

Minnesota Attorney General: Administrative Rules Proceedings

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Version 3
August 20, 2018

DEPARTMENT: Office of the Attorney General

STATE OF MINNESOTA

OFFICE MEMORANDUM

DATE: January 16, 1992

TO: Mary Miller
Attorney
Department Of Labor and Industry

FROM: Mary Jo Murray
Special Assistant
Attorney General

PHONE: 296-3258

SUBJECT: Worker's Compensation Rehabilitation Rules
Parts 5220.0100 to 5220.1910

The above-referenced rules have not been approved by the Attorney General for several reasons. First, many of the subparts (described below) permit the Commissioner unbridled discretion in making certain decisions. When a rule is vague and allows officials to act at their own discretion, the risk of inconsistent application of the rule exists. Secondly, in conjuction with the major defects in the rules, the Statement of Need and Reasonableness does not explain the rules or justify the requirements contained in the rules; in most cases, the rule is simply restated.

With respect to the discretionary nature of the subparts discussed below, a rule which includes no standards, must, necessarily, be deemed legally infirm. Specific standards are necessary to give interested person notice of requirements and criteria. In addition, specific standards are important both as a guide in the administration of the rule and as a basis for determining whether the administering official acted in an arbitrary or capricious manner.

In order to overcome this defect, a rule must set for the criteria or standards which the Commissioner will use. The following parts of the Worker's Compensation rules contain unacceptable discretionary language:

> 5220.0120, subp. 5. "The commissioner may permit a waiver for periods longer than 60 days if good cause is shown."

Nothing describes what standards the Commissioner would use to determine what constituted good cause. The person trying to demonstrate good cause is not provided with information as to what s/he needs to show, and the commissioner is not provided with any standards to determine whether good cause exists.

> 5220.410, subp. 6 (p. 16 lines 28-33). "The commissioner may at any time request additional information, confer with the parties, recommend modifications, and otherwise seek agreement about the plan. The commissioner may approve or modify the plan, schedule an administrative conference, or refer the matter to a compensation judge to approve or modify the plan."

There are no standards governing when the commissioner should request additional information, under what circumstances a conference with the parties should take place, or what modification should be recommended under what circumstances. There are no standards governing under what circumstances the commissioner must modify the plan, schedule an administrative conference or when the matter must be referred to a compensation judge.

This subpart typifies what is meant by "unbridled discretion" on the part of the commissioner.

> 5220.0510, subp. 4. "At the discretion of the commissioner, the commissioner may amend the rehabilitation plan pursuant to Minn. Stat. sections §176.102 and §176.106 and the rules that implement those sections."

This subpart provides complete discretion as to when the commissioner may amend a rehabilitation plan. The statutory sections to not appear to provide the commissioner with the complete discretion contemplated by this subpart.

> 5220.0510, subp. 6. "The commissioner may initiate and order closure of rehabilitation services for good cause after notice to the parties...and opportunity to submit information. The submission may be written or at an in-person meeting at the discretion of the commissioner."

Nothing indicates what standards must be met to determine "good cause." Furthermore, it is not clear whether the submission is to be written unless the commissioner allows and in-person meeting, or if the determination is made by the commissioner on a case by case basis, and what standards are used to determine whether the submission will be in-person or written. For example, the section would allow the commissioner discretion to order an in-person meeting for someone who did not have the ability to attend an in-person meeting.

> 5220.0850. The commissioner may also request additional information from any of the parties..."

Again, this does not specify under what circumstances the commissioner must request more information.

> 5220.0950, subp. 1. The form must contain "substantially all of the following..."

It must be clear what information must appear on the form. "Substantially all" is not clear as to what may be omitted and allows an arbitrary decision to be made as to whether the information, while not complete, is acceptable.

> 5220.0950, subp. 2. "The commissioner may refer the dispute to a compensation judge or determine the issue, may request that the parties meet,...may order a medical exam..."

Again, it is unclear under what circumstances the commissioner must take these actions.

5220.0950, subp. 3. "The commissioner may independently determine that issues exist about an employee's entitlement to rehabilitation..."

This clearly provides the commissioner with free discretion to make determinations. It must specify under what circumstances the commissioner must make this type of determination and what standards will govern the decision of the commissioner.

5220.1200, line 15: "...however, the possible right to rehabilitation may be converted into cash by settlement agreement..."

It is not clear what standards will govern when a right to rehabilitation can be converted into a cash settlement, or how cash settlements will be made fair uniform.

5220.1400, p. 36 line 26. "Substantiated complaints."

Although this appears elsewhere in the rule and has been previously approved, it is not clear what constitutes "substantiated" or who determines if the substantiation is adequate on what basis.

5220.1801, p. 44 line 3-8. "The qualified rehabilitation consultant shall assess progress... and as required by the commissioner."

It must be made clear under what circumstances the commissioner will require progress reports.

5220.1806, p. 55, line 29: "For the purpose of determining compliance with laws, rules or orders, the commissioner may review the activities of rehabilitation providers."

While this goal is perfectly acceptable, it allows the commissioner to arbitrarily decide who will be reviewed when. Standards for when this type of review should take place need to be added.

5220.1900, p. 57 line 27: The commissioner may require uniform billing on a prescribed form and may contact the parties to discuss services and costs.

Again, it must be clear under what circumstances uniform billing will be required and under what circumstances services and costs will be discussed.

For the rules to be approved, the discretionary language should be deleted or specific criteria included upon which the Commissioner will exercise discretion.

While the rules are not being rejected on the grounds that the Statement of Need and Reasonableness (SNR) was insufficient, the problem with the discretionary nature of these rules is severely compounded by the inadequacy or complete lack of explanations in the SNR. Minn. Rules pt. 2010.0700 prohibits statements in the SNR which simply re-state the rule or simply state what the rule provides.

Not every section of the rule (or deletion of prior sections) was separately discussed in the SNR. (See, for example, 5220.1500, at pages 39-41, which is completely removed without explanation or reference.) The SNR in most cases did not explain why a subpart was necessary or the purpose for each part of the rule. This was

especially true in the sections governing qualified rehabilitation consultants. This section has considerable impact upon these consultants, and the SNR should have thoroughly discussed why the criterion were selected. In future rulemakings, please note that the SNR should justify or explain the subparts of the rule.

I would like to mention three other sections of the rule which should be reviewed. 5220.0710, subp. 5, p.22, lines 21-26 discusses services provided outside of Minnesota. The Minnesota rehabilitation consultant must take reasonable care to ensure the out of state services are rendered according to Minnesota Worker's Compensation laws. It is not possible for Minnesota to enforce its laws and rules on another state's services. The only exception might be if you are relying on federal law or rule. Otherwise, this provision is unacceptable as written.

On page 51, the rules address data privacy. However, the rule does not reference Minn. Stat §13.47, which may cover some of this. Please check to determine that all necessary references to data privacy laws have been included.

Finally, with respect to the provision in 5220.1803, at p.53, please double check to confirm that a 5-year record retention period is correct. Minn. Stat. §§138.163 and 138.17 govern the retention of government records.

This rule may be resubmitted to the Attorney General any time prior to May 7, 1992 in order to be within the 180 day time line set forth in Minn. Stat. §14.26. The procedure detailed in Minn. Rules pt. 2010.13 must be followed. A copy of that rule is enclosed. When you submit the rule to our office, please indicate that it is a resubmission and refer to our file number 1886. If you have any questions, please contact me.

cc: Jon Murphy, Special Assistant Attorney General
Maryanne Hruby, Executive Director, LCRAR
William Brown, Chief Administrative Law Judge, OAH
Paul Marinac, Assistant Deputy Revisor for Rules,
Revisor's Office

Enclosure

DEPARTMENT: **Labor and Industry**

STATE OF MINNESOTA
OFFICE MEMORANDUM

DATE: December 31, 1991

1-2-92

TO: Patty Nolte
Attorney General's Office

FROM: Mary Miller MM
Attorney

PHONE: 6-8726

SUBJECT: **Adoption of Amendment to the Workers' Compensation Rehabilitation Rules Parts 5220.0100 through 5220.1910**

Attached are copies of the documents necessary for review of an amendment to Rule adopted without a public hearing.

As required by Minnesota Rules Part 2010.0300 and identified by the letters in that Rule you will find the following items:

A. Notices of Solicitation of Outside Opinion as published in the State Register
B. n/a
C. n/a
D. Proposed rule with Revisor's Certificate of Approval as to form
E. Notice of intent to adopt as mailed
F. Statement of Need and Reasonableness
G. Affidavit of Mailing the Notice and Certificate of Mailing List
H. Notice Intent to Adopt as published in the State Register
I. Rule as Adopted showing modifications - 4 copies
J. n/a
K. Findings, Conclusion and Order Adopting of Commissioner
L. Written requests and comments
M. Declaration of Counsel
N. n/a--The one request was withdrawn
O. n/a

Also enclosed are documents necessary relating to setting of fees and evidencing submission to Legislative Commission to Review Administrative Rules.

We look forward to review and response at your earliest opportunity.

MM/cb

.0100
subp 3 doesn't describe why "qualified"
subp 12 "includes"
12 "includes"
subp 18, 19 "including 6/4/11 to"
23 how do you get approved by Commissioner?

.0110 weak
subp 5 "MAY" commissioner
0120 subp 2 may waiver - who requests?
subp 5 "may" "if good cause"
0130 subp 4 judge "may" assess $300 fine
0410 do they have auth to assess $ penalty
16 l 28-33 subp 6 "cmsr may at any time" do several things
~~0410 - weak - very (1 para for 10 subps).~~

510 subp 1 may be amended / for good cause, cancel b/h/l/t
"the employee 'feels' ill suited"

subp 2 may recommend when reasons are present
subp 6 may / for good cause / oppo
subp 7 ? all contain "substantively all" of the following
8 may file: when?

0710
subp 5 how ensure MN laws complied w/ out of State?
matchup problem w/ SOAHR

750. 4: may /c
5: may /c

$300 dropped

0850 1 may be a basis
may be rejected
4 "

950 may request assistce : when?
must "substantially all"
2 may, etc.

1010 ~~schedule~~ -

1200 may be converted into cash by settlement

1400 S/3 may
"substantiated complaints" huh?

1500 subd 3 : " "
~~subd 3~~ ~~large part deleted~~
p. 39-41 5 - deletion no explan.

1600 - OK
1700 should
1 periodically assess as required by C.
9 "is also grounds for discipline"
1800 OK.
1802 3. change may to shall
5. Data privacy what abt 13.47 + other Ch 13?
p53 1803 5 5yr retention
55 F fee arrangement ??

55

p. 56 1806 2 may /c

3 may /c, + when ? ~~to~~?

p. 57 may

may

MJM
1-8-92

RULE REVIEW CHECKLIST

File No. 1886
DATE RECEIVED 1-2-92
REVIEW DATE 1-13-92
DUE DATE ~~1-16-92~~
((DIS)APPROVED 1-16-92
~~WITHDRAWN~~

Docket No. 05 0009 0606
ADOPTED W/O HEARING
EMERGENCY RULE
TO REVISOR ON 1-8-92
REVISOR (DIS)APPROVED
FILED W/SEC. OF STATE
RETURNED TO AGENCY

✓ Rule as adopted (4 copies)

✓ Notice to Solicit Outside Information/Opinion (if applicable)
April 16, 1990 Date published in State Register
Comments

Petition for Adoption of a Rule

~~Board's Authorizing Resolution~~
Date adopted

✓ Proposed Rule
Revisor's Certificate

✓ Notice of Intent to Adopt Rule
176.83, 176.102 ✓ Statutory Authority
Small Business Statement
N/A Expenditure of public money statement
9-12-91 Signature

Statement of Need and Reasonableness (if applicable)
Small Business Statement
✓ Fees - § 16A.128 — approp. from finance have letter from House approp. and Senate finance

✓ Affidavit of Mailing Notice of Intent to Adopt Rule
Oct 8, 1991 Dated (30/25 days before adoption)
✓ Notice attached indicates it is attached
Copy of rule or summary attached

✓ Publication in State Register
Oct 7, 1991 Date (30/25 days before adoption)

✓ 180-day deadline from:
✓ Effective date of law requiring rule (14.12) (both rules) amendments don't apply
end of comment period (§ 14.26) (rules without hearing)
effective date of statutory authority (§ 14.29) (emergency rules)

Resolution Adopting
Date adopted

✓ Findings of Fact, Conclusions & Order Adopting
December 24, 1991 Date

✓ Written Requests, Submissions or Comments

✓ Declaration of Attorney
✓ Jon Murphy Name of SAAG representing agency

✓ Notice of Submission to Attorney General (if applicable) all my notes

Affidavit of Mailing Notice to Attorney General (if applicable)

Problems

Stat. Authority
176.83 Generally
In addition to any other section under this chapter giving the commissioner the authority to adopt rules, the commissioner may adopt, amend, or repeal rules to implement the provisions of this chapter.

176.102 Rehabilitation

SOLAR
~~weak~~ weak on 5220.0100, subd 3, 13
5220.0110 - very weak why reasonable
5220.0130 very weak why is $300 fine reasonable
5220.0410 Sub 2 Requirements
Rule - p.16 lines 28 - 33 of Proposed Rule
- The commissioner may at any time ...
The commissioner may
Proposed Rules p21, lines 4-16? Once?

5220.0710 subparts don't match up with Solar subparts 1 off
5220.1500 sub5 all deleted nothing in the SOLAR
5220.1600 subd 4 very little justification

Proposed Rule p51, 6-21-24 - if it is public don't they have to disclose no matter what - how can they restrict it?
25-27 - can they do that

Proposed Rules p. 56 lines 7-23 may when?
Rules p57 lines 27-29 may when?

Changes made

Submission to AG

Read Tom Davis ~~Stephen Kirkland~~ requested a hearing and submission to AG in his Oct 28, 1991 letter
Memo of Dec 5, 1991 from Stephen Kirkland to Davis indicates that the request for a formal hearing has been withdrawn not nothing about the withdrawn of submission to A.G.

Generally SOLAR Weak

Memo to Marty C

DEPARTMENT: Office of the Attorney General STATE OF MINNESOTA

OFFICE MEMORANDUM

DATE: January 15, 1992

TO: Marty C

FROM: Mary Jo Murray
Special Assistant
Attorney General

PHONE: 296-3258

SUBJECT: Worker's Comp rules

Rule section	Problem
5220.0100	Definitions: sonar simply repeats them or ignores them.
5220.0110	SONAR weak
5220.0120/sb.5	"the commissioner may permit a waiver for periods longer than 60 days if good cause is shown." Nothing describes what constitutes good cause.
5220.410/sb.6 p. 16 lines 28-33	"The commissioner may at any time request addt'l info, confer w/ the partie, recomend modifications, and otherwise seek agreement about the plan. THe comser may approve or modify the plan, schedule an adminstraive conference, or refer the matter to a comp. judge to approve or modify the plan."
5220.0510/sb.4	"at the discretion of the commissioner, the commissioner may amend the rehab plan purs. to MS sec. 176/.102 and .106 and the rules that implement those §§.
sb. 6	"The commissioner may initiate and order closure of rehab services for good cause after notice to the parties.. and opportunity to submit info..." No idea what "good cause" is.
5220.0710 sb/5	p.22, lines 21-26: services outside Minn., Minn. rehab. consultant must take reas. care to ensure the out of state services are rendered according to Minn. Work Comp. laws.
5220.0850	The commsr may also request additional information from any of the parties, ...
5220.0950/sb.1	The form must contain "substantially all of the following..." Well, does it have to have all of it or not?
5220.0950/sb.2	The cmsr. may refer to a comp. judge or determiben the issue, may request meeting, may order med. exam... (this is borderline)

Office of the Revisor of Statutes

Administrative Rules

RECEIVED

SEP 20 1991

LABOR & INDUSTRY,
REHABILITATION & MEDICAL AFFAIRS

TITLE: Proposed Permanent Rules Relating to the Rehabilitation of Persons with Work-Related Injuries

AGENCY: Department of Labor and Industry

MINNESOTA RULES: Chapter 5220

INCORPORATIONS BY REFERENCE:

Part 5220.0105: The Dictionary of Occupational Titles, fourth edition, 1977, United States Department of Labor; The Guide to Job Analysis, March 1982, Materials Development Center, Stout Vocational Rehabilitation Institute, University of Wisconsin-Stout, Menomonie, Wisconsin; Directory of Accredited Organizations Serving People With Disabilities and Standards Manual for Organizations Serving People With Disabilities, 1991, Tucson, Arizona. Available through Minitex interlibrary loan system.

The attached rules are approved for publication in the State Register

Marie E. O'Neill

Marie E. O'Neill
Assistant Revisor

Department of Labor and Industry

Proposed Permanent Rules Relating to the Rehabilitation of Persons with Work-Related Injuries

Rules as Proposed

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

5220.0100 DEFINITIONS.

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

Subp. ~~1b.~~ 2. **Approved claims handler.** "Approved claims handler" means a claims handler who meets the requirements of part 5220.1910.

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

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

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

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

Subp. ~~2.~~ 4. **Commissioner.** "Commissioner" means commissioner of the Department of Labor and Industry.

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

Subp. ~~3.~~ 9. **Employer.** "Employer" means the employer at the time of injury of qualified employees ~~and includes the insurer providing workers' compensation insurance required by~~

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~~Minnesota Statutes, chapter 176 to this employer~~, unless the context clearly indicates otherwise.

Subp. 10. **Formal course of study.** "Formal course of study" means a program described by a published syllabus with established time parameters for completion which results in a diploma or other certification that is accepted as a credential of basic competence in a vocation.

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

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

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

A. what the worker does in the job being analyzed in relation to data, people, and things;

B. what methods and techniques are employed by the worker;

C. what machines, tools, equipment, and work aids are used;

D. what materials, products, subject matter, or services result; and

E. what traits are required of the worker.

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

Subp. 16. **Job development.** "Job development" means systematic contact with prospective employers resulting in

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opportunities for interviews and employment that might not otherwise have existed. Job development facilitates a prospective employer's consideration of a qualified employee for employment.

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

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

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

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

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

Subp. ~~4.~~ 22. **Qualified employee.** "Qualified employee"

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means an employee who, because of the effects of a work-related injury or disease, whether or not combined with the effects of a prior injury or disability:

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

B. can reasonably be expected to ~~benefit from~~ return to suitable gainful employment through the provision of rehabilitation services ~~which could significantly reduce or eliminate the decrease in employability~~.

Subp. ~~5.~~ 23. **Qualified rehabilitation consultant.** "Qualified rehabilitation consultant" means a person who is professionally trained and experienced and who is ~~approved~~ registered by the commissioner to provide an eligibility consultation and to develop and ~~monitor~~ implement an appropriate plan ~~for evaluation and provision~~ of ~~physical and vocational~~ rehabilitation services for an employee entitled to rehabilitation benefits under Minnesota Statutes, section 176.102. ~~A qualified rehabilitation consultant must be either affiliated as defined in subpart 6 or independent as defined in subpart 7.~~

Subp. 6. [See repealer.]

Subp. 7. [See repealer.]

Subp. 8. [See repealer.]

Subp. ~~8a.~~ 24. **Qualified rehabilitation consultant firm ~~or firm~~.** "Qualified rehabilitation consultant firm" ~~or "firm"~~ means a public or private business, whether organized as a sole proprietorship, partnership, association, corporation, or other form, which is held out to the public as a business entity engaged in rehabilitation consultation and services. ~~Only a qualified rehabilitation consultant independent shall be associated with or employed by a firm as defined in this subpart.~~

Subp. 25. **Registered rehabilitation vendor.** "Registered rehabilitation vendor" means a public or private entity registered by the commissioner and existing wholly or in part

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for the provision of rehabilitation services in accord with an approved rehabilitation plan.

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

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

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

Subp. ~~9.~~ 27. **Rehabilitation plan.** "Rehabilitation plan" means a written document completed by ~~a~~ the assigned 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~~ on a form prescribed by the commissioner describing a vocational goal and the specific services by which the qualified employee will be returned to suitable gainful employment.

Subp. ~~9a.~~ 28. **Rehabilitation provider.** "Rehabilitation provider" means the following four categories of rehabilitation professionals:

A. qualified rehabilitation consultants;

B. qualified rehabilitation consultant interns;

C. qualified rehabilitation consultant firms; and

D. registered rehabilitation vendors.

Subp. ~~10.~~ 29. **Rehabilitation ~~service~~ services.** "Rehabilitation ~~service~~ services" means ~~service required to~~

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~~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.~~ a program of vocational rehabilitation, including medical management, designed to return an individual to work consistent with Minnesota Statutes, section 176.102, subdivision 1. The program begins with the first in-person visit of the employee by the assigned qualified rehabilitation consultant, including a visit for purposes of an eligibility consultation. The program consists of the sequential delivery and coordination of services by rehabilitation providers under an individualized plan. Specific services under this program may include, but are not limited to, vocational evaluation, counseling, job analysis, job modification, job development, job placement, labor market survey, vocational testing, transferable skills analysis, work adjustment, job seeking skills training, on-the-job training, and retraining.

Subp. 10a. [See repealer.]

Subp. 11. [See repealer.]

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

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Subp. 31. **Required rehabilitation report.** "Required rehabilitation report" means the claim screening consultation report, the eligibility consultation report and any other report that must be submitted to the commissioner whenever a rehabilitation plan is initiated, proposed to be amended, suspended or closed, or when a change of assigned qualified rehabilitation consultant occurs on a case.

Subp. 32. **Retraining plan.** "Retraining plan" means an individualized written plan describing the formal course of study through which the goal of the rehabilitation plan may be accomplished. Adult basic education or remedial programs may be a component of a retraining plan but do not constitute retraining in and of themselves.

Subp. ~~12.~~ 33. **Review panel.** "Review panel" means the rehabilitation review panel created by Minnesota Statutes, section 176.102, subdivision 3.

Subp. ~~13.~~ 34. **Suitable gainful employment.** "Suitable gainful employment" means employment which is reasonably attainable and which offers an opportunity to restore the injured employee as soon as possible and as nearly as possible to employment which produces an economic status as close as possible to that which the employee would have enjoyed without disability. Consideration shall be given to the employee's former employment and the employee's qualifications, including, but not limited to, the employee's age, education, previous work history, interests, and skills.

Subp. 14. [See repealer.]

Subp. 15. [See repealer.]

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

Subp. 36. **Vocational evaluation.** "Vocational evaluation" means the comprehensive assessment of vocational aptitudes and potential, using information about a qualified employee's past

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history, medical and psychological status, and information from appropriate vocational testing. The testing may use paper and pencil instruments, work samples, simulated work stations, or assessment in a real work environment.

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

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

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

Subp. 40. **Work hardening.** "Work hardening" means a physical conditioning program in a clinical setting designed to develop strength and tolerance for work or a schedule of graduated resumption of employment consistent with the employee's physical condition.

5220.0105 INCORPORATION BY REFERENCE.

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

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

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

C. The Commission on Accreditation of Rehabilitation Facilities (CARF) Directory of Accredited Organizations Serving People With Disabilities and its Standards Manual for Organizations Serving People With Disabilities, 1991, are revised annually and available for purchase at 101 North Wilmot Road, Suite 500, Tucson, Arizona 85711.

5220.0110 REHABILITATION CONSULTATION; CLAIM SCREENING CONSULTATION.

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

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

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

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documented by the insurer on a claim screening consultation report form prescribed by the commissioner.

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

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

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

(2) information describing the employee's physical limitations and capabilities and medical status;

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

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

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

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

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

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

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

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

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

Subp. 5. **Penalties.** The commissioner or compensation judge may assess a penalty of $300 against an insurer who fails to provide a rehabilitation consultation to an employee who meets any of the criteria in subpart 2. The insurer may object to the penalty as provided in Minnesota Statutes, section 176.84 and part 5220.2870.

5220.0120 WAIVER OF ELIGIBILITY CONSULTATION AND REHABILITATION SERVICES.

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

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

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

Subp. 4. **Effective period of waiver.** A waiver of rehabilitation services is effective for 60 days from the date

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of the commissioner's receipt of the request for waiver unless the commissioner denies the request.

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

5220.0130 REHABILITATION CONSULTATION; ELIGIBILITY CONSULTATION.

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

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

A. a waiver has not been requested;

B. a request for a waiver has been denied;

C. there is no longer a basis for a waiver;

D. a waiver period has expired without renewal; or

E. it is ordered by the commissioner.

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

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

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

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consultation.

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

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

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

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

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

(2) the eligibility consultation date;

(3) the employee's work status;

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

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

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

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

Subp. 4. **Penalty.** The commissioner or compensation judge may assess a penalty of $300 against an insurer who fails to provide a rehabilitation eligibility consultation to an employee who meets the criteria in part 5220.0130, subpart 2, unless the commissioner or a compensation judge determines the eligibility consultation is not required. The insurer may object to the penalty as provided in Minnesota Statutes, section 176.84, and part 5220.2870.

5220.0410 REHABILITATION PLAN.

Subpart 1. **Purpose.** The purpose of the rehabilitation plan is to communicate to all interested parties the vocational goal, the rehabilitation services, and the projected amounts of time and money that will be needed to achieve the vocational goal.

Subp. 2. **Requirements.** If an employee is a qualified employee under part 5220.0100, subpart 22, the assigned qualified rehabilitation consultant shall, in consultation with the parties, develop, record, and file a rehabilitation plan on the form prescribed by the commissioner containing substantially the following:

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

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

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

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

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

F. employee comments, if any; and

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

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

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

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

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

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

However, if the objection is not resolved, the objecting party must file a rehabilitation request for assistance with the

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commissioner within 21 days of receipt of the proposed plan. These disputes will be resolved according to part 5220.0950.

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

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

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

If a party fails to sign the plan or fails to file a rehabilitation request for assistance objecting to the proposed plan within the 21 days specified in subpart 4, item B, it shall be presumed that the party is in substantial agreement with the plan's vocational objective and the services that are proposed. In this event the plan, with evidence of the date it was sent to each party, shall be filed with the department by the assigned qualified rehabilitation consultant and, upon receipt, the plan will be deemed approved. A party's failure to sign a plan shall not constitute a waiver of any right to subsequently dispute the plan or to dispute payment of rehabilitation fees relative to the plan.

The commissioner may at any time request additional information, confer with the parties, recommend modifications, and otherwise seek agreement about the plan. The commissioner may approve or modify the plan, schedule an administrative conference, or refer the matter to a compensation judge to approve or modify the plan.

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

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

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

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

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

Job placement services shall be provided by rehabilitation providers registered by the commissioner or a facility accredited by the National Commission on Accreditation of Rehabilitation Facilities (CARF), Tucson, Arizona. The CARF Directory of Accredited Organizations Serving People with Disabilities and its Standards Manual for Organizations Serving People with Disabilities are incorporated by reference in part 5220.0105.

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

5220.0510 PLAN AMENDMENT AND CLOSURE.

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

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cause, including but not limited to:

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

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

C. a need to change the vocational goal of the rehabilitation plan;

D. the projected rehabilitation cost or duration, as stated in the rehabilitation plan, will be exceeded; or

E. the employee feels ill-suited for the type of work for which rehabilitation is being provided.

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

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

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

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

B. the proposed amendment;

C. a rationale for the amendment;

D. if the amendment adds rehabilitation services, an itemization of each additional rehabilitation service to be provided including any registered rehabilitation vendor names, dates of initiation and completion, and estimated costs of each

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service;

E. if the amendment will result in a change in the projected plan completion date, the new completion date;

F. if the amendment will result in a change in the projected plan cost, the new estimated cost;

G. employee comments, if any; and

H. the dated signatures of the employee, insurer, and assigned qualified rehabilitation consultant.

Subp. 4. **Amendment by commissioner.** At the discretion of the commissioner, the commissioner may amend the rehabilitation plan pursuant to Minnesota Statutes, sections 176.102 and 176.106, and the rules that implement those sections.

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

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

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

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

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

Subp. 6. **Commissioner's authority to initiate closure.** The commissioner may initiate and order closure of rehabilitation services for good cause after notice to the parties of the proposed closure and after an opportunity for interested parties to submit information. The submission may be written or at an in-person meeting at the discretion of the commissioner.

Subp. 7. **Closure report by assigned qualified rehabilitation consultant.** When an employee's rehabilitation plan is completed and closure of rehabilitation services is not

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

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

B. the outcome of the rehabilitation plan;

C. the employee's employment status:

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

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

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

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

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

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

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qualified employee has a right to choose an assigned qualified rehabilitation consultant as defined in part 5220.0100, subpart 3:

A. once:

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

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

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

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

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

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choices have not been exhausted, the determination shall be made according to the employee's choice. If the employee's choices have been exhausted, the determination shall be made according to the best interest of the parties, consistent with the objectives of Minnesota Statutes, section 176.102, subdivision 1.

Subp. 4. **Penalty.** A frivolous objection to or interference with the employee's choice of assigned qualified rehabilitation consultant under subpart 1 and Minnesota Statutes, section 176.102, subdivision 4, may subject the insurer to penalties under part 5220.2780, or a qualified rehabilitation consultant to disciplinary action pursuant to Minnesota Statutes, section 176.102, subdivisions 3 and 3a.

Subp. 5. **Employee residing or moving out of Minnesota.** Qualified employees who reside outside of Minnesota or who move out of Minnesota may receive services from a rehabilitation professional qualified under that jurisdiction's workers' compensation law to provide rehabilitation services. This subpart does not require the assignment of another rehabilitation professional if the services can be reasonably furnished by a rehabilitation provider registered in Minnesota. When services are provided outside of Minnesota by a rehabilitation professional qualified in that jurisdiction, an assigned qualified rehabilitation consultant in Minnesota shall monitor the provision of services, taking reasonable care to ensure that services are rendered according to Minnesota workers' compensation law and rules.

Subp. 6. **Change of consultant not an exercise of choice by employee.** A change of assigned qualified rehabilitation consultant necessitated by circumstances outside the control of the employee is not a choice by the employee and does not exhaust the employee's right to choice. Such circumstances include, but are not limited to, the assigned qualified rehabilitation consultant leaving practice or the extended illness of the assigned qualified rehabilitation consultant. Disputes about changes shall be resolved according to subpart 3.

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5220.0750 RETRAINING.

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

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

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

B. the retraining goal;

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

(1) the name of the school;

(2) titles of classes;

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

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

(5) mileage costs; and

(6) other required costs;

D. starting and completion dates;

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

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

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

H. an attached copy of the published course syllabus, physical requirements of the work for which the retraining will

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prepare the employee, medical documentation that the proposed training and field of work is within the employee's physical restrictions, reports of all vocational testing or evaluation, and a recent labor market survey of the field for which the training is proposed.

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

Subp. 4. **Compensation.** An employee who has been approved for retraining under Minnesota Statutes, section 176.102, subdivision 11, may petition the commissioner or a compensation judge for additional compensation, not to exceed 25 percent of the compensation otherwise payable, if the employee will incur a special, unusual, or unique circumstance during the retraining period that would otherwise reduce the likelihood that the retraining plan will be successfully completed. Additional compensation is not warranted under this subpart if the circumstance on which the request is based is compensable as a cost of the rehabilitation plan under Minnesota Statutes, section 176.102, subdivision 9. The commissioner or a compensation judge may order an award of additional compensation and specify the amount to be awarded. When the employee is entitled to additional compensation for retraining, the compensation shall begin on the first day the special, unusual, or unique circumstance of the retraining is present but not before the start of the retraining program, and shall stop at any time the special, unusual, or unique circumstance is no longer present. The commissioner or compensation judge may determine the date of commencement and the date of discontinuance of the additional compensation.

Subp. 5. **Retraining plan approval.** When the retraining

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

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

5220.0850 ON-THE-JOB TRAINING.

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

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

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

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

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

D. a job analysis of the training position;

E. information documenting that the training position

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is within the employee's physical restrictions;

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

G. training commencement and completion dates;

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

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

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

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

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

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

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

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

Subp. 4. **On-the-job training plan approval.** When an on-the-job training plan is submitted to the commissioner, the commissioner shall review the proposed plan within 30 days of its submission and notify the parties of plan approval or rejection. The commissioner may also request additional information from any of the parties, confer with the parties, recommend modifications, and otherwise seek agreement about the

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plan. The commissioner may make a determination or pursue resolution of questions regarding the plan consistent with part 5220.0950, subpart 3.

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

5220.0950 DISPUTES.

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

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

B. a statement of the rehabilitation issues to be resolved;

C. a statement of what the requester wants and supporting evidence and arguments;

D. a list showing that all parties were served and the date they were served;

E. the requester's name and signature; and

F. instructions for completion of the form.

Subp. 2. **Action by commissioner.** The commissioner may refer the dispute to a compensation judge, or, based on the written submissions of the parties, determine the issue or schedule an administrative conference prior to a determination. The commissioner may request that the parties meet and confer informally before a conference.

The commissioner may order reasonable medical examinations and rehabilitation evaluations at the expense of the insurer before a determination.

When the commissioner or compensation judge makes a

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

Subp. 3. **Commissioner discretion to initiate dispute resolution.** The commissioner may independently determine that issues exist about an employee's entitlement to rehabilitation, the appropriateness of a proposed plan, or any other disputes involving rehabilitation. The commissioner may initiate the dispute resolution process under subpart 2 by serving notice on the parties of the rehabilitation issues to be resolved.

Subp. 4. **Formal hearing.** A party that disagrees with a decision of the commissioner may request a formal hearing pursuant to part 5220.1010.

5220.1010 REQUEST FOR A FORMAL HEARING.

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

5220.1100 LEGAL REPRESENTATION.

When an employee or ~~employer~~ insurer is represented by an attorney ~~in-rehabilitation-matters-before-the-commissioner,~~ and if a notice of representation has not already been filed, the attorney shall notify the commissioner ~~shall,-at-the-earliest possible-date,-be-notified-in-writing-of-the-name,-address,-and telephone-number-of-said-representative~~ as provided in part 1415.0800. The attorney will receive notices as provided in part 5220.2890. The value of rehabilitation services shall not be used in the calculation of attorney's fees. The legal fees

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shall be calculated in the manner provided by law. ~~Any representative~~ An attorney who has so advised the commissioner will be notified of any ~~meetings~~ proceedings, and will receive ~~any reports~~ rehabilitation reports as provided by part 5220.1802, subpart 3.

5220.1200 ~~MANDATORY~~ REHABILITATION SERVICES~~,~~, SETTLEMENT AGREEMENTS.

~~Rehabilitation services pursuant to an approved rehabilitation plan are mandatory for qualified employees.--A qualified~~ An employee's right to rehabilitation services shall not be subject to compromise and shall not be convertible into cash or other benefits by settlement and release agreement or otherwise. When a good faith dispute exists ~~as to qualified employee status~~, however, the possible right to rehabilitation services may be converted into cash by settlement agreement. Any settlement agreement purporting to ~~limit or~~ compromise ~~access to~~ all rehabilitation services must be approved by the commissioner, a compensation judge, or the workers' compensation court of appeals. ~~The value of rehabilitation services shall not be used in calculation of attorneys' fees.--The legal fees shall be calculated in the same manner as in other types of cases.~~

5220.1250 QUALIFIED REHABILITATION CONSULTANT AND REGISTERED REHABILITATION VENDOR.

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

5220.1400 QUALIFYING ~~ELIGIBILITY~~ CRITERIA FOR REHABILITATION

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CONSULTANT.

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

Subp. 2. **Certification and education.** A qualified rehabilitation ~~consultant/affiliated/independent~~ consultant shall possess at least one of the following credentials ~~as applicable~~:

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

B. ~~holder of~~ a baccalaureate degree together with certification by the Association of Rehabilitation Nurses as a certified rehabilitation registered nurse ~~and current licensure as a registered nurse in Minnesota~~.

Persons who ~~are~~ were qualified rehabilitation consultants on June 15, 1987, must ~~obtain~~ have obtained the certification described in item A or B by June 15, 1989. If a qualified rehabilitation consultant lacks two years or more of the experience required to meet the certifying body's minimum experience or internship requirement, the time for becoming certified shall equal the time remaining for completion of the certifying body's minimum experience or internship requirement. If a qualified rehabilitation consultant must also obtain a baccalaureate degree to meet the certifying body's minimum education requirements, the qualified rehabilitation consultant shall have an additional four years to become certified. If an examination is required for certification, the time allowed for certification under this part must include ~~at least~~ two scheduled examinations which the applicant is eligible to take. ~~The qualified rehabilitation consultant shall select on the consultant's next annual application for registration the certifying body and program under which the qualified rehabilitation consultant is seeking certification.~~ Persons who

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are were qualified rehabilitation consultant interns on June 15, 1987, may become qualified rehabilitation consultants under the requirements in place ~~prior to June 15, 1987~~ before that date. Upon becoming qualified rehabilitation consultants, such persons must obtain certification as required by this ~~paragraph~~ subpart.

Subp. 3. Qualified rehabilitation consultant intern. The purpose of internship is to provide a supportive, structured period of professional supervision and case review following registration. An individual who meets the requirements of subpart 2, item A or B may be registered as a qualified rehabilitation consultant intern. An individual who meets the requirements of subpart 2, item A or B, except that two years or less of internship or experience remains as a requirement for certification, may be registered as a qualified rehabilitation consultant intern. ~~The~~ A qualified rehabilitation consultant intern must ~~work for at least one year as a qualified rehabilitation consultant intern in the rehabilitation of injured workers~~ complete an introductory training session sponsored by the department within six months of approval of registration. A qualified rehabilitation consultant intern shall not be a solo practitioner. When the intern is registered, the intern's employer shall provide the commissioner with the name of the qualified rehabilitation consultant under whose direct supervision the intern will work, and shall submit a plan of supervision on forms ~~required~~ prescribed by the commissioner. Direct supervision means that the supervisor is directly responsible for the rehabilitation work on any case, and for monitoring progress toward the certification required by this subpart. The intern supervisor need not maintain an office at the same location as the intern. The supervisor shall cosign all written work being done by the intern ~~and~~. 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 ~~and seminars~~ as required by the commissioner. ~~So that all parties are aware of the intern's status,~~ The intern shall be designated as an "intern"

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on all documents bearing the name of the intern. ~~The intern may make application for "qualified" status when the minimum requirements in subpart 2, item A or B have been met.~~

Substantiated complaints about professional ~~behavior~~ activities or services, or failure to comply with laws, rules, or ~~decisions and~~ orders under Minnesota Statutes, chapter 176, are grounds for denial of registration as a qualified rehabilitation consultant, discipline under Minnesota Statutes, section 176.102, subdivisions 3 and 3a, or delay of completion of internship. The intern may appeal the ~~denial~~ decision of the commissioner as provided in part 5220.1500, subpart 2.

In cases where an intern has been supervised by a qualified rehabilitation ~~consultant/affiliated~~ consultant who leaves the organization with which the intern has been ~~affiliated~~ employed and no other qualified rehabilitation consultant is available to supervise the intern, the intern may, with the prior written approval of the commissioner, ~~temporarily~~ 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 ~~will~~ shall be taken into consideration for this approval.

Subp. 4. ~~Experience criteria~~ Completion of internship. The burden of proof of experience shall be on the applicant. ~~This~~ 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 ~~physical rehabilitation or~~ vocational rehabilitation. ~~The experience requirements of subpart 2 for qualified rehabilitation consultants can be met only by full time paid employment. School internship and volunteer activities are not acceptable as employment experience.~~ 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

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certifying body chosen by the qualified rehabilitation consultant intern, full-time employment means a minimum of 37 hours per week during a 52-week period. Any part-time employment will be prorated based on this definition. The intern may make application for completion of internship when the minimum requirements in subparts 2 to 5 have been met.

~~Supporting documents shall consist of signed statements by present and previous employers and insurers specifying the services, caseload, and amount of time spent in rehabilitation of work related injuries and diseases.~~

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

Subp. 5. **General criteria.** All persons who are qualified rehabilitation consultants shall be ~~exclusively~~ self-employed or ~~exclusively~~ employed by a single organization that is approved for the employment of qualified rehabilitation consultants as a qualified rehabilitation consultant firm or an ~~employer/insurer~~ 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.

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~~All persons who are qualified rehabilitation consultants~~ Registration shall ~~be residents of~~ require Minnesota residency. ~~An organization authorized for the employment of qualified rehabilitation consultants~~ The commissioner may ~~request~~ grant an exception for ~~a consultant~~ persons who ~~lives contiguous to a Minnesota catchment area if the organization and~~ reside no more than 100 miles by road from the Minnesota border. Any such qualified rehabilitation consultant agrees, as ~~a~~ an additional condition ~~to approval~~ of registration, to appear at any administrative conference or hearing when requested, in the same manner as if ~~they had been~~ subpoenaed. ~~Failure to do so shall result in automatic revocation of the individual consultant's approval.~~ A qualified rehabilitation consultant shall notify the department immediately upon any change in residency to or from Minnesota.

~~A qualified rehabilitation consultant operating on June 15, 1987, who is registered is deemed to meet the standards of this part. Registered qualified rehabilitation consultant interns operating on February 7, 1984, must meet the minimum requirements in effect on February 6, 1984, in order to make application for qualified rehabilitation consultant registration.~~

5220.1500 PROCEDURE FOR ~~QUALIFYING~~ 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 ~~and~~, signed, and notarized application form ~~which is notarized~~;

B. copy of ~~current~~ any pertinent license or certification;

C. ~~supporting experience~~ documentation supporting any applicable experience requirements;

D. official transcripts of all ~~schools attended~~

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~~beyond-high-school~~ pertinent postsecondary education;

~~E. list-of-pertinent-continuing-education-by-title, location, and date;~~

~~F.~~ list of services and fees. This filing shall not constitute an approval or disapproval of the services or fees; ~~and~~

~~G.~~ F. the annual registration application fee of $100 ~~for each qualified rehabilitation consultant or qualified rehabilitation consultant intern~~; and

G. a plan of supervision as required by part 5220.1400, subpart 3.

Subp. 1a. **Approval of registration as qualified rehabilitation consultant intern.** Where the requirements for registration are met, the commissioner shall issue a ~~notice of acceptance or rejection~~ letter to the applicant so indicating within 60 days of ~~receipt of~~ receiving the completed application. ~~Acceptance will be provisional until the completion of an introductory training session.~~ After registration has been approved, the registration application fee is not refundable. If the requirements for qualified rehabilitation consultant intern are not met, the commissioner shall issue a decision and order denying registration to the applicant within 60 days of receipt of the completed application. If the application for registration is not approved, one-half of the registration application fee may be refunded.

Subp. 2. **Appeal process.** The appeal process provides a mechanism for applicants to request reconsideration of a ~~rejected application for registration, renewal, and reinstatement~~ decision and order denying registration or renewal of registration.

A written notice of appeal shall be filed with the commissioner within 30 days of ~~mailing~~ filing and service of ~~notice of disapproval~~ the order.

The ~~decision~~ appeal shall be ~~reviewed by~~ referred to the rehabilitation review panel according to Minnesota Statutes,

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section 176.102, subdivision 3. ~~The applicant shall be advised of the date, time, and place of the review at least ten days prior to the hearing date, and is encouraged to be present.~~

Subp. 3. Registration number and renewal. ~~The applicant must complete an introductory training session before approval is final.~~ The commissioner shall assign a registration number to each ~~qualified~~ registered rehabilitation ~~consultant and consultant intern~~ provider. ~~The registration number shall be on all reports submitted by the consultant and consultant intern.~~

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

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

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

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

Subp. 3a. **Continuing education.** To retain registration, ~~the~~ a qualified rehabilitation consultant ~~and~~ or qualified rehabilitation consultant intern ~~must~~ shall submit satisfactory documentation of ~~approved~~ current certification required by part 5220.1400, subpart 2. A qualified rehabilitation consultant or qualified rehabilitation consultant intern who is not yet certified shall submit satisfactory documentation of continuing education pertinent to the workers' compensation rehabilitation field equivalent to ~~30~~ 20 contact hours each year at the time registration is renewed. Continuing education includes, but is not limited to, the following:

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

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

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

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

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

Continuing education units must be obtained in the 12-month period immediately preceding the date on which registration renewal forms are due. ~~At least ten contact hours must be approved by the commissioner as directly pertinent to the Minnesota workers' compensation law; remaining contact hours must be approved by the Board of Rehabilitation Certification~~

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~~for-continuing-certification-as-a-certified-rehabilitation counselor-or-certified-insurance-rehabilitation-specialist-or-by the-Association-of-Rehabilitation-Nurses-for-continuing certification-as-a-certified-rehabilitation-registered-nurse. Satisfactory-documentation-shall-include-original-certificates of-attendance-signed-by-the-institution-or-organization sponsoring-the-approved-continuing-education-units.--Receipts for-tuition-are-not-acceptable-as-satisfactory-documentation-of attendance.~~

~~A-qualified-rehabilitation-consultant-intern-or-newly registered-vendor-shall-attend-at-least-one-introductory training-session-provided-by-rehabilitation-and-medical-services within-six-months-of-being-registered.~~

~~Rehabilitation-and-medical-services~~ The department of labor and industry's annual rehabilitation provider update sessions are mandatory for all ~~qualified~~ rehabilitation ~~consultants, consultant-interns,-and-all-registered-vendors~~ 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. **~~Nonrenewal-and-suspension~~** Inactive status. If an interval of one year occurs without providing direct case service to workers' compensation recipients or without providing supervision to qualified rehabilitation consultants or qualified rehabilitation consultant interns who provide direct case service to workers' compensation recipients, the registration ~~and-approval-is-automatically-suspended~~ will not be renewed upon expiration. A qualified rehabilitation consultant or qualified rehabilitation consultant intern may apply for reinstatement of registration by providing verification to ~~rehabilitation-and-medical-services~~ the commissioner of ~~his-or~~ her current certification as required by part 5220.1400, continued attendance at all annual update sessions, and fulfillment of continuing education requirements as provided by ~~parts-5220.0100-to-5220.1900~~ subpart 3a. The applicant must

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complete an ~~introductory~~ orientation training session before ~~approval~~ acceptance is final. ~~The suspension~~ An order regarding renewal of registration may be appealed to the rehabilitation review panel ~~in accordance with subpart 5, item B~~ according to Minnesota Statutes, section 176.102, subdivision 3.

Subp. 5. **Revocation Monitoring.** The commissioner ~~may~~ shall review the professional activities and services of ~~registered qualified~~ rehabilitation ~~consultants and vendors~~ providers to determine if they are ~~in compliance~~ reasonable and comply with ~~all rehabilitation services'~~ laws, rules, or orders under Minnesota Statutes, chapter 176.

~~A. When the commissioner becomes aware of an alleged violation concerning a qualified rehabilitation consultant or vendor he shall notify in writing the qualified rehabilitation consultant or vendor. The qualified rehabilitation consultant or vendor may then respond by letter or by requesting an administrative conference. If the qualified rehabilitation consultant or vendor does not request an administrative conference, the commissioner shall order that a conference occur unless the complaint is found to be frivolous or without merit. After the administrative conference, the commissioner shall determine if he should discipline the individual or firm based upon applicable rules and statutes and all evidence gathered by the conference. Regardless of the commissioner's decision, he shall issue an order setting forth the reasons for his actions. If discipline is decided on by the commissioner, it shall consist of one or more of the following:~~

~~(1) a written reprimand requesting the individual or firm to cease actions which resulted in the lack of compliance with rehabilitation services' rules;~~

~~(2) a full restitution of improperly charged fees and services by the individual or firm to the insurance carrier;~~

~~(3) an extension of intern status for up to six months beyond part 5220.1400 requirements for application;~~

~~(4) a restriction or prohibition on accepting new cases for up to six months.~~

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If the commissioner imposes discipline twice in five years upon an individual or firm, the next alleged violation shall be referred to the rehabilitation review panel for review. An individual's discipline shall not be attributed to his employing firm unless the violation for which discipline is imposed also constitutes a violation by the firm and results in discipline to the firm.

B. An individual or firm may appeal the commissioner's disciplinary action to the rehabilitation review panel by requesting a hearing in writing to the director of rehabilitation services within 30 calendar days of the commissioner's determination.

C. Upon the commissioner's referral of a third alleged violation, the firm or individual shall be given written notice of the referral and grounds for the review.

D. The rehabilitation review panel shall follow the hearing procedures set forth in Minnesota Statutes, section 176.102, subdivision 3a. The panel shall take one or more of the following actions in reviewing rehabilitation providers alleged violations such as:

(1) absolving the individual or firm of any alleged rehabilitation rule violation;

(2) written reprimand;

(3) demotion of a qualified rehabilitation consultant to qualified rehabilitation consultant intern status;

(4) probation of a qualified rehabilitation consultant, qualified rehabilitation consultant intern, or vendor;

(5) revocation of qualified rehabilitation consultant, qualified rehabilitation consultant intern, or registered vendor status.

E. Procedures to appeal the determination of the review panel shall be as follows:

(1) The panel's written decision and order shall act as a final order for purposes of implementing discipline. The decision is appealable to the Workers' Compensation Court of

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~~Appeals and must be filed in accordance with its rules, and~~

~~(2) Unless otherwise ordered by the panel, an individual or firm whose registration has been revoked must wait at least one year from the effective date of revocation to reapply for a registered status.~~

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

5220.1600 PROCEDURE FOR APPROVAL AS A QUALIFIED REHABILITATION CONSULTANT FIRM.

Subpart 1. **Criteria.** The qualified rehabilitation consultant firm shall be licensed to do business in Minnesota and shall maintain an administrative office within the state. Each office of the qualified rehabilitation consultant firm that provides services to injured employees under Minnesota Statutes, chapter 176, shall be listed on the application described in subpart 2 and shall employ on the premises at least one qualified rehabilitation consultant or qualified rehabilitation consultant intern. The management staff shall consist of at least one member who is registered as a qualified rehabilitation consultant. Eighty percent of the nonclerical staff shall be ~~eligible,~~ qualified rehabilitation consultants or qualified rehabilitation consultant interns~~, provided that~~; any firm that is not in an office sharing arrangement with another firm may have ~~at least~~ one nonclerical employee who is not a qualified rehabilitation consultant or qualified rehabilitation consultant intern. ~~The firm shall not provide the services designated only as rehabilitation vendor services.~~ Any branch office openings or closings shall be reported to the department immediately.

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

A. a completed ~~and~~, signed, and notarized application ~~(notarized)~~; ~~and~~

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B. any data or information attached to support the application; ~~and~~

C. a list of services and fees. This filing shall not constitute an approval or disapproval of the services or fees; and

D. the annual registration application fee of $200 per firm.

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

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

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

Subp. 5. **Revocation.** The revocation process ~~herein~~ shall be conducted ~~the same~~ as ~~that~~ provided in ~~part 5220.1500, subpart 5~~ Minnesota Statutes, section 176.102, subdivisions 3 and 3a.

5220.1700 PROCEDURE FOR APPROVAL AS REGISTERED REHABILITATION VENDOR.

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

A. A completed ~~and~~, signed, and notarized application.

B. Any data or information ~~attached~~ to support an application should be attached.

C. A list of services and fees. This filing shall not constitute an approval or disapproval of the services or fees.

D. The annual registration application fee of $200 for each registered rehabilitation vendor.

Subp. 1a. **Approval as registered rehabilitation**

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

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

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

Subp. 4. **Revocation.** The revocation process herein shall be conducted ~~the same~~ as ~~that~~ provided in ~~part 5220.1500, subpart 5~~ Minnesota Statutes, section 176.102, subdivisions 3 and 3a.

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

5220.1800 STANDARDS OF PERFORMANCE.

The standards of conduct described in parts 5220.1801 to ~~5220.1805~~ 5220.1806 establish minimum standards concerning the professional activities and services of ~~qualified~~ rehabilitation ~~consultants and rehabilitation vendors in Minnesota~~ providers. ~~The~~ Performance evaluations ~~by rehabilitation services~~ and monitoring of ~~qualified~~ rehabilitation ~~consultants and vendors~~ providers by the commissioner, and the administration of rehabilitation provider discipline under Minnesota Statutes, section 176.102, subdivision 3a, will be based upon these standards, as well as on ~~the~~ adherence to Minnesota Statutes, ~~section 176.102 and~~ chapter 176, rules adopted to administer it, and orders of the commissioner or a compensation judge.

5220.1801 PROFESSIONAL CONDUCT.

Subpart 1. ~~Services provided under the plan~~ Prompt provision of service and assessment of progress. ~~In accord with part 5220.0100, subpart 9,~~ The ~~qualified~~ assigned qualified rehabilitation consultant ~~or vendor~~ and any registered rehabilitation vendor providing services under a plan shall

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provide prompt and necessary rehabilitation services ~~under a rehabilitation plan~~ to assist a qualified employee to return to suitable gainful employment. The qualified rehabilitation consultant ~~or vendor~~ shall ~~implement only those rehabilitation plans with which the employee, the employer/insurer, and the qualified rehabilitation consultant agree~~ periodically assess progress toward plan objectives on a basis agreed upon among the parties and as required by the commissioner.

Subp. 2. **Assigned qualified rehabilitation consultant.** Only the assigned qualified rehabilitation consultant, or a qualified rehabilitation consultant designated by the assigned qualified rehabilitation consultant to function in an advisory capacity to the assigned consultant, shall be involved at any given time in the employee's rehabilitation ~~effort~~ plan, except as stated in subparts ~~4~~ 6 and ~~5~~ 7. The assigned qualified rehabilitation consultant ~~must submit the rehabilitation plan to rehabilitation services and to the employer within 30 days of referral. The assigned qualified rehabilitation consultant must submit records or reports to the employer or employee as requested by the employer or employee.~~ shall advise the insurer before involving or requesting advisory services from any other qualified rehabilitation consultant. No qualified rehabilitation consultant or qualified rehabilitation consultant firm shall provide rehabilitation services to a case assigned to a qualified rehabilitation consultant employed by another qualified rehabilitation consultant firm. This subpart shall not apply to a qualified rehabilitation consultant acting on behalf of the reinsurance association in a monitoring or advisory capacity on a reinsurance claim file.

Subp. 3. [See repealer.]

Subp. 4. [See repealer.]

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

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Subp. 5. **Evaluation of employee** by other than assigned qualified rehabilitation consultant. Except as provided in subpart 7, a rehabilitation provider is prohibited from performing an independent evaluation of an employee at any time unless a hearing has been scheduled before a compensation judge. If a hearing has been scheduled before a compensation judge ~~or a judicial body~~ at the office of administrative hearings, a qualified rehabilitation consultant who is not the ~~approved~~ assigned qualified rehabilitation consultant may perform an evaluation of the employee at the request of one of the parties solely for the purpose of the proceeding. ~~Rehabilitation services shall be notified in writing of the qualified rehabilitation consultant requested to do the evaluation. A copy of the evaluation report, if developed, shall be sent to rehabilitation services.~~

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

Subp. 7. **Referrals.** ~~A~~ An assigned qualified rehabilitation consultant ~~or vendor~~ may make recommendations for referrals to appropriate resources.

Subp. 8. **Separate roles and functions.** The roles and functions of a claims agent and a ~~qualified~~ rehabilitation ~~consultant or vendor~~ provider are separate. A qualified rehabilitation consultant ~~or~~, 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 ~~its~~ rules adopted thereunder. ~~Claims adjustment and claims investigation activities such as unilaterally providing for an adverse medical, vocational, or rehabilitation examination except as provided for in subpart 5, aiding insurers in determining monetary workers' compensation benefits, or~~

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~~determining-the-reasonableness-of-medical-or-rehabilitation service-are-prohibited-for-a-rehabilitation-provider.~~ A qualified rehabilitation consultant, qualified rehabilitation consultant intern, or registered rehabilitation vendor shall not act as an advocate for or advise any party about a claims or entitlement issue. Qualified rehabilitation consultants, qualified rehabilitation consultant interns, and registered rehabilitation vendors shall not engage in claims adjustment, claims investigation, or related activities. Activities unrelated to rehabilitation services include, but are not limited to, making recommendations about the determination of workers' compensation monetary benefits, the reasonableness of medical charges, or arranging for an independent medical examination and are prohibited. This ~~subpart~~ part shall not prohibit a qualified rehabilitation consultant acting on behalf of the reinsurance association from consulting with the ~~primary~~ assigned qualified rehabilitation consultant regarding the rehabilitation plan.

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

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

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

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

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609.561, 609.562, or 609.595.

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

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

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

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

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

I. Engaging in fraudulent billing practice.

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

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

(1) requesting or reporting information not

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directly related to an employee's rehabilitation plan;

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

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

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

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

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

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

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

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

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

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

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

Rehabilitation providers shall not administer or interpret tests without proper training, experience, or credentials.

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Administration of tests must be supervised by a person who is so trained, experienced, or credentialed.

A rehabilitation provider shall understand the areas of competence of other professional persons with whom the rehabilitation client establishes relationships, and act with due regard for the needs, privileged nature, special competencies, and obligations of colleagues and other professionals and not disparage their qualifications.

Subp. 11. **Impaired objectivity.** A rehabilitation provider shall not use alcoholic beverages, medication, or controlled substances in a manner that impairs the provider's ability to perform the rehabilitation services.

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

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

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

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

5220.1802 COMMUNICATIONS.

Subpart 1. **Legibility and content of required reports.** All required rehabilitation reports ~~submitted~~ and required progress records prepared by a ~~qualified~~ rehabilitation ~~consultant-or-vendor~~ provider shall be legible and show the employee's name, ~~social-security~~ department file number, and date of injury~~,-street-address,-county,-zip-code-of~~

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~~residence,-and-legal-representative,-if-any.~~

Subp. 2. **Submission of reports.** All required rehabilitation reports shall be submitted ~~in-accordance-with~~ on department forms ~~as~~ prescribed by the commissioner ~~under Minnesota-Statutes,-section-176.83,-clause-(j).~~

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

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

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

Subp. 4a. **Transfer of information.** Whenever there is a change of assigned qualified rehabilitation consultants or consultant firms, the former qualified rehabilitation consultant firm shall cooperate in transferring to the new assigned qualified rehabilitation consultant or qualified rehabilitation consultant firm all data, required rehabilitation reports,

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required progress records, and incurred rehabilitation cost information along with other relevant information within 15 days from the receipt of notice that a new consultant is assigned under part 5220.0710. The former qualified rehabilitation consultant firm may not charge a party for the transfer of information to the new assigned qualified rehabilitation consultant or qualified consultant firm.

Subp. 5. **Data privacy.** A ~~qualified~~ rehabilitation ~~consultant-or-vendor~~ provider must comply with Minnesota Statutes, chapters 175 and 176, and all other applicable data privacy ~~acts~~ laws.

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

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

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

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

Subp. 6. [See repealer.]

Subp. 7. [See repealer.]

Subp. 8. [See repealer.]

Subp. 9. [See repealer.]

Subp. 10. **Providing records.** The ~~qualified~~ rehabilitation ~~consultant-or-vendor~~ provider assigned to a case shall maintain all required progress records and copies of all required rehabilitation reports regarding a case and shall make these records available ~~or-provide-copies-to-rehabilitation-services~~

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upon request ~~by~~ to the commissioner. This subpart shall not apply to the reinsurance association, unless the reinsurance association has assumed primary responsibility for the claim pursuant to Minnesota Statutes, section 79.35, clause (g).

Subp. 11. **Access to medical and rehabilitation reports.** ~~A~~ The assigned qualified rehabilitation consultant shall ~~provide-a-vendor-access-to~~ furnish other rehabilitation providers designated by the rehabilitation plan with copies of all appropriate medical and rehabilitation reports ~~relating-to-a-case~~ necessary for effective service provision by the other providers.

5220.1803 RESPONSIBILITIES.

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

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

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

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

Subp. 2. **Knowledge of laws and rules.** A ~~qualified~~ rehabilitation ~~consultant-or-vendor~~ provider shall be

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knowledgeable and informed regarding portions of the workers' compensation law and rules that directly relate to the provision of rehabilitation services. ~~If a qualified rehabilitation consultant or vendor communicates~~ Communication of inaccurate information regarding workers' compensation ~~not directly related to rehabilitation services, the rehabilitation provider~~ is ~~subject to~~ grounds for discipline.

Subp. 3. [See repealer.]

Subp. 4. [See repealer.]

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

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

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

The assigned qualified rehabilitation consultant shall maintain individual employee files containing required rehabilitation reports and required progress records about an employee's case and shall provide copies to the commissioner, a compensation judge, or the parties at their request or as required by rule. Files must be maintained by the qualified rehabilitation consultant firm for five years from the date of file closure.

The assigned qualified rehabilitation consultant must provide the commissioner with any other requested pertinent information about a qualified employee's rehabilitation for

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purposes of rehabilitation monitoring by the department.

5220.1805 BUSINESS PRACTICES.

All ~~registered-qualified~~ rehabilitation ~~consultants, qualified-rehabilitation-consultant-interns, and vendors~~ providers shall abide by the following rules concerning a provider's business practices:

A. Rehabilitation providers shall adhere to all applicable federal, state, and local laws ~~regulating-business practices~~.

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

C. ~~If-a-fellow-rehabilitation-provider-violates-parts 5220.0100-to-5220.1910, a-rehabilitation-provider-having-actual personal-knowledge-about-the-violation-must-direct-the information-to-rehabilitation-services.~~

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

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

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

Rehabilitation providers shall fully disclose to a payer the basis for computing and prorating a fee so that the payer

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may determine the reasonableness of the fee charged. When more than one employee is served during the same time period, the rehabilitation provider shall prorate the fee.

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

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

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

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

5220.1806 DISCIPLINARY ACTION.

Subpart 1. **Discipline.** A rehabilitation provider is subject to disciplinary action, including a fine as provided by statute, suspension, and revocation of registration. Discipline shall be based on substantiated complaints about activities or or that violate laws, rules, or orders under Minnesota Statutes, chapter 176.

Subp. 2. **Complaints.** For the purpose of determining compliance with laws, rules, or orders, the commissioner may review the activities of rehabilitation providers. Complaints about activities or services of rehabilitation providers relating to noncompliance with laws, rules, or orders shall be made in writing to the commissioner. A complaint may be submitted by any party who becomes aware of a violation,

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including designees of the commissioner, administrative law judges, and presiding officials at judicial proceedings.

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

Subp. 3. **Review and investigation.** The commissioner shall review all complaints to determine if the complaint alleges violation of workers' compensation laws, rules, or orders. The commissioner may dismiss complaints or refer a matter outside the department's jurisdiction to a forum or agency that has jurisdiction. The complaining party shall be notified of a dismissal or referral. The commissioner may elect to resolve a complaint through the informal instruction of a provider.

If an investigation indicates a violation of the workers' compensation act, rules, or orders, the commissioner may begin a contested case for disciplinary action under Minnesota Statutes, section 176.102, subdivision 3a, and the Minnesota Administrative Procedure Act. The report of the administrative law judge shall be made to the rehabilitation review panel which shall make the determination on disciplinary action. The commissioner shall notify the complaining party of the disposition of the case.

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

Subp. 5. **In-person meeting.** When conferring with the parties to a complaint is deemed appropriate for clarification

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or settlement of issues, the commissioner may schedule a meeting. The commissioner may conduct a meeting for the purpose of obtaining information, instructing parties to the complaint, or for the purpose of resolving issues.

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

5220.1900 REHABILITATION ~~SERVICES AND~~ SERVICE FEES AND COSTS.

Subpart 1. **Fee Monitoring.** ~~Rehabilitation services has the responsibility and jurisdiction under Minnesota Statutes, section 176.102, subdivisions 2 and 9 to monitor and determine reasonable rehabilitation costs, the necessity of services provided, and to resolve any disputes that may arise between the parties according to part 5220.1300.~~ The ~~employer/insurer~~ insurer has the primary responsibility for monitoring and paying the cost of necessary rehabilitation services provided. ~~Either the employer/insurer or a rehabilitation provider may request rehabilitation services to make a determination of reasonable costs and necessity of services.~~

The commissioner shall monitor rehabilitation services and costs and shall also conduct periodic audits of costs, services, case outcomes, and compliance with reporting and record keeping requirements. The ~~employer/insurer~~ insurer and the rehabilitation provider shall ~~provide rehabilitation services~~ furnish the commissioner with itemized listings of case services and costs upon request. ~~Rehabilitation services must~~ The commissioner may require uniform billing on a prescribed form and may contact ~~the~~ parties to discuss ~~costs and~~ services ~~deemed questionable by rehabilitation services or one of the parties~~ and costs. ~~Rehabilitation services may order an administrative conference to discuss services and fee disputes, whether initiated by one of the parties or by rehabilitation services.~~ Invoices and itemized billings for rehabilitation services shall be provided to the commissioner upon request.

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

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

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

~~C. the-rehabilitation-providers'-fee-schedules-on file-with-rehabilitation-services-and-other-fee-schedules-of providers-on-file-with-rehabilitation-services;~~

~~B.~~ an evaluation of whether services provided were unnecessary, duplicated other services, were available at no charge to public, or were ~~excessively-sophisticated-for~~ excessive relative to the actual needs of the employee; and

~~E.~~ D. an evaluation of whether services rendered were expressly ~~authorized~~ called for by ~~either~~ the ~~employer, insurer,~~ ~~or~~ employee's rehabilitation ~~services;~~ plan.

~~F. an-evaluation-of-whether-Minnesota-Statutes, chapter-176,-and-rehabilitation-services'-parts-5220.0100-to 5220.1910-have-been-followed-by-the-provider.~~

~~No-registered-qualified-rehabilitation-consultant, qualified-rehabilitation-consultant-intern,-or-registered-vendor shall-attempt-to-collect-reimbursement-for-an-unnecessary-or unreasonable-procedure,-service,-or-cost-from-any-other-source, including-the-employee,-another-insurer,-the-special compensation-fund,-or-any-government-program.~~

Subp. 3. [See repealer.]

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Subp. 4. [See repealer.]

Subp. 5. [See repealer.]

Subp. 6. [See repealer.]

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

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

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

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

D. unanswered attempted phone calls;

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

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

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

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

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

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rehabilitation firm;

J. time spent by a supervisor, another qualified rehabilitation consultant, or support staff in addition to the assigned qualified rehabilitation consultant;

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

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

M. services that duplicate services already provided;

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

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

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

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

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

5220.1910 APPROVED CLAIMS HANDLER.

Subpart 1. **Qualifications.** A person meeting all the

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requirements of this subpart is eligible for certification as an approved claims handler~~.~~:

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

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

C. the person is not a rehabilitation provider as defined in part 5220.0100, subpart ~~9a~~ 28.

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

5220.2650 RETURN TO WORK CONFERENCES.

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

Subp. 2. **Scope.** This part applies when an employee has received temporary total or temporary partial compensation for a total of at least 45 work days whether continuously or intermittently; and no rehabilitation plan in effect at the time the 14-day check is due has been approved under part ~~5220.0400~~ 5220.0410, subpart ~~2~~ 6. In addition, a return to work conference is also available when properly requested by the employee under subpart 4 and Minnesota Statutes, section 176.2421 because of an inability to work at least 14 work days upon the employee's return to work.

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

5220.2780 FAILURE TO PAY UNDER ORDER OR PROVIDE REHABILITATION;

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PENALTY.

Subpart 1. Basis. Where payment of compensation is not made within 14 days following an order as required by Minnesota Statutes, section 176.221, subdivisions 6a and 8, the division may assess the penalties provided in Minnesota Statutes, section 176.221, subdivisions 3 and 3a. Where rehabilitation services are not provided as required by Minnesota Statutes, sections 176.102, 176.221, subdivision 6a, and ~~part 5220.0300~~ parts 5220.0130, subpart 2 and 5220.0410, subpart 2, the division may assess the penalty provided in Minnesota Statutes, section 176.221, subdivision 3a.

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

EFFECTIVE DATE. Minnesota Rules, parts 5220.0105, 5220.0110, 5220.0120, 5220.0130, 5220.0410, 5220.0510, 5220.0710, 5220.0750, 5220.0850, 5220.0950, 5220.1010, 5220.1250, 5220.1806, and the amendments to parts 5220.0100, 5220.1100, 5220.1200, 5220.1400, 5220.1500, 5220.1600, 5220.1700, 5220.1800, 5220.1801, 5220.1802, 5220.1803, 5220.1805, 5220.1900, 5220.1910, 5220.2650, and 5220.2780 are effective January 2, 1992.

REPEALER. Minnesota Rules, parts 5220.0100, subparts 6, 7, 8, 10a, 11, 14, and 15; 5220.0210; 5220.0300; 5220.0400; 5220.0500; 5220.0600; 5220.0700; 5220.0800; 5220.0900; 5220.1000; 5220.1300; 5220.1801, subparts 3 and 4; 5220.1802, subparts 6, 7, 8, and 9; 5220.1803, subparts 3 and 4; and 5220.1900, subparts 3, 4, 5, and 6, are repealed.

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Office of the Revisor of Statutes

Administrative Rules

TITLE: Proposed Permanent Rules Relating to the Rehabilitation of Persons with Work-Related Injuries

AGENCY: Department of Labor and Industry

MINNESOTA RULES: Chapter 5220

INCORPORATIONS BY REFERENCE:

Part 5220.0105: The Dictionary of Occupational Titles, fourth edition, 1977, United States Department of Labor; The Guide to Job Analysis, March 1982, Materials Development Center, Stout Vocational Rehabilitation Institute, University of Wisconsin-Stout, Menomonie, Wisconsin; Directory of Accredited Organizations Serving People With Disabilities and Standards Manual for Organizations Serving People With Disabilities, 1991, Tucson, Arizona. Available through Minitex interlibrary loan system.

The attached rules are approved for publication in the State Register

Marie E. O'Neill

Marie E. O'Neill
Assistant Revisor

David S.G.

Department of Labor and Industry

Workers' Compensation Division

Notice of Solicitation of Outside Information or Opinions Regarding Proposed Amendments to Rule Governing Workers' Compensation Rehabilitation Services

NOTICE IS HEREBY GIVEN that the State Department of Labor and Industry is seeking information or opinions from sources outside the agency in preparing to propose the amendment of the rule governing Workers' Compensation Rehabilitation services. The adoption of the rule is authorized by *Minnesota Statutes*, section 176.83, subds. 2 and 15 which permit the agency to promulgate rules necessary to implement and administer workers' compensation rehabilitation services including:

- definitions for procedures, terms and services utilized in the rehabilitation process;
- procedure for a consultation where other rehabilitation services may not be required;
- qualifications necessary to be a qualified rehabilitation consultant or a registered vendor firm;
- clarification of the qualified rehabilitation consultant role;
- the documentation necessary for developing a rehabilitation plan which includes retraining or on the job training;
- a detailed description of prohibited conduct for rehabilitation providers.

The State Department of Labor and Industry requests information and opinions concerning the subject matter of the rule amendments. Interested persons or groups may submit data or views on the subject matter of concern in writing or orally. Written statements should be addressed to:

David Sherwood-Gabrielson
Rehabilitation and Medical Affairs
Workers' Compensation Division
443 Lafayette Road
St. Paul, Minnesota 55155-4316

Oral statements will be received during regular business hours over the telephone at (612) 297-4598 and in person at the above address.

It is preferred that comments be received by May 25, 1990. However, all statements of information and opinions shall be accepted until further notice is published in the *State Register* or the Notice of Hearing or Intent to Adopt Rules Without a Hearing is published in the *State Register*. Any written material received by the State Department of Labor and Industry, Workers' Compensation Division, Rehabilitation and Medical Affairs shall become part of the rulemaking record to be submitted to the attorney general or administrative law judge in the event that the rule is adopted.

Dated: 9 April 1990

Ken Peterson, Commissioner
Department of Labor and Industry

Department of Labor & Industry

Labor Standards Division

Notice of Prevailing Wage Determinations for Commercial Construction Projects

On April 1, 1990 the commissioner certified prevailing wage rates for commercial construction projects in the following Minnesota counties: BLUE EARTH, BROWN, COTTONWOOD, DODGE, FARIBAULT, FILLMORE, FREEBORN, GOODHUE, HOUSTON, JACKSON, LAC QUI PARLE, LESUEUR, LINCOLN, LYON, MARTIN, MOWER, MURRAY, NICOLLET, NOBLES, OLMSTED, PIPESTONE, REDWOOD, RENVILLE, RICE, ROCK, SIBLEY, STEELE, WABASHA, WASECA, WATONWAN, WINONA, YELLOW MEDICINE.

A copy of the determined wage rates for Minnesota counties may be obtained by contacting the Minnesota Department of Labor and Industry, Prevailing Wage Section, 443 Lafayette Road, St. Paul, Minnesota 55155. The charges for the cost of copying and mailing are $.50 for the first county and $.30 for any subsequent copies of the same or other counties. The cost for a complete set of the above counties will be $15.00. A sales tax of 6% must be added to all orders.

A check or money order payable to the State of Minnesota must accompany each request.

Ken Peterson, Commissioner
Department of Labor and Industry

STATE OF MINNESOTA

Office Memorandum

DEPARTMENT: ATTORNEY GENERAL

DATE: February 5, 1992

TO: DAVID SHERWOOD-GABRIELSON
Director, Rehab and Medical Affairs

FROM: JON K. MURPHY
Special Assistant
Attorney General



PHONE: 6-6956

SUBJECT: Proposed Rules Relating to the Rehabilitation of Persons with Work-Related Injuries

This memo is in response to the memo you received from Mary Jo Murray regarding the above rules and the analysis you have provided me regarding that memo.

Basically, I am in agreement with the objections raised by Ms. Murray. The analysis you have provided would not appear to totally eliminate those objections. Although I appreciate the Department's desire to adopt rules, informative in nature in many respects, in order to provide full disclosure to the industry regarding the regulatory process, I do not think that desire should compromise basic concepts applicable to rules.

These concepts should be kept in mind in deciding how best to remedy the objections raised to the rules. First, it should be remembered that rules have the force and effect of law and must be shown to be both reasonable and necessary. Further, by definition, the purpose of administrative rules is to implement and make specific the law being administered. Minn. Stat. § 14.02, subd. 4. In so doing, Minn. Stat. § 14.07, subd. 3(1) directs agencies to minimize duplication of statutory language. Thus, for example, in justifying the need for a rule which provides discretion,it is not sufficient to show that the statute allows the same discretion. Repeating the discretion contained in the statute does not implement or make specific the statutory authorization and the repeat is not necessary. Also, any minor change to the statutory language, in essence, provides a new law.

Also, although I am aware that a number of the defects cited relate to language previously approved and adopted under the existing rules, I do not think a feasible resolution of these defects would be to propose going back to the language of the existing rules. The AG review process does not encompass the review of existing rules and a valid argument could be made that the AG cannot object to language previously approved and adopted. However, the manner in which the proposed rules have been written and published present practical difficutlies in resorting back to the existing rules. Rather than attempting to interject and blend the provisions of the proposed rules as amendments to existing rules, the new rules are basically being proposed as entirely new rules with broad repeals of sections of

the existing rules. As a practical matter, it would be difficult to redo the format of the proposed rules at this point in time by blending the new language with that of the old. An attempt to do so would also probably require new notices, etc. Moreover, approval by the AG does not mean the validity of a rule is set in stone. It is still subject to judicial challenge. Having been apprised of the potential defects contained in the existing rules, it would seem prudent for the Department to remedy those defects rather than to continue to administer the existing rules with those defects.

With the above concepts in mind, the following are my comments regarding the objections raised in Ms. Murray's memo and my proposals to remedy those objections.

1. Minn. R. pt. 5220.0120. The last sentence could provide:

> The commissioner may permit a waiver for periods longer than 60 days if the criteria of subd. 2 herein will exist for a period longer than 60 days.

2. Minn. R. pt. 5220.410(6). This section basically restates statutory authority and is not necessary. If needed for informational purposes, I would propose:

> In reviewing rehabilitation plans pursuant to Minn. Stat. § 176.102, subd. 6, the commissioner shall notify all interested parties of the nature of any additional information necessary for such review, any recommended modifications to the plan and any decision approving, modifying or rejecting a plan. Where the commissioner refers issues relating to a plan to a compensation judge or an administrative conference pursuant to Minn. Stat. § 176.106, all parties shall be notified of that action and all applicable procedures relating thereto.

3. Minn. R. pt. 5220.0510, subp. 4. The applicable statute covers plan modifications, although it does not speak in terms of "amend." Thus, the rule is not necessary. If kept, I propose:

> Where a plan is modified for good cause pursuant to Minn. Stat. § 176.102, subd. 8 or as a result of an administrative conference pursuant to Minn. Stat. § 176.106, the commissioner shall notify all interested parties of the modification and the reasons therefor.

4. Minn. R. pt. 5220.0510, subp. 6. Again, this proposed rule repeats statutory language and is not necessary. If kept, I would propose:

> Where the commissioner initiates the termination of rehabilitation services pursuant to Minn. Stat. § 176.102, subd. 6 or through an administrative conference pursuant to Minn. Stat. § 176.106, all interested parties shall be provided written notice of the proposed decision and an opportunity to be heard either in person or through the submission of written information.

5. Minn. R. pt. 5220.0850, subp. 2. This rule was not objected to. However, I would delete the word "substantially." Also, I note my concern regarding how the Department "prescribes" forms. A good argument can be made that if a certain form is required, that form should be adopted by rule.

6. Minn. R. pt. 5220.0850, subp. 4. I would delete the second sentence of this rule and add:

> The plan approval process shall be subject to the procedures set forth under part 5220.0410, subp. 6.

7. Minn. R. pt. 5220.0950, subp. 1. Delete word "substantially."

8. Minn. R. pt. 5220.0950, subp. 2 (first sentence). If necessary at all, I would propose:

> Where the commissioner refers a dispute to a compensation judge or, based on the written submissions of the parties, determines the dispute or schedules an administrative conference to determine the dispute, all parties shall be served with written notice of that action. To facilitate resolution of a dispute, the commissioner shall require the ~~The commissioner may request that the~~ parties ~~attempt~~ to meet and confer informally before an administrative conference where the commissioner ~~believes~~ such a meeting would facilitate resolution of the dispute.

When — What if they don't? When the commissioner ~~finds that it~~

Although not objected to, the proposed rule regarding medical exams and evaluations concerns me. If there is statutory authority for this requirement, the criteria upon which it will be imposed should be set forth.

