

Minnesota Attorney General: Administrative Rules Proceedings

Copyright Notice:

This material may be protected by copyright law (U.S. Code, Title 17). Researchers are liable for any infringement. For more information, visit www.mnhs.org/copyright.

Version 3
August 20, 2018

SF-00006-02

STATE OF MINNESOTA

DEPARTMENT ATTORNEY GENERAL

Office Memorandum

TO : RUSSELL B. SWANSON, Commissioner
Department of Labor and Industry
ATTN: Asst. Atty. Gen. Winston Ehlmann
5th Floor, Space Center Building

DATE: 1/11/82

FROM : TED A. MARTINEZ
Special Assistant Attorney General
530 State Office Building

PHONE: 296-0315

SUBJECT: IN THE MATTER OF THE PROPOSED ADOPTION OF RULES OF THE STATE DEPARTMENT OF LABOR AND INDUSTRY GOVERNING THE RULES FOR REHABILITATION OF WORK RELATED INJURIES AND DISEASES

Enclosed herewith are the rules you have submitted for approval. These rules have been approved by this office and filed with the Secretary of State. Please note that they have not been filed with the State Register. This must be done promptly by your agency.

Upon receipt and before transmittal to your agency, however, it is important that you recheck these rules as to:

1. Affixation of stamps of the Attorney General and Secretary of State to the last page of the rules;

2. Coverage by these stamps of all rules submitted; and

3. Inclusion of all pages to the rules in the approved set.

If you have any questions in this regard, please contact me.

TAM:sll

Encs.

cc: Ms. Kathy Burek
430 State Office Building

Mr. Duane Harves
Office of Administrative Hearings
400 Summit Bank Building
310 South Fourth Avenue
Minneapolis, MN 55415

Our File No. 747

Submission withdrawn 11/10/81

RULE REVIEW CHECKLIST

DATE RULE RECEIVED ~~11-10-81~~ 12/30/81
DATE FOR REVIEW ~~11/19/81~~ 1/8/82
DATE DUE ~~11-24-81~~ 1/13/82

Adopted w/a hearing _____
Adopted w/o a hearing X
Temporary rule _____

Approved _____ Disapproved _____ Returned to Agency _____

Resubmitted _____ Due _____
Approved _____ Disapproved _____ Returned to Agency _____

Date filed w/Secretary of State _____ Revisor approved 1/8/82
disapproved _____

✓ Rule as Adopted — not submitted; to be recd from Revisor rec'd 1/8/82

✓ Rule as Proposed

✓ Order Adopting 12.21.81 Date

N/A Notice of Intent to Solicit Outside Opinio

— Order for rulemaking
— Date of Hearing never existed - agency action instituted by LCRAR

N/A Certificate of Board's Authorizing Resolution

✓ Notice of rulemaking — copies of SR notice were mailed out
✓ Sufficiency

✓ Affidavit of Mailing Notice or rulemaking
11.13.81 At least 30 days prior to ~~hearing~~/adoption

✓ Mailing list Certificate

✓ Publication in State Register
9.14.81 At least 30/~~20~~ days prior to ~~hearin~~/adoption

N/A Hearing Examiner's Report

✓ Chief Hearing Examiner's Report(s)
_____ Approving H.E.'s Report
_____ Approving agency action

N/A Agency's Findings of Fact no changes from Rec. Prop.

N/A LCRAR Report or agency Affidavit

N/A Certificate of Board's Resolution Adopting Rules

N/A Order Approving Incorporation by Reference

✓ Statement of Need and Reasonableness see transmittal memo + letter from LCRAR

N/A Petition for Adoption of a Rule

N/A Record (includes transcript or tape, exhibits, comments received by agency, requests for a hearing, and other relevant materials)

✓ Certificate of Compliance w/Rulemaking Procedures

N/A Affidavit of Mailing Notice of Submission to Attorney General

✓ Notice of Submission to the Attorney General

ADMIN 1000 (Rev. 1/78)
SF-00006-01

STATE OF MINNESOTA

DEPARTMENT Labor and Industry

Office Memorandum

TO : Judith Waring
Legal Assistant, Attorney General
Administration Division

DATE: 12-21-81

FROM : Gladys Westberg
Director of Rehabilitation Services
Department of Labor and Industry

PHONE:

SUBJECT:
Rules for Rehabilitation for Work Related Injuries and Diseases
File Number 747

In accordance with M.S. 15.4012, Subdivision 4H, we are forwarding a copy of the Notice of Intent to Adopt Rules Without Public Hearing which appeared in the State Register on September 14, 1981. Also attached is a copy of the Rules approved in the Revisor of Statutes Office, and Order Adopting, Affidavit of Mailing Notice, Mailing List Certificate and Certificate of Compliance.

STATEMENT OF NEED AND REASONABLENESS

As indicated in the attached Memorandum of August 24, 1981 from Senator Tim Penny, Chairman, the Legislative Commission to Review Administrative Rules had been reviewing the Rules for a few months. After all testimony was taken, the Commission directed the staff to facilitate a meeting with representatives of labor, industry, the Department of Labor and Industry and the Minnesota Trial Lawyers Association for the purpose of working out language changes in the Rules which were agreeable to all the parties. The proposed changes in the Rules were presented to the LCRAR on August 13, 1981. Following discussion, the Commission recommended the Department of Labor and Industry make the agreed upon Rule change through use of the non-controversial procedure for adoption of a rule as provided in M.S. 15.0412 Subdivision 4H.

This agency has received no comments to the proposed rule and have received no requests for a hearing.

We are requesting the Attorney General's approval or disapproval of the Rule as to its legality and its form to the extent the form relates to legality, including the issue of substantial change, within 14 days of the submission of this request.

cc: Lorna Breiter, Assistant Revisor

RECEIVED
DEC 30 1981
ATTORNEY GENERAL
ADMINISTRATIVE AGENCIES

SF-00006-02

Chrono
105

STATE OF MINNESOTA

DEPARTMENT ATTORNEY GENERAL

Office Memorandum

TO : GLADYS WESTBERG
Director, Rehabilitation Services
Department of Labor and Industry

DATE: 11/10/81

FROM : JUDITH V. WEHRWEIN JVW
Legal Assistant
Attorney General

PHONE: 297-3471

SUBJECT: Rules for Rehabilitation of Work Related Injuries and Diseases.

