

1 Department of Labor and Industry

2

3 Adopted Permanent Rules Relating to the Rehabilitation of

4 Persons with Work-Related Injuries

5

6 Rules as Adopted

7 REHABILITATION OF PERSONS WITH WORK-RELATED INJURIES

8 INCLUDING REQUIREMENTS TO BE A QUALIFIED REHABILITATION

9 CONSULTANT OR REGISTERED REHABILITATION VENDOR

10 5220.0100 DEFINITIONS.

11 Subpart 1. **Scope.** For the purposes of parts 5220.0100 to
12 5220.1910, the following terms have the meanings given them.

13 Subp. 2. **Approved claims handler.** "Approved claims
14 handler" means a claims handler who meets the requirements of
15 part 5220.1910.

16 Subp. 3. **Assigned qualified rehabilitation consultant.**

17 "Assigned qualified rehabilitation consultant" means the
18 qualified rehabilitation consultant responsible for
19 consultation, development, and implementation of the
20 rehabilitation plan, whether the qualified rehabilitation
21 consultant is:

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

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

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

29 Subp. 4. **Commissioner.** "Commissioner" means commissioner
30 of the Department of Labor and Industry.

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

33 Subp. 9. **Employer.** "Employer" means the employer at the
34 time of injury of qualified employees, unless the context
35 clearly indicates otherwise.



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

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

15 Subp. 12a. Insurer. "Insurer" includes self-insured
16 employers.

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

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

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

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

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

27 E. what traits are required of the worker.

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

33 Subp. 16. Job development. "Job development" means
34 systematic contact with prospective employers resulting in
35 opportunities for interviews and employment that might not
36 otherwise have existed. Job development facilitates a

1 prospective employer's consideration of a qualified employee for
2 employment.

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

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

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

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

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

34 **Subp. 22. Qualified employee.** "Qualified employee" means
35 an employee who, because of the effects of a work-related injury
36 or disease, whether or not combined with the effects of a prior

1 injury or disability:

2 A. is permanently precluded or is likely to be
3 precluded from engaging in the usual and customary occupation or
4 in the job the individual held at the time of injury; and

5 B. can reasonably be expected to return to suitable
6 gainful employment through the provision of rehabilitation
7 services.

8 Subp. 23. **Qualified rehabilitation consultant.** "Qualified
9 rehabilitation consultant" means a person who is professionally
10 trained and experienced and who is registered by the
11 commissioner to provide an eligibility consultation and to
12 develop and implement an appropriate plan of rehabilitation
13 services for an employee entitled to rehabilitation benefits
14 under Minnesota Statutes, section 176.102.

15 Subp. 6. [See repealer.]

16 Subp. 7. [See repealer.]

17 Subp. 8. [See repealer.]

18 Subp. 24. **Qualified rehabilitation consultant**
19 **firm.** "Qualified rehabilitation consultant firm" means a public
20 or private business, whether organized as a sole proprietorship,
21 partnership, association, corporation, or other form, which is
22 held out to the public as a business entity engaged in
23 rehabilitation consultation and services.

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

29 Subp. 26. **Rehabilitation consultation.** "Rehabilitation
30 consultation" means one or both of the following consistent with
31 Minnesota Statutes, section 176.102, subdivision 4, and parts
32 5220.0110 to 5220.0130.

33 A. "Claim screening consultation" means an assessment
34 of the likelihood that an injured employee will uneventfully
35 return to work without rehabilitation services. A claim
36 screening consultation uses a report which refers the employee

1 for an eligibility consultation, rehabilitation services, or
2 both, or requests a waiver of rehabilitation services.

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

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

14 Subp. 28. **Rehabilitation provider.** "Rehabilitation
15 provider" means the following four categories of rehabilitation
16 professionals:

- 17 A. qualified rehabilitation consultants;
18 B. qualified rehabilitation consultant interns;
19 C. qualified rehabilitation consultant firms; and
20 D. registered rehabilitation vendors.

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

36 Subp. 10a. [See repealer.]

1 Subp. 11. [See repealer.]

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

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

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

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

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

36 Subp. 14. [See repealer.]

1 Subp. 15. [See repealer.]

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

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

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

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

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

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

32 5220.0105 INCORPORATION BY REFERENCE.