9. Minn. R. pt. 5220.0950, subp. 3. If this section is necessary, even though it appears to repeat an earlier provision, I would propose:

> Where the commissioner independently determines that issues exist regarding an employee's entitlement to rehabilitation or the appropriateness of a proposed plan, or otherwise initiates proceedings before a compensation judge or through an administrative conference, written notice of the issues in dispute shall be served upon the parties.

10. Minn. R. pt. 5220.0950, subp. 4. This section should clarify the type of decisions to which it applies and the body to which an appeal is made. Appeals from administrative conferences are to a workers' compensation judge. Is this intended for all appeals? Also, can a person appeal a decision of the commissioner to refer a case for settlement or hearing?

11. Minn. R. pt. 5220.1100. Legal Representation. Although not objected to, I question the Department's authority to regulate attorney fees. Is there legal authority to exclude rehabilitation services in calculation of attorney fees?

12. Minn. R. pt. 5220.1200. The proposed rule appears inconsistent. I suggest:

> Rehabilitation services pursuant to an approved rehabilitation plan are mandatory for qualified employees. However, where a good faith dispute exists regarding entitlement to rehabilitation services, that dispute may be converted into cash by settlement agreement between the parties pursuant to the provisions of Minn. Stat. § 176.521.

13. Minn. R. pt. 5220.1400. "Substantiated complaints." This phrase caused me concern during the Gaston hearing due to its lack of definition and I do not think the new phrase, "disciplinary action by any governmental body" is any more precise by way of definition. I would propose:

> The failure to comply with the standards of performance and professional conduct contained in parts 5220.1800-1801 of these rules or the violation of any of the provisions of Minn. Stat. ch. 17 or other provisions of these rules or orders issued pursuant thereto constitute grounds for . . . .

14. Minn. R. pt. 5220.1801, subp. 1. The statute allows the commissioner to "prescribe forms and other reporting procedures to be used by QRCs." Subp. 1 of this rule does not implement or make specific this authority. Ideally, the rule should "prescribe". Either delete "as required by the commissioner" or provide reporting criteria.

15. Minn. R. pt. 5220.1806, subps. (1) and (2).

    a. Change reference to "substantiated complaints" and conform to language proposed for section 1400.

    b. Subdivision 2 is covered by the statute and is not necessary. Further, the statutory mandate to investigate is not limited to only where a complaint is received. The statute allows broad authority to monitor and supervise. I suggest deleting the phrase "for the purpose of . . ." It is not necessary. Also, the Department's duty should be "shall" rather than "may."

    c. Although not objected to, criteria should be set forth under subp. 3 to indicate when complaints will be dismissed or referred. Also criteria for initiating a contested case.

16. Minn. R. pt. 5220.1900, subp. 1. I would either prescribe "uniform billings" and "reporting procedures" by rule or delete. Not sufficient to argue statute provides the authority. The rule does not implement or make specific the statutory authority.

17. Minn. R. pt. 5220.0710, subp. 5. This subject needs some work. I would suggest:

> Out of state rehabilitation services for employees entitled to Minnesota workers' compensation benefits will not be approved or ordered where those services do not comply with Minn. Stat. ch. 176 and these rules.

18. Minn. R. pt. 5220.1802, subp. 5. If its intent is to be informative, the rule could specify which data privacy sections of law apply. Otherwise, this could be deleted.

19. Minn. R. pt. 5220.1803, subp. 5. The comments raise this question: Do you want to consider QRC files to be government records? I do not think so. I would suggest the following:

> For the purposes of Minn. Stat. ch. 176 and these rules, individual employee files must be maintained by the qualified rehabilitation consultant firm for five years from the date of file closure. This requirement is in addition to and does not otherwise change or alter any other data retention time period required by applicable law.

I should stress that I have not attempted to review the proposed rules in their entirety. That is not my role, but only to address the concerns raised by Ms. Murray. Should you wish to discuss the proposals in more detail, please advise. Also, when changes are agreed to, I would strongly recommend detailed amended findings of fact which fully explain the rationale for the changes.

JKM:jec.by7
cc: Mary Miller
Mary Jo Murray

E.

STATE OF MINNESOTA

DEPARTMENT OF LABOR AND INDUSTRY

In the Matter of the Proposed Amendment of the Rule of the State Department of Labor and Industry, Workers' Compensation Division, Governing Rehabilitation Services

NOTICE OF INTENT TO ADOPT A RULE WITHOUT A PUBLIC HEARING

(1) Notice is hereby given that the State Department of Labor and Industry intends to adopt the above-entitled rule amendments without a public hearing following the procedures set forth in the Administrative Procedure Act for adopting rules without a public hearing in Minnesota Statutes, sections 14.22 to 14.28. The statutory authority to amend the rule is M. S. § 176.83 and 176.102.

(2) All persons have 30 days in which to submit comment in support of or in opposition to the proposed rule amendments or any part or subpart of the rule. Public comment is encouraged. (3) Each comment should identify the portion of the proposed rule amendments addressed, the reason for the comment, and any change proposed.

Any person may make a written request for a public hearing on the rule within the 30-day comment period. (4) If 25 or more persons submit a written request for a public hearing within the 30-day comment period, a public hearing will be held unless a sufficient number withdraw their request in writing. (6) Any person requesting a public hearing should state his or her name and address, and is encouraged to identify the portion of the proposed rule addressed, the reason for the request, and any change proposed. (7) If a public hearing is required, the agency will proceed pursuant to Minnesota Statutes, sections 14.131 to 14.20.

(5) Comments or written requests for a public hearing must be submitted to:

David Sherwood-Gabrielson, Director
Rehabilitation and Medical Affairs
443 Lafayette Road
St. Paul, Minnesota 55155
612-297-4598

(8) The proposed rule amendments may be modified if the modifications are supported by data and views submitted to the agency and do not result in a substantial change in the proposed rule amendments as noticed.

(11) The rule amendments proposed for adoption relate to the following matters and are set forth below. A comprehensive rewrite of most rehabilitation rules including revised and expanded definitions, changes in the rehabilitation referral process, change of time frames for rehabilitation plan submission, clarification of transfer of information by rehabilitation providers among the parties, clarification of Qualified Rehabilitation Consultant change procedures, requirements for retraining and on the job training plans, further information defining professional conduct and accountability standards and others.

(12) **A Statement of Need and Reasonableness** that describes the need for and reasonableness of each proposed amendment of the rules and identifies the data and information relied upon to support the proposed amendment has been prepared and is available upon request from David Sherwood-Gabrielson.

(N) The proposed rule amendments do not affect small businesses directly other than Qualified Rehabilitation Consultant firms and vendor firms that will be notified through the Department mailing list if they have asked to be listed.

(9) If no hearing is required, upon adoption of the rule amendments, the amendments and the required supporting documents will be submitted to the Attorney General for review as to legality and form to the extent the form relates to legality. Any person may request notification of the date of submission to the Attorney General. Persons who wish to be advised of the submission of this material to the Attorney General, or who wish to receive a copy of the adopted rule amendments, must submit the written request to David Sherwood-Gabrielson, Director Rehabilitation and Medical Affairs, 443 Lafayette Road, St. Paul, Minnesota, 55155.

9/12/91
Date

Commissioner

STATE OF MINNESOTA

DEPARTMENT OF LABOR AND INDUSTRY

In the matter of the Proposed Adoption of the Rule of the State Department of Labor and Industry Workers' Compensation Division, Governing the Rehabilitation of Persons with Work-Related Injuries

AFFIDAVIT OF MAILING THE NOTICE OF INTENT TO ADOPT A RULE WITHOUT A PUBLIC HEARING AND CERTIFICATE OF MAILING LIST

STATE OF MINNESOTA)
)ss.
COUNTY OF RAMSEY)

Janis Keesling, being sworn says:

I hereby certify that the list of persons and associations who have requested , pursuant to Minnesota Statutes, sections 14.14, subdivision 1a and 14.22 or 14.30, that their names be placed on the state Department of Labor and Industry, Workers Comp Division rulemaking mailing list is accurate, complete, and current as of this 8th day of October, 1991.

That on the 8th day of Oct, 1991, at the City of St. Paul, County of Ramsey, State of Minnesota, I mailed the attached Notice of Intent to Adopt A Rule Without a Public Hearing by depositing in the [State of Minnesota Central Mail System for United States mailing] [United States mail] a copy thereof, with postage prepaid, to all persons and associations on the aforementioned mailing list.

Janis Keesling
[Name]

Admin Asst
[Title]

Subscribed and sworn to before me
this 10 day of Oct, 1991.

Rosemary LaRue

JK/cj (s-6)

ROSEMARY LARUE
NOTARY PUBLIC—MINNESOTA
RAMSEY COUNTY
MY COMMISSION EXPIRES 11-11-96

Note: A copy of the Rules was sent out on 10-3-91 to all people on the mailing list. A cover letter, Notice of Intent to Adopt & pages 37+38 were mailed on 10-8-91.

Janis Keesling

The Minnesota
State Register
Department of Administration—Print Communications Division



Rules edition
Published every Monday
(Tuesday if Monday is a holiday)

Monday 7 October 1991

Volume 16, Number 15

Pages 801-888

State Register

Judicial Notice Shall Be Taken of Material Published in the *State Register*

The *State Register* is the official publication of the State of Minnesota, containing executive and commissioners' orders, proposed and adopted rules, official and revenue notices, state and non-state contracts, contract awards, grants, a monthly calendar of cases to be heard by the state supreme court, and announcements.

***A Contracts Supplement* is published every Thursday and contains additional state contracts and advertised bids, and the most complete source of state contract awards available in one source.**

Printing Schedule and Submission Deadlines

Vol. 16 Issue Number	*Submission deadline for Adopted and Proposed Rules, Commissioners' Orders**	*Submission deadline for Executive Orders, Contracts, and Official Notices**	Issue Date
15	Monday 23 September	Monday 30 September	Monday 7 October
16	Monday 30 September	Monday 7 October	Monday 14 October
17	Monday 7 October	Monday 14 October	Monday 21 October
18	Monday 14 October	Monday 21 October	Monday 28 October

*Deadline extensions may be possible at the editor's discretion; however, none will be made beyond the second Wednesday (12 calendar days) preceding the issue date for rules, proposed rules and executive orders, or beyond the Wednesday (5 calendar days) preceding the issue date for official notices. Requests for deadline extensions should be made only in valid emergency situations.

**Notices of public hearings on proposed rules and notices of intent to adopt rules without a public hearing are published in the Proposed Rules section and must be submitted two weeks prior to the issue date.

Instructions for submission of documents may be obtained from the ***State Register*** editorial offices, 504 Rice Street, St. Paul, Minnesota 55103, (612) 296-4273.

The ***State Register*** is published every Monday (Tuesday when Monday is a holiday) by the State of Minnesota, Department of Administration, Print Communications Division, 117 University Avenue, St. Paul, Minnesota 55155, pursuant to *Minnesota Statutes* § 14.46. A ***State Register*** *Contracts Supplement* is published every Thursday. The Monday edition is the vehicle for conveying all information about state agency rulemaking, including official notices; hearing notices; proposed, adopted and emergency rules. It also contains executive orders of the governor; commissioners' orders; state contracts and advertised bids; professional, technical and consulting contracts; non-state public contracts; state grants; decisions of the supreme court; a monthly calendar of scheduled cases before the supreme court; and other announcements. The Thursday edition contains additional state contracts and advertised bids, and the most complete listing of contract awards available in one source.

In accordance with expressed legislative intent that the ***State Register*** be self-supporting, the following subscription rates have been established: the Monday edition costs $140.00 per year and includes an index issue published in August (single issues are available at the address listed above for $3.50 per copy); the combined Monday and Thursday editions cost $195.00 (subscriptions are not available for just the *Contracts Supplement*); trial subscriptions are available for $60.00, include both the Monday and Thursday edition, last for 13 weeks, and may be converted to a full subscription anytime by making up the price difference. No refunds will be made in the event of subscription cancellation.

Both editions are delivered postpaid to points in the United States, second class postage paid for the Monday edition at St. Paul, MN, first class for the Thursday edition. Publication Number 326630 (ISSN 0146-7751).

Subscribers who do not receive a copy of an issue should notify the ***State Register*** circulation manager immediately at (612) 296-0931. Copies of back issues may not be available more than two weeks after publication.

Arne H. Carlson, Governor

Dana B. Badgerow, Commissioner
Department of Administration

Stephen A. Ordahl, Director
Print Communications Division

Robin PanLener, Editor
Katherine Artishon, Acting Editor

Paul Hoffman, Assistant Editor

Debbie George, Circulation Manager

Bonita Karels, Staff Assistant

FOR LEGISLATIVE NEWS

Publications containing news and information from the Minnesota Senate and House of Representatives are available free to concerned citizens and the news media. To be placed on the mailing list, write or call the offices listed below:

SENATE

Briefly-Preview—Senate news and committee calendar; published weekly during legislative sessions.

Perspectives—Publication about the Senate.

Session Review—Summarizes actions of the Minnesota Senate.

Contact: Senate Public Information Office
Room 231 State Capitol, St. Paul, MN 55155
(612) 296-0504

HOUSE

Session Weekly—House committees, committee assignments of individual representatives; news on committee meetings and action. House action and bill introductions

This Week—weekly interim bulletin of the House.

Session Summary—Summarizes all bills that both the Minnesota House of Representatives and Minnesota Senate passed during their regular and special sessions.

Contact: House Information Office
Room 175 State Office Building, St. Paul, MN 55155
(612) 296-2146

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NOTICE: How to Follow State Agency Rulemaking in the *State Register*

The ***State Register*** is the official source, and only complete listing, for all state agency rulemaking in its various stages. State agencies are required to publish notice of their rulemaking action in the ***State Register***. Published every Monday, the ***State Register*** makes it easy to follow and participate in the important rulemaking process. Approximately 75 state agencies have the authority to issue rules. Each agency is assigned specific ***Minnesota Rule*** chapter numbers. Every odd-numbered year the ***Minnesota Rules*** are published. This is a ten-volume bound collection of all adopted rules in effect at the time. Supplements are published to update this set of rules. Proposed and adopted emergency rules do not appear in this set because of their short-term nature, but are published in the ***State Register***.

If an agency seeks outside opinion before issuing new rules or rule amendments, it must publish a NOTICE OF INTENT TO SOLICIT OUTSIDE OPINION in the ***Official Notices*** section of the ***State Register***. When rules are first drafted, state agencies publish them as **Proposed Rules**, along with a notice of hearing, or notice of intent to adopt rules without a hearing in the case of noncontroversial rules. This notice asks for comment on the rules as proposed. Proposed emergency rules and withdrawn proposed rules are also published in the ***State Register***. After proposed rules have gone through the comment period, and have been rewritten into their final form, they again appear in the ***State Register*** as **Adopted Rules**. These final adopted rules are not printed in their entirety in the ***State Register,*** only the changes made since their publication as Proposed Rules. To see the full rule, as adopted and in effect, a person simply needs two issues of the ***State Register***, the issue the rule appeared in as proposed, and later as adopted. For a more detailed description of the rulemaking process, see the ***Minnesota Guidebook to State Agency Services.***

The ***State Register*** features partial and cumulative listings of rules in this section on the following schedule: issues 1-13 inclusive; issues 14-25 inclusive; issue 26, cumulative for issues 1-26; issues 27-38 inclusive; issue 39, cumulative for 1-39; issues 40-51 inclusive; and issue 52, cumulative for 1-52. An annual subject matter index for rules appears in August. For copies of the ***State Register***, a subscription, the annual index, the ***Minnesota Rules*** or the ***Minnesota Guidebook to State Agency Services***, contact the Print Communications Division, 117 University Avenue, St. Paul, MN 55155 (612) 297-3000 or toll-free in Minnesota 1-800-9747.

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Pursuant to Minn. Stat. §§ 14.22, an agency may propose to adopt, amend, suspend or repeal rules without first holding a public hearing, as long as the agency determines that the rules will be noncontroversial in nature. The agency must first publish a notice of intent to adopt rules without a public hearing, together with the proposed rules, in the *State Register*. The notice must advise the public:

1. that they have 30 days in which to submit comment on the proposed rules;
2. that no public hearing will be held unless 25 or more persons make a written request for a hearing within the 30-day comment period;
3. of the manner in which persons shall request a hearing on the proposed rules; and
4. that the rule may be modified if the modifications are supported by the data and views submitted.

If, during the 30-day comment period, 25 or more persons submit to the agency a written request for a hearing of the proposed rules, the agency must proceed under the provisions of §§ 14.14-14.20, which state that if an agency decides to hold a public hearing, it must publish a notice of intent in the *State Register*.

Pursuant to Minn. Stat. §§ 14.29 and 14.30, agencies may propose emergency rules under certain circumstances. Proposed emergency rules are published in the *State Register* and, for at least 25 days thereafter, interested persons may submit data and views in writing to the proposing agency.

Department of Labor and Industry

Proposed Permanent Rules Relating to the Rehabilitation of Persons with Work-Related Injuries

Notice of Intent to Adopt a Rule Without a Public Hearing

NOTICE IS HEREBY GIVEN that the State Department of Labor and Industry intends to adopt the above-entitled rule amendments without a public hearing following the procedures set forth in the Administrative Procedure Act for adopting rules without a public hearing in *Minnesota Statutes,* sections 14.22 to 14.28. The statutory authority to amend the rule is *Minnesota Statutes* § 176.83 and 176.102.

All persons have 30 days in which to submit comments in support of or in opposition to the proposed rule amendments or any part or subpart of the rule. Public comment is encouraged. Each comment should identify the portion of the proposed rule amendments addressed, the reason for the comment, and any change proposed.

Any person may make a written request for a public hearing on the rule within the 30-day comment period. If 25 or more persons submit a written request for a public hearing within the 30-day comment period, a public hearing will be held unless a sufficient number withdraw their request in writing. Any person requesting a public hearing should state his or her name and address, and is encouraged to identify the portion of the proposed rule addressed, the reason for the request, and any change proposed. If a public hearing is required, the agency will proceed pursuant to *Minnesota Statutes,* sections 14.131 to 14.20.

Comments or written requests for a public hearing must be submitted to:

David Sherwood-Gabrielson, Director
Rehabilitation and Medical Affairs
443 Lafayette Road
St. Paul, Minnesota 55155
612-297-4598

The proposed rule amendments may be modified if the modifications are supported by data and views submitted to the agency and do not result in a substantial change in the proposed rule amendments as noticed.

The rule amendments proposed for adoption relate to the following matters and are set forth below. A comprehensive rewrite of most rehabilitation rules including revised and expanded definitions, changes in the rehabilitation referral process, change of time frames for rehabilitation plan submission, clarification of transfer of information by rehabilitation providers among the parties, clarification of Qualified Rehabilitation Consultant change procedures, requirements for retraining and on the job training plans, further information defining professional conduct and accountability standards and others.

A STATEMENT OF NEED AND REASONABLENESS that describes the need for and reasonableness of each proposed amendment of the rules and identifies the data and information relied upon to support the proposed amendment has been prepared and is available upon request from David Sherwood-Gabrielson.

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.

The proposed rule amendments do not affect small businesses directly other than Qualified Rehabilitation Consultant firms and vendor firms that will be notified through the Department mailing list if they have asked to be listed.

If no hearing is required, upon adoption of the rule amendments, the amendments and the required supporting documents will be submitted to the Attorney General for review as to legality and form to the extent the form relates to legality. Any person may request notification of the date of submission to the Attorney General. Persons who wish to be advised of the submission of this material to the Attorney General, or who wish to receive a copy of the adopted rule amendments, must submit the written request to David Sherwood-Gabrielson, Director Rehabilitation and Medical Affairs, 443 Lafayette Road, St. Paul, Minnesota, 55155.

Dated: 12 September 1991

John B. Lennes, Jr.
Commissioner

Rules as Proposed

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

5220.0100 DEFINITIONS.

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

Subp. ~~1b.~~ 2. **Approved claims handler.** "Approved claims handler" means a claims handler who meets the requirements of part 5220.1910.

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

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

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

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

Subp. ~~2.~~ 4. **Commissioner.** "Commissioner" means commissioner of the Department of Labor and Industry.

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

Subp. ~~3.~~ 9. **Employer.** "Employer" means the employer at the time of injury of qualified employees ~~and includes the insurer providing workers' compensation insurance required by *Minnesota Statutes*, chapter 176 to this employer~~, unless the context clearly indicates otherwise.

Subp. 10. **Formal course of study.** "Formal course of study" means a program described by a published syllabus with established time parameters for completion which results in a diploma or other certification that is accepted as a credential of basic competence in a vocation.

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

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

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

A. what the worker does in the job being analyzed in relation to data, people, and things;

B. what methods and techniques are employed by the worker;

C. what machines, tools, equipment, and work aids are used;

D. what materials, products, subject matter, or services result; and

E. what traits are required of the worker.

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

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

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

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

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

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

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

Subp. ~~4.~~ 22. **Qualified employee.** "Qualified employee" means an employee who, because of the effects of a work-related injury or disease, whether or not combined with the effects of a prior injury or disability:

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

B. can reasonably be expected to ~~benefit from~~ return to suitable gainful employment through the provision of rehabilitation services ~~which could significantly reduce or eliminate the decrease in employability~~.

Subp. ~~5.~~ 23. **Qualified rehabilitation consultant.** "Qualified rehabilitation consultant" means a person who is professionally trained and experienced and who is ~~approved~~ registered by the commissioner to provide an eligibility consultation and to develop and ~~monitor~~ implement an appropriate plan ~~for evaluation and provision~~ of ~~physical and vocational~~ rehabilitation services for an employee entitled to rehabilitation benefits under *Minnesota Statutes*, section 176.102. ~~A qualified rehabilitation consultant must be either affiliated as defined in subpart 6 or independent as defined in subpart 7.~~

Subp. 6. [See repealer.]

Subp. 7. [See repealer.]

Subp. 8. [See repealer.]

Subp. ~~8a.~~ 24. **Qualified rehabilitation consultant firm ~~or firm~~.** "Qualified rehabilitation consultant firm" ~~or "firm"~~ means a public or private business, whether organized as a sole proprietorship, partnership, association, corporation, or other form, which is held out to the public as a business entity engaged in rehabilitation consultation and services. ~~Only a qualified rehabilitation consultant independent shall be associated with or employed by a firm as defined in this subpart.~~

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

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

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

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

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Subp. ~~9.~~ 27. **Rehabilitation plan.** "Rehabilitation plan" means a written document completed by ~~a~~ the assigned 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~~ on a form prescribed by the commissioner describing a vocational goal and the specific services by which the qualified employee will be returned to suitable gainful employment.

Subp. ~~9a.~~ 28. **Rehabilitation provider.** "Rehabilitation provider" means the following four categories of rehabilitation professionals:

A. qualified rehabilitation consultants;

B. qualified rehabilitation consultant interns;

C. qualified rehabilitation consultant firms; and

D. registered rehabilitation vendors.

Subp. ~~10.~~ 29. **Rehabilitation ~~service~~ services.** "Rehabilitation ~~service~~ services" 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.~~ a program of vocational rehabilitation, including medical management, designed to return an individual to work consistent with *Minnesota Statutes*, section 176.102, subdivision 1. The program begins with the first in-person visit of the employee by the assigned qualified rehabilitation consultant, including a visit for purposes of an eligibility consultation. The program consists of the sequential delivery and coordination of services by rehabilitation providers under an individualized plan. Specific services under this program may include, but are not limited to, vocational evaluation, counseling, job analysis, job modification, job development, job placement, labor market survey, vocational testing, transferable skills analysis, work adjustment, job seeking skills training, on-the-job training, and retraining.

Subp. 10a. [See repealer.]

Subp. 11. [See repealer.]

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

Subp. 31. **Required rehabilitation report.** "Required rehabilitation report" means the claim screening consultation report, the eligibility consultation report and any other report that must be submitted to the commissioner whenever a rehabilitation plan is initiated, proposed to be amended, suspended or closed, or when a change of assigned qualified rehabilitation consultant occurs on a case.

Subp. 32. **Retraining plan.** "Retraining plan" means an individualized written plan describing the formal course of study through which the goal of the rehabilitation plan may be accomplished. Adult basic education or remedial programs may be a component of a retraining plan but do not constitute retraining in and of themselves.

Subp. ~~12.~~ 33. **Review panel.** "Review panel" means the rehabilitation review panel created by *Minnesota Statutes*, section 176.102, subdivision 3.

Subp. ~~13.~~ 34. **Suitable gainful employment.** "Suitable gainful employment" means employment which is reasonably attainable and which offers an opportunity to restore the injured employee as soon as possible and as nearly as possible to employment which produces an economic status as close as possible to that which the employee would have enjoyed without disability. Consideration shall be given to the employee's former employment and the employee's qualifications, including, but not limited to, the employee's age, education, previous work history, interests, and skills.

Subp. 14. [See repealer.]

Subp. 15. [See repealer.]

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

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

in a real work environment.

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

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

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

Subp. 40. **Work hardening.** "Work hardening" means a physical conditioning program in a clinical setting designed to develop strength and tolerance for work or a schedule of graduated resumption of employment consistent with the employee's physical condition.

5220.0105 INCORPORATION BY REFERENCE.

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

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

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

C. The Commission on Accreditation of Rehabilitation Facilities (CARF) Directory of Accredited Organizations Serving People With Disabilities and its *Standards Manual for Organizations Serving People With Disabilities*, 1991, are revised annually and available for purchase at 101 North Wilmot Road, Suite 500, Tucson, Arizona 85711.

5220.0110 REHABILITATION CONSULTATION; CLAIM SCREENING CONSULTATION.

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

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

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

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

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

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

(2) information describing the employee's physical limitations and capabilities and medical status;

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

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

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

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

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

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

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

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

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

Subp. 5. **Penalties.** The commissioner or compensation judge may assess a penalty of $300 against an insurer who fails to provide a rehabilitation consultation to an employee who meets any of the criteria in subpart 2. The insurer may object to the penalty as provided in *Minnesota Statutes*, section 176.84 and part 5220.2870.

5220.0120 WAIVER OF ELIGIBILITY CONSULTATION AND REHABILITATION SERVICES.

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

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

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

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

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

5220.0130 REHABILITATION CONSULTATION; ELIGIBILITY CONSULTATION.

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

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

A. a waiver has not been requested;

B. a request for a waiver has been denied;

C. there is no longer a basis for a waiver;

D. a waiver period has expired without renewal; or

E. it is ordered by the commissioner.

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

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

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

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

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

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

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

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

(2) the eligibility consultation date;

(3) the employee's work status;

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

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

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

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

Subp. 4. **Penalty.** The commissioner or compensation judge may assess a penalty of $300 against an insurer who fails to provide a rehabilitation eligibility consultation to an employee who meets the criteria in part 5220.0130, subpart 2, unless the commissioner or a compensation judge determines the eligibility consultation is not required. The insurer may object to the penalty as provided in *Minnesota Statutes*, section 176.84, and part 5220.2870.

5220.0410 REHABILITATION PLAN.

Subpart 1. **Purpose.** The purpose of the rehabilitation plan is to communicate to all interested parties the vocational goal, the rehabilitation services, and the projected amounts of time and money that will be needed to achieve the vocational goal.

Subp. 2. **Requirements.** If an employee is a qualified employee under part 5220.0100, subpart 22, the assigned qualified rehabilitation consultant shall, in consultation with the parties, develop, record, and file a rehabilitation plan on the form prescribed by the commissioner containing substantially the following:

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

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

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

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

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

F. employee comments, if any; and

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

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

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

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

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

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

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

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

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

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

If a party fails to sign the plan or fails to file a rehabilitation request for assistance objecting to the proposed plan within the 21 days specified in subpart 4, item B, it shall be presumed that the party is in substantial agreement with the plan's vocational objective and the services that are proposed. In this event the plan, with evidence of the date it was sent to each party, shall be filed with the department by the assigned qualified rehabilitation consultant and, upon receipt, the plan will be deemed approved. A party's failure to sign a plan shall not constitute a waiver of any right to subsequently dispute the plan or to dispute payment of rehabilitation fees relative to the plan.

The commissioner may at any time request additional information, confer with the parties, recommend modifications, and otherwise seek agreement about the plan. The commissioner may approve or modify the plan, schedule an administrative conference, or refer the matter to a compensation judge to approve or modify the plan.

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

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

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

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

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

Job placement services shall be provided by rehabilitation providers registered by the commissioner or a facility accredited by the National Commission on Accreditation of Rehabilitation Facilities (CARF), Tucson, Arizona. The CARF Directory of Accredited Organizations Serving People with Disabilities and its Standards Manual for Organizations Serving People with Disabilities are incorporated by reference in part 5220.0105.

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

5220.0510 PLAN AMENDMENT AND CLOSURE.

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

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

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

C. a need to change the vocational goal of the rehabilitation plan;

D. the projected rehabilitation cost or duration, as stated in the rehabilitation plan, will be exceeded; or

E. the employee feels ill-suited for the type of work for which rehabilitation is being provided.

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

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

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

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

B. the proposed amendment;

C. a rationale for the amendment;

D. if the amendment adds rehabilitation services, an itemization of each additional rehabilitation service to be provided including any registered rehabilitation vendor names, dates of initiation and completion, and estimated costs of each service;

E. if the amendment will result in a change in the projected plan completion date, the new completion date;

F. if the amendment will result in a change in the projected plan cost, the new estimated cost;

G. employee comments, if any; and

H. the dated signatures of the employee, insurer, and assigned qualified rehabilitation consultant.

Subp. 4. **Amendment by commissioner.** At the discretion of the commissioner, the commissioner may amend the rehabilitation plan pursuant to *Minnesota Statutes*, sections 176.102 and 176.106, and the rules that implement those sections.

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

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

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

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

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

Subp. 6. **Commissioner's authority to initiate closure.** The commissioner may initiate and order closure of rehabilitation services for good cause after notice to the parties of the proposed closure and after an opportunity for interested parties to submit information. The submission may be written or at an in-person meeting at the discretion of the commissioner.

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

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

B. the outcome of the rehabilitation plan;

C. the employee's employment status:

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

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

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

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

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

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

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

A. once:

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

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

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

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

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

Subp. 4. **Penalty.** A frivolous objection to or interference with the employee's choice of assigned qualified rehabilitation consultant under subpart 1 and *Minnesota Statutes*, section 176.102, subdivision 4, may subject the insurer to penalties under part 5220.2780, or a qualified rehabilitation consultant to disciplinary action pursuant to *Minnesota Statutes*, section 176.102, subdivisions 3 and 3a.

Subp. 5. **Employee residing or moving out of Minnesota.** Qualified employees who reside outside of Minnesota or who move out of Minnesota may receive services from a rehabilitation professional qualified under that jurisdiction's workers' compensation law to provide rehabilitation services. This subpart does not require the assignment of another rehabilitation professional if the services can be reasonably furnished by a rehabilitation provider registered in Minnesota. When services are provided outside of Minnesota by a rehabilitation professional qualified in that jurisdiction, an assigned qualified rehabilitation consultant in Minnesota shall monitor the provision of services, taking reasonable care to ensure that services are rendered according to Minnesota workers' compensation law and rules.

Subp. 6. **Change of consultant not an exercise of choice by employee.** A change of assigned qualified rehabilitation consultant necessitated by circumstances outside the control of the employee is not a choice by the employee and does not exhaust the employee's right to choice. Such circumstances include, but are not limited to, the assigned qualified rehabilitation consultant leaving practice or the extended illness of the assigned qualified rehabilitation consultant. Disputes about changes shall be resolved according to subpart 3.

5220.0750 RETRAINING.

Subpart 1. **Purpose.** The purpose of retraining is to return the employee to suitable gainful employment through a formal course

of study. Retraining is to be given equal consideration with other rehabilitation services, and proposed for approval if other considered services are not likely to lead to suitable gainful employment.

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

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

B. the retraining goal;

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

(1) the name of the school;

(2) titles of classes;

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

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

(5) mileage costs; and

(6) other required costs;

D. starting and completion dates;

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

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

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

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

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

Subp. 4. **Compensation.** An employee who has been approved for retraining under *Minnesota Statutes*, section 176.102, subdivision 11, may petition the commissioner or a compensation judge for additional compensation, not to exceed 25 percent of the compensation otherwise payable, if the employee will incur a special, unusual, or unique circumstance during the retraining period that would otherwise reduce the likelihood that the retraining plan will be successfully completed. Additional compensation is not warranted under this subpart if the circumstance on which the request is based is compensable as a cost of the rehabilitation plan under *Minnesota Statutes*, section 176.102, subdivision 9. The commissioner or a compensation judge may order an award of additional compensation and specify the amount to be awarded. When the employee is entitled to additional compensation for retraining, the compensation shall begin on the first day the special, unusual, or unique circumstance of the retraining is present but not before the start of the retraining program, and shall stop at any time the special, unusual, or unique circumstance is no longer present. The commissioner or compensation judge may determine the date of commencement and the date of discontinuance of the additional compensation.

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

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

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5220.0850 ON-THE-JOB TRAINING.

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

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

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

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

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

D. a job analysis of the training position;

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

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

G. training commencement and completion dates;

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

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

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

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

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

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

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

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

Subp. 4. **On-the-job training plan approval.** When an on-the-job training plan is submitted to the commissioner, the commissioner shall review the proposed plan within 30 days of its submission and notify the parties of plan approval or rejection. The commissioner may also request additional information from any of the parties, confer with the parties, recommend modifications, and otherwise seek agreement about the plan. The commissioner may make a determination or pursue resolution of questions regarding the plan consistent with part 5220.0950, subpart 3.

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

5220.0950 DISPUTES.

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

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

B. a statement of the rehabilitation issues to be resolved;

C. a statement of what the requester wants and supporting evidence and arguments;

D. a list showing that all parties were served and the date they were served;

E. the requester's name and signature; and

F. instructions for completion of the form.

Subp. 2. **Action by commissioner.** The commissioner may refer the dispute to a compensation judge, or, based on the written submissions of the parties, determine the issue or schedule an administrative conference prior to a determination. The commissioner may request that the parties meet and confer informally before a conference.

The commissioner may order reasonable medical examinations and rehabilitation evaluations at the expense of the insurer before a determination.

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

Subp. 3. **Commissioner discretion to initiate dispute resolution.** The commissioner may independently determine that issues exist about an employee's entitlement to rehabilitation, the appropriateness of a proposed plan, or any other disputes involving rehabilitation. The commissioner may initiate the dispute resolution process under subpart 2 by serving notice on the parties of the rehabilitation issues to be resolved.

Subp. 4. **Formal hearing.** A party that disagrees with a decision of the commissioner may request a formal hearing pursuant to part 5220.1010.

5220.1010 REQUEST FOR A FORMAL HEARING.

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

5220.1100 LEGAL REPRESENTATION.

When an employee or ~~employer~~ insurer is represented by an attorney ~~in rehabilitation matters before the commissioner,~~ and if a notice of representation has not already been filed, the attorney shall notify the commissioner ~~shall, at the earliest possible date, be notified in writing of the name, address, and telephone number of said representative~~ as provided in part 1415.0800. The attorney will receive notices as provided in part 5220.2890. The value of rehabilitation services shall not be used in the calculation of attorney's fees. The legal fees shall be calculated in the manner provided by law. ~~Any representative~~ An attorney who has so advised the commissioner will be notified of any ~~meetings~~ proceedings, and will receive ~~any reports~~ rehabilitation reports as provided by part 5220.1802, subpart 3.

5220.1200 ~~MANDATORY~~ REHABILITATION SERVICES~~;~~, SETTLEMENT AGREEMENTS.

~~Rehabilitation services pursuant to an approved rehabilitation plan are mandatory for qualified employees. A qualified~~ An employee's right to rehabilitation services shall not be subject to compromise and shall not be convertible into cash or other benefits by settlement and release agreement or otherwise. When a good faith dispute exists ~~as to qualified employee status~~, however, the possible right to rehabilitation services may be converted into cash by settlement agreement. Any settlement agreement purporting to ~~limit or~~ compromise ~~access to~~ all rehabilitation services must be approved by the commissioner, a compensation judge, or the workers' compensation court of appeals. ~~The value of rehabilitation services shall not be used in calculation of attorneys' fees. The legal fees shall be calculated in the same manner as in other types of cases.~~

5220.1250 QUALIFIED REHABILITATION CONSULTANT AND REGISTERED REHABILITATION VENDOR.

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

5220.1400 QUALIFYING ~~ELIGIBILITY~~ CRITERIA FOR REHABILITATION CONSULTANT.

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

Subp. 2. **Certification and education.** A qualified rehabilitation ~~consultant/affiliated/independent~~ consultant shall possess at least one of the following credentials ~~as applicable~~:

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

B. ~~holder of~~ a baccalaureate degree together with certification by the Association of Rehabilitation Nurses as a certified rehabilitation registered nurse ~~and current licensure as a registered nurse in Minnesota~~.

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

Subp. 3. **Qualified rehabilitation consultant intern.** The purpose of internship is to provide a supportive, structured period of professional supervision and case review following registration. An individual who meets the requirements of subpart 2, item A or B may be registered as a qualified rehabilitation consultant intern. An individual who meets the requirements of subpart 2, item A or B, except that two years or less of internship or experience remains as a requirement for certification, may be registered as a qualified rehabilitation consultant intern. ~~The~~ A qualified rehabilitation consultant intern must ~~work for at least one year as a qualified rehabilitation consultant intern in the rehabilitation of injured workers~~ complete an introductory training session sponsored by the department within six months of approval of registration. A qualified rehabilitation consultant intern shall not be a solo practitioner. When the intern is registered, the intern's employer shall provide the commissioner with the name of the qualified rehabilitation consultant under whose direct supervision the intern will work, and shall submit a plan of supervision on forms ~~required~~ prescribed by the commissioner. Direct supervision means that the supervisor is directly responsible for the rehabilitation work on any case, and for monitoring progress toward the certification required by this subpart. The intern supervisor need not maintain an office at the same location as the intern. The supervisor shall cosign all written work being done by the intern ~~and~~. 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 ~~and seminars~~ as required by the commissioner. ~~So that all parties are aware of the intern's status,~~ The intern shall be designated as an "intern" on all documents bearing the name of the intern. ~~The intern may make application for "qualified" status when the minimum requirements in subpart 2, item A or B have been met.~~

Substantiated complaints about professional ~~behavior~~ activities or services, or failure to comply with laws, rules, or ~~decisions and~~ orders under *Minnesota Statutes*, chapter 176, are grounds for denial of registration as a qualified rehabilitation consultant, discipline under *Minnesota Statutes*, section 176.102, subdivisions 3 and 3a, or delay of completion of internship. The intern may appeal the ~~denial~~ decision of the commissioner as provided in part 5220.1500, subpart 2.

In cases where an intern has been supervised by a qualified rehabilitation ~~consultant/affiliated~~ consultant who leaves the organization with which the intern has been ~~affiliated~~ employed and no other qualified rehabilitation consultant is available to supervise the intern, the intern may, with the prior written approval of the commissioner, ~~temporarily~~ 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 ~~will~~ shall be taken into consideration for this approval.

Subp. 4. ~~**Experience criteria**~~ **Completion of internship.** The burden of proof of experience shall be on the applicant. ~~This~~ 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 ~~physical rehabilitation or~~ vocational rehabilitation. ~~The experience requirements of subpart 2 for qualified rehabilitation consultants can be met only by full-time paid employment. School internship and volunteer activities are not acceptable as employment experience.~~ For purposes of this subpart, "full-time employment" is consistent with the employment experience requirement of the certifying body chosen by the qualified rehabilitation consultant intern. Where there is no definition of full-time employment by the certifying body chosen by the qualified rehabilitation consultant intern, full-time employment means a minimum of 37 hours per week during a 52-week period. Any part-time employment will be prorated based on this definition. The intern may make application for completion of internship when the minimum requirements in subparts 2 to 5 have been met.

~~Supporting documents shall consist of signed statements by present and previous employers and insurers specifying the services, caseload, and amount of time spent in rehabilitation of work-related injuries and diseases.~~

The commissioner's action on the intern's application for completion of internship shall be based in part on the report of the qualified rehabilitation consultant intern supervisor about the competence of the intern to practice independently. The commissioner

shall also consider information about the intern's professional competence including that obtained in the course of any investigation about professional conduct, and on any substantiated complaints regarding professional conduct.

Subp. 5. **General criteria.** All persons who are qualified rehabilitation consultants shall be ~~exclusively~~ self-employed or ~~exclusively~~ employed by a single organization that is approved for the employment of qualified rehabilitation consultants as a qualified rehabilitation consultant firm or an ~~employer/insurer~~ 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.

~~All persons who are qualified rehabilitation consultants~~ Registration shall ~~be residents of~~ require Minnesota residency. ~~An organization authorized for the employment of qualified rehabilitation consultants~~ The commissioner may ~~request~~ grant an exception for ~~a consultant~~ persons who ~~lives contiguous to a Minnesota catchment area if the organization and~~ reside no more than 100 miles by road from the Minnesota border. Any such qualified rehabilitation consultant agrees, as ~~a~~ an additional condition ~~to approval~~ of registration, to appear at any administrative conference or hearing when requested, in the same manner as if ~~they had been~~ subpoenaed. ~~Failure to do so shall result in automatic revocation of the individual consultant's approval.~~ A qualified rehabilitation consultant shall notify the department immediately upon any change in residency to or from Minnesota.

~~A qualified rehabilitation consultant operating on June 15, 1987, who is registered is deemed to meet the standards of this part. Registered qualified rehabilitation consultant interns operating on February 7, 1984, must meet the minimum requirements in effect on February 6, 1984, in order to make application for qualified rehabilitation consultant registration.~~

5220.1500 PROCEDURE FOR ~~QUALIFYING~~ 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 ~~and,~~ signed, and notarized application form ~~which is notarized~~;

B. copy of ~~current~~ any pertinent license or certification;

C. ~~supporting experience~~ documentation supporting any applicable experience requirements;

D. official transcripts of all ~~schools attended beyond high school~~ pertinent postsecondary education;

E. ~~list of pertinent continuing education by title, location, and date;~~

~~F.~~ list of services and fees. This filing shall not constitute an approval or disapproval of the services or fees; ~~and~~

~~G.~~ F. the annual registration application fee of $100 ~~for each qualified rehabilitation consultant or qualified rehabilitation consultant intern~~; and

G. a plan of supervision as required by part 5220.1400, subpart 3.

Subp. 1a. **Approval of registration as qualified rehabilitation consultant intern.** Where the requirements for registration are met, the commissioner shall issue a ~~notice of acceptance or rejection~~ letter to the applicant so indicating within 60 days of ~~receipt of~~ receiving the completed application. ~~Acceptance will be provisional until the completion of an introductory training session.~~ After registration has been approved, the registration application fee is not refundable. If the requirements for qualified rehabilitation consultant intern are not met, the commissioner shall issue a decision and order denying registration to the applicant within 60 days of receipt of the completed application. If the application for registration is not approved, one-half of the registration application fee may be refunded.

Subp. 2. **Appeal process.** The appeal process provides a mechanism for applicants to request reconsideration of a ~~rejected application for registration, renewal, and reinstatement~~ decision and order denying registration or renewal of registration.

A written notice of appeal shall be filed with the commissioner within 30 days of ~~mailing~~ filing and service of ~~notice of disapproval~~ the order.

The ~~decision~~ appeal shall be ~~reviewed by~~ referred to the rehabilitation review panel according to *Minnesota Statutes*, section

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176.102, subdivision 3. ~~The applicant shall be advised of the date, time, and place of the review at least ten days prior to the hearing date, and is encouraged to be present.~~

Subp. 3. **Registration number and renewal.** ~~The applicant must complete an introductory training session before approval is final.~~ The commissioner shall assign a registration number to each ~~qualified~~ registered rehabilitation ~~consultant and consultant intern~~ provider. ~~The registration number shall be on all reports submitted by the consultant and consultant intern.~~

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

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

Service and fee schedules shall be filed with the commissioner whenever there is a change ~~or~~ and no less than once each calendar year at the time of renewal of registration. This filing shall not constitute an approval or disapproval of the services and fees.

Subp. 3a. **Continuing education.** To retain registration, ~~the~~ a qualified rehabilitation consultant ~~and~~ or qualified rehabilitation consultant intern ~~must~~ shall submit satisfactory documentation of ~~approved~~ current certification required by part 5220.1400, subpart 2. A qualified rehabilitation consultant or qualified rehabilitation consultant intern who is not yet certified shall submit satisfactory documentation of continuing education pertinent to the workers' compensation rehabilitation field equivalent to ~~30~~ 20 contact hours each year at the time registration is renewed. Continuing education includes, but is not limited to, the following:

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

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

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

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

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

Continuing education units must be obtained in the 12-month period immediately preceding the date on which registration renewal forms are due. ~~At least ten contact hours must be approved by the commissioner as directly pertinent to the Minnesota workers' compensation law; remaining contact hours must be approved by the Board of Rehabilitation Certification for continuing certification as a certified rehabilitation counselor or certified insurance rehabilitation specialist or by the Association of Rehabilitation Nurses for continuing certification as a certified rehabilitation registered nurse. Satisfactory documentation shall include original certificates of attendance signed by the institution or organization sponsoring the approved continuing education units. Receipts for tuition are not acceptable as satisfactory documentation of attendance.~~

~~A qualified rehabilitation consultant intern or newly registered vendor shall attend at least one introductory training session provided by rehabilitation and medical services within six months of being registered.~~

~~Rehabilitation and medical services~~ The department of labor and industry's annual rehabilitation provider update sessions are mandatory for all ~~qualified~~ rehabilitation ~~consultants, consultant interns, and all registered vendors~~ 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. ~~**Nonrenewal and suspension**~~ **Inactive status.** If an interval of one year occurs without providing direct case service to workers' compensation recipients or without providing supervision to qualified rehabilitation consultants or qualified rehabilitation consultant interns who provide direct case service to workers' compensation recipients, the registration ~~and approval is automatically suspended~~ will not be renewed upon expiration. A qualified rehabilitation consultant or qualified rehabilitation consultant intern may apply for reinstatement of registration by providing verification to ~~rehabilitation and medical services~~ the commissioner of ~~his or her~~ current certification as required by part 5220.1400, continued attendance at all annual update sessions, and fulfillment of continuing education requirements as provided by ~~parts 5220.0100 to 5220.1900~~ subpart 3a. The applicant must complete an ~~introductory~~

orientation training session before ~~approval~~ acceptance is final. ~~The suspension~~ An order regarding renewal of registration may be appealed to the rehabilitation review panel ~~in accordance with subpart 5, item B~~ according to *Minnesota Statutes*, section 176.102, subdivision 3.

Subp. 5. **~~Revocation~~ Monitoring.** The commissioner ~~may~~ shall review the professional activities and services of ~~registered qualified~~ rehabilitation ~~consultants and vendors~~ providers to determine if they are ~~in compliance~~ reasonable and comply with ~~all rehabilitation services'~~ laws, rules, or orders under *Minnesota Statutes*, chapter 176.

~~A. When the commissioner becomes aware of an alleged violation concerning a qualified rehabilitation consultant or vendor he shall notify in writing the qualified rehabilitation consultant or vendor. The qualified rehabilitation consultant or vendor may then respond by letter or by requesting an administrative conference. If the qualified rehabilitation consultant or vendor does not request an administrative conference, the commissioner shall order that a conference occur unless the complaint is found to be frivolous or without merit. After the administrative conference, the commissioner shall determine if he should discipline the individual or firm based upon applicable rules and statutes and all evidence gathered by the conference. Regardless of the commissioner's decision, he shall issue an order setting forth the reasons for his actions. If discipline is decided on by the commissioner, it shall consist of one or more of the following:~~

~~(1) a written reprimand requesting the individual or firm to cease actions which resulted in the lack of compliance with rehabilitation services' rules;~~

~~(2) a full restitution of improperly charged fees and services by the individual or firm to the insurance carrier;~~

~~(3) an extension of intern status for up to six months beyond part 5220.1400 requirements for application;~~

~~(4) a restriction or prohibition on accepting new cases for up to six months.~~

~~If the commissioner imposes discipline twice in five years upon an individual or firm, the next alleged violation shall be referred to the rehabilitation review panel for review. An individual's discipline shall not be attributed to his employing firm unless the violation for which discipline is imposed also constitutes a violation by the firm and results in discipline to the firm.~~

~~B. An individual or firm may appeal the commissioner's disciplinary action to the rehabilitation review panel by requesting a hearing in writing to the director of rehabilitation services within 30 calendar days of the commissioner's determination.~~

~~C. Upon the commissioner's referral of a third alleged violation, the firm or individual shall be given written notice of the referral and grounds for the review.~~

~~D. The rehabilitation review panel shall follow the hearing procedures set forth in *Minnesota Statutes*, section 176.102, subdivision 3a. The panel shall take one or more of the following actions in reviewing rehabilitation providers alleged violations such as:~~

~~(1) absolving the individual or firm of any alleged rehabilitation rule violation;~~

~~(2) written reprimand;~~

~~(3) demotion of a qualified rehabilitation consultant to qualified rehabilitation consultant intern status;~~

~~(4) probation of a qualified rehabilitation consultant, qualified rehabilitation consultant intern, or vendor;~~

~~(5) revocation of qualified rehabilitation consultant, qualified rehabilitation consultant intern, or registered vendor status.~~

~~E. Procedures to appeal the determination of the review panel shall be as follows:~~

~~(1) The panel's written decision and order shall act as a final order for purposes of implementing discipline. The decision is appealable to the Workers' Compensation Court of Appeals and must be filed in accordance with its rules; and~~

~~(2) Unless otherwise ordered by the panel, an individual or firm whose registration has been revoked must wait at least one year from the effective date of revocation to reapply for a registered status.~~

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

5220.1600 PROCEDURE FOR APPROVAL AS ~~A~~ QUALIFIED REHABILITATION CONSULTANT FIRM.

Subpart 1. **Criteria.** The qualified rehabilitation consultant firm shall be licensed to do business in Minnesota and shall maintain an administrative office within the state. Each office of the qualified rehabilitation consultant firm that provides services to injured

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employees under *Minnesota Statutes*, chapter 176, shall be listed on the application described in subpart 2 and shall employ on the premises at least one qualified rehabilitation consultant or qualified rehabilitation consultant intern. The management staff shall consist of at least one member who is registered as a qualified rehabilitation consultant. Eighty percent of the nonclerical staff shall be ~~eligible,~~ qualified rehabilitation consultants or qualified rehabilitation consultant interns~~, provided that~~; any firm that is not in an office sharing arrangement with another firm may have ~~at least~~ one nonclerical employee who is not a qualified rehabilitation consultant or qualified rehabilitation consultant intern. ~~The firm shall not provide the services designated only as rehabilitation vendor services.~~ Any branch office openings or closings shall be reported to the department immediately.

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

A. a completed ~~and~~, signed, and notarized application ~~(notarized)~~; ~~and~~

B. any data or information attached to support the application; ~~and~~

C. a list of services and fees. This filing shall not constitute an approval or disapproval of the services or fees; and

D. the annual registration application fee of $200 per firm.

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

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

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

Subp. 5. **Revocation.** The revocation process ~~herein~~ shall be conducted ~~the same~~ as ~~that~~ provided in ~~part 5220.1500, subpart 5~~ *Minnesota Statutes*, section 176.102, subdivisions 3 and 3a.

5220.1700 PROCEDURE FOR APPROVAL AS REGISTERED REHABILITATION VENDOR.

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

A. A completed ~~and~~, signed, and notarized application.

B. Any data or information ~~attached~~ to support an application should be attached.

C. A list of services and fees. This filing shall not constitute an approval or disapproval of the services or fees.

D. The annual registration application fee of $200 for each registered rehabilitation vendor.

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

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

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

Subp. 4. **Revocation.** The revocation process herein shall be conducted ~~the same~~ as ~~that~~ provided in ~~part 5220.1500, subpart 5~~ *Minnesota Statutes*, section 176.102, subdivisions 3 and 3a.

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

5220.1800 STANDARDS OF PERFORMANCE.

The standards of conduct described in parts 5220.1801 to ~~5220.1805~~ 5220.1806 establish minimum standards concerning the professional activities and services of ~~qualified~~ rehabilitation ~~consultants and rehabilitation vendors in Minnesota~~ providers. ~~The~~ Performance evaluations ~~by rehabilitation services~~ and monitoring of ~~qualified~~ rehabilitation ~~consultants and vendors~~ providers by the commissioner, and the administration of rehabilitation provider discipline under *Minnesota Statutes*, section 176.102, subdivision 3a, will be based upon these standards, as well as on ~~the~~ adherence to *Minnesota Statutes*, ~~section 176.102 and~~ chapter 176, rules adopted to administer it, and orders of the commissioner or a compensation judge.

5220.1801 PROFESSIONAL CONDUCT.

Subpart 1. **~~Services provided under the plan~~ Prompt provision of service and assessment of progress.** ~~In accord with part 5220.0100, subpart 9,~~ The ~~qualified~~ assigned qualified rehabilitation consultant ~~or vendor~~ and any registered rehabilitation vendor providing services under a plan shall provide prompt and necessary rehabilitation services ~~under a rehabilitation plan~~ to assist a qualified employee to return to suitable gainful employment. The qualified rehabilitation consultant ~~or vendor~~ shall ~~implement only those rehabilitation plans with which the employee, the employer/insurer, and the qualified rehabilitation consultant agree~~ periodically assess progress toward plan objectives on a basis agreed upon among the parties and as required by the commissioner.

Subp. 2. **Assigned qualified rehabilitation consultant.** Only the assigned qualified rehabilitation consultant, or a qualified rehabilitation consultant designated by the assigned qualified rehabilitation consultant to function in an advisory capacity to the assigned consultant, shall be involved at any given time in the employee's rehabilitation ~~effort~~ plan, except as stated in subparts ~~4~~ 6 and ~~5~~ 7. The assigned qualified rehabilitation consultant ~~must submit the rehabilitation plan to rehabilitation services and to the employer within 30 days of referral. The assigned qualified rehabilitation consultant must submit records or reports to the employer or employee as requested by the employer or employee.~~ shall advise the insurer before involving or requesting advisory services from any other qualified rehabilitation consultant. No qualified rehabilitation consultant or qualified rehabilitation consultant firm shall provide rehabilitation services to a case assigned to a qualified rehabilitation consultant employed by another qualified rehabilitation consultant firm. This subpart shall not apply to a qualified rehabilitation consultant acting on behalf of the reinsurance association in a monitoring or advisory capacity on a reinsurance claim file.

Subp. 3. [See repealer.]

Subp. 4. [See repealer.]

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

Subp. 5. **Evaluation of employee by other than assigned qualified rehabilitation consultant.** Except as provided in subpart 7, a rehabilitation provider is prohibited from performing an independent evaluation of an employee at any time unless a hearing has been scheduled before a compensation judge. If a hearing has been scheduled before a compensation judge ~~or a judicial body~~ at the office of administrative hearings, a qualified rehabilitation consultant who is not the ~~approved~~ assigned qualified rehabilitation consultant may perform an evaluation of the employee at the request of one of the parties solely for the purpose of the proceeding. ~~Rehabilitation services shall be notified in writing of the qualified rehabilitation consultant requested to do the evaluation. A copy of the evaluation report, if developed, shall be sent to rehabilitation services.~~

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

Subp. 7. **Referrals.** ~~A~~ An assigned qualified rehabilitation consultant ~~or vendor~~ may make recommendations for referrals to appropriate resources.

Subp. 8. **Separate roles and functions.** The roles and functions of a claims agent and a ~~qualified~~ rehabilitation ~~consultant or vendor~~ provider are separate. A qualified rehabilitation consultant ~~or~~, 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 ~~its~~ rules adopted thereunder. ~~Claims adjustment and claims investigation activities such as unilaterally providing for an adverse medical, vocational, or rehabilitation examination except as provided for in subpart 5, aiding insurers in determining monetary workers' compensation benefits, or determining the reasonableness of medical or rehabilitation service are prohibited for a rehabilitation provider.~~ A qualified rehabilitation consultant, qualified rehabilitation consultant intern, or registered rehabilitation vendor shall not act as an advocate for or advise any party about a claims or entitlement issue. Qualified rehabilitation consultants, qualified rehabilitation consultant interns, and registered rehabilitation vendors shall not engage in claims adjustment, claims investigation, or related activities. Activities unrelated to rehabilitation services include, but are not limited to, making recommendations about the determination of workers' compensation monetary benefits, the reasonableness of medical charges, or arranging for an independent medical examination and are prohibited. This ~~subpart~~ part shall not prohibit a qualified rehabilitation consultant acting on behalf of the reinsurance association from consulting with the ~~primary~~ assigned qualified rehabilitation consultant regarding the rehabilitation plan.

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

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

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

C. Conviction of crimes against persons. For purposes of this chapter, a crime against a person means a violation of any of the following sections: *Minnesota Statutes*, section 609.185, 609.19, 609.195, 609.20, 609.205, 609.21, 609.215, 609.221, 609.222,

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609.223, 609.224, 609.23, 609.231, 609.235, 609.24, 609.245, 609.25, 609.255, 609.265, 609.26, 609.342, 609.343, 609.344, 609.345, 609.365, 609.498, 609.50, 609.561, 609.562, or 609.595.

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

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

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

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

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

I. Engaging in fraudulent billing practice.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

A rehabilitation provider shall understand the areas of competence of other professional persons with whom the rehabilitation client establishes relationships, and act with due regard for the needs, privileged nature, special competencies, and obligations of colleagues and other professionals and not disparage their qualifications.

Subp. 11. **Impaired objectivity.** A rehabilitation provider shall not use alcoholic beverages, medication, or controlled substances in a manner that impairs the provider's ability to perform the rehabilitation services.

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

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

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

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

5220.1802 COMMUNICATIONS.

Subpart 1. **Legibility and content of required reports.** All required rehabilitation reports ~~submitted~~ and required progress records prepared by a ~~qualified~~ rehabilitation ~~consultant or vendor~~ provider shall be legible and show the employee's name, ~~social security~~ department file number, and date of injury~~, street address, county, zip code of residence, and legal representative, if any~~.

Subp. 2. **Submission of reports.** All required rehabilitation reports shall be submitted ~~in accordance with~~ on department forms ~~as~~ prescribed by the commissioner ~~under *Minnesota Statutes*, section 176.83, clause (j)~~.

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

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

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

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

Subp. 5. **Data privacy.** A ~~qualified~~ rehabilitation ~~consultant or vendor~~ provider must comply with *Minnesota Statutes*, chapters 175 and 176, and all other applicable data privacy ~~acts~~ laws.

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

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

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

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

Subp. 6. [See repealer.]

Subp. 7. [See repealer.]

Subp. 8. [See repealer.]

Subp. 9. [See repealer.]

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

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

5220.1803 RESPONSIBILITIES.

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

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

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

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

Subp. 2. **Knowledge of laws and rules.** A ~~qualified~~ rehabilitation ~~consultant or vendor~~ provider shall be knowledgeable and informed regarding portions of the workers' compensation law and rules that directly relate to the provision of rehabilitation services. ~~If a qualified rehabilitation consultant or vendor communicates~~ Communication of inaccurate information regarding workers' compensation ~~not directly related to rehabilitation services, the rehabilitation provider~~ is ~~subject to~~ grounds for discipline.

Subp. 3. [See repealer.]

Subp. 4. [See repealer.]

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

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

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

The assigned qualified rehabilitation consultant shall maintain individual employee files containing required rehabilitation reports and required progress records about an employee's case and shall provide copies to the commissioner, a compensation judge, or the parties at their request or as required by rule. Files must be maintained by the qualified rehabilitation consultant firm for five years from the date of file closure.

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

5220.1805 BUSINESS PRACTICES.

All ~~registered qualified~~ rehabilitation ~~consultants, qualified rehabilitation consultant interns, and vendors~~ providers shall abide by the following rules concerning a provider's business practices:

A. Rehabilitation providers shall adhere to all applicable federal, state, and local laws ~~regulating business practices~~.

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

C. ~~If a fellow rehabilitation provider violates parts 5220.0100 to 5220.1910, a rehabilitation provider having actual personal knowledge about the violation must direct the information to rehabilitation services.~~

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

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

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

Rehabilitation providers shall fully disclose to a payer the basis for computing and prorating a fee so that the payer may determine

the reasonableness of the fee charged. When more than one employee is served during the same time period, the rehabilitation provider shall prorate the fee.

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

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

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

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

5220.1806 DISCIPLINARY ACTION.

Subpart 1. **Discipline.** A rehabilitation provider is subject to disciplinary action, including a fine as provided by statute, suspension, and revocation of registration. Discipline shall be based on substantiated complaints about activities or or that violate laws, rules, or orders under *Minnesota Statutes,* chapter 176.

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

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

Subp. 3. **Review and investigation.** The commissioner shall review all complaints to determine if the complaint alleges violation of workers' compensation laws, rules, or orders. The commissioner may dismiss complaints or refer a matter outside the department's jurisdiction to a forum or agency that has jurisdiction. The complaining party shall be notified of a dismissal or referral. The commissioner may elect to resolve a complaint through the informal instruction of a provider.

If an investigation indicates a violation of the workers' compensation act, rules, or orders, the commissioner may begin a contested case for disciplinary action under *Minnesota Statutes,* section 176.102, subdivision 3a, and the Minnesota Administrative Procedure Act. The report of the administrative law judge shall be made to the rehabilitation review panel which shall make the determination on disciplinary action. The commissioner shall notify the complaining party of the disposition of the case.

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

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

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

5220.1900 REHABILITATION ~~SERVICES AND~~ SERVICE FEES AND COSTS.

Subpart 1. **~~Fee~~ Monitoring.** ~~Rehabilitation services has the responsibility and jurisdiction under *Minnesota Statutes,* section 176.102, subdivisions 2 and 9 to monitor and determine reasonable rehabilitation costs, the necessity of services provided, and to resolve any disputes that may arise between the parties according to part 5220.1300.~~ The ~~employer/insurer~~ insurer has the primary

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responsibility for monitoring and paying the cost of necessary rehabilitation services provided. ~~Either the employer/insurer or a rehabilitation provider may request rehabilitation services to make a determination of reasonable costs and necessity of services.~~

The commissioner shall monitor rehabilitation services and costs and shall also conduct periodic audits of costs, services, case outcomes, and compliance with reporting and record keeping requirements. The ~~employer/insurer~~ insurer and the rehabilitation provider shall ~~provide rehabilitation services~~ furnish the commissioner with itemized listings of case services and costs upon request. ~~Rehabilitation services must~~ The commissioner may require uniform billing on a prescribed form and may contact ~~the~~ parties to discuss ~~costs and~~ services ~~deemed questionable by rehabilitation services or one of the parties~~ and costs. ~~Rehabilitation services may order an administrative conference to discuss services and fee disputes, whether initiated by one of the parties or by rehabilitation services.~~ Invoices and itemized billings for rehabilitation services shall be provided to the commissioner upon request.

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

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

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

C. ~~the rehabilitation providers' fee schedules on file with rehabilitation services and other fee schedules of providers on file with rehabilitation services;~~

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

~~E.~~ D. an evaluation of whether services rendered were expressly ~~authorized~~ called for by ~~either~~ the ~~employer, insurer, or~~ employee's rehabilitation ~~services;~~ plan.

~~F. an evaluation of whether *Minnesota Statutes*, chapter 176, and rehabilitation services' parts 5220.0100 to 5220.1910 have been followed by the provider~~.

~~No registered qualified rehabilitation consultant, qualified rehabilitation consultant intern, or registered vendor shall attempt to collect reimbursement for an unnecessary or unreasonable procedure, service, or cost from any other source, including the employee, another insurer, the special compensation fund, or any government program.~~

Subp. 3. [See repealer.]

Subp. 4. [See repealer.]

Subp. 5. [See repealer.]

Subp. 6. [See repealer.]

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

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

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

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

D. unanswered attempted phone calls;

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

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

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

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

I. time spent reviewing the file and initial contact to establish rapport with interested parties by an assigned qualified rehabil-

itation consultant or registered rehabilitation vendor when a case has been transferred from another qualified rehabilitation consultant or vendor within the same rehabilitation firm;

J. time spent by a supervisor, another qualified rehabilitation consultant, or support staff in addition to the assigned qualified rehabilitation consultant;

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

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

M. services that duplicate services already provided;

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

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

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

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

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

5220.1910 APPROVED CLAIMS HANDLER.

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

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

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

C. the person is not a rehabilitation provider as defined in part 5220.0100, subpart ~~9a~~ 28.

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

5220.2650 RETURN TO WORK CONFERENCES.

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

Subp. 2. **Scope.** This part applies when an employee has received temporary total or temporary partial compensation for a total of at least 45 work days whether continuously or intermittently; and no rehabilitation plan in effect at the time the 14-day check is due has been approved under part ~~5220.0400~~ 5220.0410, subpart ~~2~~ 6. In addition, a return to work conference is also available when properly requested by the employee under subpart 4 and *Minnesota Statutes*, section 176.2421 because of an inability to work at least 14 work days upon the employee's return to work.

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

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

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

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subdivision 6a, and ~~part 5220.0300~~ parts 5220.0130, subpart 2 and 5220.0410, subpart 2, the division may assess the penalty provided in *Minnesota Statutes*, section 176.221, subdivision 3a.

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

EFFECTIVE DATE. *Minnesota Rules*, parts 5220.0105, 5220.0110, 5220.0120, 5220.0130, 5220.0410, 5220.0510, 5220.0710, 5220.0750, 5220.0850, 5220.0950, 5220.1010, 5220.1250, 5220.1806, and the amendments to parts 5220.0100, 5220.1100, 5220.1200, 5220.1400, 5220.1500, 5220.1600, 5220.1700, 5220.1800, 5220.1801, 5220.1802, 5220.1803, 5220.1805, 5220.1900, 5220.1910, 5220.2650, and 5220.2780 are effective January 2, 1992.

REPEALER. *Minnesota Rules*, parts 5220.0100, subparts 6, 7, 8, 10a, 11, 14, and 15; 5220.0210; 5220.0300; 5220.0400; 5220.0500; 5220.0600; 5220.0700; 5220.0800; 5220.0900; 5220.1000; 5220.1300; 5220.1801, subparts 3 and 4; 5220.1802, subparts 6, 7, 8, and 9; 5220.1803, subparts 3 and 4; and 5220.1900, subparts 3, 4, 5, and 6, are repealed.

Higher Education Coordinating Board

Proposed Permanent Rules Relating to Postsecondary Financial Assistance

Notice of Intent to Adopt Rules Without a Public Hearing

NOTICE IS HEREBY GIVEN that the Minnesota Higher Education Coordinating Board intends to adopt the above-entitled rule without a public hearing following the procedures set forth in the Administrative Procedure Act for adopting rules without a public hearing in *Minnesota Statutes* 14.22 to 14.28 (1990). The Board's authority to adopt the rule is set forth in *Minnesota Statutes* 136A.04, Subd. 1(9) and 136A.16 (1990).

All persons have 30 days in which to submit comments in support of or in opposition to the proposed rules or any part or subpart of the rules. That date would end on November 6, 1991 at 4:30 p.m. Comment is encouraged. Each comment should identify the portion of the proposed rules addressed, the reason for the comment, and any change proposed.

Any person may make a written request for a public hearing on the rules within the comment period. If 25 or more persons submit a written request for a public hearing within the 30-day comment period, a public hearing will be held unless a sufficient number withdraw their requests in writing. Any person requesting a public hearing should state his or her name and address, and is encouraged to identify the portion of the proposed rules addressed, the reason for the request, and any change proposed. If a public hearing is required, the Board will proceed pursuant to *Minnesota Statutes* 14.131 to 14.20 (1990).

Comments or written requests for a public hearing must be submitted to:

Mary Lou Dresbach
Minnesota Higher Education Coordinating Board
Capitol Square Building, Suite 400
550 Cedar Street
St. Paul, MN 55101

The proposed rule may be modified if the modifications are supported by data and views submitted to the Board and do not result in a substantial change in the proposed rule as noticed.

A copy of the proposed rule is attached to this notice.

A **STATEMENT OF NEED AND REASONABLENESS** that describes the need for and reasonableness of each provision of the proposed rules and identifies the data and information relied upon to support the proposed rule has been prepared and is available from Mary Lou Dresbach upon request.

If no hearing is required, upon adoption of the rule, the rule and the required supporting documents will be submitted to the Attorney General for review as to legality and form to the extent form relates to legality. Any person may request notification of the date of submission to the Attorney General. Persons who wish to be advised of the submission of this material to the Attorney General, or who wish to receive a copy of the rule, must submit the written request to Mary Lou Dresbach.

Dated: 18 September 1991

David R. Powers
Executive Director

Rules as Proposed

4830.0100 DEFINITIONS FOR HIGHER EDUCATION PROGRAMS.

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

Subp. 1a. **Academic year.** "Academic year" means a period of time in which a full-time student is expected to complete:

A. the equivalent of at least two semesters, two trimesters, or three quarters at an institution that measures academic progress in credit hours and uses a semester, trimester, or quarter system;

B. before July 1, 1992, at least 24 semester hours or 36 quarter hours at an institution that measures academic progress in credit hours but does not use a semester, trimester, or quarter system;

C. after June 30, 1992, at least 30 semester hours or 45 quarter hours at an institution that measures academic progress in credit hours but does not use a semester, trimester, or quarter system; or

D. at least 900 clock hours at an institution that measures academic progress in clock hours.

[For text of subp 2, see M.R.]

Subp. 2a. **Certificate program.** After June 30, 1992, "certificate program" means a program that is:

A. offered by an eligible school as defined in part 4830.0300, subpart 1;

B. at least 12 quarter credits or the equivalent, or 300 clock hours for clock hour schools; and

C. at least ten weeks long.

[For text of subp 3, see M.R.]

Subp. 3a. **Designated rural area.** "Designated rural area" means the area outside the cities of Duluth, Mankato, Rochester, St. Cloud, and outside the counties of Anoka, Carver, Dakota, Hennepin, Ramsey, Scott, and Washington.

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

Subp. 5. **Eligible student.** "Eligible student" means a student who meets, at a minimum, all of the following requirements:

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

E. is in good standing and making satisfactory academic progress, as ~~determined by the school~~ defined in *Minnesota Statutes*, section 136A.101, subdivision 10;

[For text of items F and G, see M.R.]

[For text of subps 6 to 8, see M.R.]

Subp. 8a. **Full-time.** Before July 1, 1992, "full-time" means enrollment in a minimum of 12 credits per quarter or semester, or the equivalent. After June 30, 1992, full-time means enrollment in a minimum of 15 credits per quarter or semester, or the equivalent.

[For text of subp 9, see M.R.]

Subp. 10. **Minnesota resident.** "Minnesota resident" means:

[For text of items A and B, see M.R.]

C. a student who graduated from a Minnesota high school, unless the student is a resident of a bordering state while attending a Minnesota high school; or

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

[For text of subps 10a to 12, see M.R.]

Higher Education Coordinating Board

Proposed Permanent Rules Relating to Postsecondary Financial Assistance

Notice of Intent to Adopt Rules Without a Public Hearing

NOTICE IS HEREBY GIVEN that the Minnesota Higher Education Coordinating Board intends to adopt the above-entitled rule without a public hearing following the procedures set forth in the Administrative Procedure Act for adopting rules without a public hearing in *Minnesota Statutes* 14.22 to 14.28 (1990). The Board's authority to adopt the rule is set forth in *Minnesota Statutes* 136A.04, Subd. 1(9) and 136A.16 (1990).

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.

All persons have 30 days in which to submit comments in support of or in opposition to the proposed rules or any part or subpart of the rules. That date would end on November 6, 1991 at 4:30 p.m. Comment is encouraged. Each comment should identify the portion of the proposed rules addressed, the reason for the comment, and any change proposed.

Any person may make a written request for a public hearing on the rules within the comment period. If 25 or more persons submit a written request for a public hearing within the 30-day comment period, a public hearing will be held unless a sufficient number withdraw their requests in writing. Any person requesting a public hearing should state his or her name and address, and is encouraged to identify the portion of the proposed rules addressed, the reason for the request, and any change proposed. If a public hearing is required, the Board will proceed pursuant to *Minnesota Statutes* 14.131 to 14.20 (1990).

Comments or written requests for a public hearing must be submitted to:

Mary Lou Dresbach
Minnesota Higher Education Coordinating Board
Capitol Square Building, Suite 400
550 Cedar Street
St. Paul, MN 55101

The proposed rule may be modified if the modifications are supported by data and views submitted to the Board and do not result in a substantial change in the proposed rule as noticed.

A copy of the proposed rule is attached to this notice.

A **STATEMENT OF NEED AND REASONABLENESS** that describes the need for and reasonableness of each provision of the proposed rules and identifies the data and information relied upon to support the proposed rule has been prepared and is available from Mary Lou Dresbach upon request.

If no hearing is required, upon adoption of the rule, the rule and the required supporting documents will be submitted to the Attorney General for review as to legality and form to the extent form relates to legality. Any person may request notification of the date of submission to the Attorney General. Persons who wish to be advised of the submission of this material to the Attorney General, or who wish to receive a copy of the rule, must submit the written request to Mary Lou Dresbach.

Dated: 18 September 1991

David R. Powers
Executive Director

Rules as Proposed

4800.8100 DEFINITIONS.

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

Subp. 2. [See repealer.]

Subp. 3. **Eligible institution.** "Eligible institution" shall be any public or private institution of higher education in Minnesota which is eligible for the state ~~grant in aid~~ grant program as defined in *Minnesota Statutes*, section 136A.101, subdivision 4 and part ~~4800.0200~~ 4830.0300 and that has foreign students enrolled.

[For text of subps 4 to 8, see M.R.]

Subp. 9. [See repealer.]

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

Subp. 12. **Total cost of education.** "Total cost of education" shall be defined as the institutional budget established for the state ~~grant in aid~~ grant program adjusted to include out-of-state tuition fee.

[For text of subp 13, see M.R.]

Subp. 14. [See repealer.]

4800.8300 EXECUTIVE DIRECTOR.

The executive director is hereby delegated necessary authority and responsibility for administration of the program in accordance with these rules, state law, and applicable federal laws and regulations, including issuing public information, ~~designing related forms, prescribing application procedures, prescribing procedures and terms for collection and repayment of loans, prescribing terms and conditions for agreements with eligible institutions, approving and disapproving applications,~~ and establishing such policies and practices as the executive director may deem necessary for effective administration in accordance with the purposes and requirements of the Minnesota foreign student assistance program.

4800.8400 GRANTING RESIDENT STATUS.

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

Subp. 2. **Scholarship and ~~grant in aid~~ grant recipients.** Eligible institutions shall have the authority to grant resident status to any foreign student who is a recipient of scholarship or grant funds contributed by Minnesota individuals, organizations, or corporations in sufficient amounts to cover such resident tuition fees provided that the institution documents that the scholarship or grant funds did not originate from the student or any member of the student's family.

4830.0400 APPLICATION DATES AND STUDENT ELIGIBILITY.

[For text of subps 1 and 2a, see M.R.]

Subp. 4. **Eligibility for initial grant.** To be eligible for an initial grant a student must be an eligible student, as defined in part 4830.0100, subpart 5. ~~except E,~~ and:

A. demonstrate financial need;

B. if under 17 years old, hold a high school diploma or the equivalent;

C. ~~be enrolled in a program that is at least ten weeks long, and involves at least 12 academic credits or 300 clock hours; and~~ pursuing a program or course of study that applies to a degree, diploma, or certificate;

D. must not have received a previous Minnesota state grant; and

E. is not more than 30 days in arrears for any child support payments owed to a public agency responsible for child support enforcement or, if the student is more than 30 days in arrears, is complying with a payment plan for arrearages.

Subp. 5. **Renewal awards.** A grant is renewable for a maximum of six semesters, nine quarters, or the equivalent, but must not continue after the first of the following occurrences:

A. the recipient has obtained a baccalaureate degree; or

B. the recipient has been enrolled on a full-time basis for eight semesters, 12 quarters, or the equivalent. To be eligible to renew a grant a student must apply each year and continue to meet the requirements for an initial grant, except for subpart 4, item D. A student must have made satisfactory academic progress as ~~determined by the school~~ defined in *Minnesota Statutes*, section 136A.101, subdivision 10.

Subp. 5a. **Child support arrearages.** A grant is not renewable if the recipient is more than 30 days in arrears for any child support payment owed to a public agency responsible for child support enforcement and not subject to a payment plan for arrearages or not in compliance with a payment plan for the arrearages.

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

4830.2300 WORK-STUDY GRANTS.

A school shall determine if a student is eligible for a work-study grant. To be eligible a student must meet the requirements of part 4830.0100, subpart 5, items B ~~to~~, C, D, and F. A student employed during periods of nonenrollment must sign a statement of intent to enroll full-time the next term or provide proof of registration for the next term.

4830.2400 EMPLOYMENT TERMS; AMOUNT OF GRANTS.

[For text of subps 1 and 2, see M.R.]

Subp. 3. **Hourly wages.** Not less than ~~20~~ 30 percent of the amount earned by a student shall be paid by the employer, with the actual percentage determined by the school in consultation with the employer. A student shall be paid for hours actually worked at an hourly rate agreed to by the employer and the student, with the approval of the school. However, the student must be paid at least the state minimum wage, if the federal minimum wage is not applicable. Student earnings must be paid according to federal regulations governing payment of student earnings under the federal work-study program.

4830.8550 AWARDS.

The amount of the grant award is a percentage of the sum of the student's Pell grant and state grant for which the student is currently eligible. The percentage must be determined annually by the executive director based upon the money available to the program from state appropriations and the estimated financial need of the student. The minimum award amount is $100.

REPEALER. *Minnesota Rules*, parts 4800.8100, subparts 2, 9, and 14; 4800.8500; 4800.8600; 4800.8700; and 4800.8800, are repealed.

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Pollution Control Agency

Proposed Permanent Rules Relating to Land Disposal Restrictions for Hazardous Wastes

Notice of Intent to Adopt Rules Without a Public Hearing

NOTICE IS HEREBY GIVEN that the Minnesota Pollution Control Agency (MPCA) intends to adopt the above-entitled rule amendments without a public hearing following the procedures set forth in the Administrative Procedure Act for adopting rule amendments without a public hearing in *Minnesota Statutes* §§ 14.22 to 14.28 (1990). The MPCA's authority to adopt the rule amendments is set forth in *Minnesota Statutes* §§ 116.07, subd. 4 and 116.37 (1990).

