks from the date of the first in-person visit between an assigned qualified rehabilitation consultant and the employee; or

B. the costs of rehabilitation services billed by the qualified rehabilitation consultant have exceeded $3,500, whichever comes first. Payment exceeding that permitted by this rule is prohibited.

Subp. 1g. **Payment.** As soon as reasonably possible, and no later than 30 calendar days after receiving the rehabilitation provider's bill for rehabilitation services, the employer or insurer shall pay the charge or any portion of the charge that is not denied, deny all or a part of the charge stating the specific service charge and the reason it is excessive or unreasonable, or specify the additional data needed, with written notification to the rehabilitation provider.

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. 6a. ***Billing limits on qualified rehabilitation consultant services.*** When a rehabilitation provider other than a qualified rehabilitation consultant is providing and billing for job development or job placement services pursuant to an approved rehabilitation plan, the qualified rehabilitation consultant shall limit the qualified rehabilitation consultant's billing to no more than two hours in any 30-calendar-day period. Billing beyond this limit will require specific approval of the parties or a determination by the department or a compensation judge.

Subp. 6b. **Plans; exceptions.** The qualified rehabilitation consultant shall bill no more than eight hours for a rehabilitation consultation as described in Minnesota Statutes, section 176.102, subdivision 4, and part 5220.0100, subpart 26, and the development, preparation, and filing of a rehabilitation plan as described in Minnesota Statutes, section 176.102, subdivision 4, and part 5220.0410. If conditions exist that necessitate traveling over 50 miles to visit the employee, employer, or health care provider, or an unusually difficult medical situation is documentable, billing beyond this limit is allowed upon the express consent of the parties or a determination by the department or compensation judge.

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 consultant, 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 assistance 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: *8 SR 1777; 9 SR 1478; 16 SR 2520; 17 SR 3361*

5220.1910 [Repealed, 17 SR 3361]

WORKERS' COMPENSATION RULES OF PRACTICE

5220.2500 [Repealed, 11 SR 1530]

5220.2510 SCOPE AND PURPOSE.

Chapter 5220 governs all workers' compensation matters before the commissioner of the Department of Labor and Industry and the Office of Administrative Hearings. The Joint Rules of Practice of the Workers' Compensation Division and the Office of Administrative Hearings in chapter 1415 also govern workers' compensation matters.

Statutory Authority: *MS s 175.17; 175.171; 176.102; 176.83*

History: *11 SR 1530; 17 SR 3361; 18 SR 2546*

5220.2520 DEFINITIONS.

Subpart 1. **Scope.** Terms used in parts 5220.2510 to 5220.2960 have the meanings given them in part 1415.0300 and this part and Minnesota Statutes, section 176.011.

Subp. 2. **Commissioner.** "Commissioner" means the commissioner of the Department of Labor and Industry.

Subp. 3. **Days.** "Days" refers to calendar days unless otherwise indicated.

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

Subp. 5. **Division.** "Division" means the Workers' Compensation Division of the Department of Labor and Industry.

Subp. 6. **Health care provider.** "Health care provider" has the meaning given it in Minnesota Statutes, section 176.011, subdivision 24.

Subp. 7. **Insurer.** "Insurer" includes self–insured employers.

Subp. 8. **Office.** "Office" means the Office of Administrative Hearings.

Subp. 9. [Repealed, 18 SR 2546]

Subp. 10. [Repealed, 18 SR 2546]

Statutory Authority: *MS s 175.17; 175.171; 176.83*

History: *11 SR 1530; 18 SR 2546*

5220.2530 FIRST REPORT OF INJURY.

The first report of injury must be fully completed and submitted to the division within the time limits established by Minnesota Statutes, section 176.231. It must be on a form prescribed by the commissioner, containing substantially the following:

A. information identifying the employee, employer, insurer, and any adjusting company, including numbers identifying the employer, insurer, adjusting company, and insurer class code;

B. claim numbers and Occupational Safety and Health log number;

C. information regarding all wages paid to the employee from any source;

D. information regarding employment status and occupation, including date of hire;

E. information regarding the circumstances of the injury, including the date, place, time, persons or objects involved, and the date notice was received by the employer and insurer;

F. a description of the claimed injury and how and where it occurred;

G. information regarding lost time from work; and

H. information identifying the treating physician.

Failure to file the report in a timely manner may result in the assessment against the employer or insurer of the penalty set out in part 5220.2820 and against the insurer of the penalty set out in part 5220.2770.

Statutory Authority: *MS s 175.17; 175.171; 176.83*

History: *11 SR 1530; 18 SR 2546*

5220.2540 PAYMENT OF TEMPORARY TOTAL, TEMPORARY PARTIAL, OR PERMANENT TOTAL COMPENSATION.

Subpart 1. **Time of payment.** Payment of compensation must be commenced within 14 days of:

A. notice to or knowledge by the employer of an injury compensable under the act;

B. notice to or knowledge by the employer of a new period of lost time due to a previous work–related injury unless an extension is requested under Minnesota Statutes, section 176.221, subdivision 1; or

C. an order by the division, compensation judge, or workers' compensation court of appeals requiring payment of benefits which is not appealed. A party's consideration of an appeal does not excuse payment beyond the 14–day time limit. When an appeal is not filed, payments made after the 14th day are subject to penalties and interest under parts 5220.2760 and 5220.2780.

Once temporary total or permanent total disability benefits have been commenced, they must continue to be paid on a regular basis at the intervals the employee would have received wages from the employer had the employee continued working. Less frequent payments may be arranged by written agreement of the parties. With the initial payment of temporary total or permanent total disability benefits, the insurer must notify the employee in writing of the day of the week that further payments will be made and the frequency with which payments will be made. If the initial payment is a first and final payment, then notification need not be sent.

The same time limits apply to payments of temporary partial disability benefits. If the current wage varies so that wage documentation for calculation of temporary partial disability benefits is necessary, payment is due ten days following the date the employee or employer sends wage verification to the insurer.

Subp. 2. **Place of payment.** With the exception of payments made subject to part 5220.2560 or other order of a compensation judge or the division, all payments of compensation must be made directly to the employee or dependent at the home address unless the employee or dependent, in writing, authorizes payment to be sent elsewhere. The employee or dependent may authorize payment to be sent to a bank, savings association, or other financial institution by providing the employer or insurer with a written request for redirection of payment, the name and address of the institution, and the account number to which the payments should be credited. The insurer must comply with the request without a specific order from the division. The insurer must file a copy of the request with the division.

Subp. 3. **Notice to division.** The insurer must keep the division advised of all payments of compensation and amounts withheld and amounts paid for attorney fees by the filing of interim status reports each year and upon specific request by the division.

The insurer must also file with the division proof of payment which must indicate the amount of compensation paid and the date when the first payment was made, at each of the following times:

A. when the insurer makes the first payment to the employee following the injury;

B. when payments are reinstated after they have been previously discontinued by a notice of intention to discontinue benefits or an order of the division under part 5220.2640, subpart 7;

C. when monitoring period compensation is commenced under Minnesota Statutes, section 176.101, subdivision 3i; and

D. when payments are commenced by order of the division, a compensation judge, the workers' compensation court of appeals, or the Minnesota Supreme Court.

Subp. 4. **Penalties.** If payment is not made within the time limits of subpart 1, and no denial of liability has been filed under part 5220.2570, subpart 1, or notice of appeal filed from an order of the division, compensation judge, workers' compensation court of appeals, or the Minnesota Supreme Court, the division may assess penalties under Minnesota Statutes, sections 176.221 and 176.225, and parts 5220.2770, 5220.2780, and 5220.2790. A penalty for failure to file a notice required under this part may be assessed under part 5220.2830.

Subp. 5. **Removal from the labor market.** An employee who voluntarily removes himself or herself from the labor market is no longer entitled to temporary total, temporary partial, or permanent total disability benefits. A removal from the labor market has occurred when the employee is released to return to work by a health care provider and the employee retires or the employee's opportunities for gainful employment or suitable employment are significantly diminished due to the employee's move to another labor market.

Subp. 6. **Apprentices, temporary partial disability benefits.** An apprentice, upon return to the same apprenticeship program in the same position or a similar position to that held on the date of injury, has not suffered a loss of earning capacity where the wage upon return to the apprenticeship program is the same or greater than the wage on the date of injury. Temporary partial disability benefits are not owing where there is no loss in earning capacity.

Statutory Authority: *MS s 175.17; 175.171; 176.83*

History: *11 SR 1530; 18 SR 2546; L 1995 c 202 art 1 s 25*

5220.2550 PAYMENT OF PERMANENT PARTIAL DISABILITY, INCLUDING IMPAIRMENT COMPENSATION AND ECONOMIC RECOVERY COMPENSATION.

Subpart 1. **Time of payment.** Permanent partial disability must be paid at the time specified in Minnesota Statutes, sections 176.021 and 176.101. When permanent partial disability compensation is being paid periodically following the payment of temporary total benefits or following or concurrent with the payment of temporary partial benefits, the payments must be continued without interruption at the same intervals that the temporary benefits were paid. When the employee reaches maximum medical improvement, the insurer must request an initial assessment of any permanent partial disability from the employee's physician.

A. When the extent of permanent partial disability is not disputed, upon receipt of a medical report containing a permanency rating or medical information from which the insurer may determine a rating, the employer or insurer must, within 30 days:

(1) make a lump sum payment or begin periodic payments to the employee; or

(2) inform the employee in writing of the disability rating and the time when the permanent partial disability payment will be payable under the statute.

B. When the extent of permanent partial disability is disputed, upon receipt of a medical report containing a permanency rating or medical information from which the insurer may determine a rating, the employer or insurer must, within 30 days:

(1) make a minimum lump sum payment or begin periodic payments based on the minimum undisputed permanent partial disability ascertainable; and

(2) notify the employee in writing that an adverse medical examination has been scheduled and the date, time, and place of the examination. The disability rating must be determined and any remaining permanent partial disability payments made or periodic payment begun, within 120 days of the insurer's receipt of the initial medical report containing a permanency rating; or

C. If permanent partial disability benefits are not currently payable under Minnesota Statutes, section 176.101, inform the employee in writing of the disability rating and the time when the permanent partial disability payment will be payable by statute.

Subp. 2. **Notice of benefit payment.**

A. For injuries before January 1, 1984, the employer or insurer must, when payment is made, file with the division and serve on the employee an itemized proof of payment indicating the amount of compensation paid and the date of payment together with a copy of the medical report upon which payment is based.

B. For injuries on or after January 1, 1984, when the insurer makes a lump sum payment of permanent partial disability benefits or begins periodic payment, the employer or insurer shall fully complete, serve on the employee, and file with the division a notice of permanent partial disability benefits which must be on a form prescribed by the commissioner, containing substantially the following information:

(1) information identifying the employee, employer, insurer, and any adjusting company;

(2) claim numbers or codes;

(3) the date of the injury;

(4) an explanation of the amount, type, and time of payment of permanent partial disability benefits, including the legal authority for the rating;

(5) monitoring period information;

(6) instructions to the employee concerning any disagreement about the payment;

(7) information regarding possible future permanent partial disability payments;

(8) information regarding previous permanent partial disability payments;

(9) copies of medical reports containing disability ratings or medical information upon which the insurer bases the rating;

(10) verification by the insurer, including the name and telephone number of the person making the decision to pay benefits; and

(11) the date the notice was served on the employee.

Subp. 3. **Place of payment.** Payment under this part is to be made as provided in part 5220.2540, subpart 2.