This is to confirm that, in accordance with our telephone conversation of today, the above-referenced rules are being withdrawn from submission to the Attorney General's Office for review as to form and legality because of incomplete documentation.

As we discussed, a complete submission will require, pursuant to Attorney General's rule 1 MCAR § 1.203, an Order Adopting, Notice of Intent to Adopt a Rule Without Public Hearing, Affidavit of Mailing Notice, Mailing List Certificate and Certificate of Compliance.

When a complete submission is made, please note it should be to the Administration Division of the Attorney General's Office at 530 State Office Building.

I am returning all documents submitted at this time. Upon resubmission, please refer to our File No. 747.

Please call me if I can be of any assistance in this matter.

JVW/cae

ADMIN 1000 (Rev. 1/78)
SF-00006-01

STATE OF MINNESOTA

DEPARTMENT Labor and Industry

Office Memorandum

TO : Office of the Attorney General

DATE: October 26, 1981

FROM : Gladys Westberg, Director
Rehabilitation Services

PHONE: 7 2684

SUBJECT: Rules for Rehabilitation of Work Related Injuries and Diseases

In accordance with M.S. 15.0412, Subdivision 4H, we are forwarding a copy of the Notice Of Intent To Adopt Rules without a public hearing which appeared in the State Register on September 14, 1981. Also attached is a copy of the Rules approved in the Revisor of Statutes Office.

Statement of Need and Reasonableness

As indicated in the attached Memorandum of August 24, 1981 from Senator Tim Penny, Chairman, the Legislative Commission to Review Administrative Rules had been reviewing the Rules for a few months. After all testimony was taken, the Commission directed the staff to facilitate a meeting with representatives of labor, industry, the Department of Labor and Industry and the Minnesota Trial Lawyers Association for the purpose of working out language changes in the Rules which were agreeable to all the parties. The proposed changes in the Rules were presented to the LCRAR on August 13, 1981. Following discussion, the Commission recommended the Department of Labor and Industry make the agreed upon Rule change through use of the non-controversial procedure for adoption of a rule as provided in M.S. 15.0412 Subdivison 4H.

This agency has received no comments to the proposed rule and have received no requests for a hearing.

We are requesting the Attorney General's approval or disapproval of the Rule as to its legality and its form to the extent the form relates to legality, including the issue of substantial change, within 14 days of the submission of this request.

cc: Office of the Revisor

Worker's Compensation Rehabilitation Services

Adopted Rules Governing Rehabilitation of Work Related Injuries and Diseases

Rules as Adopted

RS 1. Definitions. For the purposes of RS 1.-17., the following terms have the meanings given them.

A. Commissioner. "Commissioner" means Commissioner of the Department of Labor and Industry.

B. Employer. "Employer" means the employer of qualified employees and includes the insurer providing workers' compensation insurance required by Minn. Stat. ch. 176 to this employer.

C. 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 the employee would have enjoyed without ~~the~~ 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.

D. 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:

1. Is permanently precluded or is likely to be precluded from engaging in the usual and customary occupation or position in which the individual was engaged at the time of injury; and

2. Can reasonably be expected to benefit from rehabilitation services which could significantly reduce or eliminate the decrease in employability.

E. Qualified rehabilitation consultant. "Qualified rehabilitation consultant" means a person who is professionally

trained and experienced and who is approved by the commissioner to develop and monitor an appropriate plan for evaluation and provision of physical and vocational rehabilitation services for an employee entitled to rehabilitation benefits under Minn. Stat. S 176.102.

F. Qualified rehabilitation consultant/independent. "Qualified rehabilitation consultant/independent" means a consultant neither affiliated with an employer, insurer, or adjusting company, nor with a facility or agency engaged in the provision of comprehensive rehabilitation services to qualified employees, and who is approved by the commissioner to develop and monitor rehabilitation plans.

G. Qualified rehabilitation consultant/affiliated. "Qualified rehabilitation consultant/affiliated" means a consultant who is affiliated with an employer, insurer, or adjusting company, and who is approved by the commissioner to develop and monitor rehabilitation plans.

H. Registered rehabilitation vendor. "Registered rehabilitation vendor" means a public or private entity existing wholly or in part for the provision of rehabilitation services to the qualified employee and which has been registered to provide specific rehabilitation services in accord with a rehabilitation plan authorized by the commissioner.

I. Rehabilitation consultation. "Rehabilitation consultation" means an evaluation by a qualified rehabilitation consultant of the likelihood that rehabilitation services will significantly reduce or eliminate the decrease in employability.

J. Rehabilitation plan. "Rehabilitation plan" means a written document completed by a qualified rehabilitation consultant and which describes the manner and means by which it is proposed that a qualified employee may be returned to suitable, gainful employment through the use of rehabilitation service. The plan shall take into consideration the qualified employee's unique disabilities and assets.

K. Rehabilitation service. "Rehabilitation service" means service required to determine an employee's eligibility as a

qualified employee, and service designed to return an individual to suitable gainful employment by returning the individual to a job with the former employer or to a job related to the individual's former employment, or by placing the individual in a job in another work field, or by placing the individual in a job with higher economic status than would have occurred without the disability if it can be demonstrated that this is necessary to increase the likelihood of reemployment. The service may include, but is not limited to, medical evaluation, medically prescribed physical rehabilitation, work evaluation, counseling, job analysis, job modification, job placement, on-the-job training, or retraining.

