

STATE OF MINNESOTA  
DEPARTMENT OF LABOR AND INDUSTRY

In the Matter of the Proposed  
Adoption by the Minnesota  
Department of Labor and Industry,  
Workers' Compensation Division,  
of Amendments Governing  
Rehabilitation Providers

STATEMENT OF NEED  
AND REASONABLENESS  
for  
Proposed Amendments to  
Minnesota Rules, Parts  
5220.0100 - 5220.1900

Introduction

These amendments accomplish two purposes. Most are required to make the rules consistent with recent legislative and case law developments. Others institute an event-based reporting system which eliminates the monthly reporting requirements for rehabilitation cases. Because the volume of rehabilitation cases and the responsibilities of Rehabilitation Services have increased significantly, it is no longer feasible to review and monitor monthly reports for every rehabilitation case. Further, the increased professionalism of qualified rehabilitation consultants (QRC) makes it appropriate for the commissioner to shift a greater burden for monitoring onto QRCs. The event-based reporting system is necessary and reasonable to enable Rehabilitation Services to more efficiently monitor rehabilitation progress and to concentrate resources at those points in the process which are most likely to require intervention.

5220.0100 DEFINITIONS.

Subp. 1b. The addition of the term "approved claims handler" is necessary for the implementation of the new procedure for waiving rehabilitation consultation as mandated by Minn. Stat. § 176.102, subd. 4 (d) (Supp. 1983). See part 5220.1910. Approved claims handlers are claims personnel of insurers, employers, or adjusting companies who may complete the rehabilitation indicators form described in part 5220.0210, subp. 3. The relative simplicity of the form, the availability of necessary information to claims personnel, and the minimal independent judgment required to complete the rehabilitation indicators form make it reasonable to permit approved claims handlers to complete it. QRCs may continue to complete this form without becoming approved claims handlers.

Subp. 5. The added sentence to this subpart codifies the current practice of classifying all qualified rehabilitation consultants as either independent or affiliated.

Subp. 6. The added language to the definition of "Qualified rehabilitation consultant/affiliated" is necessary to make this definition consistent with a recent decision of the Rehabilitation Review Panel. In Young v. DeChene Corp., File No. 476-56-4359 (served and filed March 12, 1984), the panel interpreted this definition to exclude from its scope a qualified rehabilitation consultant who provided rehabilitation consultation to entities other than the affiliated parent entity. This amendment thus incorporates the requirement that an affiliated consultant provide service only to the parent entity.

Subp. 8a. The definition of a "firm" is necessary to the implementation of the commissioner's licensing responsibilities under Minn. Stat. § 176.83 (a) (Supp. 1983). Pursuant to this statutory authority, Minn. Rules, part 5220.1500, subp. 1. G. was adopted in February of 1984. In administering this new rule, the commissioner has received inquiries as to whether particular business arrangements constitute a firm. This rule establishes that all rehabilitation firms are subject to the requirements of part 5220.1600, subp. 1, regardless of the form of the entity.

Under this definition, only independent QRCs may be associated with rehabilitation firms, not affiliated QRCs. This is consistent with the intent of part 5220.1600 that firms encompass only independent QRCs, and with the requirement in part 5220.0100, subp. 6 that affiliated QRCs serve only employers, insurers, or adjusting companies.

This requirement regarding the employment of QRCs also helps distinguish firms from rehabilitation vendors as defined by subp. 11. Firms employ only independent QRCs. However, vendors are prohibited from engaging any QRCs at all. Confusion surrounding the distinction between firms and vendors has precipitated litigation concerning the employment of QRCs by vendors. In clarifying the description of firms, this amendment should reduce litigation.

Subp. 10a. This amendment is necessary to recognize the addition of medical services to the jurisdiction of the rehabilitation services section under Minn. Stat. § 176.103, subd. 2 (Supp. 1983). As a result of these added responsibilities, the name has been changed to the Rehabilitation and Medical Services Section.

Subp. 11. Consistent with Minn. Stat. § 176.102, subd. 10 (Supp. 1983) and Minn. Rules part 5220.1300, subp. 5, vendors are prohibited from employing QRCs. This is intended to preserve the professional independence between QRCs, who prescribe and supervise the plan, and vendors, who provide services under the plan.

Subp. 14. The new definition of a required rehabilitation report is necessary to the event-based reporting system. Reports are required upon the initiation, alteration, suspension, or termination of rehabilitation plans pursuant to parts 5220.0400, 5220.0500, and 5220.0600. Because these events represent critical stages in the rehabilitation plan, these reports are necessary and reasonable to effectively monitor rehabilitation progress.

