



April 23, 2018

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Via e-mail to [sonars@lrl.leg.mn](mailto:sonars@lrl.leg.mn).

Re: In the Matter of Proposed Amendments to Rules Governing Workers' Compensation Vocational Rehabilitation Fees, Minn. R. 5220.1900; Revisor's ID Number R-04438

Dear Librarian:

The Minnesota Department of Labor and Industry (DLI) intends to adopt rules about fees charged for services provided to injured workers by workers' compensation vocational rehabilitation providers. DLI plans to publish a Dual Notice in the April 30, 2018, State Register.

DLI has prepared a Statement of Need and Reasonableness. As required by Minnesota Statutes, sections 14.131 and 14.23, DLI is sending the Library an electronic copy of the Statement of Need and Reasonableness.

If you have questions, please contact me at 651-284-5006 or [dli.rules@state.mn.us](mailto:dli.rules@state.mn.us).

Sincerely,

*Matt Jobe*

Matt Jobe  
General Counsel  
Minnesota Department of Labor and Industry

Enclosure: Statement of Need and Reasonableness

## **Minnesota Department of Labor and Industry**

### **STATEMENT OF NEED AND REASONABLENESS**

#### **Proposed Amendments to Rules Governing Workers' Compensation Vocational Rehabilitation Fees, Minnesota Rules, Part 5220.1900, R-04438.**

#### **ALTERNATIVE FORMAT**

Upon request, this Statement of Need and Reasonableness (SONAR) can be made available in an alternative format, such as large print, braille, or audio. To make a request, contact the agency contact person, Matt Jobe, at the Department of Labor and Industry (DLI) in any of the following ways:

- by mail at 443 Lafayette Road North, St. Paul, MN 55155;
- by phone at 651-284-5006;
- by FAX at 651-284-5725; and
- by e-mail at [dli.rules@state.mn.us](mailto:dli.rules@state.mn.us)

#### **INTRODUCTION AND STATUTORY AUTHORITY**

Minn. Stat. § 176.102 (2016) addresses vocational rehabilitation for injured workers in the workers' compensation system. The goal of vocational rehabilitation is "to restore the injured employee so the employee may return to a job related to the employee's former employment or to a job in another work area which produces an economic status as close as possible to that the employee would have enjoyed without disability." Minn. Stat. § 176.102, subd. 1(b). As long as certain conditions are met, employers are liable for rehabilitation services for injured workers. Minn. Stat. § 176.102, subd. 9.

Rehabilitation services include medical management, 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. Minn. R. 5220.0100, subp. 29. The rules governing rehabilitation services are currently found at Minn. R. 5220.0100 through 5220.1900.

Minn. Stat. § 176.102, subd. 2(a), grants the commissioner of DLI specific statutory authority to adopt rules regarding rehabilitation fees. In fact, the commissioner is required to "by rule establish a fee schedule or otherwise limit fees charged by qualified rehabilitation consultants and vendors" and to "annually review the fees and give notice of any adjustment in the State Register." Minn. Stat. § 176.102, subd. 2(a). Minn. R. 5220.1900 carries out the commissioner's statutory obligation.

Additionally, Minn. Stat. § 176.83, subd. 2 (2016), authorizes the commissioner to adopt "rules necessary to implement and administer section 176.102," the statutory section on rehabilitation. The rehabilitation rules may "establish[] . . . qualifications necessary to be a qualified rehabilitation consultant"; set forth "the requirements to be an approved registered vendor of rehabilitation services;" "provide for penalties to be imposed by the commissioner against insurers or self-insured employers who fail to provide rehabilitation consultation to employees pursuant to section 176.102;" and "establish criteria for determining 'reasonable

moving expenses' under section 176.102." Minn. Stat. § 176.83, subd. 2.

The commissioner is not limited to adopting new rehabilitation rules. Minn. Stat. § 176.83, subd. 1, provides that the commissioner may also amend or repeal rules to carry out the provisions of chapter 176.

Finally, Minn. Stat. §§ 176.221 and 176.225 (2016) authorize the commissioner to assess a penalty when an employer or insurer does not timely make a payment or frivolously denies a claim for a payment.

## **BACKGROUND AND OUTREACH TO REGULATED PARTIES**

The original rules promulgating the standards and procedures for providing rehabilitation services for injured workers were first adopted in 1980.<sup>1</sup> The rules have been amended on multiple occasions since then. The last revisions were made in 2005.<sup>2</sup> This SONAR is about amendments to 5220.1900, the part of the rehabilitation rules that addresses rehabilitation service fees and costs.

The impetus to make changes to 5220.1900 came, in part, from proposals by the Minnesota Association of Rehabilitation Professionals (MARF) and deliberations by the Rehabilitation Review Panel (RRP) and the Workers' Compensation Insurers' Task Force (WCITF). MARF is made up of qualified rehabilitation consultants (QRCs) and job placement vendors. The RRP is a body created by Minn. Stat. § 176.102, subd. 3. The RRP consists of "two members each from employers, insurers, and rehabilitation, two licensed or registered health care providers, one chiropractor, and four members representing labor." *Id.* One of the functions of the RRP is to "develop and recommend rehabilitation rules to the commissioner." *Id.* at 3a. The WCITF is an advisory group composed of representatives of insurers and self-insured employers.

MARF presented at the RRP meeting on July 23, 2015.<sup>3</sup> MARF suggested three revisions to the rehabilitation rules:

- 1) increase the number of hours that QRCs may provide services when job development and/or job placement services are being provided by someone other than the QRC from two to eight hours per month (*See* Minn. R. 5220.1900, subp. 6a);
- 2) eliminate the \$10 per hour fee reduction that is triggered when rehabilitation cases last longer than 39 weeks or exceed \$3,500 in costs (*See* Minn. R. 5220.1900, subp. 1f); and
- 3) eliminate the \$10 per hour fee reduction for QRC interns (*See* Minn. R. 5220.1900, subp. 1d).

Members of the RRP discussed MARF's proposals at the RRP meeting on January 7, 2016. Additionally, MARF presented its suggested rule changes at the WCITF meeting on March 16, 2016.<sup>4</sup> Then, at the RRP meeting on April 7, 2016, a member made motions for the RRP to recommend that DLI amend 5220.1900, subparts 1f and 6a. A majority of RRP members voted in favor of these two motions.

Taking into consideration MARF's proposals and discussions at RRP and WCITF meetings, DLI drafted amendments to 5220.1900. On December 22, 2016, DLI posted a draft of the proposed amendments to 5220.1900 on the rulemaking docket page on its website and

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<sup>1</sup> *See* 4 S.R. 1221–27 (Feb. 4, 1980).

<sup>2</sup> *See* 29 S.R. 1480 (May 31, 2005).

<sup>3</sup> Minutes from the RRP meetings discussed in this SONAR can be accessed at: <http://www.dli.mn.gov/Rrp.asp>.

<sup>4</sup> Minutes from the WCITF meetings discussed in this SONAR can be accessed at: <http://www.dli.mn.gov/Wcitif.asp>.

emailed the draft to people and entities who had signed up for the DLI updates lists for workers' compensation insurance adjusters and rehabilitation providers.<sup>5</sup> Although the most substantive changes were made to subparts 1f and 6a, DLI also proposed some minor amendments to other subparts in 5220.1900. (The details of this draft of the rule amendments are discussed below in the analysis of regulatory factor 4).

Two weeks later, on January 5, 2017, members of the RRP discussed the draft rule amendments to 5220.1900 at their meeting. QRCs presented oral comments to the RRP as well. RRP members and commenters disagreed with some of the proposed changes to subparts 1f and 6a. DLI also received written comments from the public that conveyed similar opinions to those expressed at the RRP meeting.

DLI gave a presentation to the WCITF on March 31, 2017, and the RRP on April 6, 2017, regarding the draft rule amendments released on December 22, 2016. As part of its presentation, DLI discussed possible alternative approaches to amending 5220.1900.

After considering the comments from stakeholders and the comments from members of the RRP and the WCITF, DLI revised the draft amendments to remove the fee reduction in subpart 1f and decrease the maximum hourly rate for QRCs in subpart 1c<sup>6</sup> so that the total QRC costs would remain the same as under the current rules. Also, subpart 6a was revised to allow QRCs to receive payment for six hours of services per calendar month during job development/job placement, without approval from the insurer, commissioner, or compensation judge, in order to advance the rehabilitation plan. DLI posted the revised draft rule amendments to 5220.1900 on its website on May 15, 2017, and emailed it to persons on the adjusters' and rehabilitation providers' lists the next day.

DLI then presented the revised draft rule amendments at the WCITF meeting on May 17, 2017, and the RRP meeting on July 6, 2017. After making a few minor adjustments to the May 15, 2017, draft, on August 22, 2017, DLI posted the draft rule amendments to 5220.1900 on its website. In the following weeks, DLI sent the draft to persons on the adjusters' and rehabilitation providers' lists and members of the WCITF and the RRP. On October 12, 2017, the RRP recommended that the commissioner adopt the draft rule amendments to 5220.1900 dated August 22, 2017.<sup>7</sup>

## **DESCRIPTION OF 5220.1900 SUBPARTS AND PROPOSED AMENDMENTS**

To provide context for the regulatory analysis below, here is a summary of the subparts of 5220.1900 with a brief description of the proposed amendments:

- Subpart 1 describes the roles of insurers, the commissioner, and rehabilitation providers in monitoring and paying the costs of rehabilitation services. There are no amendments to this subpart.
- Subpart 1a requires that rehabilitation provider billings be recorded on the vocational

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<sup>5</sup> There are 1,775 persons on the adjusters list and 1,365 persons on the rehabilitation providers list as of March 19, 2018. Although DLI created the lists to provide notice of information that would be of interest to adjusters and rehabilitation providers, persons other than adjusters and rehabilitation providers have also signed up to receive the emails.

<sup>6</sup> The current version of 5220.1900, subpart 1c, states that \$65 is the maximum hourly rate for QRC services. However, that value has been adjusted in accordance with subpart 1b. As of October 1, 2017, the maximum hourly rate for QRC services is \$108.78.

<sup>7</sup> Minn. Stat. § 176.102, subd. 3a, states that the RRP "shall . . . develop and recommend rehabilitation rules to the commissioner."

rehabilitation invoice prescribed by the commissioner. Subpart 1a also lists information the billings must provide. There are no amendments to this subpart.

- Subpart 1b states that there are maximum rates for fees for rehabilitation services and how the rates may be increased every year. The proposed amendments to this subpart are necessary because of the adjustment to the maximum hourly rate in subpart 1c and the elimination of 1f.
- Subpart 1c prescribes a maximum hourly rate for QRCs, which has been adjusted according to subpart 1b. Subpart 1c also addresses the hourly rate for wait time and travel time. The proposed amendment to this subpart adjusts the maximum hourly rate for QRC services to account for the elimination of the \$10 fee reduction in subpart 1f.
- Subpart 1d states that the hourly rate for QRC interns must be at least \$10 less than the maximum hourly rate charged by QRCs employed by the QRC firm. There are no amendments to this subpart.
- Subpart 1e prescribes a maximum hourly rate for providing job development and job placement services. The proposed amendment to this subpart notes the maximum hourly rate for job development/job placement services as of October 1, 2017: \$82.58.<sup>8</sup>
- Subpart 1f prescribes a \$10 fee reduction for services provided by QRCs or QRC interns when a rehabilitation case lasts longer than 39 weeks or when the total billings for a case exceed \$3,500. The proposed amendment is to eliminate this subpart.
- Subpart 1g states that the employer or insurer must either pay or deny a rehabilitation provider's bill or specify what additional data is needed no later than 30 calendar days after receiving the bill. The proposed amendment to this subpart makes it explicit that insurers<sup>9</sup> could be assessed penalties under Minn. Stat. ch. 176 for failure to comply with this subpart.
- Subpart 2 requires that rehabilitation providers only bill for necessary and reasonable services and provides that the commissioner or a compensation judge must decide disputes about costs and whether services are necessary and reasonable. The Revisor's Office plans to make non-substantive amendments to this subpart.
- Subpart 6a places a limit on QRC services to the injured worker when a rehabilitation provider other than a QRC is providing or billing for job development/job placement services.<sup>10</sup> Proposed amendments to this subpart provide that QRCs may be paid for up to six hours of services per month during job development/job placement without getting prior approval from the insurer, commissioner, or compensation judge. Proposed amendments also provide that travel time and wait time are not included in the limit on services by a QRC during job development/job placement.
- Subpart 6b places a limit on billing for a rehabilitation consultation and "the development, preparation, and filing of a rehabilitation plan." The proposed amendment to this subpart clarifies when payment beyond the time limit may be made.
- Subpart 7 lists certain services and activities that are not compensable or are not billable.

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<sup>8</sup> The proposed amendment does not actually change the maximum hourly rate for job development/job placement services, as that value has been adjusted in accordance with subpart 1b multiple times since subpart 1e was last amended.

<sup>9</sup> "Insurer" is defined to include self-insured employers. See Minn. R. 5220.0100, subp. 12a.

<sup>10</sup> Subpart 6a places a *limitation on QRC services* only when a rehabilitation provider other than a QRC is providing job development or job placement services. This is not to be confused with the *limitation on job development services* prescribed by Minn. Stat. § 176.102, subd. 5(b).

The proposed amendments to this subpart create two categories: 1) services and activities that must be specified in the rehabilitation plan or approved by the insurer, commissioner, or a compensation judge; and 2) services and activities that rehabilitation providers must never bill for. The explanation for the categorization of each service and activity appears in the rule-by-rule analysis below.

- Subpart 8 provides for a way to resolve disputes about the reasonableness, necessity, or cost of a rehabilitation service. There are no amendments to this subpart.
- Subpart 9 prohibits rehabilitation providers from trying to collect payment for an unnecessary or unreasonable service. There are no amendments to this subpart.

## REGULATORY ANALYSIS

Minn. Stat. § 14.131 (2016), sets out eight factors for a regulatory analysis that must be included in the SONAR. Paragraphs (1) through (8) identify these factors and provide DLI's response.

**(1) a description of the classes of persons who probably will be affected by the proposed rule, including classes that will bear the costs of the proposed rule and classes that will benefit from the proposed rule.**

The amendments to the rules will most directly affect rehabilitation providers and insurers. The amendments to the rules may also affect injured workers, workers' compensation employers, and representatives of these people and entities.

The proposed amendments to 5220.1900, subparts 1c and 1f, would eliminate the fee reduction when plans exceed a certain cost or length and decrease the maximum hourly rate for QRC services. The elimination of the fee reduction in subpart 1f would increase the cost of rehabilitation services when the plan exceeds either the 39 week or the \$3,500 threshold, but the maximum hourly rate for QRC services in subpart 1c is adjusted downward to produce the same total QRC costs as under the current rules. That is to say, the amendments to subparts 1c and 1f are expected to be cost-neutral to the system overall. In individual cases, though, the benefits and costs of these proposed amendments could fall on either an insurer or QRC depending on whether a specific plan would have met one of the fee reduction thresholds under the current subpart 1f.

Another consideration is that elimination of subpart 1f could result in indirect cost savings for insurers and QRCs. Billing, payment, and recordkeeping may be more administratively efficient because insurers and QRCs will no longer have to track the hours of service and charges for each injured worker and change the hourly fee partway through lengthy, costly rehabilitation plans. Injured workers may also benefit from the elimination of subpart 1f to the extent that there is no longer an incentive to limit rehabilitation services for injured workers with complex rehabilitation needs.

Next, the addition of the reference to penalties in 5220.1900, subpart 1g, clarifies that DLI can issue penalties to insurers who do not pay or deny rehabilitation bills within the 30-day timeframe prescribed by the rule. DLI already has the authority to issue penalties under Minn. Stat. § 176.221, subd. 6a, so this amendment does not increase or decrease costs for insurers or QRCs.

Unlike the proposed amendments to the other subparts, the amendments to 5220.1900, subpart 6a, may add to the cost of rehabilitation services. For subpart 6a, DLI proposes an

increase in the number of hours for which a QRC may receive payment (without approval from the insurer, commissioner, or compensation judge) when someone else is providing job development/job placement services to the injured worker. Insurers would bear any increase in costs as a result of this amendment to subpart 6a. Injured workers and rehabilitation providers would likely benefit from the proposed change. Injured workers would be more likely to receive the QRC services they need during job development/job placement, and rehabilitation providers may see slight increases in payments. Although a precise calculation of the monetary costs of the amendments to subpart 6a is not possible, a detailed discussion of the possible costs is included in factor 5 below.