L. Review panel. "Review panel" means the panel created by Minn. Stat. S 176.102, subd. 3.

RS 5. Plan modification. Upon request of the employer or employee, the commissioner may suspend, terminate or alter a rehabilitation plan 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 he is unlikely to complete the plan successfully; or

C. The employee is not cooperating with the plan.

The commissioner may alter a plan on the request of an employee if the employee believes that the occupation for which he is being trained is not suited to him, provided that the employee's request shall be made within 90 days from the plan's implementation date and that no more than one change shall be permitted for this reason. Any decision of the commissioner regarding a change in a plan may be appealed to the review panel within 15 days of the filing of and service of the decision on the interested parties.

OFFICE OF THE REVISOR OF STATUTES

Certificate of Approval of Adopted Rules

Agency: Department of Labor and Industry

Rule Numbers: RS1 & RS5

Rule Title: Adopted Rules Governing Rehabilitation of Work Related Injuries and Diseases

Type of Rules: Permanent X

Temporary _____

Documents Incorporated by Reference:

The attached Rules are approved as to form.

Steven C. Cross
Revisor of Statutes

APPROVED AS TO LEGALITY
Jan 11 1982
WARREN SPANNAUS, ATTORNEY GENERAL
BY Ted A. Mathison
SPECIAL ASSISTANT ATTORNEY GENERAL

Name: Lorna Breiter

Title: Assistant Revisor

Phone: 296-2778

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED
JAN 11 1982
Joan Anderson Growe
Secretary of State
3:20 PM

Rules as Proposed

RS 1. Definitions. For the purposes of RS 1.-17., the following terms have the meanings given them.

A. Commissioner. "Commissioner" means Commissioner of the Department of Labor and Industry.

B. Employer. "Employer" means the employer of qualified employees and includes the insurer providing workers' compensation insurance required by ~~Minnesota Statutes Chapter~~ Minn. Stat. ch. 176 to this employer.

C. 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 ~~consistent with~~ which produces an economic status as close as possible to that the employee would have enjoyed without disability. Consideration shall be given to the employee's former employment and ~~with~~ the employee's qualifications, including, but not limited to, the employee's age, education, previous work history, interests and skills. ~~Consideration shall also be given to the economic status enjoyed by the employee at the time of the injury and to the present and future labor market.~~

D. Qualified employee. "Qualified employee" means an

APPROVED IN THE REVISOR OF STATUTES OFFICE BY:

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~~,~~:

~~(1)~~ 1. Is permanently precluded or is likely to be precluded from engaging in the usual and customary occupation or position in which the individual was engaged at the time of injury~~,~~; and

~~(2)~~ 2. Can reasonably be expected to benefit from rehabilitation services which could significantly reduce or eliminate the decrease in employability.

E. Qualified rehabilitation consultant. "Qualified rehabilitation consultant" means a person who is professionally trained and experienced and who is approved by the commissioner to develop and monitor an appropriate plan for evaluation and provision of physical and vocational rehabilitation services for an employee entitled to rehabilitation benefits under ~~M.S.~~ Minn. Stat. S 176.102.

F. Qualified rehabilitation consultant/independent. "Qualified rehabilitation consultant/independent" means a consultant neither affiliated with an employer, insurer, or adjusting company, nor with a facility or agency engaged in the provision of comprehensive rehabilitation services to qualified employees, and who is approved by the commissioner to develop and monitor rehabilitation plans.

G. Qualified rehabilitation consultant/affiliated. "Qualified rehabilitation consultant/affiliated" means a consultant who is affiliated with an employer, insurer, or adjusting company, and who is approved by the commissioner to develop and monitor rehabilitation plans.

H. Registered rehabilitation vendor. "Registered rehabilitation vendor" means a public or private entity existing wholly or in part for the provision of rehabilitation services to the qualified employee and which has been registered to provide specific rehabilitation services in accord with a rehabilitation plan authorized by the commissioner.

I. Rehabilitation consultation. "Rehabilitation

APPROVED IN THE REVISOR OF STATUTES OFFICE BY:

consultation" means an evaluation by a qualified rehabilitation consultant of the likelihood that rehabilitation services will significantly reduce or eliminate the decrease in employability.

J. Rehabilitation plan. "Rehabilitation plan" means a written document completed by a qualified rehabilitation consultant and which describes the manner and means by which it is proposed that a qualified ~~worker~~ employee may be returned to suitable, gainful employment through the use of rehabilitation ~~services~~ service. ~~The plan may include, but is not limited to, physical rehabilitation services preliminary to or in conjunction with vocational rehabilitation, modification of the employee's job at the time of the injury, provision for alternative work with the same employer, on-the-job training, job placement assistance or some combination of the services~~ The plan shall take into consideration the qualified employee's unique disabilities and assets.

K. Rehabilitation service. "Rehabilitation service" means service required to determine an employee's eligibility as a qualified employee, and service designed to return an individual to ~~(1)~~ suitable gainful employment by returning the individual to a job with the former employer or to a job related to the individual's former employment, ~~(2)~~ or by placing the individual in a job in another work field ~~which produces an economic status as close as possible to that enjoyed before the injury~~, or ~~(3)~~ by placing the individual in a job with higher economic status than would have occurred without the disability if it can be demonstrated that this is necessary to increase the likelihood of reemployment. The service may include, but is not limited to, medical evaluation, medically prescribed physical rehabilitation, work evaluation, counseling, job analysis, job modification, job placement ~~and implementation of~~, on-the-job training, or ~~short-term~~ retraining.

L. Review panel. "Review panel" means the panel created by ~~Minnesota Statutes, Section~~ Minn. Stat. S 176.102, ~~Subdivision~~ subd. 3.

APPROVED BY THE REVISOR OF STATUTES OFFICE BY:

RS 5. Plan modification. Upon request of the employer or employee, the commissioner may suspend, terminate or alter a rehabilitation plan for good cause, including, but not limited to:

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

~~(b)~~ B. The employee's performance indicates that he is unlikely to complete the plan successfully; or

~~(c)~~ C. The employee is not cooperating with the plan~~, or (d)~~.