Subp. 4. **Penalties.** If benefits are not paid as required under subpart 1 or 2, the division may assess penalties under Minnesota Statutes, sections 176.221 and 176.225, and parts 5220.2750, 5220.2760, and 5220.2790. A penalty for failure to file a notice required by this subpart may be assessed under part 5220.2830.

Statutory Authority: *MS s 175.17; 175.171; 176.83*

History: *11 SR 1530; 18 SR 2546*

5220.2555 RETRAINING 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 compensation 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.

Statutory Authority: *MS s 175.17; 175.171; 176.83*

History: *18 SR 2546*

5220.2560 ATTACHMENT AND GARNISHMENT OF BENEFITS.

Workers' compensation benefits are not subject to attachment or garnishment, although they may be withheld under Minnesota Statutes, sections 518.54, subdivision 6, and 518.6111, and paid for child support or spousal maintenance if the other requirements of those statutes are met. Upon request, the insurer shall file with the division a statement of the amount being withheld from the employee's benefits and paid to the county or obligee, a copy of the order for withholding of income, and verification of payments made.

Statutory Authority: *MS s 175.17; 175.171; 176.83*

History: *11 SR 1530; 18 SR 2546; L 1997 c 203 art 6 s 92*

5220.2570 DENIALS OF LIABILITY.

Subpart 1. **Form.** When an employer or insurer denies liability for a work–related injury, it shall serve and file the documents prescribed by this part.

Subp. 2. **Denial of liability form.** A denial of primary liability under Minnesota Statutes, section 176.221, subdivision 1, except a letter denial under subpart 4 or 5, must be fully completed and on a form prescribed by the commissioner, containing substantially the following:

A. information identifying the employee, employer, insurer, and any adjusting company;

B. the date of the claimed injury;

C. claim numbers or codes;

D. the signature, name, and telephone number of the person who made the determination;

E. a specific reason for the denial which must be in language easily readable and understandable to a person of average intelligence and education and a clear statement of the facts forming the basis for the denial. A denial which states only that the injury did not arise

out of and in the course and scope of employment or that the injury was denied for lack of a medical report, for example, is not specific within the meaning of this item;

F. a copy of a medical report or summary of any health care provider contact which forms a basis for the denial; and

G. instructions to the employee if the employee disagrees, including the availability of rehabilitation benefits, the statute of limitations for filing a workers' compensation claim, and the address and telephone numbers of division offices the employee may contact for information.

Subp. 3. **Notice of intention to discontinue benefits.** A denial of primary liability filed more than 30 days after notice to or knowledge by the employer of a work–related injury which is required to be reported to the commissioner under Minnesota Statutes, section 176.231, subdivision 1, and for which benefits are being paid must be made by a notice of intention to discontinue benefits under part 5220.2630 and must clearly indicate that its purpose is to deny liability for the entire claim.

Subp. 4. **Letter denial for new period of temporary total.** A denial of liability for temporary total disability benefits for a new period of lost time due to a previous work–related injury must be in writing and include:

A. information identifying the employee, employer, insurer, and any adjusting company;

B. the date of the claimed injury;

C. claim numbers or codes;

D. the signature, name, and telephone number of the person who made the decision; and

E. a specific reason for the denial in language easily readable and understandable to a person of average intelligence and education and a clear statement of the facts forming the basis for the denial.

Subp. 5. **Letter denial for other benefits.** A denial of liability for a portion of benefits or any other compensation where primary liability has been accepted must be in writing and include:

A. information identifying the employee, employer, insurer, and any adjusting company;

B. the date of the claimed injury;

C. claim numbers or codes;

D. the signature, name, and telephone number of the person who made the decision; and

E. a specific reason for the denial in language easily readable and understandable to a person of average intelligence and education and a clear statement of the facts forming the basis for the denial.

Subp. 6. **Service.** The employer or insurer shall serve on the employee the form or letter under subparts 1 to 5 with any relevant medical or other reports attached and file a copy with the division.

Subp. 7. **Time for filing.** Denials of liability must be filed with the division within the following time limits:

A. Where appropriate, a denial under subpart 2 must be filed within 14 days of notice to or knowledge by the employer of an injury which is required to be reported to the commissioner under Minnesota Statutes, section 176.231, subdivision 1. Where appropriate, a denial under subpart 2 must be filed within 30 days after notice or knowledge where an extension has been requested in the event of a new period of temporary total or if payment has commenced. After the 30–day period, where appropriate, a denial must be filed under subpart 3.

B. A denial of liability under subpart 3 must be filed in accordance with part 5220.2630, subpart 4.

C. A denial of liability under subpart 4 must be filed within 14 days of notice or knowledge of a new period of lost time due to a previous work–related injury unless an extension is requested under Minnesota Statutes, section 176.221, subdivision 1.

Subp. 8. [Repealed, 18 SR 2546]

Subp. 9. **Penalty; timeliness.** Failure to pay or deny in a timely manner may result in the assessment of the penalties in parts 5220.2770 and 5220.2790.

Subp. 10. **Penalty; frivolous denial.**

A. A frivolous denial under Minnesota Statutes, section 176.225, subdivision 1, clause (a), includes one which:

(1) does not state facts indicating that an investigation has been completed or that a good faith effort to investigate has been attempted; or

(2) states a basis which is a clearly inaccurate statement of fact or the applicable law.

B. In addition to any workers' compensation benefits due and a penalty under subpart 9, a penalty may be assessed by the division or compensation judge under parts 5220.2760 and 5220.2770 and Minnesota Statutes, sections 176.221, subdivision 3a, and 176.225, subdivision 1, for a frivolous denial.

Subp. 11. **Penalty; nonspecific denial.** A nonspecific denial as defined in subpart 2, item E; 4, item E; or 5, item E, may result in the assessment of a penalty in the amount of $300 under Minnesota Statutes, section 176.84, subdivision 2. A penalty for a nonspecific denial may be assessed without regard to the substantive validity of the denial of benefits. A penalty under this subpart may be assessed in addition to the penalties described in subparts 9 and 10 and is payable to the special compensation fund.

Statutory Authority: *MS s 175.17; 175.171; 176.83*

History: *11 SR 1530; 18 SR 2546*

5220.2580 CLAIM FOR REFUND FROM EMPLOYEE OR DEPENDENT; OVERPAYMENTS.

Subpart 1. **Request for refund.** All requests for refunds or reimbursements by an insurer for payments made under a mistake of fact or law, which were allegedly not received by an employee or dependent in good faith, must be made in writing to the employee with a copy immediately mailed to the attorney representing the employee or dependent, if any, and upon request to the division.

Subp. 2. **Contents of request.** All requests must contain the following information:

A. amount of alleged overpayment;

B. what the original payment was made for;

C. the date on which the payment was made;

D. the mistake of fact or law which forms the basis for the claimed overpayment;

E. the reason the insurer believes the payments were not received in good faith; and

F. a statement informing the employee that, if the employee has any questions regarding the legal obligations to repay any claims for overpayment alleged to have not been received in good faith, the employee should contact either a private attorney or the division.

Subp. 3. **Overpayments.** The insurer that overpaid benefits that were received by the employee in good faith may take the credit allowed under Minnesota Statutes, section 176.179, after giving notice to the employee of the information in subpart 2, items A to F. Benefits paid pursuant to Minnesota Statutes, section 176.239, subdivision 3, are not overpaid benefits unless so ordered by a compensation judge under Minnesota Statutes, section 176.239, subdivision 9.

Statutory Authority: *MS s 175.17; 175.171; 176.83*

History: *11 SR 1530; 18 SR 2546*

5220.2590 [Repealed, 18 SR 1472; 18 SR 2546]

5220.2600 [Repealed, 11 SR 1530]

5220.2605 DISPOSITION OF COVERAGE ISSUES.

Subpart 1. **Motion.** If an answer filed under Minnesota Statutes, section 176.321, raises an issue related to independent contractor or employment status, a party may move to bifur-

cate the issue or issues for immediate and expedited resolution upon affidavit or, if requested by any party, an oral hearing.

Subp. 2. **Filing.** The motion must be filed with the division, or the office if the matter has been certified to the office, within ten days after the filing of the answer. The motion, which must be served upon the petitioner or petitioner's attorney and other parties to the proceedings, must include (1) an affidavit of service; (2) evidence relied on in support of the motion by verified affidavits; (3) any request and reasons for an oral hearing; and (4) if desired, a written brief not exceeding 25 pages in support of the motion. Other parties to the proceeding may respond to the motion within 20 days after the service of the motion under this part by submission of affidavits and, in its discretion, a written brief not exceeding 20 pages. The movant will have ten days from service of a response to the motion to file affidavits and, if desired, a written brief not exceeding ten pages in rebuttal to any issue raised in opposition to the motion.

Subp. 3. **Decision; hearing.** The judge may determine the motion on the basis of the written matter submitted, or may, on the judge's own motion or upon motion of a party, schedule a hearing. If a hearing is scheduled, the parties must be served with notice of hearing at least 20 days before the hearing. The parties may present the issues fully, including the right to introduce evidence supplementing that presented by affidavit and the right to cross–examine adverse witnesses.

Subp. 4. **Appeal.** Whether or not a hearing is held, the judge shall issue a decision based on the facts presented. This decision may be appealed to the Workers' Compensation Court of Appeals.

Subp. 5. **Hearing on the merits.** The commissioner or compensation judge shall schedule a hearing on other issues not decided under this subpart, if needed, following a final decision on the motion under this subpart and any related appeal.

Statutory Authority: *MS s 175.17; 175.171; 176.83*

History: *18 SR 2546*

5220.2610 ADMINISTRATIVE CONFERENCES.

Subpart 1. **Scope.** This part governs administrative conferences conducted under Minnesota Statutes, sections 176.106 and 176.239.

Subp. 2. **Notice.** Unless the issue will be decided on the basis of written submissions, or unless the parties agree on a shorter notice period, the division must notify the parties and intervenors or potential intervenors under Minnesota Statutes, section 176.361, of the date, time, and place of the conference at least ten working days before the conference date. The qualified rehabilitation consultant, if one is assigned, must be notified of a rehabilitation conference. The special compensation fund must be notified of all administrative conferences where the fund is reimbursing benefits to an insurer or self–insurer under Minnesota Statutes, section 176.131 or 176.132, or a claim has been made under the above referenced statutes against the fund for benefits by any of the parties, or the fund is paying benefits under Minnesota Statutes, section 176.191. The notice must include the statutory authority to hold the conference and indicate whether issues from another petition or request form have been joined for consideration at the conference. Telephone notice of the conference at least three working days before the conference date is sufficient for a discontinuance or other expedited conference if timely service of notice by mail cannot be made.

Subp. 3. **Appearances.** All parties and the qualified rehabilitation consultant, if the conference is conducted under Minnesota Statutes, section 176.106 concerning rehabilitation services, must be given notice and the opportunity to attend administrative conferences or, at their option, to present documents on their behalf. A person who has an interest in the outcome of the conference such that the person may either gain or lose by the decision may attend the conference. A party may be represented by an attorney. The employee and insurer or designated person having authority to act on behalf of the party regarding the matter in dispute is required to attend an administrative conference under Minnesota Statutes, section 176.239, unless health reasons, distances, or other good cause prevents attendance. If absent because of distance, the employee and insurer or authorized designee of the employee and insurer must be available by telephone at the scheduled conference time.

Subp. 4. [Repealed, 18 SR 2546]

Subp. 5. **Information considered.** The presiding official shall permit the parties to present their positions and reports or other documents or exhibits relevant to the issues involved. Reasonable opportunity for parties to refute statements or other information submitted must be allowed. Copies of documents submitted must be simultaneously supplied to the other parties.