The amendments to 5220.1900, subpart 6b, clarify when payment for a rehabilitation consultation beyond the time limit may be made. The language is consistent with subparts 6a and 7. The amendments to 5220.1900, subpart 7, eliminate unnecessary or confusing provisions and list certain services and activities that providers must never bill for, which provides more guidance to both insurers and rehabilitation providers. As a result, it is likely that there will be fewer disputes between insurers and providers and that rehabilitation services will be delivered more effectively. The amendments to subparts 6b and 7 will benefit all classes of persons who are involved in the rehabilitation system: rehabilitation providers, insurers, workers' compensation employers, injured workers, and representatives of these people and entities.

**(2) the probable costs to the agency and to any other agency of the implementation and enforcement of the proposed rule and any anticipated effect on state revenues.**

DLI does not anticipate an increase in costs to DLI or any other agency for the implementation and enforcement of the proposed rules because they are updates to existing rules. DLI already has the structures and systems in place to enforce the rehabilitation rules in 5220.1900. DLI also has an alternative dispute resolution (ADR) unit that will continue to help resolve workers' compensation disputes, including disagreements about 5220.1900. *See* Minn. Stat. § 176.261 (2016) (stating that DLI "must make efforts to settle problems of employees and employers").

A state agency may be affected by implementation and enforcement of the proposed rules to the extent it is an affected party. The State of Minnesota is a self-insured employer, and state agencies are part of the State's Workers' Compensation Program. As noted in factors 1 and 5, there may be a minimal increase in the cost of providing rehabilitation services. Therefore, state agencies might or might not see a small increase in workers' compensation costs as a result of the proposed rule amendments depending on the volume and nature of the rehabilitation cases for which they pay. Any increase in costs may be offset by savings due to no longer having to track the thresholds in subpart 1f, and clearer guidelines in subpart 7.

The only impacts on state revenues would be those related to workers' compensation. There are no anticipated changes to the Special Compensation Fund assessments as a result of these amendments. *See* Minn. Stat. § 176.129 (2016).

**(3) a determination of whether there are less costly methods or less intrusive methods for achieving the purpose of the proposed rule.**

DLI has not identified any less costly or less intrusive methods for achieving the purposes of the amendments to the rehabilitation rules. The proposed amendments are intended to solve a specific problem or expected to make the provision of rehabilitation services more efficient.

The purpose of vocational rehabilitation is "to restore the injured employee so the

employee may return to a job related to the employee's former employment or to a job in another work area which produces an economic status as close as possible to that the employee would have enjoyed without disability."<sup>11</sup> The primary purpose of eliminating the fee reduction in subpart 1f is to ensure that injured workers receive the services that they need regardless of the length or cost of the rehabilitation plan. DLI proposes this amendment because there is no evidence that the fee reduction has resulted in more effective delivery of QRC services. In fact, most QRCs who submitted comments to DLI asserted that the current fee reduction discourages QRCs from providing rehabilitation services to injured workers with the most complex rehabilitation needs, such as those who live in rural areas, are of an advanced age, have less education, have limited skills, have a longer recovery time, or have more severe disabilities. With the elimination of the fee reduction, QRCs will no longer be paid at a reduced rate when providing rehabilitation services to injured workers who are the most difficult to place in employment due to barriers QRCs cannot control.

To keep total costs for QRC services neutral in light of the elimination of the fee reduction, subpart 1c is amended to reduce the maximum hourly rate for QRC services. DLI has not identified any less costly or less intrusive methods to maintain cost neutrality. In fact, eliminating the fee reduction actually makes the rehabilitation rules less intrusive because it removes a step in billing and paying for QRC services and ensures that each injured worker receives services based on her or his individual needs.

In a comment, one QRC firm suggested that, instead of the fee amendments, the rehabilitation rules should allow fees to be based on "the market." The QRC firm's proposal is not an option, though. Not only would the elimination of all fee limits result in more disputes about whether a charge for QRC services was reasonable, but Minn. Stat. § 176.102, subd. 2(a), *requires* the commissioner to "by rule establish a fee schedule or otherwise limit fees charged by qualified rehabilitation consultants and vendors."

Subpart 1g is amended to note that insurers may be penalized under the workers' compensation statute if they do not pay or deny a rehabilitation provider's bill within 30 days of receiving it. The purpose of the amendment is to remind stakeholders that DLI has statutory authority to assess penalties if insurers do not comply with the requirements in subpart 1g. Adding the sentence about penalties to subpart 1g is the least costly and least intrusive approach because it does not require any additional recordkeeping and because it does not actually alter any rights or responsibilities for insurers, rehabilitation providers, or DLI.

The purpose of the amendments to subpart 6a is to make sure that QRCs are compensated for providing reasonable and necessary services<sup>12</sup> while another rehabilitation provider is working with the injured worker on job development/job placement. DLI proposes to increase the limit on payments for QRC services during job development/job placement to six hours per calendar month based on a review of all the comments submitted and an analysis of the cost of the proposal.<sup>13</sup> Additionally, DLI considered the RRP's expertise. At its meeting on April 7, 2016, the RRP voted to recommend that DLI amend subpart 6a to increase the payment limit to six hours per month during job development/job placement because QRC services facilitate job

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<sup>11</sup> Minn. Stat. § 176.102, subd. 1(b).

<sup>12</sup> QRC services include development of job goals, medical management, on-site job analysis, vocational counseling, development of on-the-job training programs, providing direction to placement providers, and attending employee meetings to enhance employment opportunities.

<sup>13</sup> The cost analysis is described in detail under regulatory factor (5).



placement/job development in some cases.<sup>14</sup> DLI is not aware of any less costly or less intrusive methods for ensuring injured workers receive appropriate QRC services while another rehabilitation provider is providing job development/job placement. Amending subpart 6a is actually likely to decrease friction costs because QRCs will not as often have to seek approval from the insurer or a determination by the commissioner or compensation judge in order to get paid for their services during job development/job placement.<sup>15</sup>

Finally, the purposes of the amendments to subpart 7 are to make the language of the rule clearer and to describe certain services and activities that rehabilitation providers can never bill for. The amendments to subpart 7 provide more concrete guidance to regulated parties, so costs may decrease due to less confusion and fewer disputes. DLI has determined that there are no less costly or less intrusive methods to communicate to stakeholders what services and activities rehabilitation providers cannot seek compensation for.

On October 12, 2017, the RRP voted to recommend that the commissioner adopt the proposed rules.

**(4) a description of any alternative methods for achieving the purpose of the proposed rule that were seriously considered by the agency and the reasons why they were rejected in favor of the proposed rule.**

DLI seriously considered alternative methods for achieving the purposes of the proposed rule amendments to 5220.1900, subparts 1f and 6a.

The primary purpose of the amendments to subpart 1f is to ensure that injured workers receive the services that they need regardless of the length or cost of the rehabilitation plan. Eliminating the fee reduction in subpart 1f would mean that QRCs are no longer paid less when providing rehabilitation services to injured workers who are the most difficult to place in employment. DLI considered various approaches to address concerns with the fee reduction before deciding on the current proposal, though.

Under the current version of subpart 1f, the hourly billing rate for QRC services must be reduced by \$10 when the rehabilitation case exceeds 39 weeks or the costs of rehabilitation services exceed \$3,500. At the time subpart 1f was adopted in 1992, one of the stated goals of the fee reduction was to incentivize QRCs to resolve rehabilitation plans more quickly.<sup>16</sup> At the RRP meeting on July 23, 2015, MARP suggested that the fee reduction be eliminated. MARP argued that the fee reduction does not cause QRCs to complete rehabilitation plans more quickly because QRCs have very little control over the length and cost of rehabilitation plans.<sup>17</sup>

Members of the RRP had discussions about MARP's position at subsequent RRP meetings. Then, at the WCITF meeting on March 16, 2016, MARP presented its proposal regarding subpart 1f, which had changed slightly. At that time, MARP advocated that the fee reduction be eliminated or that the cost threshold that triggers the fee reduction be increased from \$3,500 to \$7,500 to account for inflation since the rule was initially adopted.

At the RRP meeting on April 7, 2016, a majority of RRP members voted to recommend that DLI amend subpart 1f so that the cost threshold be increased to \$7,541 and that this value be adjusted annually based on the statewide average weekly wage (SAWW). In the rule draft

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<sup>14</sup> See minutes from the RRP meeting on April 7, 2016.

<sup>15</sup> Insurers are still entitled to deny payment for any rehabilitation service that the insurer has determined was not needed in light of the facts of the specific case.

<sup>16</sup> SONAR-02130, pg. 17 (Dec. 21, 1992).

<sup>17</sup> For a more detailed treatment of this issue, see the discussion of subpart 1f in the rule-by-rule analysis below.

released on December 22, 2016, DLI proposed an amendment that would increase the amount of billings that triggers the fee reduction to \$7,541, as recommended by the RRP. DLI also proposed to increase the amount of the fee reduction—from \$10 per hour to \$16.49 per hour—based on the rationale that this value should be adjusted for inflation as well.

Two weeks later, on January 5, 2017, members of the RRP discussed the draft amendments to 5220.1900 at their meeting. Most of the comments were made by members who are QRCs. They disagreed with DLI’s proposal to increase the fee reduction from \$10 to \$16.49 to account for inflation since the rule was originally adopted. MARP also expressed opposition to the proposed increase to the fee reduction. Steve Hollander spoke on behalf of MARP. He stated that MARP “believe[d] the best solution would be to eliminate the fee reduction altogether.” Hollander also presented a second option. He asserted that “the next best solution” would be to eliminate the 39-week fee reduction trigger, leave the fee reduction at \$10 per hour, and adjust for inflation going forward. Additionally, multiple QRCs, at the RRP meeting or in written comments, again asked DLI to consider eliminating the fee reduction altogether. DLI did not receive any comments from insurers regarding the changes to subpart 1f proposed in the December 22, 2016, draft amendments. DLI continued to consider whether there were any other ways to address the concerns of QRCs but not significantly increase rehabilitation costs.

Having reviewed the available data, DLI acknowledged that it is difficult to determine whether subpart 1f accomplishes the goal of incentivizing QRCs to complete rehabilitation plans faster given that complicated barriers outside of QRCs’ control affect re-employment. DLI therefore proposed an alternative option: eliminate subpart 1f and decrease the maximum hourly rate for QRC services in subpart 1c so that total QRC costs would be neutral as compared to the current rules. This approach does away with the fee reduction thresholds, which were difficult to administer by both insurers and QRCs, but does not measurably add to the costs borne by insurers. The proposed changes achieve the purpose of simplifying the rules governing rehabilitation while also ensuring that QRCs are fairly compensated and injured workers return to work as soon as possible according to their specific needs. DLI presented the revised draft of the rule amendments with the elimination of subpart 1f to the WCITF on May 17, 2017, and the RRP on July 13, 2017, and October 12, 2017. None of the members of these bodies made objections or recommended additional changes.<sup>18</sup>

Next, the purpose of the proposed amendments to subpart 6a is to make sure that QRCs are compensated for the reasonable and necessary services they provide while another rehabilitation provider is working with the injured worker on job development/job placement. DLI considered different approaches to amending this subpart as well.

The impetus to amend subpart 6a came, in part, from MARP. At the RRP meeting on July 23, 2015, MARP suggested a change to the time limit on QRC services when job development/job placement is being provided by someone other than the QRC. MARP asserted that injured workers regularly need QRC services for more than two hours per month during job development/job placement. MARP asked that DLI increase the limit in subpart 6a to eight hours per month. A few months later, on April 7, 2016, the RRP passed a motion to recommend that DLI amend subpart 6a to increase the limit on QRC services during job development/job placement from two hours per month to six hours per month, excluding travel time.

In the December 22, 2016, draft of DLI’s proposed amendments to 5220.1900, subpart 6a

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<sup>18</sup> One QRC firm suggested that, instead of the fee amendments, the rules should allow fees to be based on “the market.” However, Minn. Stat. § 176.102, subd. 2(a), *requires* the commissioner to “by rule establish a fee schedule or otherwise limit fees charged by qualified rehabilitation consultants and vendors.”

was altered to increase the limit on payment to QRCs for their services during job development/job placement from two hours per month to six hours per month, but only for four 30-calendar-day periods. After the four 30-calendar-day periods, the limit on QRC services would go back to two hours per month.

DLI proposed increasing the limit to six hours per month during job development/job placement because QRCs are still responsible for providing time-consuming, ongoing rehabilitation services. Such services include medical management, review of transferrable and vocational test results, identification and adjustment of vocational goals, meeting with the employee and job search vendor, jobsite analysis, development of on-the-job training programs, etc. Based on discussions at RRP and WCITF meetings and written comments submitted by rehabilitation providers, DLI determined that a six-hour limit in each of four months would cover most reasonable and necessary QRC services during job development/job placement.

MARP and individual QRCs disagreed with the proposed change to subpart 6a that limited the increase to six hours of QRC services per month to four 30-calendar-day periods. At the RRP meeting on January 5, 2017, members of the RRP and other QRCs argued that it would be overly burdensome for both insurers and rehabilitation providers to keep track of the four 30-calendar-day periods. QRCs also predicted that there would be more disputes between rehabilitation providers and insurers due to the difficulty of determining when QRCs could be paid up to six hours per month rather than two hours per month during job development/job placement. DLI received written comments from rehabilitation providers that conveyed similar opinions to those expressed at the RRP meeting.

DLI considered the feedback it received regarding subpart 6a. DLI determined that decreasing the limit on QRC services from six hours per month to two hours per month after four months would be unnecessarily burdensome. Acknowledging that its original proposal may have been exceedingly complicated, DLI rejected it. DLI then altered the language in subpart 6a so that the six-hour-per-month payment limit during job development/job placement would not be restricted to a specific number of months. The RRP voted to recommend that the commissioner adopt the proposed rules, including subpart 6a, on October 12, 2017.

The proposed amendments to subpart 6a make it more likely that injured workers will receive necessary services from QRCs during job development/job placement without burdening stakeholders with additional, inefficient administrative tasks. It is also consistent with the RRP's recommendation to DLI at its meetings on April 7, 2016, and October 12, 2017. Finally, this rule does not establish a finite floor or ceiling. There is still a check on costs: the six-hour limit on QRC services specified in the rule does not preclude insurers from denying payment for any QRC service on the basis that the service provided during job development/job placement was not reasonable and necessary. And in especially complicated cases, QRCs can still request approval from the insurer, commissioner, or compensation judge for more than six hours per month.

With respect to the proposed amendments to the other subparts of 5220.1900, DLI did not seriously consider alternative methods. However, DLI carefully determined that all of the amendments are necessary and reasonable: DLI reviewed comments submitted, considered input from WCITF members and RRP members, and made countless revisions to language during the drafting process. The rule-by-rule analysis in this SONAR provides a detailed explanation of each rule amendment.

**(5) the probable costs of complying with the proposed rule, including the portion of the total costs that will be borne by identifiable categories of affected parties, such as separate**

**classes of governmental units, businesses, or individuals.**

It is possible that the amendments may result in increased costs for insurers and rehabilitation providers in some cases.<sup>19</sup> Each of the substantive rule amendments is analyzed in turn.

First, DLI anticipates that, by decreasing the maximum hourly rate for QRC services in subpart 1c in conjunction with eliminating the fee reduction in subpart 1f, total QRC costs will remain roughly the same as under the current rules.<sup>20</sup> (A detailed explanation of how the proposed maximum hourly rate was calculated is included in the rule-by-rule analysis below.) Rehabilitation providers, including individual QRCs and QRC firms, that take on a variety of cases in terms of complexity are unlikely to see a significant change in revenue. Similarly, insurers who pay for a variety of rehabilitation plans in terms of complexity are unlikely to see a significant change in costs. Such a result is consistent with one of the purposes of the elimination of subpart 1f—that QRCs are paid at the same rate regardless of the length or cost of the rehabilitation plan.<sup>21</sup> The cost of individual rehabilitation plans is likely to change, though. QRCs will receive slightly less in payment for lower-cost plans and slightly more for higher-cost plans; insurers will pay slightly less for lower-cost plans and slightly more for higher-cost plans.<sup>22</sup>

Next, subpart 1g does not impose compliance costs because the amendment simply provides information about existing statutory penalties. Insurers are already required to pay or deny rehabilitation bills within 30 days under the current rule. DLI proposes adding a sentence about penalties to subpart 1g because multiple QRCs submitted comments to DLI stating that insurers do not always timely pay or deny bills. The proposed amendment to subpart 1g emphasizes to insurers that failure to do what is required by subpart 1g could lead to penalties. Any costs would be borne by insurers that do not timely pay for rehabilitation services, but that risk already exists. This amendment simply reminds parties that workers' compensation law authorizes DLI to impose penalties.