All persons have until 4:30 p.m. on November 7, 1991, to submit comments in support of or in opposition to the proposed rule amendments or any part or subpart of the rules. Comment is encouraged. Each comment should identify the portion of the proposed rule amendments addressed, the reason for the comment, and any change proposed.

Any person may make a written request for a public hearing on the proposed rule amendments within the comment period. If 25 or more persons submit a written request for a public hearing within the comment period, a public hearing will be held unless a sufficient number withdraw their requests in writing. Any person requesting a public hearing should state his or her name and address, and is encouraged to identify the portion of the proposed rule amendments addressed, the reason for the request, and any change proposed. If a public hearing is required, the MPCA will proceed pursuant to *Minnesota Statutes* §§ 14.131 to 14.20 (1990).

Comments or written requests for a public hearing must be submitted to: Nathan Brooks Cooley, Hazardous Waste Division, Minnesota Pollution Control Agency, 520 Lafayette Road, St. Paul, MN 55155-3898. Telephone 612/297-7544.

The proposed rule amendments may be modified if the modifications are supported by data and views submitted to the MPCA and do not result in a substantial change in the proposed rule amendments as noticed.

The proposed rule amendments restricting the land disposal of untreated hazardous waste, if adopted, will incorporate several sets of federal regulations promulgated by the U.S. Environmental Protection Agency (EPA) between August 17, 1988 and January 31, 1991. The MPCA incorporated related land disposal regulations in a previous rulemaking. This rulemaking incorporates regulations restricting the land disposal of untreated hazardous wastes not previously addressed.

The proposed rule amendments are published below. The MPCA has also documented the need for and the reasonableness of the proposed rule amendments. One free copy of the rules and/or the Statement of Need and Reasonableness is available upon request at the address and telephone number stated above.

You are hereby advised, pursuant to *Minnesota Statutes* § 14.115 (1990), "Small business considerations in rulemakings," that, except for one minor clarification, all of the proposed rule amendments were in effect in Minnesota under federal authority on their federal effective dates in lieu of this rulemaking. This rulemaking shifts primary enforcement authority for existing regulations from the EPA to the MPCA. This rulemaking has no substantive effect on any business subject to the amendments, including small businesses, since the regulations are already in effect.

If no hearing is required, upon adoption of the rule amendments, the rule amendments and required supporting documents will be submitted to the Attorney General for review as to legality and form to the extent form relates to legality. Any person may request notification of the date of submission to the Attorney General. Persons who wish to be advised of the submission of this material to the Attorney General, or who wish to receive a copy of the rules, must submit the written request to Nathan Cooley at the above address.

Charles W. Williams
Commissioner

Rules as Proposed

7001.0520 PERMIT REQUIREMENTS.

[For text of subps 1 to 6, see M.R.]

Subp. 7. **Permit denial.** The commissioner may deny the permit application, whether or not the application is complete, either in its entirety or as to the active life of a hazardous waste management facility or unit only. The denial does not affect the requirement to obtain a postclosure permit under this part.

7001.0650 INTERIM STATUS.

[For text of subps 1 to 4, see M.R.]

Subp. 5. **Changes during interim status.** Except as provided in item F, an owner or operator who has interim status may conduct the ~~following~~ activities ~~as~~ prescribed: in items A to F.

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

B. The owner or operator may increase the design capacity of the facility if, before implementation of the increase, the owner or operator submits a revised Part A of the permit application and an explanation of the need for the change, and if the commissioner approves the increase in writing. The commissioner shall approve the change if the commissioner finds that:

(1) there is a lack of available treatment, storage, or disposal capacity at other permitted hazardous waste facilities; or

(2) the change is necessary to comply with a federal, state, or local requirement.

[For text of items C and D, see M.R.]

E. Changes may be made according to an interim status corrective action order issued by EPA under United States Code, title 42, section 3008(h), or other federal authority, by the agency, or by a court in a judicial action brought by EPA or the agency. Changes under this item are limited to the treatment, storage, or disposal of solid waste from releases that originate within the boundary of the facility.

F. Except as specifically allowed under this item, changes listed under items A to E may not be made if they amount to reconstruction of the hazardous waste management facility. Reconstruction occurs when the capital investment in the changes to the facility exceeds 50 percent of the capital cost of a comparable entirely new hazardous waste management facility. If all other requirements are met, the following changes may be made even if they amount to reconstruction:

(1) changes made only for complying with parts 7045.0528, subpart 4, and 7045.0628, subpart 4, for tanks and ancillary equipment;

(2) if necessary to comply with federal, state, or local requirements, changes to an existing unit, changes solely involving tanks or containers, or addition of replacement surface impoundments that satisfy the standards of RCRA section 3004(o);

(3) changes that are necessary to allow owners or operators to continue handling newly listed or identified hazardous wastes that have been treated, stored, or disposed of at the facility before the effective date of the rule establishing the new listing or identification;

(4) changes during closure of a facility or of a unit within a facility made according to an approved closure plan;

(5) changes necessary to comply with an interim status corrective action order issued by EPA under RCRA section 3008(h) or other federal authority, by an authorized state under comparable state authority, or by a court in judicial proceeding brought by EPA or an authorized state, provided that the changes are limited to the treatment, storage, or disposal of solid waste from releases that originate within the boundary of the facility; and

(6) changes to treat or store, in tanks or containers, hazardous wastes subject to land disposal restrictions imposed by parts 7045.1300 to 7045.1380, provided that the changes are made solely for the purpose of complying with parts 7045.1300 to 7045.1380 or RCRA section 3004.

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

Subp. 7. **Termination of interim status.** Interim status terminates automatically when the agency has taken final administrative action on the permit application or when terminated by Code of Federal Regulations, title 40, section 270.73(c) to ~~(f)~~ (g). The following constitute justification for the commissioner to commence proceedings to terminate interim status:

[For text of items A and B, see M.R.]

7045.0020 DEFINITIONS.

[For text of subps 1 to 45, see M.R.]

Subp. 45a. **Inorganic solid debris.** "Inorganic solid debris" means nonfriable inorganic solids contaminated with D004-D011 hazardous wastes that are incapable of passing through a 9.5 millimeter standard sieve; that require cutting or crushing and grinding in mechanical sizing equipment prior to stabilization; and that are limited to the following inorganic or metal materials:

A. metal slags, either dross or scoria;

B. glassified slag;

C. glass;

D. concrete, excluding cementitious or pozzolanic stabilized hazardous wastes;

E. masonry and refractory bricks;

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F. metal cans, containers, drums, or tanks;

G. metal nuts, bolts, pipes, pumps, valves; appliances, or industrial equipment; and

H. scrap metal as defined in subpart 79a.

Subp. ~~45a~~ 45b. **Installation inspector.** "Installation inspector" means a person who, by ~~reason of his~~ knowledge of the physical sciences and the principles of engineering, acquired by a professional education and related practical experience, is qualified to supervise the installation of tank systems.

[For text of subps 46 to 59a, see M.R.]

Subp. 59b. **Nonwastewater.** "Nonwastewater" means hazardous waste that is not wastewater as defined in subpart 102c.

Subp. ~~59b~~ 59c. **Off-specification used oil.** "Off-specification used oil" means a used oil fuel that exceeds any of the specification levels for the following constituents or has a flash point less than 100 degrees Fahrenheit.

Constituent	Allowable level
Arsenic, total	5 parts per million maximum
Cadmium, total	2 parts per million maximum
Chromium, total	10 parts per million maximum
Lead, total	100 parts per million maximum
Total Halogens	4,000 parts per million maximum

Subp. ~~59c~~ 59d. **Onground tank.** "Onground tank" means a device meeting the definition of "tank" in subpart 90 and that is situated in such a way that the bottom of the tank is on the same level as the adjacent surrounding surface so that the external tank bottom cannot be visually inspected.

[For text of subps 60 to 73, see M.R.]

Subp. 73a. **RCRA or Resource Conservation and Recovery Act.** "RCRA" or "Resource Conservation and Recovery Act" means the Resource Conservation and Recovery Act.

Subp. ~~73a.~~ 73b. **Receiving country.** "Receiving country" means a foreign country to which a hazardous waste is sent for the purpose of treatment, storage, or disposal, except short-term storage incidental to transportation.

Subp. ~~73b.~~ 73c. **Reclamation.** "Reclamation" means the processing or regeneration of a waste to recover a usable product. Examples are the recovery of lead values from spent batteries and regeneration of spent solvents.

Subp. ~~73c.~~ 73d. **Recycle.** "Recycle" means the reclamation, reuse, or use of a hazardous waste.

[For text of subps 74 to 102b, see M.R.]

Subp. 102c. **Wastewater.** "Wastewater" means waste that contains less than one percent by weight total organic carbon (TOC) and less than one percent by weight total suspended solids (TSS), with the following exceptions:

A. F001, F002, F003, F004, or F005 wastewaters are solvent-water mixtures that contain less than one percent by weight total organic carbon or less than one percent by weight total F001, F002, F003, F004, or F005 solvent constituents listed in part 7045.1355;

B. K011, K013, or K014 wastewaters that contain less than five percent by weight total organic carbon and less than one percent by weight total suspended solids as generated; or

C. K0103 or K0104 wastewaters that contain less than four percent by weight total organic carbon and less than one percent by weight total suspended solids.

[For text of subps 103 to 109, see M.R.]

7045.0075 PETITIONS.

[For text of subps 1 to 8, see M.R.]

Subp. 9. **Petitions to allow land disposal of a prohibited waste.** A person seeking an exemption from a prohibition for the disposal of a restricted hazardous waste in a particular unit or units must submit a petition to the agency and to the EPA demonstrating, to a reasonable degree of certainty, that there will be no migration of hazardous constituents from the disposal unit or injection zone for as long as the wastes remain hazardous. The demonstration to the EPA must include the provisions in Code of Federal Regulations, title 40, section 268.6. The demonstration to the agency must include an identification of the specific waste and the specific unit for which the demonstration will be made, a waste analysis to describe fully the chemical and physical characteristics of the subject waste, and a comprehensive characterization of the disposal unit site including an analysis of background air, soil, and water quality. The demonstration must also include a monitoring plan that detects migration at the earliest practicable time, and sufficient information to assure the commissioner that the owner or operator of a land disposal unit receiving restricted wastes will comply with other applicable federal, state, and local laws. The person seeking the exemption must also comply with items A to L.

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

B. Each petition referred to in this subpart must include information described in subitems (1) to (5):

(1) A monitoring plan that describes the monitoring program installed at and around the unit to verify continued compliance with the conditions of the variance. This monitoring plan must provide information on the monitoring of the unit and the environment around the unit. The following specific information must be included in the plan:

(a) the media monitored in the cases where monitoring of the environment around the unit is required;

(b) the type of monitoring conducted at the unit, in the cases where monitoring of the unit is required;

(c) the location of the monitoring stations;

(d) the frequency of monitoring at each station;

(e) the specific hazardous constituents to be monitored;

(f) the implementation schedule for the monitoring program;

(g) the equipment used at the monitoring stations;

(h) the sampling and analytical techniques employed; and

(i) the data recording and reporting procedures.

(2) Where applicable, the monitoring program must be in place for a period of time specified by the commissioner, as part of the commissioner's approval of the petition, before receipt of prohibited waste at the unit.

(3) The monitoring data collected according to the monitoring plan must be sent to the commissioner according to a format and schedule specified and approved in the monitoring plan.

(4) A copy of the monitoring data collected under the monitoring plan must be kept on-site at the facility in the operating record.

(5) The monitoring program in subitem (1) must meet the following criteria:

(a) all sampling, testing, and analytical data must be approved by the commissioner and must provide data that is accurate and reproducible;

(b) all estimation and monitoring techniques must be approved by the commissioner; and

(c) a quality assurance and quality control plan addressing all aspects of the monitoring program must be provided to and approved by the commissioner.

C. After a petition has been approved, the owner or operator must report any changes in conditions at the unit and the environment around the unit that significantly depart from the conditions described in the variance and affect the potential for migration of hazardous constituents from the units as follows:

(1) If the owner or operator plans to make changes to the unit design, construction, or operation, the change must be proposed, in writing, and the owner or operator must submit a demonstration to the commissioner at least 30 days before making the change. The commissioner shall determine whether the proposed change invalidates the terms of the petition and will determine the appropriate response. Any change must be approved by the commissioner before being made.

(2) If the owner or operator discovers that a condition at the site which was modeled or predicted in the petition does not occur as predicted, this change must be reported, in writing, to the commissioner within ten days of discovering the change. The commissioner shall determine whether the reported change from the terms of the petition requires further action, which may include termination of waste acceptance and revocation of the petition, petition modifications, or other responses.

D. If the owner or operator determines that there is migration of hazardous constituents from the unit, the owner or operator must immediately suspend receipt of prohibited waste at the unit and notify the commissioner in writing within ten days of the determination that a release has occurred. Within 60 days of receiving the notification, the commissioner shall determine whether the owner or operator can continue to receive prohibited waste in the unit and whether the variance is to be revoked. The commissioner shall also determine whether further examination of any migration is warranted under applicable provisions of parts 7045.0450 to 7045.0642.

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~~B.~~ E. Each petition must include the following statement signed by the petitioner or an authorized representative:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted in this petition and all attached documents, and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment."

~~C.~~ F. After receiving a petition, the commissioner may request additional information that reasonably may be required to evaluate the demonstration.

~~D.~~ G. If approved, the petition will apply to land disposal of the specific restricted waste at the individual disposal unit described in the demonstration and will not apply to any other restricted waste at that disposal unit, or to that specific restricted waste at any other disposal unit.

~~E.~~ H. The commissioner will give public notice in the *State Register* of the intent to approve or deny a petition and provide an opportunity for public comment. The final decision on a petition will be published in the *State Register.*

~~F.~~ I. The term of a petition granted under this part must be no longer than the term of the RCRA permit if the disposal unit is operating under an RCRA permit, or up to a maximum of five years from the date of approval provided under item G if the unit is operating under interim status. In either case, the term of the granted petition expires upon the termination or denial of an RCRA permit, or upon the termination of interim status or when the volume limit of waste to be land disposed during the term of petition is reached.

~~G.~~ J. Before the agency's decision, the applicant must comply with all restrictions on land disposal under parts 7045.1300 to 7045.1380 when the effective date for the waste has been reached.

~~H.~~ K. The petition granted by the agency does not relieve the petitioner of responsibility for the management of hazardous waste under chapters 7001 and 7045.

~~I.~~ L. Liquid hazardous wastes containing polychlorinated biphenyls at concentrations greater than or equal to 500 ppm are not eligible for an exemption under this subpart.

[For text of subps 10 to 12, see M.R.]

7045.0131 CHARACTERISTICS OF HAZARDOUS WASTE.

Subpart 1. **In general.** A waste which is not excluded from regulation as a hazardous waste under part 7045.0120 is a hazardous waste if it exhibits ignitability, corrosivity, reactivity, toxicity, lethality, or is an oxidizer, as described in subparts 2 to 7. A hazardous waste which is identified by a characteristic in this part is assigned every hazardous waste number that is applicable. This number must be used in complying with the notification requirements of section 3010 of the federal Resource Conservation and Recovery Act and all applicable record keeping and reporting requirements under parts 7045.0205 to 7045.0642 and 7045.1300, and chapter 7001. For purposes of this part, the commissioner shall consider a sample obtained using any of the applicable sampling methods specified in Code of Federal Regulations, title 40, part 260, Appendix I or part 261, Appendix II, to be a representative sample.

Subp. 2. **Ignitability.** A waste exhibits the characteristic of ignitability if a representative sample of the waste has any of the following properties:

[For text of items A and B, see M.R.]

C. it is an ignitable compressed gas as defined in Code of Federal Regulations, title 49, section 173.300 (1983) and as determined by the test methods described in that regulation or equivalent test methods approved by the commissioner under part 7045.0075, subpart 1.

A waste that exhibits the characteristic of ignitability~~, but is not listed as a hazardous waste in part 7045.0135,~~ has the hazardous waste number of D001.

Subp. 3. **Oxidizers.** A waste exhibits the characteristics of an oxidizer if a representative sample of the waste has the following properties:

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

B. it readily supplies oxygen to a reaction in the absence of air. Oxidative materials include, but are not limited to, oxides, organic and inorganic peroxides, permanganates, perrhenates, chlorates, perchlorates, persulfates, nitric acid, organic and inorganic nitrates, iodates, periodates, bromates, perselenates, perbromates, chromates, dichromates, ozone, and perborates. Bromine, chlorine, fluorine, and iodine react similarly to oxygen under some conditions and are therefore also oxidative materials.

A waste that exhibits the characteristics of an oxidizer~~, but is not listed as a hazardous waste in part 7045.0135,~~ has the hazardous waste number of D001.

Subp. 4. **Corrosivity.** A waste exhibits the characteristic of corrosivity if a representative sample of the waste has any of the following properties:

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

B. It is liquid and corrodes steel (SAE 1020) at a rate greater than 6.35 mm (0.250 inch) per year at a test temperature of 55 degrees Celsius (130 degrees Fahrenheit) as determined by the test method specified in National Association of Corrosion Engineers Standard TM-01-69 as standardized in Test Methods for Evaluating Solid Waste, Physical/Chemical Methods, issued by the United States Environmental Protection Agency, publication number SW 846 (First Edition, 1980 as updated by Revisions A (August 1980), B (July 1981), and C (February 1982) or Second Edition, 1982) or an equivalent test method approved by the commissioner under the procedures set forth in part 7045.0075, subpart 1.

A waste that exhibits the characteristic of corrosivity~~, but is not listed as a hazardous waste in part 7045.0135,~~ has the hazardous waste number of D002.

Subp. 5. **Reactivity.** A waste exhibits the characteristic of reactivity if a representative sample of the waste has any of the following properties:

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

H. it is a forbidden explosive as defined in Code of Federal Regulations, title 49, section 173.51 (1983), a Class A explosive as defined in Code of Federal Regulations, title 49, section 173.53 (1983), or a Class B explosive as defined in Code of Federal Regulations, title 49, Section 173.88 (1983).

A waste that exhibits the characteristic of reactivity~~, but is not listed as a hazardous waste in part 7045.0135,~~ has the hazardous waste number of D003.

Subp. 6. **Lethality.** Lethality is determined as follows:

A. A waste exhibits the characteristic of lethality as determined in item B, if a representative sample of the waste has any one of the following properties:

[For text of subitems (1) to (3), see M.R.]

(4) an inhalation median lethal concentration of less than 1,000 parts per million of material ~~per million parts of~~ in air, if the material or component may be inhaled as gas or vapor.

[For text of items B and C, see M.R.]

D. A waste that exhibits the characteristics of lethality~~, but is not listed as a hazardous waste in part 7045.0135,~~ has the hazardous waste number MN01.

Subp. 7. **Toxicity.** Toxicity is determined as follows:

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

B. A waste that exhibits the characteristic of toxicity~~, but is not listed as a hazardous waste in part 7045.0135,~~ has the hazardous waste number specified in subpart 8 which corresponds to the toxic contaminant causing it to be hazardous.

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

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

7045.0135 LISTS OF HAZARDOUS WASTES.

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

Subp. 2. **Hazardous wastes from nonspecific sources.** Hazardous wastes from nonspecific sources are listed with the generic hazardous waste number and hazard code in items A to ~~U~~ V.

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

T. F027, discarded unused formulations containing tri-, tetra-, or pentachlorophenol or discarded unused formulations containing compounds derived from these chlorophenols. This listing does not include formulations containing hexachlorophene synthesized from prepurified 2,4,5-trichlorophenol as the sole component: (H); ~~and~~

U. F028, residues resulting from the incineration or thermal treatment of soil contaminated with hazardous waste Nos. F020, F021, F022, F023, F026, and F027: (T); and

V. F039, leachate resulting from the disposal of more than one restricted waste classified as hazardous under part 7045.0131

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and this part. Leachate resulting from the management of one or more of the following EPA hazardous wastes and no other hazardous wastes retains its EPA hazardous waste numbers: F020, F021, F022, F023, F026, F027, or F028: (T).

[For text of subps 3 to 5, see M.R.]

7045.0139 BASIS FOR LISTING HAZARDOUS WASTES.

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

Subp. 2. **Constituents.** The constituents which are the basis for listing the wastes identified in part 7045.0135, subparts 2 and 3 are listed in items A and B.

A. Constituents of wastes identified in part 7045.0135, subpart 2 are listed in subitems (1) to (21).

[For text of subitems (1) to (19), see M.R.]

(20) F027: Tetra-, penta-, and hexachlorodibenzo-p-dioxins; tetra-, penta-, and hexachlorodibenzofurans; tri-, tetra-, and pentachlorophenols and their chlorophenoxy derivative acids, esters, ethers, amine, and other salts; ~~and~~

(21) F028: Tetra-, penta-, and hexachlorodibenzo-p-dioxins; tetra-, penta-, and hexachlorodibenzofurans; tri-, tetra-, and pentachlorophenols and their chlorophenoxy derivative acids, esters, ethers, amine, and other salts; and

(22) F039: Constituents for which treatment standards are specified for multisource leachate, wastewaters, and nonwastewaters under part 7045.1358.

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

7045.0214 EVALUATION OF WASTES.

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

Subp. 2. **Method for evaluation.** The person evaluating the waste must determine if the waste meets any of the following criteria for a hazardous waste:

A. the waste is listed in part 7045.0135; or

B. if the waste ~~exhibits any of the characteristics of hazardous waste~~ is not listed in part 7045.0135, the person must then determine whether the waste is identified in part 7045.0131 by either:

(1) testing the waste according to the methods ~~set forth~~ in part 7045.0131 or according to an equivalent method approved by the commissioner pursuant to part 7045.0075, subpart 1; or

(2) applying knowledge of the hazard characteristics of the waste in light of the materials or the processes used.

[For text of subp 3, see M.R.]

7045.0292 ACCUMULATION OF HAZARDOUS WASTE.

Subpart 1. **When allowed without a permit.** A generator may accumulate hazardous waste on-site without a permit or without having interim status if:

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

H. the requirements of parts 7045.0558 ~~and~~, 7045.0566 to 7045.0576, and 7045.1315 are fulfilled regarding personnel training, preparedness, prevention, and contingency planning; and

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

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

7045.0458 WASTE ANALYSIS REQUIREMENTS.

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

Subp. 2. **Waste analysis plan.** The owner or operator shall develop and follow a written waste analysis plan which describes the procedures which he or she will carry out to comply with subpart 1. The owner or operator shall keep this plan at the facility. The plan must specify:

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

H. for surface impoundments exempted from the land disposal restrictions under part 7045.1310, the procedures and schedules for:

(1) the sampling of impoundment contents;

(2) the analysis of test data; and

(3) the annual removal of residues ~~that~~ which are not delisted under part 7045.0075, subpart 2, ~~and do not~~ or which exhibit a characteristic of hazardous waste under part 7045.0131, and ~~that~~ either do not meet the treatment standards of parts 7045.1350 to 7045.1360, or, where no treatment standards have been established, ~~the annual removal of residues that do not meet the applicable prohibition levels in~~ such residues are prohibited from land disposal under parts 7045.1320 to ~~7045.1330~~ 7045.1333 or RCRA section 3004(d).

7045.0478 OPERATING RECORD.

[For text of subps 1 and 2, see M.R.]

Subp. 3. **Record information.** All of the following information must be recorded, as it becomes available, and maintained in the operating record until closure of the facility:

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

M. Records of the quantities and date of placement ~~of~~ for each shipment of hazardous waste placed in land disposal units under an extension to the effective date of any land disposal restriction granted under part 7045.0075, subpart 8 ~~or~~, a petition under part 7045.0075, subpart 9, or a certification under part 7045.1308, and the applicable notice required ~~by~~ of a generator under part 7045.1315, subpart 1~~, item C~~.

N. For an off-site treatment facility, a copy of the notice, and the certification and demonstration, if applicable, required ~~by a~~ of the generator or the owner under part 7045.1315, subpart 1, item A, or 7045.1308.

O. For an on-site treatment facility, the information contained in the notice, except the manifest number, and the certification and demonstration, if applicable, required ~~by~~ of the generator or owner or operator under part 7045.1315, subpart 1, item A, ~~except for the manifest number required under subitem (3)~~ or 7045.1308.

P. For an off-site land disposal facility, a copy of the notice, and the certification and demonstration, if applicable, required ~~by~~ of the generator or the owner or operator of a treatment facility under ~~part~~ parts 7045.1315~~, subpart 2, items A and B, or a copy of the notice and certification required by the generator under part 7045.1315, subpart 1, item B,~~ and 7045.1308, whichever is applicable.

Q. For an on-site land disposal facility, the information contained in the notice required of the generator or owner or operator of a treatment facility under part 7045.1315, ~~subpart 1, item B,~~ except for the manifest number, ~~or the information contained in the notice required by a treater under part 7045.1315, subpart 2, item A, except the manifest number~~ and the certification and demonstration, if applicable, required under ~~subitem (3)~~ part 7045.1308, whichever is applicable.

R. For an off-site storage facility, a copy of the notice, and the certification and demonstration if applicable, required of the generator or the owner or operator under part 7045.1308 or 7045.1315.

S. For an on-site storage facility, the information contained in the notice, except the manifest number, and the certification and demonstration if applicable, required of the generator or the owner or operator under part 7045.1308 or 7045.1315.

7045.0532 SURFACE IMPOUNDMENTS.

[For text of subps 1 to 7, see M.R.]

Subp. 8. **Special requirements for ignitable or reactive waste.** Ignitable or reactive waste must not be placed in a surface impoundment, unless the waste and impoundment satisfy all applicable requirements of parts 7045.1300 to 7045.1380, and:

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

[For text of subps 9 and 10, see M.R.]

7045.0534 WASTE PILES.

[For text of subps 1 to 7, see M.R.]

Subp. 8. **Special requirements for ignitable or reactive waste.** Ignitable or reactive waste must not be placed in a waste pile unless the waste and waste pile satisfy all applicable requirements of parts 7045.1300 to 7045.1380, and:

[For text of items A and B, see M.R.]

[For text of subps 9 and 10, see M.R.]

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7045.0536 LAND TREATMENT.

[For text of subps 1 to 8, see M.R.]

Subp. 9. **Ignitable or reactive waste.** The owner or operator shall not apply ignitable or reactive waste to the treatment zone unless the waste and the treatment zone meet all applicable requirements of parts 7045.1300 to 7045.1380, and:

[For text of items A and B, see M.R.]

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

7045.0538 LANDFILLS.

[For text of subps 1 to 7, see M.R.]

Subp. 8. **Special requirements for ignitable or reactive waste.** Special requirements for ignitable or reactive waste are as follows:

A. Except as provided in item B and subpart 12, ignitable or reactive waste must not be placed in a landfill, unless the waste ~~is treated, rendered, or mixed before or immediately after placement in a landfill so that~~ and landfill meet all applicable requirements of parts 7045.1300 to 7045.1380, and the resulting waste, mixture, or dissolution of material no longer meets the definition of ignitable or reactive waste under part 7045.0131, ~~subparts~~ subpart 2 ~~and~~ or 5, and compliance with part 7045.0456, subpart 2 is maintained.

B. Except for prohibited wastes which remain subject to treatment standards in parts 7045.1350 to 7045.1360, ignitable wastes in containers may be landfilled without meeting the requirements of item A, provided that the wastes are disposed of in such a way that they are protected from any material or conditions which may cause them to ignite. At a minimum, ignitable wastes must be disposed of in nonleaking containers which are carefully handled and placed so as to avoid heat, sparks, rupture, or any other condition that might cause ignition of the wastes; must be covered daily with soil or other noncombustible material to minimize the potential for ignition of the wastes; and must not be disposed of in cells that contain or will contain other wastes which may generate heat sufficient to cause ignition of the waste.

[For text of subps 9 to 11, see M.R.]

Subp. 12. **Disposal of small containers of hazardous waste in overpacked drums.** Small containers of hazardous waste in overpacked drums, or laboratory packs, may be placed in a landfill if the requirements of items A to ~~E~~ F are met:

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

F. The disposal is in compliance with parts 7045.1300 to 7045.1380. Persons who incinerate lab packs according to part 7045.1360 may use fiber drums in place of metal outer containers. The fiber drums must meet United States Department of Transportation specifications in Code of Federal Regulations, title 49, section 173.12, and be overpacked according to the requirements in item B.

[For text of subp 13, see M.R.]

7045.0552 FACILITIES GOVERNED BY INTERIM STATUS.

Subpart 1. **General requirements.** Parts 7045.0552 to 7045.0642 establish minimum standards for the management of hazardous waste during the period of interim status and until certification of final closure or, if the facility is subject to postclosure requirements, until postclosure responsibilities are fulfilled. These standards apply to owners and operators of existing facilities who have fully complied with the requirements for state or federal interim status until a permit is issued or until applicable interim status closure and postclosure responsibilities are fulfilled, and those who have failed to achieve state or federal interim status. These standards apply to all treatment, storage, or disposal of hazardous waste at these facilities after July 16, 1984, except as specifically provided otherwise.

For existing facilities which were not required to obtain federal interim status under the Resource Conservation and Recovery Act, United States Code, title 42, sections 6901 to 6986, as amended through June 30, 1983, but are required to obtain state interim status, the requirements of parts 7045.0590; 7045.0592; 7045.0632, subpart 4, items A and B; 7045.0634, subpart 2; 7045.0638, subparts 2, 7, and 8, become effective 12 months after July 16, 1984, and the requirements of parts 7045.0608 to 7045.0624 become effective 90 days after July 16, 1984.

Parts 7045.0552 to 7045.0642 apply to the owners and operators of all facilities that treat, store, or dispose of hazardous waste referred to in parts 7045.1300 to 7045.1380, land disposal restrictions, and those restrictions are considered material conditions or requirements of parts 7045.0552 to 7045.0642, interim status standards.

[For text of subps 1a to 4, see M.R.]

7045.0564 WASTE ANALYSIS REQUIREMENTS.

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

Subp. 2. **Waste analysis plan.** The owner or operator shall develop and follow a written waste analysis plan which describes the procedures the owner or operator will carry out to comply with subpart 1. The owner or operator shall keep this plan at the facility.

The plan must specify:

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

H. For surface impoundments exempted from the land disposal restrictions under part 7045.1310, the procedures and schedule for:

(1) the sampling of impoundment contents;

(2) the analysis of test data; and

(3) the annual removal of residues ~~that~~ which are not delisted under part 7045.0075, subpart 2, ~~and do not~~ or which exhibit a characteristic of hazardous waste under part 7045.0131, and ~~that~~ either do not meet ~~the~~ applicable treatment standards of parts 7045.1350 to 7045.1360, or, where no treatment standards have been established, ~~the annual removal of residues that do not meet the applicable prohibition levels in~~ such residues are prohibited from land disposal under parts 7045.1320 to ~~7045.1330~~ 7045.1333 or RCRA section 3004(d).

7045.0584 OPERATING RECORD.

[For text of subps 1 and 2, see M.R.]

Subp. 3. **Record information.** The following information must be recorded, as it becomes available, and maintained in the operating record until closure of the facility:

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

J. Records of the quantities and date of placement of each shipment of hazardous waste placed in land disposal units under an extension to the effective date of any land disposal restriction granted under part 7045.0075, subpart 8 or 9, monitoring data required pursuant to a petition under part 7045.0075, subpart 9, or a certificate and demonstration under part 7045.1308 and the notice required by a generator under part 7045.1315, subpart 1, item C.

K. For an off-site treatment facility, the notice, and the certification and demonstration, if applicable, required by a generator or the owner or operator under ~~part~~ parts 7045.1308 and 7045.1315, subpart 1, item A.

L. For an on-site treatment facility, the information contained in the notice and the certification and demonstration, if applicable, required by a generator or the owner or operator under ~~part~~ parts 7045.1308 and 7045.1315, subpart 1, item A, except for the manifest number required under part 7045.1315, subpart 1, item A, subitem (3).

M. For an off-site land disposal facility, the notice ~~and~~, certification and demonstration, if applicable, required by the generator, owner or operator of a treatment facility under part 7045.1308 or 7045.1315, subpart 2, items A and B, for the facility or ~~the certification required by the generator under~~ part 7045.1315, subpart 1, item B, for the generator, whichever is applicable.

N. For an on-site land disposal facility, the information contained in the notice required by a generator or the owner or operator under part 7045.1308 or 7045.1315~~, subpart 1, item B,~~ except for the manifest number, ~~or the information contained in the notice required by the treatment facility under part 7045.1315, subpart 2, item A, except the manifest number required under subitem (3),~~ whichever is applicable.

O. For an off-site storage facility, a copy of the notice, and the certification and demonstration if applicable, required by the generator or the owner or operator under part 7045.1308 or 7045.1315.

P. For an on-site storage facility, the information contained in the notice, except the manifest number, and the certification and demonstration if applicable, required by the generator or the owner or operator of a treatment facility under part 7045.1308 or 7045.1315.

7045.0630 SURFACE IMPOUNDMENTS.

[For text of subps 1 to 4, see M.R.]

Subp. 5. **Inspections.** The owner or operator shall inspect:

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

B. the surface impoundment, including dikes and vegetation surrounding the dike, at least once a week to detect any leaks, deterioration, or failures in the impoundment. As required by part 7045.0556, subpart 5, the owner or operator shall remedy any deterioration or malfunction ~~he finds~~ found.

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

Subp. 7. **Special requirements for ignitable or reactive wastes.** Ignitable or reactive waste must not be placed in a surface impoundment unless the waste and the impoundment satisfy all applicable requirements of parts 7045.1300 to 7045.1380, and:

[For text of items A and B, see M.R.]

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

7045.0632 WASTE PILES.

[For text of subps 1 to 4a, see M.R.]

Subp. 5. **Special requirements for ignitable or reactive waste.** Ignitable or reactive waste must not be placed in a pile unless the waste and pile satisfy all applicable requirements of parts 7045.1300 to 7045.1380:

[For text of items A and B, see M.R.]

[For text of subps 6 and 7, see M.R.]

7045.0634 LAND TREATMENT.

[For text of subps 1 to 6, see M.R.]

Subp. 7. **Special requirements for ignitable or reactive waste.** Ignitable or reactive wastes must not be land treated, unless the waste and treatment zone meet all applicable requirements of parts 7045.1300 to 7045.1380, and the waste is immediately incorporated into the soil so that the resulting waste, mixture, or dissolution of material no longer meets the definition of ignitable or reactive waste under parts 7045.0131, subpart 2 or 5; and 7045.0562, subpart 2 is complied with.

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

7045.0638 LANDFILLS.

[For text of subps 1 to 4, see M.R.]

Subp. 5. **Special requirements for ignitable or reactive waste.** Special requirements for ignitable or reactive waste are as follows:

A. Except as provided in item B, and subparts 7 and 9, ignitable or reactive waste must not be placed in a landfill unless the waste ~~is treated, rendered, or mixed before or immediately after placement in the~~ and landfill ~~so that~~ meet all applicable requirements of parts 7045.1300 to 7045.1380, and the resulting waste, mixture, or dissolution of material no longer meets the definition of ignitable or reactive waste under ~~parts~~ part 7045.0131, subpart 2 or 5, and compliance with part 7045.0562, subpart 2, is ~~complied with~~ maintained.

B. Except for prohibited wastes which remain subject to treatment standards in parts 7045.1350 to 7045.1360, ignitable wastes in containers may be landfilled without meeting the requirements of item A if the wastes are disposed so that they are protected from any material or conditions which may cause them to ignite. Ignitable wastes must be disposed in nonleaking containers which are carefully handled and placed so as to avoid heat, sparks, rupture, or any other condition that might cause ignition of the wastes; must be covered daily with soil or other noncombustible material to minimize the potential for ignition of the wastes; and must not be disposed in cells that contain or will contain other wastes which may generate heat sufficient to cause ignition of the wastes.

[For text of subp 6 to 8, see M.R.]

Subp. 9. **Special requirements for disposal of laboratory packs.** Small containers of hazardous waste in overpacked drums, or laboratory packs, may be placed in a landfill if the requirements of items A to ~~E~~ F are met:

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

F. The disposal complies with parts 7045.1300 to 7045.1380. Persons who incinerate lab packs according to part 7045.1360 may use fiber drums in place of metal outer containers. The fiber drums must meet the United States Department of Transportation specifications in Code of Federal Regulation, title 49, section 173.12, and be overpacked according to item B.

7045.0665 USE CONSTITUTING DISPOSAL.

Subpart 1. **Scope.** ~~This part applies~~ Items A and B apply to hazardous wastes that are used in a manner constituting disposal.

A. For the purposes of this part, use constituting disposal means the application or placement of recyclable wastes in or on the land: ~~A.~~ without mixing with other substances; or ~~B.~~ after mixing or ~~combination~~ combining with any other substances.

~~Products~~ B. Hazardous wastes are not used in a manner constituting disposal if:

(1) they are a product produced for the general public's use ~~that are used in a manner constituting disposal and that~~;

(2) they contain recyclable hazardous wastes ~~that~~; and if the recyclable hazardous wastes have undergone a chemical reaction in the course of producing ~~a product~~ the products so as to become inseparable by physical means ~~are exempt from regulation under this part~~; and

(3) the products meet the applicable treatment standards in parts 7045.1350 to 7045.1360 or applicable prohibition levels in part 7045.1330 or RCRA section 3004(d) where no treatment standards have been established, for each recyclable material that they contain.

Commercial fertilizers that are produced for the general public's use that contain recyclable materials also are not presently subject to regulation ~~under this chapter~~ provided they meet the same treatment standards or prohibition levels for each recyclable material that they contain. However, zinc-containing fertilizers using hazardous waste K061 that are produced for the general public's use are not presently subject to regulation.

[For text of subps 1a to 4, see M.R.]

7045.1300 LAND DISPOSAL RESTRICTIONS; APPLICABILITY AND EXEMPTIONS.

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

Subp. 2. **Exemptions for restricted wastes.** ~~Prohibited~~ Restricted wastes may continue to be land disposed under the following conditions:

A. if an extension has been granted from the effective date of a prohibition under part 7045.0075, subpart 8, with respect to those wastes covered by the extension; and

B. if an exemption has been granted from a prohibition as a result of a petition under part 7045.0075, subpart 9, with respect to those wastes and units covered by the petition~~;~~

~~C. until November 8, 1988, if wastes are contaminated soil or debris resulting from a response action taken under section 104 or 106 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 or a corrective action required under the Resource Conservation and Recovery Act;~~

~~D. if small quantity generators of less than 100 kilograms of nonacute hazardous waste per month, or less than one kilogram acute hazardous waste per month, as defined in part 7045.0219; and~~

~~E. if a farmer is disposing of waste pesticides in accordance with part 7045.0304~~.

Subp. 3. **Other exemptions.** The following hazardous wastes are not subject to parts 7045.1300 to 7045.1380:

A. waste generated by small quantity generators of less than 100 kilograms of nonacute hazardous waste per month, or less than one kilogram of acute hazardous waste per month, as defined in part 7045.0206;

B. waste pesticides that a farmer disposes of according to part 7045.0213; and

C. waste identified or listed as hazardous after November 8, 1984, for which no land disposal prohibitions or treatment standards have been adopted.

Subp. 4. **Waivers.** The requirements of this part shall not affect the availability of a waiver under section 121(d)(4) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980.

7045.1305 DILUTION PROHIBITED AS A SUBSTITUTE FOR TREATMENT.

A. Except as provided in item B, no generator, transporter, handler, or owner or operator of a treatment, storage, or disposal facility shall in any way dilute a restricted waste or the residual from treatment of a restricted waste as a substitute for adequate treatment to achieve compliance with parts 7045.1350 to 7045.1360, to circumvent the effective date or otherwise avoid a prohibition in parts 7045.1320 to 7045.1330, or to circumvent a land disposal prohibition imposed by RCRA section 3004.

B. Dilution of wastes that are hazardous only because they exhibit a characteristic in a treatment system that treats wastes subsequently discharged to a water of the United States pursuant to a permit issued under section 402 of the Clean Water Act (CWA), or that treats wastes for purposes of pretreatment requirements under section 307 of the CWA is not impermissible dilution for purposes of this part unless a method has been specified as the treatment standard in part 7045.1360.

7045.1308 LANDFILL AND SURFACE IMPOUNDMENT DISPOSAL RESTRICTIONS.

Subpart 1. **Generator requirements.** As of May 8, 1990, this part is no longer in effect. Before May 8, 1990, wastes that are otherwise prohibited from land disposal under part 7045.1333, subpart 2, item C, may be disposed in a landfill or surface impoundment in compliance with Code of Federal Regulations, title 40, section 268.5(h)(2), provided that the generator meets the requirements in items A to D.

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A. Before disposal, the generator has made a good faith effort to locate and contract with treatment and recovery facilities practically available that provide the greatest environmental benefit.

B. If a generator determines that there is no practically available treatment for a waste, the generator must fulfill the requirements in subitems (1) and (2).

(1) Before the initial shipment of waste, the generator must submit a demonstration to the commissioner that includes a list of facilities and facility officials contacted, addresses, telephone numbers, and contact dates, as well as a written discussion of why the generator was not able to obtain treatment or recovery for that waste. The generator must also provide the following certification:

"I certify under penalty of law that the requirements of *Minnesota Rules*, part 7045.1308, subpart 1, item A, have been met and that disposal in a landfill or surface impoundment is the only practical alternative to treatment currently available. I believe that the information submitted is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment."

The generator does not need to wait for commissioner approval of the demonstration or certification before shipment of the waste. However, if the commissioner invalidates the demonstration or certification for the reasons outlined in part 7045.1308, subpart 2, item B, the generator must immediately cease further shipments of the waste, inform all facilities that received the waste of the invalidation, and keep records of the communication on-site in the generator's files.

(2) With the initial shipment of waste, the generator must submit a copy of the demonstration and the certification in subitem (1) to the receiving facility. With each subsequent waste shipment, only the certification is required to be submitted, provided that the conditions being certified remain unchanged. The generator must retain on-site a copy of the demonstration, if applicable, and certification required for each waste shipment for at least five years from the date that the waste that is the subject of the documentation was last sent to on-site or off-site disposal. The five-year record retention requirement is automatically extended during the course of any unresolved enforcement action regarding the regulated activity or as requested by the commissioner.

C. If a generator determines that there are practically available treatments for a waste, the generator must contract to use the practically available technology that yields the greatest environmental benefit. The generator must also fulfill the requirements in subitems (1) and (2).

(1) Before the initial shipment of waste, the generator must submit a demonstration to the commissioner that includes a list of facilities and facility officials contacted, addresses, telephone numbers, and contact dates, as well as a written discussion explaining why the treatment or recovery technology chosen provides the greatest environmental benefit. The generator must also provide the following certification:

"I certify under penalty of law that the requirements of *Minnesota Rules*, part 7045.1308, subpart 1, item A, have been met and that I have contracted to treat my waste, or otherwise provide treatment, by the practically available technology that yields the greatest environmental benefit, as indicated in my demonstration. I believe that the information submitted is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment."

The generator does not need to wait for commissioner approval of the demonstration or certification before shipment of the waste.

(2) With the initial shipment of waste, the generator must submit to the receiving facility a copy of the demonstration and the certification in subitem (1). With each subsequent waste shipment, only the certification is required to be submitted, provided that the conditions being certified remain unchanged. The generator must retain on-site a copy of the demonstration, if applicable, and certification required for each waste shipment for at least five years from the date that the waste that is the subject of the documentation was last sent to on-site or off-site disposal. The five-year record retention requirement is automatically extended during the course of any unresolved enforcement action regarding the regulated activity or as requested by the commissioner.

D. When the generator has determined that there is practically available treatment for a waste before disposal, with the initial shipment of waste, the generator must submit a copy of the demonstration and the certification required in subpart 1, item B, subitem (2), to the receiving facility. With each subsequent waste shipment, only the certification is required to be submitted, provided that the conditions being certified remain unchanged. The generator must retain on-site a copy of the demonstration, if applicable, and certification required for each waste shipment for at least five years from the date that the waste that is the subject of the documentation was last sent to on-site or off-site disposal. The five-year record retention requirement is automatically extended during the course of any unresolved enforcement action regarding the regulated activity or as requested by the commissioner.

Subp. 2. **Certification review.**

A. After receiving the demonstration and certification, the commissioner may request any additional information which the commissioner considers necessary to evaluate the certification.

B. A generator who has submitted a certification under this part must immediately notify the commissioner when the generator

has knowledge of any change in the conditions that formed the basis of the generator's certification, and submit a new demonstration and certification as provided in part 7045.1308, subpart 1, to the receiving facility.

C. If, after review of the certification, the commissioner determines that practically available treatment exists where the generator has certified otherwise, or that there exists some other method of practically available treatment yielding greater environmental benefit than that which the generator has certified, the commissioner may invalidate the certification.

D. If the commissioner invalidates a certification, the generator must immediately cease further shipments of the waste, and inform all facilities that received the waste of the invalidation, and keep records of such communication on-site in the generator's files.

Subp. 3. **Facility requirements.**

A. A treatment, recovery, or storage facility receiving wastes subject to a valid certification must keep copies of the generator's demonstration, if applicable, and certification in the facility's operating record.

B. The owner or operator of a treatment or recovery facility must certify that the facility has treated the waste according to the generator's demonstration. The following certification is required:

"I certify under penalty of law that I have personally examined and am familiar with the treatment, technology, and operation of the treatment process used to support this certification and that, based on my inquiry of those individuals immediately responsible for obtaining this information, I believe that the treatment process has been operated and maintained properly and complies with treatment as specified in the generator's demonstration. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment."

C. The owner or operator of a treatment, recovery, or storage facility must, for each initial shipment of waste, send a copy of the generator's demonstration, if applicable, and certification under part 7045.1308, subpart 1, item B, subitem (1) or item C, subitem (1), and certification under subpart 3, item B, if applicable, to the facility receiving the waste or treatment residues. With each subsequent waste shipment, only the certification is required to be submitted, provided that the conditions being certified remain unchanged.

D. The owner or operator of a disposal facility must ensure that those wastes prohibited under part 7034.1333, subpart 2, item D, are subject to a certification according to the requirements of this part before disposal in a landfill or surface impoundment, and that the units receiving the wastes must meet the minimum technological requirements of Code of Federal Regulations, title 40, section 268.5(h)(2).

Subp. 4. **Land disposal authorized.** When the certification is received by the commissioner, and provided that the wastes have been treated by the treatment, if any, determined by the generator to yield the greatest environmental benefit practically available, the wastes or treatment residuals may be disposed in a landfill or surface impoundment unit meeting the requirements of Code of Federal Regulations, title 40, section 268.5(h)(2), unless otherwise prohibited by the commissioner.

7045.1309 SPECIAL RULES REGARDING WASTES THAT EXHIBIT A CHARACTERISTIC.

Subpart 1. **Applicable treatment standards.** The initial generator of a solid waste must determine each EPA hazardous waste number applicable to the waste to determine the applicable treatment standards under parts 7045.1350 to 7045.1360. For purposes of parts 7045.1300 to 7045.1380, the waste will carry the waste code for any applicable listing under part 7045.0135 and also one or more waste codes under part 7045.0131 where the waste exhibits a characteristic, except when the treatment standard for the waste code listed in part 7045.0135 operates in lieu of the standard for the waste code under part 7045.0131 as provided in subpart 2.

Subp. 2. **Conditions of meeting treatment standards.** When a prohibited waste is listed under part 7045.0135 and exhibits a characteristic under part 7045.0131, the treatment standard for the waste code listed in part 7045.0135 will operate in lieu of the standard for the waste code under part 7045.0131, provided that the treatment standard for the waste includes a treatment standard for the constituent that causes the waste to exhibit the characteristic. Otherwise, the waste must meet the treatment standards for all applicable listed and characteristic waste codes.

Subp. 3. **Land disposal.** In addition to any applicable standards determined from the initial point of generation, no prohibited waste that exhibits a characteristic under part 7045.0131 may be land disposed unless the waste complies with the treatment standards under parts 7045.1350 to 7045.1360.

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Subp. 4. **Waste analysis.**

A. Wastes that exhibit a characteristic under part 7045.0131 are also subject to the requirements of part 7045.1315, except that when the waste is no longer hazardous, for each shipment of the wastes to a solid waste facility under chapter 7035, the initial generator or the treatment facility need not send a notification as required in part 7045.1315 to the facility. In those circumstances, a notification and certification must be sent to the commissioner.

B. The notification must include the following information:

(1) the name and address of the solid waste facility receiving the waste shipment under chapter 7035;

(2) a description of the waste as initially generated, including the applicable EPA hazardous waste numbers, the applicable wastewater or nonwastewater category as defined in part 7045.0020, and the subdivisions made within a waste code based on waste specific criteria; and

(3) the treatment standards applicable to the waste at the initial point of generation.

C. The certification must be signed by an authorized representative, and must use the following statement:

"I certify under penalty of law that I have personally examined and am familiar with the treatment technology and operation of the treatment process used to support this certification and that, based on my inquiry of those individuals immediately responsible for obtaining this information, I believe that the treatment process has been operated and maintained properly and complies with the performance levels in parts 7045.1350 to 7045.1360 and all applicable prohibitions in part 7045.1330 or RCRA section 3004(d) without impermissible dilution of the prohibited waste. I am aware that there are significant penalties for submitting a false certification, including the possibility of fine and imprisonment."

7045.1310 TREATMENT SURFACE IMPOUNDMENT EXEMPTION.

Subpart 1. **Conditions.** Wastes that are otherwise prohibited from land disposal under parts 7045.1300 to 7045.1380 may be treated in a surface impoundment or series of impoundments if:

A. treatment of the wastes occurs in the impoundments ~~.~~;

B. the following conditions are met:

(1) For wastes with treatment standards in parts 7045.1350 to 7045.1360 or prohibition levels in parts 7045.1320 to 7045.1350 or RCRA section 3004(d), the residues ~~of the~~ from treatment are analyzed, as ~~provided~~ specified in part 7045.1315 or 7045.1330 to determine if they meet the applicable treatment standards ~~in parts 7045.1350 to 7045.1360~~, or, where no treatment standards have been established for the waste, the applicable prohibition levels ~~in parts 7045.1320 to 7045.1330 or RCRA section 3004(d)~~. The sampling method, specified in the waste analysis plan under part 7045.0458 or 7045.0564 must be designed so the representative samples of the sludge and the supernatant are tested separately rather than mixed to form homogeneous samples.

(2) The following treatment residues, including any liquid waste, ~~that~~ must be removed at least annually: residues that do not meet the treatment standards adopted under parts 7045.1350 to 7045.1360~~, or~~; residues that do not meet the ~~applicable~~ prohibition levels adopted under parts 7045.1320 to ~~7045.1330~~ 7045.1350, or imposed by statute where no treatment standards have been established~~, or that~~; residues that are from the treatment of wastes prohibited from land disposal under parts 7045.1320 to 7045.1350 where no treatment standards have been established and no prohibition levels apply; or residues from managing listed wastes that are not delisted under part 7045.0075, subpart 2~~, and no longer exhibit a characteristic of hazardous waste, must~~. However, residues that are the subject of a valid certification under part 7045.1308 made no later than one year after placement of the wastes in an impoundment are not required to be removed ~~at least~~ annually. ~~These~~ If the volume of liquid flowing through the impoundment or series of impoundments annually is greater than the volume of the impoundment or impoundments, the flow-through constitutes removal of the supernatant for the purpose of this requirement.

(3) Treatment residues may not be placed in any other surface impoundment for ~~later~~ subsequent management~~. If the volume of liquid flowing through the impoundment or series of impoundments annually is greater than the volume of the impoundment or impoundments, this flow-through constitutes removal of the supernatant for the purpose of this requirement~~ unless the residues are the subject of a valid certification under part 7045.1308 that allows disposal in surface impoundments meeting the requirements of part 7045.1308, subpart 1.

(4) The procedures and schedule for the sampling of impoundment contents, the analysis of test data, and the annual removal of ~~residue that does~~ residues that do not meet the treatment standards ~~in parts 7045.1350 to 7045.1360~~, or, prohibition levels where no treatment standards have been established, ~~the prohibition levels in~~ or that are from the treatment of wastes prohibited from land disposal under parts 7045.1320 to ~~7045.1330 or RCRA section 3004(d),~~ 7045.1350 where no treatment standards have been established and no prohibition levels apply, must be specified in the facility's waste analysis plan as required under ~~part~~ parts 7045.0458 ~~or~~ and 7045.0564~~.~~;

C. the impoundment meets the design requirements of Code of Federal Regulations, title 40, section 264.221(c) or 265.221(a), and ~~be in compliance~~ complies with applicable groundwater monitoring requirements of part 7045.0484 or 7045.0590~~.~~;

D. the owner or operator submits to the commissioner a written certification that the requirements of item C, have been met and a copy of the waste analysis plan required under item B. The following certification is required:

"I certify under penalty of law that the requirements of part 7045.1310, subpart 1, item C, have been met for all surface impoundments being used to treat restricted wastes. I believe that the ~~submitted~~ information submitted is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment."

[For text of subp 2, see M.R.]

7045.1315 WASTE ANALYSIS FOR RESTRICTED WASTES.

Subpart 1. **Applicability.** Except as provided in part 7045.1330 or 7045.1358, if a waste is listed in part 7045.0135, the generator must test the waste, or test an extract ~~developed~~ using the test method described in Code of Federal Regulations, title 40, part ~~268~~ 261, Appendix ~~I~~ II, or use knowledge of the waste, to determine if the waste is restricted from land disposal. Except as specified in part 7045.1330, if a generator's waste exhibits one or more of the characteristics in part 7045.0131, the generator must test an extract using the test method in Code of Federal Regulations, title 40, part 268, Appendix IX, or use knowledge of the waste to determine if the waste is restricted from land disposal under this part.

A. If a generator ~~determines that the waste being generated~~ is managing a restricted waste and the waste does not meet the applicable treatment standards~~,~~ or ~~where the waste does not comply with~~ exceeds the applicable ~~prohibitions~~ prohibition levels in part 7045.1330 or RCRA section 3004(d), with each shipment of waste the generator must notify the treatment or storage facility in writing of the appropriate treatment standards in parts 7045.1350 to 7045.1360 and any applicable ~~prohibitions~~ prohibition levels in part 7045.1330 or RCRA section 3004(d). The notice must include the following information:

(1) EPA Hazardous Waste Number;

(2) the corresponding treatment standards ~~and all applicable prohibitions in~~ for wastes F001-F005, F039, and wastes prohibited under part 7045.1330 or RCRA section 3004(d). Treatment standards for all other restricted wastes must either be included, or be referenced by including on the notification the applicable wastewater or nonwastewater category as defined in part 7045.0020, the applicable subdivisions made within a waste code based on waste specific criteria, and Code of Federal Regulations sections and paragraphs where the applicable treatment standard appears. Where the applicable treatment standards are expressed as specified technologies in part 7045.1360, the applicable five-letter treatment code in part 7045.1360 (e.g., INCIN, WETOX) also must be listed on the notification;

(3) the manifest number associated with the shipment of waste; and

(4) waste analysis data, where available.

B. If a generator ~~determines that the waste being generated~~ is managing a restricted waste and determines that the waste can be land disposed without further treatment, with each shipment of waste the generator must submit, to the treatment, storage, or land disposal facility, a notice and a certification stating that the waste meets the applicable treatment standards in parts 7045.1350 to 7045.1360 and the applicable prohibitions in part 7045.1330 or RCRA section 3004(d).

(1) The notice must include the following information:

(a) EPA Hazardous Waste Number~~;~~;

(b) the corresponding treatment standards for wastes F001-F005, F039, and ~~all applicable prohibitions in~~ wastes prohibited under part 7045.1330 or RCRA section 3004(d)~~;~~. Treatment standards for all other restricted wastes must either be included, or be referenced by including on the notification the applicable wastewater or nonwastewater category as defined in part 7045.0020, the applicable subdivisions made within a waste code based on waste specific criteria, and Code of Federal Regulations sections and paragraphs where the applicable treatment standard appears. Where the applicable treatment standards are expressed as specified technologies in part 7045.1360, the applicable five-letter treatment code in part 7045.1360 also must be listed on the notification;

(c) the manifest number associated with the shipment of waste~~;~~; and

(d) waste analysis data, where available.

(2) The certification must be signed by an authorized representative and must state the following:

"I certify under penalty of law that I personally have examined and am familiar with the waste through analysis and testing or

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through knowledge of the waste to support this certification that the waste complies with the treatment standards ~~specified~~ in parts 7045.1350 to 7045.1360 and all applicable prohibitions in part 7045.1330 or RCRA section 3004(d). I believe that the information ~~I~~ submitted is true, accurate, and complete. I am aware that there are significant penalties for submitting a false certification, including the possibility of a fine and imprisonment."

C. If a generator's waste is subject to an exemption from a prohibition on the type of land disposal method used for the waste, including, but not limited to, a case-by-case extension under part 7045.0075, subpart 8, an exemption under part 7045.0075, subpart 9, ~~an extension under part 7045.1300, subpart 2, item C,~~ or a nationwide capacity variance under Code of Federal Regulations, title 40, part 268, subpart C, with each shipment of wastes, the generator must submit a notice ~~must be forwarded with the waste~~ to the ~~land disposal~~ facility receiving the waste, stating that the waste is ~~exempt~~ not prohibited from ~~the~~ land disposal ~~restrictions~~. The notice must include the following information:

(1) the EPA Hazardous Waste Number;

(2) the corresponding treatment standards for wastes F001-F005, F039, and wastes prohibited in part 7045.1330 or RCRA section 3004(d). Treatment standards for all other restricted wastes must either be included, or be referenced by including on the notification the applicable wastewater or nonwastewater category as defined in part 7045.0020, the applicable subdivisions made within a waste code based on waste specific criteria, and Code of Federal Regulations sections and paragraphs where the applicable treatment standard appears. Where the applicable treatment standards are expressed as specified technologies in part 7045.1360, the applicable five-letter treatment code in part 7045.1360 also must be listed on the notification;

(3) the manifest number associated with the shipment of waste;

(4) waste analysis data, where available; and

(5) the date the waste is subject to the prohibitions.

D. If a ~~generator's decision~~ generator is managing a prohibited waste in tanks or containers under part 7045.0292, and is treating the waste in tanks or containers to meet applicable treatment standards under parts 7045.1350 to 7045.1360, the generator must develop and follow a written waste analysis plan that describes the procedures the generator will carry out to comply with the treatment standards. The plan must be kept on-site in the generator's records, and the following requirements must be met:

(1) the waste analysis plan must be based on a detailed chemical and physical analysis of a representative sample of the prohibited wastes being treated, and contain all information necessary to treat the wastes according to parts 7045.1300 to 7045.1380, including the selected testing frequency;

(2) the plans must be filed with the commissioner at least 30 days before treatment activity, with delivery verified; and

(3) wastes shipped off-site must comply with the notification requirements of subpart 1.

E. If a generator determines that a waste is restricted ~~is~~ based solely on the generator's knowledge of the waste, all supporting data used to make this determination must be ~~maintained~~ retained on-site in the generator's files. If a generator determines that a waste is restricted based on testing the waste or an extract developed using the test method described in Code of Federal Regulations, title 40, part 261, Appendix II, all waste analysis data must be retained on-site in the generator's files.

F. If a generator determines that the generator is managing a restricted waste that is excluded from the definition of hazardous or solid waste or exempt from hazardous waste regulation under Code of Federal Regulations, title 40, sections 261.2 to 261.6, subsequent to the point of generation, the generator must place a one-time notice stating the generation, subsequent exclusion from the definition of hazardous or solid waste, or exemption from the hazardous waste regulation, and the disposition of the waste in the facility's file.

G. Generators must retain on-site a copy of all notices, certifications, demonstrations, waste analysis data, and other documentation produced under this part for at least five years from the date that the waste that is the subject of the documentation was last sent to on-site or off-site treatment, storage, or disposal. The five-year record retention period is automatically extended during the course of any unresolved enforcement action regarding the regulated activity or as requested by the commissioner. The requirements of this item apply to solid wastes even when the hazardous characteristic is removed before disposal or when the waste is excluded from the definition of hazardous or solid waste or exempted from hazardous waste regulation, subsequent to the point of generation.

H. If a generator is managing a lab pack that contains wastes identified under part 7045.1380 and wishes to use the alternative treatment standard under part 7045.1360, with each shipment of waste, the generator must submit a notice to the treatment facility according to this subpart. The generator must also submit the following certification, which must be signed by an authorized representative:

"I certify under penalty of law that I personally have examined and am familiar with the waste and that the lab pack contains only the wastes specified in Code of Federal Regulations, title 40, part 268, Appendix IV, or solid wastes not subject to regulation under Code of Federal Regulations, title 40, part 261. I am aware that there are significant penalties for submitting a false certification, including the possibility of fine or imprisonment."

I. If a generator is managing a lab pack that contains organic wastes and wishes to use the alternate treatment standards in part 7045.1360, with each shipment of waste, the generator must submit a notice to the treatment facility according to this subpart. The generator also must submit the following certification, which must be signed by an authorized representative:

"I certify under penalty of law that I personally have examined and am familiar with the waste through analysis and testing or through knowledge of the waste and that the lab pack contains only organic waste specified in Code of Federal Regulations, title 40, part 268, Appendix V, or solid wastes not subject to regulation under Code of Federal Regulations, title 40, part 261. I am aware that there are significant penalties for submitting a false certification, including the possibility of fine or imprisonment."

J. Small quantity generators with tolling agreements must comply with the applicable notification and certification requirements of this subpart for the initial shipment of the waste subject to the agreement. The generators must retain on-site a copy of the notification and certification, together with the tolling agreement, for at least three years after termination or expiration of the agreement. The three-year record retention period is automatically extended during the course of any unresolved enforcement action regarding the regulated activity or as requested by the commissioner.

Subp. 2. **Testing of wastes.** Treatment facilities must test their wastes according to the frequency specified in their waste analysis plans under part 7045.0458 or 7045.0564. The testing must be performed as provided in items A to C.

A. For wastes with treatment standards expressed as concentrations in the waste extract in part 7045.1355, the owner or operator of the treatment facility must test the treatment residues or an extract of the residues developed using the test method described in Code of Federal Regulations, title 40, part ~~268~~ 261, Appendix ~~I~~ II, to assure that the treatment residues or extract meet the applicable treatment standards.

B. For wastes prohibited under part 7045.1330 or RCRA section 3004(d) which are not subject to any treatment standards under parts 7045.1350 to 7045.1360, the owner or operator of the treatment facility must test the treatment residues according to the generator testing requirements in part 7045.1330 to assure that the treatment residues comply with the applicable prohibitions. ~~For both circumstances described above, the testing must be performed according to the frequency specified in the facility's waste analysis plan as required by part 7045.0458 or 7045.0564. Where the treatment residues do not comply with the applicable treatment standards or prohibitions, the treatment facility must comply with the notice requirements applicable to generators in subpart 1, item A, if the treatment residues will be further managed at a different treatment facility.~~

~~A.~~ C. For wastes with treatment standards expressed as concentrations in the waste under part 7045.1358, the owner or operator of the treatment facility must test the treatment residues, not an extract of the residues, to assure that the treatment residues meet the applicable treatment standards.

D. A notice must be sent with each waste shipment to the land disposal facility that includes the following information:

(1) the EPA Hazardous Waste Number;

(2) the corresponding treatment standards ~~and all applicable prohibitions in~~ for wastes F001-F005, F039, and wastes prohibited under part 7045.1330 or RCRA section 3004(d). Treatment standards for all other restricted wastes must either be included, or be referenced by including on the notification the applicable wastewater or nonwastewater category as defined in part 7045.0020, the applicable subdivisions made within a waste code based on waste specific criteria, and Code of Federal Regulations sections and paragraphs where the applicable treatment standard appears. Where the applicable treatment standards are expressed as specified technologies in part 7045.1360, the applicable five-letter treatment code in part 7045.1360 (e.g., INCIN, WETOX) also must be listed on the notification;

(3) the manifest number associated with the shipment of waste; and

(4) waste analysis data, where available.

~~B.~~ E. The treatment facility must submit a certification with each shipment of waste or treatment residue of a restricted waste to the land disposal facility stating that the waste or treatment residue has been treated in compliance with the applicable performance standards in parts 7045.1350 to 7045.1360 and the applicable prohibitions in part 7045.1330 or RCRA section 3004(d).

(1) For wastes with treatment standards expressed as concentrations in the waste extract ~~in part 7045.1355~~ or in the waste, under part 7045.1355 or 7045.1358, or for wastes prohibited under part 7045.1330 or RCRA section 3004(d) ~~which~~ that are not subject to any treatment standards under parts 7045.1350 to 7045.1360, the certification must be signed by an authorized representative and must state the following:

"I certify under penalty of law that I have personally examined and am familiar with the treatment technology and operations of

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the treatment process used to support this certification and that, based on my inquiry of those individuals immediately responsible for obtaining this information, I believe that the treatment process has been operated and maintained properly ~~so as to comply~~ and complies with the performance levels ~~specified~~ in parts 7045.1350 to 7045.1360 and all applicable prohibitions in part 7045.1330 or RCRA section 3004(d) without impermissible dilution of the prohibited waste. I am aware that there are significant penalties for submitting a false certification, including the possibility of fine and imprisonment."

(2) For wastes with treatment standards expressed as technologies in part 7045.1360, the certification must be signed by an authorized representative and must state the following:

"I certify under penalty of law that the waste has been treated ~~in accordance with the requirements of~~ according to part 7045.1360. I am aware that there are significant penalties for submitting a false certification, including the possibility of fine and imprisonment."

(3) For wastes with treatment standards expressed as concentrations in the waste under part 7045.1358, if compliance with the treatment standards in parts 7045.1350 to 7045.1360 is based in whole or in part on the analytical detection limit alternative specified in part 7045.1358, the certification also must state the following:

"I certify under penalty of law that I have personally examined and am familiar with the treatment technology and operation of the treatment process used to support this certification and that, based on my inquiry of those individuals immediately responsible for obtaining this information, I believe that the nonwastewater organic constituents have been treated by incineration in units operated according to Code of Federal Regulations, title 40, part 264, subpart O, or part 265, subpart O, or by combustion in fuel substitution units operating according to applicable technical requirements, and I have been unable to detect the nonwastewater organic constituents despite having used my best good faith efforts to analyze for the constituents. I am aware that there are significant penalties for submitting a false certification, including the possibility of fine and imprisonment."

F. If the waste or treatment residue will be further managed at a different treatment or storage facility, the treatment, storage, or disposal facility sending the waste or treatment residue off-site must comply with the notice and certification requirements applicable to generators under this part.

G. When the wastes are recyclable materials used in a manner constituting disposal subject to part 7045.0665, subpart 1, item C, regarding treatment standards and prohibition levels, the owner or operator of a treatment facility, the recycler, is not required to notify the receiving facility under item D. With each shipment of the wastes, the owner or operator of the recycling facility must submit the certification in item E, and a notice that includes the information in item D, except the manifest number, to the commissioner's delegated representative. The recycling facility also must keep records of the name and location of each entity receiving the hazardous waste-derived product.

Subp. 3. **Facility requirements.** Except when the owner or operator is disposing of waste that is a recyclable material used in a manner constituting disposal under part 7045.0665, subpart 1, the owner or operator of ~~any~~ a land disposal facility disposing any waste subject to restrictions under parts 7045.1300 to 7045.1380 must:

A. have ~~records~~ copies of the notice and ~~certification required~~ certifications specified in subpart 1 or 2. ~~The owner or operator of the land disposal facility must~~ and the certification specified in part 7045.1308, if applicable; and

B. test the waste, or an extract of the waste or treatment residue developed using the test method ~~described~~ in Code of Federal Regulations, title 40, part ~~268~~ 261, Appendix ~~I~~ II, or using any methods required by generators under part 7045.1330, to assure that the wastes or treatment residues are in compliance with the applicable treatment standards in parts 7045.1350 to 7045.1360 and all applicable prohibitions in part 7045.1330 or RCRA section 3004(d). The testing must be performed according to the frequency specified in the facility's waste analysis plan as required in part 7045.0458 or 7045.0564.

7045.1320 WASTE SPECIFIC PROHIBITIONS; SOLVENT WASTES.

Subpart 1. **Applicability.** Effective November 8, 1986, the spent solvent wastes specified in part 7045.0135 as Hazardous Waste Nos. F001, F002, F003, F004, and F005, are prohibited from land disposal unless one or more of the following conditions apply:

A. the generator of the solvent waste is a small quantity generator;

B. the solvent waste is generated from any response action taken under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), or any corrective action taken under the Resource Conservation and Recovery Act (RCRA), except where the waste is contaminated soil or debris ~~not subject to this chapter until November 8, 1988~~;

C. the initial generator's solvent waste is a solvent-water mixture, solvent-containing sludge or solid, or solvent-contaminated soil (non-CERCLA or RCRA corrective action) containing less than one percent total F001-F005 solvent constituents listed in part 7045.1355, subpart 3; or

D. the solvent waste is a residue from treating a waste described in items A to C; or the solvent waste is a residue from treating a waste not described in items A to C, provided the residue belongs to a different treatability group than the waste as initially generated and wastes belonging to ~~a~~ the treatability group are described in item C.

Subp. 2. **Effective date.** Effective November 8, 1988, the F001-F005 solvent wastes listed in subpart 1, items A to ~~C~~ D, are prohibited from land disposal. ~~Until~~ Effective November 8, ~~1988~~ 1990, the F001-F005 solvent wastes ~~included in subpart 1, items A to C,~~ that are contaminated soil and debris resulting from a response action taken under section 104 or 106 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 or a corrective action required under RCRA, subtitle C, and the residues from treating these wastes are prohibited from land disposal. Between November 8, 1988, and November 8, 1990, these wastes may be disposed of in a landfill or surface impoundment only if the ~~facility~~ unit is in compliance with the requirements of Code of Federal Regulations, title 40, section 268.5(h)(2).

Subp. 3. **Exceptions.** The requirements of subparts 1 and 2 do not apply if:

A. the wastes meet the standards of parts 7045.1350 to 7045.1360;

B. persons have been granted an exemption from a prohibition pursuant to a petition under part 7045.0075, ~~subpart 9,~~ with respect to those wastes and units covered by ~~repetition~~ the petition; or

C. persons have been granted an extension to ~~an~~ the effective date of a prohibition under part 7045.0075, subpart ~~8~~ 6, with respect to those wastes and units covered by the extension.

7045.1325 WASTE SPECIFIC PROHIBITION; DIOXIN-CONTAINING WASTES.

Subpart 1. **Applicability.** Effective November 8, 1988, the dioxin-containing wastes specified in part 7045.0135 as Hazardous Waste Nos. F020, F021, F022, F023, F026, F027, and F028~~,~~ are prohibited from land disposal.

Subp. 2. **Exceptions.** The requirements of subpart 1 do not apply if:

A. the wastes meet the standards of parts 7045.1350 to 7045.1360;

B. persons have been granted an exemption from a prohibition under part 7045.0075, subpart 9, with respect to those wastes or units covered by the petition; ~~or~~

C. persons have been granted an extension to ~~an~~ the effective date of a prohibition under part 7045.0075, subpart 8, with respect to those wastes covered by the extension; or

D. the F020-F023 and F026-F028 dioxin-containing wastes are contaminated soil and debris resulting from a response action taken under section 104 or 106 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, or a corrective action taken under RCRA, subtitle C.

Subp. 3. **Effective date.** ~~Until~~ Effective November 8, 1990, the F020-F023 and F026-F028 dioxin-containing wastes in subpart 2, item D, are prohibited from land disposal. Between November 8, 1988, and November 8, 1990, wastes included in subpart ~~1~~ 2, item A, may be disposed of in a landfill or surface impoundment only if the ~~facility~~ unit is in compliance with the requirements of Code of Federal Regulations, title 40, part 268.5(h)(2) and all other applicable requirements of parts 7045.0450 to 7045.0642.

7045.1330 WASTE SPECIFIC PROHIBITIONS; CALIFORNIA LIST WASTES.

Subpart 1. **Application.** Effective July 8, 1987, the following hazardous wastes are prohibited from land disposal:

A. liquid hazardous wastes having a pH less than or equal to two;

B. liquid hazardous wastes containing polychlorinated biphenyls (PCB's) at concentrations greater than or equal to 50 ppm; ~~and~~

C. liquid hazardous wastes that are primarily water and contain halogenated organic compounds (HOC's) in total concentration greater than or equal to 1,000 mg/1 and less than 10,000 mg/1 HOC's;

D. liquid hazardous wastes that contain HOC's in total concentration greater than or equal to 1,000 mg/1 and are not prohibited under item C; and

E. nonliquid hazardous wastes containing HOC's in total concentration greater than or equal to 1,000 mg/kg and are not wastes described in subpart 2, items A and B.

Subp. 2. **Exceptions.** The ~~following items are an exception from the prohibitions in~~ requirements of subpart 1, items A to E, do not apply until:

A. ~~The requirements of subpart 1 do not apply until November~~ July 8, ~~1988~~ 1989, where the wastes are contaminated soil or debris not resulting from a response action taken under section 104 or 106 of the Comprehensive Environmental Response, Compen-

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sation, and Liability Act of 1980 or a corrective action ~~required~~ taken under RCRA, subtitle C. Between July 8, 1987, and July 8, 1989, the wastes may be disposed of in a landfill or surface impoundment only if the disposal is in compliance with the requirements of Code of Federal Regulations, title 40, section 268.5(h)(2).

B. ~~Effective July~~ November 8, ~~1989~~ 1990, where the ~~following hazardous~~ wastes are ~~prohibited from land disposal:~~

~~(1) liquid hazardous wastes that contain HOC's in total concentration greater than or equal to 1,000 mg/l and are not prohibited under subpart 1, item C; and~~

~~(2) nonliquid hazardous wastes containing HOC's in total concentration greater than or equal to 1,000 mg/kg~~ contaminated soil or debris resulting from a response action taken under section 104 or 106 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 or a corrective action taken under RCRA, subtitle C. Between November 8, 1988, and November 8, 1990, the wastes may be disposed of in a landfill or surface impoundment only if the unit is in compliance with the requirements of Code of Federal Regulations, title 40, section 268.5(h)(2).

C. ~~Until~~ Between July 8, ~~1989~~ 1987, and November 8, 1988, the wastes ~~described~~ included in ~~item B~~ subpart 1, items D and E, may be disposed of in a landfill or surface impoundment only if the ~~facility~~ unit is in compliance with the requirements of Code of Federal Regulations, title 40, part 268.5(h)(2).

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

E. The prohibitions and effective dates in subpart 1, ~~item~~ items C to E, and subpart 2, items A and B, do not apply where the waste is subject to an effective date and prohibition under parts 7045.1320 to 7045.1330 for a specified HOC, such as a hazardous waste chlorinated solvent.

[For text of subp 3, see M.R.]

7045.1333 WASTE SPECIFIC PROHIBITIONS; FIRST ONE-THIRD OF REGULATED WASTES.

Subpart 1. **Application.** The hazardous wastes in items A and B are prohibited from land disposal.

A. Effective August 8, 1988, the wastes specified as EPA Hazardous Waste Nos. F006 (nonwastewater) in part 7045.0135; K001 and K004 wastes specified in part 7045.1358, subpart 1; K008 wastes specified in part 7045.1358, subpart 1; K016, K018, K019, K020 and K021 wastes specified in part 7045.1358, subpart 1; K022 (nonwastewater), K024, and K025 nonwastewaters specified in part 7045.1358, subpart 1; K030, K036 (nonwastewater), K037, K044, K045, nonexplosive K046 (nonwastewater), K047, K060 (nonwastewater), K061 (nonwastewaters containing less than 15 percent zinc), K062, non $CaSO_4$ K069 (nonwastewaters), K086 (solvent washes), K087, K099, and K100 nonwastewaters specified in part 7045.1358, subpart 1; K101 (wastewater), K101 (nonwastewater, low arsenic subcategory less than one percent total arsenic), K102 (wastewater), K102 (nonwastewater, low arsenic subcategory less than one percent total arsenic), K103, and K104 are prohibited from land disposal.

B. Effective August 8, 1988, and continuing until August 7, 1990, K061 wastes containing 15 percent zinc or greater are prohibited from land disposal under the treatment standards specified in part 7045.1355 applicable to K061 wastes that contain less than 15 percent zinc.

Subp. 2. **Exceptions.** Items A to D are exceptions from the prohibitions in subpart 1.

A. Effective August 8, 1990, the waste specified in part 7045.0135, subpart 3, as EPA Hazardous Waste No. K071 is prohibited from land disposal.

B. Effective August 8, 1990, the wastes specified in Code of Federal Regulations, title 40, section 268.10, having a treatment standard in parts 7045.1350 to 7045.1360 based on incineration that are contaminated soil and debris are prohibited from land disposal.

C. Between November 8, 1988, and August 8, 1990, wastes included in items A and B may be disposed of in a landfill or surface impoundment only if the unit is in compliance with the requirements of Code of Federal Regulations, title 40, section 268.5(h)(2).

D. The requirements of this subpart and subpart 1 do not apply if:

(1) the wastes meet the applicable standards in part 7045.1355;

(2) persons have been granted an exemption to an effective date of a prohibition under part 7045.0075, subpart 7, with respect to those wastes and units covered by the petition; or

(3) persons have been granted an extension to an effective date of a prohibition under part 7045.0075, subpart 6, with respect to those wastes covered by the extension.

Subp. 3. **Applicability between August 8, 1988, and May 8, 1990.** Between August 8, 1988, and May 8, 1990, the wastes specified in Code of Federal Regulations, title 40, section 268.10, for which treatment standards under part 7045.1355 have not been adopted, including wastes that are subject to the statutory prohibitions of RCRA section 3004(d) or codified prohibitions under part 7045.0135, subpart 3, but not including wastes subject to a treatment standard under part 7045.1360, are prohibited from disposal in a landfill or surface impoundment unless a demonstration and certification have been submitted.