The commissioner may alter a plan on the request of an employee if the employee believes that the occupation for which he is being trained is not suited to him, provided that a ~~request by an employee for the reason indicated in (d) above~~ the employee's request shall be made within 90 days from the plan's implementation date and that no more than one change ~~under (d) above~~ shall be permitted for this reason. Any decision of the commissioner regarding a change in a plan may be appealed to the review panel within 15 days of the filing of and service of the decision on the interested parties.

APPROVED BY THE REVISOR OF STATUTES OFFICE BY:

OFFICE OF THE REVISOR OF STATUTES
PROPOSED RULES

Agency Department of Labor and Industry

Division

Agency Contact Gladys Westberg Phone Number 7-2684

Title: Proposed Rules Amending the Definitions and Plan Modification Provision of the Rules Governing Rehabilitation of an Employee after a Work Related Injury or Disease.

Type of Rules: Permanent X Temporary____

Incorporations by References: None

Rule Number	Material Incorporated
	Author
	Title
	Place
	Publisher
	Date
	Cost
	Places Available

See Additional references on back Yes____ No____

Duplication of Statutory Language.

Rule Number	Statutory Section Duplicated

The attached rules are approved as to form.

Steven C. Cross
Revisor of Statutes

Name: Ann L. Bateson
Ann L. Bateson

Title: Deputy Revisor

Phone: 296-1536

STATE OF MINNESOTA

DEPARTMENT OF LABOR AND INDUSTRY

In the Matter of the Proposed Adoption of Rules of the State Department of Labor and Industry Governing the Rules for Rehabilitation of Work Related Injuries and Diseases

ORDER ADOPTING RULES

Notice of the Commissioner's intent to adopt the above-entitled rules without a public hearing was published in the State Register on September 14, 1981, and was sent by United States mail to all persons on the list maintained by the agency pursuant to Minnesota Statutes section 15.0412, subdivision 4 on November 13, 1981.

NOW, THEREFORE, IT IS ORDERED that these rules identified as Rules for Rehabilitation of Work Related Injuries and Diseases are adopted this 21st day of December 1981, pursuant to authority vested in me by Minnesota Statutes section 176.102.

State of Minnesota

Russell B. Swanson
Commissioner of Labor and Industry

In the Matter of the Proposed Adoption of Rules of the State Department of Labor and Industry Governing the Rules for Rehabilitation of Work Related Injuries and Diseases

AFFIDAVIT OF MAILING

STATE OF MINNESOTA)
) SS.
COUNTY OF RAMSEY)

Christine A. Lee, being first duly sworn deposes and says:

That on the 13th day of November, 1981, at the City of St. Paul, County of Ramsey, State of Minnesota, she served the attached Notice of (Hearing/Intent to Adopt Rules Without Public Hearing) by depositing in the (State of Minnesota Central Mail System for United States mailing (or) United States mail) at said City of St. Paul, a copy thereof, properly enveloped, with postage prepaid, on all persons and associations who have requested that their names be placed on file with the State Department of Labor and Industry for the purpose of receiving notice of the proposed adoption of rules by this office of Rehabilitation Services.

Christine A. Lee
Christine A. Lee

Subscribed and sworn to before me
this 21st day of December, 1981.

Cheryl J. Schaar

CHERYL J. SCHAAR
NOTARY PUBLIC-MINNESOTA
WASHINGTON COUNTY
MY COMMISSION EXPIRES SEPTEMBER 21, 1988

STATE OF MINNESOTA

COUNTY OF RAMSEY

CERTIFICATE

In the Matter of the Proposed Adoption
of Rules of the State Department of Labor
and Industry Governing the Rules for
Rehabilitation of Work Related Injuries and
Diseases

I hereby certify that the list of persons, associations, and other interested groups who have requested, pursuant to Minnesota Statute 15.0412, subdivision 4, that their names be placed on file with and maintained by the State Department of Labor and Industry for the purpose of receiving notice of the proposed adoption of Rules by this Rehabilitation Services is accurate and complete as of 9:00 a.m. this 13th day of November 1981.

Gladys E. Westberg

Gladys E. Westberg
Director of Rehabilitation

any establishment in which the employee is or was employed provided for in 8 MCAR § 1.7292 shall, upon request, be made available by the employer to any employee, former employee, and their representatives for examination and copying in a reasonable manner and at reasonable times.

C. Bargaining for additional access. Nothing in this rule shall preclude employees and employee representatives from collectively bargaining for access to information relating to occupational injuries and illnesses in addition to the information made available under this rule.

D. Extent of access. Access to the log and summary provided under this rule shall pertain to all logs and summaries retained under the requirements of 8 MCAR § 1.7296.

8 MCAR § 1.7304 Small employers.

A. Exemption. An employer who had no more than ten (10) employees at any one time during the calendar year immediately preceding the current calendar year need not comply with any of the requirements of this chapter except 8 MCAR § 1.7298 concerning fatalities or multiple hospitalization accidents (i.e., he need not prepare the log, OSHA Form No. ~~100~~ 200; the Supplementary Record, OSHA Form No. 101; nor prepare or post the summary, OSHA Form No. ~~102~~ 200).

B. Limitation of exemption. Paragraph A. ~~of this section~~ shall not apply when an employer has been notified in writing by the Bureau of Labor Statistics that he has been selected to participate in a statistical survey of occupational injuries and illnesses. If selected, an employer will be required to maintain a log of occupational injuries and illnesses (OSHA Form No. ~~100~~ 200) in accordance with 8 MCAR § 1.7292 and to make reports in accordance with 8 MCAR § 1.7306 for the period of time which is specified in the notice.

Department of Labor and Industry
Worker's Compensation Rehabilitation Services

Proposed Amendment of Rules for Rehabilitation of Work Related Injuries and Diseases

Notice of Intent to Adopt Rules without a Public Hearing

Notice is hereby given that the Worker's Compensation Rehabilitation Services proposes to amend the above-entitled rules without a public hearing. Rehabilitation Services has determined that the proposed amendment of these rules will be noncontroversial in nature and has elected to follow the procedures set forth in Minn. Stat. § 15.0412, subd. 4h.