The amendments to subpart 6a proposed by DLI might increase costs to insurers, but a precise calculation of costs is not possible. Under the proposed amendments, the limit on payment for QRC services when another rehabilitation provider is providing job development and/or job placement services would increase from two hours per month to six hours per month.<sup>23</sup> Under the adjusted maximum hourly rate for QRC services of \$103.10, the maximum increase in QRC costs would initially be \$412.40 ( $\$103.10 \times 4$  hours) per rehabilitation plan for each month that an injured worker receives job development/job placement services from a rehabilitation provider other than the QRC.

DLI also attempted to determine what the total increase in QRC costs would be to the system as a result of the amendments to subpart 6a. However, DLI could not estimate the cost

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<sup>19</sup> The issue of costs was first discussed briefly under regulatory factor (1).

<sup>20</sup> See attachment 1, which shows how the new maximum rate for QRC services was calculated to off-set the elimination of the fee reduction.

<sup>21</sup> See the analysis of regulatory factors (3) and (4).

<sup>22</sup> It is impossible to develop an algorithm that would project exact cost increases or cost savings for specific insurers and QRCs because there are a multitude of parties and factors involved. There are hundreds of workers' compensation insurers and approximately 300 QRCs in Minnesota. Additionally, over 5,000 injured workers living across the state receive rehabilitation services annually, and these injured workers have different education levels and skill sets.

<sup>23</sup> As a reminder, the limit on QRC services in subpart 6a does not apply when the assigned QRC is providing job development and/or job placement services.

impact of certain factors unique to specific QRCs, injured workers, and insurers. First, according to some QRCs and insurers, in some instances insurers will already agree to reimburse QRCs for more than two hours of services per month during job development/job placement. Relatedly, QRCs are not likely to reach the new six-hour-per-month limit for every month of every plan if the proposed rule amendments are adopted. Next, DLI could not account for settlement of rehabilitation files, nor could it predict possible changes in the job market in future years, which could affect how many injured workers receive job development/job placement services and for how long.<sup>24</sup> Finally, DLI does not know the average length of time that an injured worker receives job development/job placement.<sup>25</sup>

Because limited data was available, DLI had to rely on various assumptions when making calculations to estimate the possible increase in total QRC costs.<sup>26</sup> For example, DLI assumed that all QRCs bill at the maximum hourly rate, all QRCs are currently paid for only two hours per month during job development/job placement and will receive payment for six hours per month during job development/job placement after subpart 6a is amended, and injured workers receive 20 hours of job development/job placement services per month.<sup>27</sup>

Doing its best with the data it had and based on the assumptions stated above, DLI calculated that total QRC costs could increase by \$637,158 in the year after the amendments to subpart 6a are adopted. DLI emphasizes that this value is just one possible estimate of costs and that it cannot be characterized as precise because of the assumptions that were necessary to do the cost analysis.

Lastly, DLI asked a wide variety of people and entities to provide information on the probable costs of the proposed rule amendments and on the other regulatory factors analyzed in this SONAR. In August 2017, DLI requested feedback on costs in an email sent to members of the WCITF and the RRP and persons on the adjusters' and rehabilitation providers' lists. DLI also sought information on costs and the other regulatory factors at the RRP meeting on October 12, 2017. DLI received no specific information about costs in response to these requests.

**(6) the probable costs or consequences of not adopting the proposed rule, including those costs or consequences borne by identifiable categories of affected parties, such as separate classes of government units, businesses, or individuals.**

There would be two negative consequences of not adopting the proposed amendments to subparts 1c and 1f. First, rehabilitation providers that take on high-cost or lengthy cases would continue to be paid at a reduced rate. As discussed in detail in the rule-by-rule analysis, there is no evidence that the fee reduction pushes QRCs to complete rehabilitation plans more quickly, and in fact, the current rules could result in QRCs limiting services for more complex cases or refusing to take them at all. Also, there are multiple factors outside of QRCs' control that affect

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<sup>24</sup> For example, the duration of employees' rehabilitation plans was longer between 2008 and 2013, suggesting an effect of the Great Recession. See Minnesota Workers' Compensation System Report, 2015, pg. 28, available at <http://www.dli.mn.gov/rs/Pdf/wcfact15.pdf>.

<sup>25</sup> During fiscal year 2017, an injured worker receiving rehabilitation services through DLI's Vocational Rehabilitation unit was in job development/job placement an average of 97 days. DLI does not have the data to know how this compares to other QRC firms.

<sup>26</sup> DLI's Research and Statistics unit conducted the cost analysis. Its calculations were based on the 5,674 plan closures from October 1, 2015, to September 30, 2016. Of the 5,674 plan closures, 605 had charges for job development and/or job placement services.

<sup>27</sup> This last assumption comes from the 20-hour-per-month limit on job development services under Minnesota Statutes § 176.102, subdivision 5(b) (2016).

plan length including benefit status, severity of injury, necessary medical treatment, the injured worker's age, education, and skill level, and where the injured worker lives.

The other problem with not adopting the proposed amendments to subparts 1c and 1f is that rehabilitation providers and insurers would have to continue to unnecessarily monitor and change the hourly fee partway through lengthy, costly rehabilitation plans. If the proposed amendments are adopted, billing, payment, and recordkeeping may be more administratively efficient. DLI's aim is to simplify the processes for delivering rehabilitation services so long as doing so does not undermine the overarching purpose of the rehabilitation rules: helping injured workers return to work as soon as possible.

DLI's purpose in amending subpart 1g is to emphasize that insurers could face penalties for not paying or denying rehabilitation bills on time. The intent is that the amendment to subpart 1g will facilitate prompt payment for rehabilitation services and decrease billing disputes. These benefits are less likely to be realized if the proposed reference to penalties is not added to subpart 1g.

The likely consequence of not adopting the proposed amendments to subpart 6a is that injured workers would be less likely to receive the QRC services they need during job development/job placement. QRCs provide a wide range of case management services during job development/job placement that help the injured worker return to work in a safe and timely manner. Such services include monitoring the job placement vendor, medical management, review of transferrable and vocational test results, identification and adjustment of vocational goals, meeting with the employee and job search vendor, jobsite analysis, and development of on-the-job training programs. Job placement vendors have a more specialized, narrow role under the rehabilitation plan. Their focus is to assist the injured worker in conducting an efficient job search. It is important that QRCs continue to coordinate all services under a rehabilitation plan during the job search effort so that injured workers return to suitable employment as soon as possible.

As noted in the analysis of regulatory factor 4, various commenters stated that QRCs often need to provide more than two hours of services per month during job development/job placement. QRCs cannot be expected to provide more than two hours of services per month if they are not going to get paid for the additional hours. QRCs who do provide more than two hours of reasonable and necessary services during job development/job placement even if they are not going to receive payment would experience monetary costs if the proposed amendments to subpart 6a are not adopted.

The consequence of not adopting the amendments to 6b is that the language in subpart 6b would be different from the corresponding language in subparts 6a and 7.

Lastly, if the amendments to subpart 7 are not adopted, all classes of persons who are involved in the rehabilitation system will have less guidance about what services and activities require approval or must not be billed for. The current version of subpart 7 contains provisions that are unnecessary, confusing, or outdated; the proposed amendments are designed to clarify this subpart. Therefore, the prevalence of disputes between insurers and providers would probably not decrease if the proposed version of subpart 7 is not adopted.

**(7) an assessment of any differences between the proposed rule and existing federal regulations and a specific analysis of the need for and reasonableness of each difference.**

There are no known federal regulations that govern rehabilitation services provided in Minnesota's workers' compensation program.

**(8) an assessment of the cumulative effect of the rule with other federal and state regulations related to the specific purpose of the rule. . . ‘[C]umulative effect’ means the impact that results from incremental impact of the proposed rule in addition to other rules, regardless of what state or federal agency has adopted the other rules. Cumulative effects can result from individually minor but collectively significant rules adopted over a period of time.**

There are no cumulative effects of the rule with other federal or state regulations as there are no federal or state regulations related to the specific purpose of 5220.1900.

## **PERFORMANCE-BASED RULES**

Minn. Stat. §§ 14.002 and 14.131 (2016), require the SONAR to describe how the agency, in developing rules, considered and implemented performance-based standards that emphasize superior achievement in meeting the agency’s regulatory objectives and maximum flexibility for the regulated party and the agency in meeting those goals.

Broadly speaking, DLI’s regulatory objective in promulgating rules governing vocational rehabilitation is to “implement and administer” the provision of rehabilitation services to injured workers in the workers’ compensation system. *See* Minn. Stat. § 176.83, subs. 1 & 2. The commissioner of DLI is required to “monitor and supervise rehabilitation services” and “limit fees charged by” rehabilitation providers. *See* Minn. Stat. § 176.102, subd. 2(a). Minn. R. 5220.1900 structures the fee system for rehabilitation services. DLI’s objectives in proposing amendments to 5220.1900 are to make the processes for billing and payment for rehabilitation services as clear as possible, address stakeholders’ concerns with fees for rehabilitation services, and control rehabilitation costs while ensuring that injured workers receive the rehabilitation services they need.

Some of the proposed rule amendments specifically increase flexibility for the regulated parties, which will enhance the return-to-work process for injured employees. DLI proposes the elimination of subpart 1f to ensure that injured workers receive the rehabilitation services they need based on factors unique to each injured worker and to increase administrative efficiencies. If the proposed rules are adopted, rehabilitation providers and insurers will no longer have to track the fee reduction thresholds or change the QRC billing rate in the middle of the rehabilitation plan. Billing and payment processes will be simpler and smoother and injured workers will continue to receive appropriate rehabilitation services without a significant change in costs to the system. Because insurers, the commissioner, or compensation judge can still deny payment for services that are not reasonable and necessary, elimination of the fee reduction results in a performance-based rule.

The increase in the limit on QRC services from two to six hours per month during job development/job placement in subpart 6a is also expected to cut down on transaction costs and disputes, while promoting performance-based service based on the unique needs of the injured worker. It is less likely that rehabilitation services will be delayed because QRCs will not as often have to seek approval from insurers, the commissioner, or compensation judge before providing reasonable and necessary services. Because the insurer retains the right to deny payment for services it deems to be unnecessary, and QRCs retain the right to request payment for more than six hours a month, the proposed change to subpart 6a is a performance-based standard.

As the proposed rule amendments were drafted, DLI considered input from the public to be essential. People and entities submitted written comments to DLI. The RRP discussed possible rule amendments on July 23, 2015, January 7, 2016, April 7, 2016, January 5, 2017, April 6, 2017, July 6, 2017, and October 12, 2017. The WCITF considered rule amendments on March 16, 2016, March 31, 2017, and May 17, 2017. Additionally, in August 2017, DLI specifically requested feedback on whether the rules “emphasize[] superior achievement in meeting DLI’s regulatory objectives and maximum flexibility for regulated parties” in an email sent to members of the WCITF and the RRP and persons on the adjusters’ and rehabilitation providers’ lists.

Comments from stakeholders provided the best information for determining how to create maximum flexibility for the regulated parties. DLI seriously considered all the comments it received. In fact, as laid out in the eight regulatory factors and the rule-by-rule analysis, the proposed rules were modified as a result of comments from QRCs and members of the RRP and the WCITF. Neither DLI nor stakeholders have identified a more flexible way to regulate payment for rehabilitation services, which DLI is required to do by Minn. Stat. § 176.102, subd. 2(a).

## **ADDITIONAL NOTICE**

Minn. Stat. §§ 14.131, 14.23 (2016) require that the SONAR describe DLI’s efforts to provide additional notification to persons or classes of persons who may be affected by the proposed rule or explain why these efforts were not made. DLI’s additional notice plan, described below, was reviewed and approved by Administrative Law Judge Eric L. Lipman per an Order dated April 9, 2018.

DLI has identified persons and classes of persons that represent those most likely to be affected by or interested in the rule amendments. The Dual Notice: Notice of Intent to Adopt Rules Without a Public Hearing Unless 25 or More Persons Request a Hearing, and Notice of Hearing if 25 or More Requests for Hearing Are Received will be mailed or emailed to all of the following:

1. Members of the RRP, which consists of representatives of labor, employers, insurers, rehabilitation providers, and health care providers, and persons who have requested to receive notice of RRP meetings;<sup>28</sup>
2. The members of the Workers’ Compensation Advisory Council (WCAC), which consists of labor, employer, and legislative representatives, and persons who have requested to receive notice of WCAC meetings;<sup>29</sup>
3. Members of the WCITF, which consists of representatives of workers’ compensation insurers, self-insured employers, and third-party administrators, and persons who have requested to receive notice of WCITF meetings;<sup>30</sup>
4. The following professional associations: the Minnesota Association of Rehabilitation Providers (MARP), the Minnesota Rehabilitation Association (MRA), and the Minnesota Association of Service Providers in Private Rehabilitation (MASPPR);
5. All currently registered QRCs, QRC firms, and rehabilitation vendors;<sup>31</sup>

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<sup>28</sup> There are 48 persons in this group as of March 19, 2018.

<sup>29</sup> There are 120 persons in this group as of March 19, 2018.

<sup>30</sup> There are 51 persons in this group as of March 19, 2018.

<sup>31</sup> There are 336 persons in this group as of March 19, 2018.



6. People and entities who have signed up for the DLI updates lists for workers' compensation adjusters and rehabilitation providers;<sup>32</sup>
7. People and entities who have requested to be on the email list for *COMPACT*, DLI's quarterly workers' compensation publication;<sup>33</sup>
8. Attorneys on DLI's email list for workers' compensation attorneys;<sup>34</sup>
9. The following organizations: the Union Construction Workers' Compensation Program; the Minnesota Employers Workers' Compensation Alliance; and the Insurance Federation of Minnesota;
10. The three workers' compensation certified managed care plans; and
11. Those who have commented on the draft amendments since the Request for Comments was published on October 3, 2016.

In addition, DLI will place the Dual Notice, the proposed rule amendments, and the SONAR on DLI's rulemaking docket page: <http://www.dli.mn.gov/PDF/docket/5220docket.pdf>.

DLI will also give notice to everyone who has registered to be on DLI's rulemaking mailing under Minn. Stat. § 14.14, subd. 1a (2016), and to the Legislature as required by Minn. Stat. § 14.116 (2016).

## **CONSULT WITH MMB ON LOCAL GOVERNMENT IMPACT**

As required by Minn. Stat. § 14.131, DLI has consulted with the Commissioner of Minnesota Management and Budget to help evaluate the fiscal impact and benefits of proposed rules on local governments. DLI sent a letter to the Executive Budget Officer (EBO) dated January 16, 2018, asking for assistance in evaluating the fiscal impact and fiscal benefits of the proposed rule amendments on units of local government. DLI followed up with the EBO on March 20, 2018, about a change to the draft of the SONAR. In a letter dated April 2, 2018, the EBO stated that the proposed rule amendments could have a minimal fiscal impact on local units of government, but that the cost to each local unit of government is not likely to be significant.

## **DETERMINATION ABOUT RULES REQUIRING LOCAL IMPLEMENTATION**

Under Minn. Stat. § 14.128 (2016), agencies must determine if a town, county, or home rule charter or statutory city will be required to adopt or amend an ordinance or other regulation to comply with a proposed agency rule. DLI has determined that no local government will be required to adopt or amend an ordinance or other regulation to comply with the proposed amendments to 5220.1900. Local governments are already required to comply with the workers compensation law, Minn. Stat. ch. 176, under Minn. Stat. § 176.021, subd. 1 (2016). And the commissioner of DLI has the authority to amend the rules governing workers compensation, including rehabilitation rules adopted under Minn. Stat. §§ 176.102, subd. 2(a); 176.83, subds. 1 & 2. Accordingly, the implementation of these rule amendments does not require action by local governments.