Subp. 4. **Waste analysis.** To determine whether a hazardous waste listed in Code of Federal Regulations, title 40, section 268.10, exceeds the applicable treatment standards in parts 7045.1355 and 7045.1358, the initial generator must test a representative sample of the waste extract or the entire waste depending on whether the treatment standards are expressed as concentrations in the waste extract or the waste, or the generator may use knowledge of the waste. If the waste contains constituents in excess of the applicable subpart D levels, the waste is prohibited from land disposal and all requirements of parts 7045.1300 to 7045.1380 are applicable, except as otherwise specified.

7045.1334 WASTE SPECIFIC PROHIBITION; SECOND ONE-THIRD OF REGULATED WASTES.

Subpart 1. **Application.** The wastes in items A to E are prohibited from land disposal.

A. Effective June 8, 1989, the wastes specified in part 7045.0135 as EPA Hazardous Waste Nos. F010; F024; K005; K007; K009 (nonwastewaters); K010; K023; K027; K028; K029 (nonwastewaters); K036 (wastewaters); K038; K039; K040; K043; K093; K094; K095 (nonwastewaters); K096 (nonwastewaters); K113; K114; K115; K116; P013; P021; P029; P030; P039; P040; P041; P043; P044; P062; P063; P071; P074; P085; P089; P094; P097; P098; P099; P104; P106; P109; P111; P121; U028; U058; U069; U087; U088; U102; U107; U221; U223; and U235 are prohibited from land disposal.

B. Effective June 8, 1989, the wastes specified in part 7045.0135 as EPA Hazardous Waste Nos. K009 (wastewaters); K011 (nonwastewaters); K013 (nonwastewaters); and K014 (nonwastewaters) are prohibited from land disposal.

C. Effective July 8, 1989, the wastes specified in part 7045.0135 as EPA Hazardous Waste Nos. F006—cyanide (nonwastewater); F008; F009; F011 (wastewaters); and F012 (wastewaters) are prohibited from land disposal.

D. Effective July 8, 1989, the waste specified in Code of Federal Regulations, title 40, section 261.31, as EPA Hazardous Waste No. F007 is prohibited from land disposal.

E. Effective July 8, 1989 through December 8, 1989, F011 (nonwastewaters) and F012 (nonwastewaters) are prohibited from land disposal pursuant to the treatment standards in parts 7045.1355 and 7045.1358 applicable to EPA Hazardous Waste Nos. F007, F008, and F009 nonwastewaters. Effective December 8, 1989, F011 (nonwastewaters) and F012 (nonwastewaters) are prohibited from land disposal pursuant to the treatment standards in parts 7045.1355 and 7045.1358 applicable to F011 (nonwastewaters) and F012 (nonwastewaters).

Subp. 2. **Exceptions.** Items A to D are exceptions from the prohibitions in subpart 1.

A. Effective June 8, 1991, the wastes specified in this part having a treatment standard in parts 7045.1350 to 7045.1360 based on incineration that are contaminated soil and debris are prohibited from land disposal.

B. Between June 8, 1989, and June 8, 1991, (for EPA Hazardous Waste Nos. F007, F008, F009, F011, and F012 between June 8, 1989, and July 8, 1989) wastes included in item A and subpart 1, item C, may be disposed of in a landfill or surface impoundment only if the unit is in compliance with the technical requirements of Code of Federal Regulations, title 40, section 268.5(h)(2).

C. The requirements of item A and subpart 1, items A to C, do not apply if:

(1) the wastes meet the applicable standards in parts 7045.1350 to 7045.1360;

(2) an exemption has been granted from a prohibition as a result of a petition under part 7045.0075, subpart 7, with respect to wastes and units covered by the petition; or

(3) an extension to the effective date of a prohibition under part 7045.0075, subpart 7, has been granted with respect to wastes covered by the extension.

D. Between June 8, 1989, and May 8, 1990, the wastes specified in Code of Federal Regulations, title 40, section 268.11, for which treatment standards under parts 7045.1350 to 7045.1360 are not applicable, including California list wastes subject to the statutory prohibitions of RCRA section 3004(d) or codified prohibitions under part 7045.0135, subpart 3, are prohibited from disposal in a landfill or surface impoundment unless the wastes are the subject of a valid demonstration and certification under part 7045.1308.

Subp. 3. **Waste analysis.** To determine whether a hazardous waste listed in Code of Federal Regulations, title 40, sections 268.10 to 268.12, exceeds the applicable treatment standards specified in parts 7045.1355 and 7045.1358, the initial generator must test a representative sample of the waste extract or the entire waste, depending on whether the treatment standards are expressed as concentrations in the waste extract of the waste, or the generator may use knowledge of the waste. If the waste contains constituents

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in excess of the applicable levels specified in parts 7045.1350 to 7045.1360, the waste is prohibited from land disposal and all requirements of parts 7045.1300 to 7045.1380 are applicable, except as otherwise specified.

7045.1335 WASTE SPECIFIC PROHIBITIONS; THIRD ONE-THIRD OF REGULATED WASTES.

Subpart 1. **Applicability as of August 8, 1990.** Effective August 8, 1990, the following wastes are prohibited from land disposal:

A. wastes specified in part 7045.1325 as EPA Hazardous Waste Nos. F002 (1,1,2-trichloroethane); F005 (benzene); F005 (2-ethoxy ethanol); F005 (2-nitro-propane); F006 (wastewaters); F019; F025; and F039 (wastewaters);

B. wastes specified in part 7045.1330 as EPA Hazardous Waste Nos. K002; K003; K004 (wastewaters); K005 (wastewaters); K006; K008 (wastewaters); K011 (wastewaters); K013 (wastewaters); K014 (wastewaters); K015 (nonwastewaters); K017; K021 (wastewaters); K022 (wastewaters); K025 (wastewaters); K026; K029 (wastewaters); K031 (wastewaters); K032; K033; K034; K035; K041; K042; K046 (wastewaters, reactive nonwastewaters); K048 (wastewaters); K049 (wastewaters); K050 (wastewaters); K051 (wastewaters); K052 (wastewaters); K060 (wastewaters); K061 (wastewaters and high zinc subcategory f 15 percent zinc); K069 (wastewaters, calcium sulfate nonwastewaters); K073; K083; K084 (wastewaters); K085; K095 (wastewaters); K096 (wastewaters); K097; K098; K100 (wastewaters); K101 (wastewaters); K102 (wastewaters); K105; and K106 (wastewaters);

C. wastes specified in part 7045.1333, subpart 2, as EPA Hazardous Waste Nos. P001; P002; P003; P004; P005; P006; P007; P008; P009; P010 (wastewaters); P011 (wastewaters); P012 (wastewaters); P014; P015; P016; P017; P018; P020; P022; P023; P024; P026; P027; P028; P031; P033; P034; P036 (wastewaters); P037; P038 (wastewaters); P042; P045; P046; P047; P048; P049; P050; P051; P054; P056; P057; P058; P059; P060; P064; P065 (wastewaters); P066; P067; P068; P069; P070; P072; P073; P075; P076; P077; P078; P081; P082; P084; P088; P092 (wastewaters); P093; P095; P096; P101; P102; P103; P105; P108; P110; P112; P113; P114; P115; P116; P118; P119; P120; P122; and P123;

D. wastes specified in part 7045.1333, subpart 3, as EPA Hazardous Waste Nos. U001; U002; U003; U004; U005; U006; U007; U008; U009; U010; U011; U012; U014; U015; U016; U017; U018; U019; U020; U021; U022; U023; U024; U025; U026; U027; U029; U030; U031; U032; U033; U034; U035; U036; U037; U038; U039; U041; U042; U043; U044; U045; U046; U047; U048; U049; U050; U051; U052; U053; U055; U056; U057; U059; U060; U061; U062; U063; U064; U066; U067; U068; U070; U071; U072; U073; U074; U075; U076; U077; U078; U079; U080; U081; U082; U083; U084; U085; U086; U089; U090; U091; U092; U093; U094; U095; U096; U097; U098; U099; U101; U103; U105; U106; U108; U109; U110; U111; U112; U113; U114; U115; U116; U117; U118; U119; U120; U121; U122; U123; U124; U125; U126; U127; U128; U129; U130; U131; U132; U133; U134; U135; U136 (wastewaters); U137; U138; U140; U141; U142; U143; U144; U145; U146; U147; U148; U149; U150; U151 (wastewaters); U152; U153; U154; U155; U156; U157; U158; U159; U160; U161; U162; U163; U164; U165; U166; U167; U168; U169; U170; U171; U172; U173; U174; U176; U177; U178; U179; U180; U181; U182; U183; U184; U185; U186; U187; U188; U189; U191; U192; U193; U194; U196; U197; U200; U201; U202; U203; U204; U205; U206; U207; U208; U209; U210; U211; U213; U214; U215; U216; U217; U218; U219; U220; U222; U225; U226; U227; U228; U234; U236; U237; U238; U239; U240; U243; U244; U246; U247; U248; and U249; and

E. the following wastes identified as hazardous based on a characteristic alone: D001; D002; D003; D004 (wastewaters); D005; D006; D007; D008 (except for lead materials stored before secondary smelting); D009 (wastewaters); D010; D011; D012; D013; D014; D015; D016; and D017.

Subp. 2. **Applicability as of November 8, 1990.** Effective November 8, 1990, the wastes specified in part 7045.1330 as EPA Hazardous Waste Nos. K048 (nonwastewaters); K049 (nonwastewaters); K050 (nonwastewaters); K051 (nonwastewaters); and K052 (nonwastewaters) are prohibited from land disposal.

Subp. 3. **Applicability as of May 8, 1992.** Effective May 8, 1992, the following wastes are prohibited from land disposal:

A. waste specified in part 7045.1325 as EPA Hazardous Waste No. F039 (nonwastewaters);

B. wastes specified in part 7045.1330 as EPA Hazardous Waste Nos. K031 (nonwastewaters); K084 (nonwastewaters); K101 (nonwastewaters); K102 (nonwastewaters); and K106 (nonwastewaters);

C. wastes specified in part 7045.1333, subpart 2, as EPA Hazardous Waste Nos. P010 (nonwastewaters); P011 (nonwastewaters); P012 (nonwastewaters); P036 (nonwastewaters); P038 (nonwastewaters); P065 (nonwastewaters); P087; and P092 (nonwastewaters);

D. wastes specified in part 7045.1333, subpart 3, as EPA Hazardous Waste Nos. U136 (nonwastewaters); and U151 (nonwastewaters); and

E. the following wastes identified as hazardous based on a characteristic alone: D004 (nonwastewaters); D008 (lead materials stored before secondary smelting), and D009 (nonwastewaters); inorganic solids debris as defined in part 7045.0020, subpart 45a (which also applies to chromium refractory bricks carrying the EPA Hazardous Waste Nos. K048-K052); and RCRA hazardous wastes that contain naturally occurring radioactive materials.

Subp. 4. **Mixed radioactive/hazardous wastes.** Effective May 8, 1992, hazardous wastes listed in Code of Federal Regulations,

title 40, sections 268.10, 268.11, and 268.12, that are mixed radioactive/hazardous wastes, and soil or debris contaminated with the hazardous wastes, are prohibited from land disposal.

Subp. 5. **Contaminated soil or debris.** Effective May 8, 1992, the wastes specified in this part having a treatment standard in parts 7045.1350 to 7045.1360 based on incineration, mercury retorting, vitrification, acid leaching followed by chemical precipitation, or thermal recovery of metals, and which are contaminated soil or debris, are prohibited from land disposal.

Subp. 6. **Exceptions between May 8, 1990, and August 8, 1990.** Between May 8, 1990, and August 8, 1990, the wastes in subpart 1 may be disposed of in a landfill or surface impoundment only if the unit is in compliance with the requirements in part 7045.0075, subpart 8.

Subp. 7. **Exceptions between May 8, 1990, and November 8, 1990.** Between May 8, 1990, and November 8, 1990, the wastes in subpart 2 may be disposed of in a landfill or surface impoundment only if the unit is in compliance with the requirements in part 7045.0075, subpart 8.

Subp. 8. **Exceptions between May 8, 1990, and May 8, 1992.** Between May 8, 1990, and May 8, 1992, the wastes in subparts 3 to 5 may be disposed of in a landfill or surface impoundment only if the unit is in compliance with the requirements of Code of Federal Regulations, title 40, section 268.5(h)(2).

Subp. 9. **General exceptions.** The requirements of subparts 1 to 5 do not apply if:

A. the wastes meet the applicable standards in parts 7045.1350 to 7045.1360;

B. persons have been granted an exemption from a prohibition pursuant to a petition under part 7045.0075, subpart 9, with respect to wastes and units covered by the petition;

C. the wastes meet the applicable alternate standards established pursuant to a petition granted under Code of Federal Regulations, title 40, section 268.44; and

D. persons have been granted an extension to the effective date of a prohibition under part 7045.0075, subpart 8, with respect to wastes covered by the extension.

Subp. 10. **Waste analysis.** To determine whether a hazardous waste listed in Code of Federal Regulations, title 40, sections 268.10, 268.11, and 268.12, exceeds the applicable treatment standards in parts 7045.1355 and 7045.1358, the initial generator must test a representative sample of the waste extract or the entire waste, depending on whether the treatment standards are expressed as concentrations in the waste extract or the waste, or the generator may use knowledge of the waste. If the waste contains constituents in excess of the applicable levels listed in parts 7045.1350 to 7045.1360, the waste is prohibited from land disposal and all requirements of parts 7045.1300 to 7045.1380 are applicable, except as otherwise specified.

7045.1339 EFFECTIVE DATES OF SURFACE DISPOSED WASTES REGULATED IN THE LAND DISPOSAL RESTRICTIONS.

The comprehensive list of effective dates of surface disposed wastes regulated in the land disposal restrictions is found in Code of Federal Regulations, title 40, section 268, Appendix VII, Tables 1 and 2. This table does not include mixed radioactive wastes which are receiving a national capacity variance until May 8, 1992, for all applicable treatment technologies.

7045.1350 TREATMENT STANDARDS.

Subpart 1. **Concentration standard for waste extract.** A restricted waste identified in ~~this subpart~~ part 7045.1355 may be land disposed ~~without further treatment~~ only if an extract of the waste or of the treatment residue of the waste developed using the test method in Code of Federal Regulations, title 40, part ~~268~~ 261, Appendix ~~I~~ II, does not exceed the value shown in Code of Federal Regulations, title 40, part ~~7045.1355, subpart 3~~ 268.41, Table CCWE, for any hazardous constituent listed for that waste, with the following exceptions: D004; D008; K031; K084; K101; K102; P010; P011; P012; P036; P038; and U136. These wastes may be land disposed only if an extract of the waste or of the treatment residue of the waste developed using either the test method in Code of Federal Regulations, title 40, part 261, Appendix II, or the test method in Code of Federal Regulations, title 40, part 268, Appendix IX, does not exceed the concentrations shown in Code of Federal Regulations, title 40, part 268.41, Table CCWE, for any hazardous constituent listed for that waste.

[For text of subp 2, see M.R.]

Subp. 3. **Concentration standard for waste or treatment residue.** Except as otherwise specified in part 7045.1358, a restricted waste identified in part 7045.1358 may be land disposed only if the constituent concentrations in the waste or treatment residue of

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the waste do not exceed the value shown in Code of Federal Regulations, title 40, part 268.43, Table CCW, for any hazardous constituents listed for that waste.

7045.1355 TREATMENT STANDARDS EXPRESSED AS CONCENTRATIONS IN WASTE EXTRACT.

Subpart 1. **Applicability.** ~~Subpart 3~~ Code of Federal Regulations, title 40, part 268.41, Table CCWE, identifies the restricted wastes and the concentrations of their associated ~~hazardous~~ constituents that may not be exceeded by the extract of a waste or waste treatment residual developed using the test method in ~~Appendix I of~~ Code of Federal Regulations, title 40, part ~~268~~ 261, Appendix II, for the allowable land disposal of ~~the waste~~ such wastes, with the exception of EPA Hazardous Waste Nos. D004, D008, K031, K084, K101, K102, P010, P011, P012, P036, P038, and U136. Table CCWE also identifies the restricted EPA Hazardous Waste Nos. D004, D008, K031, K084, K101, K102, P010, P011, P012, P036, P038, and U136 and the concentrations of their associated constituents which may not be exceeded by the extract of a waste or waste treatment residual developed using the test method in Code of Federal Regulations, title 40, part 261, Appendix II, for the allowable land disposal of such wastes. Code of Federal Regulations, title 40, part 268, Appendix II, provides agency guidance on treatment methods that have been shown to achieve the Table CCWE levels for the respective wastes. This guidance is provided to assist generators and owners or operators in their selection of appropriate treatment methods. Compliance with these concentrations is required based on grab samples.

[For text of subp 2, see M.R.]

Subp. 3. **~~Constituents~~ Constituent concentrations in waste extract.** Constituents in waste extracts are listed with the applicable concentration limits in Code of Federal Regulations, title 40, part 268.41, Table CCWE.

	~~Concentration (in mg/l)~~	
~~F001-F005 spent solvents~~	~~Wastewaters containing spent solvents~~	~~All other spent solvent wastes~~
~~Acetone~~	~~0.05~~	~~0.59~~
~~n-Butyl alcohol~~	~~5.0~~	~~5.0~~
~~Carbon disulfide~~	~~1.05~~	~~4.81~~
~~Carbon tetrachloride~~	~~0.05~~	~~0.96~~
~~Chlorobenzene~~	~~0.15~~	~~0.05~~
~~Cresols (and cresylic acid)~~	~~2.82~~	~~0.75~~
~~Cyclohexanone~~	~~0.125~~	~~0.75~~
~~1,2-Dichlorobenzene~~	~~0.65~~	~~0.125~~
~~Ethyl acetate~~	~~0.05~~	~~0.75~~
~~Ethylbenzene~~	~~0.05~~	~~0.053~~
~~Ethyl ether~~	~~0.05~~	~~0.75~~
~~Isobutanol~~	~~5.0~~	~~5.0~~
~~Methanol~~	~~0.25~~	~~0.75~~
~~Methylene chloride~~	~~0.20~~	~~0.96~~
~~Methylene chloride (from the pharmaceutical industry)~~	~~12.7~~	~~0.96~~
~~Methyl ethyl ketone~~	~~0.05~~	~~0.75~~
~~Methyl isobutyl ketone~~	~~0.05~~	~~0.33~~
~~Nitrobenzene~~	~~0.66~~	~~0.125~~
~~Pyridine~~	~~1.12~~	~~0.33~~
~~Tetrachloroethylene~~	~~0.079~~	~~0.05~~
~~Toluene~~	~~1.12~~	~~0.33~~
~~1,1,1-Trichloroethane~~	~~1.05~~	~~0.41~~
~~1,1,2-Trichloro-1,2,2-Trifluoroethane~~	~~1.05~~	~~0.96~~
~~Trichloroethylene~~	~~0.062~~	~~0.091~~
~~Trichlorofluoromethane~~	~~0.05~~	~~0.96~~
~~Xylene~~	~~0.05~~	~~0.15~~

~~F020-F023 and F026-F028 dioxin containing wastes~~	~~Concentration~~
~~HxCDD—All Hexachlorodibenzo-p-dioxins~~	~~< 1 ppb~~
~~HxCDF—All Hexachlorodibenzofurans~~	~~< 1 ppb~~
~~PeCDD—All Pentachlorodibenzo-p-dioxins~~	~~< 1 ppb~~
~~PeCDF—All Pentachlorodibenzofurans~~	~~< 1 ppb~~
~~TCDD—All Tetrachlorodibenzo-p-dioxins~~	~~< 1 ppb~~
~~TCDF—All Tetrachlorodibenzofurans~~	~~< 1 ppb~~

~~F020-F023 and F026-F028 dioxin containing wastes~~

	~~Concentration~~
~~2,4,5-Trichlorophenol~~	~~< 0.05 ppm~~
~~2,4,6-Trichlorophenol~~	~~< 0.05 ppm~~
~~2,3,4,6-Tetrachlorophenol~~	~~< 0.10 ppm~~
~~Pentachlorophenol~~	~~< 0.01 ppm~~

7045.1358 TREATMENT STANDARDS EXPRESSED AS WASTE CONCENTRATIONS.

Subpart 1. **Applicability.** Subpart 3 identifies the restricted wastes and the concentrations of their associated hazardous constituents that may not be exceeded by the waste or treatment residual, not an extract of the waste or residual, for the allowable land disposal of the waste or residual. Compliance with these concentrations is required based on grab samples, unless otherwise noted in subpart 3. Limits are expressed in milligrams per kilogram (mg/kg) for nonwastewaters and in milligrams per liter (mg/l) for wastewaters.

Subp. 2. **Combined wastes.** When wastes with differing treatment standards for a constituent of concern are combined for purposes of treatment, the treatment residue must meet the lowest treatment standard for the constituent of concern.

Subp. 3. **Constituent concentrations in wastes.** Constituent concentrations in wastes are listed with the applicable concentration limits in Code of Federal Regulations, title 40, section 268.43, Table CCW.

Subp. 4. **No land disposal.** The nonwastewater forms of the following wastes generated by the processes described in the waste listing description applies only to wastes generated and disposed after the dates shown, if a date is shown, and not generated in the course of treating wastewater forms of these wastes based on no generation, except as noted, are prohibited from land disposal:

A. K004, after August 17, 1988;

B. K005, after June 8, 1989;

C. K007, after June 8, 1989;

D. K008, after August 17, 1988;

E. K015, after May 8, 1990, based on no ash;

F. K021, after August 17, 1988;

G. K025, after August 17, 1988;

H. K036, after August 17, 1988;

I. K044, based on reactivity;

J. K045, based on reactivity;

K. K047, based on reactivity;

L. K060, after August 17, 1988;

M. K061—high zinc subcategory, greater than or equal to 15 percent total zinc, after August 17, 1990, based on recycling, effective August 8, 1990;

N. K069—noncalcium sulfate subcategory, after August 17, 1988, based on recycling;

O. K083—no ash subcategory, less than 0.01 percent total ash, after May 8, 1990, based on no ash; and

P. K100, after August 17, 1988.

Subp. 5. **Demonstrating compliance with treatment standards for organic constituents.** Notwithstanding the prohibitions in subpart 1, treatment and disposal facilities may demonstrate, and certify under part 7045.1315, subpart 2, item E, compliance with the treatment standards for organic constituents specified by a footnote in Code of Federal Regulations, title 40, section 268.43, Table CCW, provided the following conditions are satisfied:

A. the treatment standards for the organic constituents were established based on incineration in units operated according to the technical requirements of part 7045.0542 or 7045.0640, or based on combustion in fuel substitution units operating in according to applicable technical requirements;

B. the treatment or disposal facility has used the methods referenced in item A to treat the organic constituents; and

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C. the treatment or disposal facility has been unable to detect the organic constituents despite using its best good faith efforts as defined by applicable guidance or standards. Until the guidance or standards are developed, the treatment or disposal facility may demonstrate such good faith efforts by achieving detection limits for the regulated organic constituents that do not exceed an order of magnitude of the treatment standards specified in this part.

7045.1360 TREATMENT STANDARDS EXPRESSED AS SPECIFIED TECHNOLOGIES.

~~The following wastes must be treated using the identified technology or technologies, or an equivalent method approved under part 7045.0075, subpart 10.~~

Subpart 1. **Applicability.** The wastes in items A and B and subparts 4 and 5 must be treated using the technology or technologies specified in items A to C and subpart 3.

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

B. Nonliquid hazardous wastes containing halogenated organic compounds (HOC's) in total ~~concentrations~~ concentration greater than or equal to 1,000 mg/kg and liquid HOC-containing wastes that are prohibited under part 7045.1330, subpart ~~2~~ 1, item ~~B~~ D, ~~subitem (1),~~ must be incinerated in accordance with the requirements of part 7045.0542 or 7045.0640. These treatment standards do not apply if the waste is subject to a treatment standard in parts ~~7045.1320~~ 7045.1350 to ~~7045.1330~~ 7045.1360 for a specific HOC.

C. A mixture consisting of wastewater, the discharge of which is subject to regulation under either section 307(b) or 402 of the Clean Water Act, and de minimis losses of materials from manufacturing operations in which these materials are used as raw materials or are produced as products in the manufacturing process, and that meet the criteria of the D001 ignitable liquids containing greater than ten percent total organic constituents (TOC) subcategory, is subject to the DEACT treatment standard described in subpart 3. For purposes of this item, de minimis losses include those from normal material handling operations such as spills from the unloading or transfer of materials from bins or other containers, leaks from pipes, valves, or other devices used to transfer materials; minor leaks from process equipment, storage tanks, or containers; leaks from well-maintained pump packings and seals; sample purgings; and relief device discharges.

Subp. 2. **Alternative technology.** A person may submit an application to the commissioner demonstrating that an alternative treatment method can achieve a measure of performance equivalent to that achievable by methods specified in subpart 1. The applicant must submit information demonstrating that the alternative treatment method complies with federal, state, and local requirements and is protective of human health and the environment. On the basis of all available information, the commissioner may approve the use of the alternative treatment method if the commissioner finds that the alternative treatment method provides a measure of performance equivalent to that achieved by methods specified in subpart 1. An approval must be stated in writing and contain provisions and conditions the commissioner considers appropriate. The person to whom the approval is issued must comply with all limitations contained in the determination.

Subp. 3. **Technology codes and description of technology-based standards.** The items in this subpart list the five-letter technology codes for use in notifications and the description of each technology-based standard.

When a combination of these technologies, called a treatment train, is specified as a single treatment standard, the order of application is specified in subpart 4 by indicating the five-letter technology code that must be applied first, then the designation "fb," which is an abbreviation for "followed by," then the five-letter technology code for the technology that must be applied next, and so on.

When more than one technology or treatment train are specified as alternative treatment standards, the five-letter technology codes or the treatment trains are separated by a semicolon (;) with the last technology preceded by the word "OR." This indicates that any one of these BDAT technologies or treatment trains can be used for compliance with the standard.

A. ADGAS: venting of compressed gases into an absorbing or reacting media (i.e., solid or liquid). Venting can be accomplished through physical release using values/piping; physical penetration of the container; or penetration through detonation.

B. AMLGM: amalgamation of liquid, elemental mercury contaminated with radioactive materials using inorganic reagents such as copper, zinc, nickel, gold, and sulfur that result in a nonliquid, semisolid amalgam and thereby reducing potential emissions of elemental mercury vapors to the air.

C. BIODG: biodegradation of organics or nonmetallic inorganics (i.e., degradable inorganics that contain the elements of phosphorus, nitrogen, and sulfur) in units operated under either aerobic or anaerobic conditions so that a surrogate compound or indicator parameter has been substantially reduced in concentration in the residuals (e.g., total organic carbon can often be used as an indicator parameter for the biodegradation of many organic constituents that cannot be directly analyzed in wastewater residues).

D. CARBN: carbon adsorption (granulated or powdered) of nonmetallic inorganics, organo metallics, and/or organic constituents, operated so that a surrogate compound or indicator parameter has not undergone breakthrough (e.g., total organic carbon can often be used as an indicator parameter for the adsorption of many organic constituents that cannot be directly analyzed in wastewater

residues). Breakthrough occurs when the carbon has become saturated with the constituent (or indicator parameter) and substantial change in adsorption rate associated with that constituent occurs.

E. CHOXD: chemical or electrolytic oxidation using the following oxidation reagents (or waste reagents) or combinations or reagents:

(1) hypochlorite (e.g., bleach);

(2) chlorine;

(3) chlorine dioxide;

(4) ozone or ultraviolet light assisted ozone;

(5) peroxides;

(6) persulfates;

(7) perchlorates;

(8) permangantes; and/or

(9) other oxidizing reagents of equivalent efficiency, performed in units operated so that a surrogate compound or indicator parameter has been substantially reduced in concentration in the residuals (e.g., total organic carbon can often be used as an indicator parameter for the oxidation of many organic constituents that cannot be directly analyzed in wastewater residues). Chemical oxidation specifically includes what is commonly referred to as alkaline chlorination.

F. CHRED: chemical reduction using the following reducing reagents (or waste reagents) or combinations of reagents:

(1) sulfur dioxide;

(2) sodium, potassium, or alkali salts of sulfites, bisulfites, metabisulfites, and polyethylene glycols (e.g., NaPEG and KPEG);

(3) sodium hydrosulfide;

(4) ferrous salts; and/or

(5) other reducing reagents of equivalent efficiency, performed in units operated such that a surrogate compound or indicator parameter has been substantially reduced in concentration in the residuals (e.g., total organic halogens can often be used as an indicator parameter for the reduction of many halogenated organic constituents that cannot be directly analyzed in wastewater residues). Chemical reduction is commonly used for the reduction of hexavalent chromium to the trivalent state.

G. DEACT: deactivation to remove the hazardous characteristics of a waste due to its ignitability, corrosivity, and/or reactivity.

H. FSUBS: fuel substitution in units operated according to applicable technical operating requirements.

I. HLVIT: vitrification of high level mixed radioactive wastes in units in compliance with all applicable radioactive protection requirements under control of the Nuclear Regulatory Commission.

J. IMERC: incineration of wastes containing organics and mercury in units operated according to the technical operating requirements of parts 7045.0542 and 7045.0640. All wastewater and nonwastewater residues derived from this process must comply with the corresponding treatment standards per waste code with consideration of any applicable subcategories (e.g., high or low mercury subcategories).

K. INCIN: incineration units operated according to the technical operating requirements of parts 7045.0542 and 7045.0640.

L. LLEXT: liquid-liquid extraction (often referred to as solvent extraction) of organics from liquid wastes into an immiscible solvent for which the hazardous constituents have a greater solvent affinity, resulting in an extract high in organics that must undergo either incineration, reuse as a fuel, or other recovery/reuse and a raffinate (extracted liquid waste) proportionately low in organics that must undergo further treatment as specified in the standard.

M. MACRO: macroencapsulation with surface coating materials such as polymeric organics (e.g., resins and plastics) or with a jacket of inert inorganic materials to substantially reduce surface exposure to potential leaching media. Macroencapsulation specifically does not include any material that would be classified as a tank or container according to part 7045.0020.

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N. NEUTR: neutralization with the following reagents (or waste reagents) or combinations of reagents:

(1) acids;

(2) bases; or

(3) water (including wastewaters) resulting in a pH greater than two but less than 12.5 as measured in the aqueous residuals.

O. NLDBR: no land disposal based on recycling.

P. PRECP: chemical precipitation of metals and other inorganics as insoluble precipitates of oxides, hydroxides, carbonates, sulfides, sulfates, chlorides, fluorides, or phosphates. The following reagents (or waste reagents) are typically used alone or in combination:

(1) lime (i.e., containing oxides and/or hydroxides of calcium and/or magnesium);

(2) caustic (i.e., sodium and/or potassium hydroxides);

(3) soda ash (i.e., sodium carbonate);

(4) sodium sulfide;

(5) ferric sulfate or ferric chloride;

(6) alum; or

(7) sodium sulfate.

Additional floculating, coagulation, or similar reagents/processes that enhance sludge dewatering characteristics are not precluded from use.

Q. RBERY: thermal recovery of beryllium.

R. RCGAS: recovery/reuse of compressed gases including techniques such as reprocessing of the gases for reuse/resale; filtering/adsorption of impurities; remixing for direct reuse of resale; and use of the gas as a fuel source.

S. RCORR: recovery of acids or bases using one or more of the following recovery technologies:

(1) distillation (i.e., thermal concentration);

(2) ion exchange;

(3) resin or solid adsorption;

(4) reverse osmosis; and/or

(5) incineration for the recovery of acid.

Note: this does not preclude the use of other physical phase separation or concentration techniques such as decantation, filtration (including ultrafiltration), and centrifugation, when used in conjunction with the recovery technologies in subitems (1) to (5).

T. RLEAD: thermal recovery of lead in secondary lead smelters.

U. RMERC: retorting or roasting in a thermal processing unit capable of volatilizing mercury and subsequently condensing the volatilized mercury for recovery. The retorting or roasting unit or facility must be subject to one or more of the following:

(1) a National Emissions Standard for Hazardous Air Pollutants (NESHAP) for mercury;

(2) a Best Available Control Technology (BACT) or a Lowest Achievable Emission Rate (LAER) standard for mercury imposed pursuant to a Prevention of Significant Deterioration (PSD) permit; or

(3) a state permit that establishes emission limitations for mercury within meaning of section 302 of the Clean Air Act. All wastewater and nonwastewater residues derived from this process must comply with the corresponding treatment standards per waste code with consideration of any applicable subcategories (e.g., high or low mercury subcategories).

V. RMETL: recovery of metals or inorganics using one or more of the following direct physical/removal technologies:

(1) ion exchange;

(2) resin or solid (i.e., zeolites) adsorption;

(3) reverse osmosis;

(4) chelation/solvent extraction;

(5) freeze crystallization;

(6) ultrafiltration; and/or

(7) simple precipitation (i.e., crystallization).

NOTE: This does not preclude the use of other physical phase separation or concentration techniques such as decantation, filtration (including ultrafiltration), and centrifugation, when used in conjunction with the recovery technologies in subitems (1) to (7).

W. RORGS: recovery of organics using one or more of the following technologies:

(1) distillation;

(2) thin film evaporation;

(3) steam stripping;

(4) carbon adsorption;

(5) critical fluid extraction;

(6) liquid-liquid extraction;

(7) precipitation/crystallization (including freeze crystallization); or

(8) chemical phase separation techniques (i.e., addition of acids, bases, demulsifiers, or similar chemicals).

NOTE: This does not preclude the use of other physical phase separation techniques such as decantation, filtration (including ultrafiltration), and centrifugation, when used in conjunction with the recovery technologies in subitems (1) to (8).

X. RTHRM: thermal recovery of metals or inorganics from nonwastewaters in units defined in part 7045.0020, under the definition of industrial furnaces.

Y. RZINC: resmelting for the purpose of recovery of zinc high temperature metal recovery units.

Z. STABL: stabilization with the following reagents (or waste reagents) or combinations of reagents:

(1) portland cement; or

(2) lime/pozzolans (e.g., fly fish and cement kiln dust).

NOTE: This does not preclude the addition of reagents (e.g., iron salts, silicates, and clays) designed to enhance the set/cure time and/or compressive strength, or to overall reduce the leachability of the metal or inorganic.

AA. SSTRP: steam stripping of organics from liquid wastes using direct application of steam to the wastes operated so that liquid and vapor flow rates and temperature and pressure ranges have been optimized, monitored, and maintained. These operating parameters are dependent on the design parameters of the unit, such as the number of separation stages and the internal column design, thus resulting in a condensed extract high in organics that must undergo incineration, reuse as a fuel, or other recovery/reuse and an extracted wastewater that must undergo further treatment as specified in the standard.

BB. WETOX: wet air oxidation performed in units operated so that a surrogate compound or indicator parameter has been substantially reduced in concentration in the residuals (e.g., total organic carbon can often be used as an indicator parameter for the oxidation of many organic constituents that cannot be directly analyzed in wastewater residues).

CC. WTRRX: controlled reaction with water for highly reactive inorganic or organic chemicals with precautionary controls for protection of workers from potential violent reactions and precautionary controls for potential emissions of toxic/ignitable levels of gases released during the reaction.

Subp. 4. **Technology-based standards by RCRA waste code.** Governed by technology-based standards listed in Code of Federal Regulations, title 40, part 268.42, Table 2.

Subp. 5. **Technology-based standards for specific radioactive hazardous mixed waste.** Governed by standards listed in Code of Federal Regulations, title 40, part 268.42, Table 3.

Subp. 6. **Application for alternative treatment methods.** A person may submit an application to the commissioner demonstrating that an alternative treatment method can achieve a measure of performance equivalent to that achievable by methods specified in subparts 1, 7, and 8. The applicant must submit information demonstrating that the applicant's treatment method complies with federal, state, and local requirements and is protective of human health and the environment. On the basis of all available information, the commissioner may approve the use of an alternative treatment method. The approval must be stated in writing and contain provisions and conditions the commissioner considers appropriate. The person to whom the approval is issued must comply with all limitations contained in the determination.

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Subp. 7. **Exceptions for lab packs.** As an alternative to the otherwise applicable treatment standards under parts 7045.1350 to 7045.1360, lab packs are eligible for land disposal, provided the following requirements are met:

A. the lab packs comply with parts 7045.0538 and 7045.0638;

B. all hazardous wastes contained in the lab packs are specified in subpart 9 or 10;

C. the lab packs are incinerated according to part 7045.0542 or 7045.0640; and

D. any incinerator residues from lab packs containing D004, D005, D006, D007, D008, D010, and D011 are treated in compliance with the applicable treatment standards specified for the wastes in parts 7045.1350 to 7045.1360.

Subp. 8. **Exceptions for radioactive hazardous mixed wastes.** Radioactive hazardous mixed wastes with treatment standards specified in subpart 5 are not subject to any treatment standards specified in subpart 4 or part 7045.1355 or 7045.1358. Radioactive hazardous mixed wastes not subject to treatment standards in subpart 1 remain subject to all applicable treatment standards specified in subpart 4 and parts 7045.1355 and 7045.1358.

Subp. 9. **Organometallic lab packs.** Hazardous waste with the following EPA Hazardous Waste Nos. may be placed in an organometallic lab pack: P001; P002; P003; P004; P005; P006; P007; P008; P009; P013; P014; P015; P016; P017; P018; P020; P022; P023; P024; P025; P026; P027; P028; P031; P034; P036; P037; P038; P039; P040; P041; P042; P043; P044; P045; P047; P048; P049; P050; P051; P054; P056; P057; P058; P059; P060; P062; P063; P064; P065; P066; P067; P068; P069; P070; P071; P072; P073; P074; P075; P077; P081; P082; P084; P085; P087; P088; P089; P092; P093; P094; P095; P096; P097; P098; P099; P101; P102; P103; P104; P105; P108; P109; P110; P112; P113; P114; P115; P116; P118; P119; P120; P122; P123; U001; U002; U003; U004; U005; U006; U007; U008; U009; U010; U011; U012; U014; U015; U016; U017; U018; U019; U020; U021; U022; U023; U024; U025; U026; U027; U028; U029; U030; U031; U032; U033; U034; U035; U036; U037; U038; U039; U041; U042; U043; U044; U045; U046; U047; U048; U049; U050; U051; U052; U053; U055; U056; U057; U058; U059; U060; U061; U062; U063; U064; U066; U067; U068; U069; U070; U071; U072; U073; U074; U075; U076; U077; U078; U079; U080; U081; U082; U083; U084; U085; U086; U087; U088; U089; U090; U091; U092; U093; U094; U095; U096; U097; U098; U099; U101; U102; U103; U105; U106; U107; U108; U109; U110; U111; U112; U113; U114; U115; U116; U117; U118; U119; U120; U121; U122; U123; U124; U125; U126; U127; U128; U129; U130; U131; U132; U133; U135; U136; U137; U138; U139; U140; U141; U142; U143; U144; U145; U146; U147; U148; U149; U150; U152; U153; U154; U155; U156; U157; U158; U159; U160; U161; U162; U163; U164; U165; U166; U167; U168; U169; U170; U171; U172; U173; U174; U176; U177; U178; U179; U180; U181; U182; U183; U184; U185; U186; U187; U188; U189; U190; U191; U192; U193; U194; U196; U197; U200; U201; U202; U203; U204; U205; U206; U207; U208; U209; U210; U211; U213; U214; U215; U216; U217; U218; U219; U220; U221; U222; U223; U225; U226; U227; U228; U234; U235; U236; U237; U238; U239; U240; U243; U244; U246; U247; U248; U249; U328; U353; U359; F001; F002; F003; F004; F005; F006; F010; F020; F021; F023; F024; F026; F027; F028; K001; K002; K008; K009; K010; K011; K013; K014; K015; K016; K017; K018; K019; K020; K021; K022; K023; K024; K025; K026; K027; K028; K029; K030; K031; K032; K033; K034; K035; K036; K037; K038; K039; K040; K041; K042; K043; K044; K045; K046; K047; K048; K049; K050; K051; K052; K054; K060; K061; K064; K065; K066; K069; K071; K073; K083; K084; K085; K086; K087; K093; K094; K095; K096; K097; K098; K099; K101; K102; K103; K104; K105; K111; K112; K113; K114; K115; K116; K117; K118; K123; K124; K125; K126; K136; D001; D002; D003; D004; D005; D006; D007; D008; D010; D011; D012; D013; D014; D015; D016; and D017.

Subp. 10. **Organic lab packs.** Hazardous wastes with the following EPA Hazardous Waste Nos. may be placed in an organic lab pack: P001; P002; P003; P004; P005; P006; P007; P008; P009; P013; P014; P015; P016; P017; P018; P020; P022; P023; P024; P025; P026; P027; P028; P031; P034; P036; P037; P038; P039; P040; P041; P042; P043; P044; P045; P046; P047; P048; P049; P050; P051; P054; P057; P058; P059; P060; P062; P063; P064; P065; P066; P067; P068; P069; P070; P071; P072; P073; P074; P075; P077; P081; P082; P084; P085; P087; P088; P089; P092; P093; P094; P095; P096; P097; P098; P099; P101; P102; P103; P104; P105; P108; P109; P110; P111; P112; P113; P114; P115; P116; P118; P119; P120; P122; P123; U001; U002; U003; U004; U005; U006; U007; U008; U009; U010; U011; U012; U014; U015; U016; U017; U018; U019; U020; U021; U022; U023; U024; U025; U026; U027; U028; U029; U030; U031; U033; U034; U035; U036; U037; U038; U039; U041; U042; U043; U044; U045; U046; U047; U048; U049; U050; U051; U052; U053; U055; U056; U057; U058; U059; U060; U061; U062; U063; U064; U066; U067; U068; U069; U070; U071; U072; U073; U074; U075; U076; U077; U078; U079; U080; U081; U082; U083; U084; U085; U086; U087; U088; U089; U090; U091; U092; U093; U094; U095; U096; U097; U098; U099; U101; U102; U103; U105; U106; U107; U108; U109; U110; U111; U112; U113; U114; U115; U116; U117; U118; U119; U120; U121; U122; U123; U124; U125; U126; U127; U128; U129; U130; U131; U132; U133; U135; U137; U138; U139; U140; U141; U142; U143; U147; U148; U149; U150; U153; U154; U155; U156; U157; U158; U159; U160; U161; U162; U163; U164; U165; U166; U167; U168; U169; U170; U171; U172; U173; U174; U176; U177; U178; U179; U180; U181; U182; U183; U184; U185; U186; U187; U188; U189; U190; U191; U192; U193; U194; U196; U197; U200; U201; U202; U203; U205; U206; U207; U208; U209; U210; U211; U213; U214; U218; U219; U220; U221; U222; U223; U225; U226; U227; U228; U234; U235; U236; U237; U238; U239; U240; U243; U244; U246; U247; U248; U249; U328; U353; U359; F001; F002; F003; F004; F005; F010; F020; F021; F023; F024; F026; F027; F028; K001; K009; K010; K011; K013; K014; K015; K016; K017; K018; K019; K020; K021; K022; K023; K024; K025; K026; K027; K029; K030; K031; K032; K033; K034; K035; K036; K037; K038; K039; K040; K041; K042; K043; K044; K045; K046; K047; K048;

K049; K050; K051; K052; K054; K060; K065; K073; K083; K084; K085; K086; K087; K093; K094; K095; K096; K097; K098; K099; K101; K102; K103; K104; K105; K111; K112; K113; K114; K115; K116; K117; K118; K123; K124; K125; K126; K136; D001; D012; D013; D014; D015; D016; and D017.

Subp. 11. **Recommended technologies to achieve deactivation of characteristics.** The treatment standard for many subcategories of the EPA Hazardous Waste Nos. D001, D002, D003, K044, K045, and K047 wastes is listed simply as "Deactivation to remove the characteristics of ignitability, corrosivity, and reactivity." EPA has determined that many technologies, when used alone or in combination, can achieve this standard. The following appendix presents a partial list of these technologies, using the five-letter technology codes established in subpart 3. Use of these specific technologies is not mandatory and does not preclude direct reuse, recovery, or the use of other pretreatment technologies, provided deactivation is achieved and these alternative methods are not performed in units designated as land disposal.

7045.1380 PROHIBITIONS ON STORAGE OF RESTRICTED WASTES.

[For text of subps 1 to 3, see M.R.]

Subp. 4. ~~**Petition**~~ **Exemptions.** ~~The~~ If a ~~generators~~ generator's waste is exempt from a prohibition ~~in subpart 1 does not apply to the wastes that are the subject~~ on the type of land disposal used for the waste, because of an approved case-by-case extension under part 7045.0075, subpart 6, an approved petition under part 7045.0075, subparts 8 and 9, or a national capacity variance ~~contained in~~ under parts 7045.1320 to 7045.1330, the prohibition in subpart 1 does not apply during the period of the exemption.

[For text of subps 5 and 6, see M.R.]

Adopted Rules

The adoption of a rule becomes effective after the requirements of Minn. Stat. §14.14-14.28 have been met and five working days after the rule is published in *State Register*, unless a later date is required by statutes or specified in the rule.

If an adopted rule is identical to its proposed form as previously published, a notice of adoption and a citation to its previous *State Register* publication will be printed.

If an adopted rule differs from its proposed form, language which has been deleted will be printed with strikeouts and new language will be underlined. The rule's previous *State Register* publication will be cited.

An emergency rule becomes effective five working days after the approval of the Attorney General as specified in Minn. Stat. §14.33 and upon the approval of the Revisor of Statutes as specified in §14.36. Notice of approval by the Attorney General will be published as soon as practicable, and the adopted emergency rule will be published in the manner provided for adopted rules under §14.18.

Board of Marriage and Family Therapy

Adopted Permanent Rules Relating to Continuing Education

The rules proposed and published at *State Register,* Volume 16, Number 2, pages 57-58, July 8, 1991 (16 SR 57); Volume 16, Number 4, page 136, July 22, 1991 (16 SR 136), are adopted as proposed.

Pollution Control Agency

Division of Air Quality

Adopted Permanent Rules Relating to Open Burning Restrictions and Permitting Requirements

The rules proposed and published at *State Register,* Volume 15, Number 18, pages 993-999, October 29, 1990 (15 SR 993); Volume 15, Number 37, pages 2035-2037, March 11, 1991 (15 SR 2035); Volume 15, Number 39, page 2141, March 25, 1991 (15 SR 2141), are adopted with the following modifications:

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.

Rules as Adopted

OPEN BURNING RESTRICTIONS AND PERMITTING REQUIREMENTS

7005.0705 DEFINITIONS.

Subp. 4. **Delegated authority.** "Delegated authority" means a town, home rule charter or statutory city or metropolitan county as defined in *Minnesota Statutes*, section 473.121, subdivision 4, authorized by the commissioner to issue open burning permits under part 7005.0767.

Subp. 6. **Land used for farming.** "Land used for farming" means land that is in agricultural use as defined in *Minnesota Statutes*, section 17.81.

Subp. 7. **Local authority.** "Local authority" means a local fire chief, fire marshal, fire warden, or local governmental official.

Subp. ~~7~~ 8. **Nonattainment area.** "Nonattainment area" means a geographic region that has been:

Subp. ~~8~~ 9. **Open burning.** "Open burning" means the burning of any matter if the resultant combustion products are emitted directly to the atmosphere without passing through a stack, duct, or chimney.

Subp. ~~9~~ 10. **Owner or operator.** "Owner" or "operator" means a person who owns, leases, operates, controls, or supervises an open burning site, or who conducts open burning.

Subp. 11. **Practical.** "Practical" means technically feasible, available within the general area where the material to be burned is located, and available at a cost that is not prohibitive for most users.

Subp. ~~10~~ 12. **Solid waste.** "Solid waste" has the meaning given it in *Minnesota Statutes*, section 116.06, subdivision 10.

7005.0715 OPEN BURNING RESTRICTIONS.

Subpart 1. **Open burning without a permit.** Except as provided in parts 7005.0785 and 7005.0795, open burning without ~~a~~ an agency permit is allowed only on unincorporated land in attainment areas, and only if the owner or operator conducts the burning for the purposes described in subpart 3, according to the conditions in subpart 4, parts 7005.0725, 7005.0775, and 7005.0805, and prior notice has been given to the local authority.

Subp. 3. **Purposes for burning.** Open burning is allowed if conducted for the following purposes:

E. ~~activities in accordance with Department of Agriculture practices~~ consistent with *Minnesota Statutes*, section 18.024, the disposal of diseased shade trees as described in parts 1505.0230 and 1505.0320~~, and *Minnesota Statutes*, section 19.56; or~~

F. disposal of diseased or infested nursery stock, diseased bee hives under *Minnesota Statutes*, section 19.56, or dunnage as required under part 1505.1430; or

G. the disposal of burnable building material such as unpainted or untreated lumber, wood shakes, or other unpainted or untreated wood products generated by construction, where recycling, reuse, chipping, or other alternative disposal methods are not practical.

Subp. 4. **Conditions.** Open burning must be conducted according to the requirements in items A to ~~I~~ J.

A. The prevailing wind at the time of the burning must be away from nearby residences and occupied buildings. ~~Wind speed must not exceed 15 miles per hour.~~

B. The burning must be conducted ~~at least 300 feet from a highway or public road~~ as far away from a road as possible and controlled so that a traffic hazard is not created.

C. The burning must ~~not~~ be ~~located within 600 feet of an occupied building or residence other than those located on the property on which the burning is conducted unless written permission is obtained from those occupants within the 600 feet~~ conducted consistent with article 11.101(b) of the Minnesota Uniform Fire Code as adopted in part 7510.3120.

E. The burning must not be conducted during the duration of an agency-declared air pollution ~~episode~~ alert, warning, emergency, or significant harm episode as outlined in parts 7005.2950 to 7005.3006; *Minnesota Statutes*, section 116.11; Code of Federal Regulations, title 40, part 51, subpart H; or Code of Federal Regulations, title 40, section 52.1220 (c)(1).

F. The person conducting the open burning shall give notice to the local authority and to the local Department of Natural Resources representative ~~and the local authority~~ when within an area under Department of Natural Resources jurisdiction prior to any open burning. The notice must include the time and location of the fire.

I. Fires must not be allowed to smolder with no flame present, except when conducted for the purpose of managing forests, prairies, or wildlife habitats.

J. Fires set or allowed to burn for the purpose of managing forests, prairies, or wildlife habitats must be managed according to a prescribed burn plan approved by the managing agency.

7005.0725 OPEN BURNING PROHIBITIONS.

Subp. 2. **Hazardous wastes.** No person shall conduct, cause, or permit open burning of hazardous waste as classified in chapter 7045 and *Minnesota Statutes,* section 116.06, subdivision 13, except as specifically provided in part 7045.0542, subpart 9.

Subp. 4. **Demolition debris.** No person shall conduct, cause, or permit open burning of burnable building material generated from demolition of commercial or institutional structures. A farm building is not a commercial structure.

Subp. 6. **Motor vehicles.** No person shall conduct, cause, or permit the processing of motor vehicles ~~or scrap metals~~ by open burning.

7005.0735 PERMITS REQUIRED.

Subp. 3. **Application process.** In areas where there is no delegated authority, the applicant shall obtain a permit application from the commissioner. After completing the application, the applicant shall submit the application to the local authority for its approval. Following the local authority approval, the application shall be submitted to the commissioner for a decision whether to issue a permit.

In areas where there is a delegated authority, the applicant shall obtain a permit application from the delegated authority. After completing the application, the applicant shall submit the application to the local authority for its approval. Following the local authority approval, the application shall be submitted to the delegated authority for a decision whether to issue a permit.

The application process for permanent tree and brush open burning sites is described in part 7005.0815, subparts 7 and 8.

To obtain a permit for fire training, an application must be submitted by the fire department or other entity seeking to conduct fire training directly to the commissioner by May 15 of each year. The application must describe the fire department's or other entity's annual training plans and identify the estimated number of structures that will need to be burned for training purposes.

Subp. 4. **Information requests.** The commissioner or delegated authority may request, and the applicant shall provide, any information additional to that required in the application form which the commissioner or delegated authority needs to determine if the open burning can be conducted in compliance with ~~all applicable rules~~ parts 7005.0705 to 7005.0815.

7005.0745 PERMIT DENIAL.

The commissioner shall deny a permit application submitted pursuant to parts 7005.0705 to 7005.0815 if:

A. a ~~reasonable,~~ practical alternative method of disposal of the material is available, such as chipping~~,~~ or composting~~, or other method~~;

7005.0755 PERMIT REVOCATION.

A permit is subject to revocation by the commissioner, if:

A. a ~~reasonable,~~ practical method of disposal of the material is found;

C. the permittee violates parts 7005.0705 to 7005.0815; ~~or~~

D. any of the conditions of the permit are violated; or

E. a nuisance condition has resulted from the burning.

7005.0765 DEPARTMENT OF NATURAL RESOURCES JURISDICTION.

Designated Department of Natural Resources ~~forest~~ officers or fire wardens are authorized to accept applications and issue, deny, enforce, and revoke open burning permits on behalf of the commissioner for locations within their jurisdiction.

7005.0766 FIRE TRAINING.

Subpart 1. **Structure burn training.** Except for owners or operators conducting fire training in specialized industrial settings pursuant to applicable federal, state, or local standards, owners or operators conducting open burning for the purpose of instruction and training of firefighters with regard to structures must follow the techniques described in Structural Burn Training Procedures for the Minnesota Technical College System ~~used in the training of firefighting personnel at Minnesota vocational technical colleges or other qualified training facilities~~. This document is written and published by the Regional State Fire Training Coordinator Staff, June 1987, and is incorporated by reference. It is not subject to frequent change. This publication is available at the Minnesota State Law Library and at the Fire Information, Research, and Education Center, 550 Cedar Street, Saint Paul, Minnesota 55101.

Subp. 2. **Restrictions.** Flammable or combustible liquids shall not be burned during fire training unless liquid fuels or arson

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investigation training is being conducted. The use of small amounts of uncontaminated diesel fuel or kerosene for ignition of live burn fires is not prohibited.

7005.0767 DELEGATED AUTHORITY.

Subpart 1. **Delegated authority to issue permits.** A town or home rule charter or statutory city or metropolitan county may issue permits for open burning other than for fire training or permanent tree and brush burning conducted according to parts 7005.0705 to 7005.0805, if delegated authority is obtained as provided in subpart 2. Permits must be issued on a form approved by the commissioner and records must be maintained of all open burning permits issued.

Subp. 2. **Obtaining authority.** To obtain authority to issue open burning permits, a town or home rule charter or statutory city or metropolitan county must adopt parts 7005.0705 to 7005.0805 as a local ordinance governing open burning. After adopting this ordinance, the town or home rule charter or statutory city or metropolitan county must submit the following to the commissioner:

B. the name of the person or persons authorized to issue the permits on behalf of the town or home rule charter or statutory city or metropolitan county and a certified copy of the motion passed by the town or home rule charter or statutory city or metropolitan county designating such person or persons; and

7005.0785 RECREATIONAL FIRES.

Fires set for recreational, ceremonial, food preparation, or social purposes are allowed and do not require an agency permit. ~~Fires~~ The material to be burned must be limited to a pile no larger than three feet in diameter by three feet high. Only unpainted and untreated wood, coal, or charcoal may be burned.

7005.0815 PERMANENT TREE AND BRUSH OPEN BURNING SITES.

Subp. 4. **Location.** A permanent open burning site must not be located within:

D. 300 feet of a stream, river, lake, or other water body unless berms or other measures are used to ensure that ash or organic material does not enter the water body; or

Subp. 5. **Site operation.** A permanent open burning site must be developed and operated according to items A to J.

G. ~~Twenty-four hour~~ Prior notice must be given to the local authority of the time and duration of each burn.

H. Fugitive ash emissions must be controlled and ash residue must be collected periodically and disposed of in a permitted ~~sanitary landfill~~ solid waste land disposal facility or other method allowed by applicable statutes and rules.

Subp. 6. **Site termination.** A permanent open burning site must be terminated in compliance with items A to D.

A. All unburned materials must be removed and disposed of ~~in an appropriate manner~~ through burning at another permitted burnsite or by other method allowed by applicable statutes, rules, and ordinances.

B. All ash must be removed to a permitted ~~sanitary landfill or~~ solid waste land disposal facility or disposed of by other method allowed by applicable statutes, rules, and ~~rules~~ ordinances.

Subp. 7. **Application process.** Applicants for a permanent open burning site permit shall submit a complete application on a form provided by the commissioner. This application must be submitted at least 90 days before the date of the proposed operation of the permanent open burning site. The application must be submitted to the commissioner and must contain:

E. any other information relevant to the operation of the site, or as requested by the commissioner to determine if the site can be operated in compliance with ~~all applicable rules~~ parts 7005.0705 to 7005.0815.

Revenue Notices

Department of Revenue

Revenue Notice #91-14: Annual Audit of Organizations Licensed to Conduct Lawful Gambling

Minnesota Statutes § 349.19, subd. 9, as amended by 1991 legislation, states that an organization licensed to conduct lawful gambling in Minnesota must have an annual financial audit of its lawful gambling activities and funds performed by an independent accountant licensed by the state of Minnesota. The legislation requires the commissioner of revenue to prescribe the standards for the audit as well as the filing requirements related to the audit.

Annual Audit

All organizations licensed to conduct lawful gambling in the State of Minnesota must have an annual financial audit of their lawful

gambling activities, books of account, and other financial records performed by an independent certified public accountant (C.P.A.) or an independent licensed public accountant (L.P.A.) for all fiscal years ending June 30, 1991 and after. All licensed organizations must submit their annual financial audit report to the Department of Revenue no later than the last day of the sixth month following their fiscal year-end.

A. **Financial Audit Report**—The annual financial audit report shall contain:

1) "Statement of assets, liabilities and fund balance—regulatory basis of accounting" as of the organization's fiscal year-end.

2) "Statement of revenue and expense—regulatory basis of accounting" for its fiscal year then ending.

3) "Statement of changes in fund balance (profit carryover)—regulatory basis of accounting."

4) "Notes to the financial statements" as required by generally accepted accounting principles.

5) Audit report on the financial statements by the independent certified public accountant or independent licensed public accountant.

6) Supplemental schedules of:

a) Lawful purpose expenditures

b) Allowable expense percentage computation

c) Other information that the Department may require to be disclosed.

B. **Evaluation of Accounting Procedures and System of Internal Controls**—A licensed organization shall file with the Department a report of the study and evaluation conducted by the accountant regarding the accounting procedures of the licensed organization and its system of internal control, including any remedial action taken or proposed, within 60 days after the filing of the annual financial audit report.

The report concerning the organization's system of internal control shall be in the form prescribed by generally accepted auditing standards.

C. **Accounting Records**—All licensed organizations are required to maintain records that account for the assets, liabilities, and fund balance of their lawful gambling operation. These records must also account for their gambling revenue, prize pay-outs, expenses, and lawful purpose expenditures. If, in the opinion of the independent certified public accountant or the independent licensed public accountant engaged to conduct the annual financial audit, the licensed organization has not maintained proper accounting records in such a form that can be audited, the accountant must terminate the audit engagement. The accountant must notify the organization of the deficiencies that exist and the corrective action required, with an estimate of the cost to generate auditable records, or, in the alternative, the reason the cost can't be estimated. This notification must be in writing.

D. **Definition, Availability, and Maintenance of Accountant's Workpapers**—Workpapers are the records kept by the independent certified public accountant or independent licensed public accountant of the procedures followed, the tests performed, the information obtained, and the conclusions reached pertinent to the examination of the financial statements of a licensed gambling organization. Workpapers may include work programs, analyses, memoranda, letters of confirmation and representation, management letters, abstracts of organization documents, and schedules or commentaries prepared or obtained by the accountant in the course of the audit and that support the accountant's opinion.

Every licensed gambling organization required to file an audited financial report shall require the accountant, through the licensed gambling organization, to make available for review by the Department of Revenue the workpapers prepared in the conduct of the audit. The licensed gambling organization shall require that the accountant retain the audit workpapers for a period of not less than five years after the period reported upon.

E. **Qualifications of Accountant**—The Department shall not accept any audit report required by *Minnesota Statute* § 349.19, subd. 9 unless the audit is performed by an independent certified public accountant or independent licensed public accountant in good standing with the Minnesota State Board of Accountancy and licensed to practice in the State of Minnesota.

F. **Termination of the Audit Engagement**—If, for any reason, the audit engagement is terminated by either the licensed organization or the independent accountant prior to its completion and filing of the annual financial audit report, the accountant is, within 10 days of termination, required to make a written report to the Department of Revenue detailing the reason or reasons for such termination.

Dated: 7 October 1991

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Official Notices

Pursuant to the provisions of Minnesota Statutes § 14.10, an agency, in preparing proposed rules, may seek information or opinion from sources outside the agency. Notices of intent to solicit outside opinion must be published in the *State Register* and all interested persons afforded the opportunity to submit data or views on the subject, either orally or in writing.

The *State Register* also publishes other official notices of state agencies, notices of meetings, and matters of public interest.

Minnesota Comprehensive Health Association

Notice of Enrollee Appeal Committee Meeting

NOTICE IS HEREBY GIVEN that an Enrollee Appeal Committee Meeting of the Minnesota Comprehensive Health Association will be held at 9:00 a.m. on Wednesday, October 16, 1991 at Minnesota Comprehensive Health Association, 5775 Wayzata Boulevard, Suite 910, St. Louis Park, Minnesota. Portions of this meeting may be closed to the public.

For additional information please call Lynn Gruber at (612) 593-9609.

Department of Health

Division of Environmental Health

Notice of Solicitation of Outside Information or Opinions in the Matter of the Proposed Adoption of the Rules of the Minnesota Department of Health Governing Clean Indoor Air, Smoking, Parts 4620.0100 to 4620.1500

NOTICE IS HEREBY GIVEN that the Minnesota Department of Health is seeking information or opinions from sources outside the Department in preparing to revise adopted rules governing clean indoor air, smoking in public places, public meetings and places of work, parts 4620.0100 to 4620.1500. Authority to adopt rules is governed by *Minnesota Statutes*, section 144.12, subdivision 1, sections 144.411 to 144.417 and *Law of Minnesota 1984*, chapter 654, article 2, sections 18 and 113 which permits the Department to control by rule, atmospheric pollution which may be injurious or detrimental to public health; smoking in public places, and smoking in factories, warehouses and similar places of work.

The Minnesota Department of Health requests information and opinion on the subject matter of the rule. Interested or affected persons or groups may submit data or views on the subject matter of the adopted rules in writing or orally. Written statements should be addressed to:

Mary Zetterlund
Minnesota Department of Health
Division of Environmental Health
925 Southeast Delaware Street
Minneapolis, Minnesota 55459

Oral statements will be received during regular business hours over the telephone at (612) 627-5015 by Ms. Zetterlund and in person at the above address.

All statements of information and opinions will be accepted until further notice is published in the *State Register*. Any written material received by the Minnesota Department of Health becomes part of the rulemaking record to be submitted to the attorney general or administrative law judge in the event that the rule is adopted.

Jane A. Nelson
Rules Coordinator

Department of Health

Division of Environmental Health

Notice of Solicitation of Outside Information or Opinions Regarding Proposed Amendments to Rules Governing Lead Abatement Methods and Standards for Lead in Paint, Dust, and Drinking Water, Parts 4761.0100 Through 4761.0800

NOTICE IS HEREBY GIVEN that the Minnesota Department of Health is seeking information or opinions from sources outside

the department in preparing to propose amendment of existing rules governing lead abatement methods and standards for lead in paint, dust, and drinking water. The adoption of the amendments is authorized by *Minnesota Statutes*, section 144.878.

The Department of Health requests information and opinions on the subject matter of the rules. Interested persons or groups may submit data or views on the subject matter in writing or orally. Written statements should be addressed to:

Douglas M. Benson
Minnesota Department of Health
925 S.E. Delaware Street
P.O. Box 59040
Minneapolis, Minnesota, 55459-0400

Oral statements will be received during regular business hours over the telephone at 612/627-5017 and in person at the above address.

Information and opinions are particularly solicited regarding: the definition of "elevated blood lead level"; requirements for health education by boards of health; the standard for lead in drinking water; requirements for assessments by boards of health; and prohibited paint abatement methods.

All statements of information and opinions will be accepted until the amendments to the rules are formally proposed for adoption. Any written material received by the Department of Health will become part of the rulemaking record to be submitted to the Office of the Attorney General of the Office of Administrative Hearings in the event that an amendment is adopted.

Raymond W. Thron, Ph.D., P.E., Director
Division of Environmental Health

Department of Health

Division of Environmental Health

Notice of Solicitation of Outside Information or Opinions in the Matter of the Proposed Adoption of the Rules of the Minnesota Department of Health Governing Public Water Supplies, Parts 4720.0010 to 4720.3970

NOTICE IS HEREBY GIVEN that the Minnesota Department of Health is seeking information or opinions from sources outside the Department in preparing to revise adopted rules governing public water supplies, *Minnesota Rules* parts 4720.0010 to 4720.3970. Authority to adopt rules is governed by *Minnesota Statutes*, section 144.383 (e), the Minnesota Safe Drinking Water Act.

The need to revise state public water supply rules is prompted by changes to the National Primary Drinking Water Regulations contained in 40 CFR, parts 141, 142 and 143. New federal code sets maximum contaminant levels for more chemicals; establishes additional monitoring, reporting and public notification standards; and sets standards for controlling lead and copper in drinking water including corrosion control treatment, source water treatment, lead service line replacement and public education.

The Minnesota Department of Health requests information and opinion on the subject matter of the rule. Interested or affected persons or groups may submit data or views on the subject matter of the adopted rules in writing or orally. Written statements should be addressed to:

Richard Clark
Public Water Supply Unit
Minnesota Department of Health
Division of Environmental Health
925 Southeast Delaware Street
Minneapolis, Minnesota 55459-0040

Oral statements will be received during regular business hours over the telephone at (612) 627-5180 by Mr. Clark and in person at the above address.

All statements of information and opinions will be accepted until further notice is published in the *State Register.* Any written material received by the Minnesota Department of Health becomes part of the rulemaking record to be submitted to the attorney general or administrative law judge in the event that the rule is adopted.

Jane A. Nelson
Rules Coordinator

Department of Human Services

Health Care Management Division

Notice of Meeting of Advisory Committee on Organ and Tissue Transplants

The Advisory Committee on Organ and Tissue Transplants will meet on Tuesday, October 22, 1991 at 12:30 p.m. in the Columbine Room, first floor, Centennial Building, 658 Cedar Street, St. Paul, Minnesota.

Public Employees Retirement Association

Notice of Meetings of the Board of Trustees

The next regular monthly meeting of the Board of Trustees of the Public Employees Retirement Association (PERA) is scheduled to be held on Thursday, October 10, 1991, at 2:00 p.m. in the Association offices, 514 St. Peter Street, Suite 200-Skyway Level, St. Paul, Minnesota. It will be followed by a Town Meeting at 6:30 p.m. in the Dakota Hills Middle School, 4183 Braddock Trail, Eagan, Minnesota.

An Information Forum/Public Safety Officers' meeting will be held Wednesday, October 16, 1991, at 1:00 p.m.

A Retiree Round Table will be held in the Holiday Inn Mankato, 101 East Main Street, Mankato, Minnesota, on Wednesday, October 23, 1991, at 1:30 p.m.

Department of Revenue

Appeals, Legal Services, and Criminal Investigation Division

Notice of Solicitation of Outside Information or Opinions Regarding Proposed Rules Governing the Annual Audit of Organizations Licensed to Conduct Lawful Gambling

NOTICE IS HEREBY GIVEN that the Minnesota Department of Revenue is seeking information or opinions from sources outside the agency in preparing to propose the adoption of a rule governing the annual audit of organizations licensed to conduct lawful gambling. The adoption of the rule is authorized by *Minnesota Statutes*, section 270.06, subd. 13, which permits the agency to make, publish, and distribute rules for the administration and enforcement of state tax law.

The Minnesota Department of Revenue requests information and opinions concerning the subject matter of the rule. Interested persons or groups may submit data or views on the subject matter of concern in writing or orally. Written statements should be addressed to:

Patrick J. Finnegan
Minnesota Department of Revenue
Appeals, Legal Serivces, and Criminal Investigation Division
10 River Park Plaza
Mail Station 2220
St. Paul, MN 55146-2220

Oral statements will be received during regular business hours over the telephone at (612) 297-5203 and in person at the above address.

All statements of information and opinions shall be accepted until November 6, 1991. Any written material received by the Department of Revenue shall become part of the rulemaking record to be submitted to the Attorney General or Administrative Law Judge in the event that the rule is adopted.

Dated: 30 September 1991

Patrick J. Finnegan
Attorney

Department of Revenue

Appeals and Legal Services Division

Notice of Solicitation of Outside Information or Opinions Regarding Proposed Rule Governing Sales and Use Taxation Relating to Computer Software and Automatic Data Processing

NOTICE IS HEREBY GIVEN that the Minnesota Department of Revenue is seeking information or opinions from sources outside the agency in preparing to propose the adoption of a rule governing sales and use tax on computer software and automatic data processing. The adoption of this rule is authorized by *Minnesota Statutes*, section 270.06 which requires the commissioner of revenue to make, publish, and distribute rules for the administration and enforcement of state tax laws.

The Minnesota Department of Revenue requests information and opinions concerning the subject matter of the rule. Interested persons or groups may submit data or views on the subject matter of concern in writing or orally. Written statements should be addressed to:

John E. Streiff
Department of Revenue
Appeals, Legal Services, and
Criminal Investigation Division
10 River Park Plaza
Mail Station 2220
St. Paul, MN 55146-2220

Oral statements will be received during regular business hours over the telephone at (612) 296-1902 extension 133, or (612) 296-1022 and in person at the above address.

All statements of information and opinions shall be accepted until November 8, 1991. Any written material received by the Minnesota Department of Revenue shall become part of the rulemaking record to be submitted to the Attorney General or Administrative Law Judge in the event that the rule is adopted.

Dated: 7 October 1991

John E. Streiff
Attorney

Department of Revenue

Notice of Counties Which Have Adopted the Local Option Sales Tax

The Commissioner of the Department of Revenue announces that the counties listed below have adopted the local option sales tax of one-half percent. The tax becomes effective in each county on January 1, 1992 at which time the state sales tax—which was increased by one-half percent effective July 1, 1991—will be reduced by one-half percent. The county boards of commissioners of all 87 Minnesota counties have passed resolutions adopting the local option sales tax. The 87 counties, in alphabetical order, are:

Aitkin	Crow Wing	Kittson
Anoka	Dakota	Koochiching
Becker	Dodge	Lac Qui Parle
Beltrami	Douglas	Lake
Benton	Faribault	Lake of the Woods
Big Stone	Fillmore	Le Sueur
Blue Earth	Freeborn	Lincoln
Brown	Goodhue	Lyon
Carlton	Grant	McLeod
Carver	Hennepin	Mahnomen
Cass	Houston	Marshall
Chippewa	Hubbard	Martin
Chisago	Isanti	Meeker
Clay	Itasca	Mille Lacs
Clearwater	Jackson	Morrison
Cook	Kanabec	Mower
Cottonwood	Kandiyohi	Murray

Nicollet	Redwood	Swift
Nobles	Renville	Todd
Norman	Rice	Traverse
Olmsted	Rock	Wabasha
Otter Tail	Roseau	Wadena
Pennington	St. Louis	Waseca
Pine	Scott	Washington
Pipestone	Sherburne	Watonwan
Polk	Sibley	Wilkin
Pope	Stearns	Winona
Ramsey	Steele	Wright
Red Lake	Stevens	Yellow Medicine

The publication of this notice is required by *Minnesota Laws of 1991*, Article 2, Section 6, Subdivision 4.

State Grants

In addition to requests by state agencies for technical/professional services (published in the State Contracts section), the *State Register* also publishes notices about grant funds available through any agency or branch of state government. Although some grant programs specifically require printing in a statewide publication such as the *State Register*, there is no requirement for publication in the *State Register* itself.

Agencies are encouraged to publish grant notices, and to provide financial estimates as well as sufficient time for interested parties to respond.

Minnesota Trade Office

Request for Proposals for International Cultural/Educational Grants Program (First Phase)

Definitions:

Nonprofit organization means a corporation or organization that is formed for a purpose not involving pecuniary gain to its members. It does not include cities, counties, school districts, or other subdivisions, units or agencies of state or local government, but these may comprise the membership of a nonprofit organization.

Nonpublic funds means funds from sources other than state, local or federal government appropriations.

Long term trading relations means fostered or improved economic relations between Minnesota and another country.

Cultural and educational exchange program means reciprocal face-to-face exchanges including but not limited to the areas of the humanities, sciences, law, business, labor, agriculture, education, research, environment, government and administration.

History:

In May 1990, the Minnesota Legislature approved an appropriation of $50,000 for Fiscal Year 1991 to the Minnesota Trade Office for awarding grants to nonprofit organizations to support cultural and educational exchange programs that may have the potential to lead to long-term international trading relations. Grants must be matched with at least $3 of nonpublic funds for every dollar of state grant funds awarded under this provision. (See *Laws of Minnesota 1990*, Chapter 594, Sec. 24, Subdiv. 1 c.)

The 1991 legislature appropriated $100,000 to the Minnesota Trade Office for FY92 for both the Cultural/Educational Grants and an International Business Partnership Program. The MTO has assigned half the appropriation for the Cultural/Educational Grants.

Purpose:

Cultural and educational exchanges possess the capacity to foster or improve trading relations between the nations and peoples of the world. The purpose of this program is to increase these exchanges, thereby increasing Minnesota's long-term economic relationships with the rest of the world.

Request for Proposal:

The Minnesota Trade Office (MTO), a division of the Minnesota Department of Trade and Economic Development (DTED), invites applications from eligible existing nonprofit organizations, as defined above, for grants under the International Cultural and Educational Grants Program (ICEGP). The ICEGP will have the following basic parameters:

a) The maximum amount of grant(s) to any one nonprofit organization shall be $5,000 per state fiscal year.

b) The applicant must show evidence of matching funds committed from nonpublic sources of $3 for each dollar received under ICEGP.

c) The grant must be used solely for cultural or educational exchange with international groups from other countries.

d) The application should outline benefits of the proposed exchange, including any long-term trade benefits.

Application Process:

Eligible nonprofit organizations may request the prescribed application form from the Minnesota Trade Office after publication of this RFP in the *State Register* by writing:

Minnesota Trade Office
Attn: ICEGP
1000 Minnesota World Trade Center
30 East Seventh Street
St. Paul, MN 55101

or by calling 612/297-4222, or by fax at 612/296-3555.

$25,000 of grant funds will be made available in the first phase of this program, to be executed in October/November, 1991. The balance of $25,000 will be made available in the second phase, to be executed in February/March, 1992.

Completed applications for the first phase must be received by the Minnesota Trade Office at the above address by 4:30 p.m. on Friday, November 15, 1991, for consideration.

Evaluation of Grant Application:

The Commissioner of DTED shall make grant awards following a review of the applications in accordance with the following criteria:

a) Past experience of applicant in conducting/organizing international exchange programs—25 points

b) Completeness and adequacy of proposed exchange program for which grant is sought, including:

i) evidence of interest by host country organizations in the proposed exchange.

ii) proposed itinerary including dates and plates.

iii) link to long term trade development

40 points

c) Amount and diversity of matching funds—20 points

d) Clarity, conciseness and completeness of the application—15 points

Total Points—100

The Department will endeavor to ensure a regional statewide balance in the distribution of these grants.

Notification:

Applications for the first phase grants will be reviewed, and approved applicants notified by Friday, December 20, 1991. Approved applicants will be required to conclude a grant agreement before any disbursement of funds.

For more information, please contact Mr. Noor Doja at the Minnesota Trade Office at 612/297-4658.

Professional, Technical & Consulting Contracts

Department of Administration procedures require that notice of any consultant services contract or professional and technical services contract which has an estimated cost of over $10,000 be printed in the *State Register*. These procedures also require that the following information be included in the notice: name of contact person, agency name and address, description of project and tasks, cost estimate, and final submission date of completed contract proposal. Certain quasi-state agencies are exempted from some of the provisions of this statute.

Minnesota Historical Society

Notice of Request for Proposals for Consulting and Design Work for Museum Shops at the Minnesota History Center

The Minnesota Historical Society is seeking proposals from qualified firms and individuals to provide professional and technical services in the areas of merchandise selection, store location and sizing and store design for its Minnesota History Center.

The work will be performed under contract. The Request for Proposals is available by calling or writing Gary W. Goldsmith, Contracting Officer, Minnesota Historical Society, 690 Cedar Street, St. Paul, MN 55101. Telephone (612) 296-2155.

Proposals will be due October 28, 1991 at 2:00 p.m. Details on submission requirements are included in the Request for Proposals.

Minnesota Historical Society

Notice of Request for Proposals for Design and Project Management Sign System for Minnesota History Center

The Minnesota Historical Society is seeking proposals from qualified firms and individuals to provide professional and technical services in the areas of sign system design, construction and installation for its Minnesota History Center.

The work will be performed under contract. The Request for Proposals is available by calling or writing Gary W. Goldsmith, Contracting Officer, Minnesota Historical Society, 690 Cedar Street, St. Paul, MN 55101. Telephone (612) 296-2155.

Proposals will be due October 28, 1991 at 2:00 p.m. Details on submission requirements are included in the Request for Proposals.

Minnesota Historical Society

Request for Statements of Interest for Contract Consultant

The Minnesota Historical Society anticipates the need for a contract consultant to act as a liaison between the Society and the various branches and agencies of the State of Minnesota during the first six months of 1992. Assistance will be required in such areas as governmental relations and legislative matters.

Interested individuals or firms should submit a letter of interest along with their credentials to Nina Archabal, Director, Minnesota Historical Society, 690 Cedar Street, St. Paul, MN 55101 not later than October 31, 1991.

Further information may be obtained from John B. Lilja, Assistant Director for Finance and Administration at the above address or by telephone at (612) 296-2155.

This solicitation is for the purpose of assessing the interest and qualifications of potential contractors and does not obligate the Society to proceed with an engagement of a consultant as described herein.