Subp. 6. **Concurrent litigation.** When the same or a nearly identical issue in the same case is pending with the office, the workers' compensation court of appeals, or another court, the division must decline to issue a decision and defer to the office or court to avoid inconsistent determinations.

Subp. 7. **Continuance.** Continuances are disfavored and will be granted only upon a showing of good cause for the inability or failure to appear at a conference. Good cause generally means that circumstances beyond the control of the party or party's representative prevent attendance at the scheduled time. Before a continuance is granted, the division must consider receiving written arguments and supporting documentation in place of the scheduled conference.

Subp. 8. **Intervenors.** If, at the time of the conference, the division determines that a potential party has not been notified of the conference, the conference must be canceled or continued, the parties may enter into an agreement which does not compromise the rights of the potential party, or the division must issue a decision which does not compromise the rights of the potential party. A potential party is a person who has an interest in the outcome of the conference under Minnesota Statutes, section 176.361, such that the person may either gain or lose by the decision to be made following the conference.

Subp. 9. **Decision.** The decision following an administrative conference shall include a determination concerning the rights an intervenor or potential intervenor under Minnesota Statutes, section 176.361, may have in the dispute. The decision must include a statement indicating the right to request a formal hearing and explain how to initiate the request.

Subp. 10. **Testimony cost.** The division shall not order reimbursement of costs for testimony at an administrative conference.

Statutory Authority: *MS s 175.17; 175.171; 176.83*

History: *11 SR 1530; 18 SR 2546*

5220.2620 MEDICAL DISPUTES.

Subpart 1. **Definition.** For purposes of this part, the following term has the meaning given.

"Medical issues" means all health care rendered under Minnesota Statutes, sections 176.135 and 176.136, and determinations by the division under Minnesota Statutes, sections 176.103 and 176.106, and includes:

A. whether the charge is a reasonable charge as described and allowed by chapter 5221 and Minnesota Statutes, section 176.136;

B. the reasonableness and necessity of a medical service or treatment as described and allowed by chapter 5221 and Minnesota Statutes, sections 176.135 and 176.136;

C. the need for a second opinion prior to surgery;

D. a request for change of primary health care provider;

E. the employee's cooperation with medical treatment;

F. the inability to secure a health care provider report;

G. the relationship of the health care to the work injury;

H. the assessment of penalties or interest for untimely response to medical billings and failure to provide at an administrative conference a specific reason for nonpayment of the items in dispute;

I. the availability of medical services from a managed care organization under Minnesota Statutes, section 176.1351; and

J. other problems related to medical treatment and supplies.

Subp. 2. **Medical claim, request.** An employee or insurer may initiate a medical claim by filing a medical request form with the division. A medical request form may be filed by a health care provider as defined by Minnesota Statutes, section 176.011, subdivision 24,

where the insurer has denied payment on the basis that a charge is excessive under Minnesota Statutes, section 176.136, subdivision 2. A claim is not denied based on excessiveness where the insurer asserts that the injury did not arise out of and in the course of employment or where the disputed treatment is for a condition which the insurer asserts is not wholly or partly casually related to the work injury. The requesting party shall serve the medical request form and attachments on the other parties, including the employee, insurer, employer, and any health care provider and other person having an interest in the outcome such that the person may either gain or lose by the resulting decision. The requesting party shall specify the medical issues in dispute and attach supporting documents. A health care provider filing a medical request form must attach evidence of the insurer's denial of payment based on excessiveness, an itemized statement of charges, and the appropriate record as defined in part 5221.0100, subpart 1a. The requesting party must also specify the name and address of any third party who has paid or has been ordered to pay to reimburse medical or treatment expense, and the claim or policy number, if known. At the time the medical request form is filed, the requesting party must mail a copy of the medical request form to third parties who have paid benefits. A claim petition containing medical issues only may be treated in the same manner as a medical request form under this subpart if the insurer is not disputing that the injury arose out of and in the course of employment.

Subp. 3. **Medical claims response.** If the employee or health care provider has filed a medical request form, the insurer must file a medical response form with the division and serve copies on the other parties no later than 20 days after service of the medical request form or within the time period provided by part 5221.6050, subpart 7. Failure to file a required form will be considered in the determination of disputed issues, penalties, and interest charges, and may result in a determination based solely on the written submissions of the requester when an administrative conference is not scheduled.

Subp. 4. [Repealed, 18 SR 2546]

Subp. 5. **Medical claim; denial of liability.** If a medical request form has been mistakenly filed in a case in which initial issues of liability exist, the matter may be set for a settlement conference before a judge of the division under Minnesota Statutes, section 176.305, or the requester will be instructed to file a claim petition, intervene in another proceeding, or other procedure as the division directs.

Subp. 6. [Repealed, 18 SR 2546]

Subp. 7. [Repealed, 18 SR 2546]

Subp. 8. [Repealed, 18 SR 2546]

Subp. 9. [Repealed, 18 SR 2546]

Subp. 10. [Repealed, 18 SR 2546]

Subp. 11. [Repealed, 18 SR 2546]

Subp. 12. **Penalties.** Where payment of medical charges is not made in compliance with part 5221.0600 and Minnesota Statutes, section 176.135, a penalty may be assessed under part 5220.2740.

Statutory Authority: *MS s 175.17; 175.171; 176.83*

History: *11 SR 1530; 18 SR 2546*

5220.2630 DISCONTINUANCE OF COMPENSATION.

Subpart 1. **Generally.** When an insurer proposes or intends to reduce, suspend, or discontinue an employee's benefits, it shall file one of the following documents described in this part. A form need not be filed when an insurer increases or decreases an employee's periodic temporary partial benefit due to changes in the employee's earnings while employed, provided that a payment continues to be made based on the employee's actual earnings.

Subp. 2. **Petition.** The filing of a petition to discontinue compensation with the division under part 1415.1000 and Minnesota Statutes, section 176.238, subdivision 5, commences a formal action to reduce, suspend, or discontinue compensation. A petition is required to reduce, suspend, or discontinue permanent total benefits if a judicial or administrative order finding permanent total status was previously issued. The division shall refer the matter to the office under Minnesota Statutes, section 176.238.

Subp. 3. **Notice of benefit payment.**

A. The employer or insurer may make a lump sum or final payment of the benefit indicated by the filing of a notice of benefit payment with the division and service of the notice on the other parties at the time that the payment occurs when the payment represents:

(1) a lump sum payment of full permanent partial disability compensation;

(2) a final periodic payment of impairment compensation or economic recovery compensation;

(3) a final payment under an award, order, or stipulation;

(4) for injuries occurring before August 1, 1975, where the employee is not permanently totally disabled, a final payment of temporary total disability or for injuries occurring before May 28, 1977, a final payment of temporary partial disability based on a statutory maximum number of weekly payments; or

(5) a final payment of monitoring period compensation.

B. A notice of benefit payment must be fully completed and on the form prescribed by the commissioner, containing substantially the relevant information described in part 5220.2550, subpart 2.

Subp. 4. **Notice of intention to discontinue benefits.**

A. To discontinue temporary total, temporary partial, or permanent total benefits in situations not specified in subpart 3, the employer or insurer must serve upon the employee and file with the division a notice of intention to discontinue benefits or a petition under subpart 2. The insurer may serve and file a notice of intention to discontinue permanent total benefits under this subpart only where no judicial or administrative decision finding permanent total status was previously issued. The notice of intention to discontinue benefits must be accompanied by a form prescribed by the commissioner with which to request an administrative conference on the proposed discontinuance. The form must contain the employer's name, the date of the injury or disease, and the name, social security number, and address of the employee and a space for the employee to indicate the reason the employee objects to the proposed discontinuance.

B. A notice of intention to discontinue benefits must be fully completed and on the form prescribed by the commissioner, containing substantially the following:

(1) information identifying the employee, employer, insurer, and any adjusting company;

(2) the date of the injury or disease;

(3) claim numbers or codes;

(4) the type of benefits being reduced or discontinued;

(5) the legal reason or reasons for the proposed discontinuance or reduction, stated in language which may easily be read and understood by a person of average intelligence and education, and in sufficient detail to inform the employee of the factual basis for the discontinuance or reduction;

(6) the effective date of the discontinuance;

(7) information regarding benefits previously paid;

(8) information regarding attorney fees;

(9) the date the notice was served on the employee and the employee's attorney;

(10) verification and information identifying the person making the proposal to discontinue benefits;

(11) instructions to the employee, including who to contact for more information and how to request a conference or hearing;

(12) copies of relevant medical reports; and

(13) copies of any other relevant documents.

Supporting documents must be attached to all copies of the discontinuance notice when served.

C. The liability of the insurer to make compensation payments continues at least until the notice of intention to discontinue benefits is received by the division and served on the employee and the employee's attorney, except that benefits may be discontinued on the

date the employee returned to work and temporary partial benefits may be discontinued as of the date the employee ceased employment. Continuation of benefits following service and filing of a notice of intention to discontinue benefits is set out in part 5220.2640, subpart 3.

Subp. 5. [Repealed, 18 SR 2546]

Subp. 6. **Penalties.** Where compensation is discontinued, reduced, or suspended in violation of this part, a penalty may be assessed under parts 5220.2720, 5220.2760, and 5220.2790.

Statutory Authority: *MS s 175.17; 175.171; 176.83*

History: *11 SR 1530; 18 SR 2546*

5220.2640 DISCONTINUANCE CONFERENCES.

Subpart 1. **Purpose.** The purpose of an administrative conference under Minnesota Statutes, section 176.239, is to determine whether reasonable grounds exist for a discontinuance of weekly benefits. The conference is an informal procedure to encourage discussion and clarify issues. If the parties do not reach an agreement on the issues, they will be resolved by a decision of the division. If all affected parties consent, or if notice of joinder of rehabilitation or medical issues has been given under part 5220.2610, subpart 2, rehabilitation and medical issues may also be discussed and clarified and decisions issued under Minnesota Statutes, sections 176.102, 176.103, and 176.106.

Subp. 2. **Request.** The employee may request that the division schedule an administrative conference to discuss a proposed discontinuance of benefits. If the proposed discontinuance is based on a reason other than a return to work, the employee's request for a conference must be personally delivered, received by, or telephoned to the department no later than 12 calendar days from the date a notice of intention to discontinue benefits, which was served on the employee and the employee's attorney, was received by the division. If the proposed discontinuance is based on a return to work, the employee's request must be received by the division within 30 days of the reported date of the employee's return to work. Allowance will be made, if appropriate, for nonreceipt or delay under Minnesota Statutes, section 176.285.

If the insurer discontinues, reduces, or suspends benefits without properly serving and filing a notice of intention to discontinue benefits and with the required attachments in a situation in which a notice of intention to discontinue benefits was required under part 5220.2630 and Minnesota Statutes, section 176.238, the employee may request an administrative conference within 40 days after the employee received the last payment but no later than 12 days after a notice of intention to discontinue benefits is properly served and filed, or 30 days after the employee returned to work if the notice is properly served and filed within 14 days after the insurer has notice of the employee's return to work.

The employee's request should be on the form provided by the insurer under part 5220.2630, subpart 4, item A.