Under the amended definition, monthly reports which are currently filed as R-3 progress reports under part 5220.1801, subp. 2 will no longer be required. These reports, which cover routine rehabilitation progress, are not necessary for monitoring the employee's rehabilitation. Their exclusion from the definition is thus necessary and reasonable in a reporting system which concentrates on the critical stages of rehabilitation. As prescribed by Minn. Stat. § 176.102, subd. 7 (Supp. 1983), additional reports are required if they are requested by the commissioner or parties.

Subp. 15. The addition of a definition of required progress record is integral to the event-based reporting system. Previously, all documents regarding a case were submitted to Rehabilitation Services and became part of the employee's rehabilitation file. While submission of all documents is not required in the event-based reporting system, the documents must nonetheless be prepared and maintained by the QRC. Retaining all documents as part of the required progress record is necessary to ensure a complete file on the case, to maintain accountability to the QRC's employer, to permit an audit by the commissioner, and to permit prompt responses to information requests.

#### **5220.0210 WORK STATUS REPORT**

This proposed rule replaces the current rule on work status reports, part 5220.0200, which was made obsolete by changes in Minn. Stat. § 176.102, subd. 4 (Supp. 1983). Work status reports are needed to enable the commissioner to monitor compliance with the statutory requirements regarding delivery of rehabilitation services.

Subpart 1. This section specifies the conditions which require filing of the work status report. Work status reports are needed as specified in A-D in order for the commissioner to determine rehabilitation eligibility under Minn. Stat. § 176.102, subd. 6 (a) (Supp. 1983) and the appropriateness of a waiver of rehabilitation consultation under Minn. Stat. § 176.102, subd. 4 (d) (Supp. 1983).

The time deadlines in A. and B. are relatively short in recognition of the necessity for early intervention for successful rehabilitation. Sufficient time is provided, however, for preparation of the report. The time deadlines in C. and D. are mandated by Minn. Stat. § 176.102, subd. 4 (a) (Supp. 1983).

Subp. 2. This subpart describes the contents of the work status report and the documentation which must be submitted with the report. A rehabilitation indicators form must be attached to the work status report where rehabilitation is waived. This form is necessary as part of the commissioner's monitoring responsibilities to ensure that the waiver is substantiated by available information. Under part 5220.0200, subp. 2, the work status report is currently used to indicate eligibility for rehabilitation services. The new rules thus continue present practices, except that the rehabilitation indicators form must be submitted where a waiver is requested.

Subp. 3. This subpart describes the requirements for obtaining a waiver of rehabilitation consultation. In general, this procedure will be used where it is highly likely that the employee will return to work within a relatively short time. The submission of a work status report, accompanied by a completed rehabilitation indicators form, results in a waiver of rehabilitation consultation. Because the employer completes and submits the form, notice to the employer of the granting of the waiver is unnecessary. Where the request for a waiver is denied, Minn. Stat. § 176.102, subd. 4 (b) (Supp. 1983) requires the provision of rehabilitation services and the appointment of a QRC. In these cases, notice to the employer is required to permit the assignment of a QRC.

Waivers are granted for 60 days to allow the commissioner to periodically review the employee's eligibility for rehabilitation. This time period reflects the commissioner's experience and judgment that most employees for whom rehabilitation is waived will have returned to work within 60 days. Rehabilitation consultation will likely be required where the employee does not return to work within 60 days. Upon expiration of this period, another work status report must be filed. This procedure is similar to the present practice of submitting 60 day supplemental work status reports under part 5220.0200, subp. 2.

#### **5220.0300 INITIATION OF REHABILITATION SERVICE.**

Subp. 1. This subpart is amended to reflect legislative changes in Minn. Stat. § 176.102, subd. 4 (a) (Supp. 1983). The deadlines for initiating rehabilitation services are adjusted consistent with amendments to the statute.

Subp. 2. This amendment clarifies that the commissioner has the authority to schedule administrative conferences where there are disputes regarding a change of QRC. Because of frequent inquiries regarding the availability of conferences for this purpose, the legislature explicitly conferred the necessary authority under Minn. Stat. § 176.102, subd. 4(a) (Supp. 1983). The clarification is included in the rule for completeness.