## **COST OF COMPLYING FOR SMALL BUSINESS OR CITY**

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<sup>32</sup> There are 1,775 persons on the adjusters list and 1,365 persons on the rehabilitation providers list as of March 19, 2018.

<sup>33</sup> There are 1,942 persons on this list as of March 19, 2018.

<sup>34</sup> There are 1,038 persons on this list as of March 19, 2018.

As prescribed by Minn. Stat. § 14.127 (2016), DLI has considered whether the cost of complying with the proposed rule amendments to 5220.1900 in the first year after they take effect will exceed \$25,000 for any business that has fewer than 50 full-time employees (small business) or any city that has less than ten full-time employees (small city). DLI does not anticipate that the cost of complying with the proposed rules in the first year after the rules take effect will exceed \$25,000 for any small business or small city.

A majority of QRC firms and rehabilitation vendors are businesses that have fewer than 50 full-time employees. As stated in the regulatory analysis part of this SONAR, it is possible that some of the proposed amendments to 5220.1900 will have minimal economic effects on QRC firms. However, the amendments are not likely to result in an increase in costs exceeding \$25,000 for any small QRC firms.

With the elimination of subpart 1f, small QRC firms will not have to track the fee reduction thresholds or a change in the billing rate partway through a rehabilitation plan, which will reduce costs. Additionally, the amendment to subpart 1f removes what some QRCs view as a financial penalty for taking on complex rehabilitation cases. Finally, total QRC costs are expected to be neutral as compared to the current rule, because, along with the elimination of subpart 1f, the maximum fee for QRC services in subpart 1c is reduced. So, although payment for services on individual rehabilitation plans is likely to change, QRC firms that take on a variety of cases in terms of complexity are unlikely to see a significant change in revenue.<sup>35</sup> There is no evidence that any QRC firm will face an increase in costs that exceeds \$25,000 as a result of the elimination of subpart 1f and adjustment to the maximum fee for QRC services.

The amendments to subpart 6a raise the number of hours QRCs can provide rehabilitation services, without approval, while another person is providing job development/job placement services. This means that small QRC firms might provide more necessary rehabilitation services to injured workers and receive more payment than they do under the current version of subpart 6a.<sup>36</sup> Moreover, one goal of the rule amendments is to decrease the cost of compliance for all stakeholders, including small QRC firms, through a reduction in tracking and billing requirements. A result of amending subpart 6a is that QRCs will not have to spend as much time asking insurers for approval before providing necessary rehabilitation services during job development/job placement.

Next, the amendments to subpart 7 are intended to provide clarity to all parties about when QRCs can bill for certain services and activities. The expectation is that costs for all parties, including small QRC firms, will decrease because there will be less conflict over the issues addressed in subpart 7.

The changes to the other subparts are not likely to have a meaningful effect on costs. The alterations are minor wording changes that do not substantively alter the rights and responsibilities of stakeholders, including small QRC firms.

DLI acknowledges that small QRC firms may face nominal costs as they adjust their billing practices in order to comply with the rule amendments. However, there is no evidence

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<sup>35</sup> See the analysis of regulatory factor (5). Also, it is impossible to develop an algorithm that would project exact cost savings or cost increases for specific QRC firms because there are a multitude of parties and factors involved. There are hundreds of workers' compensation insurers and approximately 300 QRCs in Minnesota. Additionally, over 5,000 injured workers living across the state receive rehabilitation services annually, and these injured workers have different education levels and skill sets.

<sup>36</sup> See the analysis of regulatory factor (5).

that QRC firms will have to spend \$25,000 to update software or paperwork processes in order to ensure that they are correctly billing for QRC services.

Finally, DLI asked a wide variety of people and entities to provide information on the probable costs of the proposed rule amendments and on the other regulatory factors analyzed in this SONAR. DLI requested feedback on costs in an email sent to members of the WCITF and the RRP and persons on the adjusters' and rehabilitation providers' lists in August 2017. DLI also sought information on costs and the other regulatory factors at the RRP meeting on October 12, 2017. DLI received no specific information about costs in response to these requests, and DLI has not received any objection to the proposed rules from an insurer or QRC firm with fewer than 50 employees. In sum, the Department does not anticipate that it will cost any small business more than \$25,000 to comply with the rules.

The cost of complying with the proposed rule amendments to 5220.1900 in the first year after they take effect will not exceed \$25,000 for any small city either. Small cities employ workers who may receive rehabilitation services if they get injured. Whether or not a small city is self-insured or pays insurance premiums every month, it is not likely that any small city will spend more than \$25,000 to comply with the rule amendments. The cost of rehabilitation services is not expected to increase very much as a result of the 5220.1900 rule amendments. Only the amendments to subpart 6a are likely to raise costs. The maximum increase in the first year would be \$412.40 (\$103.10 x 4 hours) per rehabilitation plan for each month that an injured worker receives job development/job placement services from a rehabilitation provider other than the QRC. DLI calculated that total QRC costs could increase by \$637,158 in the first year,<sup>37</sup> which would be less than 0.035% for the entire workers' compensation system in Minnesota. Therefore, DLI expects that any increase in workers' compensation insurance for small cities will be minimal.

## **LIST OF WITNESSES**

Minn. R. 1400.2070, subp. 1(C), states that, if a hearing is scheduled, the SONAR must include a list of any nonagency witnesses the agency anticipates asking to testify and a summary or description of their testimony. DLI only plans to have Department staff testify as witnesses if these rule amendments go to a public hearing.

## **RULE-BY-RULE ANALYSIS**

This section discusses the proposed amendments to the rules. It also sets forth the circumstances that created the needs for the changes and why the proposed changes are reasonable solutions for meeting the needs.

### **5220.1900 REHABILITATION SERVICE FEES AND COSTS.**

#### **Subpart 1b. Fees.**

The proposed amendments to subpart 1b are as follows:

Hourly fees for rehabilitation services shall not exceed the maximum rates in subparts 1c,

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<sup>37</sup> DLI emphasizes that this value is just one possible estimate of costs and that it cannot be characterized as precise because of the assumptions that were necessary to do the cost analysis. For more details, see the analysis of regulatory factor (5) above.

1d, ~~and 1e, and 1f~~, except that the maximum rates may be ~~increased~~ adjusted annually according to Minnesota Statutes, section 176.102, subdivision 2, paragraph (a), beginning October 1, ~~1993, but~~ 2018. Any annual increase is limited by the annual adjustment for injured employees under Minnesota Statutes, section 176.645.

The first amendment in subpart 1b reflects the elimination of the fee reduction in subpart 1f, which is discussed under that subpart.

The second amendment to subpart 1b substitutes the word “adjusted” instead of “increased” and cross-references the applicable statute. This change is made to reflect the statutory language, which states that “[t]he commissioner shall annually review the fees and give notice of any *adjustment* in the State Register.” Minn. Stat. § 176.102, subd. 2(a). (Emphasis added.)<sup>38</sup>

This subpart also states that the maximum rate may be adjusted annually beginning October 1, 2018. The year is updated to 2018 because that will be the first adjustment after the effective date of the fee amendments.

Lastly, the phrase “for injured employees” is added to the last sentence of this subpart because Minn. Stat. § 176.645 (2016) governs annual adjustment of injured workers’ wage loss benefits.

### **Subp. 1c. Consultants.**

The proposed amendments to subpart 1c are as follows:

When billing on an hourly basis for the services of qualified rehabilitation consultants, a qualified rehabilitation consultant or qualified rehabilitation consultant firm shall bill at an hourly rate not to exceed ~~\$65~~ \$103.10 per hour as adjusted under subpart 1b. A rehabilitation provider shall bill one-half of the hourly rate for wait time, and three-fourths of the hourly rate for travel time. Travel time shall be prorated as outlined in part 5220.1805, item E.

Subpart 1c is amended to adjust the maximum hourly rate for QRC services. The maximum hourly rate, as adjusted on October 1, 2017, is \$108.78.<sup>39</sup> The maximum hourly rate is adjusted to \$103.10 to account for the elimination of the fee reduction in subpart 1f. Stated differently, the maximum QRC rate is amended to keep the total QRC costs the same as compared to what they would have been if the fee reduction in subpart 1f were still in place.

DLI calculated the revised maximum hourly rate in subpart 1c based on data reported to DLI by QRCs. The total amount of QRC costs reported to DLI for plans closed between October 1, 2015, and September 30, 2016, was \$37,926,971. DLI then removed the \$10 fee reduction for plans that met the 39-week or \$3,500 threshold. The result is an estimate of what the total QRC costs would have been if there were no fee reduction: \$40,015,168. Finally, the maximum hourly QRC rate in effect between October 1, 2015, and September 30, 2016, which applied to the

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<sup>38</sup> When the rehabilitation rules were initially adopted in the 1990s, it was assumed that the fees would always be increased because adjustments to injured workers’ wage loss benefits under Minn. Stat. § 176.645 (2016) increased every year. However, in 2010, due to the recession, the statewide average weekly wage decreased. In response to the recession, Minn. Stat. § 176.645 was amended in 2013. One of the amendments added the sentence “No adjustment under this section shall be less than zero percent.” The rule is therefore amended to reflect the statutory language. This rule amendment will not have any financial effect on future rehabilitation fee adjustments because the rule already ties the fee adjustment to Minn. Stat. § 176.645.

<sup>39</sup> See 42 S.R. 343 (Sept. 11, 2017).

plans, was multiplied by the ratio of total QRC costs with the fee reduction to total estimated QRC costs without the fee reduction. The result is the hourly rate—\$103.10—that would offset the elimination of the fee reduction to produce the same total QRC costs that there would be if the fee reduction were still in place.<sup>40</sup>

### **Subp. 1e. Job development and placement services.**

The proposed amendments to subpart 1e are as follows:

Whether provided by registered rehabilitation vendors or qualified rehabilitation consultant firms, job development and job placement services, when billed on an hourly basis, shall be billed at an hourly rate not to exceed ~~\$50~~ \$82.58 per hour as adjusted under subpart 1b.

Subpart 1e is amended to reflect the maximum hourly rate for job development and job placement services as of October 1, 2017: \$82.58.<sup>41</sup> The proposed rule amendment does not actually change the maximum hourly rate for job development and job placement services, as that value has been adjusted in accordance with subpart 1b multiple times since subpart 1e was last amended. The current maximum fee of \$82.58 for job development and job placement services is subject to annual adjustment, beginning October 1, 2018, as provided in subpart 1b.

### **Subp. 1f. Fee reduction.**

This subpart is proposed to be repealed.

~~Billing for services by the qualified rehabilitation consultant or qualified rehabilitation consultant intern based upon an hourly rate shall be reduced by \$10 per hour when:~~

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

~~or~~

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

Currently, subpart 1f reduces the payment to QRCs for lengthy or high-cost rehabilitation plans. At the time subpart 1f was adopted in 1992, one of the stated purposes was to incentivize QRCs to complete rehabilitation plans as quickly as possible.<sup>42</sup> However, MARP, members of the RRP, and other QRCs have argued that the existence of the fee reduction has not affected how long it takes to complete a rehabilitation plan. They asserted—at RRP and WCITF meetings and in written comments submitted to DLI—that QRCs have very little control over the length and cost of rehabilitation plans. The skills, education, work history, geographic location, age, and recovery time of the injured worker, the type of injury sustained by the worker, and legal challenges related to the workers' compensation claim can be barriers that significantly affect how long it takes a worker to return to work. The QRCs argued that they cannot control such factors, and that the current rule creates a financial penalty for QRCs who take on injured workers who have complex rehabilitation needs. DLI did not receive any comments from QRCs

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<sup>40</sup> See attachment 1, which shows how the new maximum rate for QRC services was calculated to off-set the elimination of the fee reduction.

<sup>41</sup> See 42 S.R. 343 (Sept. 11, 2017).

<sup>42</sup> SONAR-02130, pg. 17 (Dec. 21, 1992).

or insurers disputing these assertions.

The data on the duration of rehabilitation plans that is currently available to DLI is consistent with the QRCs' claim.<sup>43</sup> For example, the permanent partial disability (PPD) percentage rating for injured workers, which is an attempt to capture the severity of an injury, is directly correlated with the duration of rehabilitation plans. Because there are many barriers that can influence an injured worker's ability to return to work, DLI does not have a way to measure what effect, if any, the fee reduction has had on how effectively QRCs provide rehabilitation services. Subpart 1f is proposed to be repealed in order to ensure that injured workers receive the services that they need regardless of the length or cost of the rehabilitation plan.

The elimination of subpart 1f is also likely to increase administrative efficiencies. Under subpart 1f, rehabilitation providers and insurers have to track the fee reduction thresholds. Then, if one of the thresholds is triggered, QRCs have to change the QRC billing rate in the middle of the rehabilitation plan, and insurers have to track that the charges properly reflect the \$10 fee reduction. With the elimination of subpart 1f, the billing rate for QRC services will be consistent over the course of the plan, which is likely to lead to smoother billing and payment processes and recordkeeping.

The decision to eliminate the fee reduction in subpart 1f required that DLI address a related issue: the maximum rate for QRC services in subpart 1c. Subpart 1f was originally implemented not only to encourage QRCs to complete rehabilitation plans more quickly, but also to lower costs.<sup>44</sup> Although there is not data to show whether the fee reduction incentivized QRCs to complete rehabilitation plans more quickly, by its very nature, the fee reduction in the current subpart 1f does decrease QRC costs when the rehabilitation plan exceeds one of the thresholds. Eliminating the fee reduction without making any other changes to QRC fees would result in an increase in total costs for QRC services. While there are good reasons for repealing subpart 1f, as explained in this section and in the regulatory analysis above, there is not a basis for increasing overall costs to insurers for QRC services.

To achieve cost neutrality for QRC services after the elimination of the fee reduction, it is proposed that the maximum hourly rate for rehabilitation services in subpart 1c be lowered from \$108.78 to \$103.10. The explanation for how the adjusted maximum hourly rate in subpart 1c was calculated is noted in the analysis of that subpart above. The anticipated result of amending subpart 1c in conjunction with repealing subpart 1f is that total QRC costs will remain roughly the same.

### **Subp. 1g. Payment.**

The proposed amendment to subpart 1g is as follows:

As soon as reasonably possible, and no later than 30 calendar days after receiving the rehabilitation provider's bill for rehabilitation services, the employer or insurer shall pay the charge or any portion of the charge that is not denied, deny all or a part of the charge stating the specific service charge and the reason it is excessive or unreasonable, or specify the additional data needed, with written notification to the rehabilitation provider. An employer or insurer is subject to penalties pursuant to Minnesota Statutes, chapter 176, for failure to pay or deny the payment as required by this chapter and Minnesota Statutes, section 176.102.

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<sup>43</sup> See attachment 2.

<sup>44</sup> SONAR-02130, pg. 17 (Dec. 21, 1992).

The sentence added to subpart 1g states that employers and insurers are subject to penalties under the workers' compensation law, Minn. Stat. ch. 176, if they fail to pay or deny a rehabilitation provider's bill. Insurers do not always timely pay or deny a bill, which leads to avoidable administrative conferences that take up the parties' time and add to costs. Including a reference to penalties in the rule is necessary because insurers and QRCs are not always aware that a penalty is possible. This gives QRCs, who are generally more familiar with the rehabilitation rules than chapter 176, a tool to remind insurers of the 30-day time frame to pay or deny charges, which in turn increases the likelihood that insurers will comply with this rule. The imposition of penalties for failure to timely pay rehabilitation charges is specifically permitted under Minn. Stat. § 176.221, subs. 3a and 6a (2016).<sup>45</sup> Because penalty authority may change in the future, the proposed amendment refers generally to penalties under chapter 176.

**Subp. 2. Reasonable and necessary services.**

The Revisor's Office plans to make the following non-substantive amendments to subpart 2:

A rehabilitation provider shall bill for only those necessary and reasonable services ~~which~~ that are rendered in accordance with according to 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: . . . .