Persons interested in these rules shall have 30 days to submit comments on the proposed rules. The proposed rules may be modified if the modifications are supported by the data and views submitted to the agency and do not result in a substantial change in the proposed language.

Unless seven or more persons submit written requests for a public hearing on the proposed rules within the 30-day comment period, a public hearing will not be held. In the event a public hearing is required, the agency will proceed according to the provisions of Minn. Stat. § 15.0412, subs. 4-4f. If a public hearing is requested, identification of the particular objection, the suggested modifications to the proposed language, and the reasons or data relied on to support the suggested modifications is desired.

Persons who wish to submit comments or a written request for a public hearing should submit such comments or requests to:

Gladys Westberg
Director of Rehabilitation Services
Department of Labor & Industry
444 Lafayette Road, 5th Floor
St. Paul, Mn. 55101
Telephone: (612) 297-2684

Authority for the adoption of these rules is contained in Minn. Stat. § 176.102, subd. 12 (1979).

Upon adoption of the final rules without a public hearing, the proposed rules, this notice, all written comments received, and the final rules as adopted will be delivered to a designee of the Attorney General for review as to form and legality, including the issue of substantial change. Persons who wish to receive a copy of the final rules as adopted should submit a written statement of such request to Ms. Westberg.

A copy of the proposed rules is attached to this notice. Additional copies may be obtained by contacting Ms. Westberg.

Gladys Westberg
Director of Rehabilitation Services

Rules as Proposed

RS 1. Definitions. For the purposes of RS 1.-17., the following terms have the meanings given them.

A. Commissioner. "Commissioner" means Commissioner of the Department of Labor and Industry.

B. Employer. "Employer" means the employer of qualified employees and includes the insurer providing workers' compensation insurance required by ~~Minnesota Statutes Chapter~~ Minn. Stat. ch. 176 to this employer.

C. 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 ~~consistent with~~ which produces an economic status as close as possible to that employee would have enjoyed without the disability. Consideration shall be given to the employee's former employment and ~~with~~ the employee's qualifications, including, but not limited to, the employee's age, education, previous work history, interests and skills. ~~Consideration shall also be given to the economic status enjoyed by the employee at the time of the injury and to the present and future labor market.~~

D. 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~~,~~:

~~(1)~~ 1. Is permanently precluded or is likely to be precluded from engaging in the usual and customary occupation or position in which the individual was engaged at the time of injury~~,~~; and

~~(2)~~ 2. Can reasonably be expected to benefit from rehabilitation services which could significantly reduce or eliminate the decrease in employability.

E. Qualified rehabilitation consultant. "Qualified rehabilitation consultant" means a person who is professionally trained and experienced and who is approved by the commissioner to develop and monitor an appropriate plan for evaluation and provision of physical and vocational rehabilitation services for an employee entitled to rehabilitation benefits under ~~M.S.~~ Minn. Stat. § 176.102.

F. Qualified rehabilitation consultant/independent. "Qualified rehabilitation consultant/independent" means a consultant neither affiliated with an employer, insurer, or adjusting company, nor with a facility or agency engaged in the provision of comprehensive rehabilitation services to qualified employees, and who is approved by the commissioner to develop and monitor rehabilitation plans.

G. Qualified rehabilitation consultant/affiliated. "Qualified rehabilitation consultant/affiliated" means a consultant who is affiliated with an employer, insurer, or adjusting company, and who is approved by the commissioner to develop and monitor rehabilitation plans.

H. Registered rehabilitation vendor. "Registered rehabilitation vendor" means a public or private entity existing wholly or in part for the provision of rehabilitation services to the qualified employee and which has been registered to provide specific rehabilitation services in accord with a rehabilitation plan authorized by the commissioner.

I. Rehabilitation consultation. "Rehabilitation consultation" means an evaluation by a qualified rehabilitation consultant of the likelihood that rehabilitation services will significantly reduce or eliminate the decrease in employability.

J. Rehabilitation plan. "Rehabilitation plan" means a written document completed by a qualified rehabilitation consultant and which describes the manner and means by which it is proposed that a qualified ~~worker~~ employee may be returned to suitable, gainful employment through the use of rehabilitation ~~services~~ service. ~~The plan may include, but is not limited to, physical rehabilitation services preliminary to or in conjunction with vocational rehabilitation, modification of the employee's job at the time of the injury, provision for alternative work with the same employer, on-the-job training, job placement assistance or some combination of the services~~ The plan shall take into consideration the qualified employee's unique disabilities and assets.

K. Rehabilitation service. "Rehabilitation service" means service required to determine an employee's eligibility as a

KEY: PROPOSED RULES SECTION — Underlining indicates additions to existing rule language. ~~Strike outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material." ADOPTED RULES SECTION — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language.

qualified employee, and service designed to return an individual to ~~(1)~~ suitable gainful employment by returning the individual to a job with the former employer or to a job related to the individual's former employment, ~~(2)~~ or by placing the individual in a job in another field ~~which produces an economic status as close as possible to that enjoyed before the injury~~, or ~~(3)~~ by placing the individual in a job with higher economic status than would have occurred without the disability if it can be demonstrated that this is necessary to increase the likelihood of reemployment. The service may include, but is not limited to, medical evaluation, medically prescribed physical rehabilitation, work evaluation, counseling, job analysis, job modification, job placement ~~and implementation of~~, on-the-job training, or ~~short-term~~ retraining.

L. Review panel. "Review panel" means the panel created by ~~Minnesota Statutes, Section~~ Minn. Stat. § 176.102, ~~Subdivision~~ subd. 3.

RS 5. Plan modification. Upon request of the employer or employee, the commissioner may suspend, terminate or alter a rehabilitation plan for good cause, including, but not limited to:

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

~~(b)~~ B. The employee's performance indicates that he is unlikely to complete the plan successfully; or

~~(c)~~ C. The employee is not cooperating with the plan~~, or (d)~~.