Subp. 3. Pursuant to amendments to Minn. Stat. § 176.102, subd. 4 (a) (Supp. 1983), rehabilitation must be provided within 5 days of receiving information that the employee is qualified for rehabilitation services. The rule previously provided for initiation of rehabilitation within 30 days, as required by the statute then in effect. The commissioner is authorized by Minn. Stat. § 176.102, subd. 4 (b) (Supp. 1983) to appoint a QRC at the employer's expense if the employer fails to do so within the specified time period.

#### **5220.0500 PLAN MODIFICATION.**

The added language in this rule reflects legislative additions made in 1983. The amendments are necessary to make the rule consistent with Minn. Stat. § 176.102, subd. 8 (Supp. 1983).

#### **5220.1000 RETRAINING**

The legislature revised Minn. Stat. § 176.102, subd. 11 (Supp. 1983) to eliminate the confusion noted by the Supreme Court in Rippentrop v. Imperial Chemicals Co., 315 N.W.2d 514, 33 W.C.D. 453 (1982) regarding the payment of retraining benefits. Consistent with the 1983 revisions, the amended rule provides that compensation during retraining begins at the commencement of the training program. The amount of retraining benefits is governed by the law in effect at the time of the injury.

The amended rule also provides that on-the-job training and compensation for training begin simultaneously. Because on-the-job training benefits were repealed in 1983, an employee is entitled to those benefits only if the right to them vested before the repeal of the law. The amendments are thus necessary to accurately reflect statutory and case law developments.

As part of its 1983 revisions to Minn. Stat. § 176.102, subd. 11, the heading was changed from "Compensation During Rehabilitation" to "Retraining". The heading of this subpart is also changed accordingly.

**5220.1300 QUALIFIED REHABILITATION CONSULTANT AND REGISTERED REHABILITATION VENDOR.**

Consistent with Parts 5220.0100 subp. 8a and 5220.1600 "organization" is changed to "firm". This editorial change does not affect the meaning of the rule.

**5220.1400 QUALIFYING ELIGIBILITY CRITERIA FOR REHABILITATION CONSULTANT.**

The specification of educational degrees for QRC licensure eligibility is expanded to include counseling degrees and additional psychology degrees. The added degrees require coursework that is essentially identical to that required for the psychology and counseling and guidance degrees listed in the present rule. Since eligibility is determined by degree title and not by curriculum evaluation, the present rule has required the denial of licensure to applicants whose coursework is similar to the coursework of applicants who receive licenses. The amendments are intended to correct this inequity.

**5220.1500 PROCEDURE FOR QUALIFYING AS REHABILITATION CONSULTANT.**

The change from a 15 to a 30 day appeal period makes the appeal period consistent with the other appeal periods under Minn. Stat. § 176.102, subds. 6 and 8. As no appeal period is specified in the QRC licensing provisions of Minn. Stat. §§ 176.102 subd. 10 and 176.83 subd. 2, it is reasonable to adopt the same appeal period that is applied to other matters before the Rehabilitation Review Panel.

**5220.1600 PROCEDURE FOR APPROVAL AS ORGANIZATION REGISTERED FOR EMPLOYMENT OF QUALIFIED REHABILITATION CONSULTANTS/INDEPENDENT.**

"Firm", a term defined in Part 5220.0100 subp. 8a, is substituted for the undefined term "organization." This editorial change has no material effect on the meaning of the rule.

**5220.1801 PROFESSIONAL CONDUCT.**

Subp. 2. The amendment requiring the submission of plans to Rehabilitation Services and to the employer represents no substantial change from the existing rules. The significant change to this rule is the elimination of the monthly reporting requirement.

Monthly reports are currently filed with Rehabilitation Services on R-3 progress report forms and were initially intended to permit the monitoring of rehabilitation. The Section's increased responsibilities, together with the growing professionalism and experience of QRCs, have made it unnecessary and inefficient to monitor rehabilitation by reviewing monthly reports. The proposed amendments thus reflect the changes in the Section's monitoring responsibilities and in the private rehabilitation consulting profession. Reports must still be submitted upon request to the employer, insurer, commissioner or employee.

#### **5220.1802 COMMUNICATIONS.**

Subp. 2. These amendments are necessary to achieve conformity with the other amendments regarding the change to an event-based reporting system. The change in the statutory citation is necessary to reflect the commissioner's specific authority over rehabilitation forms under Minn. Stat. § 176.83 (j) (Supp. 1983).