Department of Human Services

Chemical Dependency Program Division

Request for Proposals to Conduct an Assessment of the Federal Medicaid Waiver for the Minnesota Chemical Dependency Treatment Fund

I. INTRODUCTION

The Minnesota Department of Human Services, Chemical Dependency Program Division (CDPD), is soliciting proposals from qualified consultants to conduct an assessment of the federal Medicaid waiver for the Minnesota Consolidated Chemical Dependency Treatment Fund.

The Health Care Financing Administration (HCFA) of the U.S. Department of Health and Human Services has waived certain limitations concerning requirements for Medicaid recipients in Minnesota so that those recipients can participate in the State's Consolidated Chemical Dependency Treatment Fund (CCDTF). The CCDTF pays for chemical dependency (CD) treatment and receives some reimbursement from Medicaid.

The Medicaid waiver requires that the State of Minnesota arrange for an independent assessment of the cost-effectiveness of the waiver and its impact on recipient access to care of adequate quality. The purpose of this request for proposals is to accomplish this independent assessment. A copy of the full Request for Proposals may be obtained by contacting the CDPD.

II. QUALIFICATIONS OF RESPONDENTS

Respondents must be able to demonstrate experience and expertise in secondary data analysis, computer programming and processing, and preparation of professional reports of a publishable quality. Experience in fiscal analysis and knowledge of chemical dependency and health care programs is desirable.

III. SCOPE OF THE PROJECT

The project will be initiated upon selection of a proposal and finalizing a contract. The project must be completed and a report submitted to CDPD by February 14, 1992.

The proposed study will be based primarily on secondary data analysis. The Department of Human Services operates several automated information systems which can be used to evaluate the impact of the HCFA waiver. These systems include a reimbursement system for Minnesota counties, Indian reservations, and CD service providers which allows the State to make payments to providers and monitor client placements. Data from the CDPD's Drug and Alcohol Abuse Normative Evaluation System (DAANES) also will be available.

The secondary analysis will address the issues of whether there have been cost savings due to the waiver, whether Medical Assistance (MA) recipients have had the same access to care as other clients, and whether the quality of the care received has been comparable to that of non-MA clients.

IV. PROPOSAL CONTENTS

A. A description of the respondent's background and experience in performing this type of a project;

B. A description of the methodology to be used and tasks to be performed in meeting the objectives of the project;

C. A timetable and budget for the project;

D. A description of the respondent's computing resources, including statistical packages available for the project;

E. Resumes/qualifications of staff who will be assigned to the project; and

F. Assurances that the respondent will comply with state and federal laws and regulations on data privacy.

Proposals are to be submitted on the CDPD's Grant Application Form, which will be sent to those requesting a copy of the full RFP. All responses must be received by October 25, 1991.

V. SELECTION CRITERIA

A. Proposed methodology for achieving the project's objectives, including a clear plan of action for each activity, and documentation of all resources and expertise to be used;

B. Demonstrated understanding of the project's objectives;

C. Qualifications and experience of the person(s) assigned to complete the analysis and report;

D. Cost of the proposed project; and

E. Proposed timetable.

For a Copy of the Full Request for Proposals and Grant Application Form Contact:

Dorrie Hennagir
Chemical Dependency Program Division
444 Lafayette Road
St. Paul, MN 55155-3823
612/296-4617

Department of Public Safety

Office of Traffic Safety

Request for Proposals for Young Driver/Alcohol Program

The Department of Public Safety has received a grant from the National Highway Traffic Safety Administration to conduct an anti-drunken driving program for young drivers. The Department is seeking proposals to develop and produce a broadcast (or videotaped) program about the dangers of drinking and driving that will be shown to 15-to-19 year old drivers, to conduct discussions about the program among the drivers in that age group, and to produce materials to support the program and discussions. The goal is to provide a program that will reach the majority of 15-to-19 year old drivers with a strong "Don't Drink and Drive" message that will mesh with existing alcohol and traffic safety programs available to this age group.

Details are contained in a request for proposals which may be obtained by calling or writing:

Kathryn Swanson
Office of Traffic Safety
Department of Public Safety

207 Transportation Bldg.
395 John Ireland Blvd.
St. Paul, MN 55155
(612) 296-9507

The estimated cost of the contract is $80,000.00. Final date for submitting proposals is October 28, 1991.

State Contracts and Advertised Bids

Pursuant to the provisions of Minn. Stat. § 14.10, an agency must make reasonable effort to publicize the availability of any services contract or professional and technical services contract which has an estimated cost of over $2,000.

Commodities contracts with an estimated value of $15,000 or more are listed under the Materials Management Division, Department of Administration. All bids are open for 7-10 days before bidding deadline. For bid specifics, time lines, and other general information, contact the appropriate buyers whose initials appear in parentheses next to the commodity for bid, by calling (612) 296-6152.

Awards of contracts and advertised bids for commodities and printing, as well as awards of professional, technical and consulting contracts, appear in the midweek STATE REGISTER Contracts Supplement, published every Thursday. Call (612) 296-0931 for subscription information.

Materials Management Division—Department of Administration:

Contracts and Requisitions Open for Bid

Call 296-2600 for information on a specific bid, or to request a specific bid.

Commodity: UDS modem adapter
Contact: Bernadette Vogel 296-3778
Bid due date at 4:30pm: October 9
Agency: Intertechnologies Group
Deliver to: St. Paul
Requisition #: B 02410-23328

Commodity: Miscellaneous computer equipment
Contact: Bernadette Vogel 296-3778
Bid due date at 4:30pm: October 9
Agency: St. Cloud State University
Deliver to: St. Cloud
Requisition #: B 26073-23151

Commodity: 386/25 computer
Contact: Bernadette Vogel 296-3778
Bid due date at 4:30pm: October 9
Agency: Minnesota Academy for the Blind
Deliver to: Faribault
Requisition #: B 37001-20139

Commodity: Nox monitor
Contact: Pam Anderson 296-1053
Bid due date at 2pm: October 11
Agency: Minnesota Pollution Control Agency
Deliver to: St. Paul
Requisition #: B 32200-30678

Commodity: Ozone monitors
Contact: Pam Anderson 296-1053
Bid due date at 2pm: October 11
Agency: Minnesota Pollution Control Agency
Deliver to: St. Paul
Requisition #: B 32200-30684

Commodity: Roofing & insulation
Contact: Pam Anderson 296-1053
Bid due date at 4:30pm: October 9
Agency: Minnesota Department of Transportation
Deliver to: Various places
Requisition #: B 79000-21908

Commodity: Repair garage door
Contact: Pam Anderson 296-1053
Bid due date at 4:30pm: October 9
Agency: Minnesota Department of Transportation
Deliver to: Various places
Requisition #: B 79500-22506

Commodity: Maintenance on computer systems
Contact: Bernadette Vogel 296-3778
Bid due date at 4:30pm: October 9
Agency: Department of Gaming
Deliver to: Various places
Requisition #: B 09300-31132

Commodity: Kewaunee lab table
Contact: Bernadette Vogel 296-3778
Bid due date at 4:30pm: October 9
Agency: Lakewood Community College
Deliver to: White Bear Lake
Requisition #: B 27154-47256

Commodity: Sulfur dioxide monitor
Contact: Pam Anderson 296-1053
Bid due date at 2pm: October 11
Agency: Minnesota Pollution Control Agency
Deliver to: St. Paul
Requisition #: B 32200-30677

Commodity: Carbon monoxide monitor
Contact: Pam Anderson 296-1053
Bid due date at 2pm: October 11
Agency: Minnesota Pollution Control Agency
Deliver to: St. Paul
Requisition #: B 32200-30680

Commodity: Water sampling equipment
Contact: Pam Anderson 296-1053
Bid due date at 4:30pm: October 11
Agency: Minnesota Pollution Control Agency
Deliver to: St. Paul
Requisition #: B 32600-30637

Commodity: Lumber, siding & hardware
Contact: Pam Anderson 296-1053
Bid due date at 2pm: October 8
Agency: Minnesota Department of Transportation
Deliver to: Various places
Requisition #: B 79050-27603

Commodity: Cable junction box
Contact: Joan Breisler 296-9071
Bid due date at 4:30pm: October 10
Agency: Facilities Management Office
Deliver to: Little Falls
Requisition #: B 01000-06806

Commodity: Aluminum cable
Contact: Joan Breisler 296-9071
Bid due date at 4:30pm: October 8
Agency: Department of Military Affairs
Deliver to: Little Falls
Requisition #: B 01000-06811

Commodity: Installation of tables in vans
Contact: Brenda Thielen 296-9075
Bid due date at 4:30pm: October 8
Agency: Department of Public Safety/ Finance
Deliver to: Various places
Requisition #: B 07500-27054

Commodity: Piano tuning service
Contact: Linda Parkos 296-3725
Bid due date at 4:30pm: October 9
Agency: Southwest State University
Deliver to: Marshall
Requisition #: B 26175-02240

Commodity: Miscellaneous safety clothing
Contact: Linda Parkos 296-3725
Bid due date at 4:30pm: October 9
Agency: Department of Natural Resources—Southern Service Center
Deliver to: St. Paul
Requisition #: B 29008-80481

Commodity: Dictation equipment
Contact: Jack Bauer 296-2621
Bid due date at 4:30pm: October 9
Agency: Minnesota Department of Jobs & Training
Deliver to: Minneapolis
Requisition #: B 21200-41756

Commodity: High skid gear for Bell helicopter
Contact: Mary Jo Bruski 296-3772
Bid due date at 4:30pm: October 4
Agency: Department of Public Safety/ Finance
Deliver to: St. Paul
Requisition #: B 07500-27059

Commodity: Pose data diagrammer software
Contact: Joan Breisler 296-9071
Bid due date at 4:30pm: October 8
Agency: Minnesota Department of Transportation
Deliver to: St. Paul
Requisition #: B 79000-21988

Commodity: Grass seed
Contact: Linda Parkos 296-3725
Bid due date at 4:30pm: October 9
Agency: Facilities Management Office
Deliver to: Little Falls
Requisition #: B 01000-06803

Commodity: Hockey equipment
Contact: Linda Parkos 296-3725
Bid due date at 4:30pm: October 9
Agency: Rainy River Community College
Deliver to: International Falls
Requisition #: B 27155-55174

Commodity: Winter mukluks
Contact: Linda Parkos 296-3725
Bid due date at 4:30pm: October 9
Agency: Thistledew Youth Camp
Deliver to: Togo
Requisition #: B 78780-05007

Commodity: Flitesteps for Bell helicopter
Contact: Mary Jo Bruski 296-3772
Bid due date at 4:30pm: October 4
Agency: Department of Safety/Finance
Deliver to: St. Paul
Requisition #: B 07500-27058

Commodity: Nightsun search light system helicopter
Contact: Mary Jo Bruski 296-3772
Bid due date at 2pm: October 11
Agency: Department of Public Safety/ Finance
Deliver to: St. Paul
Requisition #: B 07500-27061

Commodity: Breathing/hearing protection supplies
Contact: Teresa Manzella 296-7556
Bid due date at 4:30pm: October 14
Agency: Minnesota Department of Health
Deliver to: Minneapolis
Requisition #: B 12600-82478

Commodity: QMS postscript printer
Contact: Bernadette Vogel 296-3778
Bid due date at 4:30pm: October 10
Agency: Department of Public Safety/ Finance
Deliver to: St. Paul
Requisition #: B 07020-27062

Commodity: Xircom Ethernet adaptor
Contact: Bernadette Vogel 296-3778
Bid due date at 4:30pm: October 10
Agency: Department of Public Safety/ Finance
Deliver to: South St. Paul, MN 55075
Requisition #: B 07500-27056

Commodity: 486DX/33 computer
Contact: Bernadette Vogel 296-3778
Bid due date at 4:30pm: October 10
Agency: Minnesota Department of Health
Deliver to: Minneapolis
Requisition #: B 12200-82506

Commodity: Desk top scanner
Contact: Bernadette Vogel 296-3778
Bid due date at 4:30pm: October 10
Agency: Minnesota Department of Health
Deliver to: Minneapolis
Requisition #: B 12500-82291

Commodity: Mac classic
Contact: Bernadette Vogel 296-3778
Bid due date at 4:30pm: October 10
Agency: Minnesota Department of Jobs & Training
Deliver to: Various places
Requisition #: B 21607-29010

Commodity: Miscellaneous computer equipment
Contact: Bernadette Vogel 296-3778
Bid due date at 4:30pm: October 10
Agency: Moorhead State University
Deliver to: Moorhead
Requisition #: B 26072-03454

Commodity: Biomed service—2nd request
Contact: Teresa Manzella 296-7556
Bid due date at 4:30pm: October 10
Agency: St. Peter Regional Treatment Center
Deliver to: St. Peter
Requisition #: B 55105-08993-1

Commodity: Radius monitor
Contact: Bernadette Vogel 296-3778
Bid due date at 4:30pm: October 10
Agency: Department of Public Safety/ Finance
Deliver to: St. Paul
Requisition #: B 07020-27063

Commodity: Printer
Contact: Bernadette Vogel 296-3778
Bid due date at 4:30pm: October 10
Agency: Minnesota Department of Health
Deliver to: Minneapolis
Requisition #: B 12200-82503

Commodity: Regulator
Contact: Bernadette Vogel 296-3778
Bid due date at 4:30pm: October 10
Agency: Minnesota Department of Health
Deliver to: Minneapolis
Requisition #: B 12400-82332

Commodity: Express 386/25
Contact: Bernadette Vogel 296-3778
Bid due date at 4:30pm: October 10
Agency: Minnesota Department of Jobs & Training
Deliver to: Various places
Requisition #: B 21605-87313

Commodity: Furnish & install PC network
Contact: Bernadette Vogel 296-3778
Bid due date at 2pm: October 14
Agency: Bemidji State University
Deliver to: Bemidji
Requisition #: B 26070-14549

Commodity: Quantum board
Contact: Bernadette Vogel 296-3778
Bid due date at 4:30pm: October 10
Agency: St. Cloud State University
Deliver to: St. Cloud
Requisition #: B 26073-23145

Commodity: CD ROM drive
Contact: Bernadette Vogel 296-3778
Bid due date at 4:30pm: October 10
Agency: St. Cloud State University
Deliver to: St. Cloud
Requisition #: B 26073-23150

Commodity: Netmodem
Contact: Bernadette Vogel 296-3778
Bid due date at 4:30pm: October 10
Agency: St. Cloud State University
Deliver to: St. Cloud
Requisition #: B 26073-23158

Commodity: 386SX-30 computer
Contact: Bernadette Vogel 296-3778
Bid due date at 4:30pm: October 10
Agency: Winona State University
Deliver to: Winona
Requisition #: B 26074-14160

Commodity: Refurbish Nikon microscope
Contact: Bernadette Vogel 296-3778
Bid due date at 4:30pm: October 14
Agency: Winona State University
Deliver to: Winona
Requisition #: B 26074-14165

Commodity: Strip chart recorder
Contact: Bernadette Vogel 296-3778
Bid due date at 2pm: October 14
Agency: Minnesota Pollution Control Agency
Deliver to: St. Paul
Requisition #: B 32200-30676

Commodity: Automated hematology instrument
Contact: Bernadette Vogel 296-3778
Bid due date at 2pm: October 14
Agency: Willmar R.T.C.
Deliver to: Willmar
Requisition #: B 55106-02135

Commodity: Trash can reinforcements
Contact: Joan Breisler 296-9071
Bid due date at 4:30pm: October 14
Agency: Facilities Management Office
Deliver to: Little Falls
Requisition #: B 01000-06810

Commodity: Telemetry system
Contact: Bernadette Vogel 296-3778
Bid due date at 2pm: October 14
Agency: St. Cloud State University
Deliver to: St. Cloud
Requisition #: B 26073-23155

Commodity: Data general server
Contact: Bernadette Vogel 296-3778
Bid due date at 4:30pm: October 10
Agency: Winona State University
Deliver to: Winona
Requisition #: B 26074-14153

Commodity: 386/25 computer
Contact: Bernadette Vogel 296-3778
Bid due date at 4:30pm: October 10
Agency: Winona State University
Deliver to: Winona
Requisition #: B 26074-14161

Commodity: Nuvista video board
Contact: Bernadette Vogel 296-3778
Bid due date at 4:30pm: October 10
Agency: Lakewood Community College
Deliver to: White Bear Lake
Requisition #: B 27154-47261

Commodity: LCD projection panel
Contact: Bernadette Vogel 296-3778
Bid due date at 4:30pm: October 10
Agency: Minnesota Department of Education/Accounts Payable
Deliver to: St. Paul
Requisition #: B 37080-93357

Commodity: Blood collection chair
Contact: Bernadette Vogel 296-3778
Bid due date at 4:30pm: October 10
Agency: Willmar R.T.C.
Deliver to: Willmar
Requisition #: B 55106-02136

Commodity: Reflective backs to lamps
Contact: Joan Breisler 296-9071
Bid due date at 4:30pm: October 10
Agency: Department of Public Safety
Deliver to: St. Paul
Requisition #: B 07300-26127

Commodity: Detector tubes
Contact: Joan Breisler 296-9071
Bid due date at 4:30pm: October 10
Agency: Department of Employee Relations
Deliver to: St. Paul
Requisition #: B 24500-20555

Commodity: V-3M-9
Contact: Brenda Thielen 296-9075
Bid due date at 2pm: October 9
Agency: Minnesota Correctional Facility
Deliver to: Oak Park Heights
Requisition #: B 78630-10407

Commodity: Pintle hooks
Contact: Linda Parkos 296-3725
Bid due date at 4:30pm: October 9
Agency: Minnesota Department of Transportation
Deliver to: Fort Snelling
Requisition #: B 79990-00341

Commodity: Paper shredder
Contact: Jack Bauer 296-2621
Bid due date at 2pm: October 14
Agency: Department of Gaming
Deliver to: Roseville
Requisition #: B 09200-92023

Commodity: Survey equipment
Contact: Jack Bauer 296-2621
Bid due date at 2pm: October 17
Agency: Minnesota Department of Transportation
Deliver to: St. Paul
Requisition #: B 79000-21985

Commodity: Skid type loader bobcat
Contact: Mary Jo Bruski 296-3772
Bid due date at 2pm: October 11
Agency: Department of Military Affairs
Deliver to: St. Paul
Requisition #: B 01000-06819

Commodity: Laboratory gases
Contact: Joan Breisler 296-9071
Bid due date at 4:30pm: October 10
Agency: Minnesota Pollution Control Agency
Deliver to: St. Paul
Requisition #: B 32200-30652

Commodity: Embroidered emblems for uniforms
Contact: Linda Parkos 296-3725
Bid due date at 4:30pm: October 9
Agency: Department of Natural Resources—Northern Service Center
Deliver to: Grand Rapids
Requisition #: B 29007-10423

Commodity: Minimizer front fenders
Contact: Linda Parkos 296-3725
Bid due date at 4:30pm: October 9
Agency: Minnesota Department of Transportation
Deliver to: Fort Snelling
Requisition #: B 79990-00342

Commodity: Welders
Contact: Jack Bauer 296-2621
Bid due date at 4:30pm: October 14
Agency: Minnesota Department of Transportation
Deliver to: Various places
Requisition #: B 79000-21898

Commodity: Survey equipment
Contact: Jack Bauer 296-2621
Bid due date at 4:30pm: October 17
Agency: Minnesota Department of Transportation
Deliver to: St. Paul
Requisition #: B 79000-21999

Commodity: Boat, motor & trailer packages
Contact: Mary Jo Bruski 296-3772
Bid due date at 2pm: October 11
Agency: Department of Natural Resources—Regional Headquarters
Deliver to: Various places
Requisition #: B 29000-57107-1

Commodity: Computer disaster recovery facility for InterTechnology Group, Department of Administration
Contact: Don Olson 296-3771
Bid due date at 2pm: October 13
Agency: InterTechnology Group, Department of Administration
Deliver to: St. Paul
Requisition #: Request for proposal—draft

Commodity: Digital key telephone system
Contact: Teresa Manzella 296-7556
Bid due date at 2pm: October 21
Agency: Minnesota Department of Transportation
Deliver to: St. Paul
Requisition #: B 79000-22000

Commodity: Dismantle, move and reinstall Philips
Contact: Bernadette Vogel 296-3778
Bid due date at 2pm: October 11
Agency: Winona State University
Deliver to: Winona
Requisition #: B 26074-14166

Commodity: Atomic absorption spectrometer
Contact: Pam Anderson 296-1053
Bid due date at 2pm: October 11
Agency: Minnesota Pollution Control Agency
Deliver to: St. Paul
Requisition #: B 32200-30679

Commodity: Mamiya system
Contact: Joan Breisler 296-9071
Bid due date at 4:30pm: October 15
Agency: Moorhead State University
Deliver to: Moorhead
Requisition #: B 26072-03458

Commodity: Embroidered hunter education emblems
Contact: Linda Parkos 296-3725
Bid due date at 4:30pm: October 11
Agency: Department of Natural Resources—Division of Enforcement
Deliver to: St. Paul
Requisition #: B 29000-57290

Commodity: Roll-away tool chest
Contact: Linda Parkos 296-3725
Bid due date at 4:30pm: October 11
Agency: Minnesota Department of Transportation
Deliver to: St. Cloud
Requisition #: B 79000-21892

Commodity: Fire detection maintenance
Contact: Jack Bauer 296-2621
Bid due date at 4:30pm: October 7
Agency: Department of Military Affairs
Deliver to: St. Paul
Requisition #: B 01000-06820

Commodity: Used Mettler scale
Contact: Bernadette Vogel 296-3778
Bid due date at 4:30pm: October 11
Agency: Bemidji State University
Deliver to: Bemidji
Requisition #: B 26070-14554

Commodity: Impact tester
Contact: Pam Anderson 296-1053
Bid due date at 4:30pm: October 11
Agency: Mankato State University
Deliver to: Mankato
Requisition #: B 26071-64184

Commodity: Fluorescence detector
Contact: Pam Anderson 296-1053
Bid due date at 4:30pm: October 15
Agency: Minnesota Pollution Control Agency
Deliver to: St. Paul
Requisition #: B 32200-30681

Commodity: 1991 Olds Cutlass Supreme, Buick or Pontiac equivalent
Contact: Brenda Thielen 296-9075
Bid due date at 2pm: October 10
Agency: Department of Public Safety
Deliver to: St. Paul
Requisition #: B 07300-26147

Commodity: Commercial laundry equipment
Contact: Linda Parkos 296-3725
Bid due date at 2pm: October 15
Agency: Brainerd Regional Human Services Center
Deliver to: Various places
Requisition #: B 55304-09147

Commodity: Heavy duty Boyer hammer
Contact: Linda Parkos 296-3725
Bid due date at 4:30pm: October 11
Agency: Minnesota Department of Transportation
Deliver to: St. Cloud
Requisition #: B 79000-21895

Commodity: Oil tank removal
Contact: Jack Bauer 296-2621
Bid due date at 4:30pm: October 14
Agency: Department of Administration
Deliver to: St. Paul
Requisition #: B 02307-24229

Commodity: Dictation equipment
Contact: Jack Bauer 296-2621
Bid due date at 4:30pm: October 14
Agency: Department of Gaming
Deliver to: Roseville
Requisition #: B 09200-92025

Commodity: Copier lease purchase
Contact: Jack Bauer 296-2621
Bid due date at 2pm: October 10
Agency: Department of Public Service
Deliver to: St. Paul
Requisition #: B 80400-92161

Commodity: Fiber fuel pellets
Contact: Dale Meyer 296-3773
Bid due date at 2pm: October 16
Agency: Various
Deliver to: Various
Requisition #: Price Contract

Department of Administration: Print Communications Division

Printing vendors for the following printing contracts must review contract specifications in printing buyers office at 117 University Avenue, Room 134-B, St. Paul, MN.

Printing vendors NOTE: Other printing contracts can be found in the Materials Management Division listing above, and in the Professional, Technical & Consulting Contracts section immediately following this section.

Commodity: Application for AFDC, GA, FS, MA & MSA—form no. DHS-2852, camera ready copy, 2-sided, head to head, 400M sets, 3 parts, 3 pps, 8½"x11", stub, 3-parts carbonless, perf, 2-hole punch, shrink wrap, see special instructions, see sample
Contact: Printing Buyer's Office
Bids are due at 2pm: October 10
Agency: Department of Human Services
Deliver to: St. Paul
Requisition #: 18876

Commodity: Weekly construction diary statement, camera ready copy, negs avail, 2-sided, h to h, 5M sets, glue, top stub, carbonless and carbon interleave, 4 parts, perf, shrink wrap
Contact: Printing Buyer's Office
Bids are due: October 10
Agency: Department of Transportation
Deliver to: St. Paul
Requisition #: 19056

Commodity: Parent Information Packet Folder, camera ready copy, 1-sided, 2500 each, 1 fold, 9" x 12" (18" x 12" open) folder with 4" gummed pockets (gummed on outer edges only). Business card die cut on left pocket.
Contact: Printing Buyer's Office
Bids are due: October 11
Agency: Department of Health
Deliver to: Minneapolis
Requisition #: 19070

Commodity: 1991 Snowmobile Maps NE, NW, SE & SW, camera ready copy, negs avail, 2-sided, 37,500, fold 8 accordian/2, 24″ x 36″ to 4″ x 8″
Contact: Printing Buyer's Office
Bids are due: October 10
Agency: Department of Natural Resources
Deliver to: St. Paul
Requisition #: 19186

Announcements

Placement Services Expand for People With Disabilities: Placement services for people with disabilities has begun October 1 in Brainerd, Faribault and Monticello for the federally funded Projects With Industry program, Commissioner R. Jane Brown of the Minnesota Department of Jobs and Training announced today. PWI services are funded by a $300,000 federal grant awarded to the Department of Jobs and Training's Rehabilitation Services Division. • Projects With Industry (PWI) offer placement services free of charge to people with disabilities who experience difficulty finding employment. PWI staff work with employers in their area to identify locations needing employees where their clients' skills and abilities fit the need. • Employers interested in membership on the PWI Business Advisory Council or wanting further information should contact Cathy Carlson, PWI Staff Support, Central Office, Division of Rehabilitation Services, at (612) 296-0535.

Frederick Appointed to Mississippi River Commission: Former State Senator Mel Frederick of Owatonna has been appointed to the Mississippi River Parkway Commission as a representative of the Minnesota Department of Transportation. Frederick was appointed by former Commissioner John H. Riley during the last days of his tenure at Mn/DOT. • Mr. Frederick represented Senate District 30 during his 20 years of public service. His committee assignments included Transportation, Finance, and Rules and Administration. Mr. Frederick is currently a Vice President for Dain Bosworth, Inc. in Rochester. • The Mississippi River Parkway Commission was inaugurated in 1938 by Governor's Executive Order and is comprised of ten members. The Commission's objective is to promote, preserve, and enhance the resources of the Mississippi River Valley and to develop the national, scenic, and historic parkway known as the Great River Road.

DNR License Bureau Offering Longer Hours: The Minnesota Department of Natural Resources (DNR) License Bureau is now open for walk-in business Mondays through Fridays from 8 a.m. until 5:30 p.m., according to License Bureau Administrator Margaret Winkel. (Previously, the DNR License Bureau ended its business day at 4:30 p.m.) The License Bureau sells game and fish licenses, watercraft, snowmobile and ATV registrations, cross-country ski passes, state park vehicle stickers, and watercraft titles. • The DNR License Bureau is located at 500 Lafayette Road in St. Paul. Phone-in hours remain 8 a.m. to 4:30 p.m. Mondays through Fridays.

DNR Explains New Deer Baiting Regulation: Department of Natural Resources (DNR) officials said this week that they have been receiving numerous questions from deer hunters regarding the new restrictions on use of bait for deer hunting. "While most hunters have not objected to the baiting regulations, many have questioned whether the new rule affects their particular hunting situation," explained Ed Boggess, resource manager for the DNR Section of Wildlife. "Many hunters who are feeding deer, pheasants and other wildlife on the same property where they are hunting deer want to make sure that does not constitute baiting," Boggess said. The new regulation states that **hunters may not place or use bait for the purpose of taking deer.** It defines bait as grain, fruit, vegetables, nuts, hay, or other food transported and placed for the purpose of attracting or enticing deer. Bait does not include salt, minerals, liquid scents, or such things as standing agricultural crops or other foods that result from agricultural or other land management activities. "The baiting regulation is not intended to prevent individuals from feeding deer," explained Boggess. "However, if hunters wish to hunt deer near feeding areas, they should consider waiting until they have finished hunting before placing out feed, or they should avoid hunting at the actual feeding site," he said. Hunters have also asked the DNR about the use of scented or flavored "deer blocks." Boggess indicated that if the blocks contain some food but are primarily scented or flavored salt or mineral blocks, they would not constitute bait. However, if they are made up primarily of grains, apples or other foods, they would be considered bait. This year's restriction on baiting is in response to problems in other Midwestern states where baiting has become widespread. Those problems include pre-emption of and confrontations over hunting spots on public lands,

litter and aesthetic impacts, shifting of deer movements and behavior based on baiting patterns, and increases in illegal activities associated with baiting. While baiting for deer is not currently a common practice in Minnesota, it is beginning to become more prevalent here, Boggess said. "We wanted to restrict baiting before it became firmly established in the state," explained Boggess. "Once baiting begins in an area, it tends to increase rapidly because other hunters then feel that they must also bait to compete for deer." At least a dozen other states have established regulations prohibiting the use of bait for deer, according to Boggess. Further support for the baiting ban resulted from discussions at public input meetings and publicity through various media outlets. "The general response from deer hunters has been supportive or neutral, with many of them expressing a strong concern about maintaining the quality and integrity of the deer hunting experience," Boggess said. Hunters with questions about the baiting regulation are urged by the DNR to contact their local conservation officer before hunting this fall.

Minnesota Manufacturer's Directory 1991



NEW: In the directory this year are two titles (where applicable) Chief Engineer and Data Processing Manager.

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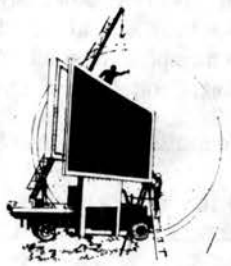



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Edible Mushrooms, a classic guide to safe mushrooms, describes 60 species in detail, with photographs (many in color) to show each in its natural habitat. Advice to amateur mushroom hunters. Paperbound, 118 pp. Code #19-11, $12.95.

Malfred Ferndock's Morel Cookbook, brim full of morel lore, interesting and tall tales, recounts of the hunt, and many savory recipes. Spiral bound, 117 pgs., black & white photos and drawings. Code #19-83, $8.50.

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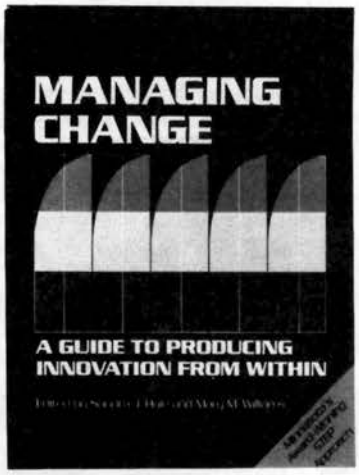
Manage Change and Information Plans



Managing Change. A guide to managing change from *within* an organization, it combines common sense with solid theory about organizational behavior and change. Based on the premise: for an enterprise to succeed, employees must be involved as active partners. Operating in an environment of change, government adapts to newly elected officials, new political appointees, new economic conditions, new laws and rules, new managers and employees, and new mandates and priorities. Through the STEP plan, government capitalizes on that change by emphasizing closeness to the customer, employee participation, managerial discretion, partnerships, productivity improvement and work measurement. Contains a project directory and glossary. Paperbound, 181 pages. Stock #19-64, $19.00.

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Minnesota: national leader in education

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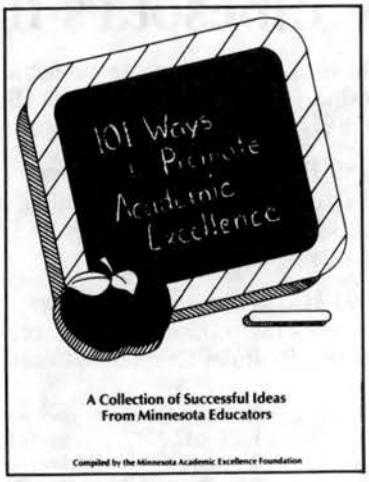

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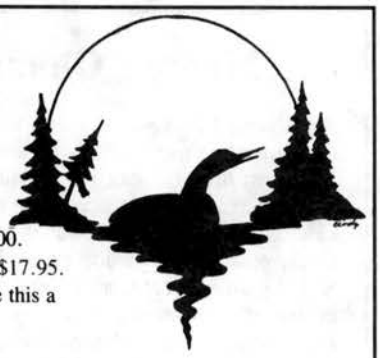
Voices of the Loon



Its voice severs the bonds to the world of cities, traffic, crowds, lights and noise. The lyrical magic of the loon, sometimes hauntingly eerie, makes the skin tingle, and the hair on the back of the neck stand on edge, awakening a primitive response. Its solitary wail turns the shadowy wilderness into a mysterious path into eternity.

Voices of the Loon, cassette tape, includes introduction and loon call identification, chorus from a distant lake, tremolo duet, wail duet, border confrontation, wails with morning songbird chorus, tremolos while running, wails during a thunderstorm, and coyotes calling with loons. Code #19-73, $12.00.

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Minnesota's future environment



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October 31, 1991

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LABOR & INDUSTRY
REHABILITATION & MEDICAL AFFAIRS

Mr. David Sherwood-Gabrielson, Director
Rehabilitation and Medical Affairs
Minnesota Department of Labor and Industry
443 Lafayette Road
St. Paul, Minnesota 55155

Dear Mr. Sherwood-Gabrielson:

I respectfully request that the rule-making committee consider for revision the regulations concerning the requirements necessary to practice as a Qualified Rehabilitation Consultant (QRC), so that Occupational Therapists are not inadvertently excluded.

For the purposes of initial consideration of my request and proposals, please consider the term "Occupational Therapy" to include both OTRs and COTAs; whether a distinction should be made eventually can be discussed at a later time if indicated.

I am enclosing a copy of my application materials and rejection letter from CRCC, for your reference, as my having been denied access to the CRC examination because my pre-QRC vocational habilitation experience was as an Occupational Therapist demonstrates my claim. Further, Ms. Roselyn Rockman, OTR, QRC-Intern was nearly denied candidacy for the CIRS exam on the grounds that, as a clinic-based Occupational Therapists, she "did not deal with insurance;" and I have heard from two separate individuals that Ms. Patricia Alagna, also an Occupational Therapist, was denied candidacy for CIRS on the latter grounds. I leave it to your office to confirm the difficulties with Ms. Rockman and Ms. Alagna directly.

I propose the following revisions to the rules, with my reasons cited afterwards:

1. Occupational Therapists who wish to become QRCs are required to complete at least one year of internship, during which time they are supervised by a QRC. This supervision would include co-signing of all documentation generated by the QRC-intern. This internship would be for the purpose of providing on-the-job training in the complexities of the Minnesota Workers' Compensation laws, as well as in the areas of job development, placement assistance and labor market surveys.

2. Occupational Therapists who either wish to become, or have attained full QRC status can choose whether or not to pursue CRC or CIRS status in addition to their QRC status; but will not be required by your department of obtain BRC certification in order to continue providing QRC services.

a. Occupational Therapists who have not or do not wish to obtain BRC credentials will be required to submit documentation supporting 20 CEUs per year to the Department; and a certain percentage of the 20 CEUs must be directly relevant to vocational development, placement assistance, and/or labor market issues, since standard Occupational Therapist training does not emphasize these aspects of the vocational rehabilitation process to the extent of the training of a Rehabilitation Counselor.

- if an Occupational Therapist who becomes a QRC can document formal training, such as either an undergraduate or graduate degree in vocational rehabilitation or rehabilitation counseling, then the 20 CEUs need not include a specific percentage of focus on the vocational development, placement assistance or labor market subject matter.

As I mentioned to you in our conversation at the QRC update 10/11/91, and as my opening statements with accompanying documentation demonstrate, the current regulations requiring CRC, CIRS or CRRN designations for all QRCs effectively limit, if not eliminate, Occupational Therapists from QRC practice, due to the Board for Rehabilitation Certification's (BRC) unwillingness to accept Occupational Therapy training and experience as meeting the minimum standards to sit for the CRC or CIRS exams. I am making the proposals that follow because I do not believe it is within the scope of your department to attempt to influence BRC's decision-making process; and it may not be even within the purview of the American Occupational Therapy Association to convince the BRC to grant automatic eligibility to Occupational Therapists who wish to sit for the Certification exams. Rather, I believe that Occupational Therapy training and skills provide a <u>vital complement</u> to those of the professionals whom BRC regulates; and that since Occupational Therapists already have national certification, as QRCs they should be regulated at the State level in a parallel way, if you will, to holders of BRC credentials.

Elimination or exclusion of Occupational Therapists from the vocational rehabilitation arena will constitute a loss to employers and injured employees alike, for the following reasons:

1. Occupational Therapists have the most extensive training and knowledge of all rehabilitation providers concerning the effects of disability on function; and not only are the original providers of vocational rehabilitation and vocational evaluation services (pre-dating all legislative provisions); but in fact, in the late 1950's were the majority of evaluators. "The goals of Occupational Therapy [intervention], by their very nature, should always be aimed towards furthering vocational goals. Work evaluation is a specialty directly related to Occupational Therapy, with its primary emphasis geared to discovering appropriate vocational goals. Other factors that give the Occupational Therapist the capability of performing work evaluations include knowledge of disabling conditions and the problems involved, focus on minimizing the problems and maximizing the assets, knowledge of methods for achieving a therapeutic relationship, and skill in

techniques for motivating and teaching 'problem' patients."[1]

2. A review of the curriculum of an Occupational Therapy Baccalaureate program will demonstrate the immersion of Occupational Therapy students in the areas of basic Psychology, the psychology of disability and dysfunction; methods of effective and therapeutic communication and counseling, not only with disabled clients, in order to facilitate adjustment to disability and changes in functional abilities, but also with multidisciplinary rehabilitation professionals and non-professionals such as family members and community resources. Through the study of cadavers through dissection, Occupational Therapists learn anatomy, the thoroughness of this anatomy training surpassed only by medical students. Occupational Therapists are trained to differentiate between normal and abnormal conditions and functions; through training in kinesiology, Occupational Therapists learn the purpose of every muscle in the body; and with a continuous focus on biomechanics, Occupational Therapists are trained to differentiate between normal and abnormal movement patterns, and to provide a broad variety of therapeutic interventions, including adapting approaches, tasks, tools and equipment, and environments to maximize a person's functional effectiveness in any given situation. All of this training combines to give Occupational Therapists a level of insight into the ESSENTIAL ELEMENTS of tasks and activities, INCLUDING WORK, that no other medical or rehabilitation professional has (even MDs with additional certification in Occupational Medicine or Physical Medicine and Rehabilitation [Physiatry] rely heavily on Occupational Therapists to identify and address the nuances of dysfunction). This focus on essential elements is not only crucial to effectiveness with ergonomic considerations, but also to compliance with the Americans With Disabilities Act (ADA), which includes "essential elements" in the rules of compliance.

Further, an Occupational Therapist has some advantages even over Ergonomists (who are often Engineers), in that Occupational Therapists are also trained specifically in identifying low-tech (or even no-tech) solutions to biomechanical dysfunction; and combined with their additional training in Rehabilitation Technology, an Occupational Therapist providing vocational rehabilitation services is far more likely than an Engineer-Ergonomist to identify cost-effective and relatively simple solutions; but is also able to make appropriate recommendations for more techologically complex solutions when necessary. As a point of fact, a textbook written by an Industrial Engineer (Don B. Chaffin, PhD.) and an Orthopedic Surgeon (Gunnar B.J. Anderson, MD, PhD) on the subject of Ergonomics, is entitled "Occupational Biomechanics". I mention this to reiterate my point that ergonomics is a specific application of Biomechanics, and Occupational Therapists are extensively trained in Biomechanics.

Along these same lines, Occupational Therapists are almost always, whether in clinical settings or other settings such as schools and client homes, informing, educating and negotiating with insurance carriers in order to deliver not only services,

but adaptations, to their clients; and this direct and on-going interaction with the insurance industry serves to hone Occupational Therapists' skills in cost-effectiveness.

2. The Smith-Fess Act (or Vocational Rehabilitation Act of 1920) identified "homemaking" as a bona fide occupation and acceptable vocational goal.[2] Human Resource professionals have recognized the effects that dysfunction at home can have on performance at work; and in workers' compensation cases, this inclusion of homemaking is relevant, in that Occupational Therapists are trained to address all aspects of a person's functional responsibilities; and although all workers' compensation clients have jobs in addition to homemaking, difficulties arising from the work injury, which also decrease the employees' ability to function in their personal responsibilities increases employees' difficulty in adjusting to their disability. An Occupational Therapist QRC can identify, through the normal Initial Evaluation and on-going rehabilitation counseling processes, such non-vocational difficulties, and can provide effective suggestions for modifications (and obtain inexpensive adaptive devices, if necessary) to the employees' personal environments and activities so that the employees become functional again in these areas. This type of intervention is invaluable, as it increases an employee's confidence in his/her ability to function normally in all aspects of life (thus in keeping with Dunton's principles cited in 5. [p. 6 of this letter]); and can significantly improve an employee's attitude about, and motivation to, return to work.

3. Occupational Therapy training, skills and experience provide employers and employees with a faster, easier understanding of both the employee's capability and job knowledge. Relying on nurse or MD information alone does not provide the full picture. Occupational Therapists are superior to other vocational rehabil itation providers in their ability to critically evaluate medical information, and to communicate the information about vocational function to the rest of the rehabilitation team, including the employer and employee.

4. Occupational Therapists have access to resources that no other professionals have, that are not "retail", but rather available only to Occupational Therapists. Therefore it is more likely that an Occupational Therapist QRC will be able to obtain a modification to tools or environments that no other rehabilitation professional will even know exists; and that retail sources like Ergosource do not have access to, or the right to sell.

5. Occupational Therapists are trained to design and manufacture modifications in the absence of ready-made; and this training is also important for customizing a ready-made device. Thus, an Occupational Therapist QRC is able to make relatively simple suggestions, and provide guidance in implementation and use, to employer and employees alike in developing solutions that are not only cost-effective, but that can be easily replicated for other employees, as well, resulting in a better-designed workplace.

6. For employers and employees located in rural areas, lack of access to formal work conditioning and work hardening programs, as well as to Functional Capacity Evaluation providers is a problem, especially given the restrictions defined by CARF for accreditation of such programs. An Occupational Therapist QRC can develop a treatment plan that is highly specific to the employee's vocational needs, and obtain a referral to a local Occupational Therapy clinic that can implement the treatment plan, with the Occupational Therapist QRC functioning as supervisor of the treatment plan. No other rehabilitation professional can provide this type of access to job-specific clinical rehabilitation in the absence of CARF-accredited work conditioning and/or work hardening programs.

Further, an Occupational Therapist QRC can recognize when Occupational Therapy services are indicated to address some specific issues that are not obvious to either the treating physician or to other vocational rehabilitation providers; can request a referral for Occupational Therapy for specific approaches; and can communicate the reasons and types, and expected duration of treatment relevant to resolving the problems. The Occupational Therapist QRC can also explain the issues, proposed intervention and expected duration of treatment to the insurance provider so that services will be pre-authorized. Therefore, a Return to Work plan has an increased chance of success when the subtle details have been addressed.

Examining the history of Occupational Therapy reveals that not only did Occupational Therapy precede and provide the foundation for vocational rehabilitation services as they are known today, but, in fact, was the profession of the majority of vocational evaluators through the late 1950's as well. I support this statement with the following citations:

1. Occupational Therapy to address vocational dysfunction predates Federal and State legislation that made rehabilitation and vocational rehabilitation services accessible to the public. In fact, the earliest reference in the literature to medically prescribed use of work for remediation is 1801.[3]

2. The period of maximum use of Occupational Therapy in the United States occurred [in the mid-1800's].[4]

3. Adolph Meyer, whose philosophy was the forerunner of the Occupational Therapy profession in the United States, stated in the yearbook of the Chicago School of Civics and Philanthropy (1908-1911):

> "During the last decade, we have come to realize more than ever that while some...disorders are due to toxic conditions, others are rather due to conflicts through poor adaptation. In these conditions a training in normal activities and a culturation of fruitful interests are the sanest and only efficient point of attack." [5]

4. In 1906, the first systematic training course in occupation to prepare instructors for teaching patient activities as developed by Susan Tracy, a nurse. It was determined that, since limitations were imposed on patients because of illness or disease, persons with medical training would be better qualified [to teach occupational activities] because they would recognize the signs of [physical distress] and know the limitations caused by various diseases or injuries.[6] The initial course description was as follows:

> Each patient is considered in light of this threefold personality - body, mind and spirit.
>
> The Aim is likewise threefold:
> 1. The patient's physical improvement
> 2. His educational advancement
> 3. His financial betterment
>
> The Method is based on a threefold principle:
> 1. The realization of resources
> 2. The ability to initiate activities
> 3. The participation in such activities of both sick and well subjects.[7]

5. In 1915, the "father of the Occupational Therapy profession," William Rush Dunton, advocated a set of principles, including that treatment should:

> -be prescribed and administered under constant medical supervision and correlated with other treatment of the patient;
> -be directed to individual needs;
> -arouse interest, courage and confidence;
> -exercise mind and body in healthy activity;
> -overcome disability and reestablish capacity for industrial and social usefulness;
> -regulate and grade occupation as a patient's strength and capabilities increase.[8]

6. The first annual meeting of what would eventually become the American Occupational Therapy Association was held in 1917; and one of the presentations proposed a system of vocational education whereby the convalescent, while still in the hospital, could be evaluated and taught useful occupations which would be meaningful and useful on discharge.[9]

7. During World War I, with the U.S. faced with wounded men in need of rehabilitation, the Medical Department of the Army issued a directive establishing training programs for two groups of "reconstruction aides": physiotherapy and occupational therapy. The physiotherapy aides were to be trained "to give massage and exercise and other remedial treatment to the returned soldiers," while the occupational therapy aides were to be trained to

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"furnish forms of occupation to convalescents in long illnesses and to give to patients the therapeutic benefit of activity." 10

Mr. Sherwood-Gabrielson, I believe I have made my point. Thank you for your courtesy and attention to date; and I look forward to the opportunity to meet with you and your team to discuss this issue further.

Sincerely,

Allie Hafez, OTR, QRC

Enclosure

cc: Stephen Serkland
Jeanne Gehrman
Sara Hertfelder, AOTA Practice Division

REFERENCES

1. Willard & Spackman's Occupational Therapy", 5th edition, Hopkins & Smith (eds), J.B. Lippincott Co., 1978, p.204.

2. Bitter, James, Introduction to Rehabilitation p. 16.

3. Willard & Spackman, op. cit., p.4

4. Ibid. p.5

5. Ibid. p.6

6. Ibid. p.7

7. Ibid. p.8

8. Ibid. p.13

9. Ibid. p.10

10. Ibid. p. 11

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LABOR & INDUSTRY
REHABILITATION & MEDICAL AFFAIRS

Executive Director
Eda Holt

CRCC

1835 Rohlwing Road, Suite E • Rolling Meadows, Illinois 60008 • (708) 394-2104

Commission on Rehabilitation Counselor Certification
Accredited by the National Commission For Health Certifying Agencies

March 7, 1991

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LABOR & INDUSTRY
REHABILITATION & MEDICAL AFFAIRS

Alexandra C. Hafez
740 E. 16th Street
Minneapolis, MN 55404-1660

Candidate I.D. #24734

Dear Ms. Hafez:

At its recent meeting, the Appeals Committee of the CRCC reviewed your application for the upcoming Certification Examination. All the information and documentation in your file by JANUARY 15, 1991 was taken into consideration by the Committee in reaching its decision.

It is the determination of this Committee that you do not meet the CRCC's published standards and criteria for the eligibility category which your certification application falls. See "A Guide to Rehabilitation Counselor Certification" which you received with your application. Therefore, you will not be allowed to participate in the Certification Examination to be administered on April 27, 1991. The reasons for the Committee's decision are detailed below:

Eligibility under CATEGORY F: A Bachelors degree in any discipline and you must evidence 7 years of acceptable employment experience with 12 months under the supervision of a CRC.

In order for employment to be considered acceptable, the job description and the employment verification form must evidence that 50% of your time is/was spent as a Rehabilitation Counselor in a rehabilitation setting, providing rehabilitation services to a disabled population as defined by CRCC. Each place of employment must reflect professional experience in rehabilitation counseling, rehabilitation planning, and service delivery.

All education and employment criteria must have been fulfilled by JULY 1, 1990. The Appeals Committee accepted Vital Link Consulting for 33 months, Employer Lifelines for 21 months, and Tom Robinson & Assoc. for 12 months for a TOTAL of 66 months of acceptable employment experience. Rehab. Specialists/Kaposia was deemed not acceptable. The Appeals Committee concurred with the Credentials Committee's decision. The supportive documentation indicates that the activities performed reflect occupational therapist activities NOT rehabilitation counselor activities as defined by CRCC. No other employment was submitted. Therefore, you are lacking 18 months of acceptable employment experience towards certification.

American Deafness and Rehabilitation Association • American Rehabilitation Counseling Association • Canadian Association of Rehabilitation Personnel • Council of State Administrators of Vocational Rehabilitation • National Association of Non-White Rehabilitation Workers • National Association of Rehabilitation Facilities • National Association of Rehabilitation Practioners in the Private Sector • National Council on Rehabilitation Education • National Rehabilitation Counseling Association • At-Large Members Representing the Certified Rehabilitation Counselor • Public Members

Executive Director
Eda Holt

CRCC

1835 Rohlwing Road, Suite E • Rolling Meadows, Illinois 60008 • (708) 394-2104

Commission on Rehabilitation Counselor Certification
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March 7, 1991

If you feel that eligibility criteria have been, unjustly, inconsistently, or unfairly applied in your case by the Appeals Committee, due process entitles you to a review by the full Commission. Such an appeal is initiated by a WRITTEN REQUEST for a full Commission review BY APRIL 5, 1991. Should you choose to address the full Commission, only the facts reviewed by the Appeals Committee will be considered by the full Commission. This process provides for due process and gives the benefit of the doubt to the candidate, but at the same time, maintains consistent and fair application of eligibility criteria for certification.

Should you decide NOT to address the full Commission, your certification file will AUTOMATICALLY AND OFFICIALLY BE CLOSED on APRIL 6, 1991.

Sincerely,

Robert J. Nichols

Robert J. Nichols, CRC
Chair, Appeals Committee
Commission on Rehabilitation Counselor Certification

American Deafness and Rehabilitation Association • American Rehabilitation Counseling Association • Canadian Association of Rehabilitation Personnel • Council of State Administrators of Vocational Rehabilitation • National Association of Non-White Rehabilitation Workers • National Association of Rehabilitation Facilities • National Association of Rehabilitation Practioners in the Private Sector • National Council on Rehabilitation Education • National Rehabilitation Counseling Association • At-Large Members Representing the Certified Rehabilitation Counselor • Public Members

COMMISSION ON REHABILITATION COUNSELOR CERTIFICATION
1835 ROHLWING ROAD • SUITE E
ROLLING MEADOWS, IL 60008
(708) 394-2104

CANDIDATE # 24734

(Rehabilitation Counselor's Name) Alexandra (Allie) C. Hafez has applied to CRCC for certification. If this rehabilitation counselor meets all standards and criteria and passes the Certification Examination, he/she will be granted the Certificate "CRC", Certified Rehabilitation Counselor.

This applicant has indicated that you will be able to verify his/her employment as a rehabilitation counselor. This verification is a requirement for certification. CRCC and the applicant will appreciate your prompt response to this request.

COMPANY/ORGANIZATION NAME: Kaposia, Inc. (formerly Kaposia Developmental Learning Center)

APPLICANT'S OFFICIAL JOB TITLE: Occupational Therapy Consultant Service provided ~~EMPLOYED~~ FROM: 09/19/83 (M/D/Y) TO: 12/21/84 (M/D/Y)

A. 40 NUMBER OF HOURS — How many hours per week is/was spent by this applicant ~~in your employment?~~ providing services to your organiz.

B. 40 NUMBER OF HOURS — Please identify the total number of hours of the above named applicant (average work week) spent working as a Rehabilitation Counselor in a rehabilitation setting, providing rehabilitation services to a special population as defined by CRCC.* Also, please identify the special population(s) the above named applicant worked with and the percent of time spent with each special population indicated.

SPECIAL POPULATION	PERCENT OF TIME	SPECIAL POPULATION	PERCENT OF TIME
1. mentally retarded	100%	3. cerebral palsy	20%
2. developmentally disabled	100%	4. vision/hearing impaired	40%

Please summarize the applicant's responsibilities in this position: Severe clients had multiple types of disabilities resulting in simultaneous delivery of services to more than one type of disability. Occupational Therapy to increase and improve employability and vocational success of multiply-disabled adults.

JOB ACTIVITIES

Check the following activities which were performed by the applicant for a special population. For any activity marked "YES", record the number of hours per week the applicant spent in that activity and whether the activity was performed satisfactorily.

I. COUNSELING WITH A SPECIAL POPULATION INCLUDES:	ACTIVITY REQUIRED YES	ACTIVITY REQUIRED NO	NUMBER OF HOURS PER WEEK	ACTIVITY PERFORMED SATISFACTORILY YES	ACTIVITY PERFORMED SATISFACTORILY NO
A. AFFECTIVE COUNSELING FOR A SPECIAL POPULATION* (For example, did the rehabilitation counselor assist in reducing clients' anxiety by helping them face and realistically assess problems that seemed insumountable? Did the counselor aid the client to better understand and when necessary, change their feeling about themselves and others? Did the counselor interpret the motivations underlying clients' behavior and assist clients to identify relevant issues which required modifying behaviors and/or attitudes?)	X		10	X	
B. VOCATIONAL COUNSELING FOR A SPECIAL POPULATION* (For example, did the rehabilitation counselor assess the vocational significance of clients' disabilities? Did the counselor discuss specific vocational alternatives which were compatible with clients' training, experience and disability limitations? Did the counselor explore with clients their vocational assets/liabilities and thier acceptance of them?)	X		10	X	

*A special population is interpreted by CRCC to include persons who have one or more physical or mental disabilities resulting from amputation, arthritis, blindness, cancer, cerebral palsy, cystic fibrosis, deafness, heart disease, hemiplegia, hemophilia, respiratory or pulmonary disease, multiple sclerosis, muscular dystrophy, musculoskeletal disease or disorder, quadriplegia and or spinal cord conditions, sickle cell anemia, endstage renal disease, neurosis and/or psychosis, or another disability or combination of disabilities causing functional limitations.

II. PLANNING AND DELIVERY OF REHABILITATION SERVICE TO A SPECIAL POPULATION INCLUDES:	ACTIVITY REQUIRED		NUMBER OF HOURS	ACTIVITY PERFORMED SATISFACTORILY	
	YES	NO		YES	NO
A. **MEDICAL AND PSYCHOLOGICAL SERVICE COORDINATION FOR A SPECIAL POPULATION*** (For example, did the rehabilitation counselor appraise clients' psychological readiness for rehabilitation services? Did the counselor decide if medical and/or psychological services reduced clients' vocational handicaps? Did the rehabilitation counselor determine what special medical and/or psychological examinations were required by clients?)	X		1	X	
B. **JOB PLACEMENT/DEVELOPMENT FOR A SPECIAL POPULATION** (For example, did the rehabilitation counselor use counseling techniques to prepare clients for the activities of job hunting? Did the counselor instruct clients about ways to locate jobs? Did the counselor role-play employment interview and review employer questions with clients? Did the counselor visit employers to solicit job openings for particular clients? Did the counselor set up job interview appointments for clients?)		X	N/A	N/A	
C. **REHABILITATION SERVICE COORDINATION FOR A SPECIAL POPULATION*** (For example, did the rehabilitation counselor review clients' progress in vocational rehabilitation programs? Did the counselor brief cooperating agencies when referring clients? Did the counselor refer clients to other agencies for needed services?)	X		10	X	
D. **JOB ANALYSIS FOR A SPECIAL POPULATION*** (For example, did the counselor make on site employer contacts to determine the tasks, physical and mental, which comprised the job? Did the counselor identify methods used to do the job? Did the counselor determine the skills needed to perform the job? Did the counselor evaluate job activities at the work site to determine if modification of the work activities were needed. Did the counselor perform modification of the job tasks to accommodate clients' disabilities?)	X		4	X	
E. **CLIENT ASSESSMENT FOR A SPECIAL POPULATION*** (For example, did the rehabilitation counselor use test results as diagnostic aids to understand the whole client? Did the counselor interpret testing results to clients? Did the counselor incorporate testing results in the formulation of vocational rehabilitation goals?)	X		2	X	
F. **ADMINISTRATIVE PLANNING FOR A SPECIAL POPULATION*** (For example, did the rehabilitation counselor keep abreast of laws affecting rehabilitation service delivery? Did the counselor act in a liasion capacity between agency and other groups in the community and professionals?)	X		1	X	
G. **SERVICE PLANNING FOR A SPECIAL POPULATION*** (For example, did the rehabilitation counselor develop and prepare written rehabilitation plans with the client? Did the counselor conduct intake interviews to determine how the counselor and the agency could help clients? Did the counselor integrate vocational, medical, psychological diagnostic information to formulate rehabilitation goals?)	X		2	X	

I hereby certify that the above named person received a systematic and periodic evaluation of the quality of his/her delivery of rehabilitation counseling services as a rehabilitation counselor under my supervision, and that the information I have provided on the verification is a correct and accurate representation of the applicant's job. **ALSO, I UNDERSTAND THIS VERIFICATION WILL NOT BE ACCEPTABLE UNLESS ACCOMPANIED BY AN OFFICIAL JOB DESCRIPTION:**

Jacqueline M. Magnuson — CCC — 4/20/90

SIGNATURE — TITLE — DATE

Kaposia, inc.
Our Workers Work

380 East Lafayette Freeway South
Saint Paul, Minnesota 55107-1216
(612) 224-6974

RECEIVED
NOV 6 1991
LABOR & INDUSTRY
REHABILITATION & MEDICAL AFFAIRS

To CRCC application reviewer:

The following describes the services provided by Ms. Alexandra (Allie) Hafez, OTR as the Occupational Therapy Consultant to Kaposia, Inc. 09/19/83 - 12/21/84

Kaposia, Inc. is a vocational habilitation, training and placement program. For the period Ms. Hafex provided full-time Occupational Therapy services, Kaposia served adults with mental retardation ranging from profound to mild, with accompanying developmental deficits; and including some physical disabilities such as cerebral palsy, vision and hearing impairments (of varying severity), hemiplegia, and musculoskeletal disorders.

Ms. Hafez provided Occupational Therapy services in the following areas:

Vocational counseling: Kaposia clients had no vocational experience prior to entering Kaposia's program. As part of vocational skill-building treatment plans to address physical-motor, sensory-motor, perceptual-motor and cognitive deficits, Ms. Hafez provided counseling for: placement on available jobs; work behaviors; interests in future job assignments; and, for clients working offsite, counseling/ assistance as indicated in approriate interaction with co-workers and supervisors; and appropriate use of resources.

Affective counseling: As relevant to work behaviors and performance, Ms. Hafez provided counseling and intervention strategies for clients having difficulty dealing with frustration; age-inappropriate psychosocial interactions with co-workers and supervisors; appropriate use of break times; and fears of new challenges.

Medical and psychological services coordination: Ms. Hafez had monthly meetings with a physiatrist who examined each client receiving Occupational Therapy services, reviewed the intervention plan, and authorized continuation of services. Additionally, on the few occasions when clients required medical care relevant to their physical disabilities, Ms. Hafez reviewed the physician's recommendations regarding physical activity, and revised the Occupational Therapy plans as indicated.

Job Placement/development: Kaposia's staff included a full-time job developer; placement in available jobs was a team function that included input from the Occupational Therapist regarding client readiness, client special needs on the job, adaptations/accommodations necessary.

Rehabilitation Services coordination: through frequent and regular formal and informal communication, Ms. Hafez coordinated Occupational Therapy services with other vocational habilitation services provided by Kaposia staff to maximize clients' involvement with and success at vocational experiences.

Job analysis: Ms. Hafez provided in-depth job analyses in order to determine appropriate client assignments and adaptations/modifications needed. Ms. Hafez designed and constructed several adaptations to tools and materials, as well as adapting job requirements and enviroments to accommodate inappropriate and/or incompatible behaviors (such as self-stimulation) exhibited by some clients.

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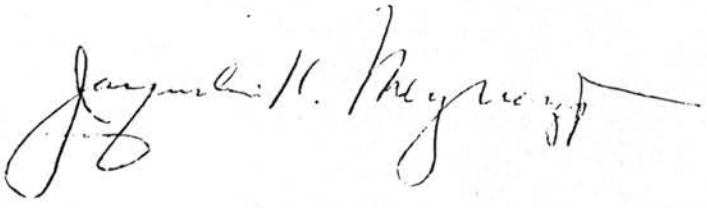
Client Assessment: Using standardized and non-standardized Occupational Therapy evaluation instruments, Ms. Hafez evaluated the physical-motor, sensory-motor, perceptual-motor and cognitive abilities of Kaposia's clients to determine the individual special needs of each client beginning a vocational activity. She shared (and when necessary, interpreted) results and recommendations for intervention and/or approaches with their individual abilities and limitations.

Work Evaluation: As job opportunities/contracts were received by Kaposia, clients were assigned based on their assessed abilities. On the job, clients were continuously evaluated - as relevant to their jobs - on their basic skills (such as telling time, counting, reading/writing, speech/communication); attendance/punctuality; response to supervision and supervisor; initiative; reliability/responsibility; co-worker relations; personality and attitude towards work; flexibility towards variety of jobs; frustration tolerance; attention span; work tolerance; learning ability; seeking assistance appropriately; retention-reorientation to task; transfer skills; ability to keep track of production, and recognition and correction of errors; proper use of time clock and job cards; compliance to shop and safety rules; quality of work; fine/gross motor skills. Ms. Hafez provided, as indicated, intervention (using Occupational Therapy principles and theory) to improve or eliminate problems exhibited by clients in any of the above areas. She also provided recommendations to staff regarding adaptations to components of job as necessary, as well as adaptations to training methods, as necessary.

Administrative planning: Ms. Hafez consistently attended training and updates provided by professionals to Kaposia staff. Additionally, she participated in regular meetings with other Occupational Therapists providing services (through RSI) to traditional developmental achievement centers, to maintain knowledge of Occupational Therapy services to the multiply-handicapped population.

Services planning for a special population: Ms. Hafez was responsible for developing individualized Occupational Therepy plans for Kaposia's clients that were consistent and compatible with those of the Kaposia team, as well as, in some cases, with the clients' residential situations.

Kaposia's program at this time was unique in the state of Minnesota; and Ms. Hafez did an excellent job of providing Occupational Therapy services that were categorically different from the traditional, developmentally-based services provided by Occupational Therapists during Kaposia's previous history (and, at the time, still being provided at Kaposia's counterparts). Ms. Hafez's services were directly relevant to clients' vocational development, productivity and wage-earnings abilities.



KAPOSIA DEVELOPMENTAL LEARNING CENTER INC.

VOCATIONAL TRAINING SERVICES

LIFE SKILLS CENTER

- Recycling of cans and papers
- Managing the Clothing Room and Food Shelves for the Neighborhood House, Inc.
- Collating of church bulletins, neighborhood flyers, etc.
- Daily janitorial duties
- Subcontract work
- Small work crews doing volunteer work in the community

HOME LIVING CENTER

- Food Service - catering meals for community groups
- House Cleaning Service - cleaning private homes and commercial properties

WORK CENTER

- In-center subcontract work
- Subcontract work at the business site
- Client on-the-job training in a business site
- Work crews in a business site

Sentry Claims Service

1800 North Point Drive
Stevens Point WI 54481
715 346 6000

October 31, 1991

David Sherwood-Gabrielson, Director
Rehabilitation and Medical Affairs
443 Lafayette Road
St. Paul, MN 55155

RECEIVED
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LABOR & INDUSTRY
REHABILITATION & MEDICAL AFFAIRS

Sir, I am responding with comment to Rehabilitation Regulations 5220.0100 to 5220.2780 on behalf of my company. My issues are as follows:

1. 5220.0410, Rehabilitation plan - There are inconsistencies in timeframes regarding submission of a rehabilitation plan. Subpart 3 and subpart 5 refer to 60 and 90 days. A single timeframe is needed.

2. 5220.0850, On-the-job training - Sentry disagrees with language indicated in Subpart 4 regarding on-the-job training plan approval. Instead of calling this a proposed plan allowing the commissioner 30 days for plan approval or rejection, Sentry would prefer language more consistent with plan approval indicated in 5220.0410, rehabilitation plan. Referring back to that section, Subpart 6, you will find the statement "A Rehabilitation plan that all parties have signed is deemed approved by the Commissioner upon filing." That statement is followed by various disclaimers. To hasten job placement utilizing on-the-job training plans, language similar to rehabilitation plan approval, Subpart 6 should be incorporated into the on-the-job training plan approval, Subpart 4 with disclaimers.

3. 5220.0510, Plan Amendment and Closure - Subpart 1, Reasons for Amendment. Strike Item E. Reference to how the employee "feels" is highly subjective. Additionally, the issue is already covered under Item C above it.

4. 5220.1400, Qualifying Criteria for Rehabilitation Consultant - Subpart 2 , Certification on Education. There are professionals ignored by Sections A and B who have and would continue to make excellent QRCs. It is recommended a Section C, Miscellaneous Section be incorporated to include such professionals. For example, Sections A and B exclude Occupational Therapists. Language similar to Item B could be incorporated to eliminate such excluded professions.

5. 5220.1801, Professional Conduct - Subpart 2, Assigned Qualified or Rehabilitation Consultant: The phrase "No qualified Rehabilitation Consultant or qualified Rehabilitation Consultant firm shall provide rehabilitation services to a case assigned to a qualified Rehabilitation Consultant employed by another qualified Rehabilitation Consultant firm" should be totally stricken. Rationale; small and one person firms run into a problem. Where they are unavailable to attend an important meeting related to the case, the QRC would remain unrepresented if the section cited above is not stricken from the record. That could have dire consequences on individual cases.

Mr. Sherwood-Gabrielson, we at Sentry appreciate the opportunity to comment regarding the proposed amendments. If you have questions on anything which I have said, please call me. I am readily available at 715-346-6680.

Rick Lang
Director of Rehabilitation Claims

dmr

Enclosure: Business card

cc: Greg Klug - 2N
Tom Herzog - 2N
Gail Signell-Hain - St. Louis Park, MN

recd 11/13

Rehabilitation Evaluation Consultants

LYNNE M. MECKSTROTH, R.N., Q.R.C., C.I.R.S. SHIRLEY FRIBERG, R.N., Q.R.C., C.R.R.N., C.I.R.S. JOSEPH T. CROWE, C.R.C., Q.R.C.
2130 FAIRWAYS LANE
ROSEVILLE, MINNESOTA 55113
612 • 631-2046

October 24, 1991

RECEIVED
OCT 30 19[illegible]
LABOR & INDUSTRY
REHABILITATION & MEDICAL AFFAIRS

David Sherwin-Gabrielson
Director
Rehabilitation and Medical Affairs
443 Lafayette Road
St. Paul, MN 55155

Re: Rule Amendments of the State Department of Labor & Industry, Workers' Compensation Division

Dear David:

I reviewed the proposed permanent rules relating to the rehabilitation of persons with work related injuries. I was impressed with the clarity and completeness of the rules. I agree with the definition of medical management. I think it is particularly helpful that you have identified the difference between "claim screen consultation" and a "eligibility consultation." They provide the early intervention needed to identify potential problem cases.

The rules have specific guidelines but the fact that they allow for differences in cases is helpful. I agree with 5220.0850, On The Job Training, subpart three. Six months is recommended as the maximum for most on the job training plans but the rule allows for exceptions.

I also support the changes in 5220.1500, Inactive Status, subpart four. Although I do question the need for another orientation program if the QRC has attended all annual update sessions. It is hard to believe after working several years one would forget the entire practice. I think about attorneys leaving their practice for politics and then returning.

All in all, I think you did a super job. Keep up the good work.

Sincerely yours,

Shirley J. Friberg R.N. QRC
CRRN, CIRS

SF/kd

Dictated but not read

Charlotte Cohen & Associates

Workers Compensation Specialists

5820 74th Ave. North
Suite 116
Brooklyn Park, MN 55443
612/561-0080

P.O. Box 2
443 Fourth Street
International Falls, MN 56649
218/285-7738

October 28, 1991

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OCT 30 1991
LABOR & INDUSTRY
REHABILITATION & MEDICAL AFFAIRS

Mr. David Sherwood-Gabrielson, Director
Rehabilitation and Medical Affairs
443 Lafayette Road
St. Paul, MN 55155

RE: Proposed Rehabilitation Rules

Dear Mr. Sherwood-Gabrielson:

You may consider this a written request for a public hearing on the proposed rules. I am writing this request because of my strong concern about one particular area of the rules.

Rule 5220.1900, subpart 7, indicates, "Case activities requiring insurer consent for payment. The rehabilitation provider must obtain the consent of the insurer before billing for the following case activities; however, the presence or absence of consent shall not preclude the commissioner or a compensation judge from determining the reasonable value or necessity of these case activities: ... P. Services after request to suspend or terminate the Rehabilitation Plan has been filed."

I am particularly concerned that this allows an insurer to effectively suspend or terminate rehabilitation during the period of time between their request and the time an administrative conference or hearing can be scheduled. This places the QRC's services and reimbursement for services at risk. This appears to be contrary to the intent of other portions of the statute and regulation. For example, an insurer must continue paying monetary benefits to an injured employee after the issuance of a Notice of Intent to Discontinue Benefits up until the time the case can be heard at an administrative conference or before a compensation judge. A time frame for the employee to respond and for a conference to be held has been established by statute and regulation.

I specifically recommend that the wording in question be eliminated from this section of the rules. More thought should be given to the impact of this regulation, and perhaps a specific section of the rules should address the problem. My recommendation would be that if rehabilitation services are to continue while they are in dispute, a defined time frame be established for the dispute process similar to that which is established at the issuance of an NOID. QRC should not be placed in the position of having their fees being

placed at risk during this process and employees should not be placed in the situation of effectively having their rehabilitation services suspended or terminated during the initial phases of the dispute process without hearing. As I said before, this seems to be contrary to processes outlined in other dispute situations.

I am also requesting a change in Rule 5220.1700, subpart 8. On page 46, line 13, I am requesting the reinstatement of the previous language, which was "medical or rehabilitation" charges. Rule 5220.1900 indicates, "The insurer has the primary responsibility for monitoring and paying the cost of necessary rehabilitation services provided." This indicates that the determining of the reasonableness of rehabilitation costs is a claims function. As such, it should be a prohibited practice for QRCs to engage in assisting the insurer in making these determinations. Without the additional language, there will be a conflict between the two sections of the rule.

I am also concerned about the wording in Rule 5220.0710, subpart 3. The wording appears to leave open the possibilities for dispute. In particular, the question will arise of what constitutes an employee's exhaustion of choice. I am concerned that after an employee has utilized their final opportunity to choose a QRC and is working with the QRC of their choice, the language of this section may allow for a dispute to arise based upon an insurer proposing an additional change. I believe that that is not the intent of this section, but it appears to leave this possibility open. I do not have alternative language to propose.

Please forward to me at your earliest convenience a copy of the Statement of Need and Reasonableness that has been prepared by the department. Please also advise me of the submission of the material to the Attorney General and send me a copy of the Adopted Rule Amendments.

Thank you very much for your attention to this matter. If you should have any questions or if I can provide additional information, please feel free to call me. Also, I am more than willing to withdraw my request for a public hearing should the above noted issues be sufficiently addressed informally.

Sincerely,

Tom Davis

Tom Davis, M.S., C.I.R.S.
Q.R.C. #725-5092

TD:bc

November 8, 1991

Robin Saunders
Minnesota Chapter of the APTA Association
Rosewood Office Plaza, Ste. 101-S
1711 W. Cty. Rd. B
Roseville, MN 55113

Dear Ms. Saunders:

Thank you for taking the time to comment on the Proposed Amendment of the Rules Governing Rehabilitation Services. We rely heavily upon individuals and professional groups to assist us in formulating and promulgating administrative rules.

Your specific concern was in regard to the definition for Work Hardening, 5220.0100 Definitions (Subp. 40). You requested that we substitute the definition proposed by CARF. You also suggested that we contact Vicki Torvik about this issue. Sandra Keogh, Medical Policy Analyst in the Rehabilitation and Medical Affairs Unit has spoke to Ms. Torvik on this issue.

The definition as it appears in the proposed Amendment is a fairly broad definition of Work Hardening and the best one we had to work with at the time. I am interested in discussing with you the possibility of substituting our current definition for the one you proposed.

In the Minnesota administrative rulemaking procedure, a change can be made from the original published language without reopening the 30 day comment period if it is not a substantive change. I would like to meet with the task force on Work Hardening and Work Conditioning Definitions and Standards and our Department committee on the proposed amendments and discuss whether or not this is or is not a substantive change.

I will be in contact with you through Stephen Serkland or Sandra Keogh about setting up a meeting for this purpose.

Sincerely,

WORKERS' COMPENSATION DIVISION
REHABILITATION AND MEDICAL AFFAIRS

David Sherwood-Gabrielson

David Sherwood-Gabrielson
Director

DSG/df/109

cc: Stephen Serkland, Rehabilitation Policy Analyst
Sandra Keogh, Medical Policy Analyst

October 24, 1991

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REHABILITATION & MEDICAL AFFAIRS

David Sherwood-Gabrielson, Director
Rehabilitation and Medical Affairs
443 Lafayette Road
St. Paul, MN 55155

Dear Mr. Sherwood-Gabrielson:

In regard to the Proposed Amendment of the Rules Governing Rehabilitation Services, please consider the following:

Because of the confusion and frustration of referral sources, providers and payors, there was an identified need to clarify the definitions and standards for both Work Hardening Programs and Work Conditioning Programs. In response, a task force was formed.

The Task Force on Work Hardening and Work Conditioning Definitions and Standards is a task force made up of P.T.'s and O.T.'s who are currently providers of Work Hardening and/or Work Conditioning in the state of Minnesota. This task force is a subgroup of the Minnesota Industrial Physical Therapy Group and the Minnesota Industrial Occupational Therapy Group. In addition, other interested P.T.'s/O.T.'s were invited to participate through their respective professional organizations.

The task force has met an average of twice monthly between June and October 1991. Over 20 facilities from across the state were represented on the task force.

First, we addressed the issue of mandating CARF accreditation as a criteria for reimbursement of Work Hardening services. Secondly, we developed recommendations for standard definitions and standards for both Work Hardening Programs and Work Conditioning Programs in the state of Minnesota.

Our task force has summarized our recommendations on the following pages. We have developed these recommendations after several months of conversation and scrutiny of both CARF's Work Hardening Standards and work done by the American Physical Therapy Association's Industrial Rehabilitation Advisory Committee.

Therefore, our committee is asking you to consider changing the definition you are currently proposing for Work Hardening (Subp. 40). The definition as stated in Subp. 40 is significantly different from that our committee is recommending (CARF's proposed 1992 Definition). We feel strongly that standardization and continuity in definitions is desperately needed. Vicki Torvik, one of our committee members, will be contacting you on this matter within the next few days. In the meantime, please feel free to contact Vicki at 927-3707 or myself at 645-8083 if you have any questions.

Sincerely,

Robin Saunders
Minnesota Work Hardening/Work Conditioning Taskforce Chairperson

WORK HARDENING/WORK CONDITIONING TASK FORCE RECOMMENDATIONS

I. CARF Accreditation:

We do not recommend that CARF accreditation be mandated in the state of Minnesota as a criteria for reimbursement of Work Hardening services.

To become CARF accredited, a facility must meet CARF's "Standards for the Organization" and "Standards for All Programs" as well as the specific "Standards for Work Hardening Programs (1)". This would result in increased costs to the consumer but would not guarantee improved quality of care or outcome.

II. Recommended Definitions and Standards:

A. Work Hardening

Definition: "Work Hardening is a highly structured, goal-oriented, individualized treatment program designed to maximize the person's ability to return to work. Work hardening programs are interdisciplinary in nature with a capability of addressing the functional, physical, behavioral and vocational needs of the person served. Work hardening provides a transition between the initial injury management and return to work, while addressing the issues of productivity, safety, physical tolerances, and work behaviors. Work hardening programs use real or simulated work activities in a relevant work environment in conjunction with physical conditioning tasks. These activities are used to progressively improve the biomechanical, neuromuscular, cardiovascular/metabolic, behavioral, attitudinal, and vocational function of the person served.(1)" [from CARF's 1991 National Advisory Committees]

Standards:

We recommend that all Work Hardening Programs in the state of Minnesota adhere to the Commission on Accreditation of Rehabilitation Facilities' (CARF's) Definition and specific program Standards for Work Hardening Programs, with the following exception:

In relation to Standard #11 - "The interdisciplinary team should be made up of the following professionals: a) Occupational Therapist; b) Physical Therapist; c) Psychologist and d) Vocational Specialist",

1) We agree that a vocational specialist is an appropriate member of the interdisciplinary Work Hardening team; however,

2) In the State of Minnesota, it is mandated by law that this vocational rehabilitation services are provided by the Qualified Rehabilitation Consultant (QRC)/Vocational Specialist.

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3) The majority of current Work Hardening clients have QRC's/Vocational Specialists. For those clients who do not, the Work Hardening Program's responsibility shall be to assist the client in obtaining these services based upon need. If Work Hardening Programs were required to provide these services, in most cases this would be a duplication of services and costs.

Therefore, in relation to Standard #13 - "Depending on the needs of persons served, the program should assist the person to obtain ...[list of various services]", we would add to the list, "Vocational Specialist".