The commissioner may alter a plan on the request of an employee if the employee believes that the occupation for which he is being trained is not suited to him, provided that ~~a request by an employee for the reason indicated in (d) above~~ the employee's request shall be made within 90 days from the plan's implementation date and that no more than one change ~~under (d) above~~ shall be permitted for this reason. Any decision of the commissioner regarding a change in a plan may be appealed to the review panel within 15 days of the filing of and service of the decision on the interested parties.

Department of Public Welfare

Proposed Rule Governing the Administration and Provision of Protective Services to Vulnerable Adults (12 MCAR § 2.221)

Notice of Hearing

A public hearing concerning the above entitled matter will be held in Room A, 4th Floor, Centennial Office Building, St. Paul, Minnesota, 55155 on October 14, 1981 commencing at 12:30 p.m. and continuing until all interested persons have an opportunity to be heard. The proposed rule may be modified as a result of the hearing process. Therefore, if you are affected in any manner by the proposed rule, you are urged to participate in the rule hearing process.

Following the agency's presentation at the hearing, all interested or affected persons will have an opportunity to participate by asking questions and making comments. Statements may be made orally and written material may be submitted. In addition, whether or not an appearance is made at the hearing, written statements or material may be submitted to Jon L. Lunde, Office of Administrative Hearings, 1745 University Avenue, Room 300, St. Paul, Minnesota, 55104, either before the hearing or within five working days after the public hearing ends. Mr. Lunde's telephone number is 612/296-5938. The hearing examiner may, at the hearing, order that the comment period be extended for a longer period not to exceed 20 calendar days. The rule hearing procedure is governed by Minn. Stat. §§ 15.041-15.0417 and 15.052, and by 9 MCAR §§ 2.101-2.113 (Minnesota Code of Agency Rules). If you have any questions about the procedure, call or write the hearing examiner.

Notice is hereby given that 25 days prior to the hearing, a statement of need and reasonableness will be available for review at the agency and at the Office of Administrative Hearings. This statement of need and reasonableness will include a summary of all the evidence and argument which the agency anticipates presenting at the hearing justifying both the need for and the reasonableness of the proposed rule or rules. Copies of the statement of need and reasonableness may be obtained from the Office of Administrative Hearings at a minimal charge.

The purpose of 12 MCAR § 2.221 is to establish the procedures and standards necessary for implementation of Minn. Stat. § 626.557 (1980), subd. 10, governing the administration and provision of protective services to vulnerable adults by county social services agencies.

The rule has eight major sections: A. Applicability; B. Definitions; C. Complaint Investigations by local social services agencies; D. Classification of complaints; E. Relocation of vulnerable adults; F. Social services for vulnerable adults; G. Actions on behalf of a vulnerable adult who refuses services; H. Reports to the state agency.

Section A. "Applicability" cites the state statute upon which the rule is based.

Section B. "Definitions" includes definitions of terms used in the rule.

Legislative Commission to
Review Administrative Rules

Senator Timothy J. Penny
Chairman
Representative Paul McCarron
Vice-Chairman

Susan P. Robertson
Executive Director

August 24, 1981

Mr. Bruce Swanson
Commissioner
Department of Labor and Industry
444 Lafayette Rd.
St. Paul, MN 55101

Dear Mr. Swanson:

I am writing you in regard to the workers' compensation vocational rehabilitation rules adopted by your Department in January of 1980. The Legislative Commission to Review Administrative Rules has been reviewing these rules for the past several months. On July 23 the Commission held a hearing on the rules which over 100 people attended. Seventeen persons testified on the rules. After all testimony was taken the Commission directed the staff to facilitate a meeting with representatives of labor, industry, the Department of Labor and Industry and the Minnesota Trial Lawyers Association for the purpose of working out language changes in the rules which were agreeable to all the parties. Such a meeting was subsequently held on August 5, 1981. I have attached a copy of the changes in the rules which were agreed to at that meeting.

The proposed changes in the rules were presented to the LCRAR on August 13, 1981. Following discussion, the Commission passed the following motion:

> The Legislative Commission to Review Administrative Rules requests the Department of Labor and Industry to amend its vocational rehabilitation rules, RS1 and RS5, to conform with the language agreed upon by representatives of labor, industry, the Minnesota Trial Lawyers Association and the Department of Labor and Industry. The Department could make this rule change through use of the noncontroversial procedure for adoption of a rule as provided in Minnesota Statutes, Section 15.0417, Subd. 4h.

I hope that these changes can be made as soon as possible and that they will enable us to work toward our mutual goal of better serving the needs of employees and employers in Minnesota.

If you have any questions or if I can be of assistance in this matter, please don't hesitate to contact me.

Sincerely,

Senator Tim Penny
Chairman, LCRAR

TP:lsh
Encl.

RS 1. DEFINITIONS

"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 ~~consistent with~~ which produces an economic status as close as possible to that he would have enjoyed without disability. Consideration shall be given to the employee's former employment and ~~with~~ the employee's qualifications, including, but not limited to, the employee's age, education, previous work history, interests and skills. ~~Consideration shall also be given to the economic status enjoyed by the employee at the time of the injury and to the present and future labor market.~~

"Rehabilitation plan" means a written document completed by a qualified rehabilitation consultant and which describes the manner and means by which it is proposed that a qualified ~~worker~~ employee may be returned to suitable, gainful employment through the use of rehabilitation ~~services~~ service. ~~The plan may include, but is not limited to, physical rehabilitation services preliminary to or in conjunction with vocational rehabilitation, modification of the employee's job at the time of the injury, provision for alternative work with the same employer, on the job training, job placement assistance or some combination of the services.~~ The plan shall take into consideration the qualified employee's unique disabilities and assets.

"Rehabilitation service" means service required to determine an employee's eligibility as a qualified employee, and service designed to return an individual to ~~(1)~~ suitable gainful employment by returning the individual to a job with the former employer or to a job related to the individual's former employment, ~~(2)~~ by placing the individual in a job in another work field ~~which produces an economic status as close as possible to that enjoyed before the injury~~, or ~~(3)~~ by placing the individual in a job with higher economic status than would have occurred without the disability if it can be demonstrated that this is necessary to increase the likelihood of reemployment. The service may include, but is not limited to, medical evaluation, medically prescribed physical rehabilitation, work evaluation, counseling, job analysis, job modification, job placement ~~and implementation of~~, on-the-job training, or ~~short term~~ retraining.