Subp. 3. **Continuation of benefits.**

A. If an employee requests an administrative conference within the time set out in this part, benefits must be paid through the date of the conference unless:

(1) the employee has withdrawn the request for a conference;

(2) the commissioner determines that no conference is necessary and allows the discontinuance;

(3) the employee fails to appear at the conference without good cause;

(4) the employee has returned to work in which case benefits are due through the date of the employee's return to work;

(5) the employee is receiving temporary partial benefits and the employee is no longer employed;

(6) the employee dies;

(7) no plausible information is presented by the employee to dispute the proposed discontinuance of the benefits;

(8) notice of maximum medical improvement was served more than 90 days before the administrative conference;

(9) an approved retraining plan ended more than 90 days before the administrative conference;

(10) the employee has failed to make a good faith effort to participate in the rehabilitation plan before the administrative conference, but is making a good faith effort at the time of the conference, in which case benefits may be discontinued between the date the notice of intention to discontinue benefits was served and filed and the administrative conference date;

(11) the workers' compensation claim was mistakenly accepted by the insurer and primary liability for the entire injury is now denied;

(12) the employee has received temporary partial benefits for the maximum period allowed under Minnesota Statutes, section 176.101, subdivision 2;

(13) the employee has completely recovered from the injury; or

(14) the employee has voluntarily retired from the labor market.

B. If an employee's request for a continuance under part 5220.2610, subpart 7, is granted and the employee is awarded ongoing benefits, benefits must be paid through the date of the conference and continuing. If the employee's request for a continuance is granted and the employee is not awarded benefits, benefits need not be paid during the period of continuance. If the employer or insurer requested the continuance, benefits must be paid during the period of continuance. If the employee and insurer's joint request for a continuance is granted, benefits must be paid during the period of continuance unless the employee agrees in writing to waive the interim payment and await a decision regarding payment under subpart 7 following the administrative conference.

Subp. 4. **Scheduling.** Subject to part 5220.2610, subpart 7, a discontinuance conference must be set within the time limits set by this subpart. Following a notice of intention to discontinue benefits, the division shall schedule an administrative conference no later than ten calendar days after the division's receipt of a timely request for a conference. If no notice of intention to discontinue benefits was filed as required by part 5220.2630 and the employee requests a conference, the division shall schedule a conference no later than ten calendar days after the division's receipt of the employee's request if the conference request is received within 40 days from the date the employee's last benefit payment was received.

Subp. 5. [Repealed, 18 SR 2546]

Subp. 6. **Standard and burden of proof.** The employer or insurer must prove by a preponderance of the information presented that reasonable grounds for a discontinuance exist.

Subp. 7. **The decision.** The decision must be based on information presented at the conference and information from the division file relating to the department's authority to decide the issue, and information contained in the notice of intention to discontinue benefits and any attachments. The division shall mail a copy of the decision to the parties no later than five working days from the date of the conference.

Subp. 8. [Repealed, 18 SR 2546]

Subp. 9. **Penalties.** Penalties may be imposed for an improper discontinuance of compensation under part 5220.2720 and Minnesota Statutes, section 176.238, subdivision 10, and for unreasonable or inexcusable delay or other grounds under parts 5220.2760 and 5220.2790 and Minnesota Statutes, section 176.225, subdivisions 1 and 5.

Statutory Authority: *MS s 175.17; 175.171; 176.83*

History: *11 SR 1530; 18 SR 2546*

5220.2650 [Repealed, 18 SR 2546]

5220.2655 SMALL CLAIMS COURT OPERATIONS.

Subpart 1. **Jurisdiction.** Only claims within the jurisdictional limits of Minnesota Statutes, section 176.2615, as described in items A to D, may be brought in small claims court. The claim may be heard in small claims court if all parties agree to submit the claim to the jurisdiction of the small claims court and:

A. the claim is for rehabilitation benefits only under Minnesota Statutes, section 176.102;

B. the claim is for medical benefits only under Minnesota Statutes, section 176.135;

C. the claim in its total amount does not equal more than $5,000; or

D. where the claim is for apportionment or for contribution and reimbursement, no counterclaim in excess of $5,000 is asserted.

Subp. 2. **Statement of claim.** An employee, employer, insurer, self–insured employer, or claims service agent for a self–insured employer or insurer may file a statement of claim in a format or form prescribed by the commissioner which has been signed by all parties or with signed attachments of the parties consenting to the jurisdiction of the small claims court. The statement of claim must provide:

A. the name and social security number of the employee;

B. the address and telephone number of the employee;

C. the name, title, address, and telephone number of the insurer's claim representative and claim number;

D. the name, address, and telephone number of the potential intervenor or other payor or provider of benefits received by an employee following an alleged work–related injury;

E. a statement of the benefits claimed, including, if appropriate, value in dollars;

F. attached supporting documentation;

G. defenses to the claim and supporting documentation;

H. the statement that the judge's award or order determining the dispute is final and that the matter may not be appealed, used as evidence, or further considered in any other forum or proceeding; and

I. a statement providing for mutual waiver of representation by attorneys if the parties agree.

Subp. 3. **Notice.** The department shall notify all parties by mail of the date, time, and place of the small claims court hearing.

Subp. 4. **Hearing.** All parties must appear at the hearing fully prepared with the witnesses, exhibits, and evidence the parties choose to present to the presiding judge. Parties may agree to appear without representation by attorneys. Participation of attorneys is permitted to the extent that the judge determines is helpful to the resolution of the case. Attorney's fees shall be awarded subject to the limitations of Minnesota Statutes, section 176.081, only if the judge determines that the attorney's participation was significantly instrumental in the disposition of the case.

Subp. 5. **Decision.** The judge shall issue findings and an order deciding the issues within three working days of the completion of the hearing. No appeals can be taken. In the event of a settlement, the judge shall issue a settlement order within three working days of receipt of a settlement agreement.

Statutory Authority: *MS s 175.17; 175.171; 176.83*

History: *18 SR 2546*

5220.2660 [Repealed, 18 SR 2546]

5220.2670 MEDIATION.

Subpart 1. **Evaluation for mediation.** The commissioner may refer, or any party to a workers' compensation matter or dispute may, at any stage of the proceedings, request evaluation of a disputed matter by the mediation unit to determine suitability of the matter for further action by the unit. If the matter is found to be suitable for resolution by the mediation process, the mediation unit will contact the parties or their attorneys, if they are represented, to attempt conciliation or schedule a mediation session.

Subp. 2. **Conciliation.** Conciliation is the resolution of a matter through informal means without conducting a full conference. If the matter is appropriate for conciliation, the mediation unit may conciliate an agreement of the parties.

Subp. 3. **Agreement to mediate.** If conciliation does not occur or is not successful and all parties consent to participate in the mediation process, the unit will schedule a mediation session. The mediation unit will notify the parties of the date, time, and place for the session. An agreement to mediate must be executed by the parties prior to the commencement of mediation.

Subp. 4. **Mediation resolution.** If the mediation session results in a resolution of one or more of the disputed issues, the parties shall sign a written statement outlining the agreement. The mediation resolution need not contain all of the items listed in part 1415.2000, but must include a list of the issues under discussion and agreements reached by the parties. An intervenor is not required to sign the statement if it provides for reimbursement in full to the intervenor.

Subp. 5. **Mediation award.** A designee of the commissioner shall review the mediation resolution as provided by Minnesota Statutes, section 176.521, and shall issue a mediation award if the terms conform with the workers' compensation act. The award and the resolution must be served on the parties by mail within ten days of the conclusion of mediation unless the parties agree to allow a party to draft the mediation resolution. Both documents will be attached to and become part of the judgment roll of the division's file.

Statutory Authority: *MS s 175.17; 175.171; 176.83*

History: *11 SR 1530; 18 SR 2546*

5220.2680 SECOND INJURY LAW.

Subpart 1. [Repealed, 18 SR 2546]

Subp. 2. [Repealed, 18 SR 2546]

Subp. 3. [Repealed, 18 SR 2546]

Subp. 4. [Repealed, 18 SR 2546]

Subp. 5. **Notice of intention to claim reimbursement.** Notice of intention to claim reimbursement under Minnesota Statutes, section 176.131, subdivision 6, must be on forms prescribed by the division. In a claim under Minnesota Statutes, section 176.131, subdivision 1, forms must be filed within one year after the payment of sufficient weekly benefits or medical expenses to make claim against the special compensation fund. In a claim under Minnesota Statutes, section 176.131, subdivision 2, forms must be filed within one year from the first payment of weekly benefits or medical expense. The insurer must file with the division the original and one copy of the notice of intention to claim reimbursement.

Subp. 6. **Claim for reimbursement.** Reimbursement will be made by an order of the division or workers' compensation court of appeals from the special compensation fund on a yearly basis upon application for reimbursement on forms prescribed by the division. The insurer must file the original and one copy of the claim for reimbursement with the division. The application must be verified, set out in detail expenditures made and expenditures for which reimbursement is claimed, and must be supported by medical reports, showing the nature and extent of disability and relationship to the injury and physical impairment for which reimbursement is claimed.

Statutory Authority: *MS s 175.17; 175.171; 176.83*

History: *11 SR 1530; 18 SR 2546*

5220.2690 SUBROGATION INTEREST IN THIRD–PARTY RECOVERY.

Subpart 1. **Duty to inform division.** Any insurer, learning of a third–party recovery or settlement arising out of a personal injury for which the insurer is or may be liable, shall inform the division of the possible, pending, or completed third–party action, indicating:

A. name of the employee;

B. employee's social security number;

C. name of employer;

D. date of injury;

E. name and address of the attorney, if any, representing the employee in the third–party action; and

F. if the employee is not represented by an attorney in the third–party action or if the name of the attorney is not known, the name and address of the insurer for the third party, together with the name of their insured and any identifying file or claim numbers.

Subp. 2. **Stipulated agreement**. Where all of the parties have reached agreement with respect to the subrogation interest, a stipulated agreement concerning that interest may be submitted as provided in Minnesota Statutes, section 176.521.

Subp. 3. **Determination of subrogation interest.** The insurer or employee must comply with the procedures in this part in submitting a petition to the workers' compensation division for an order determining subrogation interest and credit.

A. The petition must be on the form prescribed by the commissioner and contain substantially the following:

(1) information identifying both the district court action if any and the workers' compensation claim involved;

(2) the total proceeds of the third–party settlement or award;

(3) the amount of legal fees and costs of the third–party claim;

(4) the subrogation interest of the employer itemized by type of benefits paid such as but not limited to:

(a) temporary total disability;

(b) temporary partial disability;

(c) permanent total disability;

(d) permanent partial disability;

(e) medical expenses where Minnesota Statutes, section 176.061, subdivision 7, claim was not made; and

(f) other;

(5) the name, address, and telephone number of the attorney for each party if any; and

(6) calculation of the subrogation interest, including the future credit amount and the sum payable to the employee.

B. The petitioner shall serve a copy of the petition and attachments on all parties to both the third–party action and the workers' compensation proceeding. Notice to the special compensation fund shall be given where a subrogation interest based on payments made pursuant to Minnesota Statutes, section 176.183 or potential interest under Minnesota Statutes, section 176.131 is known.

C. The original petition, together with a copy of the district court order or stipulation for settlement and corresponding order for dismissal or other documentary evidence reflecting the nature and extent of the resolution in district court must be filed with the division with proof of service as required in item B.

D. If a party disagrees with the petitioner's request, the disagreeing party shall serve an answer on all parties to the third–party action and parties to the workers' compensation proceeding within 20 days of service of the petition. If the answering party disagrees with the petitioner's calculation of the subrogation interest, future credit, or sum payable to the employee, the answering party must propose alternative calculations. The answer and a proof of service must be filed with the division within 20 days of service of the petition.

E. Upon receipt of the petition and any answer to the petition, the division will issue an order containing the following:

(1) information identifying both the district court action if any and the workers' compensation claim involved;

(2) the information upon which the subrogation order is based;

(3) the calculation of the subrogation interest, including the future credit amount and the sum payable to the employee; and

(4) an explanation of the effect of the credit upon future benefit entitlement.

The order will be served on all parties and will contain notice of the parties' right to appeal the order within 30 days of its service.

F. If an appeal of the order is not received by the division within 30 days, the order will become the final order.

Subp. 4. **Appeal of order.** A party may appeal the order by filing a written appeal with the division and serving it on all parties within 30 days of the service of the order. The appeal must contain a detailed statement explaining the factual or legal basis for the appeal and include any documentation supporting the appeal.

Upon receipt of a timely appeal, the matter will be referred to a settlement judge for a settlement conference to resolve the issues by agreement.

If agreement is not reached at the settlement conference but the parties agree to a stipulated set of facts, the settlement judge will rule on the subrogation interest under Minnesota Statutes, section 176.322. The determination is appealable as provided in Minnesota Statutes, section 176.322.

If agreement is not reached at the settlement conference and facts remain in dispute, the matter will be certified to the office for hearing.

Statutory Authority: *MS s 175.17; 175.171; 176.129; 176.83*

History: *11 SR 1530; 13 SR 2686; 18 SR 2546*

5220.2700 [Repealed, 11 SR 1530]

5220.2710 ASSESSMENT OF PENALTIES.

All penalties assessed by the commissioner or an authorized designee under Minnesota Statutes, chapter 176, shall be assessed within two years of the violation by service of a notice of assessment upon the party against whom the penalty is assessed which shall contain substantially the following:

A. a statement of the legal basis for the penalty assessment including a citation to the applicable statutes;

B. a clear and concise statement of the factual basis for the penalty assessment;

C. a statement of the right to object to the penalty assessment and the right to a hearing;

D. the procedure and time limits for making an objection and obtaining a hearing;

E. the amount of the penalty; and

F. the date payment is due if a timely objection is not filed.

The notice of assessment must be served upon the employee if it is payable to the employee, the employer, and the insurer.

Statutory Authority: *MS s 175.17 cl (2); 176.83 subds 1,7,8,9,15*

History: *11 SR 1530*

5220.2720 IMPROPER DISCONTINUANCES; PENALTY.

Subpart 1. **Basis.** A penalty assessment for improper discontinuance will be made by the division, if appropriate where:

A. benefits were discontinued without timely notice to the employee and the employee's attorney as required under part 5220.2630 and Minnesota Statutes, section 176.238;

B. the discontinuance occurred despite an administrative determination denying a request to discontinue under part 5220.2640 and Minnesota Statutes, section 176.239;

C. the discontinuance occurred without notice despite a final decision of a compensation judge, the workers' compensation court of appeals, or the supreme court requiring payment of ongoing benefits;

D. an administrative conference was requested and the request was not withdrawn, the discontinuance occurred before the date of the administrative conference, except where allowed by part 5220.2640, subpart 3; or

E. when a notice of intention to discontinue benefits is required to be filed but the discontinuance is retroactive, taking effect prior to the date that the notice of intention to discontinue benefits is served and filed with the division or served on the employee, except as allowed by part 5220.2630.

Subp. 2. **Amount.** When the division makes a determination under subpart 1, notice will be given and fines assessed as follows:

A. (1) If an insurer has not had a penalty assessed in the two–year period before the assessment for violation of a particular item in subpart 1, the division will send a warning notice to the insurer that the division has determined the discontinuance is improper. The warning notice will direct the insurer to pay the improperly discontinued benefits and serve and file any required notice of discontinuance within ten days of service of notice or a penalty will be assessed.

(2) If the improperly discontinued benefits are not paid and any proper discontinuance filed within the following time periods after the warning notice is served, the division will send notice that a penalty is imposed as follows:

(a) 11 to 20 days late, $100;
(b) 21 to 30 days late, $300;
(c) 31 to 60 days late, $400; and
(d) over 60 days late, $500.

B. If an insurer has had a penalty assessed in the two-year period before the assessment for violation of an item in subpart 1 and again violates the same item, the following penalties apply if the improperly discontinued benefit is not paid and a discontinuance notice is not filed when required:

(1) one to ten days late, $200;
(2) 11 to 20 days late, $300;
(3) 21 to 30 days late, $400; and
(4) over 30 days late, $500.

C. If that insurer has been issued five or more penalties for violations under part 5220.2720 in a six-month period, a separate penalty of $500 for each additional violation within that six-month period will be assessed.

D. Alternatively, a penalty may be assessed under Minnesota Statutes, section 176.221, subdivision 3, payable to the assigned risk safety account, of up to 100 percent of the amount of compensation to which the employee is entitled.

E. In addition to a penalty payable to the special compensation fund or the assigned risk safety account under this part, a penalty may be assessed under part 5220.2760.

Subp. 3. **Payable to.** Penalties under this part are payable to the special compensation fund.

Statutory Authority: *MS s 175.17; 175.171; 176.83*

History: *11 SR 1530; 18 SR 2546*

5220.2730 [Repealed, 18 SR 2546]

5220.2740 FAILURE TO PAY OR DENY MEDICAL CHARGES; PENALTY.

Subpart 1. **Basis.** Under Minnesota Statutes, section 176.221, subdivision 6a, a penalty may be assessed where payment or denial of medical charges is not made in a timely manner as provided in part 5221.0600 and Minnesota Statutes, section 176.135.

Subp. 2. **Amount.** Under Minnesota Statutes, section 176.221, subdivision 3a, a penalty of up to $1,000 shall be assessed as follows:

A. one to 15 days late, $250;
B. 16 to 30 days late, $500;
C. 31 to 60 days late, $750; and
D. over 60 days late, $1,000.

Subp. 3. [Repealed, 18 SR 2546]

Subp. 4. **Payable to.** Penalties assessed under this part are payable to the assigned risk safety account.

Subp. 5. **Interest.** Interest on the sums owed under Minnesota Statutes, section 176.221, subdivision 8, is payable to the health care provider.

Statutory Authority: *MS s 175.17; 175.171; 176.83*

History: *11 SR 1530; 18 SR 2546*

5220.2750 FAILURE TO MAKE TIMELY PAYMENT OF ECONOMIC RECOVERY COMPENSATION OR IMPAIRMENT COMPENSATION; PENALTY.

Subpart 1. **Basis.** A penalty may be assessed where payment of economic recovery compensation or impairment compensation is not made in a timely manner as provided in Minnesota Statutes, section 176.101 and part 5220.2550.

Subp. 2. **Amount.** Under Minnesota Statutes, section 176.221, subdivisions 3 and 6a, a penalty of up to 100 percent of the amount owing may be assessed.

Subp. 3. **Payable to.** The penalty is payable to the assigned risk safety account.

Statutory Authority: *MS s 175.17; 175.171; 176.83*

History: *11 SR 1530; 18 SR 2546*

5220.2760 ADDITIONAL AWARD AS PENALTY.

Subpart 1. **Basis.** Penalties under Minnesota Statutes, section 176.225, subdivision 1, in an amount up to 25 percent of the total amount of the compensation award may be assessed by the division on the grounds listed in that section, including:

A. underpaying, delaying payment of, or refusing to pay within 14 days of the filing of an order by the division or a compensation judge, the workers' compensation court of appeals or the Minnesota Supreme Court unless the order is appealed within the time limits for an appeal. If the payor does not appeal the order, payments made more than 14 days after the order is served and filed are late, however, the division shall not issue a penalty under this part unless payment is made after the 30th day following a final order. A penalty may be issued, however, for a payment after the 14th day and through the 30th day following a settlement award under Minnesota Statutes, section 176.521. Payments made after the 14th day must include interest pursuant to Minnesota Statutes, section 176.221, subdivision 7, or 176.225, subdivision 5, to the payee;

B. delay of payment, underpayment, or refusal to pay permanent partial disability benefits as provided in part 5220.2550; and

C. other violations under Minnesota Statutes, section 176.225, subdivision 1, paragraph (a), (b), (d), or (e).

This part does not affect the employee's independent right to seek penalties by filing a claim petition under Minnesota Statutes, section 176.271.

Subp. 2. **Amount.** A penalty assessed under this part will be for at least five percent of the compensation owing and shall be assessed as follows:

A. one to five days late, five percent;

B. six to 15 days late, ten percent;

C. 16 to 30 days late, 15 percent;

D. 31 to 60 days late, 20 percent; and

E. over 60 days late, 25 percent.

Subp. 3. **Payable to.** Penalties assessed under this part are payable to the employee.

Statutory Authority: *MS s 175.17; 175.171; 176.83*

History: *11 SR 1530; 18 SR 2546*

5220.2770 FAILURE TO PAY OR DENY; PENALTY.

Subpart 1. **Basis.** Where payment is not made in a timely manner and no denial of primary liability is filed as provided by Minnesota Statutes, section 176.221, subdivision 1, the division may assess the penalties provided in Minnesota Statutes, section 176.221, subdivisions 3 and 3a.

Subp. 2. **Amount.** The commissioner's designee must use the following procedure to determine the amount of the penalty.

A. The commissioner's designee must complete a delayed payment worksheet containing information identifying the claim and setting forth the time period of late payment.

B. Calculation of the amount of the penalty will be in the following manner:

(1) the 14–day period is first calculated. The period will begin on the next day after either the first day of lost time or day of notice, whichever is latest;

(2) the number of days after the 14–day period until payment is made constitute the days late;

(3) the penalty due for the number of days late is calculated under Minnesota Statutes, section 176.221, subdivision 3.

C. Where an old injury recurs causing disability, an extension under Minnesota Statutes, section 176.221, subdivision 1, is filed, and payment is not made within 30 days, calculation of the amount owing under item B shall be made using a period of 30 days rather than 14 days.

D. Where no compensation has been paid but the insurer has failed to file a denial of liability within the statutory 14– or 30–day limit on a claim required to be reported to the

division, a penalty of up to $1,000 may be assessed under Minnesota Statutes, section 176.221, subdivision 3a, as follows:

(1) one to 15 days late, $100;

(2) 16 to 30 days late, $150;

(3) 31 to 60 days late, $350; and

(4) over 60 days late, $500.

If the insurer has been assessed five or more penalties for violation of this item in the two–year period before the assessment, a penalty of $1,000 shall be assessed for a subsequent violation.

E. Where the insurer has filed a frivolous denial under part 5220.2570, subpart 10, a penalty may be assessed under Minnesota Statutes, section 176.221, subdivision 3a, as follows:

(1) one to five violations in the two–year period before the assessment, $500; and

(2) six or more violations in the two–year period before the assessment, $1,000.

Subp. 3. **Payable to.** This penalty is payable to the assigned risk safety account.

Subp. 4. **Repeated failure.** An insurer that has been penalized for failure to pay benefits or deny under Minnesota Statutes, section 176.221, on five or more percent of their claims required by statute to be filed within a given calendar year will be subject to the action set out in Minnesota Statutes, section 176.231, subdivision 2.

Statutory Authority: *MS s 175.17; 175.171; 176.83*

History: *11 SR 1530; 18 SR 2546*

5220.2780 FAILURE TO PAY UNDER ORDER; PENALTY.

Subpart 1. **Basis.** Where payment of compensation or expenses 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, subdivision 3 or 3a, however, the division shall not issue a penalty under this part unless payment is made after the 30th day following a final order. A penalty may be issued, however, for a payment after the 14th day and through the 30th day following a settlement award under Minnesota Statutes, section 176.521. Payments made after the 14th day must include interest to the payee.

Subp. 2. **Amount.** The penalty available under Minnesota Statutes, section 176.221, subdivision 3 or 3a, shall be assessed where there has been a failure to pay under an order which has not been appealed. If the payor chooses not to appeal the order, payments made more than 14 days after the order is served and filed are late. Each day after the 14th day is considered a day late. Penalties under Minnesota Statutes, section 176.221, subdivision 3a, shall be assessed as follows:

A. one to 15 days late, $250;

B. 16 to 30 days late, $500;

C. 31 to 60 days late, $750; and

D. over 60 days late, $1,000.

Subp. 3. **Payable to.** The penalty is payable to the assigned risk safety account.

Statutory Authority: *MS s 175.17; 175.171; 176.83*

History: *11 SR 1530; 16 SR 2520; 17 SR 3361; 18 SR 2546*

5220.2790 INEXCUSABLE DELAY IN MAKING PAYMENT, INCREASE IN PAYMENT.

Subpart 1. **Basis.**

A. When a claim has not been denied but payment is not made as provided by Minnesota Statutes, section 176.221, the failure is deemed inexcusable delay under Minnesota Statutes, section 176.225, subdivision 5.

B. Where other payment of temporary total, temporary partial, permanent total, or permanent partial disability benefits is not made within three business days of the date pro-

vided by statute or rule on more than three occasions in any 12-month period, the failure is deemed inexcusable.

Subp. 2. **Amount.** The amount of the increase in payment under Minnesota Statutes, section 176.225, subdivision 5, for a delay under subpart 1, item A, is calculated as ten percent of the amount in part 5220.2770, subpart 2, item B, subitem (4), unit (a).

The amount of the increase in payment assessed under subpart 1, item B, will be calculated at ten percent of the payment found to be delayed.

Subp. 3. **Payable to.** The amount of any penalty assessed under this part is payable to the employee.

Subp. 4. **Assessment.**

A. The procedure for assessment of a penalty under subpart 1, item A, must be made as provided in part 5220.2770 except that only ten percent of the amount delayed shall be assessed as a penalty under this part.

B. The calculation of a penalty under subpart 1, item B, for late payment of temporary total, temporary partial, or permanent total disability benefits must be as follows:

(1) The due date specified in part 5220.2540 or 5220.2550 is determined.

(2) The number of days after the due date until payment is made constitute the days late.

(3) The compensation due for the number of days late is determined.

(4) The penalty is calculated at ten percent of the sum paid in an untimely manner.

C. The calculation of a penalty for late payment of permanent partial disability benefits, including economic recovery compensation and impairment compensation under subpart 1, item B, must be as follows:

(1) the due date specified in part 5220.2540 or 5220.2550 is determined;

(2) if payment of the sum due is not made within three business days of the due date on more than three occasions in any 12-month period, a penalty of ten percent of the sum paid in an untimely manner is assessed.

Statutory Authority: *MS s 175.17; 175.171; 176.83*

History: *11 SR 1530; 18 SR 2546*

5220.2800 [Repealed, 11 SR 1530]

5220.2810 FAILURE TO RELEASE MEDICAL DATA; PENALTY.

Subpart 1. **Application for penalty.** Any party or the division may request a penalty assessment against a collector or possessor for failure to release medical data in accordance with Minnesota Statutes, section 176.138. The application must be in writing, clearly state the factual basis upon which the penalty is requested, and be accompanied by copies of the written requests for medical data made by the applicant and any response received. The application also must be accompanied by a copy of the written notification to the employee of the request for medical data, unless the employee requested the medical data.

Subp. 2. **Assessment of penalty.** Upon receipt of an application for a penalty assessment, the division shall assess a penalty if it determines that the request meets the following requirements:

A. the medical data requested is related to a current claim for compensation, which means any claim for compensation under Minnesota Statutes, chapter 176, for which benefits are currently being paid or are being claimed by an employee, whether or not a claim petition has been filed;

B. the requested medical data is specifically identified and in existence at the time of the request;

C. the requested medical data is directly related to a current injury or disability for which compensation is claimed or being paid;

D. the applicant sent written notification of the request for medical data to the employee at the time the request was made;

E. if required by federal law, appropriate authorizations for release of information were furnished; and

F. the requested medical data was not provided within seven working days after receipt of the request by a party and receipt of appropriate authorizations, if required by federal law.

Subp. 3. **Amount.**

A. If a collector or a possessor of medical data was not issued a warning under this part in the preceding 12–month period, the division must send a warning letter before a monetary penalty is assessed. The warning letter must advise the collector or possessor against whom the penalty is sought of the obligation to provide medical data under Minnesota Statutes, section 176.138, and that a penalty will be assessed if it fails to provide the requested data within seven working days after the warning letter and to file written verification of the release of the data or a copy of the data with the division within that time.

B. If the requested data is not provided and written verification filed with the division within seven working days after receipt of a required warning letter or the division's request where no warning letter is required, a penalty of $100 shall be imposed. If that collector or possessor has had more than three penalties assessed or warning letters sent for violation of this part in the preceding 12 months, the penalty will be $200 as well as further penalties under items C and D.

C. If the requested data is not provided and written verification filed with the division within 30 days after the date of a required warning letter or the division's request where no warning letter is required, a penalty of $150 will be imposed.

D. If the requested data is not provided and written verification filed with the division within 60 days after the date of a required warning letter or the division's request where no warning letter is required, a penalty of $200 will be imposed.

Subp. 4. **Payable to.** The amount of any penalty assessed under this part is payable to the assigned risk safety account.

Statutory Authority: *MS s 175.17; 175.171; 176.83*

History: *11 SR 1530; 18 SR 2546*

5220.2820 FAILURE TO MAKE TIMELY REPORT OF INJURY; PENALTY.

Subpart 1. **Basis.** A penalty may be assessed under Minnesota Statutes, section 176.231, subdivision 10:

A. against the employer, if a work–related death or serious injury occurs to an employee and the commissioner is not notified within 48 hours;

B. against the employer, if any other injury which must be reported to the division occurs and the first report of injury is received by the insurer more than ten days after the first day of lost time due to the injury or ten days after the date when notice of lost time due to the injury was received by the employer, whichever is later; or

C. against the insurer, if:

(1) an injury which must be reported to the division occurs;

(2) the first report of injury is received by the insurer within the ten–day period described in item B; and

(3) the report is received by the division more than 14 days after the first day of lost time due to the injury, or 14 days after the date when notice of lost time due to the injury was received by the employer, whichever is later.

Subp. 2. **Amount.** If the employer or insurer has violated subpart 1 and has had no similar violations in the 12–month period prior to the assessment, an advisory letter informing the employer or insurer of the violation and the statutory requirement must be sent. If the employer or insurer has had one violation of subpart 1 in the past 12 months, a penalty of $50 must be assessed. If the employer or insurer has had two violations in the past 12 months, a penalty of $100 must be assessed. If the employer or insurer has had three violations in the past 12 months, a penalty of $150 must be assessed. If the employer or insurer has had four or more violations in the past 12 months, a penalty of $200 must be assessed.

Subp. 3. **Assessment.** The penalty must be assessed by letter informing the employer or insurer of the number of violations in the past 12 months on record and the amount of the penalty. The letter must contain instructions for payment.

Subp. 4. **Payable to.** The penalty is payable to the assigned risk safety account.

Subp. 5. [Repealed, 18 SR 2546]

Statutory Authority: *MS s 175.17; 175.171; 176.83*

History: *11 SR 1530; 18 SR 2546*

5220.2830 OTHER FAILURE TO FILE REPORT IN MANNER OR WITHIN TIME LIMITS PROVIDED; PENALTY.

Subpart 1. **Basis.** The division may assess a penalty for failure to file a required report if:

A. a report other than the first report of injury required to be filed by Minnesota Statutes, section 176.231, is not filed in the manner or within the time limitations prescribed; or

B. a report on a form prescribed by the commissioner is requested by the commissioner but is not provided within 21 days of the commissioner's request.

Subp. 2. **Amount.** If, after a letter request from the commissioner or authorized designee, a report under this part is not received by the division within 21 days, a penalty of $50 must be assessed. A failure to file a report after a second request will result in an additional penalty assessment of $150. A subsequent failure will result in penalty assessments of $200.

Subp. 3. **Payable to.** The penalty is payable to the assigned risk safety account.

Statutory Authority: *MS s 175.17; 175.171; 176.83*

History: *11 SR 1530; 18 SR 2546*

5220.2840 FAILURE TO MAKE PAYMENT OR REPORT TO SPECIAL FUND; PENALTY.

Subpart 1. **Due date.** For workers' compensation benefits paid from January 1 through June 30, the due date of the completed assessment form and corresponding assessment amount is August 15 of the same calendar year.

For workers' compensation benefits paid from July 1 through December 31, the due date of the corresponding assessment amount is March 1 of the following calendar year.

Notice of the assessment rate and instructions for payment will be issued by the fund 45 or more days before the due date.

Insurers no longer licensed to provide, or no longer providing workers' compensation insurance in Minnesota, and employers no longer self–insured to provide workers' compensation benefits must continue to file the assessment form until five years have elapsed since a policy of workers' compensation insurance or self–insurance was provided, or three years after the last indemnity payment was made, whichever is later. Insurers not owing an assessment must report zero liability during the required reporting years.

Subp. 2. **Basis.** A penalty will be assessed under Minnesota Statutes, section 176.129, subdivision 10, where either:

A. the completed assessment form and payment of the special compensation fund assessment; or

B. written certification that the assessment report and assessment payment will not be made by the due date because of reasons beyond the control of the insurer or because no assessment is owing, is not received by the special compensation fund on or before the due date.

Subp. 3. **Amount.** Within 30 days of the due date, the special compensation fund will give notice of penalty to those who have neither filed the completed assessment form and paid the assessment amount, nor submitted a certified reason for nonpayment by the due date as follows:

A. Either:

(1) 2.5 percent of the assessment amount due if the assessment payment is received at the fund within five days after the due date;

(2) five percent of the assessment amount due if the assessment payment is received at the fund within six to 30 days after the due date;

(3) ten percent of the assessment amount due if the assessment payment is received at the fund within 31 to 60 days after the due date; or

(4) 15 percent of the assessment amount due if the assessment payment is received at the fund 61 or more days after the due date;

B. $500, whichever is greater; or

C. $200 for failure to timely report under subpart 2, item B, that no assessment is due.

Subp. 4. **Payable to.** Both the assessment amount and any penalty due under this part are payable to the assigned risk safety account.

Subp. 5. **Continued nonpayment.** If the insurer penalized does not make payment within six months of the due date, the fund director shall refer the file to the Department of Commerce for consideration of license or permit revocation.

Statutory Authority: *MS s 175.17; 175.171; 176.129; 176.83*

History: *11 SR 1530; 13 SR 2686; 18 SR 2546*

5220.2850 FAILURE OF UNINSURED OR SELF-INSURED TO PAY; PENALTY.

The fund director, through an authorized designee or representative, will seek reimbursement of benefits paid from the special fund and the penalties provided under Minnesota Statutes, sections 176.181, subdivision 3, and 176.183, subdivision 2, by filing petitions for contribution and reimbursement or recovery, and through other collection mechanisms or remedies available in the civil courts.