B. Work Conditioning

Definition: "Work Conditioning Programs are intensive, goal-oriented, systematic processes specifically designed to restore an individual's systemic neuro-musculo-skeletal function (strength, endurance, movement, flexibility and motor control). The objective of this program is to restore the client's physical health and function so that the client can return to work, or become physically reconditioned so that vocational rehabilitation services can commence (2)." [from APTA Industrial Rehabilitation Advisory Committee]

Standards:

We feel that most of CARF's standards for Work Hardening Programs are also applicable to Work Conditioning Programs, with some major exceptions. Therefore, we recommend that all Work Conditioning Programs in the state of Minnesota adhere to CARF's specific program Standards for Work Hardening Programs, with the following exceptions:

All Standards: The words "Work Conditioning" should be substituted for "Work Hardening".

Standard #10 - "Services should be provided by a coordinated interdisciplinary team that meets in team conference for each person served no less often than every other week".

Reword as follows, "Services should be provided by a physical therapist and/or occupational therapist. Where more than one professional is involved, a team conference should be held for each person served no less often than every other week".

Standard # 11 - "The interdisciplinary team should be made up of the following professionals: a) Occupational Therapist; b) Physical Therapist; c) Psychologist and d) Vocational Specialist"

Reword as follows: "The service should be provided by one or more of the following professionals: a) Occupational Therapist and/or b) Physical Therapist.

Standard #12 - "The professionals on the interdisciplinary team should be able to demonstrate interest, training and experience in Work Hardening Programs".

Reword as follows: "The professionals providing Work Conditioning Services should be able to demonstrate interest, training and experience in Work Conditioning Programs".

Standard #13 - "Depending on the needs of persons served, the program should assist the person to obtain ...[list of various services]", we would add to the list, "Psychologist" and "Vocational Specialist".

Standard #23 - "There should be a core designated area that is organized, staffed and equipped for the specific purpose of providing Work Hardening Programs and is suitably designed for that purpose".

Reword as follows: "There should be a suitably designed area that is organized, staffed and equipped for the specific purpose of providing Work Conditioning Programs".

III. Frequency, Length and Daily Duration of Work Hardening and Work Conditioning Programs

Generally, Work Conditioning is less than or equal to a 1/2 day per session, and Work Hardening can be up to a full day per session. Both Work Conditioning and Work Hardening should be made available 5x/week. Work Conditioning and Work Hardening Programs generally do not exceed 8 weeks in total length. The length, frequency and daily duration of Work Conditioning and Work Hardening Programs may vary from the above depending upon the goals of the client's program. Any variations, however, will be supported by documentation.

References:

1. Recommendations of CARF's 1991 National Advisory Committees regarding revisions for CARF's 1992 Standards Manual. Commission on Accreditation of Rehabilitation Facilities (CARF), 101 North Wilmot Road, Tucson, Arizona 85711.

2. APTA Field Review Document for Work Conditioning Guidelines, Summer 1991, APTA Industrial Rehabilitation Advisory Committee, 1111 N. Fairfax St., Alexandria, Virginia 22314.

MESABI REHABILITATION SERVICES, INC.

P. O. BOX 1002
VIRGINIA, MINNESOTA 55792
218-749-3329

October 23, 1991

Mr. David Sherwood-Gabrielson
Director of Rehabilitation and
Medical Affairs
Minnesota Department of Labor and Industry
443 Lafayette Road
St. Paul, MN 55155

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OCT 28 1991
LABOR & INDUSTRY
REHABILITATION & MEDICAL AFFAIRS

RE: <u>In-House Placement Specialists</u>

Dr. Mr. Sherwood-Gabrielson:

Thank you for speaking with me earlier this week regarding the use of in-house placement specialists. You advised me that the current rules and regulations do not prohibit the use of an in-house placement specialist. My understanding of the rules and regulations coincides with yours and, in fact, this agency has employed an in-house placement specialist since May of 1988 which has been fully documented to your department via the R-24 form. In fact, since that time, I have had numerous conversations with staff members from your department indicating that my use of an in-house placement specialist was in no way contrary to the established rules and regulations pertaining to the delivery of rehabilitation services within the workers' compensation system.

Recently, a self-insured employer challenged me at an administrative hearing on the legality of an in-house placement specialist. Also, we are both aware of another administrative hearing in which the Administrative Law Judge made a ruling indicating that the use of an in-house placement specialist was in contradiction to the rules and regulations. During our telephone conversation earlier this week, we both agreed that the reason for such confusion revolves around the lack of a very specific statement within the rules and regulations specifically allowing the use of an in-house placement specialist. It was your opinion, which I also share, that changing

the current rules and regulations to specifically mention and allow the use of in-house placement specialists would not substantially change the existing rules and regulations. However, the specific inclusion of the job classification of an in-house placement specialist in the rules and regulations would merely be a clarification. Therefore, I specifically request that this change be made to the rules and regulations so that this ambiguity and the resulting misinterpretation can be corrected and eliminated. If this clarification cannot be made, then I specifically request a formal hearing on this subject.

Also, to ensure that you have received this letter and understand clearly my concerns, I request that you contact me as soon as possible regarding this topic.

I hope to hear from you soon.

Respectfully submitted
MESABI REHABILITATION SERVICES, INC.

Jim Jackson /c

L. James Jackson, MS, CRC
Chief Executive Officer

LJJ/crb

Dictated but not read
10/24/91

STATE OF MINNESOTA

DEPARTMENT OF LABOR AND INDUSTRY

In the Matter of the Proposed Adoption of the Rule of the State Department of Labor and Industry, Workers' Compensation Division, Relating to the Rehabilitation of Persons with Work-Related Injuries

DECLARATION OF COUNSEL

I, Jon K. Murphy, Special Assistant Attorney General, do hereby declare that I have examined the above-captioned rule, and the supporting rulemaking record, and that, based on my examination, the Administrative Procedure Act and Minnesota Rules, chapter 2010 have been followed. Any exceptions are listed below. For Attorney General billing purposes, the four-digit docket client code is 60 0001 0606.

Assistant Attorney General

Dated: 12/2/91

Minnesota
Department of Labor and Industry

443 Lafayette Road
St. Paul, Minnesota 55155
(612) 296-6107

Telecommunication Device
for the Deaf (612) 297-4198

FAX (612) 297-1329

December 5, 1991

Tom Davis, QRC
Charlotte Cohen and Associates
5820 - 74th Avenue N, Ste 116
Brooklyn Park, MN 55443

Dear Tom,

Thank you for talking with me last Wednesday, November 27, 1991, regarding you concerns about the proposed rehabilitation rules.

I am writing to confirm that you have withdrawn your request for a formal hearing.

We will be addressing your concerns and seeking your input in the next rule making phase. Thank you for your ongoing support and participation in this important work.

Sincerely,

Stephen P. Serkland
Rehabilitation Review Panel

SPS/jlk

Charlotte Cohen & Associates

Workers Compensation Specialists

5820 74th Ave. North
Suite 116
Brooklyn Park, MN 55443
612/561-0080

P.O. Box 2
443 Fourth Street
International Falls, MN 56649
218/285-7738

October 28, 1991

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LABOR & INDUSTRY
REHABILITATION & MEDICAL AFFAIRS

Mr. David Sherwood-Gabrielson, Director
Rehabilitation and Medical Affairs
443 Lafayette Road
St. Paul, MN 55155

RE: Proposed Rehabilitation Rules

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You may consider this a written request for a public hearing on the proposed rules. I am writing this request because of my strong concern about one particular area of the rules.

Rule 5220.1900, subpart 7, indicates, "Case activities requiring insurer consent for payment. The rehabilitation provider must obtain the consent of the insurer before billing for the following case activities; however, the presence or absence of consent shall not preclude the commissioner or a compensation judge from determining the reasonable value or necessity of these case activities: ... P. Services after request to suspend or terminate the Rehabilitation Plan has been filed."

I am particularly concerned that this allows an insurer to effectively suspend or terminate rehabilitation during the period of time between their request and the time an administrative conference or hearing can be scheduled. This places the QRC's services and reimbursement for services at risk. This appears to be contrary to the intent of other portions of the statute and regulation. For example, an insurer must continue paying monetary benefits to an injured employee after the issuance of a Notice of Intent to Discontinue Benefits up until the time the case can be heard at an administrative conference or before a compensation judge. A time frame for the employee to respond and for a conference to be held has been established by statute and regulation.

I specifically recommend that the wording in question be eliminated from this section of the rules. More thought should be given to the impact of this regulation, and perhaps a specific section of the rules should address the problem. My recommendation would be that if rehabilitation services are to continue while they are in dispute, a defined time frame be established for the dispute process similar to that which is established at the issuance of an NOID. QRC should not be placed in the position of having their fees being

placed at risk during this process and employees should not be placed in the situation of effectively having their rehabilitation services suspended or terminated during the initial phases of the dispute process without hearing. As I said before, this seems to be contrary to processes outlined in other dispute situations.

I am also requesting a change in Rule 5220.1700, subpart 8. On page 46, line 13, I am requesting the reinstatement of the previous language, which was "medical or rehabilitation" charges. Rule 5220.1900 indicates, "The insurer has the primary responsibility for monitoring and paying the cost of necessary rehabilitation services provided." This indicates that the determining of the reasonableness of rehabilitation costs is a claims function. As such, it should be a prohibited practice for QRCs to engage in assisting the insurer in making these determinations. Without the additional language, there will be a conflict between the two sections of the rule.

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Please forward to me at your earliest convenience a copy of the Statement of Need and Reasonableness that has been prepared by the department. Please also advise me of the submission of the material to the Attorney General and send me a copy of the Adopted Rule Amendments.

Thank you very much for your attention to this matter. If you should have any questions or if I can provide additional information, please feel free to call me. Also, I am more than willing to withdraw my request for a public hearing should the above noted issues be sufficiently addressed informally.

Sincerely,

Tom Davis

Tom Davis, M.S., C.I.R.S.
Q.R.C. #725-5092

TD:bc

Department of Labor and Industry

Adopted Permanent Rules Relating to the Rehabilitation of Persons with Work-Related Injuries

Rules as Adopted

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

5220.0100 DEFINITIONS.

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

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

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

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

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

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

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

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

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

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Subp. 10. **Formal course of study.** "Formal course of study" means a program described by a published syllabus with established time parameters for completion which results in a diploma or other certification that is accepted as a credential of basic competence in a vocation.

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

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

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

A. what the worker does in the job being analyzed in relation to data, people, and things;

B. what methods and techniques are employed by the worker;

C. what machines, tools, equipment, and work aids are used;

D. what materials, products, subject matter, or services result; and

E. what traits are required of the worker.

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

Subp. 16. **Job development.** "Job development" means systematic contact with prospective employers resulting in opportunities for interviews and employment that might not otherwise have existed. Job development facilitates a

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prospective employer's consideration of a qualified employee for employment.

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

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

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

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

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

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

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injury or disability:

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

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

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

Subp. 6. [See repealer.]

Subp. 7. [See repealer.]

Subp. 8. [See repealer.]

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

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

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

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

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for an eligibility consultation, rehabilitation services, or both, or requests a waiver of rehabilitation services.

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

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

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

A. qualified rehabilitation consultants;

B. qualified rehabilitation consultant interns;

C. qualified rehabilitation consultant firms; and

D. registered rehabilitation vendors.

Subp. 29. **Rehabilitation services.** "Rehabilitation services" means a program of vocational rehabilitation, including medical management, designed to return an individual to work consistent with Minnesota Statutes, section 176.102, subdivision 1. The program begins with the first in-person visit of the employee by the assigned qualified rehabilitation consultant, including a visit for purposes of an eligibility consultation. The program consists of the sequential delivery and coordination of services by rehabilitation providers under an individualized plan. Specific services under this program may include, but are not limited to, vocational evaluation, counseling, job analysis, job modification, job development, job placement, labor market survey, vocational testing, transferable skills analysis, work adjustment, job seeking skills training, on-the-job training, and retraining.

Subp. 10a. [See repealer.]

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Subp. 11. [See repealer.]

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

Subp. 31. **Required rehabilitation report.** "Required rehabilitation report" means the claim screening consultation report, the eligibility consultation report and any other report that must be submitted to the commissioner whenever a rehabilitation plan is initiated, proposed to be amended, suspended or closed, or when a change of assigned qualified rehabilitation consultant occurs on a case.

Subp. 32. **Retraining plan.** "Retraining plan" means an individualized written plan describing the formal course of study through which the goal of the rehabilitation plan may be accomplished. Adult basic education or remedial programs may be a component of a retraining plan but do not constitute retraining in and of themselves.

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

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

Subp. 14. [See repealer.]

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Subp. 15. [See repealer.]

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

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

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

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

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

Subp. 40. **Work hardening.** "Work hardening" means a physical conditioning program in a clinical setting designed to develop strength and tolerance for work or a schedule of graduated resumption of employment consistent with the employee's physical condition.

5220.0105 INCORPORATION BY REFERENCE.

The following documents are incorporated by reference only to the extent specifically referenced in parts 5220.0100 to 5220.1910. The documents in items A and B are not subject to

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frequent change, although new editions may occasionally be published. The documents in item C are revised annually. All documents are available through the Minitex interlibrary loan system.

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

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

C. The Commission on Accreditation of Rehabilitation Facilities (CARF) Directory of Accredited Organizations Serving People With Disabilities and its Standards Manual for Organizations Serving People With Disabilities, 1991, are revised annually and available for purchase at 101 North Wilmot Road, Suite 500, Tucson, Arizona 85711.

5220.0110 REHABILITATION CONSULTATION; CLAIM SCREENING CONSULTATION.

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

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

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will be unable to return to work at the job held at the time of injury. The claim screening consultation shall then be provided within five days of receipt of the information.

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

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

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

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

(2) information describing the employee's physical limitations and capabilities and medical status;

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

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

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

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

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

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

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

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

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

~~Subp. 5. Penalties. The commissioner or compensation judge may assess a penalty of $300 against an insurer who fails to provide a rehabilitation consultation to an employee who meets any of the criteria in subpart 2. The insurer may object to the penalty as provided in Minnesota Statutes, section 176.84 and part 5220.2870.~~

5220.0120 WAIVER OF ELIGIBILITY CONSULTATION AND REHABILITATION SERVICES.

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

Subp. 2. **Criteria.** A rehabilitation waiver may be requested when (1) the employee meets the lost time requirement for a rehabilitation consultation, but there is a reasonable expectation that the employee will return to the preinjury job in the near future without rehabilitation services, or (2)

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information indicates that the employee would not benefit at that time from rehabilitation services.

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

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

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

5220.0130 REHABILITATION CONSULTATION; ELIGIBILITY CONSULTATION.

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

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

A. a waiver has not been requested;

B. a request for a waiver has been denied;

C. there is no longer a basis for a waiver;

D. a waiver period has expired without renewal; or

E. it is ordered by the commissioner.

Subp. 3. **Consultation.** The procedure and documentation

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for an eligibility consultation are contained in items A to E.

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

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

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

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

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

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

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

(2) the eligibility consultation date;

(3) the employee's work status;

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

(5) a professional opinion about whether the employee can reasonably be expected to return to suitable

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gainful employment through the provision of rehabilitation services at this time and the basis for that opinion.

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

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

~~Subp. 4. Penalty. The commissioner or compensation judge may assess a penalty of $300 against an insurer who fails to provide a rehabilitation eligibility consultation to an employee who meets the criteria in part 5220.0130, subpart 2, unless the commissioner or a compensation judge determines the eligibility consultation is not required. The insurer may object to the penalty as provided in Minnesota Statutes, section 176.84, and part 5220.2870.~~

5220.0410 REHABILITATION PLAN.

Subpart 1. **Purpose.** The purpose of the rehabilitation plan is to communicate to all interested parties the vocational goal, the rehabilitation services, and the projected amounts of time and money that will be needed to achieve the vocational goal.

Subp. 2. **Requirements.** If an employee is a qualified employee under part 5220.0100, subpart 22, the assigned qualified rehabilitation consultant shall, in consultation with the parties, develop, record, and file a rehabilitation plan on the form prescribed by the commissioner containing substantially the following:

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

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

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

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

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

F. employee comments, if any; and

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

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

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

Subp. 4. **Party's response.** Upon receipt of the proposed

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rehabilitation plan, each party must, within 21 days, either:

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

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

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

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

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

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

If a party fails to sign the plan or fails to file a rehabilitation request for assistance objecting to the proposed plan within the 21 days specified in subpart 4, item B, it shall be presumed that the party is in substantial agreement with the plan's vocational objective and the services that are proposed. In this event the plan, with evidence of the date it was sent to each party, shall be filed with the department by the assigned qualified rehabilitation consultant and, upon receipt, the plan will be deemed approved. A party's failure to sign a plan shall not constitute a waiver of any right to subsequently dispute the plan or to dispute payment of rehabilitation fees relative to the plan.

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The commissioner may at any time request additional information, confer with the parties, recommend modifications, and otherwise seek agreement about the plan. The commissioner may approve or modify the plan, schedule an administrative conference, or refer the matter to a compensation judge to approve or modify the plan.

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

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

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

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

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

Job placement services shall be provided by rehabilitation providers registered by the commissioner or a facility accredited by the National Commission on Accreditation of Rehabilitation Facilities (CARF), Tucson, Arizona. The CARF Directory of Accredited Organizations Serving People with Disabilities and its Standards Manual for Organizations Serving People with Disabilities are incorporated by reference in part 5220.0105.

Subp. 10. **Disputes.** In the case of a dispute about a

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rehabilitation plan, any party may file a rehabilitation request for assistance according to Minnesota Statutes, chapter 176, or part 5220.0950.

5220.0510 PLAN AMENDMENT AND CLOSURE.

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

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

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

C. a need to change the vocational goal of the rehabilitation plan;

D. the projected rehabilitation cost or duration, as stated in the rehabilitation plan, will be exceeded; or

E. the employee feels ill-suited for the type of work for which rehabilitation is being provided.

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

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

Subp. 3. **Requirements.** The rehabilitation plan amendment shall be filed on the form prescribed by the commissioner. The

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prescribed form shall contain substantially the following:

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

B. the proposed amendment;

C. a rationale for the amendment;

D. if the amendment adds rehabilitation services, an itemization of each additional rehabilitation service to be provided including any registered rehabilitation vendor names, dates of initiation and completion, and estimated costs of each service;

E. if the amendment will result in a change in the projected plan completion date, the new completion date;

F. if the amendment will result in a change in the projected plan cost, the new estimated cost;

G. employee comments, if any; and

H. the dated signatures of the employee, insurer, and assigned qualified rehabilitation consultant.

Subp. 4. **Amendment by commissioner.** At the discretion of the commissioner, the commissioner may amend the rehabilitation plan pursuant to Minnesota Statutes, sections 176.102 and 176.106, and the rules that implement those sections.

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

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

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

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

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

Subp. 6. **Commissioner's authority to initiate closure.**

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The commissioner may initiate and order closure of rehabilitation services for good cause after notice to the parties of the proposed closure and after an opportunity for interested parties to submit information. The submission may be written or at an in-person meeting at the discretion of the commissioner.

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

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

B. the outcome of the rehabilitation plan;

C. the employee's employment status:

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

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

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

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

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

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

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

A. once:

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

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

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

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

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

Subp. 4. ~~**Penalty.--A-frivolous-objection-to-or interference-with-the-employee's-choice-of-assigned-qualified rehabilitation-consultant-under-subpart-1-and-Minnesota Statutes,-section-176.102,-subdivision-4,-may-subject-the insurer-to-penalties-under-part-5220.2780,-or-a-qualified rehabilitation-consultant-to-disciplinary-action-pursuant-to Minnesota-Statutes,-section-176.102,-subdivisions-3-and-3a.**~~

~~Subp.-5.~~ **Employee residing or moving out of Minnesota.** Qualified employees who reside outside of Minnesota or who move out of Minnesota may receive services from a rehabilitation professional qualified under that jurisdiction's workers' compensation law to provide rehabilitation services. This subpart does not require the assignment of another rehabilitation professional if the services can be reasonably furnished by a rehabilitation provider registered in Minnesota. When services are provided outside of Minnesota by a rehabilitation professional qualified in that jurisdiction, an assigned qualified rehabilitation consultant in Minnesota shall monitor the provision of services, taking reasonable care to ensure that services are rendered according to Minnesota workers' compensation law and rules.

Subp. ~~6.~~ 5. **Change of consultant not an exercise of choice**

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

5220.0750 RETRAINING.

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

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

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

B. the retraining goal;

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

(1) the name of the school;

(2) titles of classes;

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

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

(5) mileage costs; and

(6) other required costs;

D. starting and completion dates;

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

F. a narrative rationale describing the reasons why

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

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

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

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

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

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

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

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

5220.0850 ON-THE-JOB TRAINING.

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

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

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

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

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

D. a job analysis of the training position;

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

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

G. training commencement and completion dates;

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

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

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

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

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

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

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

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

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will significantly increase the likelihood that the employee will recover preinjury economic status.

Subp. 4. **On-the-job training plan approval.** When an on-the-job training plan is submitted to the commissioner, the commissioner shall review the proposed plan within 30 days of its submission and notify the parties of plan approval or rejection. The commissioner may also request additional information from any of the parties, confer with the parties, recommend modifications, and otherwise seek agreement about the plan. The commissioner may make a determination or pursue resolution of questions regarding the plan consistent with part 5220.0950, subpart 3.

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

5220.0950 DISPUTES.

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

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

B. a statement of the rehabilitation issues to be resolved;

C. a statement of what the requester wants and supporting evidence and arguments;

D. a list showing that all parties were served and the date they were served;

E. the requester's name and signature; and

F. instructions for completion of the form.

Subp. 2. **Action by commissioner.** The commissioner may

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refer the dispute to a compensation judge, or, based on the written submissions of the parties, determine the issue or schedule an administrative conference prior to a determination. The commissioner may request that the parties meet and confer informally before a conference.

The commissioner may order reasonable medical examinations and rehabilitation evaluations at the expense of the insurer before a determination.

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

Subp. 3. **Commissioner discretion to initiate dispute resolution.** The commissioner may independently determine that issues exist about an employee's entitlement to rehabilitation, the appropriateness of a proposed plan, or any other disputes involving rehabilitation. The commissioner may initiate the dispute resolution process under subpart 2 by serving notice on the parties of the rehabilitation issues to be resolved.

Subp. 4. **Formal hearing.** A party that disagrees with a decision of the commissioner may request a formal hearing pursuant to part 5220.1010.

5220.1010 REQUEST FOR A FORMAL HEARING.

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

5220.1100 LEGAL REPRESENTATION.

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

5220.1200 REHABILITATION SERVICES, SETTLEMENT AGREEMENTS.

An employee's right to rehabilitation services shall not be subject to compromise and shall not be convertible into cash or other benefits by settlement and release agreement or otherwise. When a good faith dispute exists, however, the possible right to rehabilitation services may be converted into cash by settlement agreement. Any settlement agreement purporting to compromise all rehabilitation services must be approved by the commissioner, a compensation judge, or the workers' compensation court of appeals.

5220.1250 QUALIFIED REHABILITATION CONSULTANT AND REGISTERED REHABILITATION VENDOR.

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

5220.1400 QUALIFYING CRITERIA FOR REHABILITATION CONSULTANT.

Subpart 1. **Requirement.** To become registered as a qualified rehabilitation consultant, the certification,

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education, and internship requirements of subparts 2 to 5 must be met.

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

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

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

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

Subp. 3. **Qualified rehabilitation consultant intern.** The purpose of internship is to provide a supportive, structured period of professional supervision and case review following registration. An individual who meets the requirements of

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

Substantiated complaints about professional activities or services, or failure to comply with laws, rules, or orders under Minnesota Statutes, chapter 176, are grounds for denial of registration as a qualified rehabilitation consultant, discipline under Minnesota Statutes, section 176.102, ~~subdivisions 3 and~~ subdivision 3a, or delay of completion of internship. The intern may appeal the decision of the commissioner as provided in part 5220.1500, subpart 2.

In cases where an intern has been supervised by a qualified rehabilitation consultant who leaves the organization with which the intern has been employed and no other qualified

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rehabilitation consultant is available to supervise the intern, the intern may, with the prior written approval of the commissioner, sign all required documents in the capacity of a qualified rehabilitation consultant for a period of time deemed appropriate by the commissioner. Past performance and overall experience shall be taken into consideration for this approval.

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

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

Subp. 5. **General criteria.** All persons who are qualified rehabilitation consultants shall be self-employed or employed by a single organization that is approved for the employment of qualified rehabilitation consultants as a qualified rehabilitation consultant firm or an employer or insurer. Qualified rehabilitation consultants must be available to

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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.

5220.1500 PROCEDURE FOR REGISTRATION AS QUALIFIED REHABILITATION CONSULTANT.

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

A. completed, signed, and notarized application form;

B. copy of any pertinent license or certification;

C. documentation supporting any applicable experience requirements;

D. official transcripts of all pertinent postsecondary education;

E. list of services and fees. This filing shall not constitute an approval or disapproval of the services or fees;

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F. the annual registration application fee of $100; and

G. a plan of supervision as required by part 5220.1400, subpart 3.

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

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

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

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

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

Registration must be renewed annually. A rehabilitation provider shall request renewal on a form prescribed by the commissioner. Application for renewal is due 60 days before expiration of registration, accompanied by the appropriate registration fee. Registration renewal applications that are

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not complete, are not accompanied by the registration renewal fee, or are not accompanied by documentation of certification or satisfactory documentation of continuing education will be returned to the applicant for completion. Completed registration renewal applications received later than the due date shall be assessed a $25 late fee. Registration renewal applications received more than 30 days after the due date shall be assessed an additional $10 per day late fee for each day after the request is 30 days late. No late fee in excess of $125 may be assessed.

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

Service and fee schedules shall be filed with the commissioner whenever there is a change and no less than once each calendar year at the time of renewal of registration. This filing shall not constitute an approval or disapproval of the services and fees.

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

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

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

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

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

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

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

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

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

Subp. 4. **Inactive status.** If an interval of one year occurs without providing direct case service to workers' compensation recipients or without providing supervision to qualified rehabilitation consultants or qualified rehabilitation consultant interns who provide direct case service to workers' compensation recipients, the registration will not be renewed upon expiration. A qualified rehabilitation consultant or qualified rehabilitation consultant intern may apply for reinstatement of registration by providing verification to the

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commissioner of current certification as required by part 5220.1400, continued attendance at all annual update sessions, and fulfillment of continuing education requirements as provided by subpart 3a. The applicant must complete an orientation training session before acceptance is final. An order regarding renewal of registration may be appealed to the rehabilitation review panel according to Minnesota Statutes, section 176.102, subdivision 3.

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

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

5220.1600 PROCEDURE FOR APPROVAL AS QUALIFIED REHABILITATION CONSULTANT FIRM.

Subpart 1. **Criteria.** The qualified rehabilitation consultant firm shall be licensed to do business in Minnesota and shall maintain an administrative office within the state. Each office of the qualified rehabilitation consultant firm that provides services to injured employees under Minnesota Statutes, chapter 176, shall be listed on the application described in subpart 2 and shall employ on the premises at least one qualified rehabilitation consultant or qualified rehabilitation consultant intern. The management staff shall consist of at least one member who is registered as a qualified rehabilitation consultant. Eighty percent of the nonclerical staff shall be qualified rehabilitation consultants or qualified rehabilitation consultant interns; any firm that is not in an office sharing arrangement with another firm may have one nonclerical employee who is not a qualified rehabilitation consultant or qualified rehabilitation consultant intern. Any branch office openings or closings shall be reported to the department immediately.

Subp. 2. **Application.** A private or public entity desiring

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to be approved as a qualified rehabilitation consultant firm shall submit to the commissioner a complete application consisting of the following:

A. a completed, signed, and notarized application;

B. any data or information attached to support the application;

C. a list of services and fees. This filing shall not constitute an approval or disapproval of the services or fees; and

D. the annual registration application fee of $200 per firm.

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

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

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

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

5220.1700 PROCEDURE FOR APPROVAL AS REGISTERED REHABILITATION VENDOR.

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

A. A completed, signed, and notarized application.

B. Any data or information to support an application should be attached.

C. A list of services and fees. This filing shall not constitute an approval or disapproval of the services or fees.

D. The annual registration application fee of $200 for each registered rehabilitation vendor.

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

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

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

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

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

5220.1800 STANDARDS OF PERFORMANCE.

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

5220.1801 PROFESSIONAL CONDUCT.

Subpart 1. **Prompt provision of service and assessment of progress.** The assigned qualified rehabilitation consultant and any registered rehabilitation vendor providing services under a plan shall provide prompt and necessary rehabilitation services to assist a qualified employee to return to suitable gainful employment. The qualified rehabilitation consultant shall periodically assess progress toward plan objectives on a basis agreed upon among the parties and as required by the commissioner.

Subp. 2. **Assigned qualified rehabilitation consultant.**

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

Subp. 3. [See repealer.]

Subp. 4. [See repealer.]

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

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

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

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

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

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

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

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

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

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

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

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

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

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client or engaging in sexual exploitation of a client or a former client.

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

I. Engaging in fraudulent billing practice.

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

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

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

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

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

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

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

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

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

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

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

Q. Unlawful discrimination against any person on the

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

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

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

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

A rehabilitation provider shall understand the areas of competence of other professional persons with whom the rehabilitation client establishes relationships, and act with due regard for the needs, privileged nature, special competencies, and obligations of colleagues and other professionals and not disparage their qualifications.

Subp. 11. **Impaired objectivity.** A rehabilitation provider shall not use alcoholic beverages, medication, or controlled substances in a manner that impairs the provider's ability to perform the rehabilitation services.

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

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

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

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attorneys.

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

5220.1802 COMMUNICATIONS.

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

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

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

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

Subp. 4. **Registered rehabilitation vendor reporting.** At least each 30 days, the registered rehabilitation vendor shall submit all required progress records, required rehabilitation

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reports and cost information on an employee's case directly to the assigned qualified rehabilitation consultant.

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

Subp. 5. **Data privacy.** A rehabilitation provider must comply with Minnesota Statutes, chapters 175 and 176, and all other applicable data privacy laws.

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

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

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

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

Subp. 6. [See repealer.]

Subp. 7. [See repealer.]

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Subp. 8. [See repealer.]

Subp. 9. [See repealer.]

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

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

5220.1803 RESPONSIBILITIES.

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

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

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

B. "Business referral" means any referral

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arrangement, whether documented or not.

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

Subp. 3. [See repealer.]

Subp. 4. [See repealer.]

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

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

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

The assigned qualified rehabilitation consultant shall maintain individual employee files containing required rehabilitation reports and required progress records about an employee's case and shall provide copies to the commissioner, a compensation judge, or the parties at their request or as required by rule. Files must be maintained by the qualified rehabilitation consultant firm for five years from the date of file closure.

The assigned qualified rehabilitation consultant must provide the commissioner with any other requested pertinent information about a qualified employee's rehabilitation for

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purposes of rehabilitation monitoring by the department.

5220.1805 BUSINESS PRACTICES.

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

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

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

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

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

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

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

F. Any fee arrangement which prevents or compromises individualized assessment and services for each employee is grounds for discipline. This may include any fee arrangement which provides employees with standardized services whether or

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not the services are necessary.

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

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

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

5220.1806 DISCIPLINARY ACTION.

Subpart 1. **Discipline.** A rehabilitation provider is subject to disciplinary action, including a fine as provided by statute, suspension, and revocation of registration. Discipline shall be based on substantiated complaints about activities or or that violate laws, rules, or orders under Minnesota Statutes, chapter 176.

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

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

Subp. 3. **Review and investigation.** The commissioner shall review all complaints to determine if the complaint alleges violation of workers' compensation laws, rules, or orders. The

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commissioner may dismiss complaints or refer a matter outside the department's jurisdiction to a forum or agency that has jurisdiction. The complaining party shall be notified of a dismissal or referral. The commissioner may elect to resolve a complaint through the informal instruction of a provider.

If an investigation indicates a violation of the workers' compensation act, rules, or orders, the commissioner may begin a contested case for disciplinary action under Minnesota Statutes, section 176.102, subdivision 3a, and the Minnesota Administrative Procedure Act. The report of the administrative law judge shall be made to the rehabilitation review panel which shall make the determination on disciplinary action. The commissioner shall notify the complaining party of the disposition of the case.

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

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

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

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5220.1900 REHABILITATION SERVICE FEES AND COSTS.

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

The commissioner shall monitor rehabilitation services and costs and shall also conduct periodic audits of costs, services, case outcomes, and compliance with reporting and record keeping requirements. The insurer and the rehabilitation provider shall furnish the commissioner with itemized listings of case services and costs upon request. The commissioner may require uniform billing on a prescribed form and may contact parties to discuss services and costs. Invoices and itemized billings for rehabilitation services shall be provided to the commissioner upon request.

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

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

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

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

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

Subp. 3. [See repealer.]

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Subp. 4. [See repealer.]

Subp. 5. [See repealer.]

Subp. 6. [See repealer.]

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

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

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

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

D. unanswered attempted phone calls;

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

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

G. time for attendance at an administrative conference by the supervisor of the qualified rehabilitation consultant intern who is providing services to the employee;

H. before a determination of eligibility, services rendered when a rehabilitation waiver has been requested and was not denied or when the insurer disputes the employee's eligibility for rehabilitation services;

I. time spent reviewing the file and initial contact to establish rapport with interested parties by an assigned qualified rehabilitation consultant or registered rehabilitation vendor when a case has been transferred from another qualified rehabilitation consultant or vendor within the same

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rehabilitation firm;

J. time spent by a supervisor, another qualified rehabilitation consultant, or support staff in addition to the assigned qualified rehabilitation consultant;

K. job placement activities beyond 90 days from the start of the job placement effort without a formal plan review or case planning meeting with the employee and insurer;

L. wait time for a visit without a prearranged meeting or early arrival for a prearranged appointment;

M. services that duplicate services already provided;

N. charges beyond the hourly fee for testimony at a judicial hearing when the qualified rehabilitation consultant or registered rehabilitation vendor has provided rehabilitation services under the plan;

O. travel costs beyond those needed to develop or complete a plan; or

P. services after a request to suspend or terminate the rehabilitation plan has been filed.

Subp. 8. **Disputes.** In the event of a dispute about the reasonableness and necessity or cost of a rehabilitation service, the insurer or a rehabilitation provider may make a request for a determination by the commissioner or a compensation judge of reasonable costs and necessity of services. Such a request may be made by filing a request for resolution of a dispute according to Minnesota Statutes, chapter 176 or part 5220.0950.

Subp. 9. **Collection prohibited.** No rehabilitation provider shall attempt to collect a fee or reimbursement for an unnecessary or unreasonable service from any party, including the employee, another insurer, the special compensation fund, or any government program. This prohibition shall apply to any fee determined excessive in amount by the commissioner or a compensation judge.

5220.1910 APPROVED CLAIMS HANDLER.

Subpart 1. **Qualifications.** A person meeting all the

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requirements of this subpart is eligible for certification as an approved claims handler:

A. at least one year of experience handling Minnesota workers' compensation claims and making decisions on acceptance or denial of Minnesota workers' compensation claims;

B. completion of a training session conducted by the commissioner; and

C. the person is not a rehabilitation provider as defined in part 5220.0100, subpart 28.

Subp. 2. **Procedure for obtaining approval.** The insurer shall certify to the commissioner on a form prescribed for that purpose that the claims handler meets the requirements of this part. Approval is effective upon the commissioner's receipt of the certification. The approval remains in effect until the claims handler leaves the employ of the certifying entity, or the certification is withdrawn by the certifying entity. At the request of the commissioner, the certifying entity must consult with the commissioner regarding withdrawal of certification. The commissioner is authorized to withdraw approval if the claims handler does not meet the requirements of subpart 1.

5220.2650 RETURN TO WORK CONFERENCES.

[For text of subpart 1, see M.R.]

Subp. 2. **Scope.** This part applies when an employee has received temporary total or temporary partial compensation for a total of at least 45 work days whether continuously or intermittently; and no rehabilitation plan in effect at the time the 14-day check is due has been approved under part 5220.0410, subpart 6. In addition, a return to work conference is also available when properly requested by the employee under subpart 4 and Minnesota Statutes, section 176.2421 because of an inability to work at least 14 work days upon the employee's return to work.

[For text of subps 3 to 8, see M.R.]

5220.2780 FAILURE TO PAY UNDER ORDER OR PROVIDE REHABILITATION; PENALTY.

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Subpart 1. **Basis.** Where payment of compensation is not made within 14 days following an order as required by Minnesota Statutes, section 176.221, subdivisions 6a and 8, the division may assess the penalties provided in Minnesota Statutes, section 176.221, subdivisions 3 and 3a. Where rehabilitation services are not provided as required by Minnesota Statutes, sections 176.102, 176.221, subdivision 6a, and parts 5220.0130, subpart 2 and 5220.0410, subpart 2, the division may assess the penalty provided in Minnesota Statutes, section 176.221, subdivision 3a.

[For text of subps 2 and 3, see M.R.]

EFFECTIVE DATE. Minnesota Rules, parts 5220.0100, subparts 3, 5, 10, 12, 12a, 13, 16, 17, 18, 19, 20, 21, 25, 30, 31, 32, 35, 36, 37, 38, 39, and 40; 5220.0105~~,-5220.0110,-5220.0120,~~ ~~5220.0130,~~; 5220.0410, ~~5220.0510,~~ subpart 9; 5220.0710~~,~~; 5220.0750~~,~~; 5220.0850~~,~~; 5220.0950~~,~~; 5220.1010~~,~~; 5220.1250~~,~~; 5220.1806, and the amendments to parts 5220.0100, subparts 2, 4, 9, 23, 24, 27, 28, and 33; 5220.1100~~,~~; 5220.1200~~,~~; 5220.1400~~,~~; 5220.1500~~,~~; 5220.1600~~,~~; 5220.1700~~,~~; 5220.1800~~,~~; 5220.1801~~,~~; 5220.1802~~,~~; 5220.1803~~,~~; 5220.1805~~,~~; 5220.1900~~,~~; and 5220.1910~~,~~ ~~5220.2650,-and-5220.2780~~ are effective ~~January~~ March 2, 1992.

Minnesota Rules, parts 5220.0100, subpart 26; 5220.0110; 5220.0120; 5220.0130; 5220.0410, subparts 1 to 8 and 10; 5220.0510, and the amendments to parts 5220.0100, subparts 22, 29, and 34; 5220.2650; and 5220.2780 are effective July 1, 1992.

REPEALER. Minnesota Rules, parts 5220.0100, subparts 6, 7, ~~8,~~ 10a, 11, 14, and 15; ~~5220.0210,-5220.0300,-5220.0400,-5220.0500,~~ ~~5220.0600,~~ 5220.0700; 5220.0800; 5220.0900; 5220.1000; 5220.1300; 5220.1801, subparts 3 and 4; 5220.1802, subparts 6, 7, 8, and 9; 5220.1803, subparts 3 and 4; and 5220.1900, subparts ~~3,-4,~~ 5~~,~~ and 6, are repealed effective March 2, 1992.

Minnesota Rules, parts 5220.0100, subpart 8; 5220.0210; 5220.0300; 5220.0400; 5220.0500; 5220.0600; 5220.1900, subparts 3 and 4, are repealed effective July 1, 1992.

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Office of the Revisor of Statutes

Administrative Rules

TITLE: Adopted Permanent Rules Relating to the Rehabilitation of Persons with Work-Related Injuries

AGENCY: Department of Labor and Industry

MINNESOTA RULES: Chapter 5220

INCORPORATIONS BY REFERENCE:

Part 5220.0105: The Dictionary of Occupational Titles, fourth edition, 1977, United States Department of Labor; The Guide to Job Analysis, March 1982, Materials Development Center, Stout Vocational Rehabilitation Institute, University of Wisconsin-Stout, Menomonie, Wisconsin; Directory of Accredited Organizations Serving People With Disabilities and Standards Manual for Organizations Serving People With Disabilities, 1991, Tucson, Arizona. Available through Minitex interlibrary loan system.

The attached rules are approved for filing
with the Secretary of State

Marie E. O'Neill

Marie E. O'Neill
Assistant Revisor

DEPARTMENT OF LABOR AND INDUSTRY

WORKERS' COMPENSATION DIVISION

REHABILITATION AND MEDICAL AFFAIRS UNIT

In the matter of the proposed amendment to the Rules Relating to the Rehabilitation of Persons with Work-Related Injuries

STATEMENT OF NEED AND REASONABLENESS

INTRODUCTION

As the result of legislative changes in 1979, provision of rehabilitation services to injured workers was largely shifted from the public sector vocational rehabilitation agency to private sector rehabilitation consultants. The original rules setting forth the standards and procedures for this provision of rehabilitation services to injured workers under Minnesota Statutes, section 176.102 were promulgated on January 21, 1980. Revision to the Rehabilitation Rules occurred in 1984 as a response to 1983 legislation. Another revision occurred in 1987 when the methods for establishing the educational and experiential requirements for qualified rehabilitation consultants were changed. Legislation enacted in 1987 affecting an injured employee's right to change qualified rehabilitation consultants gave the initial impetus to this rule-writing effort and the Department then undertook the first systematic review of the Rehabilitation Rules for purposes of clarifying procedures, expectations, and defining performance standards. A primary objective of this effort is to

make the rehabilitation system in Minnesota more accountable to employers and the injured employees who are served by the rehabilitation system.

OVERVIEW

Significant revisions are summarized below:

- Expanded definitions: A common detailed professional language to describe the rehabilitation process.

- Rehabilitation referral procedures: Responsibilities are set forth in a claim screening consultation procedure, a method of waiving rehabilitation services, and in an eligibility consultation process.

- Rehabilitation plan: Provides greater specificity in defining content, filing and approval requirements.

- Change of qualified rehabilitation consultants: Distinguishes employee's statutory choice of rehabilitation consultant from change situations by defining when change of qualified rehabilitation consultant is not deemed an exercise of choice.

- Retraining and on-the-job training: Details the reasons and requirements for retraining and on-the-job training programs.

Professional ethics for rehabilitation providers: Includes a detailed description of prohibited conduct including adversarial communications, impaired objectivity, and failure to perform professional rehabilitation services with reasonable skill.

CONTENT REVIEW

5220.0100 **"Definitions."** Many of the added definitions are necessary simply to have an adequate language describing the rehabilitation process. Other changes include terms which aid in the administration of rehabilitation. Terms defined because of their use in a rehabilitation professional vocabulary include the following: job analysis, job development, job modification, job placement, job seeking skills training, medical management, on-the-job training, transferable skills analysis, vocational evaluation, vocational rehabilitation, vocational testing, work adjustment, and work hardening.

Definitions added or changed which assist an administration include: assigned qualified rehabilitation consultant, department, employer, formal course of study, identifying information, insurer, qualified employee, qualified rehabilitation consultant, qualified rehabilitation consultant firm, registered rehabilitation vendor, rehabilitation consultation, rehabilitation plan, rehabilitation services, required progress record, required rehabilitation report, and review panel.

Further explanation of definitions added or changed follows:

Subp. 3. "Assigned qualified rehabilitation consultant." This subpart defines the operative term for the qualified rehabilitation consultant who has the statutory and rule authority to provide rehabilitation services to an injured worker.

Subp. 4. "Commissioner." This subpart simply states that the term "commissioner" as used in the rules refers to the commissioner of the Department of Labor and Industry.

Subp. 5. "Department." This subpart simply clarifies that the term "department" as used in the rules means the Department of Labor and Industry.

Subp. 9. "Employer." The revised definition restricts the usage of the term "employer" to the predominant meaning in the statute, namely the employer at the time of injury of a qualified employee. Formerly, in these rules "employer" was an inclusive term meaning both the pre-injury employer and the insurer. The usage of this term in the statute and Workers' Compensation Rules of Practice is adopted as applicable to these rules as well.

Subp. 10. "Formal course of study." The term "formal course of study"

is added to provide a specific criteria for the term as it is used in subp. 32 of this part, the definition of retraining plan.

Subp. 12. "Identifying information." This subpart defines the information needed by the Department to administer the reporting of rehabilitation services. This specificity of common data elements will permit systematic analysis and assessment of rehabilitation services.

Subp. 12a. "Insurer." This subpart, consistent with subp. 5 and subp. 12 is the operative term for the party responsible for payment and administration of an injured worker's compensation claim. The usage of this term in the statute and Workers' Compensation Rules is adopted as applicable for these rules as well.

Subp. 13. "Job analysis." This subpart provides a definition of the term "job analysis" consistent with its usage in the rehabilitation profession.

Subp. 16. "Job development." This subpart provides a definition of the term "job development" consistent with its usage in the rehabilitation profession.

Subp. 17. "Job modification." This subpart provides a definition of the term "job modification" consistent with its usage in the rehabilitation

profession.

Subp. 18. "Job placement." This subpart provides a definition of the term "job placement" consistent with its usage in the rehabilitation profession.

Subp. 19. "Job seeking skills training." This subpart provides a definition of the term "job seeking skills training" consistent with its usage in the rehabilitation profession.

Subp. 20. "Medical management." This subpart provides a definition of "medical management" in an appropriate return to work context. The purpose of this definition is to characterize the nature of medical management activities that are appropriately a part of a vocational rehabilitation process.

Subp. 21. "On-the-job training." This subpart provides a definition of the term "on-the-job training" consistent with its usage in the rehabilitation profession.

Subp. 22. "Qualified employee." This subpart sets forth the statutory understanding of eligibility for rehabilitation services. In this revision the language of item B is changed from "can reasonably be expected to

benefit from rehabilitation services which would significantly reduce or eliminate the decrease in employability" to "can reasonably be expected to return to suitable gainful employment through the provision of rehabilitation services." This change in language replaces awkward language with a clear statement of purpose and defines commissioner discretion consistent with Minnesota Statutes, section 176.102, subd. 4d.

Subp. 23. "Qualified rehabilitation consultant." This subpart is changed to include the term "registered" as the operative term for persons who are approved by the commissioner to provide rehabilitation services to an injured worker under Minnesota Statutes, section 176.102. Additionally, the definition includes the provision of an eligibility consultation which is a new service defined in subpart 29 of this part, rehabilitation services.

Subp. 24. "Qualified rehabilitation consultant firm." This subpart adds "rehabilitation services" to the statement of what may be provided by a qualified rehabilitation consultant firm.

Subp. 25. "Registered rehabilitation provider." This subpart defines one of the varieties of rehabilitation provider listed in subpart 28, "rehabilitation provider," formerly not defined by rule.

Subp. 26. "Rehabilitation consultation." This subpart defines the rehabilitation consultation including the claims screening consultation and the eligibility consultation defined further in parts 5220.0110 to 5220.0130 and consistent with Minnesota Statutes, section 176.102, subd. 4.

Subp. 27. "Rehabilitation plan." This subpart includes new language focusing the rehabilitation process more specifically on the vocational goal and the specific services by which an injured worker will be returned to suitable gainful employment.

Subp. 29. "Rehabilitation services." This subpart is revised to include a more comprehensive list of the services which are appropriately provided by rehabilitation providers to injured workers. Vocational evaluation, labor market survey, vocational testing, transferable skills analysis, and work adjustment were not included in the former rehabilitation services definition. Additionally, the eligibility consultation defined in subpart 26 of this part and in 5220.0130 is also added to the definition.

Subp. 30. "Required Progress Record." This subpart defines the specific requirements of the documents which must be maintained as a case record by the rehabilitation provider providing rehabilitation

services to an injured worker.

Subp. 31. "Required rehabilitation report." This subpart defines the specific documents which must be submitted to the commissioner whenever a rehabilitation plan is initiated, proposed to be amended, suspended or closed, or when a change of assigned qualified rehabilitation consultant occurs on a case.

Subp. 32. "Retraining plan." This subpart provides an operative understanding of "retraining plan" consistent with professional rehabilitation practices and the workers' compensation system.

Subp. 33. "Review panel." This subpart is revised to clarify that the reference is to the rehabilitation review panel created by Minnesota Statutes, section 176.102, subd. 3.

Subp. 35. "Transferable skills analysis." This subpart provides a definition of the term "transferable skills analysis" consistent with its usage in the rehabilitation profession.

Subp. 36. "Vocational evaluation." This subpart provides a definition of the term "vocational evaluation" consistent with its usage in the rehabilitation profession.

Subp. 37. "Vocational rehabilitation." This subpart provides a definition of the term "vocational rehabilitation" consistent with its usage in the workers' compensation context.

Subp. 38. "Vocational testing." This subpart provides a definition of the term "vocational testing" consistent with its usage in the rehabilitation profession.

Subp. 39. "Work adjustment." This subpart provides a definition of the term "work adjustment" consistent with its usage in the rehabilitation profession.

Subp. 40. "Work hardening." This subpart provides a definition of the term "work hardening" consistent with its usage in the rehabilitation profession.

5220.0105 Incorporation by Reference. The authoritative references for describing a vocational history and a vocational goal or for analyzing jobs under the rehabilitation plan in 5220.0410, are the Dictionary of Occupational Titles and the Guide to Job Analysis. These are standard, well accepted resources for defining and analyzing jobs in the rehabilitation profession. Their incorporation is necessary for a common method of describing vocational goals and outcomes. The

National Commission on Accreditation of Rehabilitation Facilities (CARF) is a unique national organization that evaluates and registers qualifying facilities providing rehabilitation services. Under 5220.0410, subp. 9, Administration of the Plan, CARF accredited facilities are permitted to provide job placement services to injured workers under a rehabilitation plan. Thus, the Commission on Accreditation of Rehabilitation Facilities (CARF) Directory of Accredited Organizations Serving People with Disabilities and its Standards Manual for Organizations Serving People with Disabilities, 1991 is incorporated by reference.

5220.0110-0130 **Rehabilitation consultation:** Specific authority for the commissioner to amend the rules on rehabilitation consultation is set out at Minnesota Statutes, section 176.83, subd. 2. The process for referring an injured employee to rehabilitation is set forth in 5220.0110 "Claim Screening Consultation", 5220.0120 "Waiver of Eligibility Consultation and Rehabilitation Services", and 5220.0130 "Eligibility Consultation" and described below:

5220.0110 **"Rehabilitation Consultation; Claim Screening Consultation"** defines the responsibilities of an insurer to an injured employee who has 30 days of lost work time due to a back injury or 60 days of lost work time due to other injures under Minnesota Statutes, section 176.102, subd. 4. The purpose is to identify a clear decision point and decision

criteria for referral of the employee to a qualified rehabilitation consultant for an "eligibility consultation", or, in the case of an employee able to return to work without formal assistance to request a "waiver of eligibility consultation and rehabilitation services." Although the statute at Minnesota Statutes, section 176.102, subd. 4(b) and (d) allows waiver of consultation or services at the commissioner's discretion, and there has been an administrative procedure for waiving rehabilitation, constituents have complained that waivers of rehabilitation are underutilized because of the complications involved in the administrative procedure and the rules describing it in the now deleted section 5220.0210, Work Status Report.

5220.0120 **"Waiver of Eligibility Consultation and Rehabilitation Services."** The statute provides for a 30/60 day lost time period before the consideration of rehabilitation services in a consultation. At the same time, the inclusion of authority to waive rehabilitation at Minnesota Statutes, section 176.102, subd. 4 (b) and (d) indicates expectation that judgment be made on the basis of an injured employee's individual circumstances as to whether rehabilitation services are needed and provided. The intent of 5220.0110 through 5220.0130 is to provide an accountable structure for this analysis, decision-making, and referral process. The waiver of rehabilitation is intended for use by employers and insurers where, based on their knowledge of an employee's prospects for returning to the pre-injury job, the time line for referral

to rehabilitation may be delayed for an additional 60 days by requesting a waiver of rehabilitation. The waiver is designed for those injured employees who are expected to return to their pre-injury job without the intervention of rehabilitation services. If the employee has not returned to work within this extended time frame, the insurer will have to seek a renewal of the waiver and provide additional information or refer the injured employee to a qualified rehabilitation consultant for an "eligibility consultation."

5220.0130 **"Rehabilitation Consultation; Eligibility Consultation."** The eligibility consultation is intended to focus the question of the employee's need for rehabilitation services and the specific potential to benefit from rehabilitation services. With the historic 30/60 day mandatory consultation, a critique of constituents has been that every time an employee is referred to rehabilitation, rehabilitation services always commence and are provided. The eligibility consultation provides a structured analysis of whether the employee is reasonably expected to return to suitable gainful employment and requires the qualified rehabilitation consultant to define why the employee should receive rehabilitation services or why rehabilitation services are not required.

5220.0410 **"Rehabilitation Plan."** This part provides greater detail about the content and use of this key document in the rehabilitation process.

Subp. 1. "Purpose." This subpart sets forth a statement of purpose for the rehabilitation plan: "To communicate to all interested parties the vocational goal, the rehabilitation services, and the projected amounts of time and money that will be needed to achieve the vocational goal."

Subp. 2 "Requirements." This subpart details the information required on the rehabilitation plan. In subp. 2G a 21 day presumption of approval is introduced to administratively assist the process of plan review discussion and modification by the parties. At present the Department has an administrative problem created when parties who receive a rehabilitation plan fail to act on it promptly, delaying the rehabilitation process.

Subp. 3. "Process." This subpart describes the responsibility of the qualified rehabilitation consultant to prepare a rehabilitation plan for presentation to the parties within 60 days of the first in-person contact with the employee.

Subp. 4. "Party's response." This subpart sets forth the responsibility of the parties to respond to the rehabilitation plan after it is presented by the qualified rehabilitation consultant, thereby keeping rehabilitation moving.

Subp. 5. "Filing the plan." This subpart sets forth the time frame for

filing a plan with the commissioner. Under the current rules, the qualified rehabilitation consultation has 30 days from the first inperson contact. A more thorough assessment, allowed by a longer period (up to 90 days) would benefit rehabilitation objectives. This revision extends the number of days for filing the plan.

Subp. 6. "Plan approval." This subpart sets forth the standards for rehabilitation plan approval, including presumption of agreement mentioned in subp. 2: "If a party fails to make a response to the proposed plan within the 21 days specified in subp. 4, item B, it shall be presumed that the party is in substantial agreement with the plan's vocational objective and the services that are proposed. In this event the plan, with evidence of the date received by all parties, shall be filed with the Department by the assigned qualified rehabilitation consultant and, upon receipt, the plan will be deemed approved. A party's failure to sign a plan shall not constitute a waiver of any right to subsequently dispute the plan or dispute the payment of rehabilitation fees relative to the plan." The purpose of this presumption of approval is to prevent delays of the rehabilitation process.

Subp. 7. "Communication with treating doctor." This subpart defines the expectation that with a properly executed consent document, the qualified rehabilitation consultant shall provide a copy of the

rehabilitation plan to the employee's treating doctor to inform and assist the health care provider's participation in the vocational rehabilitation process.

Subp. 8. "Adherence to plan." This subpart states that services provided by the assigned qualified rehabilitation consultant or registered rehabilitation vendor must be provided according to the written rehabilitation plan so that services are consistent with those planned and anticipated by the parties.

Subp. 9. "Administration of the plan." This subpart clarifies that all rehabilitation services provided pursuant to Minnesota Workers' Compensation Law be provided exclusively by a person or business entity registered by the commissioner. The assigned qualified rehabilitation consultant's responsibility to monitor services provided by the registered rehabilitation vendor is described. Finally, to insure quality and accountability, the provision of job placement services is limited to those persons registered as a rehabilitation vendor or by those facilities accredited by the National Commission on Accreditation of Rehabilitation Facilities.

5220.0510 **"Plan Amendment and Closure."** This part is needed to describe the responsibilities of the qualified rehabilitation consultant and the parties when rehabilitation plans are amended or closed.

Subp. 1. "Reasons for amendment." The primary change in this subpart is to clarify why rehabilitation plans should be amended or closed. Beyond the statement of purpose, "Whenever circumstances indicate that the rehabilitation plan objectives are not likely to be achieved, proposals for plan amendment may be considered by the parties", greater specificity is achieved in A through E, concepts formerly included in 5220.0500 A through D. These are revised to use more objective, functional language understood in the rehabilitation community. For example, "The employee is not participating effectively in the implementation of the plan" is used in place of the more subjective phrase, "The employee is not cooperating with the plan."

Additionally, a proviso is added in item D to bring greater accountability by including as reasons for plan amendment both rehabilitation costs and time duration that exceed the original rehabilitation plan estimate.

Subp. 2. "Procedure and responsibilities." This subpart clarifies responsibilities of the qualified rehabilitation consultant in the plan amendment process. While parties other than the qualified rehabilitation consultant may propose amendments, it is the responsibility of the assigned qualified rehabilitation consultant to facilitate discussion of proposed amendments and report those agreed

upon to the commissioner. If there is disagreement that parties are unable to resolve privately, the procedure for requesting the amendment and resolving the dispute is defined through a cross-reference to subp. 8 which describes the dispute resolution options.

Subp. 3. "Requirements." This subpart defines the specific information to be included in a rehabilitation plan amendment. Information listed from A to H is specified to clarify responsibilities and to provide information to the Department and other parties so that the amendment can be understood and evaluated at the time it is proposed.

Subp. 4. "Amendment by commissioner." This clarifies to all parties the statutory authority of the commissioner to amend the plan under Minnesota Statutes, sections 176.102 and 176.106.

Subp. 5. "Request for closure before plan completion." Formerly, 5220.0600, "Completion of Plan," this part of the rule was entirely lacking in specificity of detail or direction to the parties. As a result, there has been confusion about the reasons for filing a rehabilitation plan closure form. This subpart now lists the specific reasons for requesting closure of the rehabilitation plan when rehabilitation goals have not been reached.

Subp. 6. "Commissioner's authority to initiate closure." This subpart describes the commissioner's authority to initiate an order of closure of rehabilitation services for good cause after notice to the parties of the proposed closure and after an opportunity for interested parties to submit information.

Subp. 7. "Closure report by the assigned qualified rehabilitation consultant." This new subpart describes the expectations of a qualified rehabilitation consultant for closing an employee's rehabilitation services when the plan is completed and when closure of rehabilitation services is not disputed. Due to lack of specificity in the previous rule, there was often confusion by parties about whether rehabilitation closure procedures should be initiated when rehabilitation services were in dispute. Information to be included with the closure report is defined with greater clarity. The rule clarifies that rehabilitation services should not be closed when a party disagrees with closure. This information will permit the Department to assess the overall effectiveness of the rehabilitation services provided.

Subp. 8. "Disputes." As indicated earlier, this subpart provides direction for parties who have a dispute regarding either amendment or closure and cross-references part 5220.0950 of this rule which defines the dispute resolution process in more detail.

5220.0710 **"Employee Choice of Qualified Rehabilitation Consultant; Change of Qualified Rehabilitation Consultant."** Changes to the workers' compensation statute by the 1987 legislature necessitated revision in what was formerly 5220.0700, "Change of Consultant/Vendor," and this new section brings Department rules into conformity with the 1987 statutory changes. Those changes set forth a standard for the employee's right to change qualified rehabilitation consultants.

Subp. 1. "Definition." The definition for "assigned qualified rehabilitation consultant" is integral to the process of choice and identifying who may legitimately work with an injured employee on the rehabilitation plan. This definition, through its listing of options under A through C, refers both to the administrative action of an insurer assigning a qualified rehabilitation consultant to work with an injured employee as well as to an employee's right to exercise choice of qualified rehabilitation consultants.

Subp. 2. "Employee right to choose." This subpart explains procedurally the statutory right under Minnesota Statutes, section 176.102, subd. 4 for an employee to choose rehabilitation consultants: The employee may select a qualified rehabilitation consultant before there is a referral by the insurer or after the employee has been referred to a qualified rehabilitation consultant by the insurer. The injured employee may exercise the right to change rehabilitation

consultants once in the first 60 days following the first in-person contact with the insurer referred qualified rehabilitation consultant. There is another opportunity for the employee to change rehabilitation consultants after the first 60 day period after the first inperson contact with the assigned qualified rehabilitation consultant has passed.

Subp. 3. "Documentation." This subpart requires the new assigned qualified rehabilitation consultant to notify the commissioner and other parties that there has been a change in qualified rehabilitation consultants and specifies the information to be included with that notification so that all may know who is responsible for qualified rehabilitation consultation functions.

Subp. 4. "Dispute resolution." This subpart describes the administrative procedure after the employee has exhausted the change options described in subp. 2. This section acknowledges that parties may at any time agree to a change and select a new rehabilitation consultant and report that to the Department. However, if a dispute about the change arises, this subpart sets forth the standard for determination of such disputes, directing that the determination be made according to the best interest of the parties consistent with Minnesota Statutes, section 176.102, subd. 1 which describes the purpose of rehabilitation.

Subp. 5. "Penalty." This is a new subpart is intended to prevent delaying the rehabilitation process by frivolous objection to employee's exercise of statutory choice.

Subp. 6. "Employee residing or moving out of Minnesota." This subpart describes the options applicable to injured employees receiving rehabilitation services who either reside outside of Minnesota or move out of Minnesota. It includes the proviso that services may be provided by a rehabilitation professional who is not registered in Minnesota but requires that a Minnesota assigned qualified rehabilitation consultant shall monitor that provision of those services to take reasonable care that the services are rendered according to Minnesota Workers' Compensation Statute and Rules. This subpart also permits a rehabilitation provider registered in Minnesota to furnish services to a qualified employee living in a border area of another state.

Subp. 7. "Change of consultant not an exercise of choice by employee." This subpart distinguishes the concept of "change" of rehabilitation consultant from "choice" of rehabilitation consultant. There are circumstances such as an assigned qualified rehabilitation consultant leaving a practice or being absent because of an extended illness. Such circumstances require that another qualified rehabilitation consultant assume those duties but should this necessity not exhaust the statutory

choice options for the injured employee. At the same time, this subpart is cross-referenced to subp. 4 for clarification in situations where disputes about change of rehabilitation consultants need to be resolved.

5220.0750 **"Retraining."** This part of the rule replaces a brief and inadequate paragraph on retraining in the old rules at 5220.1000 which addressed only the concept of additional compensation for retraining. This expanded section defines the purpose, criteria, and procedural requirements for retraining, more clearly distinguishing retraining from other forms of rehabilitation planning.

Subp. 1. "Purpose." The purpose statement indicates that retraining is to return the employee to suitable gainful employment through a formal course of study. A formal course of study is defined in Definitions 5220.0100 under subp. 10 and gives specificity to the type of programs acceptable as training. "A formal course of study" means a program described by a published syllabus with established time parameters for completion which results in a diploma or other certification that is accepted as a credential of basic competence in a vocation. Additionally, the purpose statement explains retraining's relationship to other rehabilitation options; that is, retraining is given equal consideration with other rehabilitation services but proposed for approval only if other considered services are not likely to lead to

suitable gainful employment.

Subp. 2. "Plan submission." This subpart lists the specific information required by the Commissioner when a plan for retraining is proposed for approval by the commissioner. The specificity of the information required will permit all parties to understand and evaluate a proposed retraining plan including the specific costs and probable outcomes of the retraining.

Subp. 3. "Amendment." This subpart retains and relocates a concept formerly located in the last paragraph of 5220.0500 that permits an employee to change a retraining plan if the employee believes that the occupation which is the goal of retraining is not suitable and permits a 90 day time frame for this type of amendment. Other amendments to the plan are cross-referenced to the new section of the rules dealing with amendment to the rehabilitation plan in part 5220.0510.

Subp. 4. "Compensation." Minnesota Statutes, section 176.102, subd. 11 describes the process whereby an employee may petition the commissioner or compensation judge for additional compensation, not to exceed 25% of the compensation otherwise payable during retraining. Heretofore, criteria or reasons for permitting the additional 25% have not been defined. This subpart proposes broad criteria for this judgment: "If the employee will incur an unusual or unique

circumstance during the retraining period that would otherwise reduce the likelihood that the training plan will be successfully completed."

Subp. 5. "Retraining plan approval." This subpart defines the administrative procedure that the commissioner uses in reviewing retraining plans for approval.

Subp. 6. "Disputes." This subpart describes the procedure for handling disputes about a retraining plan, namely that any party may file a rehabilitation request for assistance according to Minnesota Statutes, Chapter 176 or through the dispute resolution procedures described in 5220.0950, Disputes.

5220.0850 **"On-The-Job Training."** The previous rehabilitation rules simply did not address standards or procedures for on-the-job training. This new part defines the purpose, procedural requirements and plan approval process for on-the-job training.

Subp. 1. "Objective of on-the-job training." This subpart defines the primary objective of on-the-job training as gainful employment with the on-the-job training employer that is likely to restore the employee as close as possible to pre-injury economic status.

Subp. 2. "Plan submission." This subpart details the information which

must be presented on a form prescribed by the commissioner for approval of an on-the-job training proposal.

Subp. 3. "Duration of the plan." This subpart sets a six month parameter for on-the-job training plans in general but permits training which will exceed six months if such training would significantly increase the likelihood that the employee would recover pre-injury economic status.

Subp. 4. "On-the-job training plan approval." This subpart sets a 30 day period following submission to the Department for plan review and approval including the notification of the parties.

Subp. 5. "Disputes." This subpart provides direction for parties requesting a resolution of a dispute about on-the-job training and cross-references to part 5220.0950, "Disputes."

5220.0950 **"Disputes."** This part replaces 5220.0800 in the previous rehabilitation rules. This part serves as a comprehensive description of the dispute resolution possibilities present within the workers' compensation system relative to disputes about rehabilitation services.

Subp. 1. "Request for assistance." This subpart defines the procedure whereby a party may request assistance with a dispute about

entitlement to rehabilitation services, the appropriateness of a proposed plan, or any other dispute about rehabilitation. Under this subpart, items A through F define the information to be included on a form prescribed by the commissioner for the resolution of disputes.

Subp. 2. "Action by commissioner." This subpart defines the commissioner's options in handling a dispute by referring it to the appropriate dispute resolution forum, whether a compensation judge or an administrative conference. It also permits the commissioner to request that parties meet and confer informally before a conference, and to order reasonable medical and rehabilitation evaluations at the expense of an employer. Finally, this subpart clarifies that no determination will be made by the commissioner with respect to rehabilitation entitlement if primary liability for the workers' compensation injury has been denied by the employer/insurer.

Subp. 3. "Commissioner discretion to initiate dispute resolution." This subpart defines the commissioner's ability to intervene in disputes and to identify such issues through the commissioner's responsibility for monitoring and oversight of rehabilitation services.

Subp. 4. "Formal hearing." This subpart states the right of a party who disagrees with a decision of the commissioner to request a formal hearing.

5220.1010 **"Request for a Formal Hearing."** This part sets forth the procedure and time frame for parties who wish to request a formal hearing to appeal a decision of the commissioner.

5220.1100 **"Legal Representation."** This part is modified to clarify that the standard obligations of filing Notice of Representation (Minn. Rules, part 1415.0800) are applicable where there is representation in a rehabilitation matter only to the extent they have not already been accomplished. This part further indicates that hereafter the attorney will receive notice as provided in part 5220.2890, which sets forth the procedure for serving documents in workers' compensation matters and will receive rehabilitation reports as provided in these rehabilitation rules. Finally, this part is amended to reflect the decisions in the cases of Heaton v. J. E. Fryer & Co., 36 W.C.D., 316 (1983) and Weisser v. Country Club Markets, 39 W.C.D. 282, 397 N.W.2d 891 (1987) concerning attorney fees in these matters.

5220.1200 **"Rehabilitation Services; Settlement Agreements."** This part sets forth that an employee's right to rehabilitation services shall not be subject to compromise and shall not be convertible into cash or other benefits by settlement and release agreement or otherwise. However, when a good faith dispute exists, the possible right to rehabilitation services may be converted into cash by settlement agreement. In any event, any settlement agreement purporting to compromise all rehabilitation

services must be approved by the commissioner, a compensation judge, or the Workers' Compensation Court of Appeals.

5220.1250 **"Qualified Rehabilitation Consultant and Registered Rehabilitation Vendor."** The language in this part was formerly in part 5220.1300, which is being repealed. The change in this part incorporates the new definition of "registered rehabilitation vendor."

The deleted part 5220.1300, subp. 1, Provision of Services is now addressed in part 5220.0110 Claim Screening Consultation Report; part 5220.0120 Waiver of Eligibility Consultation and Rehabilitation Services; and part 5220.0130 Rehabilitation Consultation; Eligibility Consultation. Additionally, part 5220.0410 Rehabilitation Plan, part 5220.1800 Standards of Performance, and part 5220.1801, Professional Conduct addresses issues pertinent to the provision of rehabilitation services. Subpart 2, Delivery of Services of deleted part 5220.1300 is now addressed by part 5220.0410, subp. 9 Administration of Plan. Deleted part 5220.1300, subp. 4 Dispute Over Charges, is now addressed in 5220.1900, subp. 2 Reasonable and Necessary Services and subp. 8, Disputes. Deleted part 5220.1300, subp. 5 Reports, is now addressed in 5220.1803, subp. 5 Reporting Requirements. Deleted part 5220.1300, subp. 6 Following the Plan, is now addressed in 5220.0410, subp. 8, Adherence to Plan. Deleted part 5220.1300, subp. 7, Monitoring Vendor Performance, is now addressed in part 5220.1500,

subp. 5; part 5220.1800, Standards of Performance; and part 5220.1900, subp. 1. Deleted part 5220.1300, subp. 8, Employee Moves to Another State, is now addressed in 5220.0710, subp. 5.

5220.1400 **"Qualifying Criteria for Rehabilitation Consultant."** This part describes the qualifying criteria for registration as a qualified rehabilitation consultant.

Subp. 2. "Certification and education." This subpart takes out the words "affiliated/independent" because "qualified rehabilitation consultant affiliated" and "qualified rehabilitation consultant independent" were taken out of the definitions. The use of the terms "affiliated" or "independent" in the definition of qualified rehabilitation consultant in the former rules made a distinction in the nature of the entity employing the qualified rehabilitation consultant. "Affiliated" qualified rehabilitation consultants were employed by employers or insurers and "independent" qualified rehabilitation consultants were employed by qualified rehabilitation consultant firms. Administratively, the only difference between these types of qualified rehabilitation consultants was in the restrictions on the rehabilitation claims that could be handled by a qualified rehabilitation consultant working for an employer or insurer. That restriction is contained in subpart 5 of this part.

This subpart also clarifies that a candidate for registration as a

qualified rehabilitation consultant intern need not possess all of the credentials in the rule, only one of the credentials.

Subp. 2b. This language was removed because licensure as a nurse is not necessary for a person to perform qualified rehabilitation consultant work. Also, the certifying body (Association of Rehabilitation Nurses) requires a current RN license as one of their eligibility requirements. It is not necessary for the Department to duplicate this.

The changes in the remaining paragraphs of this subpart are necessary in order to clarify that this language was effective with the latest rule change, June 15, 1987.

This subpart also removes the requirement that qualified rehabilitation consultants advise the Department, on their next annual application for renewal of registration, of which certifying body they are selecting. All persons who were registered qualified rehabilitation consultants on the effective date of the latest rule change (June 15, 1987) have so advised the Department of which certifying body they have selected.

Subp. 3. "Qualified rehabilitation consultant intern." This subpart includes the added requirement (moved from Minn. Rules, pt. 5220.1500) that an intern must complete an introductory training

session sponsored by the Department.

The language stricken here, that an intern must work for at least one year as a qualified rehabilitation consultant/intern, was moved to Minn. Rules, pt 5220.1400, subp. 4.

The added language that an intern shall not be a solo practitioner merely clarifies the existing requirement in this rule that an individual must have completed an internship under the direct supervision of a registered full status qualified rehabilitation consultant before beginning unsupervised work with injured workers.

The added language that the qualified rehabilitation consultant intern's supervisor need not be located in the same office as the intern is necessary because the majority of qualified rehabilitation consultants' work is done in the community rather than at their office location. A qualified rehabilitation consultant supervisor may supervise more than one intern, and these interns may be at different office locations.

The language describing the process for completion of internship, deleted at the end of the paragraph, was moved to subp. 4, "Completion of internship."

The added language in the next paragraph is necessary to clarify the

statutory intent of Minnesota Statutes, section 176.102, subd. 3 and 3a, regarding the discipline of qualified rehabilitation consultants. The language added clarifies the commissioner's statutory discretion in registering qualified rehabilitation consultants and states that the commissioner may deny full status (completion of internship) to a qualified rehabilitation consultant/intern if there are substantiated complaints about professional behavior.

The word "affiliated", as it refers to qualified rehabilitation consultants, is removed in the next paragraph because it was removed from the definitions. The added language is necessary to clarify that an intern must obtain prior written approval of the commissioner in order to temporarily sign as a full qualified rehabilitation consultant if the supervising qualified rehabilitation consultant leaves the firm and there is no other person to supervise the intern. The added language also clarifies that the commissioner will determine the length of time allowed because the word "temporary" was too ambiguous.

The language added about monitoring progress toward certification is necessary in order to clarify that the intern's supervisor is also responsible for monitoring the intern's obligation under the rules to obtain certification within two years or less.

Subp. 4. "Completion of internship." The added language at the beginning of the subpart was moved from subp. 3 because it more logically belongs in the subpart dealing with completion of internship.

The deleted language removes the requirement that a qualified rehabilitation consultant can obtain the year's experience only by working full time. Many people in today's work world want to work part time, and a person may obtain the requisite experience by working part time and prorating it based on the added language defining full time employment. Thus, a qualified rehabilitation consultant/intern working half time, for example, may complete the experience requirements by working two years at half time instead of one year working full time.

The last sentence added to the paragraph was moved from subp. 3 because it more logically belongs in the subpart with completion of internship.

The deleted language about signed statements by previous employers as supporting documentation of experience is no longer necessary. When the rules named a list of degrees which were the qualifying eligibility criteria for registration, the rules also required one or two years of prior experience depending on whether the applicant possessed a baccalaureate or master's degree. The certifying bodies

require documentation of prior work experience where necessary, and it is not necessary for the Department to duplicate this effort.

The added language in the last paragraph of this subpart is reasonable and necessary because it is the qualified rehabilitation consultant supervisor who is familiar with the intern's readiness to assume full responsibility for work done after the requisite supervised internship. Minn. Rules, pt. 5220.1400, subp. 3 states that the qualified rehabilitation consultant supervisor is directly responsible for all of the rehabilitation work done by the intern, and the supervisor will now be required to report to the commissioner to assist in the determination of whether the internship is completed.

Subp. 5. "General criteria." In this subpart, the word "exclusively" was removed because it may have precluded a qualified rehabilitation consultant from other employment outside of the rehabilitation field. Minn. Rules, pt. 5220.1300 and Minnesota Statutes, section 176.102, subd. 10 are clear that the roles of qualified rehabilitation consultant and registered rehabilitation vendor are separate, so a qualified rehabilitation consultant may not be employed elsewhere by an entity registered as a rehabilitation vendor. The added language, however, clarifies that any outside employment held by a qualified rehabilitation consultant must not interfere with the work necessary as a qualified rehabilitation consultant.

The added language stating that a qualified rehabilitation consultant employed by an entity other than a registered qualified rehabilitation consultant firm may do qualified rehabilitation consultant work only on the claims being handled by the entity employing the qualified rehabilitation consultant simply continues this requirement for qualified rehabilitation consultants employed by employers or insurers.

The added language about notifying the Department upon changing employment is necessary in order for the Department to keep accurate and up-to-date records of all registered qualified rehabilitation consultants.

The deleted language in the next paragraph was ambiguous because there was no definition of what constituted living contiguous to a Minnesota catchment area. The Department believes that, if the qualified rehabilitation consultant resides outside of Minnesota, that residence should be not more than 100 miles by road so the qualified rehabilitation consultant will be reasonably available to Minnesota's injured workers. It is also necessary that the qualified rehabilitation consultant notifies the Department immediately upon changing residence to or from Minnesota so the Department can monitor compliance with this rule.

The deleted language in the next paragraph is no longer necessary

because it was used to "grandfather" those qualified rehabilitation consultants who did not have a college degree when that requirement became effective in the rules on February 7, 1984. The rule required those who were interns, however, to obtain at least a baccalaureate degree in one of the fields of study named in that rule. All qualified rehabilitation consultants who were registered were grandfathered, and all interns who were registered obtained the required degree, and the rule is no longer necessary.

5220.1500 "Procedure for Registration as Qualified Rehabilitation Consultant." This part outlines the procedure for registering as a qualified rehabilitation consultant. The changes in this part are addressed at their respective subparts.

Subp. 1. "Application to become a qualified rehabilitation consultant intern." In this subpart, it is necessary to add the word "intern" to clarify that any individual applying for registration must apply as a qualified rehabilitation consultant intern. Minn. Rules, pt. 5220.1400, subp. 4 requires at least one year of full time employment as a qualified rehabilitation consultant/intern as part of the requirement for completion of internship in order to work unsupervised as a qualified rehabilitation consultant. All applications for registration, therefore, are for an internship.

The added and deleted language in the next paragraphs is for clarification only. The change in D is necessary so that the Department is certain that the college transcripts submitted as documentation of education are official transcripts and not subject to falsification.

The language in E was deleted because a baccalaureate degree and eligibility for certification within two years are the minimum requirements for registration as a qualified rehabilitation consultant/intern. It is not necessary to submit any additional continuing education until renewal of registration.

The language in G was added as one of the items which must be submitted with the application for registration, as called for in Minn. Rules, pt. 5220.1400, subp. 3.

Subp. 1a. "Approval of registration as a qualified rehabilitation consultant." The added language in this subpart is necessary to clarify that when registration is approved, the registration fee is not refundable if the individual at some later date during the registration year no longer wishes to maintain registration. The Department would be unduly bogged down in administering the return of a portion of the registration fee based on the number of months or days a person maintained the registration. A fee is paid to obtain registration. The

costs of administering this are mainly incurred at the beginning and end of registration, regardless of the length of the registered period. The individual's choice to not maintain the registration is beyond the Department's control or responsibility.

The added language stating that where registration is not approved, one-half of the registration fee will be refunded is reasonable and necessary. A clearly unqualified individual may submit an application and the Department must issue a decision accepting or rejecting the application. Minnesota Statutes, section 16A.128, subd. 1a, requires that a registration fee must be sufficient to cover the Department's costs of registering. Refunding the money to an unqualified candidate would mean that the Department would have to raise its registration fee for qualified candidates; the burden of this cost should be shared by those who may be unqualified candidates.

Subp. 2. "Appeal process." The changes in this subpart reflect the statutory change of Minnesota Statutes, section 176.102, subd. 3 made on July 1, 1987.