RS 5. PLAN MODIFICATION

Upon request of the employer or employee, the commissioner may suspend, terminate or alter a rehabilitation plan 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 he is unlikely to complete the plan successfully; or (c) the employee is not cooperating with the plan, ~~or (d)~~. The commissioner may alter a plan on the request of an employee if the employee believes that the occupation for which he is being trained is not suited to him, provided that ~~a request by an employee for the reason indicated in (d) above~~ the employee's request shall be made within 90 days from the plan's implementation date and that no more than one change ~~under (d) above~~ shall be permitted for this reason. Any decision of the commissioner regarding a change in a plan may be appealed to the review panel within 15 days of the filing of and service of the decision on the interested parties.

In the Matter of the Proposed Adoption of Rules of the State Department of Labor and Industry Governing the Rules for Rehabilitation of Work Related Injuries and Diseases

STATEMENT OF COMPLIANCE WITH RULEMAKING PROCEDURES

I, Winston Ehlmann, do hereby declare that I have examined the rules and all related documents and that, based on my examination and my personal familiarity with the applicable procedures, the Administrative Procedure Act, the rules of the Office of Administrative Hearings, and the rules of the Attorney General have been followed. Any exceptions are noted below.

Winston Ehlmann
Assistant Attorney General

Dated: 12/21/81

Department of Labor and Industry

Worker's Compensation Rehabilitation Services

Adopted Rules Governing Rehabilitation of Work Related Injuries and Diseases

Rules as Adopted

RS 1. Definitions. For the purposes of RS 1.-17., the following terms have the meanings given them.

A. Commissioner. "Commissioner" means Commissioner of the Department of Labor and Industry.

B. Employer. "Employer" means the employer of qualified employees and includes the insurer providing workers' compensation insurance required by Minn. Stat. ch. 176 to this employer.

C. 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 ~~the~~ employee would have enjoyed without ~~the~~ 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.

D. 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:

1. Is permanently precluded or is likely to be precluded from engaging in the usual and customary occupation or position in which the individual was engaged at the time of injury; and

2. Can reasonably be expected to benefit from rehabilitation services which could significantly reduce or eliminate the decrease in employability.

APPROVED BY THE REVISOR OF STATUTES OFFICE BY:

Lana Brewster

E. Qualified rehabilitation consultant. "Qualified rehabilitation consultant" means a person who is professionally trained and experienced and who is approved by the commissioner to develop and monitor an appropriate plan for evaluation and provision of physical and vocational rehabilitation services for an employee entitled to rehabilitation benefits under Minn. Stat. S 176.102.

F. Qualified rehabilitation consultant/independent. "Qualified rehabilitation consultant/independent" means a consultant neither affiliated with an employer, insurer, or adjusting company, nor with a facility or agency engaged in the provision of comprehensive rehabilitation services to qualified employees, and who is approved by the commissioner to develop and monitor rehabilitation plans.

G. Qualified rehabilitation consultant/affiliated. "Qualified rehabilitation consultant/affiliated" means a consultant who is affiliated with an employer, insurer, or adjusting company, and who is approved by the commissioner to develop and monitor rehabilitation plans.

H. Registered rehabilitation vendor. "Registered rehabilitation vendor" means a public or private entity existing wholly or in part for the provision of rehabilitation services to the qualified employee and which has been registered to provide specific rehabilitation services in accord with a rehabilitation plan authorized by the commissioner.

I. Rehabilitation consultation. "Rehabilitation consultation" means an evaluation by a qualified rehabilitation consultant of the likelihood that rehabilitation services will significantly reduce or eliminate the decrease in employability.

J. Rehabilitation plan. "Rehabilitation plan" means a written document completed by a qualified rehabilitation consultant and which describes the manner and means by which it is proposed that a qualified employee may be returned to suitable, gainful employment through the use of rehabilitation service. The plan shall take into consideration the qualified employee's unique disabilities and assets.

APPROVED BY THE REVISOR OF STATUTES OFFICE BY:

K. Rehabilitation service. "Rehabilitation service" means service required to determine an employee's eligibility as a qualified employee, and service designed to return an individual to suitable gainful employment by returning the individual to a job with the former employer or to a job related to the individual's former employment, or by placing the individual in a job in another work field, or by placing the individual in a job with higher economic status than would have occurred without the disability if it can be demonstrated that this is necessary to increase the likelihood of reemployment. The service may include, but is not limited to, medical evaluation, medically prescribed physical rehabilitation, work evaluation, counseling, job analysis, job modification, job placement, on-the-job training, or retraining.

L. Review panel. "Review panel" means the panel created by Minn. Stat. S 176.102, subd. 3.

RS 5. Plan modification. Upon request of the employer or employee, the commissioner may suspend, terminate or alter a rehabilitation plan 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 he is unlikely to complete the plan successfully; or

C. The employee is not cooperating with the plan.

The commissioner may alter a plan on the request of an employee if the employee believes that the occupation for which he is being trained is not suited to him, provided that the employee's request shall be made within 90 days from the plan's implementation date and that no more than one change shall be permitted for this reason. Any decision of the commissioner regarding a change in a plan may be appealed to the review panel within 15 days of the filing of and service of the decision on the interested parties.

APPROVED IN THE
REVISOR OF STATUTES
OFFICE BY:

AR0093
October 29, 1981

OFFICE OF THE REVISOR OF STATUTES

Certificate of Approval of Adopted Rules

Agency: Department of Labor and Industry

Rule Numbers: RS1 & RS5

Rule Title: Adopted Rules Governing Rehabilitation of Work Related Injuries and Diseases

Type of Rules: Permanent X

Temporary _____

Documents Incorporated by Reference:

The attached Rules are approved as to form.