**Subp. 6a. Billing Payment limits on qualified rehabilitation consultant services.**

The proposed amendments to subpart 6a provide as follows:

When a rehabilitation provider other than a qualified rehabilitation consultant is providing and billing for job development or job placement services pursuant to an approved rehabilitation plan, ~~the qualified rehabilitation consultant shall limit the qualified rehabilitation consultant's billing to no payment for more than two six hours in any 30 calendar day period of qualified rehabilitation consultant services per calendar month requires specific approval by the insurer or a determination by the commissioner or a compensation judge that the services were reasonable and necessary under subpart 2. Billing beyond this limit will require specific approval of the parties or a determination by the department or a compensation judge. Travel time and wait time are not included in the six-hour limit.~~

Subpart 6a addresses payment limits for QRC services when a rehabilitation provider

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<sup>45</sup> Minn. Stat. § 176.221, subd. 3a, states that "the commissioner may assess a penalty of up to \$2,000 payable to the commissioner for deposit in the assigned risk safety account for each instance in which an employer or insurer does not pay benefits . . . within the time limits prescribed under this section." Minn. Stat. § 176.221, subd. 6a, states that "the penalties provided by this section apply in cases where payment for treatment under section 176.135, rehabilitation expenses under section 176.102, subdivisions 9 and 11, or permanent partial compensation are not made in a timely manner as required by law or by rule adopted by the commissioner." Statutory provisions that authorize penalties payable to the employee are in Minn. Stat. § 176.225, subs. 1 and 5, which apply, for example, when an insurer neglects or refuses to pay compensation, or is guilty of inexcusable delay in making payments.

other than a QRC is providing job development<sup>46</sup> or job placement<sup>47</sup> services to the injured worker. The proposed amendment to this subpart would increase the number of hours per month for which a QRC may receive payment (without approval from the insurer, commissioner, or compensation judge) when someone else is providing job development/job placement services.<sup>48</sup> The limit on QRC services would increase from two hours per month to six hours per month.

At RRP and WCITF meetings and in written comments submitted to DLI, QRCs stated that it is sometimes necessary for them to provide services for more than two hours per month when the injured worker is receiving job development/job placement services from another provider. QRCs also contended that some insurers routinely deny payment for more than two hours per month. DLI did not receive any comments from insurers disputing these assertions. Under the current rule, during job development/job placement, some QRCs have had to choose between not providing necessary services and providing services for more than two hours per month despite a substantial risk that they would not get paid for the additional work. Therefore, QRCs must either provide the services without payment or file a rehabilitation request with the commissioner to seek approval for the services.

During job development/job placement, QRCs are still responsible for ongoing rehabilitation services including medical management, review of transferrable and vocational test results, identification and adjustment of vocational goals, meeting with the employee and job search vendor, jobsite analysis, and development of on-the-job training programs. Based on discussions at RRP and WCITF meetings and written comments submitted by rehabilitation providers, DLI determined that a six-hour limit will cover most reasonable and necessary QRC services during job development/job placement.

Although the amendments to subpart 6a allow for QRCs to receive payment without prior approval for more time than previously allowed, subpart 2 still allows the insurer to deny payment for services before the six-hour limit if the insurer determines that the services were not reasonable and necessary. The rule amendment strikes an appropriate balance: it ensures that the employee is provided with reasonable QRC services to facilitate job development/job placement while preserving the insurers' ability to challenge the services as unnecessary.

As noted in the analysis of regulatory factor 5, the increase in QRC costs as a result of the proposed rule change could initially be \$412.40 (\$103.10 x 4 hours) per rehabilitation plan for each month that an injured worker receives job development/job placement services from a rehabilitation provider other than the QRC. Since a number of insurers already approve QRC services above two hours a month during job development/job placement, this estimate is a

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<sup>46</sup> Job development is defined in Minn. R. 5220.0100, subp. 16, but that definition was superseded by an amendment to the rehabilitation statute, which contains a slightly different definition. Minn. Stat. § 176.102, subd. 5(b), states that "job development means systematic contact with prospective employers resulting in opportunities for interviews and employment that might not otherwise have existed, and includes identification of job leads and arranging for job interviews. Job development facilitates a prospective employer's consideration of a qualified employee for employment."

<sup>47</sup> Minn. R. 5220.0100, subp. 18, defines job placement as "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."

<sup>48</sup> Subpart 6a places a *limitation on QRC services* only when a rehabilitation provider other than a QRC is providing job development or job placement services. This is not to be confused with the *limitation on job development services* prescribed by Minn. Stat. § 176.102, subd. 5(b).



maximum increase.<sup>49</sup>

Finally, the proposed rule provides that a QRC's travel and wait time are not included in the six-hour limit. This amendment is reasonable because including travel and wait time in the limit would mean that some injured workers would receive fewer hours of QRC services. Injured workers who live in rural areas should not receive fewer hours of QRC services as a result of the QRC having to travel longer to attend a medical appointment with the injured worker or meet with the injured worker. Injured workers should not receive fewer hours of QRC services because of wait time, either, because QRCs do not control how long the wait time is to meet with the injured worker's health care provider or to meet to discuss the injured worker's work ability or other vocational rehabilitation issues.

### **Subp. 6b. Plans; exceptions.**

The proposed amendments to subpart 6b are as follows:

The qualified rehabilitation consultant shall bill no more than eight hours for a rehabilitation consultation as described in Minnesota Statutes, section 176.102, subdivision 4, and part 5220.0100, subpart 26, and the development, preparation, and filing of a rehabilitation plan as described in Minnesota Statutes, section 176.102, subdivision 4, and part 5220.0410. If conditions exist that necessitate traveling over 50 miles to visit the employee, employer, or health care provider, or an unusually difficult medical situation is documentable, billing payment beyond this limit is allowed upon the express consent of the parties specific approval by the insurer or a determination by the department commissioner or a compensation judge that the services were reasonable and necessary under subpart 2.

The minor changes DLI proposes to subpart 6b are meant to clarify when QRCs may receive payment for rehabilitation consultation or the development, preparation, and filing of a rehabilitation plan beyond the eight-hour billing limit. The insurer can agree to pay for more than eight hours of service, or the commissioner or a compensation judge can decide that services beyond the limit were reasonable and necessary as provided in subpart 2. The amended language is consistent with the proposed changes to subparts 6a and 7.

Changing the reference from "department" to "commissioner" reflects the terminology used in Minn. Stat. §§ 176.102 and 176.106.

### **Subp. 7. Case activities ~~requiring insurer consent for payment~~ that require approval or are not billable.**

The amendments to subpart 7 are as follows:

~~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:~~

The services and activities described in items A and B either require approval or are not billable by the rehabilitation provider.

- A. The following services and activities are not compensable unless the rehabilitation plan specifies them, the insurer approves them, or the commissioner or a compensation judge determines that they were reasonable and necessary under

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<sup>49</sup> For a more detailed discussion on possible costs, see the analysis of regulatory factor (5).

subpart 2:

- ~~A.(1) when not directed by the plan, phone calls; or visits to health care providers and accompanying the employee to appointments or examinations; or~~
- ~~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.(2) time spent by a supervisor; or another qualified rehabilitation consultant; or support staff in addition to consulting with or advising 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.~~

B. Rehabilitation providers shall not bill for the following services and activities:

- (1) phone calls to the department regarding general procedures or questions about rehabilitation not related to a specific rehabilitation plan;
- (2) unanswered attempted phone calls where the rehabilitation provider does not leave a message;
- (3) time for attendance at an administrative conference by the supervisor of the

- qualified rehabilitation consultant intern who is providing services to the employee;
- (4) time spent reviewing the file by an assigned qualified rehabilitation consultant or registered rehabilitation vendor when a case has been transferred from another qualified rehabilitation consultant or registered rehabilitation vendor within the same rehabilitation firm; or
- (5) wait time exceeding 15 minutes for early arrival for a prearranged meeting or appointment.

The amendments to subpart 7 divide certain services and activities into two categories. Item A lists services and activities that are compensable if “they are specified in the rehabilitation plan or approved by the insurer, commissioner, or a compensation judge.” The amended subpart makes clear that services and activities “specified in the rehabilitation plan” are compensable because an insurer consents to paying for a type of service by approving a rehabilitation plan that lists such a service. Also, a reference to approval by the commissioner or a compensation judge is added to this subpart because those parties resolve disputes about rehabilitation. As a result, the commissioner or a compensation judge might prescribe compensation for services and activities to which the insurer did not give consent. *See* Minn. Stat. § 176.106; Minn. R. 5220.1900, subp. 2; and 5220.0950.

Item A (1) (currently item (A)). There is no substantive change to this provision. The language is amended to eliminate “when not directed by the plan” because that phrase is redundant—the phrase before the colon in item A now provides that the services and activities in item A (1) are compensable if they are specified in the rehabilitation plan.

Item A (2) (currently item (J)). The reference to “support staff” is deleted because support staff do not consult with or advise the assigned QRC on the rehabilitation plan or related activities. The other amendments to the language clarify the type of activity at issue: “consulting with or advising” the assigned QRC.

Finally, the remaining items in the current rule are either eliminated altogether or moved to the new item B.

Current item B. This provision is eliminated because “follow-up activity with employers during job placement services to verify employee applications or applications not arranged by the rehabilitation provider” is considered investigative and therefore not ever permissible under 5220.1801.

Current item C. This item is moved to the new item B.

Current item D. This item is moved to the new item B.

Current item E. The provision “time spent for report writing not required by rules or requested by a party” is eliminated because it is covered by 5220.1801, subpart 8B. Under 5220.1801, subpart 8B, a rehabilitation provider cannot “act as an advocate for or advise any party about a claims or entitlement issue.” This prohibition encompasses

report writing about subjects outside of the rehabilitation plan.

Current item F. The provision “assigned qualified rehabilitation consultant service during vendor activity periods beyond required reporting or specific problem solving activity” is eliminated because it is too vague to be helpful to the parties. Services and activities that may have fallen under the category in subpart 7, item F, will be addressed under the “reasonable and necessary” standard in 5220.1900, subpart 2.

Current item G. This item is moved to the new item B.

Current item H. The provision “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” is eliminated because the language is confusing and because 5220.0120 and 5220.0950 give sufficient guidance for disputes about rehabilitation waivers and entitlement to rehabilitation services. Additionally, Minn. Stat. § 176.104 (2016) states that DLI’s Vocational Rehabilitation Unit shall “provide rehabilitation consultation if appropriate” when there is a dispute about liability for workers’ compensation benefits.

Current item I. This item is moved to the new item B.

Current item J. This item is renumbered as item A (2) and is discussed above.

Current item K. This provision is eliminated because “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” have not been occurring. The parties are kept informed about services by progress reports and plan amendments. Disagreements are usually addressed via telephone or email. If necessary, disputes may be resolved through an administrative conference.

Current item L. This item is moved to the new item B.

Current item M. This provision is eliminated because “services that duplicate services already provided” are explicitly addressed by 5220.1900, subpart 2C.

Current item N. The provision “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” is eliminated because it is somewhat confusing. Any disputes about reimbursement for work surrounding a legal proceeding will be addressed under the “reasonable and necessary” standard in 5220.1900, subpart 2.

Current item O. The provision “travel costs beyond those needed to develop or complete a plan” is eliminated because billing for “travel time” is addressed in 5220.1900, subparts 1c and 6b. Any other disputes about reimbursement for travel time can be addressed under the “reasonable and necessary” standard in 5220.1900, subpart 2.

Current item P. The provision “services after a request to suspend or terminate the rehabilitation plan has been filed” is eliminated because the issue is addressed in a different rule. 5220.0950, subpart 1C, states that “the assigned qualified rehabilitation consultant shall file with the commissioner and serve on all parties a rehabilitation request for assistance to determine the direction of an approved rehabilitation plan if no party has done so and the qualified rehabilitation consultant is unable to plan or implement rehabilitation services.”

The new item B lists activities for which rehabilitation providers are not allowed to bill. In other words, rehabilitation providers should never be compensated for the activities listed in item B.

Item B (1). This is moved from the current item C, which is deleted. Rehabilitation providers should never bill for “phone calls to the department regarding general procedures or questions about rehabilitation not related to a specific rehabilitation plan” because this activity does not further an agreed-upon rehabilitation plan. General questions of the department are not specific to an employee, and therefore cannot be billed to the insurer for that employee’s claim.

Item B (2). This is moved from the current item D, which is deleted. Rehabilitation providers should never bill for “unanswered attempted phone calls where the rehabilitation provider does not leave a message” because time spent to make such a phone call is negligible and provides no value to the rehabilitation plan.

Item B (3). This is moved from the current item G, which is deleted. Rehabilitation providers should never bill for “time for attendance at an administrative conference by the supervisor of the qualified rehabilitation consultant intern who is providing services to the employee” because this activity is a management task that is supervisory in nature. It is related to training the intern to work as a regular QRC rather than providing services to an injured worker, and is required of the supervisor as part of the intern’s learning process. *See* Minn. R. 5220.1400.

Item B (4). This is moved from the current item I, which is deleted. Rehabilitation providers should never bill for “time spent reviewing the file 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.” This cost should be borne by the rehabilitation firm rather than the insurer so that the rule is consistent with 5220.1802, subpart 4a, which states that a rehabilitation firm “may not charge a party for the transfer of information to the new qualified rehabilitation consultant or qualified rehabilitation firm.”

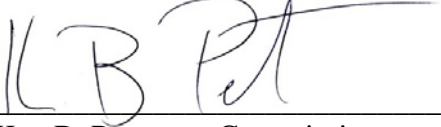
Item B (5). This is similar to the current item L, which is deleted. Rehabilitation providers should never bill for wait time exceeding 15 minutes for early arrival for a prearranged meeting or appointment. Current item L provided that no wait time was compensable. However, DLI determined that it is reasonable to compensate rehabilitation providers for some wait time because it is appropriate for QRCs to aim to arrive a few

minutes early to prearranged meetings and appointments to ensure that they are not late due to traffic or other unforeseen circumstances.

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**CONCLUSION: Based on the preceding information and analyses, the proposed rules are both needed and reasonable.**

4-19-2018  
Date

  
\_\_\_\_\_  
Ken B. Peterson, Commissioner  
Department of Labor and Industry

This Statement of Need and Reasonableness was made available for public review on April 20, 2018.

**Estimated economic effects of changes to  
 Minn. R. 5220.1900, subps. 1c & 1f on QRC plan costs [1]**

	A	B	C
	Current rules: \$10/hour fee reduction, thresholds at \$3,500 and 39 weeks	Estimated increase in QRC plan costs if \$10/hour fee reduction were eliminated with no change to the maximum QRC rate [3]	Proposed rules: no fee reduction, maximum QRC rate adjusted to maintain total QRC plan costs neutrality [4], [5]
Maximum hourly QRC rate as of 10/1/17	\$108.78	\$108.78	\$103.10
Mean QRC plan cost	\$6,684	\$7,052	\$6,684
Total QRC plan costs [2]	\$37,926,971	\$40,015,168	\$37,927,159

**Notes**

1. Estimates are based on the 5,674 plan closures from Oct. 1, 2015, to Sept. 30, 2016 in the Department's workers' compensation claims database.
2. The total QRC plan costs in column A was calculated by taking the sum of costs reported on Plan Closure (R8) forms for plans closed from Oct. 1, 2015, to Sept. 30, 2016, and then adjusting the sum to reflect the maximum hourly QRC rate of \$108.78 effective Oct. 1, 2017. The total QRC plan costs only includes current QRC costs; it does not include costs for prior QRCs, vendors, or other services.
3. The total QRC plan costs in column B--\$40,015,168--was calculated by adding back in the \$10 fee reduction to the \$37,926,971 value.
4. The adjusted maximum hourly QRC rate in the proposed rules was calculated by multiplying the ratio of total QRC plan costs with and without hourly fee reductions by the maximum hourly QRC rate for Oct. 1, 2017. The equation is  $(37,926,971/40,015,168)*108.78=103.10$ . The new maximum QRC rate will produce approximately the same total QRC costs as under the current rules.
5. The difference between the total QRC plan costs in column C as compared to column A is due to rounding the adjusted maximum hourly QRC rate--\$103.10--to the nearest cent.

**Assumptions**

1. The estimates cannot account for any future change in billing or payment practices or provision of services under a rehabilitation plan.
2. The estimates in this table are based on the Plan Closure (R8) forms, which reflect what QRCs billed rather than what they were paid.