Subp. 3. "Registration number and renewal." The deleted language was moved to 5220.1400, subp. 3, which deals with the qualified rehabilitation consultant/intern, which is where it more logically belongs.

The remaining changes just incorporate the defined terms of qualified rehabilitation consultant, qualified rehabilitation consultant/intern and qualified rehabilitation consultant firm.

The changes in the next paragraph are reasonable and necessary because, although the rule states that registration renewal forms are due 60 days prior to expiration of registration, there was nothing in the rule to enforce this. In 1989 and 1990 approximately half of the qualified rehabilitation consultants submitted registration renewal forms after the date the forms were due. The Department incurs the additional expense of sending out a second computer letter, and once the late forms are received, extra administrative work is required in order to process the application before the actual date of expiration of registration. One of the main reasons given by qualified rehabilitation consultants for being late is that they need more time to complete the continuing education requirements. Since documentation of continuing education will no longer be necessary for qualified rehabilitation consultants who have certification (according to the new requirements in 5220.1500, subp. 5) there should be less cause for late renewal forms. A $25.00 late fee is a nominal sum. Renewal forms received more than 30 days after the due date will be assessed an additional penalty, and this is reasonable and necessary because of the extra administrative burden incurred by the Department when renewal forms are more than 30 days late. This provision is in keeping with the

department's obligation to document that injured workers are serviced by persons meeting the criteria for registration.

The change in the last paragraph clarifies that the annual filing of service and fee schedules shall be done at the time of renewal of registration.

Subp. 3a. "Continuing education." The change in this subpart eliminates the need for qualified rehabilitation consultants who have certification (pursuant to 5220.1400) to submit documentation of 30 continuing education hours each year in order to be renewed and retain registration each year. The certifying bodies have continuing education requirements for certification maintenance, and it is not necessary for the Department to duplicate this. This rule states that qualified rehabilitation consultants who do not yet have certification must submit documentation of 20 (instead of 30) contact hours. The reduction in the number of hours is to bring it in line with the number of contact hours required by the professional certifying bodies.

The change from ten to six contact hours which must be approved by the commissioner as directly pertinent to the Minnesota workers' compensation law is reasonable and necessary in that it coincides with the number of contact hours of continuing education for the Department's annual update session for all registered providers. (Later

language in this rule states that attendance at the annual update session is mandatory for all registered providers.)

The added language at the bottom of the paragraph lists examples of what the Department considers to be continuing education which would be approved.

The added language about satisfactory documentation was moved from the first paragraph of subp. 5.

The deleted language was placed in 5220.1400, subp. 3, which deals with qualified rehabilitation consultant/interns. It more logically belongs there since it deals with the introductory training session for new qualified rehabilitation consultants and vendors.

The changes in the next paragraph reasonably incorporate the defined terms.

The new language in this paragraph deals with allowing for non-attendance at the mandatory annual update sessions for emergency situations and advises the qualified rehabilitation consultants that they must report to the commissioner if they do not attend.

Subp. 4. "Inactive status." The change in this subpart removes the

negative connotation of "suspension" and deals with a procedure for qualified rehabilitation consultants to have their registration inactivated if they do not renew registration annually. Another change in this subpart makes clear that if a qualified rehabilitation consultant wishes to be reinstated, the qualified rehabilitation consultant must provide verification of current certification required by Minn. Rules pt. 5220.1400. The change at the end of the paragraph is necessary so the July 1, 1987 statutory change in Minnesota Statutes, section 176.102, subd. 3 about appeals is reflected in this rule.

Subp. 5. "Monitoring." This subpart states the authority of the commissioner in reviewing the activities and services of rehabilitation providers to determine their reasonableness and compliance with Minnesota Statutes, section 176.102.

Subp. 6. "Revocation." This subpart was added to reflect the statutory change of Minnesota Statutes, section 176.102, made on July 1, 1987.

5220.1600 "Procedure for Approval as Qualified Rehabilitation Consultant Firm." This part contains the procedure for registration as a qualified rehabilitation consultant firm. The changes in this part are addressed at their respective subparts.

Subp. 1. "Criteria." The first change in this subpart simply adds the

complete defined term of "qualified rehabilitation consultant firm." The rest of the change in that sentence adds the requirement that the qualified rehabilitation consultant firm must list all of its office addresses on the application for registration or renewal. This is necessary so the Department may keep an accurate register of all office locations of qualified rehabilitation consultant firms and who works at each location. The word "eligible" was removed because it was not necessary. The words "at least" were removed because they imply that the rule would allow more than one nonclerical employee within the 80 percent qualified rehabilitation consultant staffing ratio. A qualified rehabilitation consultant firm with fewer than four qualified rehabilitation consultants may have (no more than) one nonclerical employee and still be in compliance with the 80 percent qualified rehabilitation consultant staffing ratio. The deleted language is not necessary because 5220.1300 now deals with the separate roles of vendor and qualified rehabilitation firm. The added language is necessary so the Department is immediately advised of qualified rehabilitation consultant firm branch office openings and closings so an accurate and up-to-date register for the public is maintained.

Subp. 2. "Application." The changes in this subpart incorporate the defined term of "qualified rehabilitation consultant firm." The remaining changes are merely for clarification.

Subp. 2a. "Approval of registration as a qualified rehabilitation consultant firm." The added requirement of this subpart is necessary to make clear that the Department will conduct processing applications for registration of qualified rehabilitation consultant firms using the same procedure as that outlined for qualified rehabilitation consultants in 5220.1500. Prior to this, there was no requirement in the rule for the Department to respond to a qualified rehabilitation consultant firm application within any set time, although the Department's procedure was to respond within 60 days of receipt of a completed application. This added subpart also means a qualified rehabilitation consultant firm's registration application fee is non-refundable once registration has been approved, as outlined in this Statement for Part 5220.1500, subp. 1a. of these rules and that, if the application is denied, one half of the fee will be refunded. This is necessary because the department would be unduly bogged down in administering the portion of the registration fee based on the number of months or days a firm maintained the registration. A fee is paid to obtain registration. If a firm chooses to not maintain registration, this is beyond the department's control.

The added language stating that where registration is not approved, one-half of the registration fee will be refunded is reasonable and necessary. A clearly unqualified firm may submit an application and the Department must issue a decision accepting or rejecting the

application. Minnesota Statutes, section 16A.128, subd. 1a, requires that a registration fee must be sufficient to cover the Department's costs of registering. Refunding the money to an unqualified firm would mean that the Department would have to raise its registration fee for qualified firms; the burden of this cost should be shared by those who may be unqualified candidates for firm status.

Subp. 5. "Renovation." The change in this subpart is necessary to reflect the change on July 1, 1987 of Minnesota Statutes, section 176.102, subds. 3 and 3a dealing with discipline and revocation of registration.

5220.1700 **"Procedure for Approval as Registered Rehabilitation Vendor."** The rules regarding vendor registration remain unchanged, except for minor clarifications.

Subp. 1. "Application." The change in this subpart will add a minor requirement that the completed application be notarized. Applications for registration of qualified rehabilitation consultants and qualified rehabilitation consultant firms must be notarized, and this requirement for rehabilitation vendors will make the application process more uniform.

Subp. 2. Appeal process. The change in this subpart is for ease of readability only.

Subp. 4. "Revocation." This subpart was changed to reflect the statutory change of Minnesota Statutes, section 176.102, made on July 1, 1987.

Subp. 5. "Restriction." The language in this new subpart was formerly contained in 5220.0100, subp. 11, which was a definition. Restriction of a practice more appropriately belongs with the part dealing with the requirements of registration.

5220.1800 **"Standards of Performance."** This brief section continues to serve as an introduction to parts 5220.1801 to 5220.1806 which set forth the standards of conduct and establish minimum standards for the activities and services of rehabilitation providers. Greater specificity is added by the statement "Performance evaluations and monitoring of rehabilitation providers by the commissioner, and the administration of rehabilitation provider discipline under Minnesota Statutes, section 176.102, subd. 3a will be based upon these standards as well as on adherence to Minnesota Statutes, Chapter 176, the rules adopted to administer it, and orders of the commissioner or compensation judge."

5220.1801 **"Professional Conduct."** This part is significantly expanded to include specific directives and prohibitions which constitutes a code of ethics for rehabilitation providers comparable to conduct codes for other related professions, such as psychology, social work and other counseling professions.

Subp. 1. "Prompt provision of service and assessment of progress." This subpart sets forth the guideline that rehabilitation providers shall provide prompt and necessary rehabilitation services to injured workers and shall periodically assess progress toward rehabilitation plan objectives on a basis agreed to among the parties and as required by the commissioner.

Subp. 2. "Assigned qualified rehabilitation consultant." This subpart is a further clarification of the role of the rehabilitation consultant, and limits the instances of consultants who work in an advisory capacity to another qualified rehabilitation consultant who has primary responsibility for the case. Qualified rehabilitation consultants are required to advise the employer/insurer before involving or requesting advisory services from another qualified rehabilitation consultant. With the exception of a qualified rehabilitation consultant acting on behalf of the Reinsurance Association, such practice of using qualified rehabilitation consultants in an advisory capacity is limited to rehabilitation activity within a rehabilitation firm.

Subp. 4a. "Objectivity." This subpart recognizes that while good faith disputes may arise about rehabilitation services, the rehabilitation provider must remain professionally objective, thereby maintaining effective working relationships with all parties.

Subp. 5. "Evaluation of the employee by other than the qualified rehabilitation consultant." This subpart further defines the practice stated in the prior rules of limiting independent rehabilitation evaluations to situations where litigation before the Office of Administrative Hearings has been initiated. In that context, the rehabilitation provider may perform an evaluation of the employee at the request of one of the parties solely for the purpose of that proceeding. The interest of all parties are served by limiting the practice of "experts" contending with "experts" to formal proceedings only.

Subp. 6. "Qualified rehabilitation consultant as witness." This subpart continues a prohibition in the former rehabilitation rules that a qualified rehabilitation consultant who has testified as an expert witness for any party in a hearing related to a case before a compensation judge, may not function thereafter as the assigned rehabilitation provider unless agreed to by the employee.

Subp. 8. "Separate roles and functions." This subpart states a concept

central to the role definition and distinction of the qualified rehabilitation consultant or registered rehabilitation vendor. Rehabilitation providers must focus on rehabilitation service to workers and employees and cannot engage in the insurance claims adjustment activities examples of which are given in this section. This subpart thereby eliminates a potential conflict of interest. The detail included is intended to provide specificity of expectations for rehabilitation providers and guidelines for Department staff in investigating claims about rehabilitation provider conduct or behavior. In this process, important concepts such as "adversarial communication or activity" is defined. The subpart also elaborates an affirmative obligation of the rehabilitation provider to amend a plan or recommend its closure when it is reasonably known that the rehabilitation plan objectives are not likely to be achieved.

Subp. 9. "Prohibited conduct." This subpart results from Department analysis of ethical codes and rules governing conduct for similar professions, such as social work or family counseling. This subpart identifies specific behaviors common to these conduct codes that are prohibited.

Subp. 10. "Professional competence." To protect injured workers and employers, this subpart requires that rehabilitation providers limit themselves to the performance of services for which they have the

education, experience, and qualifications. Since the provision of rehabilitation services is a broad field which utilizes specialization, it is important that rehabilitation providers accurately represent their level of skill and competence with the Department, the public and colleagues. A specific area of concern is addressed with the prohibition that rehabilitation providers shall not administer or interpret tests without proper training, experience, or credentials. Vocational aptitude and interest tests are widely used in rehabilitation planning and it is reasonable that the personnel administering and explaining such instruments are appropriately trained, experienced, or credentialed. Finally, rehabilitation providers are enjoined to understand the areas of competence of other professional persons and act with due regard for the needs, privileged nature, special competencies, and obligations of colleagues and other professionals and not disparage their qualifications.

Subp. 11. "Impaired objectivity." This subpart reflects the need for rehabilitation providers to maintain professional objectivity as a function of competency. It prohibits the use of substances or engaging in activities that would impair professional objectivity. This subpart also precludes professional relationships in which of the objectivity of the provider would be impaired due to familial, social, emotional, economic, supervisory, or political interpersonal relationships. The sometimes adversarial climate of workers' compensation can create

conflicts of interest for service providers that place the quality of service to injured workers and employers at risk. The inherent importance of rehabilitating injured persons and the extraordinary cost to both employers and injured workers if this activity is not carried out with diligence and skill dictate that no undue influence enter into rehabilitation decision making.

5220.1802 **"Communications."** This part updates and elaborates a similar part in the previous rules defining the rehabilitation consultant's reporting and communication requirements.

Subp. 1. "Legibility and content of required reports." This subpart states that standards regarding legibility and content apply to all required rehabilitation reports and all required progress reports. Further, it is required that each report include the employee's name, Department file number, and date of injury.

Subp. 3. "Copies of reports and records." This subpart states the obligation of the assigned qualified rehabilitation consultant to file required rehabilitation reports with the commissioner and provide copies to all parties.

Subp. 4. "Registered rehabilitation vendor reporting." This subpart establishes specific expectations for rehabilitation vendors whose

reporting requirements to the qualified rehabilitation consultant were not specified in previous rules. Since the qualified rehabilitation consultant assigned to the case has the duty for overall monitoring of case progress, it is imperative that this person receive copies of applicable reports from the rehabilitation vendors who are providing job placement services.

Subp. 4a. "Transfer of information." This subpart addresses an issue which has been a problem administratively, namely the transfer of information when a case is transferred from one qualified rehabilitation consultant to another. It details the responsibility of the former qualified rehabilitation consultant firm to transfer all data including the required rehabilitation reports, progress records, and incurred rehabilitation costs information to the new qualified rehabilitation consultant within a 15 day time limit so that rehabilitation may continue unimpeded.

Subp. 5. "Data privacy." This subpart sets forth the expectation that rehabilitation providers comply with all applicable data privacy laws.

Subp. 10. "Providing records." This subpart specifies the obligation of the rehabilitation provider to maintain all required progress records and copies of all required rehabilitation reports, and to make these records available to the commissioner.

Subp. 11. "Access to medical and rehabilitation reports." This subpart defines the responsibility of the assigned qualified rehabilitation consultant to furnish appropriate information (specifically, copies of all medical and rehabilitation reports necessary for effective service provision by the other provider) to other rehabilitation providers designated in a rehabilitation plan

5220.1803 "Responsibilities." This part continues instruction to rehabilitation providers about their role and responsibilities in the workers' compensation system.

Subp. 1. "Instruction by qualified rehabilitation consultant." This subpart sets forth the obligation that the qualified rehabilitation consultant shall, during the first in-person contact, instruct employees of their rights and responsibilities relating to rehabilitation and of the purpose of rehabilitation services. Specifically, the assigned qualified rehabilitation consultant is required to sign and date a prescribed Rehabilitation Rights and Responsibilities form at this first in-person meeting with the employee and subsequently provide the employee, employer, and commissioner with a copy.

Subp. 1a. "Disclosure of information." This subpart requires disclosure regarding ownership interests and business referral arrangements. Both "ownership interests" and "business referral arrangements" are

defined in this subpart.

Subp. 2. "Knowledge of laws and rules." This subpart requires a rehabilitation provider to be knowledgeable about the areas of the workers' compensation law and rules that directly relate to the provision of rehabilitation services. Further, the communication of any inaccurate information regarding workers' compensation is defined as grounds for discipline.

Subp. 5. "Reporting requirements." This subpart sets forth the qualified rehabilitation consultant's responsibility to file an initial evaluation narrative report at the time of the filing of the rehabilitation plan. Specific content of the narrative report is defined to include the following information in summary fashion: medical status, vocational history, educational history, social history, relevant economic factors, transferable skills, employment barriers, and recommendations. Additionally, the assigned qualified rehabilitation consultant is required to periodically report progress of case activity in writing to the employer at reasonable intervals or as requested by the parties. Further, the assigned qualified rehabilitation consultant's responsibility for maintaining employee files containing the required rehabilitation reports and required progress records is set forth, including the standard that such files be maintained by the qualified rehabilitation consultant firm for a period of five years from the date

of file closure. Finally, the qualified rehabilitation consultant is required to provide the commissioner with any other requested pertinent information about the qualified employee's rehabilitation for the purposes of Department monitoring.

5220.1805 **"Business practices."** This part sets forth the expectation that rehabilitation providers shall abide by applicable federal, state and local laws regulating business practices. Most of the changes are revisions in wording for better clarity of meaning. The term "rehabilitation provider" is used, as defined, as an inclusive phrase in place of the three terms "registered qualified rehabilitation consultants", "qualified rehabilitation consultant interns", and "vendors."

5220.1806 **"Disciplinary action."** This new part sets forth the administrative procedure for investigation of complaints and the application of discipline for rehabilitation providers.

Subp. 1. "Discipline." This subpart sets forth the range of options included in disciplinary actions and specifies assessment of a fine as provided by statute, suspension, and revocation of registration as disciplinary actions. It further states that discipline shall be based upon substantiated complaints about activities or services which violate laws, rules, or orders.

Subp. 2. "Complaints." This subpart sets forth the authority of the commissioner to review activities of rehabilitation providers for the purpose of determining compliance with laws, rules, or orders. Further, it specifies that complaints about activities or services of rehabilitation providers shall be made in writing to the commissioner. Finally, this part sets forth the expectation that if a rehabilitation provider violates Minnesota Statutes, Chapter 176, or the rules adopted thereunder, a rehabilitation provider having knowledge of the violation must report this to the commissioner.

Subp. 3. "Review and investigation." This subpart sets forth the standard that the commissioner shall review all complaints to determine if the complaint alleges a violation of the workers' compensation law, rules, or orders. In the process of an investigation, the commissioner may dismiss complaints or refer a matter outside the Department's jurisdiction to a forum or agency that has jurisdiction. The party bringing the complaint is notified of a dismissal or referral. Resolving a complaint through informal instruction of a provider is set forth as a method of resolution. Finally, this subpart states the commissioner's authority to begin a contested case disciplinary action under Minnesota Statutes, section 176.102, subd. 3a, which provides for commissioner's investigation of complaints against qualified rehabilitation consultants and vendors, and the Administrative Procedures Act. The process of having the report from the

Administrative Law Judge made to the Rehabilitation Review Panel, which is the final determiner of disciplinary action, is also described consistent with that statutory responsibility.

Subp. 4. "Cooperation with disciplinary proceedings." This subpart sets forth the expectation that a rehabilitation provider who is the subject of a complaint investigated by the commissioner shall fully cooperate with the investigation, including responding to questions raised in the course of the investigation and providing copies of records, reports, logs, data and costs and other information as requested by the commissioner.

Subp. 5. "In-person meeting." This subpart sets forth the administrative procedure of scheduling a meeting as a method of conferring with the parties to a complaint when this is deemed appropriate for the clarification or settlement of issues. Such a meeting may be conducted for the purpose of obtaining information, instructing the parties to a complaint, or for the purpose of resolving issues.

Subp. 6. "Resolution written agreement." This subpart sets forth the commissioner's authority to enter into stipulated agreements regarding discipline with complaint subjects in lieu of initiating contested case proceedings.

5220.1900 **"Rehabilitation Service Fees and Costs."** This part describes the primary responsibility of the insurer for monitoring and paying the costs of necessary rehabilitation services. Additionally, the commissioner's responsibility for monitoring rehabilitation services is again stated.

Subp. 1. "Monitoring." This subpart identifies the insurer as having primary responsibility for monitoring and paying the costs of rehabilitation services. The commissioner's role in monitoring is also described including the commissioner's authority to conduct periodic audits, require uniform billing information, and to request invoices and itemized billings from rehabilitation providers describing their services.

Subp. 2. "Reasonable and necessary services." This subpart states that a rehabilitation provider shall bill only for those necessary and reasonable services which are rendered in accordance with Minnesota Statutes, section 176.102 and the rules adopted to administer that section. The authority of the commissioner and compensation judge to make a determination about reasonable and necessary services and costs is also set forth, including factors to consider in that analysis, such as whether the services were expressly called for by the employee's rehabilitation plan.

Subp. 7. Case activities requiring insurer consent for payment. This subpart lists specific areas where the rehabilitation provider must obtain the consent of the insurer before billing for the activity. The purpose of this listing is to provide scrutiny of activities and costs control for services generally not integral to the employee's rehabilitation plan. Also, this part of the rules reflects some modification for clarity of meaning. The changes are not substantial.

Subp. 8. "Disputes." The dispute resolution process for these issues is repeated at this subpart.

Subp. 9. "Collection Prohibited." Minnesota Statutes, section 176.83, subd. 5 provides the basis for this rule which details the statutory directive. Rehabilitation providers may not attempt to collect for fees or services which are excessive.

5220.1910 "Approved Claims Handler." This part, which sets forth the qualifications and procedures for becoming an approved claims handler has not been changed. The requirements of this certification include one year of experience in handling Minnesota workers' compensation claims and completion of a training program conducted by the commissioner. This is unchanged from previous rules.

DEPARTMENT OF FINANCE APPROVAL

Because the rules may be construed to be seting or adjusting fees under Minnesota Statutes, section 16A.128, the approval of the rules by the Commissioner of Finance is attached to this Statement.

Because the rule amendments, other than exempted ones, do not add substantive requirements for small businesses but generally modify procedures, they will not have impact on small businesses under Minnesota Statutes, section 14.115. This is because the rule amendments generally involve the scope and practice of the rehabilitation professional. While the qualified rehabilitation consultant may well be in contact with the small businesses employing qualified employees, the rehabilitation provider's obligations and rights are set by the statute rather than by these rule amendements.

The rules will impact the scope and practice of rehabilitation providers and that affect is excluded from the provision of Minnesota Statutes, section 14.115 under subd. 7(3). Furthermore, those groups have been provided opportunity to participate in these rules through the Notice of Intention to Solicit Outside Opinion, thorugh the Rehabilitation Review Panel rule review process and professional groups concerning the rules. Finally, the mailing for the rules notice has included all registered rehabilitation providers.

STATE OF MINNESOTA

DEPARTMENT OF LABOR AND INDUSTRY

In the Matter of the Proposed Adoption of the Amendment of Rules, of the State Department of Labor and Industry, Workers' Compensation Division, Relating to the Rehabilitation of Persons with Work-Related Injuries

FINDINGS OF FACT, CONCLUSIONS, AND ORDER ADOPTING RULE WITHOUT PUBLIC HEARING

(1) Notice of the Commissioner's intent to adopt the above-entitled rule was published in the State Register on October 7, 1991 and was sent by United States mail to all persons on the list maintained by the agency pursuant to Minnesota Statutes, sections 14.14, subdivision 1a and 14.22 by October 8, 1991. (2) The statement of need and reasonableness was prepared before the notice of intent to adopt a rule without a public hearing was mailed to all persons on the rulemaking mailing list and published in the State Register and was available to the public. (3) Before the notice was submitted to the State Register, a copy of the notice of intent to adopt rules without a public hearing and the proposed rule was sent to the chairs of the house appropriations committee and senate finance committee.

(4) All persons were given the opportunity to submit comment on the rule for 30 days after notice of proposed rulemaking. (5) The agency received 2 requests for a public hearing. Therefore, the agency did not receive request for a public hearing from 25 or more persons which were not withdrawn. (7) One request for notice of submission to the Attorney General was received by the agency.

(6) First, oral comment was received from a representative of Berkley Administrators that there was no authority for the penalty provisions at Minn. Rules Part 5220.0110, subp. 5, Minn. Rules Part 5220.0130, subp. 4 and Minn. Rules Part 5220.0710, subp. 4. The specific authority at M.S. § 176.83, subd. 2 was pointed out. Concern remained however, that such penalties might be arbitrarily assessed and that an ideal method of dealing with the problem would be to assess penalties based on a pattern of noncompliance.

Because there was general agreement that the suggested approach would be the ideal, and because the Commissioner's authority to enforce initiation of rehabilitation continues at M.S. § 176.102 and § 176.83 as well as under Minn. Rules Part 5220.2780, the conclusion was reached to drop these subparts in the final promulgation.

Dropping the proposed penalty provisions is not a substantial change because the authority remains under the statute and rules to take the actions specified in those provisions and because no new issue or newly affected class of persons is involved in the action.

Second, one comment questioned whether M.S. § 176.102, subd. 13 was not an additional situation in which there might be an additional QRC on a case under Minn. Rule Part 5220.1801, subp. 5. if ordered by the Commissioner. Further, there was a question as to what constituted litigation for purposes of the exception set out in that rule.

It was concluded that M.S. § 176.102, subd. 13 was an additional instance where the Commissioner might order an independent evaluation by a QRC and that clarification was added. Further, it was concluded that the best way to define when litigation was pending for purposes of the rule was to use the scope of the Workers' Compensation Litigation rules at Minn. Rule Part 1415.0100, and that clarification was added.

These changes are not substantial in that, in the first instance the statute and order of the Commissioner would have been binding even without the rule that simply clarifies that authority. The second change adds consistency to the workers' compensation system by utilizing the same definition of litigation that the other workers' compensation rules do, when describing the instance in which QRCs are not prohibited from giving an independent evaluation on a case. Neither change adds new subject matter or affects a different class of person than originally noticed.

Third, several areas of the rule amendments lack detail that, based on comments, can further clarify the procedures in the Department or the effect that a certain action or inaction has. In addition, issuance of a decision in a litigation of a denial of registration raised several questions during the comment period about several rules' applicability and interpretation.

It is concluded that an additional phrase or sentence of explanation could be of assistance to the reader in those instances:

a. At Minn. Rules Part 5220.1500, subp. 2 the sentence "where the appeal is for denial of renewal of registration, such filing will stay the effect of the denial until final disposition." is added to distinguish this situation from an initial registration in which, of course, the Commissioner's denial of registration would stand until and unless an applicant, on appeal, could show that it should be otherwise. Where a registered rehabilitation provider is earning a living at the occupation, the effect of an order denying renewal would be stayed pending the outcome of an appeal of the issue so that the applicant's livelihood would remain intact pending process due.

b. At Minn. Rules Part 5220.1500, subp. 3 in the third paragraph the sentence, "Substantiated complaints for purposes of denial of renewal of registration means there has been a Stipulation or Order of discipline." This is again because the discipline proceedings are applicable to a person who is concurrently registered and earning a livelihood as a rehabilitation provider, while the discipline proceedings are not applicable to a person who has not yet applied for registration, so that what constitutes a substantiated complaint in each instance is somewhat different.

These two additions are not substantial changes because, in each instance, they merely add detail to what the original intent was, adding clarification where there was comment. No new subject matter or new class of persons are added or affected.

Fourth, upon close examination M.S. § 176.102, subd. 3 does not pertain to discipline of QRCs even though the Rehabilitation Review Panel might become involved in the discipline process. Consequently, there are four instances in the rules where there is essentially a clerical error of citing M.S. § 176.102, subd. 3 as well as 3a as authority/procedure for pursuing discipline.

It is concluded that these errors should be corrected and "subd. 3" is deleted at Minn. Rules Part 5220.1400, subp. 3, second paragraph; Minn. Rules Part 5220.1500, subp. 6; Minn. Rules Part 5220.1600, subp. 5 and Minn. Rules Part 5220.1700, subp. 4.

These changes are not substantial in that the authority which was cited in the rules did not exist so that the change results in a correct statement of where the authority/procedure would come from any actions under the rules.

Fifth, the effective date provision was amended: a) to allow sufficient time for the rulemaking process in the case of those provisions to be effective on March 2, 1992 and b) to allow sufficient time to prepare administratively for effective implementation of the rule amendments in the case of those provisions to be effective on July 1, 1992.

Because the effective date was at all times reliant on the rulemaking process and because the rules are procedural and clarifying or detailing the statute, this change, too, does not constitute a substantial change. No new issues are raised or class of persons affected.

Based on the comments and evidence in the record before the agency, I find the following:

1. That the Department has complied with all procedural requirements of law or rule adopting the proposed amendments.

2. That the Department has acted within its statutory authority in adopting these proposed amendments.

3. That the above captioned amendments are needed and reasonable.

(8) NOW, THEREFORE, IT IS ORDERED that the rule identified as Minn. Rules Part 5220.0100 through 5220.1910, 5220.2650 and 5220.2780 as modified is adopted this 24th day of December, 1991, pursuant to authority vested in me by Minnesota Statutes, section 176.102 and 176.83.

John B. Lennes, Jr.
Commissioner

MM/cj (190-1)

STATE OF MINNESOTA

Office Memorandum

Department: of Finance

Date: September 23, 1991

To: Anina Bearrood, Accounting Director
Labor and Industry

From: Bruce J. Reddemann, Director BJR
Budget Operations

Phone: 296-5188

Subject: Fee Approval

Approval is hereby granted for your late fee, as requested by your September 19, 1991 memorandum to Josie Ashton.

cc Josie Ashton
Glenn Olson

DEPARTMENT : LABOR AND INDUSTRY

STATE OF MINNESOTA

Office Memorandum

DATE : September 19, 1991

TO : Josie Ashton, EBO
Department of Finance

FROM : Anina Bearrood
Accounting Director

PHONE : 6-2528

SUBJECT : Approval of Fee Review Including New Late Fee

The Rehabilitation and Medical Affairs unit of the Department of Labor and Industry is proposing that a late fee provision be added to the schedule of fees for license renewal of QRC consultants, firms, and vendors. This fee would be $25 plus an additional $10 per day after 30 days with the total late fee not to exceed $125. Any increased revenue from changes in the rules regarding penalties have not been addressed in this Fee Review for two reasons: 1)revenue increases would not be significant, and 2) these are penalties rather than fees.

We would like to publish these rule changes in the State Register as soon as possible. Therefore, anything you can do to process this in an expeditious manner would be appreciated.

Att: Fee Review
Draft of Rule Changes

Minnesota
Department of Labor and Industry

443 Lafayette Road
St. Paul, Minnesota 55155
(612) 296-6107

Telecommunication Device
for the Deaf (612) 297-4198

FAX (612) 297-1329

September 20, 1991

The Honorable Wayne Simoneau, Chair
House Appropriations Committee
365 State Office Building
St. Paul, MN 55155

Dear Representative Simoneau:

RE: Proposed Amendment to Rules Relating to the Rehabilitation of Persons with Work-Related Injuries

Enclosed is a copy of Proposed Amendment to Rules Relating to the Rehabilitation of Persons with Work-Related Injuries. These rules and a Notice of Intent to Adopt a Rule Without a Public Hearing are being submitted to the State Register for publication on October 7, 1991. This is being submitted to you pursuant to Minn. Stat. §16A.128 (2a).

Sincerely,

WORKERS' COMPENSATION DIVISION
REHABILITATION AND MEDICAL AFFAIRS

Jeanne Gehrman

Jeanne Gehrman
Rehabilitation Provider Registration Specialist

JG/pm/606

Enclosure - rules

cc: Mary Miller, Attorney
Legal and Legislative Affairs Division
Dept. of Labor & Industry

David Sherwood-Gabrielson, Director
Rehabilitation & Medical Affairs
Dept. of Labor & Industry

Jon Murphy, Assistant Attorney General
Attorney General's Office

Minnesota
Department of Labor and Industry

443 Lafayette Road
St. Paul, Minnesota 55155
(612) 296-6107

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September 20, 1991

The Honorable Gene Merriam, Chair
Senate Finance Committee
122 State Capitol Building
St. Paul, MN 55155

Dear Senator Merriam:

RE: Proposed Amendment to Rules Relating to the Rehabilitation of Persons with Work-Related Injuries

Enclosed is a copy of Proposed Amendment to Rules Relating to the Rehabilitation of Persons with Work-Related Injuries. These rules and a Notice of Intent to Adopt a Rule Without a Public Hearing are being submitted to the State Register for publication on October 7, 1991. This is being submitted to you pursuant to Minn. Stat. §16A.128 (2a).

Sincerely,

WORKERS' COMPENSATION DIVISION
REHABILITATION AND MEDICAL AFFAIRS

Jeanne Gehrman

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Rehabilitation Provider Registration Specialist

JG/pm/606

Enclosure - rule

cc: Mary Miller, Attorney
Legal and Legislative Affairs Division
Dept. of Labor & Industry

David Sherwood-Gabrielson, Director
Rehabilitation & Medical Affairs
Dept. of Labor & Industry

Jon Murphy, Assistant Attorney General
Attorney General's Office

Minnesota
Department of Labor and Industry

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October 15, 1991

297-2727

The Honorable Wayne Simoneau, Chair
House Appropriations Committee
365 State Office Bldg.
St. Paul, MN 55155

Dear Representative Simoneau:

Re: Proposed Amendment to Rules Relating to the
Rehabilitation of Persons with Work-Related Injuries

On September 20, 1991, we sent you a copy of the above-mentioned rules, pursuant to Minn. Stat. §16A.128 (2a). The attached pages 37 and 38, which are copied back-to-back, may have been missing from the enclosure sent to you, or an incorrect version of those two pages may have been included in error. Enclosed is the correct version of pages 37 and 38. I apologize for the error.

Sincerely,

WORKERS' COMPENSATION DIVISION
REHABILITATION AND MEDICAL AFFAIRS

Jeanne Gehrman

Jeanne Gehrman
Rehabilitation Provider Registration Specialist

JG/pam/605

Enclosure

cc: Mary Miller, Attorney
Legal and Legislative Affairs Division
Dept. of Labor & Industry

David Sherwood-Gabrielson, Director
Rehabilitation and Medical Affairs
Dept. of Labor & Industry

Jon Murphy, Assistant Attorney General
Attorney General's Office

Minnesota
Department of Labor and Industry

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October 15, 1991

297-2727

The Honorable Gene Merriam, Chair
Senate Finance Committee
122 State Capitol Building
St. Paul, MN 55155

Dear Senator Merriam:

Re: Proposed Amendment to Rules Relating to the
Rehabilitation of Persons with Work-Related Injuries

On September 20, 1991, we sent you a copy of the above-mentioned rules, pursuant to Minn. Stat. §16A.128 (2a). The attached pages 37 and 38, which are copied back-to-back, may have been missing from the enclosure sent to you, or an incorrect version of those two pages may have been included in error. Enclosed is the correct version of pages 37 and 38. I apologize for the error.

Sincerely,

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REHABILITATION AND MEDICAL AFFAIRS

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Rehabilitation Provider Registration Specialist

JG/pam/605

Enclosure

cc: Mary Miller, Attorney
Legal and Legislative Affairs Division
Dept. of Labor & Industry

David Sherwood-Gabrielson, Director
Rehabilitation and Medical Affairs
Dept. of Labor & Industry

Jon Murphy, Assistant Attorney General
Attorney General's Office

An Equal Opportunity Employer

Minnesota
Department of Labor and Industry

443 Lafayette Road
St. Paul, Minnesota 55155
(612) 296-6107

Telecommunication Device
for the Deaf (612) 297-4198

FAX (612) 297-1329

October 7, 1991

Mary Ann Hruby, Director
Legislative Commission to Review Administrative Rules
55 State Office Building
St. Paul, MN 55155

Dear Ms. Hruby:

RE: Proposed Amendment to Rules Relating to the Rehabilitation of Persons with Work-Related Injuries

Enclosed is a copy of Proposed Amendment to Rules Relating to the Rehabilitation of Persons with Work-Related Injuries, a Notice of Intent to Adopt a Rule Without a Public Hearing, and a copy of the Statement of Needs and Reasonableness (SONAR). These rules are being submitted to the State Register for publication on October 7, 1991, and are submitted to your office pursuant to Minn. Stat. §14.131.

Sincerely,

WORKERS' COMPENSATION DIVISION
REHABILITATION AND MEDICAL AFFAIRS

Jeanne Gehrman

Jeanne Gehrman
Rehabilitation Provider Registration Specialist

JG/pm/608

Enclosure

cc: Mary Miller, Attorney
Legal and Legislative Affairs Division
Dept. of Labor & Industry

David Sherwood-Gabrielson, Director
Rehabilitation & Medical Affairs
Dept. of Labor & Industry

Jon Murphy, Assistant Attorney General
Attorney General's Office

Mary: Orig of SONAR delivered at 4:30 on 10/7. That was the only copy at the time, so I didn't deliver your copy till now, when I got a copy for the distribution list here.

Jeanne 10/8

An Equal Opportunity Employer

STATE OF MINNESOTA

Office Memorandum

Department: of Finance

Date: September 23, 1991

To: Anina Bearrood, Accounting Director
Labor and Industry

From: Bruce J. Reddemann, Director BJR
Budget Operations

Phone: 296-5188

Subject: Fee Approval

Approval is hereby granted for your late fee, as requested by your September 19, 1991 memorandum to Josie Ashton.

cc Josie Ashton
Glenn Olson

SF-00006-05 (4/88)

DEPARTMENT : LABOR AND INDUSTRY

STATE OF MINNESOTA

Office Memorandum

DATE : September 19, 1991

TO : Josie Ashton, EBO
Department of Finance

FROM : Anina Bearrood
Accounting Director

PHONE : 6-2528

SUBJECT : Approval of Fee Review Including New Late Fee

The Rehabilitation and Medical Affairs unit of the Department of Labor and Industry is proposing that a late fee provision be added to the schedule of fees for license renewal of QRC consultants, firms, and vendors. This fee would be $25 plus an additional $10 per day after 30 days with the total late fee not to exceed $125. Any increased revenue from changes in the rules regarding penalties have not been addressed in this Fee Review for two reasons: 1)revenue increases would not be significant, and 2) these are penalties rather than fees.

We would like to publish these rule changes in the State Register as soon as possible. Therefore, anything you can do to process this in an expeditious manner would be appreciated.

Att: Fee Review
Draft of Rule Changes

STATE OF MINNESOTA

DEPARTMENT OF LABOR AND INDUSTRY

In the Matter of the Proposed Adoption of the Amendment of Rules, of the State Department of Labor and Industry, Workers' Compensation Division, Relating to the Rehabilitation of Persons with Work-Related Injuries

AMENDED FINDINGS OF FACT, CONCLUSIONS, AND ORDER ADOPTING RULE WITHOUT PUBLIC HEARING

(1) Notice of the Commissioner's intent to adopt the above-entitled rule was published in the State Register on October 7, 1991 and was sent by United States mail to all persons on the list maintained by the agency pursuant to Minnesota Statutes, sections 14.14, subdivision 1a and 14.22 by October 8, 1991. (2) The statement of need and reasonableness was prepared before the notice of intent to adopt a rule without a public hearing was mailed to all persons on the rulemaking mailing list and published in the State Register and was available to the public. (3) Before the notice was submitted to the State Register, a copy of the notice of intent to adopt rules without a public hearing and the proposed rule was sent to the chairs of the house appropriations committee and senate finance committee.

(4) All persons were given the opportunity to submit comment on the rule for 30 days after notice of proposed rulemaking. (5) The agency received 2 requests for a public hearing. Therefore, the agency did not receive request for a public hearing from 25 or more persons which were not withdrawn. (7) The only request for notice of submission to the Attorney General received by the agency was withdrawn.

(6) First, oral comment was received from a representative of Berkley Administrators that there was no authority for the penalty provisions at Minnesota Rules Part 5220.0110, subp. 5, Minnesota Rules Part 5220.0130, subp. 4 and Minnesota Rules Part 5220.0710, subp. 4. The specific authority at Minnesota Statutes § 176.83, subd. 2 was pointed out. Concern remained however, that such penalties might be arbitrarily assessed and that an ideal method of dealing with the problem would be to assess penalties based on a pattern of noncompliance.

Because there was general agreement that the suggested approach would be the ideal, and because the Commissioner's authority to enforce initiation of rehabilitation continues at Minnesota Statutes § 176.102 and 176.83 as well as under Minnesota Rules Part 5220.2780, the conclusion was reached to drop these subparts in the final promulgation.

Dropping the proposed penalty provisions is not a substantial change because the authority remains under the statute and rules to take the actions specified in those provisions and because no new issue or newly affected class of persons is involved in the action.

Second, one commentor questioned whether Minnesota Statutes § 176.102, subd. 13 was not an additional situation in which there might be an additional qualified rehabilitation consultant on a case under Minnesota Rules Part 5220.1801, subp. 5. if ordered by the Commissioner. Further, there was a question as to what constituted litigation for purposes of the exception set out in that rule.

It was concluded that Minnesota Statutes § 176.102, subd. 13 was an additional instance where the Commissioner might order an independent evaluation by a qualified rehabilitation consultant and that clarification was added. Further, it was concluded that the best way to define when litigation was pending for purposes of the rule was to use the scope of the Workers' Compensation Litigation rules at Minnesota Rules Part 1415.0100, and that clarification was added.

These changes are not substantial in that, in the first instance, the statute and order of the Commissioner would have been binding even without the rule that simply clarifies that authority.

The second change adds consistency to the workers' compensation system by utilizing the same definition of litigation that the other workers' compensation rules do, when describing the instance in which qualified rehabilitation consultants are not prohibited from giving an independent evaluation on a case. Neither change adds new subject matter or affects a different class of person than originally noticed.

Third, several areas of the rule amendments lack detail that, based on comments, can further clarify the procedures in the Department or the effect that a certain action or inaction has. Based on comments some standards need to be further detailed. In addition, issuance of a decision in a litigation of a denial of registration raised several questions during the comment period about several rules' applicability and interpretation.

It is concluded that an additional phrase or sentence of explanation could be of assistance to the reader in those instances:

a. At Minnesota Rules Part 5220.0850, subp. 2 the word "substantially" is deleted to clarify that the information set out in the rule is all required. The change is not substantial because it is made simply by way of clarifying that the Department does need all of the information set out in the rule.

b. At Minnesota Rules Part 5220.0950, subp. 4 insertions clarify that the decisions of the Commissioner being referred to in this rule are rehabilitation administrative conference decisions under Minnesota Statutes § 176.106, and set out authority for referring a formal hearing request to the Office of Administrative Hearings. These changes only add the statute from which this guiding procedural rule was taken and consequently do not constitute substantial changes.

c. At Minnesota Rules Part 5220.1500, subp. 2 the sentence "where the appeal is for denial of renewal of registration, such filing will stay the effect of the denial until final disposition." is added to distinguish this situation from an initial registration in which, of course, the Commissioner's denial of registration would stand until and unless an applicant, on appeal, could show that it should be otherwise. Where a registered rehabilitation provider is earning a living at the occupation, the effect of an order denying renewal would be stayed pending the outcome of an appeal of the issue so that the applicant's livelihood would remain intact pending process that is due.

d. At Minnesota Rules Part 5220.1500, subp. 3 in the third paragraph the sentence, "Substantiated complaints for purposes of denial of renewal of registration means there has been a Stipulation or Order of discipline" is added. This is, again, because the discipline proceedings are applicable to a person who is concurrently registered and earning a livelihood as a rehabilitation provider, while discipline proceedings would not be applicable to a person who has not yet applied for registration, so that what constitutes a substantiated complaint in each instance is somewhat different.

e. At Minnesota Rules Part 5220.1806 subp. 1, a commentor was concerned that the term "substantiated complaints" needed more detail so that detail was added to the rule in the same manner as Minnesota Rules Part 5220.1400 subp. 3 is amended. The change is not substantial because the amendment merely adds detail for the reader rather than changing what the standard will be.

The same commentor was concerned that Minnesota Rules Part 5220.1806, subp.3 could use more specific criteria for when the Commissioner would take which actions on complaints. In response, "The commissioner may dismiss complaints or refer a matter outside the department's jurisdiction to a forum or agency that has jurisdiction. . . .", was changed to read "The commissioner shall investigate all complaints to determine whether there has been a violation of the workers' compensation act, rules or orders as alleged. If the matter is outside the jurisdiction

of the commissioner, the commissioner may refer the matter to a forum or agency that has jurisdiction. If an investigation indicates that discipline is warranted the commissioner shall begin a contested case for disciplinary action under Minnesota Statutes § 176.102, subdivision 3a and the Minnesota Administrative Procedure Act. The report of the administrative law judge shall be made to the rehabilitation review panel which shall make the determination on disciplinary action. If the commissioner determines that discipline is not warranted, but if the facts and issues involved warrant instruction of the provider, the commissioner shall issue the instruction in writing. The commissioner shall notify the complaining party of the disposition of the case". The change, which only gives more specific criteria, is not a substantial change in that it is a change of extent of criteria detailed in the rule only and does not change the criteria that the Commissioner will be using. No new subject matter or new class of persons are added or affected for either of these changes.

Fourth, upon close examination Minnesota Statutes § 176.102, subd. 3 does not pertain to discipline of qualified rehabilitation consultants even though the Rehabilitation Review Panel might become involved in the discipline process. Consequently, there are four instances in the rules where there is essentially a clerical error of citing Minnesota Statutes § 176.102, subd. 3 as well as 3a as authority/procedure for pursuing discipline.

It is concluded that these errors should be corrected and "subd. 3" is deleted at Minnesota Rules Part 5220.1500, subp. 6; Minnesota Rules Part 5220.1600, subp. 5 and Minnesota Rules Part 5220.1700, subp. 4 and the language is clarified at Minnesota Rules Part 5220.1400 subp. 3, second paragraph.

These changes are not substantial in that the authority which was cited in the rules did not exist so that the change results in a correct statement of where the authority/procedure would come from for any actions under the rules. Several other minor clerical corrections of this type were made.

Fifth, the effective date provision was amended to be July 1, 1992 in order: a) to allow sufficient time for the rulemaking process and b) to allow sufficient time to prepare administratively for effective implementation of the rule amendments.

One amendment, Minnesota Rules Part 5220.1900, subp. 12 which implements uniform billing, will become effective on January 4, 1993. These changes are not substantial as they could not have been effective until the administrative processes were in place to implement them.

Because the effective date was at all times reliant on the rulemaking process and because the rules are procedural and clarifying or detailing the statute, this change, too, does not constitute a substantial change. No new issues are raised or class of persons affected.

Upon review the Attorney General's administrative office suggested modifications, many of which have been adopted:

1. At Minnesota Rules Part 5220.0120, subp. 5 "The commissioner may permit a waiver for periods longer than 60 days if good cause is shown" was changed to read "The commissioner may permit a waiver for periods longer than 60 days if the criteria in subpart 2 of this part will exist for a period longer than 60 days", to more clearly tie the allowance of a waiver to the standards set out in subpart 2. This change is not substantial because it only clarifies the original meaning of the rule. There is no change of substance by the new language.

2. At Minnesota Rules Part 5220.0410, subp. 6 "The commissioner may at any time request additional information, confer with the parties, recommend modifications and otherwise seek agreement about the plan", is replaced by "In reviewing rehabilitation plans pursuant to Minnesota Statutes § 176.102, subd. 6, the commissioner shall notify all interested parties of the nature of any additional information necessary for

such review, any recommended modifications to the plan and any decision approving, modifying or rejecting a plan", and "The commissioner may approve or modify the plan, schedule an administrative conference, or refer the matter to a compensation judge to approve or modify the plan", is replaced by "If the commissioner refers issues relating to a plan to a compensation judge or an administrative conference pursuant to Minnesota Statutes § 176.106, all parties shall be notified of that action and of all applicable related procedures", to make it clear that due process requirements will be adhered to when the Commissioner exercises review function over the rehabilitation plan or exercises the referral function with respect to disputes. This change is not substantial because it simply makes explicit procedures which will be followed in the commissioner's review and referral functions.

3. At Minnesota Rules Part 5220.0510, subp. 4, "At the discretion of the commissioner, the commissioner may amend the rehabilitation plan pursuant to Minnesota Statutes § 176.102 and Minnesota Statutes § 176.106 and the rules that implement those sections", is changed to read "If a plan is modified for good cause pursuant to Minnesota Statutes § 176.102, subd. 8 or as a result of an administrative conference pursuant to Minnesota Statutes § 176.106, the commissioner shall notify all interested parties of the modification and the reasons for the modification." to avoid repeating the statutory language requiring the Commissioner to review, approve, modify or reject rehabilitation plans and to clarify that notice will be given. The criteria for when to amend are set out at Minnesota Rules Part 5220.0510, subp. 1. This change is not substantial because it only eliminates language that exists in the statute and makes explicit procedures which will be followed.

   At subpart 6 "The commissioner may initiate and order closure of rehabilitation services for good cause after notice to the parties . . . and opportunity . . . to submit information. The submission may be written or at an in-person meeting at the discretion of the commissioner," is changed to "If the commissioner initiates the termination of rehabilitation services pursuant to Minnesota Statutes § 176.102, subd. 6 or through an administrative conference pursuant to Minnesota Statutes § 176.106, all interested parties shall be provided written notice of the proposed decision and an opportunity to be heard either in person or through the submission of written information", to avoid repeating the statutory standard of "good cause" for termination of rehabilitation services. Where the Commissioner does initiate such closure the opportunity to be heard is detailed. This change is not substantial for the same reasons as the change to subp. 4 of this Part.

4. At Minnesota Rules Part 5220.0710, subp. 4 the end of the subpart, "taking reasonable care to ensure..." is deleted because of the lack of jurisdiction to enforce our law in another state. Rather, compliance with Minnesota law will be ensured through the Department's regulatory authority over the assigned qualified rehabilitation consultant. This change is not substantial because jurisdiction to enforce directly what takes place in the other state never did exist. This change merely eliminates potential confusion about that.

5. At Minnesota Rules Part 5220.0850, subp. 4 ". . . The commissioner may also request additional information from any of the parties, confer with the parties, recommend modifications, and otherwise seek agreement about the plan", is changed to "The plan approval process shall be subject to the procedures set forth under Minnesota Rules Part 5220.0410, subp. 6" for the same reasons that similar language was changed at Minnesota Rules Part 5220.0410, subp. 6. This change is not substantial because it makes explicit the procedures which will be in the Commissioner's review function.

6. At Minnesota Rules Part 5220.0950, subp. 1 the word "substantially" is deleted to clarify that the information set out in the rule is all required. This change is not substantial because it clarifies that all this information is required.

At subpart 2, "The commissioner may refer the dispute to a compensation judge . . . or . . . determine the issue, . . . The commissioner may request that the parties meet and confer informally before a conference. The commissioner may order a medical examination and rehabilitation evaluation at the expense of the insurer before a determination." is changed to read "If the commissioner refers a dispute to a compensation judge or, based on the written submission of the parties, determines the dispute or schedules an administrative conference to determine the dispute, all parties shall be served with written notice of that action. The commissioner may require the parties to meet and confer informally prior to a scheduled administrative conference if the facts and issues involved show that a meeting would facilitate resolution of the dispute." in order to not simply repeat the statutory provisions giving the Commissioner discretion in referral and resolving of disputes and in order to clarify when an informal conference would be required. The question of unambiguous authority for such orders was the basis for the change in the last sentence. This change is not substantial because it eliminates language that exists in the statue or for which authority is unclear, and makes explicit procedures which would have been followed.

At subpart 3, "The commissioner may independently determine that issues exist about an employee's entitlement to rehabilitation, the appropriateness of a proposed plan, or any other disputes involving rehabilitation. The commissioner may initiate the dispute resolution process under subpart 2 . . .", is changed to "If the commissioner independently determines that issues exist regarding an employee's entitlement to rehabilitation or the appropriateness of a proposed plan, or otherwise initiates proceedings before a compensation judge or through an administrative conference, written notice of the issues in dispute shall be served upon the parties". In order to avoid repeating the authority that already exists in the statue these sentences are reworded. This change is not substantial because it eliminates repeat of statute provisions.

At subpart 4 the clarification of which commissioner decisions lead to a formal hearing at the Office of Administrative Hearings is needed, and that procedure is added. This change is not substantial because it is not a change at all as this rule's dispute section refers only to disputes under 176.106, but spelling out that detail is thought to be helpful.

7. Because of concerns about what standards would govern when conversion could occur and how settlements would be made at Minnesota Rules Part 5220.1200 the first sentence which had been deleted is reinstated. The sentence of concern, the second sentence, is deleted and the third sentence, "When . . . dispute exists . . . the possible right to rehabilitation services may be converted into cash by settlement agreement . . .", is changed to read "However, if a good faith dispute exists regarding entitlement to rehabilitation services, that dispute may be converted into cash by settlement agreement between the parties pursuant to the provisions of Minnesota Statutes § 176.521". This change is not substantial because what is allowed or prohibited under the statue is not changed, but the amendment cites the governing statute.

8. At Minnesota Rules Part 5220.1400, subp. 3 "Substantiated complaints about professional activities or services . . . are grounds for denial of registration . . ., discipline . . . or delay of completion of internship", is changed to read "The failure to comply with the standards of performance and professional conduct contained in Minnesota Rules Parts 5220.1800 and 5220.1801 or the violation of any of the provisions of Minnesota Statutes Chapter 176 or Minnesota Rules Parts 5220.0100 to 5220.1910 or orders issued under the statutes or rules constitute grounds for . . . denial of registration . . . discipline . . . or delay of completion of internship." in order

to add detail for those activities that would constitute grounds for delayed internship, denial of registration or discipline. Several minor amendments are added to make the provision more understandable. This change is not substantial because it merely adds detail for the reader rather than changing what the standard will be.

9. At Minnesota Rules Part 5220.1801, subp. 1 the language "on a basis agreed upon among the parties and as required by the commissioner." is deleted as too vague to provide much guidance to the parties. This change is not substantial because the language gave little guidance anyway such that its deletion is not a change.

10. At Minnesota Rules Part 5220.1802, subp. 5, "A rehabilitation provider must comply with Minnesota Statutes Chapter 175 and 176 and all other applicable data privacy laws", is amended to read "Data privacy. A rehabilitation provider must comply with Minnesota Statutes Chapter 175 and 176, the rules adopted under those chapters, 42 CFR Part 2, Minnesota Statutes Chapter 13, Minnesota Statutes § 129A.05, 144.335, 144.651, 147.091, 181.954, 181.960, 268A.05, 363.03, subd. 1a, and 595.02 as applicable, and all other applicable data privacy laws", in order to detail those data privacy provisions that the Department is aware of as potentially being applicable. This change is not substantial because it merely gives more details.

11. At Minnesota Rules Part 5220.1803, subp. 5, "Files must be maintained by the qualified rehabilitation consultant firm for five years from the date of file closure," is amended to read, "For the purpose of Minnesota Statutes Chapter 176 and Minnesota Rules Parts 5220.0100 to 5220.1910, individual employee files containing all required rehabilitation reports and required progress records must be maintained by the qualified rehabilitation consultant firm for five years from the date of file closure. This requirement is in addition to and does not otherwise change or alter any other data retention time period required by law". This change is not substantial because it only clarifies the rule's applicability rather than making any change of substance.

12. At Minnesota Rules Part 5220.1806, subp. 2 "For the purpose of determining compliance with laws, rules or orders", is deleted and "may" is changed to "shall" in order to more closely follow the statute's requirement that the commissioner monitor and supervise rehabilitation services. This change is not substantial because the new language clarifies the Department's obligation as more in line with the statute. There is no substantial change.

Based on the comments and evidence in the record before the agency, I find the following:

1. That the Department has complied with all procedural requirements of law or rule in adopting the proposed amendments.

2. That the Department has acted within its statutory authority in adopting these proposed amendments. (8)

3. (9) That the above captioned amendments are needed and reasonable.

NOW, THEREFORE, IT IS ORDERED that the rule identified as Minnesota Rules Part 5220.0100 through 5220.1910, 5220.2650 and 5220.2780 as modified is adopted this 18 day of April, 1992, pursuant to authority vested in me by Minnesota Statutes, section 176.102 and 176.83.

John B. Lennes, Jr.
Commissioner

DEPARTMENT: Office of the Attorney General

STATE OF MINNESOTA

Made changes pursuant to memo

OFFICE MEMORANDUM

DATE: January 16, 1992

TO: Mary Miller
Attorney
Department Of Labor and Industry

FROM: Mary Jo Murray
Special Assistant
Attorney General

PHONE: 296-3258

SUBJECT: Worker's Compensation Rehabilitation Rules
Parts 5220.0100 to 5220.1910

None of the changes they made pursuant to your memo are addressed in the findings of fact Disregard

The above-referenced rules have not been approved by the Attorney General for several reasons. First, many of the subparts (described below) permit the Commissioner unbridled discretion in making certain decisions. When a rule is vague and allows officials to act at their own discretion, the risk of inconsistent application of the rule exists. Secondly, in conjuction with the major defects in the rules, the Statement of Need and Reasonableness does not explain the rules or justify the requirements contained in the rules; in most cases, the rule is simply restated.

With respect to the discretionary nature of the subparts discussed below, a rule which includes no standards, must, necessarily, be deemed legally infirm. Specific standards are necessary to give interested person notice of requirements and criteria. In addition, specific standards are important both as a guide in the administration of the rule and as a basis for determining whether the administering official acted in an arbitrary or capricious manner.

In order to overcome this defect, a rule must set for the criteria or standards which the Commissioner will use. The following parts of the Worker's Compensation rules contain unacceptable discretionary language:

✓ 5220.0120, subp. 5. "The commissioner may permit a waiver for periods longer than 60 days if good cause is shown." Changed but not in findings of fact

Nothing describes what standards the Commissioner would use to determine what constituted good cause. The person trying to demonstrate good cause is not provided with information as to what s/he needs to show, and the commissioner is not provided with any standards to determine whether good cause exists.

✓ 5220.0410, subp. 6 (p. 16 lines 28-33). "The commissioner may at any time request additional information, confer with the parties, recommend modifications, and otherwise seek agreement about the plan. The commissioner may approve or modify the plan, schedule an administrative conference, or refer the matter to a compensation judge to approve or modify the plan."

Changed but not addressed in findings

There are no standards governing when the commissioner should request additional information, under what circumstances a conference with the parties should take place, or what modification should be recommended under what circumstances. There are no standards governing under what circumstances the commissioner must modify the plan, schedule an administrative conference or when the matter must be referred to a compensation judge.

This subpart typifies what is meant by "unbridled discretion" on the part of the commissioner.

5220.0510, subp. 4. "At the discretion of the commissioner, the commissioner may amend the rehabilitation plan pursuant to Minn. Stat. sections §176.102 and §176.106 and the rules that implement those sections."

changed not adopted 4 endings or in part

This subpart provides complete discretion as to when the commissioner may amend a rehabilitation plan. The statutory sections to not appear to provide the commissioner with the complete discretion contemplated by this subpart.

5220.0510, subp. 6. "The commissioner may initiate and order closure of rehabilitation services for good cause after notice to the parties...and opportunity to submit information. The submission may be written or at an in-person meeting at the discretion of the commissioner."

Nothing indicates what standards must be met to determine "good cause." Furthermore, it is not clear whether the submission is to be written unless the commissioner allows and in-person meeting, or if the determination is made by the commissioner on a case by case basis, and what standards are used to determine whether the submission will be in-person or written. For example, the section would allow the commissioner discretion to order an in-person meeting for someone who did not have the ability to attend an in-person meeting.

5220.0850. The commissioner may also request additional information from any of the parties..."

Again, this does not specify under what circumstances the commissioner must request more information.

5220.0950, subp. 1. The form must contain "substantially all of the following..."

It must be clear what information must appear on the form. "Substantially all" is not clear as to what may be omitted and allows an arbitrary decision to be made as to whether the information, while not complete, is acceptable.

deleted the word substantially so now you need everything

5220.0950, subp. 2. "The commissioner may refer the dispute to a compensation judge or determine the issue, may request that the parties meet,...may order a medical exam..."

Again, it is unclear under what circumstances the commissioner must take these actions.

5220.0950, subp. 3. "The commissioner may independently determine that issues exist about an employee's entitlement to rehabilitation..."

This clearly provides the commissioner with free discretion to make determinations. It must specify under what circumstances the commissioner must make this type of determination and what standards will govern the decision of the commissioner.

5220.1200, line 15: "...however, the possible right to rehabilitation may be converted into cash by settlement agreement..."

It is not clear what standards will govern when a right to rehabilitation can be converted into a cash settlement, or how cash settlements will be made fair uniform.

5220.1400, p. ~~36~~ 31 line 26. "Substantiated complaints." 29

Although this appears elsewhere in the rule and has been previously approved, it is not clear what constitutes "substantiated" or who determines if the substantiation is adequate on what basis.

5220.1801, p. ~~44~~ 40 line ~~3-8~~ 6-7. "The qualified rehabilitation consultant shall assess progress... and as required by the commissioner."

deleted among parties and Comm. now you don't know who wants the plan dayeth

It must be made clear under what circumstances the commissioner will require progress reports.

5220.1806, p. ~~55~~ 51, line ~~29~~ 10 & 11: "For the purpose of determining compliance with laws, rules or orders, the commissioner may review the activities of rehabilitation providers."

While this goal is perfectly acceptable, it allows the commissioner to arbitrarily decide who will be reviewed when. Standards for when this type of review should take place need to be added.

5220.1900, p. 57 line 27: The commissioner may require uniform billing on a prescribed form and may contact the parties to discuss services and costs.

Again, it must be clear under what circumstances uniform billing will be required and under what circumstances services and costs will be discussed.

For the rules to be approved, the discretionary language should be deleted or specific criteria included upon which the Commissioner will exercise discretion.

While the rules are not being rejected on the grounds that the Statement of Need and Reasonableness (SNR) was insufficient, the problem with the discretionary nature of these rules is severely compounded by the inadequacy or complete lack of explanations in the SNR. Minn. Rules pt. 2010.0700 prohibits statements in the SNR which simply re-state the rule or simply state what the rule provides.

Not every section of the rule (or deletion of prior sections) was separately discussed in the SNR. (See, for example, 5220.1500, at pages 39-41, which is completely removed without explanation or reference.) The SNR in most cases did not explain why a subpart was necessary or the purpose for each part of the rule. This was

especially true in the sections governing qualified rehabilitation consultants. This section has considerable impact upon these consultants, and the SNR should have thoroughly discussed why the criterion were selected. In future rulemakings, please note that the SNR should justify or explain the subparts of the rule.

I would like to mention three other sections of the rule which should be reviewed. 5220.0710, subp. 5, p.22, lines 21-26 discusses services provided outside of Minnesota. The Minnesota rehabilitation consultant must take reasonable care to ensure the out of state services are rendered according to Minnesota Worker's Compensation laws. It is not possible for Minnesota to enforce its laws and rules on another state's services. The only exception might be if you are relying on federal law or rule. Otherwise, this provision is unacceptable as written.

On page 46 subd 5, the rules address data privacy. However, the rule does not reference Minn. Stat §13.47, which may cover some of this. Please check to determine that all necessary references to data privacy laws have been included.

Finally, with respect to the provision in 5220.1803, at p.53, please double check to confirm that a 5-year record retention period is correct. Minn. Stat. §§138.163 and 138.17 govern the retention of government records.

This rule may be resubmitted to the Attorney General any time prior to May 7, 1992 in order to be within the 180 day time line set forth in Minn. Stat. §14.26. The procedure detailed in Minn. Rules pt. 2010.13 must be followed. A copy of that rule is enclosed. When you submit the rule to our office, please indicate that it is a resubmission and refer to our file number 1886. If you have any questions, please contact me.

cc: Jon Murphy, Special Assistant Attorney General
Maryanne Hruby, Executive Director, LCRAR
William Brown, Chief Administrative Law Judge, OAH
Paul Marinac, Assistant Deputy Revisor for Rules,
Revisor's Office

Enclosure

order of withdrawal of the rule from review must be submitted to the attorney general. The written order must state the date of withdrawal and be signed by a person authorized to adopt the rule or sign the findings of fact, conclusions, and order adopting the rule.

Statutory Authority: *MS s 14.06; 14.09*

History: *11 SR 618*

2010.1200 DISAPPROVAL.

If a rule is disapproved, the attorney general must state in writing the reasons for disapproval and make recommendations to overcome the deficiencies. The statement of the reasons for disapproval must be sent to the agency, the chief administrative law judge, the legislative commission to review administrative rules, the revisor of statutes, and persons who requested to receive a copy of the decision. Upon disapproval, the review period terminates and the rule must neither be filed in the office of the secretary of state nor published unless the rule is resubmitted and approved upon resubmission.

Statutory Authority: *MS s 14.06; 14.09*

History: *11 SR 618*

2010.1300 RESUBMISSION.

Subpart 1. **Resubmission.** To resubmit a rule which was withdrawn or disapproved by the attorney general, the following documents must be submitted:

A. A supplemental findings of fact, conclusions, and order adopting the rule. The order must be signed by a person authorized to adopt the rule or authorized to sign the findings of fact, conclusion, and order adopting the rule. If any modifications were made to the rule since the rule was withdrawn or disapproved, findings of facts and conclusions must be set forth supporting the reasons for the changes and explain why the changes do not constitute substantial changes.

B. A supplemental certificate of the multimember agency's resolution if:

(1) the agency is a multimember agency as provided in Minnesota Statutes, section 15.0597, subdivision 1a;

(2) modifications were made to the rule since the rule was withdrawn or disapproved; and

(3) the certificate of the agency's resolution submitted in accordance with part 2010.0300, item J, or 2010.0400, item I does not authorize the modification by the person who signed the supplemental findings of fact, conclusions, and order. The supplemental certificate of the agency's resolution must be in accordance with part 2010.0300, item J or 2010.0400, item I.

C. If any modifications were made to the rule as adopted since the rule was withdrawn or disapproved, four copies of the rule as adopted with the modifications reflected and approved as to form by the revisor of statutes.

D. A new notice of submission of the rule to the attorney general mailed to any persons who requested notification pursuant to Minnesota Statutes, section 14.26 or 14.32. The notice of submission to the attorney general must comply with part 2010.0300, item N or 2010.0400, item M.

E. The affidavit of mailing for the notice of submission of the rule to the attorney general, if applicable. The affidavit must comply with part 2010.0300, item O or 2010.0400, item N.

F. Any other documents necessary to demonstrate that the procedural or substantive deficiencies have been remedied.

Subp. 2. **Resubmission review time period.** The attorney general review period for resubmission is the same as for the initial submission of the rule with one exception. If the resubmitted rule was adopted without a public hearing and does not raise significant new legal issues, the eight-day minimum review period does not apply. For the general review period, see part 2010.0800.

Department of Labor and Industry

Adopted Permanent Rules Relating to the Rehabilitation of Persons with Work-Related Injuries

Rules as Adopted

REHABILITATION OF PERSONS WITH WORK-RELATED INJURIES INCLUDING REQUIREMENTS TO BE A QUALIFIED REHABILITATION CONSULTANT OR REGISTERED REHABILITATION VENDOR

5220.0100 DEFINITIONS.

Subpart 1. **Scope.** For the purposes of parts 5220.0100 to 5220.1910, the following terms have the meanings given them.

Subp. 2. **Approved claims handler.** "Approved claims handler" means a claims handler who meets the requirements of part 5220.1910.

Subp. 3. **Assigned qualified rehabilitation consultant.** "Assigned qualified rehabilitation consultant" means the qualified rehabilitation consultant responsible for consultation, development, and implementation of the rehabilitation plan, whether the qualified rehabilitation consultant is:

A. selected by the insurer if the employee does not choose;

B. chosen by the employee if the employee exercises a choice under part 5220.0710, subpart 1; or

C. determined by a documented agreement of the parties or by the commissioner or a compensation judge in the event of a dispute.

Subp. 4. **Commissioner.** "Commissioner" means commissioner of the Department of Labor and Industry.

Subp. 5. **Department.** "Department" means the Department of Labor and Industry.

Subp. 9. **Employer.** "Employer" means the employer at the time of injury of qualified employees, unless the context clearly indicates otherwise.

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Subp. 10. **Formal course of study.** "Formal course of study" means a program described by a published syllabus with established time parameters for completion which results in a diploma or other certification that is accepted as a credential of basic competence in a vocation.

Subp. 12. **Identifying information.** "Identifying information" refers to the name, current mailing address, and current phone number of a person or entity. For employees, identifying information also includes the department file number and date of injury. For employers and insurers, identifying information also includes the name of the individual to contact about the claim. For rehabilitation providers, identifying information includes the rehabilitation provider registration number.

Subp. 12a. **Insurer.** "Insurer" includes self-insured employers.

Subp. 13. **Job analysis.** "Job analysis" means a systematic study that reports work activity as follows:

A. what the worker does in the job being analyzed in relation to data, people, and things;

B. what methods and techniques are employed by the worker;

C. what machines, tools, equipment, and work aids are used;

D. what materials, products, subject matter, or services result; and

E. what traits are required of the worker.

Depending upon the purpose for which the analysis is completed, a job analysis may describe a group of positions that are sufficiently alike to justify being covered by a single analysis or, if necessary, may describe a position that is the total work assignment of a single worker.

Subp. 16. **Job development.** "Job development" means systematic contact with prospective employers resulting in opportunities for interviews and employment that might not otherwise have existed. Job development facilitates a

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prospective employer's consideration of a qualified employee for employment.

Subp. 17. **Job modification.** "Job modification" means altering the work environment to accommodate physical or mental limitations by making changes in equipment, in the methods of completing tasks, or in job duties.

Subp. 18. **Job placement.** "Job placement" means activities that support a qualified employee's search for work, including the identification of job leads, arranging for job interviews, the preparation of a client to conduct an effective job search, and communication of information about, but not limited to, the labor market, programs or laws offering employment incentives and the qualified employee's physical limitations and capabilities as permitted by data privacy laws.

Subp. 19. **Job seeking skills training.** "Job seeking skills training" means the formal teaching of independent work search skills including, but not limited to, the completion of applications, preparation of resumes, effectiveness in job interviews, and techniques for obtaining job leads.

Subp. 20. **Medical management.** "Medical management" by a qualified rehabilitation consultant means rehabilitation services that assist communication of information among parties about the employee's medical condition and treatment, and rehabilitation services that coordinate the employee's medical treatment with the employee's vocational rehabilitation services. Medical management refers only to those rehabilitation services necessary to facilitate the employee's return to work.

Subp. 21. **On-the-job training.** "On-the-job training" means training while employed at a workplace where the employee receives instruction from an experienced worker and which is likely to result in employment with the on-the-job training employer upon its completion.

Subp. 22. **Qualified employee.** "Qualified employee" means an employee who, because of the effects of a work-related injury or disease, whether or not combined with the effects of a prior

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injury or disability:

A. is permanently precluded or is likely to be precluded from engaging in the usual and customary occupation or in the job the individual held at the time of injury; and

B. can reasonably be expected to return to suitable gainful employment through the provision of rehabilitation services.

Subp. 23. **Qualified rehabilitation consultant.** "Qualified rehabilitation consultant" means a person who is professionally trained and experienced and who is registered by the commissioner to provide an eligibility consultation and to develop and implement an appropriate plan of rehabilitation services for an employee entitled to rehabilitation benefits under Minnesota Statutes, section 176.102.

Subp. 6. [See repealer.]

Subp. 7. [See repealer.]

Subp. 8. [See repealer.]

Subp. 24. **Qualified rehabilitation consultant firm.** "Qualified rehabilitation consultant firm" means a public or private business, whether organized as a sole proprietorship, partnership, association, corporation, or other form, which is held out to the public as a business entity engaged in rehabilitation consultation and services.

Subp. 25. **Registered rehabilitation vendor.** "Registered rehabilitation vendor" means a public or private entity registered by the commissioner and existing wholly or in part for the provision of rehabilitation services in accord with an approved rehabilitation plan.

Subp. 26. **Rehabilitation consultation.** "Rehabilitation consultation" means one or both of the following consistent with Minnesota Statutes, section 176.102, subdivision 4, and parts 5220.0110 to 5220.0130.

A. "Claim screening consultation" means an assessment of the likelihood that an injured employee will uneventfully return to work without rehabilitation services. A claim screening consultation uses a report which refers the employee

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for an eligibility consultation, rehabilitation services, or both, or requests a waiver of rehabilitation services.

B. "Eligibility consultation" means a meeting of the employee and assigned qualified rehabilitation consultant to determine whether the employee is a qualified employee, as defined in subpart 22, to receive rehabilitation services, as defined in subpart 29.

Subp. 27. **Rehabilitation plan.** "Rehabilitation plan" means a written document completed by the assigned qualified rehabilitation consultant on a form prescribed by the commissioner describing a vocational goal and the specific services by which the qualified employee will be returned to suitable gainful employment.

Subp. 28. **Rehabilitation provider.** "Rehabilitation provider" means the following four categories of rehabilitation professionals:

A. qualified rehabilitation consultants;

B. qualified rehabilitation consultant interns;

C. qualified rehabilitation consultant firms; and

D. registered rehabilitation vendors.

Subp. 29. **Rehabilitation services.** "Rehabilitation services" means a program of vocational rehabilitation, including medical management, designed to return an individual to work consistent with Minnesota Statutes, section 176.102, subdivision 1. The program begins with the first in-person visit of the employee by the assigned qualified rehabilitation consultant, including a visit for purposes of an eligibility consultation. The program consists of the sequential delivery and coordination of services by rehabilitation providers under an individualized plan. Specific services under this program may include, but are not limited to, vocational evaluation, counseling, job analysis, job modification, job development, job placement, labor market survey, vocational testing, transferable skills analysis, work adjustment, job seeking skills training, on-the-job training, and retraining.

Subp. 10a. [See repealer.]

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Subp. 11. [See repealer.]

Subp. 30. **Required progress record.** "Required progress record" means a record maintained by the rehabilitation provider that documents the rehabilitation provider's services and the employee's rehabilitation progress. The record shall include all case notes and written reports whether or not they are submitted to the commissioner and all correspondence received or prepared by the rehabilitation provider about an employee's rehabilitation.

Subp. 31. **Required rehabilitation report.** "Required rehabilitation report" means the claim screening consultation report, the eligibility consultation report and any other report that must be submitted to the commissioner whenever a rehabilitation plan is initiated, proposed to be amended, suspended or closed, or when a change of assigned qualified rehabilitation consultant occurs on a case.

Subp. 32. **Retraining plan.** "Retraining plan" means an individualized written plan describing the formal course of study through which the goal of the rehabilitation plan may be accomplished. Adult basic education or remedial programs may be a component of a retraining plan but do not constitute retraining in and of themselves.

Subp. 33. **Review panel.** "Review panel" means the rehabilitation review panel created by Minnesota Statutes, section 176.102, subdivision 3.

Subp. 34. **Suitable gainful employment.** "Suitable gainful employment" means employment which is reasonably attainable and which offers an opportunity to restore the injured employee as soon as possible and as nearly as possible to employment which produces an economic status as close as possible to that which the employee would have enjoyed without disability. Consideration shall be given to the employee's former employment and the employee's qualifications, including, but not limited to, the employee's age, education, previous work history, interests, and skills.

Subp. 14. [See repealer.]

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Subp. 15. [See repealer.]

Subp. 35. **Transferable skills analysis.** "Transferable skills analysis" means identifying and comparing skills learned in previous vocational or avocational activities with those required by occupations which are within the qualified employee's physical and mental capabilities.

Subp. 36. **Vocational evaluation.** "Vocational evaluation" means the comprehensive assessment of vocational aptitudes and potential, using information about a qualified employee's past history, medical and psychological status, and information from appropriate vocational testing. The testing may use paper and pencil instruments, work samples, simulated work stations, or assessment in a real work environment.

Subp. 37. **Vocational rehabilitation.** "Vocational rehabilitation" means the sequential delivery and coordination of services by rehabilitation providers under a rehabilitation plan to achieve the goal of suitable gainful employment.

Subp. 38. **Vocational testing.** "Vocational testing" means the measurement of vocational interests, aptitudes, and ability using standardized, professionally accepted psychometric procedures.

Subp. 39. **Work adjustment.** "Work adjustment" means the use of real or simulated work activity under close supervision at a rehabilitation facility or other work setting to develop appropriate work behaviors, attitudes, or personal characteristics.

Subp. 40. **Work hardening.** "Work hardening" means a physical conditioning program in a clinical setting designed to develop strength and tolerance for work or a schedule of graduated resumption of employment consistent with the employee's physical condition.

5220.0105 INCORPORATION BY REFERENCE.

The following documents are incorporated by reference only to the extent specifically referenced in parts 5220.0100 to 5220.1910. The documents in items A and B are not subject to

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frequent change, although new editions may occasionally be published. The documents in item C are revised annually. All documents are available through the Minitex interlibrary loan system.

A. The Dictionary of Occupational Titles, fourth edition, 1977, United States Department of Labor, is available for purchase through the Superintendent of Documents, United States Government Printing Office, Washington, DC 20402. A revised edition is planned for late 1991.

B. The Guide to Job Analysis, March 1982, is published by and available for purchase through the Materials Development Center, Stout Vocational Rehabilitation Institute, University of Wisconsin-Stout, Menomonie, WI 54751.

C. The Commission on Accreditation of Rehabilitation Facilities (CARF) Directory of Accredited Organizations Serving People With Disabilities and its Standards Manual for Organizations Serving People With Disabilities, 1991, are revised annually and available for purchase at 101 North Wilmot Road, Suite 500, Tucson, Arizona 85711.

5220.0110 REHABILITATION CONSULTATION; CLAIM SCREENING CONSULTATION.

Subpart 1. **Purpose.** A claim screening consultation is used to assess whether an employee will return to work in the near future and to report the status of the employee with respect to rehabilitation referral.

Subp. 2. **Criteria.** An insurer shall provide a claim screening consultation so that the entire rehabilitation consultation takes place no later than five days after an employee has accumulated 60 days of lost work time due to a work injury. If an employee has a work injury to the back, the entire rehabilitation consultation shall be provided no later than five days after an employee has accumulated 30 days of lost work time. The claim screening consultation shall be provided before the lost work time requirements above in cases where an employer receives information that indicates that the employee

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will be unable to return to work at the job held at the time of injury. The claim screening consultation shall then be provided within five days of receipt of the information.

Subp. 3. **Procedure and documentation.** The insurer, in consultation with the employee and the medical provider, shall make an assessment of the need for rehabilitation and indicate on the claim screening consultation report, the rehabilitation referral status of the employee as listed in item C. The claim screening consultation and supplementary information shall be documented by the insurer on a claim screening consultation report form prescribed by the commissioner.

A. Time for filing. The claim screening consultation report shall be filed with the commissioner and mailed to the employee within five days of the claim screening consultation.

B. Contents. The claim screening consultation report shall contain substantially the following:

(1) identifying information on the employee, employer, and insurer;

(2) information describing the employee's physical limitations and capabilities and medical status;

(3) a description of the job held at time of injury, including the physical demands of the job; and

(4) information about the likelihood of the employee's return to the preinjury job in the absence of a rehabilitation plan.