Statutory Authority: *MS s 175.17; 175.171; 176.83*

History: *11 SR 1530; 18 SR 2546*

5220.2860 FAILURE TO INSURE; PENALTY.

Penalties for failure to insure will be assessed by the commissioner as provided by Minnesota Statutes, section 176.181, subdivision 3. The employer may object to the penalty as provided in part 5220.2870, except that the objection must be served and filed within ten working days from the date the notice of assessment was served on the employer.

Statutory Authority: *MS s 175.17; 175.171; 176.83*

History: *11 SR 1530; 18 SR 2546*

5220.2870 PENALTY OBJECTION AND HEARING.

A party to whom notice of assessment has been issued may object to the penalty assessment by filing a written objection with the division on the form prescribed by the commissioner. The objection must be served on the special compensation fund if the penalty is payable to the special compensation fund or the assigned risk safety account in addition to filing the objection with the division, and on the employee if the penalty is payable to the employee. The objection must be filed and served within 30 days after the date the notice of assessment was served on that party by the division. The written objection must contain a detailed statement explaining the legal or factual basis for the objection and including any documentation supporting the objection. Upon receipt of a timely objection, unresolved issues shall be referred for a hearing to determine the amount and conditions of any penalty. Objections which are not served and filed within the 30-day objection period must be dismissed by a compensation judge.

Statutory Authority: *MS s 175.17; 175.171; 176.83*

History: *11 SR 1530; 18 SR 2546*

5220.2880 EXAMINATION OF WORKERS' COMPENSATION FILES.

Subpart 1. **Division case.** Persons desiring to examine a file maintained by the division, shall present a written document authorizing their inspection of the file to designated personnel of the division. The authorization must be signed and dated within the preceding six months by a party to the claim who is either the employee, the employer, the insurer, the special compensation fund, a dependent in death cases, or a legal guardian in cases of mental or physical incapacity. The authorization must specify the person or party authorized to review

the file. The authorization is placed in and becomes part of the file. Information from division files may not be released over the telephone without the written authorization required by this subpart.

Subp. 2. **Limitation on access.** This part shall not be construed to grant greater access to the files than that given by the Minnesota Government Data Practices Act or the Workers' Compensation Act.

Statutory Authority: *MS s 175.17 cl (2); 176.83 subds 1,7,8,9,15*

History: *11 SR 1530*

5220.2890 [Repealed, 18 SR 2546]

5220.2900 [Repealed, 11 SR 1530]

5220.2910 [Repealed, 18 SR 2546]

5220.2920 ATTORNEY FEES.

Subpart 1. **Applicable principles.** Attorney fees shall be awarded in accordance with this part and Minnesota Statutes, section 176.081, after resolution of a disputed benefit or service issue, whether the matter is settled or a decision is issued.

A contingent fee provided by Minnesota Statutes, section 176.081, must not be based on the time an attorney spends on a case. It must be based on the amount awarded to a client which was genuinely in dispute. The contingent fee provided by Minnesota Statutes, section 176.081, subdivision 1, is presumed reasonable. If measured on an hourly basis, a contingent fee may seem unreasonably high or unreasonably low. On average, however, the attorney is reasonably compensated but not excessively compensated, on a contingent basis. It is contrary to the legislature's protective policy of administrative regulation of attorney fees in workers' compensation cases under Minnesota Statutes, section 176.081, to allow a contingent fee to stand when it provides a high hourly rate, but to routinely grant excess fees under Minnesota Statutes, section 176.081, subdivision 2, when the contingent fee provides a low hourly rate. The attorney fee in a particular case is not unreasonable simply because the hourly rate is below the attorney's usual billing rate. An attorney who enters into a retainer agreement with an employee or dependent under which the attorney agrees to accept a fee that is less than the fee presumed reasonable by Minnesota Statutes, section 176.081, subdivision 1, may not claim a higher fee unless a new retainer agreement providing a higher fee is executed. If, during the course of representation involving a pending claim, an attorney requests that the client sign a new retainer agreement, the attorney must notify the client by conspicuous notice in the new retainer agreement that the client is not required by law to agree to a fee higher than a fee already negotiated and agreed upon by the attorney and client.

Subp. 2. **Withholding of attorney fees.** Upon receipt of the notice of representation, the employer and insurer may withhold attorney fees on genuinely disputed portions of claims under subpart 5 and Minnesota Statutes, section 176.081. Attorney fees must be withheld on genuinely disputed portions of claims if the employee's attorney so requests.

Subp. 3. **Statement of fees, petition for disputed or excess attorney fees.** The following procedures must be followed in claiming fees.

A. If the claim for attorney fees does not exceed the fees allowed by Minnesota Statutes, section 176.081, subdivision 1, clause (a), the party claiming fees shall fully complete and file a statement of attorney fees on a form prescribed by the commissioner, including:

(1) information identifying the employee, employer, insurer, and any adjusting company;

(2) claim numbers or codes;

(3) the date of injury or disease;

(4) a list of benefits obtained which were genuinely in dispute and which would not have been recovered without the attorney's involvement, and the total dollar amount of benefits obtained;

(5) information concerning any retainer received from the employee;

(6) information concerning expense advancement;

(7) information regarding the withholding of attorney fees, and the amount of attorney fees previously paid for the same injury;

(8) the specific dollar amount claimed for attorney fees;

(9) information regarding the attorney's license to practice law in the state;

(10) a statement of the statutory basis or other legal authority for attorney fees;

(11) a notice regarding how to object to the requested fees;

(12) information identifying the employee's attorney; and

(13) the number of hours spent in the employee's representation and the attorney's hourly fee.

The statement must be accompanied by the retainer agreement, if not previously filed, and proof of service on the employer or insurer, and employee.

B. If an attorney claims fees in excess of the amount listed in Minnesota Statutes, section 176.081, subdivision 1, clause (a), or an objection to the statement under item A is filed, or it is requested that fees be assessed against the employer or insurer for refusal to pay rehabilitation or medical benefits or provide rehabilitation or medical services or the requested fees were incurred in connection with an administrative conference under Minnesota Statutes, section 176.102, 176.135, 176.136, or 176.239, the attorney shall fully complete and file a petition for disputed or excess attorney fees on a form prescribed by the commissioner, including:

(1) information identifying the employee, employer, insurer, and any adjusting company;

(2) claim numbers or codes;

(3) date of the injury or disease;

(4) an exhibit showing specific legal services performed, the date performed, and the time spent;

(5) the number of hours spent in the employee's representation and the attorney's hourly fee;

(6) a statement of expertise and experience in workers' compensation matters;

(7) a complete description of the factual, medical, and legal issues in dispute;

(8) the nature of proof required in the case;

(9) a list of the benefits obtained which were genuinely in dispute and which would not have been recovered without the attorney's involvement, and the total dollar amount of benefits obtained;

(10) information concerning any retainer;

(11) the amount the employee advanced for expenses;

(12) the specific dollar amount claimed in fees;

(13) information regarding the withholding of attorney fees, and the amount of attorney fees previously paid for the same injury;

(14) a list of the disbursements incurred and if the disbursement has been paid, by whom;

(15) information regarding the attorney's license to practice law in the state;

(16) a statement of the statutory basis or other legal authority for attorney fees;

(17) whether or not a hearing on attorney fees is requested;

(18) information identifying the employee's attorney; and

(19) where all or a portion of the fee may be payable by the employee, the prescribed notice to the employee requesting that the employee return the attached form within ten days of the employees's receipt of the notice, indicating whether or not the employee agrees that the requested fee should be awarded and notifying the employee of the relevant factors in determining the attorney fee.

The petition must be accompanied by a copy of the retainer agreement, if not previously filed, proof of service on the employer or insurer, and employee, and a form prescribed by the

commissioner upon which the employee indicates agreement or disagreement with the claim for excess fees.

Subp. 4. **Fees; objection.** If a timely objection to the statement of attorney fees or petition for excess fees is filed, the compensation judge or settlement judge shall use this part and Minnesota Statutes, section 176.081, subdivision 5, to determine whether the fee is justified.

Subp. 5. **Genuinely disputed portions of claims.** This subpart provides the applicable principles for the commissioner, compensation judge, or workers' compensation court of appeals to determine whether the benefit paid or payable was genuinely disputed for the purpose of calculation of a contingent fee under Minnesota Statutes, section 176.081, subdivision 1.

The statement of attorney fees or petition for excess attorney fees must include, for each benefit paid or awarded for which an attorney fee is sought sufficient information to allow the fee determiner to apply the principles contained in this subpart.

The principles applicable to determine whether a benefit was genuinely disputed are as follows:

A. If primary liability had been denied for the claim, all compensation paid or awarded to the employee or dependent other than payment of medical and rehabilitation expenses, is used to compute the attorney's fee.

B. If there was no dispute concerning the rate, amount, duration, or eligibility for a benefit and the benefit was timely paid, the benefit may not be used to compute the fee.

C. The fee may not be computed on the entire amount of a benefit where only a portion of the benefit is disputed. Only the disputed portion of the benefit may be used to compute the fee.

D. If eligibility for the benefit is disputed, the entire benefit during the period for which eligibility was disputed is used to compute the fee.

E. If the rate of the benefit is disputed, only the amount paid or awarded above the rate admitted and timely paid is used to compute the fee.

F. If the duration of the benefit is disputed, only the portion of the benefit not conceded and not timely paid is used to compute the fee.

G. Benefits allegedly admitted but not timely paid may be used to compute the fee.

H. Benefits timely paid may not be used to compute the fee except where primary liability for the entire claim or eligibility for the benefit had been generally denied.

I. The difference between the compensation eventually paid or awarded and the amount admitted and timely paid is used to compute the fee.

J. The following benefits may be used to compute the fee:

(1) remodeling compensation pursuant to Minnesota Statutes, section 176.137, which was in dispute under this subpart;

(2) a penalty sum awarded to the employee or dependent for a benefit which was in dispute under this subpart;

(3) interest on a benefit which was in dispute under this subpart; and

(4) a benefit which was in dispute under this subpart although reimbursable to an intervenor.

K. Generally, each benefit is evaluated separately, however, if the rate, duration, or eligibility for economic recovery compensation is disputed, the difference between the impairment compensation which was conceded and timely paid and the amount of disputed economic recovery compensation eventually paid or awarded is used to compute the fee.

L. The principles of this subpart apply to settlement sums. A portion of a lump sum award allocated to medical or rehabilitation expenses must not be used to compute the fee unless the hourly fee associated with the service exceeds the contingent fee available under Minnesota Statutes, section 176.081, subdivision 1, for all other disputed benefits under this subpart that are resolved pursuant to the award. Benefits that have not yet become due and are not in dispute under this subpart may not be used to compute the fee.

Subp. 6. **Defense attorney fees.** On August 1 of each year, every insurer must file with the department its annual statement of attorney fees containing the information required by

this subpart for the previous 12–month period from July 1 to June 31. The insurer must include defense fees and costs incurred by itself and its agents and representatives, including but not limited to adjusting companies and third–party administrators. Costs include charges for contract service providers such as surveillance companies and transcription service organizations. Only defense attorney fees and defense costs which are charged by the insurer against an individual claim file and which relate to a contested workers' compensation claim must be reported under this subpart. Contested workers' compensation claims are those claims which are the subject of pending or anticipated workers' compensation litigation. Workers' compensation litigation includes but is not limited to administrative conference proceedings, mediation, small claims court, and settlement proceedings. For the purpose of this subpart, "paid" includes sums billed or due but not yet paid.