Subp. 10. The amendments to this subpart are necessary to implement the event-based reporting system. The commissioner will monitor rehabilitation progress by reviewing reports required at critical stages and by periodic audits. These amendments thus eliminate the requirement in the present rule that all reports must be submitted to rehabilitation services. Under Minn. Stat. § 176.102, subd. 7 (Supp. 1983), the QRC is required to provide the commissioner with any requested records. This subpart, which addresses only the submission of reports to the commissioner, is not intended to restrict the statutory rights of the employee, employer or insurer to information maintained by the QRC.

#### **5220.1805 BUSINESS PRACTICES.**

The citation correction is an editorial amendment necessitated by the addition of part 5220.1910 to these rules.

#### **5220.1900 REHABILITATION SERVICES AND FEES.**

Subp. 1. Under Minn. Stat. § 176.102 Rehabilitation Services is required to monitor the delivery of rehabilitation to injured workers. As noted throughout these amendments, supervision of reporting and recordkeeping by QRCs is basic to this responsibility.

Subp. 3. The amendments regarding the submission of reports are intended to permit the commissioner to decide when to require the filing of reports. These changes are necessary to the proper functioning of the event-based reporting system. Presently the QRC files all documents generated on a case with Rehabilitation Services. In effect, duplicate files on the employee are created by Rehabilitation Services and the QRC. Under the new system, the commissioner simply requests reports from the QRC as necessary without creating an entire file. Rehabilitation progress can be monitored more efficiently under the event-based reporting system.

Subp. 4. The amendments to this subpart are necessary to make the rule consistent with other amendments regarding event-based reporting. Information on rehabilitation costs is required to fulfill the commissioner's responsibility to study rehabilitation services and delivery (Minn. Stat. §176.102, subd. 3), to make determinations regarding QRC fees (Minn. Stat. § 176.102, subd. 2), and to establish standards for determining whether rehabilitation costs are excessive (Minn. Stat. § 176.83 (d) (Supp. 1983)). Cost estimates were previously submitted on the monthly progress reports. Sufficient information can be obtained from the reports required in the event-based reporting system.

#### **5220.2000 APPROVED CLAIMS HANDLER.**

This new rule sets forth the procedure for approving claims handlers to complete and submit rehabilitation indicators forms. Minn. Stat. § 176.83 (a) (Supp. 1983) authorizes the establishment of these procedures for conducting an initial rehabilitation consultation. The requirements for qualification as an approved claims handler in subpart 1 are reasonable and necessary to ensure a basic working knowledge of the workers' compensation system and familiarity with the rehabilitation process.

The approval procedure in subpart 2 places the primary burden of screening qualifications on the employer, insurer or adjusting company rather than on the commissioner. The limited functions to be performed by approved claims handlers do not justify a licensing procedure or a significant commitment of Section resources. Certification by the employer is thus an adequate basis for approving a claims handler. Because of the importance of the employer certification in obtaining approval, approval automatically is withdrawn when the employment relationship ends. The commissioner may also advise the employer about decertification of claims handlers. Finally, the commissioner must be authorized to withdraw approval where the employer has not properly screened candidates.



**IMPACT ON SMALL BUSINESS.**

The Commissioner has considered the potential impact of these rules on small businesses to the extent required by Minn. Stat. § 14.115 (Supp. 1983) and determined that the statute has no application to these rules. Minn. Stat. § 14.115 (Supp. 1983) does not apply to rehabilitation providers because they are service businesses regulated by the Commissioner for standards and costs. Minn. Stat. § 14.115, subd. 7 (c) (Supp. 1983). Self-insured employers and insurers who may be affected by the rules are not small businesses within the meaning of Minn. Stat. § 14.115, subd. 1 (Supp. 1983).

Although not required, the Commissioner has nonetheless considered the impact of these rules on small business. The amendments establish less stringent compliance and reporting requirements in that monthly rehabilitation reports are no longer required. The event-based reporting system established by these amendments simplifies compliance and reporting requirements for rehabilitation providers. No design or operational standards for rehabilitation providers are established by these amendments. The paramount needs for protection of injured workers and the delivery of quality rehabilitation services require that all rehabilitation providers be subject to the provisions of these rules.

**FISCAL IMPACT ON LOCAL PUBLIC BODIES.**

The Commissioner has considered the fiscal impact of these rules on local public bodies pursuant to Minn. Stat. § 14.11, subd. 1 (1982) and has found none. No additional financial burdens are placed on local public bodies, as the adoption of these amendments will not require the expenditure of public moneys by local public bodies.