C. Recommendations. The claim screening consultation report shall indicate the rehabilitation referral status of the employee by:

(1) referring the employee to a qualified rehabilitation consultant or to the employee's selection of a qualified rehabilitation consultant, if one is selected by the employee, to provide eligibility consultation;

(2) referring the employee to a qualified rehabilitation consultant or to the employee's selection of a qualified rehabilitation consultant, if one is selected by the employee, to begin rehabilitation services;

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(3) requesting to waive referral for eligibility consultation and rehabilitation services, if the employee meets the criteria for a waiver of rehabilitation services under part 5220.0120, subpart 2; or

(4) indicating if there exists a dispute about medical causation or whether the injury arose out of and in the course and scope of employment, so that the commissioner may make appropriate referral under Minnesota Statutes, section 176.104, subdivision 1.

D. Objection or waiver. The employee may object to the insurer's recommendation or request a waiver of consultation and rehabilitation services by filing a rehabilitation request for assistance with the commissioner.

Subp. 4. **Commissioner's authority.** If a claim screening consultation report is not filed according to this part, the commissioner may refer the employee for an eligibility consultation by a qualified rehabilitation consultant at the insurer's expense according to Minnesota Statutes, section 176.102, subdivision 4, paragraph (b).

~~Subp. 5. **Penalties.** The commissioner or compensation judge may assess a penalty of $300 against an insurer who fails to provide a rehabilitation consultation to an employee who meets any of the criteria in subpart 2. The insurer may object to the penalty as provided in Minnesota Statutes, section 176.84 and part 5220.2870.~~

5220.0120 WAIVER OF ELIGIBILITY CONSULTATION AND REHABILITATION SERVICES.

Subpart 1. **Purpose.** The rehabilitation waiver is used where appropriate to defer the initiation of eligibility consultation and rehabilitation services.

Subp. 2. **Criteria.** A rehabilitation waiver may be requested when (1) the employee meets the lost time requirement for a rehabilitation consultation, but there is a reasonable expectation that the employee will return to the preinjury job in the near future without rehabilitation services, or (2)

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information indicates that the employee would not benefit at that time from rehabilitation services.

Subp. 3. **Procedure and documentation.** Provision for a waiver request is included in the claim screening consultation report. Any waiver requested on the claim screening consultation report shall be according to the requirements of parts 5220.0110 to 5220.0130.

Subp. 4. **Effective period of waiver.** A waiver of rehabilitation services is effective for 60 days from the date of the commissioner's receipt of the request for waiver unless the commissioner denies the request.

Subp. 5. **Renewal of waiver.** If the employee does not return to work during the waiver period, the insurer shall, at the expiration of the waiver period, make a new determination and file another claim screening consultation report referring the employee for an eligibility consultation or requesting renewal of the waiver. The approval of a renewal of waiver requires a showing of the existence of one of the criteria in subpart 2. The commissioner may permit a waiver for periods longer than 60 days if ~~good-cause-is-shown~~ the criteria in subpart 2 will exist for a period longer than 60 days.

5220.0130 REHABILITATION CONSULTATION; ELIGIBILITY CONSULTATION.

Subpart 1. **Purpose.** An eligibility consultation is used to determine whether an employee is a qualified employee as defined by part 5220.0100, subpart 22, and, if so, to begin the development of a rehabilitation plan with the employee.

Subp. 2. **Criteria.** An insurer shall provide an eligibility consultation by a qualified rehabilitation consultant if the criteria of part 5220.0110, subpart 2, have been met, and:

A. a waiver has not been requested;

B. a request for a waiver has been denied;

C. there is no longer a basis for a waiver;

D. a waiver period has expired without renewal; or

E. it is ordered by the commissioner.

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Subp. 3. **Consultation.** The procedure and documentation for an eligibility consultation are contained in items A to E.

A. Time for referral. When an insurer refers an employee to a qualified rehabilitation consultant for an eligibility consultation or rehabilitation services, the insurer shall make that referral at the same time the claim screening consultation report is filed.

The claim screening consultation report and a copy of the first report of injury shall be sent by the insurer to the assigned qualified rehabilitation consultant for the eligibility consultation.

B. Actions. During the first in-person meeting with the employee for purposes of completing the eligibility consultation, the assigned qualified rehabilitation consultation shall:

(1) meet with the employee and, including those items in part 5220.1803, subparts 1 and 1a, explain the employee's rights and all responsibilities regarding rehabilitation, including the employee's right to choose qualified rehabilitation consultants; and

(2) gather information which will permit a determination of the employee's eligibility for rehabilitation.

C. Contents of report. The eligibility consultation and supplementary information shall be documented by the assigned qualified rehabilitation consultant on an eligibility consultation report form prescribed by the commissioner containing substantially the following:

(1) identifying information of the employee, employer, insurer, and qualified rehabilitation consultant;

(2) the eligibility consultation date;

(3) the employee's work status;

(4) information indicating the presence of factors that affect the employee's ability to return to the preinjury job, including the identification of barriers to successful rehabilitation; and

(5) a professional opinion about whether the

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employee can reasonably be expected to return to suitable gainful employment through the provision of rehabilitation services at this time and the basis for that opinion.

D. Time for filing. An eligibility consultation report shall be completed by the assigned qualified rehabilitation consultant in all cases. The assigned qualified rehabilitation consultant shall file the eligibility consultation report within 30 days of the first in-person meeting with the employee and concurrently mail a copy to the insurer and the employee.

E. Employee's objection. The employee may object to the qualified rehabilitation consultant's recommendations by filing a rehabilitation request for assistance with the commissioner.

~~Subp. 4. Penalty. The commissioner or compensation judge may assess a penalty of $300 against an insurer who fails to provide a rehabilitation eligibility consultation to an employee who meets the criteria in part 5220.0130, subpart 2, unless the commissioner or a compensation judge determines the eligibility consultation is not required. The insurer may object to the penalty as provided in Minnesota Statutes, section 176.84, and part 5220.2870.~~

5220.0410 REHABILITATION PLAN.

Subpart 1. **Purpose.** The purpose of the rehabilitation plan is to communicate to all interested parties the vocational goal, the rehabilitation services, and the projected amounts of time and money that will be needed to achieve the vocational goal.

Subp. 2. **Requirements.** If an employee is a qualified employee under part 5220.0100, subpart 22, the assigned qualified rehabilitation consultant shall, in consultation with the parties, develop, record, and file a rehabilitation plan on the form prescribed by the commissioner containing substantially the following:

A. information identifying the employee, employer,

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insurer, and assigned qualified rehabilitation consultant;

B. the employee's occupation at time of injury, the Dictionary of Occupational Titles, which is incorporated by reference in part 5220.0105, code for that occupation, and the vocational goal of the rehabilitation plan;

C. itemization of the rehabilitation services to be provided including any vendor names, anticipated dates of service initiation, anticipated service completion dates, estimated service costs, and projected total plan cost and plan completion date;

D. a summary of planned treatment or physical rehabilitation, including the treating doctor's name, the employee's diagnoses and physical restrictions, relevant medical reports documenting the restrictions or the estimated date on which restrictions will be available, other complicating factors to be considered and methods of dealing with those factors;

E. the dated signatures of the employee, insurer, and assigned qualified rehabilitation consultant if the parties are in agreement with the plan;

F. employee comments, if any; and

G. instructions to the parties that if they disagree with the plan they have 21 days from their receipt of the proposed plan to resolve the disagreement or object to the proposed plan, and that an objection must be sent to the Department of Labor and Industry for resolution.

Authoritative references for describing a vocational history and a vocational goal in the plan, and for analyzing jobs are the Dictionary of Occupational Titles and the Guide to Job Analysis. These documents are incorporated by reference in part 5220.0105.

Subp. 3. **Process.** Upon preparation of the proposed plan, and within 60 days of the first in-person contact between the assigned qualified rehabilitation consultant and the employee, the qualified rehabilitation consultant shall provide to all parties a copy of the proposed rehabilitation plan on a form prescribed by the commissioner.

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Subp. 4. **Party's response.** Upon receipt of the proposed rehabilitation plan, each party must, within 21 days, either:

A. sign the plan signifying agreement and return it to the assigned qualified rehabilitation consultant; or

B. promptly notify the assigned qualified rehabilitation consultant of any objection to the plan and work with the assigned qualified rehabilitation consultant to resolve the objection by agreement.

However, if the objection is not resolved, the objecting party must file a rehabilitation request for assistance with the commissioner within 21 days of receipt of the proposed plan. These disputes will be resolved according to part 5220.0950.

If no rehabilitation request for assistance objecting to the plan is filed within 21 days of the party's receipt, the plan approval process will occur as provided in subpart 6.

Subp. 5. **Filing the plan.** The assigned qualified rehabilitation consultant shall file the rehabilitation plan and the initial evaluation narrative report, as required by part 5220.1803, subpart 5, with the commissioner within 90 days of the first in-person contact between the qualified rehabilitation consultant and the employee or within 30 days of circulation to the parties, whichever is earlier.

Subp. 6. **Plan approval.** A rehabilitation plan that all parties have signed is deemed approved by the commissioner upon filing.

If a party fails to sign the plan or fails to file a rehabilitation request for assistance objecting to the proposed plan within the 21 days specified in subpart 4, item B, it shall be presumed that the party is in substantial agreement with the plan's vocational objective and the services that are proposed. In this event the plan, with evidence of the date it was sent to each party, shall be filed with the department by the assigned qualified rehabilitation consultant and, upon receipt, the plan will be deemed approved. A party's failure to sign a plan shall not constitute a waiver of any right to subsequently dispute the plan or to dispute payment of rehabilitation fees relative to

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the plan.

~~The commissioner may at any time request additional information, confer with the parties, recommend modifications, and otherwise seek agreement about the plan. The commissioner may approve or modify the plan, schedule an administrative conference, or refer the matter to a compensation judge to approve or modify the plan.~~ In reviewing rehabilitation plans pursuant to Minnesota Statutes, section 176.102, subdivision 6, the commissioner shall notify all interested parties of the nature of any additional information necessary for the review, any recommended modifications to the plan, and any decision approving, modifying, or rejecting a plan.

If the commissioner refers issues relating to a plan to a compensation judge or an administrative conference pursuant to Minnesota Statutes, section 176.106, all parties shall be notified of that action and of all applicable related procedures.

Commencement of a plan without objection from the commissioner shall not constitute a waiver or an estoppel of the commissioner's or compensation judge's authority over the plan.

Subp. 7. **Communication with treating doctor.** Upon filing of the rehabilitation plan with the commissioner, the assigned qualified rehabilitation consultant shall, within the limitations of part 5220.1802, subpart 5, send a copy of the employee's rehabilitation plan to the employee's treating doctor.

Subp. 8. **Adherence to plan.** The services provided by rehabilitation providers shall be according to the approved rehabilitation plan.

Subp. 9. **Administration of plan.** All rehabilitation services shall be provided to an employee pursuant to Minnesota Statutes, section 176.102, as stated in the rehabilitation plan and any subsequent amendments, and shall be administered exclusively by a person or business entity registered and approved by the commissioner as a qualified rehabilitation consultant or a qualified rehabilitation consultant firm.

The assigned qualified rehabilitation consultant shall monitor registered rehabilitation vendor compliance with the

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rehabilitation plan.

Job placement services shall be provided by rehabilitation providers registered by the commissioner or a facility accredited by the National Commission on Accreditation of Rehabilitation Facilities (CARF), Tucson, Arizona. The CARF Directory of Accredited Organizations Serving People with Disabilities and its Standards Manual for Organizations Serving People with Disabilities are incorporated by reference in part 5220.0105.

Subp. 10. **Disputes.** In the case of a dispute about a rehabilitation plan, any party may file a rehabilitation request for assistance according to Minnesota Statutes, chapter 176, or part 5220.0950.

5220.0510 PLAN AMENDMENT AND CLOSURE.

Subpart 1. **Reasons for amendment.** Whenever circumstances indicate that the rehabilitation plan objectives are not likely to be achieved, proposals for plan amendment may be considered by the parties. A rehabilitation plan may be amended for good cause, including but not limited to:

A. a new or continuing physical limitation that significantly interferes with the implementation of the plan;

B. the employee is not participating effectively in the implementation of the plan;

C. a need to change the vocational goal of the rehabilitation plan;

D. the projected rehabilitation cost or duration, as stated in the rehabilitation plan, will be exceeded; or

E. the employee feels ill-suited for the type of work for which rehabilitation is being provided.

Subp. 2. **Procedure and responsibilities.** The assigned qualified rehabilitation consultant may recommend a plan amendment when reasons for amendment are present. Parties other than the assigned qualified rehabilitation consultant may propose amendments. It is the responsibility of the assigned qualified rehabilitation consultant to facilitate discussion of

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proposed amendments.

The assigned qualified rehabilitation consultant shall promptly report any agreed upon amendment of the plan on the form prescribed by the commissioner. If the parties are not able to privately resolve disagreements about plan amendment, a party may request amendment of the rehabilitation plan on a form prescribed by the commissioner and the dispute shall be resolved according to subpart 8.

Subp. 3. **Requirements.** The rehabilitation plan amendment shall be filed on the form prescribed by the commissioner. The prescribed form shall contain substantially the following:

A. identifying information on the employee, employer, insurer, and assigned qualified rehabilitation consultant;

B. the proposed amendment;

C. a rationale for the amendment;

D. if the amendment adds rehabilitation services, an itemization of each additional rehabilitation service to be provided including any registered rehabilitation vendor names, dates of initiation and completion, and estimated costs of each service;

E. if the amendment will result in a change in the projected plan completion date, the new completion date;

F. if the amendment will result in a change in the projected plan cost, the new estimated cost;

G. employee comments, if any; and

H. the dated signatures of the employee, insurer, and assigned qualified rehabilitation consultant.

Subp. 4. **Amendment by commissioner.** ~~At-the-discretion-of-the-commissioner,-the-commissioner-may-amend-the-rehabilitation-plan-pursuant-to-Minnesota-Statutes,-sections-176.102-and-176.106,-and-the-rules-that-implement-those-sections.~~ If a plan is modified for good cause pursuant to Minnesota Statutes, section 176.102, subdivision 8, or as a result of an administrative conference pursuant to Minnesota Statutes, section 176.106, the commissioner shall notify all interested parties of the modification and the reasons for the modification.

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Subp. 5. **Request for closure before plan completion.** At any time, the insurer or employee may request the closure of rehabilitation services by filing a rehabilitation request for assistance with the commissioner. The commissioner or a compensation judge may close rehabilitation services for good cause, including, but not limited to:

A. a new or continuing physical limitation that significantly interferes with the implementation of the plan;

B. the employee's performance indicates that the employee is unlikely to successfully complete the plan;

C. the employee is not participating effectively in the implementation of the plan; and

D. the employee is not likely to benefit from further rehabilitation services.

Subp. 6. **Commissioner's authority to initiate closure.** ~~The commissioner may initiate and order closure of rehabilitation services for good cause after notice to the parties of the proposed closure and after an opportunity for interested parties to submit information. The submission may be written or at an in-person meeting at the discretion of the commissioner.~~ If the commissioner initiates the termination of rehabilitation services pursuant to Minnesota Statutes, section 176.102, subdivision 6, or through an administrative conference pursuant to Minnesota Statutes, section 176.106, all interested parties shall be provided written notice of the proposed decision and an opportunity to be heard either in person or through the submission of written information.

Subp. 7. **Closure report by assigned qualified rehabilitation consultant.** When an employee's rehabilitation plan is completed and closure of rehabilitation services is not disputed, the assigned qualified rehabilitation consultant shall file a report on a form prescribed by the commissioner. When the reason for the closure is a return to work, the qualified rehabilitation consultant shall not complete and file the closure report until the employee has continued working for at least 30 calendar days following the return to work. The form

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reporting plan closure must be sent to the employee and the insurer when filed with the commissioner. The form shall contain substantially the following:

A. identifying information on the employee, employer, insurer, and assigned qualified rehabilitation consultant;

B. the outcome of the rehabilitation plan;

C. the employee's employment status:

(1) if the employee is working, information identifying the employer with whom the employee returned to work, the job title and Dictionary of Occupational Titles code, the return to work date, the weekly wage, and whether the employee has continued working for 30 calendar days; or

(2) if the employee is not working, information explaining why the plan should be closed or whether additional rehabilitation services would be of benefit;

D. a summary of the rehabilitation services provided and rehabilitation costs by all qualified rehabilitation consultants, qualified rehabilitation consultant firms, and registered rehabilitation vendors; and

E. the assigned qualified rehabilitation consultant's dated signature.

Subp. 8. **Disputes.** In the case of a dispute about a plan amendment or closure, any party may file a rehabilitation request for assistance according to Minnesota Statutes, chapter 176, and part 5220.0950.

5220.0710 EMPLOYEE CHOICE OF QUALIFIED REHABILITATION CONSULTANT; CHANGE OF QUALIFIED REHABILITATION CONSULTANT.

Subpart 1. **Employee right to choose.** Pursuant to Minnesota Statutes, section 176.102, subdivision 4, the qualified employee has a right to choose an assigned qualified rehabilitation consultant as defined in part 5220.0100, subpart 3:

A. once:

(1) when the employee selects a qualified rehabilitation consultant before a referral by the insurer to a

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qualified rehabilitation consultant, or before a first in-person visit between a qualified rehabilitation consultant and the employee; or

(2) when the employee selects a qualified rehabilitation consultant before the end of 60 days following the first in-person visit between the employee and a qualified rehabilitation consultant selected by the insurer, in which case the employee shall notify the insurer and commissioner in writing of the name, address, and telephone number of the qualified rehabilitation consultant chosen; and

B. once when the employee selects a qualified rehabilitation consultant after 60 days following the first in-person visit between the employee and the assigned qualified rehabilitation consultant.

Subp. 2. **Documentation.** The new assigned qualified rehabilitation consultant shall promptly inform the commissioner of the change in assigned qualified rehabilitation consultant by filing the prescribed form with the commissioner. The prescribed form shall contain identifying information on the employee, employer, insurer, the new qualified rehabilitation consultant, and the former qualified rehabilitation consultant.

Subp. 3. **Dispute resolution.** After exhaustion of the employee's choices in subpart 1, any party may propose a change of assigned qualified rehabilitation consultant. The parties may at any time agree to a change and select a new qualified rehabilitation consultant. If a dispute about change or selection arises, and the parties are not able to resolve that dispute, the dispute shall be resolved by a determination of the commissioner or a compensation judge as provided in Minnesota Statutes, chapter 176, and part 5220.0950. If the employee's choices have not been exhausted, the determination shall be made according to the employee's choice. If the employee's choices have been exhausted, the determination shall be made according to the best interest of the parties, consistent with the objectives of Minnesota Statutes, section 176.102, subdivision 1.

Subp. 4. ~~**Penalty.**--A-frivolous-objection-to-or~~

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~~interference with the employee's choice of assigned qualified rehabilitation consultant under subpart 1 and Minnesota Statutes, section 176.102, subdivision 4, may subject the insurer to penalties under part 5220.2780, or a qualified rehabilitation consultant to disciplinary action pursuant to Minnesota Statutes, section 176.102, subdivisions 3 and 3a.~~

~~Subp. 5.~~ **Employee residing or moving out of Minnesota.** Qualified employees who reside outside of Minnesota or who move out of Minnesota may receive services from a rehabilitation professional qualified under that jurisdiction's workers' compensation law to provide rehabilitation services. This subpart does not require the assignment of another rehabilitation professional if the services can be reasonably furnished by a rehabilitation provider registered in Minnesota. When services are provided outside of Minnesota by a rehabilitation professional qualified in that jurisdiction, an assigned qualified rehabilitation consultant in Minnesota shall monitor the provision of services, ~~taking reasonable care to ensure that services are rendered according to Minnesota workers' compensation law and rules.~~

Subp. ~~6.~~ 5. **Change of consultant not an exercise of choice by employee.** A change of assigned qualified rehabilitation consultant necessitated by circumstances outside the control of the employee is not a choice by the employee and does not exhaust the employee's right to choice. Such circumstances include, but are not limited to, the assigned qualified rehabilitation consultant leaving practice or the extended illness of the assigned qualified rehabilitation consultant. Disputes about changes shall be resolved according to subpart 3.

5220.0750 RETRAINING.

Subpart 1. **Purpose.** The purpose of retraining is to return the employee to suitable gainful employment through a formal course of study. Retraining is to be given equal consideration with other rehabilitation services, and proposed for approval if other considered services are not likely to lead

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to suitable gainful employment.

Subp. 2. **Plan submission.** A proposed retraining plan shall be filed on a form prescribed by the commissioner and must contain substantially the following:

A. identifying information on the employee, employer, insurer, and assigned qualified rehabilitation consultant;

B. the retraining goal;

C. information about the formal course of study required by the retraining plan, including:

(1) the name of the school;

(2) titles of classes;

(3) the course's length in weeks, listing beginning and ending dates of attendance;

(4) an itemized cost of tuition, books, and other necessary school charges;

(5) mileage costs; and

(6) other required costs;

D. starting and completion dates;

E. preinjury job title and economic status, including, but not limited to preinjury wage;

F. a narrative rationale describing the reasons why retraining is proposed, including a summary comparative analysis of other rehabilitation alternatives and information documenting the likelihood that the proposed retraining plan will result in the employee's return to suitable gainful employment;

G. dated signatures of the employee, insurer, and assigned qualified rehabilitation consultant signifying an agreement to the retraining plan; and

H. an attached copy of the published course syllabus, physical requirements of the work for which the retraining will prepare the employee, medical documentation that the proposed training and field of work is within the employee's physical restrictions, reports of all vocational testing or evaluation, and a recent labor market survey of the field for which the training is proposed.

Subp. 3. **Amendment.** The commissioner or a compensation

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judge may amend a retraining plan at the request of an employee if the employee believes that the occupation the employee is being trained for is not suitable, and if the employee's request is made within 90 days from the commencement date of the retraining. No more than one change shall be permitted for this reason. Other amendments may be requested by the parties according to part 5220.0510.

Subp. 4. **Compensation.** An employee who has been approved for retraining under Minnesota Statutes, section 176.102, subdivision 11, may petition the commissioner or a compensation judge for additional compensation, not to exceed 25 percent of the compensation otherwise payable, if the employee will incur a special, unusual, or unique circumstance during the retraining period that would otherwise reduce the likelihood that the retraining plan will be successfully completed. Additional compensation is not warranted under this subpart if the circumstance on which the request is based is compensable as a cost of the rehabilitation plan under Minnesota Statutes, section 176.102, subdivision 9. The commissioner or a compensation judge may order an award of additional compensation and specify the amount to be awarded. When the employee is entitled to additional compensation for retraining, the compensation shall begin on the first day the special, unusual, or unique circumstance of the retraining is present but not before the start of the retraining program, and shall stop at any time the special, unusual, or unique circumstance is no longer present. The commissioner or compensation judge may determine the date of commencement and the date of discontinuance of the additional compensation.

Subp. 5. **Retraining plan approval.** When the retraining plan is submitted to the commissioner, the commissioner shall review the proposed retraining plan within 30 days of its submission and notify the parties of plan approval or denial. The commissioner may also request additional information from the parties, confer with the parties, recommend modifications and otherwise seek agreement about the plan. The commissioner

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may make a determination or pursue resolution of questions regarding the plan consistent with part 5220.0950, subpart 3.

Subp. 6. **Disputes.** In the case of a dispute about a retraining plan, any party may file a rehabilitation request for assistance according to Minnesota Statutes, chapter 176 or part 5220.0950.

5220.0850 ON-THE-JOB TRAINING.

Subpart 1. **Objective of on-the-job training.** The primary objective of on-the-job training as defined in part 5220.0100, subpart 22, is gainful employment with the on-the-job training employer that is likely to restore the employee as close as possible to preinjury economic status. A proposed on-the-job training plan may be rejected by the commissioner or compensation judge if the plan is unlikely to achieve this primary objective. However, documentation that the training will increase employability with other employers may be a basis for approval.

Subp. 2. **Plan submission.** A proposed on-the-job training plan shall be filed on a form prescribed by the commissioner and must contain ~~substantially~~ the following:

A. identifying information on the employee, employer, insurer, and assigned qualified rehabilitation consultant;

B. information identifying the on-the-job training employer;

C. the title of the job for which the employee is being trained and its Dictionary of Occupational Titles code number;

D. a job analysis of the training position;

E. information documenting that the training position is within the employee's physical restrictions;

F. a description of the skills the employee will acquire as a result of the training;

G. training commencement and completion dates;

H. the intervals at which the plan progress will be assessed;

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I. information indicating whether the on-the-job training employer will provide employment to the employee upon completion of the training;

J. the employee's wage during and after training;

K. supplies and tools required by the plan and their cost;

L. weekly workers' compensation benefits to be paid by the insurer during the training;

M. dated signatures of the employee, insurer, assigned qualified rehabilitation consultant, on-the-job training employer, and training instructor signifying agreement with the plan; and

N. a narrative rationale describing the reasons why on-the-job training is proposed, including information that demonstrates that the on-the-job training will result in the employee's return to a job that produces, as close as possible, the preinjury economic status.

Subp. 3. **Duration of plan.** A plan for on-the-job training that will last longer than six months may be justified by information that a plan that exceeds six months is needed to master required skills, or that training that exceeds six months will significantly increase the likelihood that the employee will recover preinjury economic status.

Subp. 4. **On-the-job training plan approval.** When an on-the-job training plan is submitted to the commissioner, the commissioner shall review the proposed plan within 30 days of its submission and notify the parties of plan approval or rejection. The ~~commissioner may also request additional information from any of the parties, confer with the parties, recommend modifications, and otherwise seek agreement about the~~ plan approval process shall be subject to the procedures under part 5220.0410, subpart 6. The commissioner may make a determination or pursue resolution of questions regarding the plan consistent with part 5220.0950, subpart 3.

Subp. 5. **Disputes.** In the case of a dispute about an on-the-job training plan, any party may request resolution

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according to Minnesota Statutes, chapter 176 and part 5220.0950.

5220.0950 DISPUTES.

Subpart 1. **Request for assistance.** Where issues exist about an employee's entitlement to rehabilitation services, the appropriateness of a proposed plan, or any other dispute about rehabilitation, a party may request assistance to resolve the disputed issues by filing a form prescribed by the commissioner. The form with all its attachments must be served on all parties and be filed with the commissioner. The form must contain ~~substantially~~ the following:

A. identifying information on the employee, employer, insurer, and assigned qualified rehabilitation consultant;

B. a statement of the rehabilitation issues to be resolved;

C. a statement of what the requester wants and supporting evidence and arguments;

D. a list showing that all parties were served and the date they were served;

E. the requester's name and signature; and

F. instructions for completion of the form.

Subp. 2. **Action by commissioner.** If the commissioner ~~may refer the~~ refers a dispute to a compensation judge~~,~~ or, based on the written ~~submissions~~ submission of the parties, ~~determine~~ determines the ~~issue~~ dispute or ~~schedule~~ schedules an administrative conference ~~prior~~ to ~~a determination. The commissioner may request that the~~ determine the dispute, all parties shall be served with written notice of that action.

The commissioner may require the parties to meet and confer informally ~~before~~ prior to a scheduled administrative conference if the facts and issues involved show that a meeting would facilitate resolution of the dispute.

~~The commissioner may order reasonable medical examinations and rehabilitation evaluations at the expense of the insurer before a determination.~~

When the commissioner or compensation judge makes a

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determination on the issues in dispute, copies shall be served on the parties. No determination will be made by the commissioner under Minnesota Statutes, section 176.106, with respect to rehabilitation entitlement if primary liability has been denied.

Subp. 3. ~~Commissioner-discretion-to-initiate~~ **Commissioner's initiation of** dispute resolution. If the commissioner ~~may~~ independently ~~determine~~ determines that issues exist ~~about~~ regarding an employee's entitlement to rehabilitation, or the appropriateness of a proposed plan, or ~~any-other-disputes-involving-rehabilitation.--The commissioner-may-initiate-the-dispute-resolution-process-under subpart-2-by-serving-notice-on-the-parties-of-the-rehabilitation issues-to-be-resolved~~ otherwise initiates proceedings before a compensation judge or through an administrative conference, written notice of the issues in dispute shall be served upon the parties.

Subp. 4. **Formal hearing.** A party that disagrees with a decision of the commissioner under Minnesota Statutes, section 176.106, may request a formal hearing pursuant to part 5220.1010. The request for hearing will be referred to the Office of Administrative Hearings pursuant to Minnesota Statutes, section 176.106, subdivision 7.

5220.1010 REQUEST FOR A FORMAL HEARING.

Any party who disagrees with a decision of the commissioner about rehabilitation under Minnesota Statutes, section 176.106 and part 5220.0950 may request a new, formal hearing by filing a form prescribed by the commissioner within 30 days of the service and filing of the commissioner's decision. The request must state what issues continue to be in dispute and must be received by the commissioner within 30 days of service and filing of the commissioner's decision. A copy of the request for hearing shall be served on all parties at the time of filing.

5220.1100 LEGAL REPRESENTATION.

When an employee or insurer is represented by an attorney

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and if a notice of representation has not already been filed, the attorney shall notify the commissioner as provided in part 1415.0800. The attorney will receive notices as provided in part 5220.2890. The value of rehabilitation services shall not be used in the calculation of attorney's fees. The legal fees shall be calculated in the manner provided by law. An attorney who has so advised the commissioner will be notified of any proceedings, and will receive rehabilitation reports as provided by part 5220.1802, subpart 3.

5220.1200 REHABILITATION SERVICES, SETTLEMENT AGREEMENTS.

~~An employee's right to rehabilitation services shall not be subject to compromise and shall not be convertible into cash or other benefits by settlement and release agreement or otherwise. When~~ Rehabilitation services pursuant to an approved rehabilitation plan are mandatory for qualified employees. However, if a good faith dispute exists~~, however, the possible right~~ regarding entitlement to rehabilitation services, that dispute may be converted into cash by settlement agreement between the parties pursuant to Minnesota Statutes, section 176.521. Any settlement agreement purporting to compromise all rehabilitation services must be approved by the commissioner, a compensation judge, or the workers' compensation court of appeals.

5220.1250 QUALIFIED REHABILITATION CONSULTANT AND REGISTERED REHABILITATION VENDOR.

An entity may be approved either to provide rehabilitation services as a registered rehabilitation vendor or as a qualified rehabilitation consultant. The roles of vendor and consultant are distinct and, therefore, a qualified rehabilitation consultant may not be, or function as, a registered rehabilitation vendor or the agent of a vendor. There shall be no ownership or financial relationships of any kind between any registered rehabilitation vendor and qualified rehabilitation consultant or qualified rehabilitation consultant.

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5220.1400 QUALIFYING CRITERIA FOR REHABILITATION CONSULTANT.

Subpart 1. **Requirement.** To become registered as a qualified rehabilitation consultant, the certification, education, and internship requirements of subparts 2 to 5 must be met.

Subp. 2. **Certification and education.** A qualified rehabilitation consultant shall possess at least one of the following credentials:

A. a baccalaureate degree, together with certification by the Board of Rehabilitation Certification as a certified rehabilitation counselor or a certified insurance rehabilitation specialist; or

B. a baccalaureate degree together with certification by the Association of Rehabilitation Nurses as a certified rehabilitation registered nurse.

Persons who were qualified rehabilitation consultants on June 15, 1987, must have obtained the certification described in item A or B by June 15, 1989. If a qualified rehabilitation consultant lacks two years or more of the experience required to meet the certifying body's minimum experience or internship requirement, the time for becoming certified shall equal the time remaining for completion of the certifying body's minimum experience or internship requirement. If a qualified rehabilitation consultant must also obtain a baccalaureate degree to meet the certifying body's minimum education requirements, the qualified rehabilitation consultant shall have an additional four years to become certified. If an examination is required for certification, the time allowed for certification under this part must include two scheduled examinations which the applicant is eligible to take. Persons who were qualified rehabilitation consultant interns on June 15, 1987, may become qualified rehabilitation consultants under the requirements in place before that date. Upon becoming qualified rehabilitation consultants, such persons must obtain certification as required by this subpart.

Subp. 3. **Qualified rehabilitation consultant intern.** The

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purpose of internship is to provide a supportive, structured period of professional supervision and case review following registration. An individual who meets the requirements of subpart 2, item A or B may be registered as a qualified rehabilitation consultant intern. An individual who meets the requirements of subpart 2, item A or B, except that two years or less of internship or experience remains as a requirement for certification, may be registered as a qualified rehabilitation consultant intern. A qualified rehabilitation consultant intern must complete an introductory training session sponsored by the department within six months of approval of registration. A qualified rehabilitation consultant intern shall not be a solo practitioner. When the intern is registered, the intern's employer shall provide the commissioner with the name of the qualified rehabilitation consultant under whose direct supervision the intern will work, and shall submit a plan of supervision on forms prescribed by the commissioner. Direct supervision means that the supervisor is directly responsible for the rehabilitation work on any case, and for monitoring progress toward the certification required by this subpart. The intern supervisor need not maintain an office at the same location as the intern. The supervisor shall cosign all written work being done by the intern. There shall be no billing by the supervisor for these supervisory duties. The supervisor shall attend all administrative conferences with the intern and shall arrange for training as required by the commissioner. The intern shall be designated as an "intern" on all documents bearing the name of the intern.

~~Substantiated complaints about professional activities or services, or~~ The failure to comply with ~~laws, rules, or orders under~~ 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, ~~are~~ Minnesota Rules, parts 5520.0100 to 5220.1910, or orders issued under the statutes or rules constitute grounds for denial of registration as a qualified rehabilitation consultant under

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Minnesota Statutes, section 176.102, subdivision 3, discipline under Minnesota Statutes, section 176.102, ~~subdivisions 3 and~~ subdivision 3a, or delay of completion of internship. The intern may appeal the decision of the commissioner denying registration as provided in part 5220.1500, subpart 2.

In cases where an intern has been supervised by a qualified rehabilitation consultant who leaves the organization with which the intern has been employed and no other qualified rehabilitation consultant is available to supervise the intern, the intern may, with the prior written approval of the commissioner, sign all required documents in the capacity of a qualified rehabilitation consultant for a period of time deemed appropriate by the commissioner. Past performance and overall experience shall be taken into consideration for this approval.

Subp. 4. **Completion of internship.** The burden of proof of experience shall be on the applicant. The intern must work at least one year full time as an intern in the rehabilitation of injured workers under Minnesota Statutes, section 176.102. Evidence of experience shall include documentation of a history of employment in a position of vocational rehabilitation. For purposes of this subpart, "full-time employment" is consistent with the employment experience requirement of the certifying body chosen by the qualified rehabilitation consultant intern. Where there is no definition of full-time employment by the certifying body chosen by the qualified rehabilitation consultant intern, full-time employment means a minimum of 37 hours per week during a 52-week period. Any part-time employment will be prorated based on this definition. The intern may make application for completion of internship when the minimum requirements in subparts 2 to 5 have been met.

The commissioner's action on the intern's application for completion of internship shall be based in part on the report of the qualified rehabilitation consultant intern supervisor about the competence of the intern to practice independently. The commissioner shall also consider information about the intern's professional competence including that obtained in the course of

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any investigation about professional conduct, and on any substantiated complaints regarding professional conduct.

Subp. 5. **General criteria.** All persons who are qualified rehabilitation consultants shall be self-employed or employed by a single organization that is approved for the employment of qualified rehabilitation consultants as a qualified rehabilitation consultant firm or an employer or insurer. Qualified rehabilitation consultants must be available to clients, and for administrative conferences or hearings during normal business hours. A qualified rehabilitation consultant employed by an employer or insurer that is not registered as a qualified rehabilitation consultant firm is permitted to provide rehabilitation consultation and services only for the claims being handled by the entity by whom the consultant is employed. A qualified rehabilitation consultant shall notify the department immediately upon changing employment. Notification shall include the name of the former place of employment, the name, address, and telephone number of the new place of employment and the effective date of new employment.

Registration shall require Minnesota residency. The commissioner may grant an exception for persons who reside no more than 100 miles by road from the Minnesota border. Any such qualified rehabilitation consultant agrees, as an additional condition of registration, to appear at any administrative conference or hearing when requested, in the same manner as if subpoenaed. A qualified rehabilitation consultant shall notify the department immediately upon any change in residency to or from Minnesota.

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:

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A. completed, signed, and notarized application form;

B. copy of any pertinent license or certification;

C. documentation supporting any applicable experience requirements;

D. official transcripts of all pertinent postsecondary education;

E. list of services and fees. This filing shall not constitute an approval or disapproval of the services or fees;

F. the annual registration application fee of $100; and

G. a plan of supervision as required by part 5220.1400, subpart 3.

Subp. 1a. **Approval of registration as qualified rehabilitation consultant intern.** Where the requirements for registration are met, the commissioner shall issue a letter to the applicant so indicating within 60 days of receiving the completed application. After registration has been approved, the registration application fee is not refundable. If the requirements for qualified rehabilitation consultant intern are not met, the commissioner shall issue a decision and order denying registration to the applicant within 60 days of receipt of the completed application. If the application for registration is not approved, one-half of the registration application fee may be refunded.

Subp. 2. **Appeal process.** The appeal process provides a mechanism for applicants to request reconsideration of a decision and order denying registration or renewal of registration.

A written notice of appeal shall be filed with the commissioner within 30 days of filing and service of the order. <u>If the appeal is for denial of renewal of registration, the filing will stay the effect of the denial until final disposition.</u>

The appeal shall be referred to the rehabilitation review panel according to Minnesota Statutes, section 176.102, subdivision 3.

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Subp. 3. **Registration number and renewal.** The commissioner shall assign a registration number to each registered rehabilitation provider.

Registration must be renewed annually. A rehabilitation provider shall request renewal on a form prescribed by the commissioner. Application for renewal is due 60 days before expiration of registration, accompanied by the appropriate registration fee. Registration renewal applications that are not complete, are not accompanied by the registration renewal fee, or are not accompanied by documentation of certification or satisfactory documentation of continuing education will be returned to the applicant for completion. Completed registration renewal applications received later than the due date shall be assessed a $25 late fee. Registration renewal applications received more than 30 days after the due date shall be assessed an additional $10 per day late fee for each day after the request is 30 days late. No late fee in excess of $125 may be assessed.

Substantiated complaints about activities or services, or failure to comply with laws, rules, or orders under Minnesota Statutes, chapter 176, are grounds for denial of renewal of registration as a qualified rehabilitation consultant under Minnesota Statutes, section 176.102, subdivision 3, discipline under Minnesota Statutes, section 176.102, ~~subdivisions 3 and~~ subdivision 3a, or delay of completion of internship. The decision of the commissioner may be appealed as provided in subpart 2. "Substantiated complaints about activities or services" for purposes of denial of renewal of registration means there has been a stipulation or order of discipline.

Service and fee schedules shall be filed with the commissioner whenever there is a change and no less than once each calendar year at the time of renewal of registration. This filing shall not constitute an approval or disapproval of the services and fees.

Subp. 3a. **Continuing education.** To retain registration, a qualified rehabilitation consultant or qualified rehabilitation

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consultant intern shall submit satisfactory documentation of current certification required by part 5220.1400, subpart 2. A qualified rehabilitation consultant or qualified rehabilitation consultant intern who is not yet certified shall submit satisfactory documentation of continuing education pertinent to the workers' compensation rehabilitation field equivalent to 20 contact hours each year at the time registration is renewed. Continuing education includes, but is not limited to, the following:

A. postsecondary course work in rehabilitation related fields, including vocational rehabilitation, medical rehabilitation, psychology of disability, and occupational safety;

B. publicly or privately sponsored training in rehabilitation related fields, including vocational rehabilitation, medical rehabilitation, psychology of disability, and occupational safety;

C. continuing legal education courses about workers' compensation law; and

D. rehabilitation related training sponsored and approved by the commissioner.

Satisfactory documentation shall include legible certificates of attendance bearing the name of the participant that are signed and dated by the sponsoring institution or organization. Receipts for tuition are not acceptable as satisfactory documentation of attendance.

Continuing education units must be obtained in the 12-month period immediately preceding the date on which registration renewal forms are due.

The department of labor and industry's annual rehabilitation provider update sessions are mandatory for all rehabilitation providers.

Nonattendance at the mandatory orientation or update sessions is prohibited conduct for rehabilitation providers, but may be allowed only for emergency situations and must be reported to the commissioner.

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Subp. 4. **Inactive status.** If an interval of one year occurs without providing direct case service to workers' compensation recipients or without providing supervision to qualified rehabilitation consultants or qualified rehabilitation consultant interns who provide direct case service to workers' compensation recipients, the registration will not be renewed upon expiration. A qualified rehabilitation consultant or qualified rehabilitation consultant intern may apply for reinstatement of registration by providing verification to the commissioner of current certification as required by part 5220.1400, continued attendance at all annual update sessions, and fulfillment of continuing education requirements as provided by subpart 3a. The applicant must complete an orientation training session before acceptance is final. An order regarding renewal of registration may be appealed to the rehabilitation review panel according to Minnesota Statutes, section 176.102, subdivision 3.

Subp. 5. **Monitoring.** The commissioner shall review the professional activities and services of rehabilitation providers to determine if they are reasonable and comply with laws, rules, or orders under Minnesota Statutes, chapter 176.

Subp. 6. **Revocation.** The revocation process shall be conducted as provided in Minnesota Statutes, section 176.102, ~~subdivisions 3 and~~ subdivision 3a.

5220.1600 PROCEDURE FOR APPROVAL AS QUALIFIED REHABILITATION CONSULTANT FIRM.

Subpart 1. **Criteria.** The qualified rehabilitation consultant firm shall be licensed to do business in Minnesota and shall maintain an administrative office within the state. Each office of the qualified rehabilitation consultant firm that provides services to injured employees under Minnesota Statutes, chapter 176, shall be listed on the application described in subpart 2 and shall employ on the premises at least one qualified rehabilitation consultant or qualified rehabilitation consultant intern. The management staff shall consist of at

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least one member who is registered as a qualified rehabilitation consultant. Eighty percent of the nonclerical staff shall be qualified rehabilitation consultants or qualified rehabilitation consultant interns; any firm that is not in an office sharing arrangement with another firm may have one nonclerical employee who is not a qualified rehabilitation consultant or qualified rehabilitation consultant intern. Any branch office openings or closings shall be reported to the department immediately.

Subp. 2. **Application.** A private or public entity desiring to be approved as a qualified rehabilitation consultant firm shall submit to the commissioner a complete application consisting of the following:

A. a completed, signed, and notarized application;

B. any data or information attached to support the application;

C. a list of services and fees. This filing shall not constitute an approval or disapproval of the services or fees; and

D. the annual registration application fee of $200 per firm.

Subp. 2a. **Approval of registration as a qualified rehabilitation consultant firm.** The approval process shall be conducted the same as provided in part 5220.1500, subpart 1a.

Subp. 3. **Appeal process.** The appeal process shall be conducted the same as that provided in part 5220.1500, subpart 2.

Subp. 4. **Renewal.** The renewal process shall be conducted the same as that provided in part 5220.1500, subpart 3.

Subp. 5. **Revocation.** The revocation process shall be conducted as provided in Minnesota Statutes, section 176.102, ~~subdivisions 3 and~~ subdivision 3a.

5220.1700 PROCEDURE FOR APPROVAL AS REGISTERED REHABILITATION VENDOR.

Subpart 1. **Application.** A private or public entity desiring to be approved as a registered rehabilitation vendor shall submit to the commissioner a complete application

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consisting of all of the following:

A. A completed, signed, and notarized application.

B. Any data or information to support an application should be attached.

C. A list of services and fees. This filing shall not constitute an approval or disapproval of the services or fees.

D. The annual registration application fee of $200 for each registered rehabilitation vendor.

Subp. 1a. **Approval as registered rehabilitation vendor.** The approval process shall be conducted the same as provided in part 5220.1500, subpart 1a.

Subp. 2. **Appeal process.** The appeal process herein shall be conducted as provided in part 5220.1500, subpart 2.

Subp. 3. **Renewal.** The renewal process herein shall be conducted the same as that provided in part 5220.1500, subpart 3.

Subp. 4. **Revocation.** The revocation process herein shall be conducted as provided in Minnesota Statutes, section 176.102, ~~subdivisions 3 and~~ subdivision 3a.

Subp. 5. **Restriction.** Registered rehabilitation vendors shall not employ or otherwise engage the services of qualified rehabilitation consultants.

5220.1800 STANDARDS OF PERFORMANCE.

The standards of conduct described in parts 5220.1801 to 5220.1806 establish minimum standards concerning the professional activities and services of rehabilitation providers. Performance evaluations and monitoring of rehabilitation providers by the commissioner, and the administration of rehabilitation provider discipline under Minnesota Statutes, section 176.102, subdivision 3a, will be based upon these standards, as well as on adherence to Minnesota Statutes, chapter 176, rules adopted to administer it, and orders of the commissioner or a compensation judge.

5220.1801 PROFESSIONAL CONDUCT.

Subpart 1. **Prompt provision of service and assessment of**

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progress. The assigned qualified rehabilitation consultant and any registered rehabilitation vendor providing services under a plan shall provide prompt and necessary rehabilitation services to assist a qualified employee to return to suitable gainful employment. The qualified rehabilitation consultant shall periodically assess progress toward plan objectives ~~on-a-basis agreed-upon-among-the-parties-and-as-required-by-the commissioner~~.

Subp. 2. **Assigned qualified rehabilitation consultant.** Only the assigned qualified rehabilitation consultant, or a qualified rehabilitation consultant designated by the assigned qualified rehabilitation consultant to function in an advisory capacity to the assigned consultant, shall be involved at any given time in the employee's rehabilitation plan, except as stated in subparts 6 and 7. The assigned qualified rehabilitation consultant shall advise the insurer before involving or requesting advisory services from any other qualified rehabilitation consultant. No qualified rehabilitation consultant or qualified rehabilitation consultant firm shall provide rehabilitation services to a case assigned to a qualified rehabilitation consultant employed by another qualified rehabilitation consultant firm. This subpart shall not apply to a qualified rehabilitation consultant acting on behalf of the reinsurance association in a monitoring or advisory capacity on a reinsurance claim file.

Subp. 3. [See repealer.]

Subp. 4. [See repealer.]

Subp. 4a. **Objectivity.** Good faith disputes may arise among parties about rehabilitation services or about the direction of a rehabilitation plan. A rehabilitation provider shall remain professionally objective in conduct and in recommendations on all cases.

Subp. 5. **Evaluation of employee by other than assigned qualified rehabilitation consultant.** Except as provided in subpart 7 and in Minnesota Statutes, section 176.102, subdivision 13 as ordered, a rehabilitation provider is

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prohibited from performing an independent evaluation of an employee at any time unless ~~a hearing has been scheduled before a compensation judge~~ litigation pursuant to part 1415.0100, is pending. If ~~a hearing has been scheduled before a compensation judge at the office of administrative hearings~~ that litigation is pending, a qualified rehabilitation consultant who is not the assigned qualified rehabilitation consultant may perform an evaluation of the employee at the request of one of the parties solely for the purpose of the proceeding.

Subp. 6. **Qualified rehabilitation consultant as witness.** A qualified rehabilitation consultant who has testified as an expert witness for any party in a hearing related to the employee's case before a compensation judge may not function thereafter as the assigned qualified rehabilitation consultant on the case unless agreed to by the employee.

Subp. 7. **Referrals.** An assigned qualified rehabilitation consultant may make recommendations for referrals to appropriate resources.

Subp. 8. **Separate roles and functions.** The roles and functions of a claims agent and a rehabilitation provider are separate. A qualified rehabilitation consultant, qualified rehabilitation consultant intern, registered rehabilitation vendor, or an agent of a rehabilitation provider, shall engage only in those activities designated in Minnesota Statutes, section 176.102, and rules adopted thereunder. A qualified rehabilitation consultant, qualified rehabilitation consultant intern, or registered rehabilitation vendor shall not act as an advocate for or advise any party about a claims or entitlement issue. Qualified rehabilitation consultants, qualified rehabilitation consultant interns, and registered rehabilitation vendors shall not engage in claims adjustment, claims investigation, or related activities. Activities unrelated to rehabilitation services include, but are not limited to, making recommendations about the determination of workers' compensation monetary benefits, the reasonableness of medical charges, or arranging for an independent medical examination and are

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prohibited. This part shall not prohibit a qualified rehabilitation consultant acting on behalf of the reinsurance association from consulting with the assigned qualified rehabilitation consultant regarding the rehabilitation plan.

Subp. 9. **Prohibited conduct.** The conditions and restrictions of practice as a rehabilitation provider are contained in parts 5220.0100 to 5220.1900 and Minnesota Statutes, section 176.102. The following conduct is specifically prohibited and is also grounds for discipline:

A. Reporting or filing false or misleading information or a statement in connection with a rehabilitation case or in procuring registration or renewal of registration as a rehabilitation provider, whether for oneself or for another.

B. Conviction of a felony or a gross misdemeanor reasonably related to the provision of rehabilitation services.

C. Conviction of crimes against persons. For purposes of this chapter, a crime against a person means a violation of any of the following sections: Minnesota Statutes, section 609.185, 609.19, 609.195, 609.20, 609.205, 609.21, 609.215, 609.221, 609.222, 609.223, 609.224, 609.23, 609.231, 609.235, 609.24, 609.245, 609.25, 609.255, 609.265, 609.26, 609.342, 609.343, 609.344, 609.345, 609.365, 609.498, 609.50, 609.561, 609.562, or 609.595.

D. Restriction, limitation, or other disciplinary action against the rehabilitation provider's certification, registration, or right to practice as a rehabilitation provider in another jurisdiction for offenses that would be subject to disciplinary action in this state, or failure to report to the department the charges which have been brought in another state or jurisdiction against the rehabilitation provider's certification, registration, or right to practice.

E. Failure or inability to perform professional rehabilitation services with reasonable skill because of negligence, habits, or other cause, including the failure of a qualified rehabilitation consultant to monitor a vendor or qualified rehabilitation consultant intern, or the failure of a

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rehabilitation provider to adequately monitor the performance of services provided by a person working at the rehabilitation provider's direction.

F. Engaging in conduct likely to deceive, defraud, or harm the public or demonstrating a willful or careless disregard for the health, welfare, or safety of a rehabilitation client.

G. Engaging in conduct with a client that is sexual or may be reasonably interpreted by the client as sexual or in any verbal behavior that is seductive or sexually demeaning to a client or engaging in sexual exploitation of a client or a former client.

H. Obtaining money, property, or services other than reasonable fees for services provided to the client through the use of undue influence, harassment, duress, deception, or fraud.

I. Engaging in fraudulent billing practice.

J. Knowingly aiding, assisting, advising, or allowing an unqualified person to engage in providing rehabilitation services.

K. Engaging in adversarial communication or activity. Adversarial communication includes, but is not limited to:

(1) requesting or reporting information not directly related to an employee's rehabilitation plan;

(2) deliberate failure or delay to report to all parties pertinent information regarding an employee's rehabilitation;

(3) misrepresentation of any fact or information about rehabilitation; or

(4) failure to comply with an authorized request for information about an employee's rehabilitation.

L. Providing an opinion on settlement and recommending entering into a settlement agreement.

M. Making a recommendation about retirement; however, a rehabilitation provider may assist an employee in contacting resources about a choice of retirement or return to work.

N. Failure to take due care to ensure that a

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rehabilitation client is placed in a job that is within the client's physical restrictions.

O. Failure to maintain service activity on a case without advising the parties of the reason why service activity might be stopped or reduced.

P. Failure to recommend plan amendment, closure, or another alternative when it may be reasonably known that the plan's objective is not likely to be achieved.

Q. Unlawful discrimination against any person on the basis of age, gender, religion, race, disability, nationality, or sexual preference, or the imposition on a rehabilitation client of any stereotypes of behavior related to these categories.

Subp. 10. **Professional competence.** Rehabilitation providers shall limit themselves to the performance of only those services for which they have the education, experience, and qualifications.

Rehabilitation providers shall accurately represent their level of skill and competency to the department, the public, and colleagues.

Rehabilitation providers shall not administer or interpret tests without proper training, experience, or credentials. Administration of tests must be supervised by a person who is so trained, experienced, or credentialed.

A rehabilitation provider shall understand the areas of competence of other professional persons with whom the rehabilitation client establishes relationships, and act with due regard for the needs, privileged nature, special competencies, and obligations of colleagues and other professionals and not disparage their qualifications.

Subp. 11. **Impaired objectivity.** A rehabilitation provider shall not use alcoholic beverages, medication, or controlled substances in a manner that impairs the provider's ability to perform the rehabilitation services.

Rehabilitation providers shall not use a professional relationship to further personal, religious, political, or

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financial interests, although adherence to ethical norms shall not be construed as personal or religious interest.

A rehabilitation provider must not undertake or continue a professional relationship in which the objectivity of the provider is or would be impaired due to a familial, social, emotional, economic, supervisory, or political interpersonal relationship.

The registered provider shall disclose any potential conflicts of interest to the parties to the case and their attorneys.

Adjudication of a rehabilitation provider as mentally incompetent, mentally ill, chemically dependent, or dangerous to the public by a court in any state is grounds for suspension or revocation of registration.

5220.1802 COMMUNICATIONS.

Subpart 1. **Legibility and content of required reports.** All required rehabilitation reports and required progress records prepared by a rehabilitation provider shall be legible and show the employee's name, department file number, and date of injury.

Subp. 2. **Submission of reports.** All required rehabilitation reports shall be submitted on department forms prescribed by the commissioner.

Subp. 3. **Copies of reports and records.** The assigned qualified rehabilitation consultant shall file all required rehabilitation reports with the commissioner, and provide copies to all parties and their attorneys as the reports are created by the consultant. The qualified rehabilitation consultant shall also provide a copy of required progress records to all parties and their attorneys upon the party's request. The qualified rehabilitation consultant may not charge for the initial copy or photocopy of required rehabilitation reports or required progress records. If additional copies are requested by any party, the qualified rehabilitation consultant is entitled to reasonable compensation for cost from the requesting party. A

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dispute about cost is not a basis for a provider to withhold required reports or records when requested.

The requesting party shall pay for reasonable costs incurred by a rehabilitation provider in creating a report not required by rule or requested by the commissioner or compensation judge.

Subp. 4. **Registered rehabilitation vendor reporting.** At least each 30 days, the registered rehabilitation vendor shall submit all required progress records, required rehabilitation reports and cost information on an employee's case directly to the assigned qualified rehabilitation consultant.

Subp. 4a. **Transfer of information.** Whenever there is a change of assigned qualified rehabilitation consultants or consultant firms, the former qualified rehabilitation consultant firm shall cooperate in transferring to the new assigned qualified rehabilitation consultant or qualified rehabilitation consultant firm all data, required rehabilitation reports, required progress records, and incurred rehabilitation cost information along with other relevant information within 15 days from the receipt of notice that a new consultant is assigned under part 5220.0710. The former qualified rehabilitation consultant firm may not charge a party for the transfer of information to the new assigned qualified rehabilitation consultant or qualified consultant firm.

Subp. 5. **Data privacy.** A rehabilitation provider must comply with Minnesota Statutes, chapters 175 and 176, the rules adopted under those chapters, Code of Federal Regulations, title 42, part 2, Minnesota Statutes, sections 129A.05; 144.335; 144.651; 147.091; 181.954; 181.960; 268A.05; 363.03, subdivision 1a; and 595.02, as applicable, and all other applicable data privacy laws.

A rehabilitation provider shall not engage in communications with health care providers about an employee without the written consent of the employee.

A rehabilitation provider shall safeguard and maintain under conditions of security all information obtained in the

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course of providing rehabilitation consultation and services and shall limit records access to those parties for whom access is prescribed by Minnesota Statutes, section 176.102, subdivision 7, this chapter, or other applicable law.

When permitted by data privacy laws, disclosure of information obtained in the course of providing rehabilitation services is restricted to what is necessary, verified, and relevant to implementation of the rehabilitation plan.

A rehabilitation provider shall request only the information and data that will assist the parties in developing and carrying out the rehabilitation plan.

Subp. 6. [See repealer.]

Subp. 7. [See repealer.]

Subp. 8. [See repealer.]

Subp. 9. [See repealer.]

Subp. 10. **Providing records.** The rehabilitation provider assigned to a case shall maintain all required progress records and copies of all required rehabilitation reports regarding a case and shall make these records available upon request to the commissioner. This subpart shall not apply to the reinsurance association, unless the reinsurance association has assumed primary responsibility for the claim pursuant to Minnesota Statutes, section 79.35, clause (g).

Subp. 11. **Access to medical and rehabilitation reports.** The assigned qualified rehabilitation consultant shall furnish other rehabilitation providers designated by the rehabilitation plan with copies of all appropriate medical and rehabilitation reports necessary for effective service provision by the other providers.

5220.1803 RESPONSIBILITIES.

Subpart 1. **Instruction by qualified rehabilitation consultant.** The assigned qualified rehabilitation consultant shall, at the first in-person contact, instruct employees of their rights and responsibilities relating to rehabilitation and of the purpose of rehabilitation services. The assigned

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qualified rehabilitation consultant shall sign and date the prescribed rehabilitation rights and responsibilities form at the first in-person contact with the employee, and provide the employee, insurer, and commissioner with a copy.

Subp. 1a. **Disclosure of information.** The disclosures required by Minnesota Statutes, section 176.102, subdivision 4, must be made at the first meeting or written communication with an employee. For purposes of the disclosures the following terms shall have the meanings given them.

A. "Ownership interest" includes, but is not limited to, any partnership or holding, subsidiary, or corporate relationship as well as ordinary ownership interest.

B. "Business referral" means any referral arrangement, whether documented or not.

Subp. 2. **Knowledge of laws and rules.** A rehabilitation provider shall be knowledgeable and informed regarding portions of the workers' compensation law and rules that directly relate to the provision of rehabilitation services. Communication of inaccurate information regarding workers' compensation is grounds for discipline.

Subp. 3. [See repealer.]

Subp. 4. [See repealer.]

Subp. 5. **Reporting requirements.** The assigned qualified rehabilitation consultant shall file with the commissioner, by attaching to all rehabilitation plans, an initial evaluation narrative report about the employee that includes the following information in summary fashion: medical status, vocational history, educational history, social history, relevant economic factors, transferable skills, employment barriers, and recommendations. The qualified rehabilitation consultant shall file additional progress summaries, if requested by the commissioner.

The assigned qualified rehabilitation consultant shall periodically report progress and case activity in writing to the parties at reasonable intervals or as requested by the parties.

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the commissioner shall be on all reports submitted by the rehabilitation provider.

The assigned qualified rehabilitation consultant shall maintain individual employee files containing required rehabilitation reports and required progress records about an employee's case and shall provide copies to the commissioner, a compensation judge, or the parties at their request or as required by rule. ~~Files must be maintained by the qualified rehabilitation consultant firm for five years from the date of file closure.~~ For the purpose of Minnesota Statutes, chapter 176, and parts 5220.0100 to 5220.1910, individual employee files containing all required rehabilitation reports and required progress records must be maintained by the qualified rehabilitation consultant firm for five years from the date of file closure. This requirement is in addition to and does not otherwise change or alter any other data retention time period required by law.

The assigned qualified rehabilitation consultant must provide the commissioner with any other requested pertinent information about a qualified employee's rehabilitation for purposes of rehabilitation monitoring by the department.

5220.1805 BUSINESS PRACTICES.

All rehabilitation providers shall abide by the following rules concerning a provider's business practices:

A. Rehabilitation providers shall adhere to all applicable federal, state, and local laws.

B. Rehabilitation providers shall not misrepresent themselves, their duties, or credentials. Rehabilitation providers must not promise or offer services or results they cannot deliver or have reason to believe they cannot provide. Advertising must be factually accurate and must avoid exaggerating claims as to costs, results, and endorsements by other parties.

C. A rehabilitation provider shall not solicit referrals directly or indirectly by offering money or gifts. De

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minimis gifts are not considered the offering of money or gifts. De minimis gifts are those that have a fair market value of less than $25.

D. A rehabilitation provider shall not request or authorize a rehabilitation client to solicit other business on behalf of the rehabilitation provider.

E. A rehabilitation provider shall advise the referral source and payer of its fees and reporting procedures in advance of rendering any services and shall also furnish, upon request, detailed and accurate time records regarding any bills in question.

Rehabilitation providers shall fully disclose to a payer the basis for computing and prorating a fee so that the payer may determine the reasonableness of the fee charged. When more than one employee is served during the same time period, the rehabilitation provider shall prorate the fee.

F. Any fee arrangement which prevents or compromises individualized assessment and services for each employee is grounds for discipline. This may include any fee arrangement which provides employees with standardized services whether or not the services are necessary.

G. A rehabilitation provider shall not incur profit, split fees, or have an ownership interest with another rehabilitation provider outside of the firm that employs the provider.

H. Qualified rehabilitation consultants shall not incur profit, split fees, or have an ownership interest with health care providers. "Health care providers" means those defined in Minnesota Statutes, section 176.011, subdivision 24.

I. The prohibitions of items F, G, and H shall not be construed to prevent married couples or family members from engaging simultaneously in rehabilitation or health care.

5220.1806 DISCIPLINARY ACTION.

Subpart 1. **Discipline.** A rehabilitation provider is subject to disciplinary action, including a fine as provided by

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statute, suspension, and revocation of registration. ~~Discipline shall be based on substantiated complaints about activities or or that violate laws, rules, or orders under Minnesota Statutes, chapter 176.~~ Failure to comply with the standards of performance and professional conduct contained in parts 5220.1800 and 5220.1801 or the violation of any of the provisions of Minnesota Statutes, chapter 176, Minnesota Rules, parts 5220.0100 to 5220.1910, or orders issued under the statutes or rules constitute grounds for discipline.

Subp. 2. **Complaints.** ~~For the purpose of determining compliance with laws, rules, or orders,~~ The commissioner ~~may~~ shall review the activities of rehabilitation providers. Complaints about activities or services of rehabilitation providers relating to noncompliance with laws, rules, or orders shall be made in writing to the commissioner. A complaint may be submitted by any party who becomes aware of a violation, including designees of the commissioner, administrative law judges, and presiding officials at judicial proceedings.

If a rehabilitation provider violates Minnesota Statutes, chapter 176, or the rules adopted thereunder, a rehabilitation provider having knowledge of the violation must so advise the commissioner.

Subp. 3. **Review and investigation.** The commissioner shall ~~review~~ investigate all complaints to determine ~~if the complaint alleges~~ whether there has been a violation of the workers' compensation ~~laws~~ act, rules, or orders as alleged. If the ~~commissioner may dismiss complaints or refer a~~ matter is outside the ~~department's~~ jurisdiction of the commissioner, the commissioner may refer the matter to a forum or agency that has jurisdiction. ~~The complaining party shall be notified of a dismissal or referral. The commissioner may elect to resolve a complaint through the informal instruction of a provider.~~

If an investigation indicates ~~a violation of the workers' compensation act, rules, or orders~~ that discipline is warranted, the commissioner ~~may~~ shall begin a contested case for disciplinary action under Minnesota Statutes, section 176.102,

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subdivision 3a, and the Minnesota Administrative Procedure Act. The report of the administrative law judge shall be made to the rehabilitation review panel which shall make the determination on disciplinary action.

If the commissioner determines that discipline is not warranted, but if the facts and issues involved warrant instruction of the provider, the commissioner shall issue the instruction in writing. The commissioner shall notify the complaining party of the disposition of the case.

Subp. 4. **Cooperation with disciplinary proceedings.** A rehabilitation provider who is the subject of a complaint investigated by the commissioner under Minnesota Statutes, section 176.102, subdivisions 3 and 3a, shall cooperate fully with the investigation. Cooperation shall include responding fully and promptly to any questions raised by the commissioner relating to the subject of the investigation, and providing copies of records, reports, logs, data, and cost information as requested by the commissioner to assist in the investigation. Cooperation shall also include attending, in person, a meeting scheduled by the commissioner for the purposes in subpart 5.

Subp. 5. **In-person meeting.** When conferring with the parties to a complaint is deemed appropriate for clarification or settlement of issues, the commissioner may schedule a meeting. The commissioner may conduct a meeting for the purpose of obtaining information, instructing parties to the complaint, or for the purpose of resolving issues.

Subp. 6. **Resolution written agreement.** The commissioner may enter into stipulated consent agreements regarding discipline with complaint subjects in lieu of initiating contested case proceedings.

5220.1900 REHABILITATION SERVICE FEES AND COSTS.

Subpart 1. **Monitoring.** The insurer has the primary responsibility for monitoring and paying the cost of necessary rehabilitation services provided.

The commissioner shall monitor rehabilitation services and

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costs and shall also conduct periodic audits of costs, services, case outcomes, and compliance with reporting and record keeping requirements. The insurer and the rehabilitation provider shall furnish the commissioner with itemized listings of case services and costs upon request. ~~The commissioner may require uniform billing on a prescribed form and may contact parties to discuss services and costs. Invoices and itemized billings for rehabilitation services shall be provided to the commissioner upon request.~~

Subp. 1a. **Billing.** All rehabilitation provider billings shall be on the uniform billing form prescribed by the commissioner.

Subp. 2. **Reasonable and necessary services.** A rehabilitation provider shall bill for only those necessary and reasonable services which are rendered in accordance with Minnesota Statutes, section 176.102 and the rules adopted to administer that section. A dispute about reasonable and necessary services and costs shall be determined by the commissioner or a compensation judge. The commissioner's or a compensation judge's review must include all the following factors:

A. the employee's unique disabilities and assets in relation to the goals, objectives, and timetable of the rehabilitation plan;

B. the type of rehabilitation services provided and the actual amount of time and expense incurred in providing the service;

C. an evaluation of whether services provided were unnecessary, duplicated other services, were available at no charge to public, or were excessive relative to the actual needs of the employee; and

D. an evaluation of whether services rendered were expressly called for by the employee's rehabilitation plan.

Subp. 3. [See repealer.]

Subp. 4. [See repealer.]

Subp. 5. [See repealer.]

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Subp. 6. [See repealer.]

Subp. 7. **Case activities requiring insurer consent for payment.** The rehabilitation provider must obtain the consent of the insurer before billing for the following case activities, however, the presence or absence of consent shall not preclude the commissioner or a compensation judge from determining the reasonable value or necessity of these case activities:

A. when not directed by the plan, phone calls, or visits to health care providers and accompanying employee to appointments or examinations;

B. follow-up activity with employers during job placement services to verify employee applications or applications not arranged by the rehabilitation provider;

C. phone calls to the department regarding general procedures or questions on rehabilitation direction not related to a specific rehabilitation plan;

D. unanswered attempted phone calls;

E. time spent for report writing not required by rules or requested by a party;

F. assigned qualified rehabilitation consultant service during vendor activity periods beyond required reporting or specific problem solving activity;

G. time for attendance at an administrative conference by the supervisor of the qualified rehabilitation consultant intern who is providing services to the employee;

H. before a determination of eligibility, services rendered when a rehabilitation waiver has been requested and was not denied or when the insurer disputes the employee's eligibility for rehabilitation services;

I. time spent reviewing the file and initial contact to establish rapport with interested parties by an assigned qualified rehabilitation consultant or registered rehabilitation vendor when a case has been transferred from another qualified rehabilitation consultant or vendor within the same rehabilitation firm;

J. time spent by a supervisor, another qualified

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rehabilitation consultant, or support staff in addition to the assigned qualified rehabilitation consultant;

K. job placement activities beyond 90 days from the start of the job placement effort without a formal plan review or case planning meeting with the employee and insurer;

L. wait time for a visit without a prearranged meeting or early arrival for a prearranged appointment;

M. services that duplicate services already provided;

N. charges beyond the hourly fee for testimony at a judicial hearing when the qualified rehabilitation consultant or registered rehabilitation vendor has provided rehabilitation services under the plan;

O. travel costs beyond those needed to develop or complete a plan; or

P. services after a request to suspend or terminate the rehabilitation plan has been filed.

Subp. 8. **Disputes.** In the event of a dispute about the reasonableness and necessity or cost of a rehabilitation service, the insurer or a rehabilitation provider may make a request for a determination by the commissioner or a compensation judge of reasonable costs and necessity of services. Such a request may be made by filing a request for resolution of a dispute according to Minnesota Statutes, chapter 176 or part 5220.0950.

Subp. 9. **Collection prohibited.** No rehabilitation provider shall attempt to collect a fee or reimbursement for an unnecessary or unreasonable service from any party, including the employee, another insurer, the special compensation fund, or any government program. This prohibition shall apply to any fee determined excessive in amount by the commissioner or a compensation judge.

5220.1910 APPROVED CLAIMS HANDLER.

Subpart 1. **Qualifications.** A person meeting all the requirements of this subpart is eligible for certification as an approved claims handler:

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A. at least one year of experience handling Minnesota workers' compensation claims and making decisions on acceptance or denial of Minnesota workers' compensation claims;

B. completion of a training session conducted by the commissioner; and

C. the person is not a rehabilitation provider as defined in part 5220.0100, subpart 28.

Subp. 2. **Procedure for obtaining approval.** The insurer shall certify to the commissioner on a form prescribed for that purpose that the claims handler meets the requirements of this part. Approval is effective upon the commissioner's receipt of the certification. The approval remains in effect until the claims handler leaves the employ of the certifying entity, or the certification is withdrawn by the certifying entity. At the request of the commissioner, the certifying entity must consult with the commissioner regarding withdrawal of certification. The commissioner is authorized to withdraw approval if the claims handler does not meet the requirements of subpart 1.

5220.2650 RETURN TO WORK CONFERENCES.

[For text of subpart 1, see M.R.]

Subp. 2. **Scope.** This part applies when an employee has received temporary total or temporary partial compensation for a total of at least 45 work days whether continuously or intermittently; and no rehabilitation plan in effect at the time the 14-day check is due has been approved under part 5220.0410, subpart 6. In addition, a return to work conference is also available when properly requested by the employee under subpart 4 and Minnesota Statutes, section 176.2421 because of an inability to work at least 14 work days upon the employee's return to work.

[For text of subps 3 to 8, see M.R.]

5220.2780 FAILURE TO PAY UNDER ORDER OR PROVIDE REHABILITATION; PENALTY.

Subpart 1. **Basis.** Where payment of compensation is not made within 14 days following an order as required by Minnesota

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Statutes, section 176.221, subdivisions 6a and 8, the division may assess the penalties provided in Minnesota Statutes, section 176.221, subdivisions 3 and 3a. Where rehabilitation services are not provided as required by Minnesota Statutes, sections 176.102, 176.221, subdivision 6a, and parts 5220.0130, subpart 2 and 5220.0410, subpart 2, the division may assess the penalty provided in Minnesota Statutes, section 176.221, subdivision 3a.

[For text of subps 2 and 3, see M.R.]

EFFECTIVE DATE. Minnesota Rules, parts 5220.0105, 5220.0110, 5220.0120, 5220.0130, 5220.0410, 5220.0510, 5220.0710, 5220.0750, 5220.0850, 5220.0950, 5220.1010, 5220.1250, 5220.1806, and the amendments to parts 5220.0100, 5220.1100, 5220.1200, 5220.1400, 5220.1500, 5220.1600, 5220.1700, 5220.1800, 5220.1801, 5220.1802, 5220.1803, 5220.1805, 5220.1900, 5220.1910, 5220.2650, and 5220.2780 are effective ~~January 2~~ July 1, 1992.

Minnesota Rules, part 5220.1900, subpart 1a, is effective January 4, 1993.

REPEALER. Minnesota Rules, parts 5220.0100, subparts 6, 7, 8, 10a, 11, 14, and 15; 5220.0210; 5220.0300; 5220.0400; 5220.0500; 5220.0600; 5220.0700; 5220.0800; 5220.0900; 5220.1000; 5220.1300; 5220.1801, subparts 3 and 4; 5220.1802, subparts 6, 7, 8, and 9; 5220.1803, subparts 3 and 4; and 5220.1900, subparts 3, 4, 5, and 6, are repealed July 1, 1992.

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by Revisor _____

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED

APR 28 1992

Joan Anderson Growe
Secretary of State

10:30 AM
PB

APPROVED AS TO FORM AND LEGALITY
April 22 1992
HUBERT H. HUMPHREY III
ATTORNEY GENERAL
BY
SPECIAL ASSISTANT ATTORNEY GENERAL

MJM
4-14-92

RULE REVIEW CHECKLIST
RESUBMITTED RULE

File No. 1886 Docket No. 05 0009 0606

RESUBMISSION DATE 4-9-92
DATE DUE 4-23

ADOPTED W/O HEARING
EMERGENCY RULE

APPROVED 4-22-92
DISAPPROVED
WITHDRAWM

REVISOR APPROVED 4-16-92
REVISOR DISAPPROVED
FILED W/SEC. STATE 4-28-92
RETURNED TO AGENCY 4-28-92

____ **Does the revision raise significant new legal issues?**

_____ Review date

✓ Rule as adopted (4 copies)

✓ Supplemental Findings of Fact, Conclusions & Order Adopting

NA Board's Supplemental Resolution Adopting

NA Notice of submission to Attorney General

NA Affidavit of Mailing Notice to Attorney General

✓ Declaration of Counsel

4-10-92 - Called Mary Miller - per MJM's memo - SNR should have been redone. According Mary Miller had discussions with Jon Murphy and other Labor & Industry staff. Uncertain if MJM told them they did not have to redue SNR. May 7 deadline for 180 days coming up. Mary Miller going to get back to me today.

Jon Murphy said MJM didn't require to redue SNR - otherwise they would have had to start over.

Fine - MJM

DEPARTMENT: Office of the Attorney General

STATE OF MINNESOTA

OFFICE MEMORANDUM

DATE: April 28, 1992

TO: DAVID SHERWOOD-GABRIELSON
Rehabilitation and Medical Affairs
Workers' Compensation Division
443 Lafayette Road
St. Paul

FROM: MARY JO MURPHY
Special Assistant Attorney General
525 Park Street, Suite 500 (55103)

PHONE: 296-3258

SUBJECT: In the Matter of the Adopted Rule Relating to the Rehabilitation of Persons with Work-Related Injuries

The above-referenced rule has been approved as to its legality by the Attorney General on April 22, 1992.

Enclosed is your copy of the approved rule. This office has already filed two copies with the Secretary of State, who will forward one copy to the Revisor of Statutes. The fourth is being retained by this division of the Attorney General's Office for its records.

Also enclosed are any petitions, requests, submissions or comments along with any extra copies of documents which you submitted to the Attorney General.

Your next step is to arrange for publication of the Notice of Adoption in the State Register. In a day or two, you should receive from the Revisor's Office three copies of the notice of adoption of your rule. You should submit two copies of the Notice of Adoption to the State Register for publication. A permanent rule without a hearing does not become effective until five days after a notice of adoption is published in the State Register in accordance with Minn. Stat. § 14.27. An emergency rule becomes effective five working days after approval by the Attorney General; however, the agency must publish a notice in the State Register in accordance with Minn. Stat. § 14.34.

If you have any questions in this regard, please contact me.

MJM:jj
Enclosures
cc: Jon K. Murphy
William Brown, Chief Judge
MaryAnn Hruby

MJM's changes in 1-16-92 memo

5220.0120 subp 5 - changes it but did not address in changes of the findings of fact

5220.0410 subd 6 " " "
" "

5220.0510 subd 4 " "
" "

5220.0510 subd 6 " "
" "

5220.0850

made changes but didn't justify them in findings of fact

none of the changes in MJM's memo is justified by the findings of fact also the following are also not justified

5220.0100 subd 5 - deleted it } same
5220.0130 subd 4 deleted it }
5220.0710 subd 4 - deleted it, sub-5 deleted end of sentence

5220.1801 subd 5, 8 - added statute deleted and added same language

5220.1806 subd 3 added language
" if the matter is outside the jurisdiction
" the commissioner may refer the matter
new language under subd 3

Data Practices page 46 subd 5
per MJM's memo - added statutory
language 129A.05 - not in existence
renumbered as 268A.05 = Reports Disclosure
144.335 = Access to Health Records
144.651 = Patients and Residents of Health
Care Facilities; Bill of Rights (subd 8)
147.091 (see subd 7(d)) 181.954 = Privacy,
Confidentiality, and Privilege Safeguards
181.960 = Review of Personnel Record by Employee
363.03 subd 19 = Unfair Discriminatory Practice
595.02 = Testimony of Witnesses
do not have listed 13.47 - but put.
other privacy data

They made changes on from your memo

STATE OF MINNESOTA

DEPARTMENT OF LABOR AND INDUSTRY

In the Matter of the Proposed Adoption of the Amendment of Rules, of the State Department of Labor and Industry, Workers' Compensation Division, Relating to the Rehabilitation of Persons with Work-Related Injuries

DECLARATION OF COUNSEL

I, Jon K. Muth, Special Assistant Attorney General, do hereby declare that I have examined the above-captioned rule, and the supporting rulemaking record, and that, based on my examination, the Administrative Procedure Act and Minnesota Rules, Chapter 2010 have been followed. Any exceptions are listed below. For Attorney General billing purposes, the four-digit docket client code is 60 0001 0606.

Assistant ~~Attorney~~ General

Dated: 4/6/92

STATE OF MINNESOTA

OFFICE MEMORANDUM

DEPARTMENT: Labor and Industry

DATE: April 9, 1992

TO: Mary Jo Murray
Attorney General's Office

recd 4-9-92

FROM: Mary Miller, Attorney MM
Legal Services

PHONE: 6-8726

SUBJECT: Workers' Compensation Rehabilitation Rules
Parts 5220.0100 to 5220.1910

As provided in Minn. Rules Part 2010.1300 the following items are enclosed for resubmission:

A. The Supplemental Findings of Fact, Conclusions, and Order Adopting the rule and

B. four copies of the rule as adopted with the modifications reflected and approved as to form by the Revisor of Statutes.

In addition, the Declaration of Counsel is enclosed. We look forward to your response.

Enclosures

cc: Jon Murphy, Assistant Attorney General
Gary Bastian, Deputy Commissioner
David Sherwood-Gabrielson, Director