A. The annual defense attorney fees and defense costs statement must include:

(1) Total attorney fees paid to outside and in–house counsel for representation and advice concerning workers' compensation cases. If in–house counsel spends 100 percent of work time on workers' compensation cases, the attorney's full gross wage plus the cost of the employee's benefit package is reported as attorney fees paid. If a portion of the attorney's time is attributable to the defense of workers' compensation cases, the wages and benefits may be prorated by the respective percentage of wages and benefits attributable to the defense of workers' compensation cases. The outside counsel fees reported must be the total fee paid to all firms for representation and advice concerning workers' compensation cases.

(2) Total paralegal fees paid or cost incurred in connection with workers' compensation cases. Wages and benefits of in–house paralegals may be prorated as provided in subitem (1).

(3) Deposition costs are reported in this subitem. Other deposition costs such as court reporter fees for time, preparation of a deposition transcript, and copies of depositions, and any costs paid to the deponent must be included in this subitem. Expert witness fees are included under subitem (4). The attorney's fee for a deposition is reported in subitem (1).

(4) Expert witness fees, including fees paid to expert witnesses in connection with hearings, depositions, or other workers' compensation proceedings.

(5) Independent medical evaluation fees, including all sums paid for health care provider opinions sought by the insurer or self–insured employer under Minnesota Statutes, section 176.155, subdivision 1.

(6) Fees for the generation of a medical report not already included in another category of this item.

(7) Cost of copies of medical and other data such as personnel files and medical treatment charts.

(8) Court filing fees.

(9) Transcript costs, including fees for preparation and copies of hearing transcripts.

(10) Investigation costs not otherwise reported under this item, including surveillance costs and other services and fees connected with investigations related to litigated claims.

(11) Travel and mileage costs, including reimbursement for travel costs associated with litigated cases when these sums are not already reported under another subitem.

(12) The total number of injuries to which the fees and costs included on the report are attributable.

(13) Other litigation costs not included in subitems (1) to (12) are reported in a miscellaneous category.

B. The insurer must collect and make available for review by the department as needed individual case information relating to defense attorney fees and defense costs as provided in this item. This individual case fee information need not be reported annually except as provided by item A. The information specified under this item must be made available to

the department upon request and to parties to the claim. The fees listed in item A, subitems (1) and (2), must be collected for individual employee claims by date of injury. All other costs and fees in item A, subitems (3) to (13), may be collected in the aggregate without regard to individual claims. The data collected under item A, subitems (1) and (2), must include:

(1) the employee's social security number;

(2) the date of injury;

(3) the Minnesota supreme court registration numbers for all attorneys providing services relating to the injury;

(4) the hourly rate, if any, charged by all attorneys and paralegals providing services relating to the injury;

(5) the lump sum attorney fees paid for all attorneys providing services relating to the injury; and

(6) a sum representing all in–house attorney and paralegal time spent providing services relating to the injury. For the purpose of this subitem, the employer of the in–house attorney or paralegal may establish an hourly rate for the paralegal or attorney's time based on the gross wages and fringe benefits which closely represents the actual payment for the services rendered.

C. The attorney fees paid to in–house or outside counsel as reported in this subpart must be approved under Minnesota Statutes, section 176.081, subdivision 2, if the payment exceeds $13,000 for any injury.

Subp. 7. **Contingent fee limitations.** The contingent fee presumed reasonable under Minnesota Statutes, section 176.081, subdivision 1, applies to fees paid to the attorney or attorneys for the employee. It does not apply to each attorney individually, but begins to run from the first claim concerning the injury and continues until the $13,000 sum is reached without regard to the number of attorneys or claims initiated concerning the same injury. The $13,000 fee which is presumed reasonable applies separately to fees payable to the attorney or attorneys for the employee, and fees payable to the attorney or attorneys for the insurer. The maximum fee presumed reasonable per injury is $26,000, half to the attorney or attorneys for the employee and half to the attorney or attorneys for the insurer. Where the only issues in dispute are medical or rehabilitation benefits or services and it was not reasonable to join the rehabilitation or medical issue with other disputed benefit issues, the attorney fee payable for recovery of the benefit or service is payable by the insurer on an hourly basis. If the hourly fee associated with medical or rehabilitation issues exceeds the available contingent fee under Minnesota Statutes, section 176.081, subdivision 1, the available contingent fee shall be awarded as well as a fee payable by the insurer such that the two fees combined compensate the attorney at a reasonable hourly rate.

Subp. 8. **Determinations without a hearing.** If an objection to the requested fee has been filed and the interested parties waive their right to a hearing, the fees may be determined without a hearing. A hearing must be scheduled if an objection has been filed and all interested parties have not waived their right to a hearing. Where no objection to the requested fee has been filed, the commissioner, judge, or court before whom the matter is pending shall determine, without a hearing, the amount of attorney fees owing under this part and Minnesota Statutes, section 176.081.

Statutory Authority: *MS s 175.17; 175.171; 176.83*

History: *11 SR 1530; 18 SR 2546*

5220.2930 DEPENDENT'S BENEFITS.

Subpart 1. **Allocation of compensation by judge.**

A. A party may petition for an allocation of benefits under Minnesota Statutes, section 176.111, subdivision 10. The petition may contain a proposed allocation. The petition must be served on all parties and filed with the division within one year after the date of death. If a petition for allocation is not filed in a timely manner and the death occurred after June 30, 1981, the allocation will be as provided in subpart 2.

B. A party may object to a proposed allocation by serving on all parties and filing an objection with the division within 20 days after service of the petition. The objection must contain a clear and concise statement of the specific grounds for the objection and must be accompanied by any documentary evidence supporting the objection.

C. A settlement judge shall rule on the petition without a hearing. If a party objects to the judge's decision, the party may request a hearing by filing with the division a written request for hearing within 30 days after the decision was filed. Upon receipt of a timely request for hearing, the matter will be referred to the office for hearing.

Subp. 2. **Allocation of compensation in other cases.** In all cases where there has been no allocation of benefits by a judge under subpart 1, and the death occurs after June 30, 1981, compensation to which dependents are entitled under Minnesota Statutes, section 176.111, shall be allocated as follows:

A. If the deceased employee leaves a surviving spouse and one dependent child, 84 percent of the compensation due under Minnesota Statutes, section 176.111, shall be paid to the surviving spouse and the remaining 16 percent of the compensation shall be paid for the benefit of the dependent child.

B. If the deceased employee leaves a surviving spouse and two or more dependent children, 75 percent of the compensation due under Minnesota Statutes, section 176.111, shall be paid to the surviving spouse and the remaining 25 percent shall be paid for the benefit of the dependent children.

This allocation shall apply from the date of death until a court–determined allocation is made, if any.

Subp. 3. [Repealed, 18 SR 2546]

Subp. 4. **Factors in allocating.** Factors which may justify a different allocation from that provided in subpart 2 include special circumstances which necessitate greater income to one or more of the dependents and the existence of other adequate means of support, other than workers' compensation benefits, for certain dependents but not for others.

Subp. 5. **Offset for government survivor benefits.** An offset for government survivor benefits is allowed under Minnesota Statutes, section 176.111, subdivision 21, only to the extent that the government survivor benefits, when combined with the weekly workers' compensation benefits, exceed the weekly wage of the deceased employee at the time of death or exceeds the dependents allocated portion of the weekly wage for deaths occurring prior to July 1, 1981. For purposes of this offset, the weekly wage must be increased by the adjustments provided by Minnesota Statutes, section 176.645.

A. Deaths prior to July 1, 1981. If there is a surviving spouse and one or more dependent children in a single household, the offset must be computed twice, once separately for the spouse and once separately for the children, the children being taken as a group. For purposes of this computation, the weekly wage, as adjusted pursuant to Minnesota Statutes, section 176.645, is allocated between the spouse and children in the same proportion as benefits are allocated pursuant to this rule. Mother's insurance benefits must be allocated to the children.

B. Deaths after June 30, 1981.

(1) Surviving spouse responsible for support of all dependents. If the support of all dependent children is the responsibility of the surviving spouse, the offset shall be computed only once, taking the spouse and dependent children together as one group. All government survivor benefits, including mother's insurance benefits, received by any member of the group shall be lumped together for purposes of computing the offset.

(2) Surviving spouse not responsible for support of all dependents. If support of one or more of the dependent children is not the responsibility of the surviving spouse, the offset shall be computed twice, once for the surviving spouse and the children dependent on the surviving spouse, all taken as a group, and once for the children whose support is not the responsibility of the surviving spouse. For purposes of the offset, the weekly wage, as adjusted under Minnesota Statutes, section 176.645, must be allocated between the spouse and children in the same proportion as benefits are allocated pursuant to this part. Mother's insurance benefits must be allocated to the group comprised of the dependent children for whose benefit the mother's insurance benefits are being paid.

Statutory Authority: *MS s 175.17; 175.171; 176.83*

History: *11 SR 1530; 18 SR 2546*

5220.2940 [Repealed, 18 SR 2546]

5220.2950 [Repealed, 18 SR 2546]

5220.2960 COMMISSIONER INTERIM NOTICES AND ORDERS.

The commissioner may develop and publish commissioner interim notices and orders concerning matters within the authority of the department. Interim notices and orders do not have the force and effect of law, except where specifically authorized by statute, but may be relied upon by the public until revoked or modified to bind the department. The purpose of an interim notice or order is to provide uniform information and guidance to the public concerning department action. An interim notice or order may be relied upon to bind the department until a statute, appellate court decision, rule, or subsequent commissioner's notice or order conflicts with the notice or order, until the date stated in the notice or order, or until one year after publication, whichever occurs first. An interim notice or order under this part binds the department only if the published notice or order is clearly identified as an interim notice or order and is given an indexing number.

Statutory Authority: *MS s 175.17; 175.171; 176.83*

History: *18 SR 2546*

5220.3000 [Repealed, 11 SR 1530]

5220.3100 [Repealed, 9 SR 333]

5220.3200 [Repealed, 11 SR 1530]

5220.3300 [Repealed, 9 SR 333]

5220.3400 [Repealed, 9 SR 333]

5220.3500 [Repealed, 9 SR 333]

5220.3600 [Repealed, 11 SR 1530]

5220.3700 [Repealed, 9 SR 333]

5220.3800 [Repealed, 9 SR 333]

5220.3900 [Repealed, 9 SR 333]

5220.4000 [Repealed, 9 SR 333]

5220.4100 [Repealed, 9 SR 333]

5220.4200 [Repealed, 9 SR 333]

5220.4300 [Repealed, 9 SR 333]

5220.4301 [Repealed, 9 SR 333]

5220.4302 [Repealed, 9 SR 333]

5220.4303 [Repealed, 9 SR 333]

5220.4304 [Repealed, 9 SR 333]

5220.4305 [Repealed, 9 SR 333]

5220.4800 [Repealed, 9 SR 333]

5220.4900 [Repealed, 9 SR 333]

5220.5000 [Repealed, 11 SR 1530]

5220.5100 [Repealed, 9 SR 333]

5220.5200 [Repealed, 9 SR 333]

5220.5300 [Repealed, 9 SR 333]

5220.5400 [Repealed, 9 SR 333]

5220.5500 [Repealed, 9 SR 333]

5220.5600 [Repealed, 9 SR 333]

5220.5700 [Repealed, 9 SR 333]

5220.6500 [Repealed, 9 SR 333]

5220.6600 [Repealed, 9 SR 333]

5220.6700 [Repealed, 9 SR 333]

5220.6800 [Repealed, 9 SR 333]

5220.6900 [Repealed, 9 SR 333]

5220.7000 [Repealed, 9 SR 333]

5220.7100 [Repealed, 9 SR 333]

5220.7200 [Repealed, 9 SR 333]