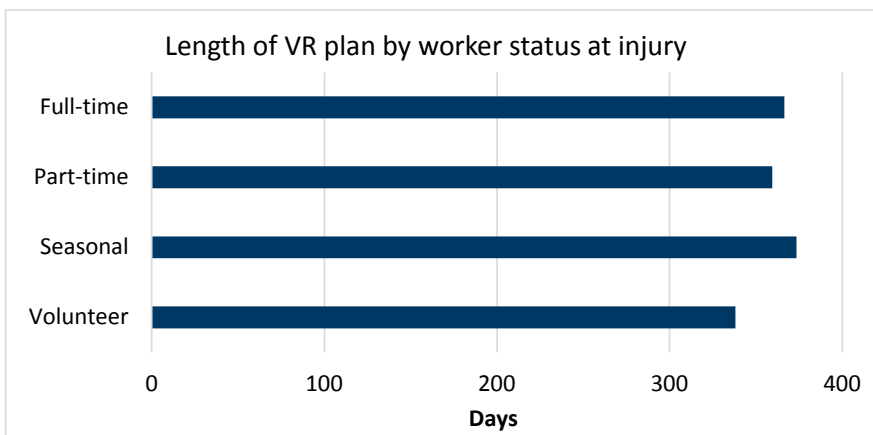
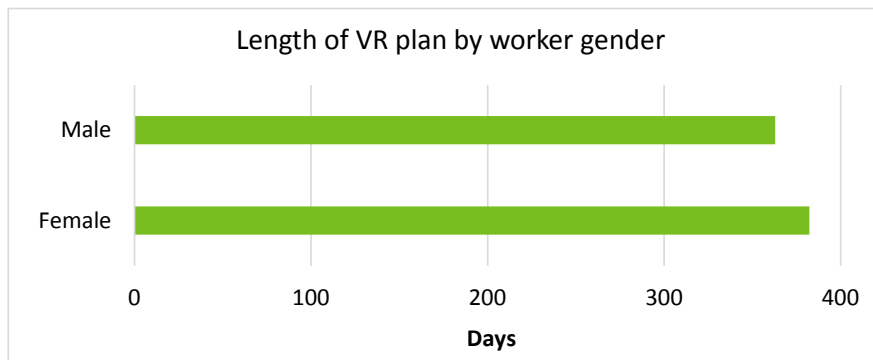
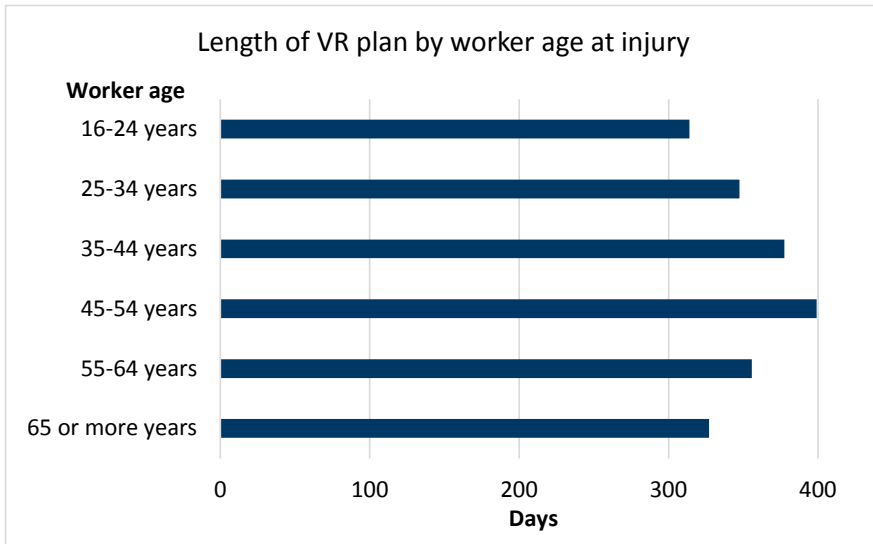
Attachment 2

Minnesota Department of Labor and Industry  
Research and Statistics  
March 8, 2018

Statistics based on 5,487 plans closed in 2016 for injuries from 2010 through 2016.  
Source: Minnesota workers' compensation claims database.

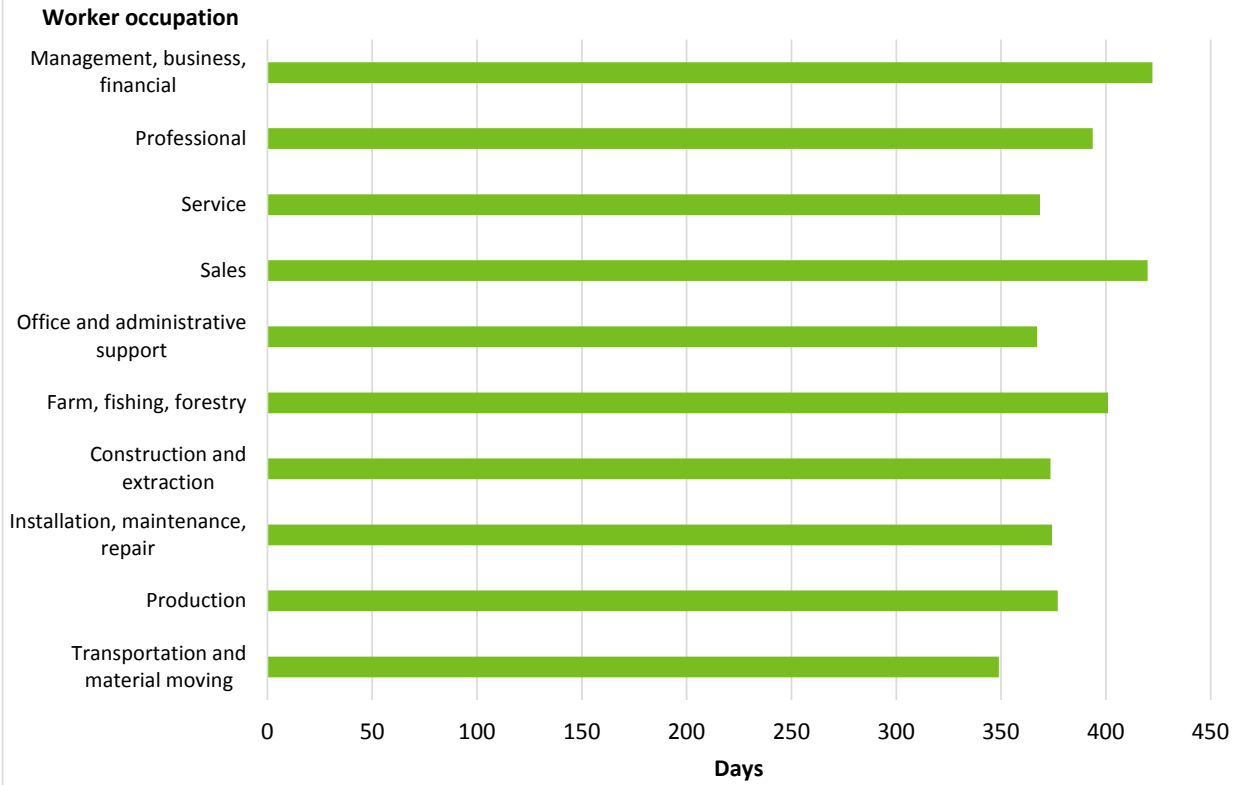
**Average duration of current vocational rehabilitation plan, in days**

Average duration for all cases: 362 days

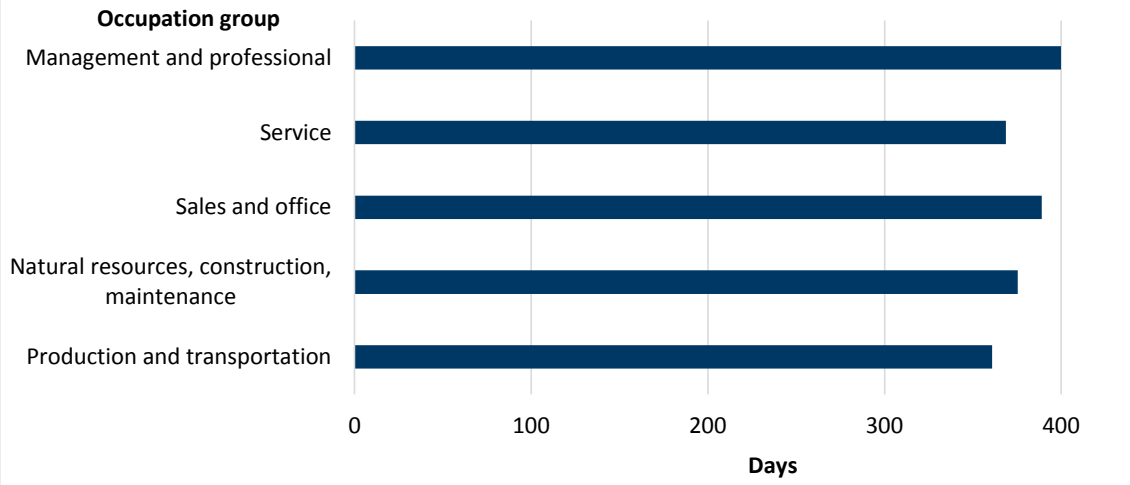




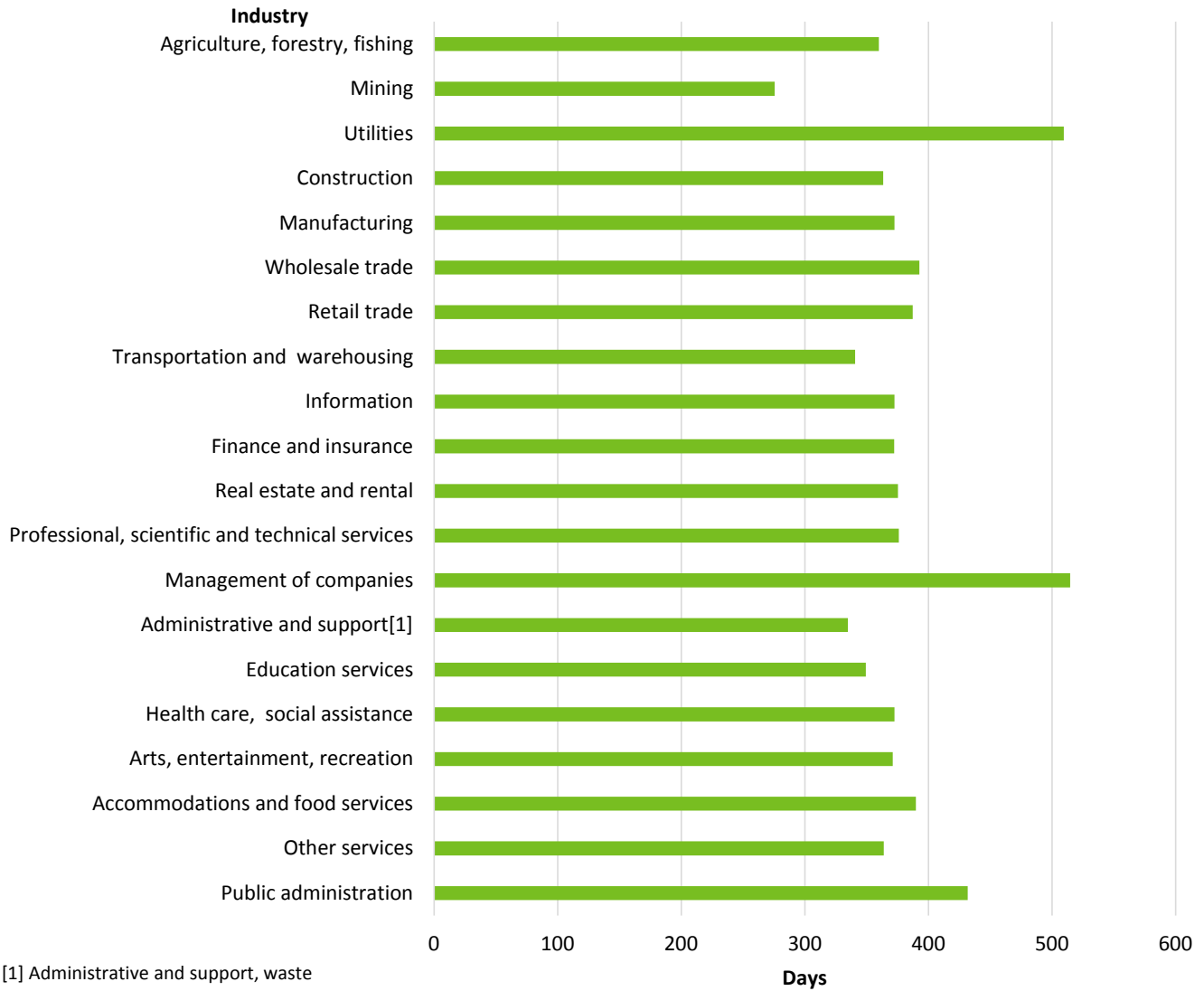
Length of VR plan by worker occupation



Length of VR plan by worker occupation group

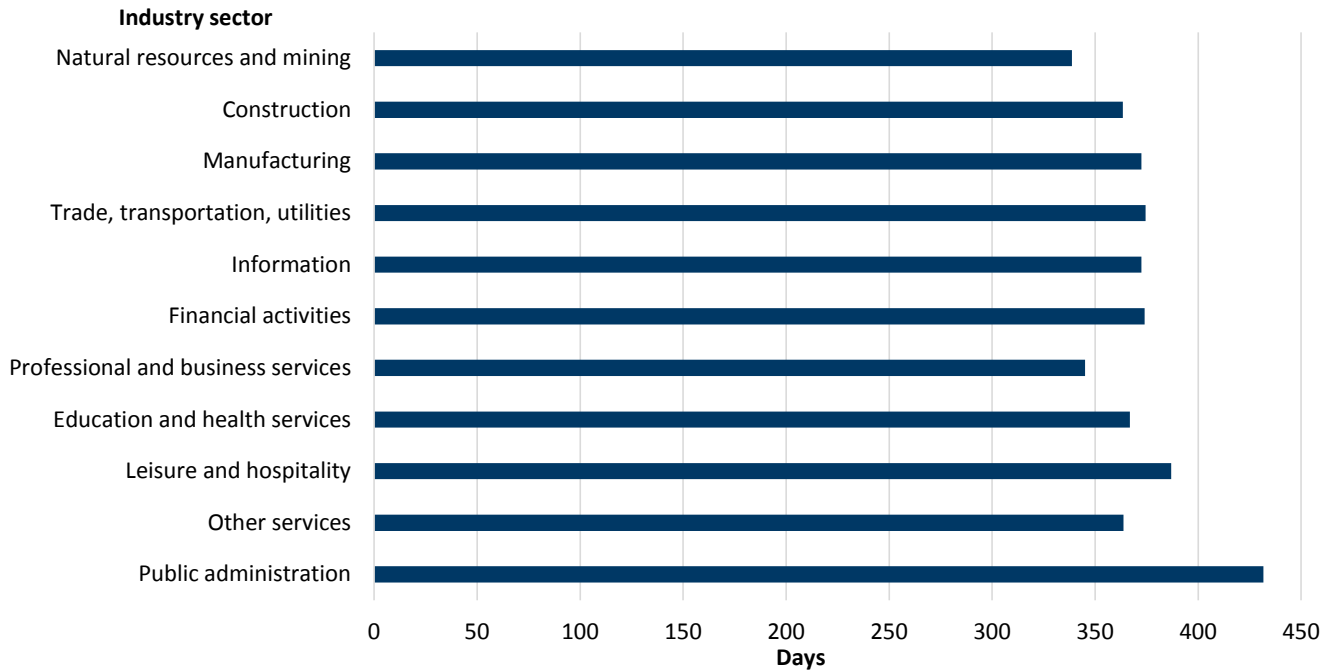


### Length of VR plan by industry

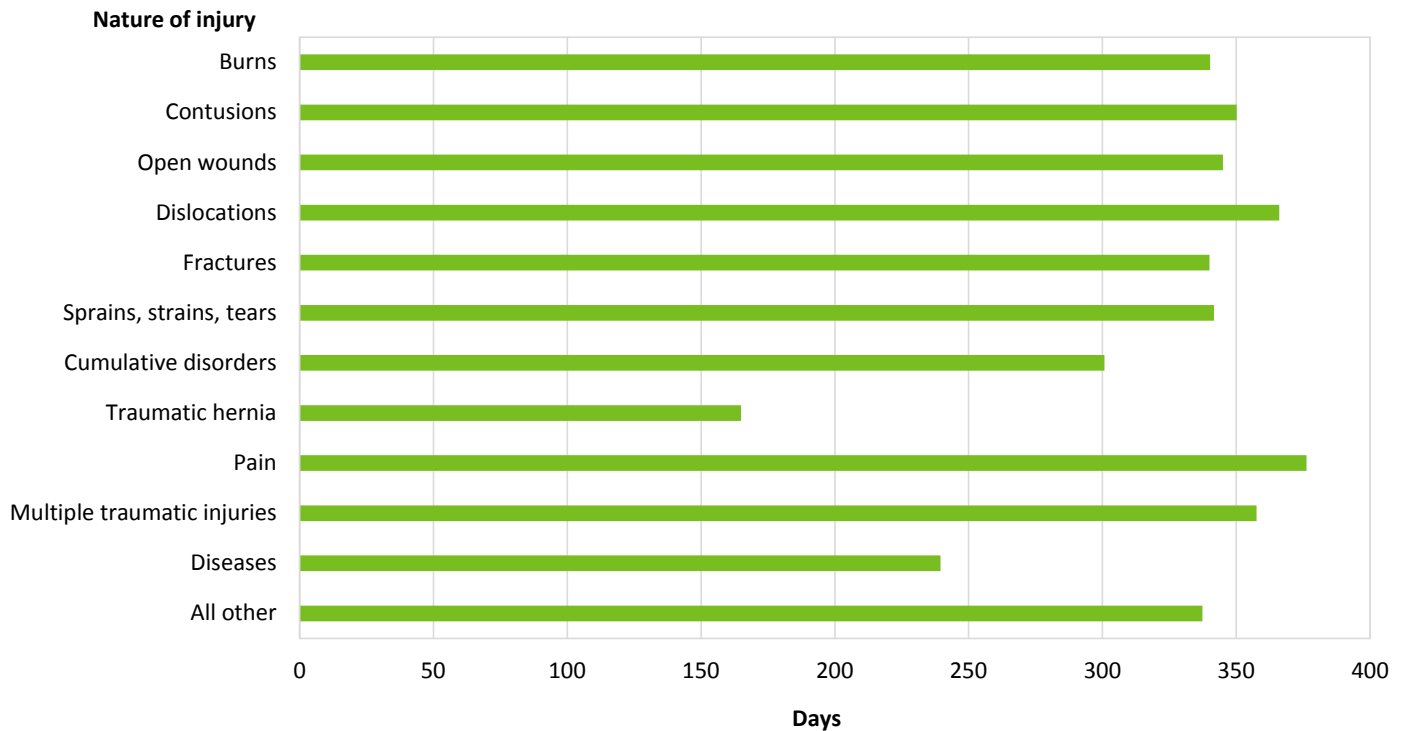


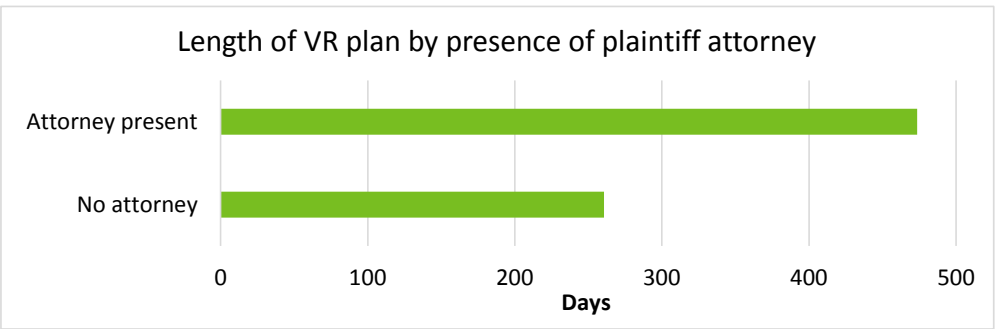
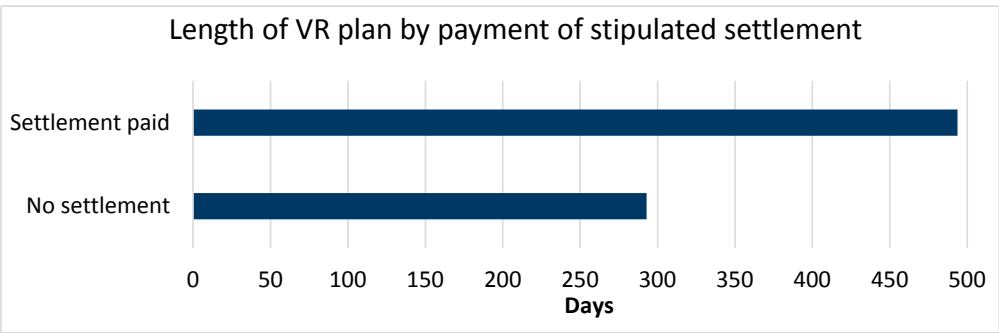
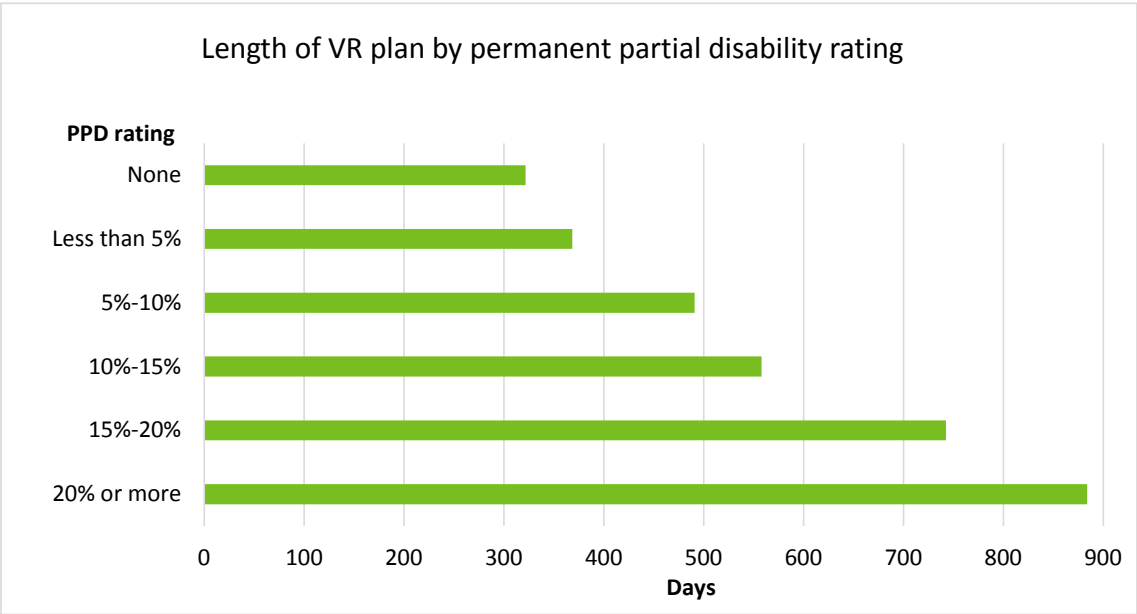
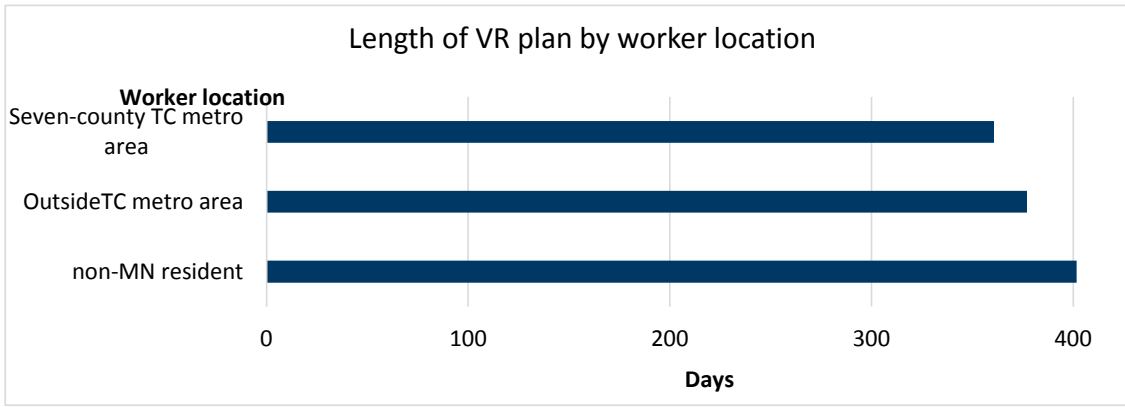
[1] Administrative and support, waste management, remediation services

Length of VR plan by industry sector



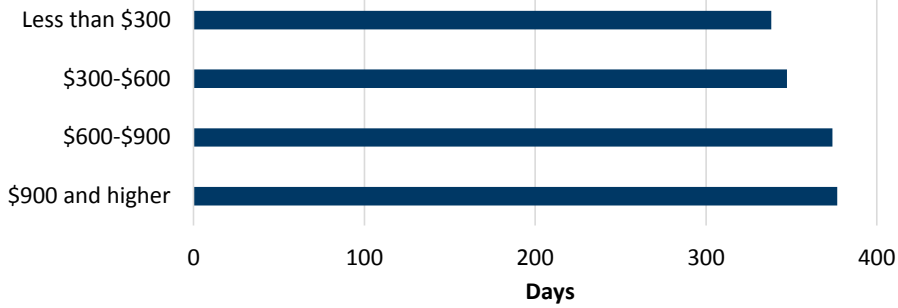
Length of VR plan by nature of injury





Length of VR plan by worker pre-injury weekly wage

**Average weekly wage**



**Average QRC charges for current vocational rehabilitation plan, not inflation-adjusted**

Average QRC charges for all cases: \$6,170

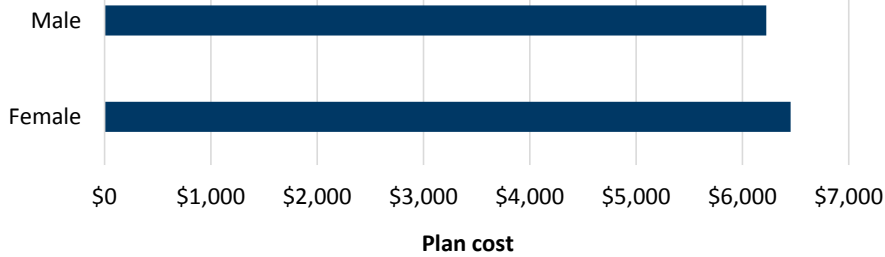
Average QRC charges by worker age at injury

**Worker age**

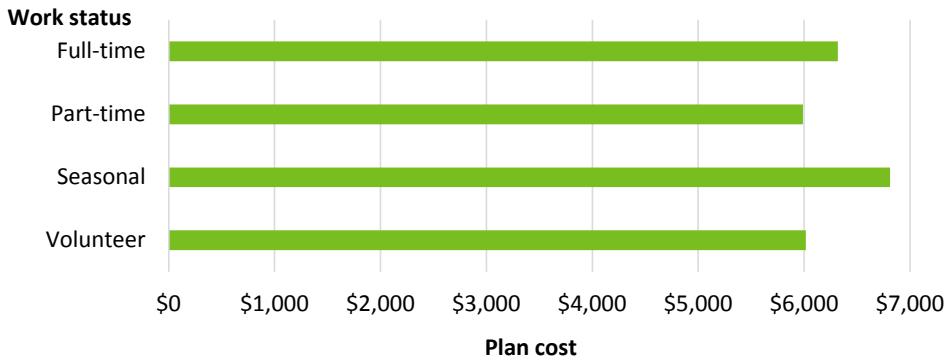


Average QRC charges by worker gender

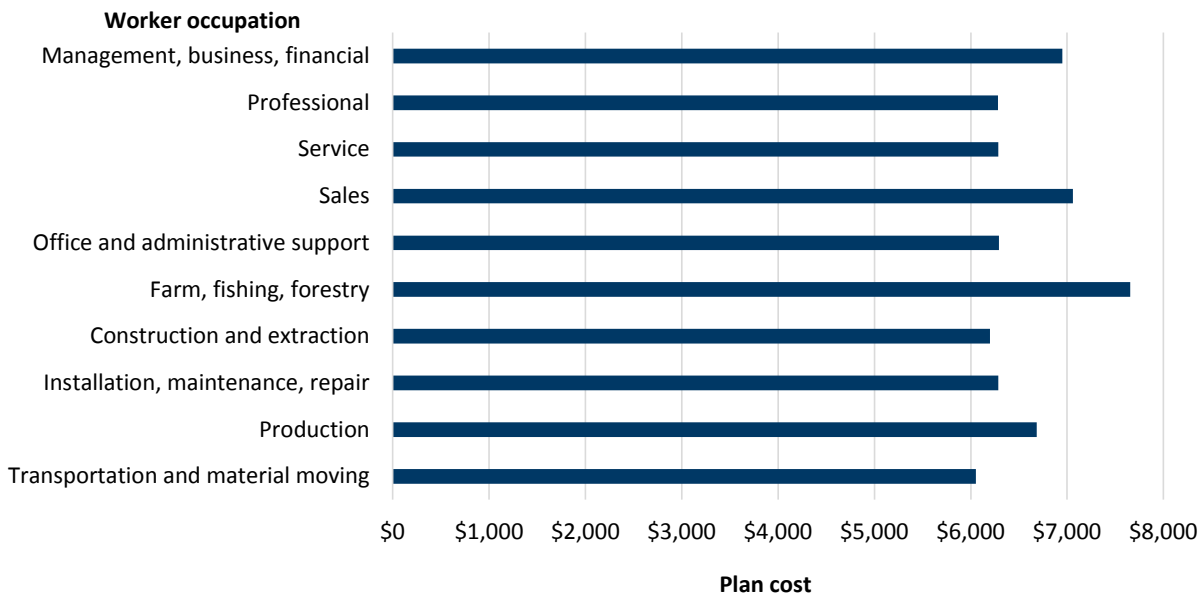
**Worker gender**



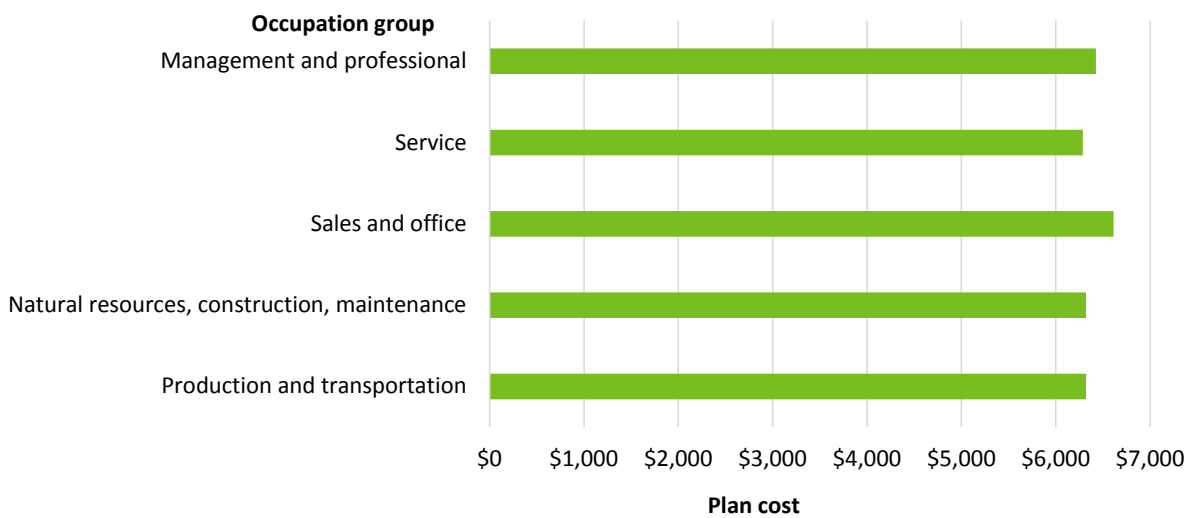
Average QRC charges by worker status at injury



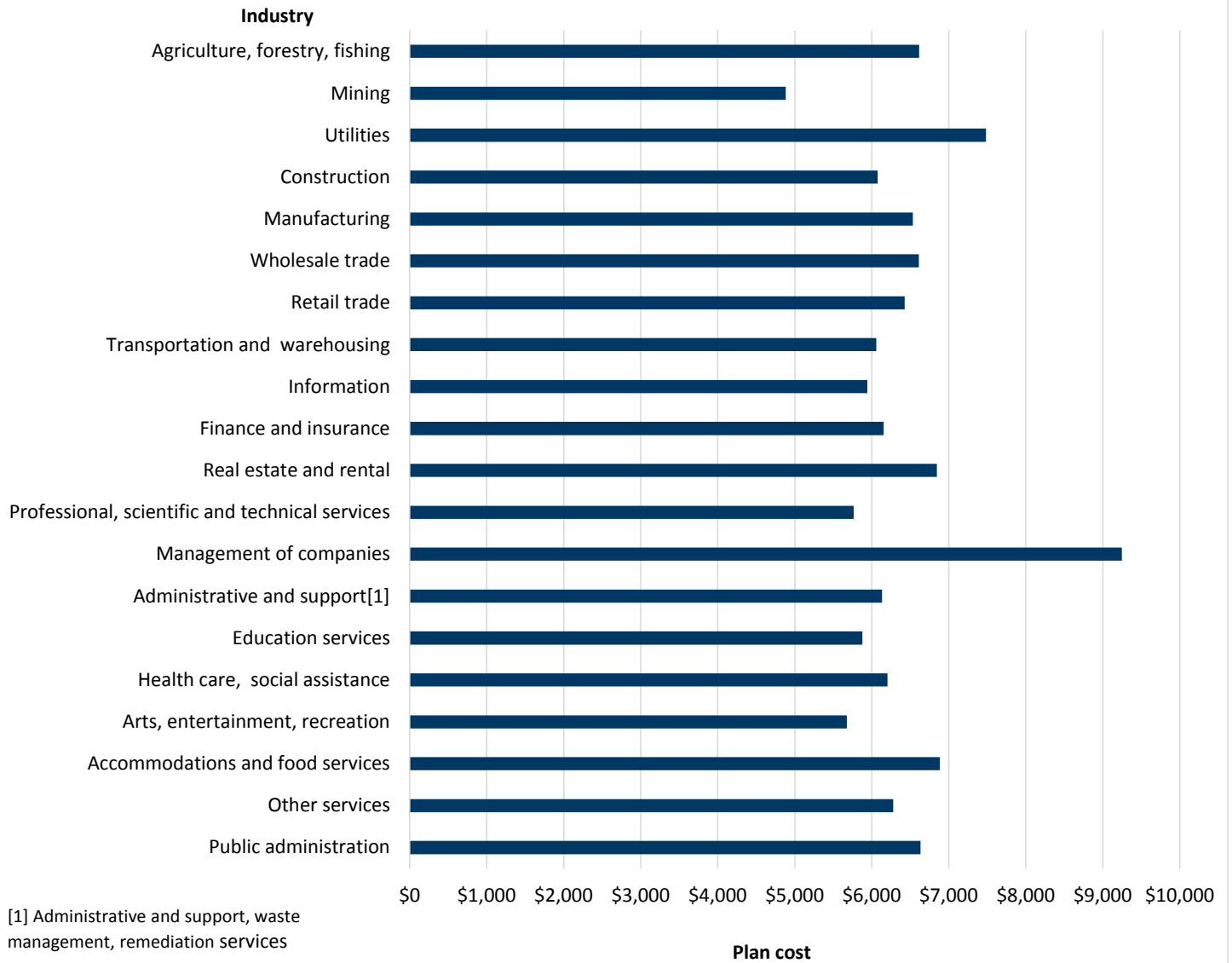
Average QRC charges by worker occupation



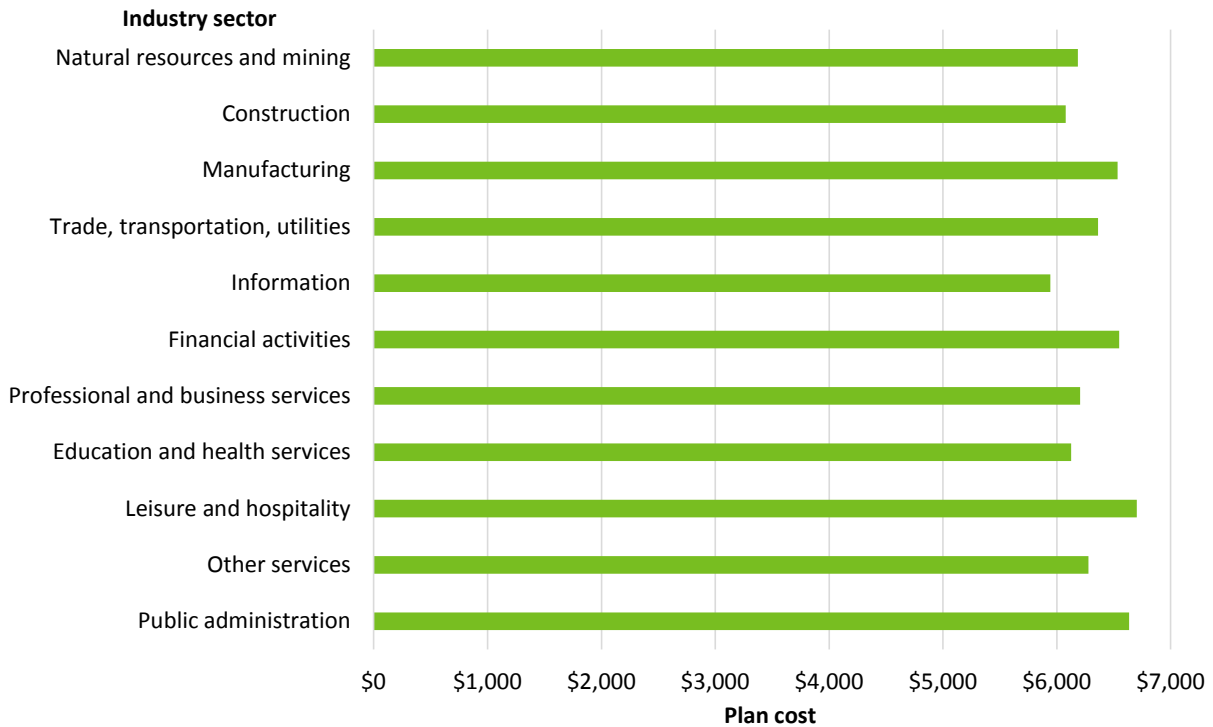
Average QRC charges by worker occupation group



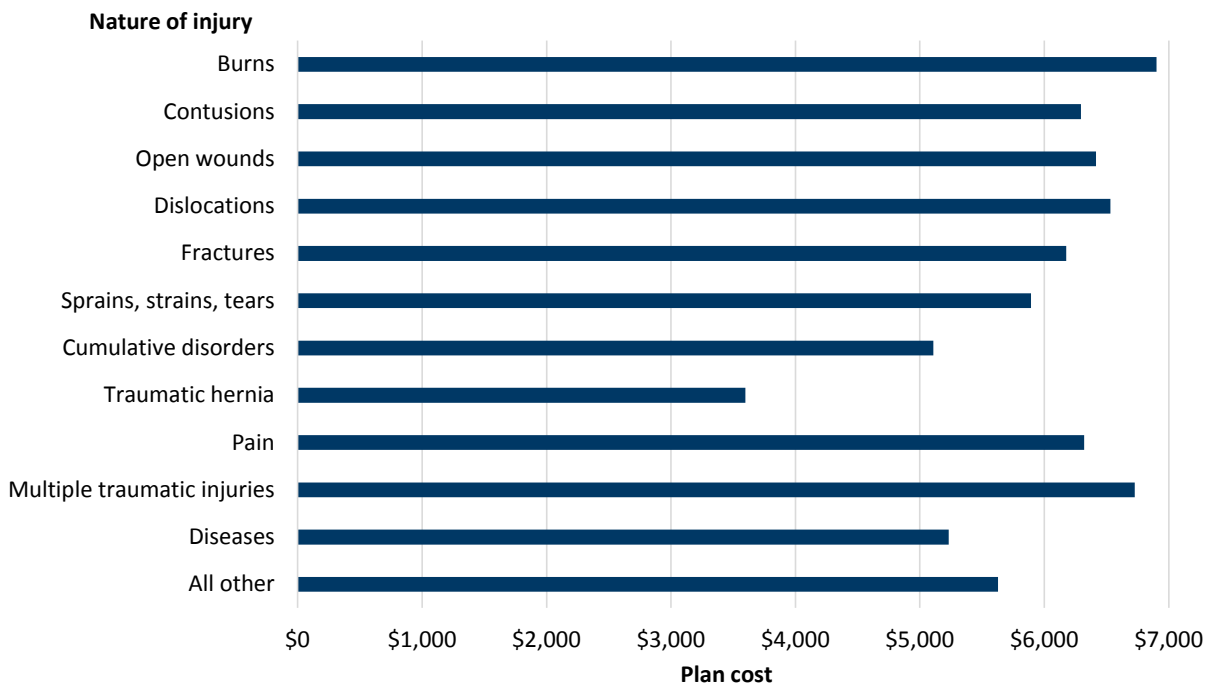
### Average QRC charges by industry



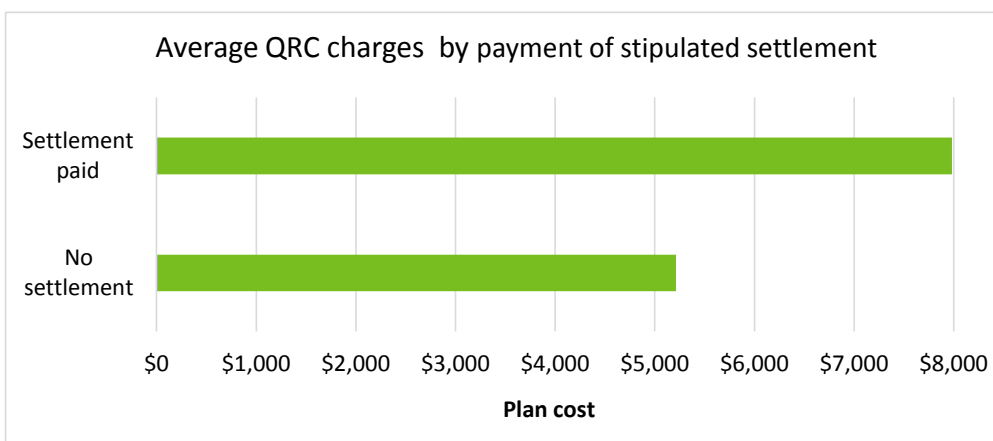
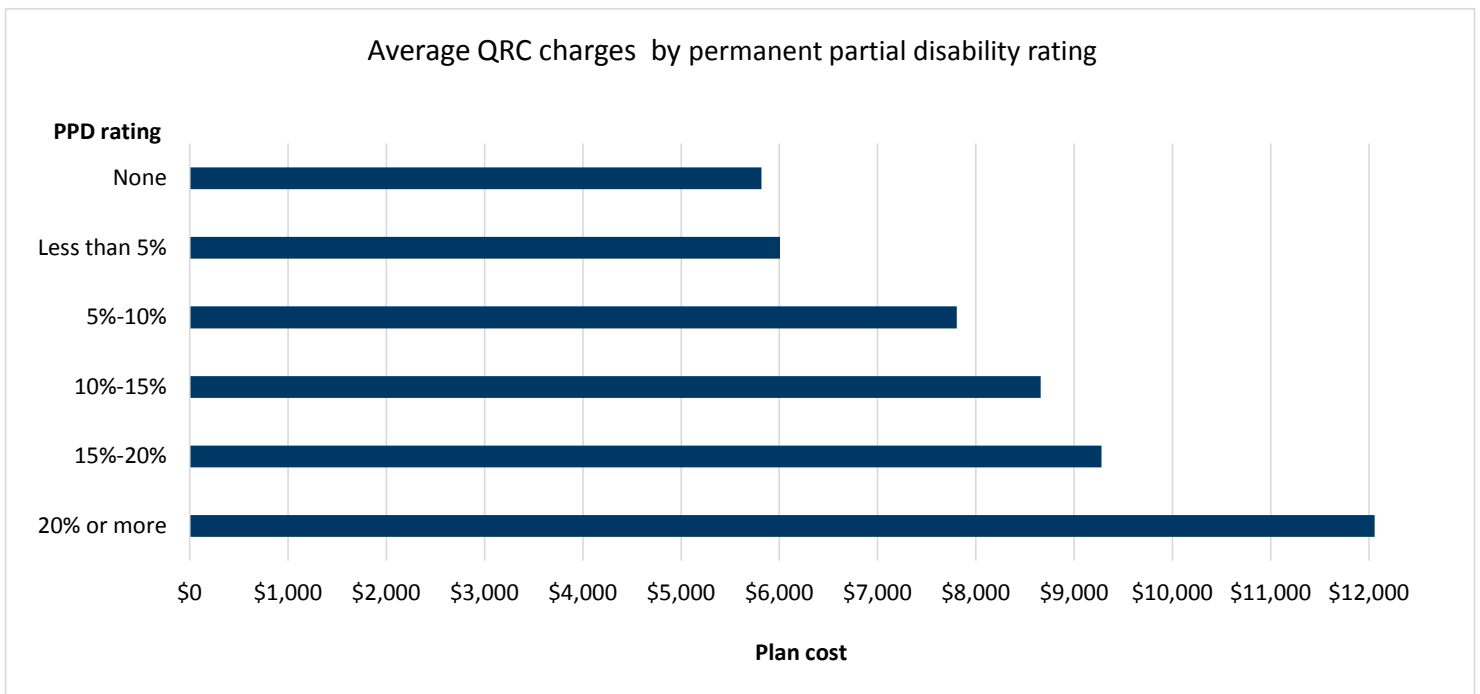
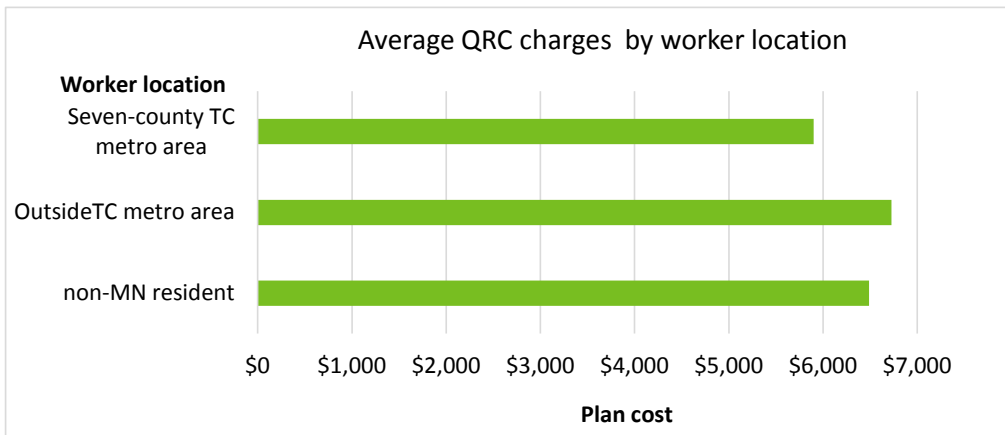
Average QRC charges by industry sector



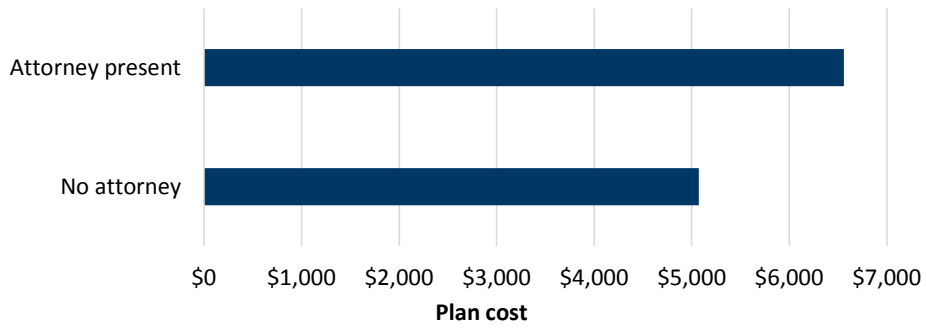
Average QRC charges by nature of injury







Average QRC charges by presence of plaintiff attorney



Average QRC charges by worker pre-injury weekly wage