Steven C. Cross
Revisor of Statutes

Name: Lorna Breiter
Lorna Breiter

Title: Assistant Revisor

Phone: 296-2778

OFFICE OF THE REVISOR OF STATUTES
Disapproval of Form of Rules

X The form of the attached rules is not approved. The revisor requests the changes described below before the rules will be approved.

Page 1, line 1, delete "Proposed", insert "Adopted"

Page 1, line 15, after "that" insert "the" which did not appear in the State Register

Page 1, line 15, after "without" insert and strike "the" which did appear in the State Register

Page 3, line 23, after "another" insert "work" which did not appear in the State Register

Steven C. Cross
Revisor of Statutes

Name: Lorna Breiter
Lorna Breiter
Title: Assistant Revisor
Phone: 296-2778

____ The changes requested by the revisor are approved by the agency.

____ The changes requested by the revisor are not approved by the agency

Agency's Representative

____ The attorney general agrees that the changes requested by the revisor are form changes, not substantive changes.

Assistant Attorney General

Rules as Proposed

RS 1. Definitions. For the purposes of RS 1.-17., the following terms have the meanings given them.

A. Commissioner. "Commissioner" means Commissioner of the Department of Labor and Industry.

B. Employer. "Employer" means the employer of qualified employees and includes the insurer providing workers' compensation insurance required by ~~Minnesota Statutes Chapter~~ Minn. Stat. ch. 176 to this employer.

C. 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 ~~consistent with~~ which produces an economic status as close as possible to that the employee would have enjoyed without disability. Consideration shall be given to the employee's former employment and ~~with~~ the employee's qualifications, including, but not limited to, the employee's age, education, previous work history, interests and skills. ~~Consideration shall also be given to the economic status enjoyed by the employee at the time of the injury and to the present and future labor market.~~

D. Qualified employee. "Qualified employee" means an

APPROVED BY THE REVISOR OF STATUTES OFFICE BY:

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~~,~~:

~~(1)~~ 1. Is permanently precluded or is likely to be precluded from engaging in the usual and customary occupation or position in which the individual was engaged at the time of injury~~,~~; and

~~(2)~~ 2. Can reasonably be expected to benefit from rehabilitation services which could significantly reduce or eliminate the decrease in employability.

E. Qualified rehabilitation consultant. "Qualified rehabilitation consultant" means a person who is professionally trained and experienced and who is approved by the commissioner to develop and monitor an appropriate plan for evaluation and provision of physical and vocational rehabilitation services for an employee entitled to rehabilitation benefits under ~~M.S.~~ Minn. Stat. S 176.102.

F. Qualified rehabilitation consultant/independent. "Qualified rehabilitation consultant/independent" means a consultant neither affiliated with an employer, insurer, or adjusting company, nor with a facility or agency engaged in the provision of comprehensive rehabilitation services to qualified employees, and who is approved by the commissioner to develop and monitor rehabilitation plans.

G. Qualified rehabilitation consultant/affiliated. "Qualified rehabilitation consultant/affiliated" means a consultant who is affiliated with an employer, insurer, or adjusting company, and who is approved by the commissioner to develop and monitor rehabilitation plans.

H. Registered rehabilitation vendor. "Registered rehabilitation vendor" means a public or private entity existing wholly or in part for the provision of rehabilitation services to the qualified employee and which has been registered to provide specific rehabilitation services in accord with a rehabilitation plan authorized by the commissioner.

I. Rehabilitation consultation. "Rehabilitation

APPROVED IN THE REVISOR OF STATUTES OFFICE BY:

consultation" means an evaluation by a qualified rehabilitation consultant of the likelihood that rehabilitation services will significantly reduce or eliminate the decrease in employability.

J. Rehabilitation plan. "Rehabilitation plan" means a written document completed by a qualified rehabilitation consultant and which describes the manner and means by which it is proposed that a qualified ~~worker~~ employee may be returned to suitable, gainful employment through the use of rehabilitation ~~services~~ service. ~~The plan may include, but is not limited to, physical rehabilitation services preliminary to or in conjunction with vocational rehabilitation, modification of the employee's job at the time of the injury, provision for alternative work with the same employer, on-the-job training, job placement assistance or some combination of the services~~ The plan shall take into consideration the qualified employee's unique disabilities and assets.

K. Rehabilitation service. "Rehabilitation service" means service required to determine an employee's eligibility as a qualified employee, and service designed to return an individual to ~~(1)~~ suitable gainful employment by returning the individual to a job with the former employer or to a job related to the individual's former employment, ~~(2)~~ or by placing the individual in a job in another work field ~~which produces an economic status as close as possible to that enjoyed before the injury~~, or ~~(3)~~ by placing the individual in a job with higher economic status than would have occurred without the disability if it can be demonstrated that this is necessary to increase the likelihood of reemployment. The service may include, but is not limited to, medical evaluation, medically prescribed physical rehabilitation, work evaluation, counseling, job analysis, job modification, job placement ~~and implementation of~~, on-the-job training, or ~~short-term~~ retraining.

L. Review panel. "Review panel" means the panel created by ~~Minnesota Statutes, Section~~ Minn. Stat. S 176.102, ~~Subdivision~~ subd. 3.

APPROVED IN THE
REVISOR OF STATUTES
OFFICE BY:

RS 5. Plan modification. Upon request of the employer or employee, the commissioner may suspend, terminate or alter a rehabilitation plan for good cause, including, but not limited to:

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

~~(b)~~ B. The employee's performance indicates that he is unlikely to complete the plan successfully; or

~~(c)~~ C. The employee is not cooperating with the plan~~, or (d)~~.

The commissioner may alter a plan on the request of an employee if the employee believes that the occupation for which he is being trained is not suited to him, provided that ~~a request by an employee for the reason indicated in (d) above~~ the employee's request shall be made within 90 days from the plan's implementation date and that no more than one change ~~under (d) above~~ shall be permitted for this reason. Any decision of the commissioner regarding a change in a plan may be appealed to the review panel within 15 days of the filing of and service of the decision on the interested parties.

APPROVED IN THE REVISOR OF STATUTES OFFICE BY: