

CHAPTER 5220
DEPARTMENT OF LABOR AND INDUSTRY
REHABILITATION AND COMPENSATION

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5220.0107 SERVICE AND FILING OF REHABILITATION DOCUMENTS; COUNTING DAYS.

Subpart 1. **Service on other parties.** All required rehabilitation reports and progress records that are required to be sent or provided to other parties must be mailed by first class mail to their addresses of record, delivered by personal service, or, if authorized by the recipient, sent by facsimile or electronic mail.

Subp 2 **Filing with state.** A document is filed upon its receipt by the division by 4 30 p.m on an open state business day Documents received after 4:30 p.m. are considered filed on the next open state business day A party is authorized to file a document with the division by facsimile if the document is 15 pages or less in length A party may file a document by electronic transmission only as authorized by the division The filed facsimile or authorized electronically transmitted information has the same force and effect as the original Where the quality or authenticity of a document filed by facsimile or electronic transmission is at issue, the division may require the original document to be filed When the quality or authenticity of a document filed by facsimile or electronic transmission is not at issue, the party shall not also file the original document.

Subp 3 **Counting days.** References to "days" in parts 5220.0100 to 5220 1900 mean calendar days unless specified otherwise.

Statutory Authority: *MS s 176 102, 176 83*

History: *29 SR 1480*

5220.0110 REHABILITATION REQUEST; DISABILITY STATUS REPORT.

[For text of subps 5 and 6, see MR]

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

A The msurer 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 temporary total disability will likely exceed 13 cumulative weeks;
- (2) withm 90 calendar days of the date of injury when the employee has not returned to work following a work injury; or
- (3) within 14 calendar days after receiving a request for rehabilitation consultation, whichever is earlier

When a waiver of rehabilitation services has been granted under part 5220 0120, the msurer shall complete, serve, and file another disability status report within 14

calendar days of the expiration of the waiver. A disability status report is also required following each request for rehabilitation consultation

B. The disability status report shall contain the following:

[For text of subitems (1) to (4), see MR]

(5) information about accommodations or services being provided to the employee to assist in the return to the date-of-injury employer;

(6) an indication of whether a rehabilitation consultation is occurring or a request for a waiver of consultation is being made under part 5220.0120,

[For text of subitems (7) and (8), see M.R.]

[For text of item C, see M.R.]

[For text of subp 8, see M.R.]

Statutory Authority: *MS s 176 102, 176.83*

History: *29 SR 1480*

5220.0120 WAIVER OF CONSULTATION AND REHABILITATION SERVICES.

[For text of subpart 1, see MR]

Subp. 2 **Criteria.** A request for a rehabilitation waiver must be filed on the disability status report within the time frames specified in part 5220.0110, subpart 7, item A. A waiver is granted when the employer documents that the otherwise qualified employee will return to the date-of-injury job or other suitable gainful employment with the date-of-injury employer within 90 calendar days after the request for the waiver is filed. The waiver shall not be effective more than 90 calendar days after the waiver is granted. A waiver of consultation and rehabilitation services may not be renewed.

[For text of subp 3, see MR]

Subp 4. [Repealed, 29 SR 1480]

Subp 5 **Commissioner's order.** If 90 calendar 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 if appropriate

Subp 6 **Referral for consultation after waiver.** If 90 calendar days have passed since the waiver was granted and the employee has not returned to suitable gainful employment, the insurer shall provide a rehabilitation consultation. The insurer shall also provide a rehabilitation consultation if requested by the employee at any time even if a waiver has been granted.

Statutory Authority: *MS s 176 102, 176.83*

History: *29 SR 1480*

5220.0130 REHABILITATION CONSULTATION.

[For text of subpart 1, see MR]

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

If the insurer requests a waiver of rehabilitation services which is denied by the commissioner under part 5220.0120, the insurer shall arrange for a rehabilitation consultation by a qualified rehabilitation consultant to take place within 15 calendar 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 if the employee lives in Minnesota or within 50 miles of a Minnesota state border. If the employee lives beyond this distance, the qualified rehabilitation consultant may conduct the consultation by telephone

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

[For text of items A and B, see MR]

C Contents of report The rehabilitation consultant 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 date-of-mjury employer or date-of-injury occupation; and
- (4) a deterrmation of whether or not the employee is a qualified employee for rehabilitation services and a narrative report explaining the basis for the deterrmation.

D. Time for filing The assigned qualified rehabilitation consultant shall complete and file with the commissioner a rehabilitation consultation report withm 14 calendar days of the first in-person meeting with the employee for the purpose of a rehabilitation consultation, or the first telephone conference if permitted by subpart 2. The assigned qualified rehabilitation consultant shall concurrently provide copies of these documents to the employer, the employee, any attorney for the employee, and the insurer

E. Objection to the determination The employee or the insurer may object to the qualified rehabilitation consultant's deterrmation by filing a rehabilitation request for assistance with the commissioner

Statutory Authority: *MS s 176 102, 176 83*

History: *29 SR 1480*

5220.0410 REHABILITATION PLAN.

[For text of subps 1 to 10, see MR]

Subp. 11. **Travel expenses.** The msurer shall reimburse the employee for automobile mileage pursuant to Minnesota Statutes, section 176 102, subdivision 9, at the rate paid by the employer for ordinary business travel expenses, or the rate paid by the state of Minnesota under the commissioner's plan for employment-related travel, whichever is lower.

Statutory Authority: *MS s 176 102, 176 83*

History: *29 SR 1480*

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.** Except as otherwise permitted by subpart 3, six months after the assigned qualified rehabilitation consultant has filed an approved rehabilitation plan with the commissioner, the assigned qualified rehabilitation consultant shall complete a plan progress report on the form prescribed by the commissioner that contains the following.

[For text of items A to E, see MR.]

Subp 3. **Filing; subsequent and alternative filing; copies to parties.**

A. The assigned qualified rehabilitation consultant shall file the six-month plan progress report with the commissioner within 15 days after six months have passed from the date of the filing of the rehabilitation plan. However, the plan progress report is not required to be completed if a plan amendment containing the information in subpart 2, items A to E, is filed within 15 days before or after six months have passed from the date the rehabilitation plan was filed

B Subsequent plan progress reports may be requested by the commissioner to monitor the progress of the rehabilitation plan. Subsequent reports must be filed with the commissioner within 15 days after the commissioner's written request.

C The qualified rehabilitation consultant must provide copies of progress reports to the employee, the insurer, and attorneys representing the employee and insurer, at the time the reports are filed with the commissioner. The qualified rehabilitation consultant shall also provide a copy to the date of injury employer if the goal of the rehabilitation plan is to return the employee to work with that employer

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 perform a more thorough review of the rehabilitation effort. The purpose of the commissioner's review is to determine if the plan is adequate to carry out the objectives of rehabilitation under Minnesota Statutes, section 176.102, subdivision 1, paragraph (b). The commissioner's review may include, but is not limited to the following:

[For text of items A to C, see MR]

Statutory Authority: *MS s 176.102; 176.83*

History: *29 SR 1480*

5220.0510 PLAN AMENDMENT AND CLOSURE.

[For text of subpart 1, see MR]

Subp. 2 **Procedure and responsibilities.** The assigned qualified rehabilitation consultant shall 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 the employee, the insurer, and any attorneys representing the employee or insurer. The qualified rehabilitation consultant shall also provide a copy to the date of injury employer if the goal of the rehabilitation plan is to return the employee to work with that employer.

Subp. 2b **Party's response.** Upon receipt of the proposed rehabilitation plan amendment, the employee, insurer, and qualified rehabilitation consultant 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 a copy of 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. The insurer is liable for reasonable fees for a rehabilitation plan that is deemed approved under this subpart until a further plan amendment is filed or ordered by the commissioner or compensation judge. A party's failure to sign a plan amendment shall not constitute a waiver of any right to subsequently dispute it or to dispute whether the rehabilitation fees relative to it are reasonable.

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, the assigned qualified rehabilitation consultant, and any change of qualified rehabilitation consultant;

[For text of items B to H, see M.R.]

Subp 3a. Reporting a change of qualified rehabilitation consultant.

A. When the employee has the right to change qualified rehabilitation consultants without approval under part 5220.0710, subpart 1, the plan amendment form is not required to be circulated to the parties for signature under subparts 2b, 2c, and 2d, but the new qualified rehabilitation consultant shall notify the department of the change by filing a plan amendment form with the commissioner. The plan amendment shall be filed with the commissioner within 15 calendar days of receipt of information transferred by the former qualified rehabilitation consultant as required by part 5220.1802, subpart 4a. The new qualified rehabilitation consultant shall also send a copy of the form to the parties as specified in subpart 2a when it is sent to the commissioner for filing.

B. If approval of a change of qualified rehabilitation consultants is required under part 5220.0710 and the insurer has approved the change, the new qualified rehabilitation consultant shall reflect the change on the plan amendment form, circulate the form for signatures, and file the form with the commissioner within 15 calendar days of obtaining the signatures. The former qualified rehabilitation consultant shall transfer information to the new qualified rehabilitation consultant as required by part 5220.1802, subpart 4a. If approval is required and the insurer has not agreed to the change, the employee shall proceed according to part 5220.0710, subpart 3.

C. If a qualified rehabilitation consultant elects to withdraw as the assigned qualified rehabilitation consultant under subpart 7a, item C, the consultant shall document the withdrawal on the plan amendment form. The qualified rehabilitation consultant shall file the plan amendment form with the commissioner and send a copy to the parties as specified in subpart 2a and the department's vocational rehabilitation unit when it is sent to the commissioner for filing.

[For text of subp 4, see M.R.]

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

[For text of items A to D, see M.R.]

[For text of subp 6, see M.R.]

Subp. 7. Closure report by assigned qualified rehabilitation consultant. The assigned qualified rehabilitation consultant shall file a rehabilitation plan closure report on a form prescribed by the commissioner within 30 calendar days of knowledge that:

A the employee has been steadily working at suitable gainful employment for 30 days or more, or the time period provided for in the plan,

B. the employee's rehabilitation benefits have been closed out by an award on stipulation or award on mediation;

- C. the employee and insurer have agreed to close the rehabilitation plan,
- D. the qualified rehabilitation consultant has been unable to locate the employee following a good faith effort to do so,
- E. the employee has died, or
- F. the commissioner or a compensation judge has ordered that the rehabilitation plan be closed and there has been no timely appeal of that order.

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:

- (1) identifying information on the employee, employer, insurer, and assigned qualified rehabilitation consultant,
- (2) the reason for closure of the rehabilitation plan;
- (3) if the employee is working, information identifying the employer with whom the employee returned to work, the job title, the return to work date, the weekly wage upon return to work, and whether the employee has continued working for 30 calendar days;
- (4) a summary of the rehabilitation services provided and rehabilitation costs by all rehabilitation providers,
- (5) the assigned qualified rehabilitation consultant's dated signature and a statement that the qualified rehabilitation consultant certifies that the form was served on the employee and insurer, any attorneys representing them, and the vocational rehabilitation unit, if applicable, on the date specified, and
- (6) notice to the employee about how to contact the department with questions or concerns about the closure.

Subp 7a Plan closure report; insurer's denial of further liability.

A. The qualified rehabilitation consultant shall also file the plan closure report form specified in subpart 7 if the consultant decides to withdraw as the assigned qualified rehabilitation consultant after the insurer has provided written notice to the employee, the employee's attorney, the commissioner, and the qualified rehabilitation consultant that the insurer is denying further liability for the injury for which rehabilitation services are being provided. The qualified rehabilitation consultant shall attach a copy of the insurer's notice to the plan closure form and shall provide a copy of the form and notice to the employee, any attorney for the employee, and the vocational rehabilitation unit established under Minnesota Statutes, section 176.104.

B. The qualified rehabilitation consultant shall continue to provide services according to the approved plan until the plan closure report form is filed and provided to the parties and the vocational rehabilitation unit as specified in item A.

C. This subpart does not apply if a claim petition, objection to discontinuance, request for an administrative conference, or other document initiating litigation has been filed on the liability issue. Where any of these litigation documents have been filed and the qualified rehabilitation consultant decides to withdraw as the assigned qualified rehabilitation consultant, the consultant shall document the withdrawal on the rehabilitation plan amendment form according to subpart 3a, item C.

[For text of subp 8, see MR]

Statutory Authority: *MS s 176.102, 176.83*

History: *29 SR 1480*

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 employee has a right to choose a qualified rehabilitation consultant as defined in part 5220.0100, subpart 23, once at any time in the period beginning before the rehabilitation consultation and ending 60 days after filing of the rehabilitation plan. Within these time limitations, the employee need not seek the approval of the insurer when choosing a qualified rehabilitation consultant. If the

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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

[For text of subp 2, see MR]

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 as outlined in subpart 1, the determination shall be made according to the employee's choice. If the employee's choice has been exhausted or if the request to change qualified rehabilitation consultants is filed more than 60 days after the rehabilitation plan was filed, 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.

[For text of subp 4, see MR]

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

If the assigned qualified rehabilitation consultant leaves a firm to work for another firm or to start a solo practice, the employee may either choose to continue with the assigned qualified rehabilitation consultant or remain with the qualified rehabilitation consultant's former firm. Neither option will exhaust the employee's right to choice of a qualified rehabilitation consultant pursuant to subpart 1.

Disputes about changes shall be resolved according to subpart 3.

Subp 6 Transfer of information. The former qualified rehabilitation consultant shall transfer pertinent documents to the new assigned qualified rehabilitation consultant pursuant to part 5220.1802, subpart 4a.

Statutory Authority: *MS s 176.102, 176.83*

History: *29 SR 1480*

5220.0950 DISPUTES.

Subpart 1 Rehabilitation request for assistance.

A. Where issues exist about an employee's entitlement to rehabilitation services, the appropriateness of a proposed plan, or any other dispute about rehabilitation, the employer, employee, or insurer may request assistance to resolve the disputed issues by filing a rehabilitation request on 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:

- (1) identifying information on the employee, employer, insurer, and assigned qualified rehabilitation consultant,
- (2) a statement of the rehabilitation issues to be resolved,
- (3) a statement of what the requester wants and supporting evidence and arguments;

(4) a list showing that all parties were served and the date they were served;

(5) the requester's name and signature, and

(6) instructions for completion of the form

B. The assigned qualified rehabilitation consultant may file with the commissioner and serve on all parties a rehabilitation request to resolve issues involving elements of a rehabilitation plan or fees for rehabilitation services.

C. Except where the insurer has denied ongoing liability for the injury in writing, the assigned qualified rehabilitation consultant shall file with the commissioner and serve on all parties a rehabilitation request for assistance to determine the direction of an approved rehabilitation plan if no party has done so and the qualified rehabilitation consultant is unable to plan or implement rehabilitation services

Subp. 1a. **Rehabilitation response.** If the employee or the qualified rehabilitation consultant has filed a rehabilitation request, the insurer must file a rehabilitation response form with the division and serve copies on the other parties no later than ten days after service of the rehabilitation request form. When an administrative conference is not scheduled, the insurer's failure to file a timely rehabilitation response may result in a determination based solely on the written submissions of the requester

[For text of subps 2 to 4, see M.R.]

Statutory Authority: *MS s 176 102, 176 83*

History: *29 SR 1480*

5220.1400 QUALIFYING CRITERIA FOR REHABILITATION CONSULTANT.

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

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

A. certification by the Commission on Rehabilitation Counselor Certification as a certified rehabilitation counselor; or

B. certification by the Certification of Disability Management Specialists Commission as a certified disability management specialist

A qualified rehabilitation consultant or qualified rehabilitation consultant intern registered with the department before July 1, 2005, may either continue to meet the certification requirements in effect at the time of initial registration or meet the certification requirements in items A and B

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 may be registered as a qualified rehabilitation consultant intern. An individual who is not certified under subpart 2 at the time of application 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 12 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

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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 an individual applies for registration as a qualified rehabilitation consultant intern, the applicant'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. To provide direct supervision, an intern supervisor must have at least 52 weeks of full-time experience as a qualified rehabilitation consultant not including any service provided while still a qualified rehabilitation consultant intern. 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 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 burden of proof of experience shall be on the applicant.

The intern may make application for completion of internship when the minimum requirements in subparts 2 to 5 have been met.

A qualified rehabilitation consultant intern must obtain certification by one of the entities specified in subpart 2 within three years of approval of registration as an intern by the commissioner. Failure to obtain certification within three years will result in a decision and order denying registration renewal.

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 supervisor shall attach examples of the following forms and reports completed by the intern as documentation of the intern's understanding of rehabilitation procedures and ability to communicate in writing: rehabilitation consultation report, rehabilitation plan, plan progress report, notice of rehabilitation plan closure, initial evaluation narrative report, labor market analysis, and closure report. At least one of the narrative reports must show understanding of vocational testing and transferable skills analysis.

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.

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: *29 SR 1480*

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 or documentation showing how certification will be obtained within three years from the date of registration,
- C. documentation supporting any applicable experience requirements;
- D. official transcripts of all pertinent postsecondary education,
- E. the annual registration application fee of \$100, and
- F. 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.

[For text of subps 1a and 2, see MR]

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.

A qualified rehabilitation consultant or qualified rehabilitation consultant intern who does not file a complete and timely application for renewal of registration along

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with payment of all required fees shall not continue to provide rehabilitation services pursuant to Minnesota Statutes, section 176.102, beyond the expiration date

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.

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 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:

[For text of items A to C, see MR]

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. A qualified rehabilitation consultant or a qualified rehabilitation consultant intern may move to inactive status upon written notification to the department. Individuals on inactive status may apply for reinstatement of registration by providing verification to the commissioner of all of the following:

A. current certification as required by part 5220.1400,

B. attendance at the most recent update session or a recording of that session;

C. documentation of continuing education requirements as provided by subpart 3a;

D. payment of any applicable late fees if the applicant failed to notify the commissioner that registration renewal was not being sought, and

E. if the applicant has been on inactive status or has failed to renew registration for more than two years, the applicant must also complete an orientation training session before acceptance is final.

An order denying renewal of registration may be appealed to the rehabilitation review panel according to Minnesota Statutes, section 176.102, subdivision 3.

[For text of subps 5 and 6, see MR]

Statutory Authority: *MS s 176.102, 176.83*

History: *29 SR 1480*

5220.1600 PROCEDURE FOR APPROVAL AS QUALIFIED REHABILITATION CONSULTANT FIRM.

Subpart 1 **Criteria.** 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

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 or shall any change in the firm address, telephone number, or contact person. 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. the annual registration application fee of \$200 per firm, and
- D. the name and telephone number of a contact person and an address where certified mail can be delivered

The Vocational Rehabilitation Unit of the Department of Labor and Industry is exempt from payment under this subpart.

[For text of subs 2a to 5, see M.R.]

Statutory Authority: *MS s 176 102, 176 83*

History: *29 SR 1480*

5220.1700 PROCEDURE FOR APPROVAL AS REGISTERED REHABILITATION VENDOR.

Subpart 1. **Application criteria.** 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 The annual registration application fee of \$200 for each registered rehabilitation vendor.
- D The name and telephone number of a contact person and an address where certified mail can be delivered

Any change in the firm address, telephone number, or contact person shall be reported to the department within two weeks of the occurrence.

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REHABILITATION AND COMPENSATION 5220.1801

Subp 1a **Approval as registered rehabilitation vendor.** The approval process shall be conducted the same as provided in part 5220.1500, subpart 1a. A registered rehabilitation vendor must have at least one person from the firm complete an introductory training session sponsored by the department within 12 months of approval of registration.

[For text of subps 2 to 5, see MR]

Statutory Authority: *MS s 176.102, 176.83*

History: *29 SR 1480*

5220.1801 PROFESSIONAL CONDUCT.

[For text of subps 1 to 7, see MR]

Subp 8 **Separate roles and functions.**

A. 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.

B. 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. Except as permitted by item C, qualified rehabilitation consultants, qualified rehabilitation consultant interns, and registered rehabilitation vendors shall at no time in any capacity engage in any of the following activities regarding any claim for workers' compensation benefits pursuant to Minnesota Statutes, chapter 176:

- (1) claims adjustment,
- (2) claims investigation,
- (3) determining liability or setting reserves for a claim,
- (4) authorizing or denying provision of future medical or rehabilitation services,
- (5) recommending, authorizing, or denying payment of medical or rehabilitation bills;
- (6) making recommendations about the determination of workers' compensation monetary benefits;
- (7) arranging for medical examinations not recommended by the treating doctor; or
- (8) arranging for or participating in surveillance or investigative services.

C. This subpart shall not prohibit a registered rehabilitation provider from engaging in the activities in item B, subitems (4) and (5), while providing medical case management services for a certified managed care plan to the extent permitted by part 5218.0760. However, a medical case manager for an employee covered by a certified managed care plan may not be the assigned qualified rehabilitation consultant for that same employee.

This subpart 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.

[For text of items A to J, see MR]

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 including, but not limited to, whether the employee is a qualified employee as defined in part 5220.0100, subpart 22;

(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

[For text of items L to Q, see MR]

[For text of subps 10 and 11, see MR.]

Statutory Authority: *MS s 176 102, 176 83*

History: *29 SR 1480*

5220.1802 COMMUNICATIONS.

[For text of subps 1 and 2, see MR]

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 provide a copy of required progress records to the employee, the insurer, and their attorneys, and also to the employer upon the employer'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 with copies to the employee, the insurer, and their attorneys, and also to the employer upon the employer's request.

[For text of subps 4a to 11, see MR]

Subp 12. **Communication with certified managed care plan.** When the employee is covered by a certified managed care plan, the assigned qualified rehabilitation consultant shall communicate with the assigned medical case manager who is providing services in accordance with part 5218.0760.

Statutory Authority: *MS s 176 102, 176 83*

History: *29 SR 1480*

5220.1900 REHABILITATION SERVICE FEES AND COSTS.

[For text of subps 1 to 1b, see MR]

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 wait time, and three-fourths of the hourly rate for travel time. Travel time shall be prorated as outlined in part 5220.1805, item E.

[For text of subps 1d to 9, see MR.]

Statutory Authority: *MS s 176 102, 176 83*

History: *29 SR 1480*

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REHABILITATION AND COMPENSATION 5220.2920

5220.2605 [Repealed, 29 SR 1448]

5220.2610 [Repealed, 29 SR 1448]

5220.2620 [Repealed, 29 SR 1448]

5220.2640 [Repealed, 29 SR 1448]

5220.2655 [Repealed, 29 SR 1448]

5220.2690 [Repealed, 29 SR 1448]

5220.2920 ATTORNEY FEES.

Subpart 1 [Repealed, 29 SR 1448]

Subp 2 [Repealed, 29 SR 1448]

Subp 3. [Repealed, 29 SR 1448]

Subp. 4 [Repealed, 29 SR 1448]

Subp. 5. [Repealed, 29 SR 1448]

[For text of subp 6, see M.R.]

Subp 7 [Repealed, 29 SR 1448]

Subp 8. [Repealed, 29 SR 1448]

Statutory Authority: *MS s 175 17, 175 171, 176 83*

History: *11 SR 1530, 18 SR 2546, 29 SR 1448*