33 The following documents are incorporated by reference only
34 to the extent specifically referenced in parts 5220.0100 to
35 5220.1910. The documents in items A and B are not subject to

1 frequent change, although new editions may occasionally be
2 published. The documents in item C are revised annually. All
3 documents are available through the Minitex interlibrary loan
4 system.

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

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

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

20 5220.0110 REHABILITATION CONSULTATION; CLAIM SCREENING
21 CONSULTATION.

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

26 Subp. 2. Criteria. An insurer shall provide a claim
27 screening consultation so that the entire rehabilitation
28 consultation takes place no later than five days after an
29 employee has accumulated 60 days of lost work time due to a work
30 injury. If an employee has a work injury to the back, the
31 entire rehabilitation consultation shall be provided no later
32 than five days after an employee has accumulated 30 days of lost
33 work time. The claim screening consultation shall be provided
34 before the lost work time requirements above in cases where an
35 employer receives information that indicates that the employee

1 will be unable to return to work at the job held at the time of
2 injury. The claim screening consultation shall then be provided
3 within five days of receipt of the information.

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

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

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

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

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

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

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

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

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

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

1 (3) requesting to waive referral for eligibility
 2 consultation and rehabilitation services, if the employee meets
 3 the criteria for a waiver of rehabilitation services under part
 4 5220.0120, subpart 2; or

5 (4) indicating if there exists a dispute about
 6 medical causation or whether the injury arose out of and in the
 7 course and scope of employment, so that the commissioner may
 8 make appropriate referral under Minnesota Statutes, section
 9 176.104, subdivision 1.

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

14 Subp. 4. Commissioner's authority. If a claim screening
 15 consultation report is not filed according to this part, the
 16 commissioner may refer the employee for an eligibility
 17 consultation by a qualified rehabilitation consultant at the
 18 insurer's expense according to Minnesota Statutes, section
 19 176.102, subdivision 4, paragraph (b).

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

26 5220.0120 WAIVER OF ELIGIBILITY CONSULTATION AND REHABILITATION
 27 SERVICES.

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

31 Subp. 2. Criteria. A rehabilitation waiver may be
 32 requested when (1) the employee meets the lost time requirement
 33 for a rehabilitation consultation, but there is a reasonable
 34 expectation that the employee will return to the preinjury job
 35 in the near future without rehabilitation services, or (2)

1 information indicates that the employee would not benefit at
2 that time from rehabilitation services.

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

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

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

22 5220.0130 REHABILITATION CONSULTATION; ELIGIBILITY CONSULTATION.

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

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

- 31 A. a waiver has not been requested;
32 B. a request for a waiver has been denied;
33 C. there is no longer a basis for a waiver;
34 D. a waiver period has expired without renewal; or
35 E. it is ordered by the commissioner.

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

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

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

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

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

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

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

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

30 (2) the eligibility consultation date;

31 (3) the employee's work status;

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

36 (5) a professional opinion about whether the

1 employee can reasonably be expected to return to suitable
 2 gainful employment through the provision of rehabilitation
 3 services at this time and the basis for that opinion.

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

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

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

23 5220.0410 REHABILITATION PLAN.

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

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

35 A. information identifying the employee, employer,

1 insurer, and assigned qualified rehabilitation consultant;

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

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

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

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

20 F. employee comments, if any; and

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

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

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

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

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

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

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

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

16 Subp. 5. Filing the plan. The assigned qualified
17 rehabilitation consultant shall file the rehabilitation plan and
18 the initial evaluation narrative report, as required by part
19 5220.1803, subpart 5, with the commissioner within 90 days of
20 the first in-person contact between the qualified rehabilitation
21 consultant and the employee or within 30 days of circulation to
22 the parties, whichever is earlier.

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

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

1 the plan.

2 ~~The commissioner may at any time request additional~~
3 ~~information, confer with the parties, recommend modifications,~~
4 ~~and otherwise seek agreement about the plan. The commissioner~~
5 ~~may approve or modify the plan, schedule an administrative~~
6 ~~conference, or refer the matter to a compensation judge to~~
7 ~~approve or modify the plan.~~ In reviewing rehabilitation plans
8 pursuant to Minnesota Statutes, section 176.102, subdivision 6,
9 the commissioner shall notify all interested parties of the
10 nature of any additional information necessary for the review,
11 any recommended modifications to the plan, and any decision
12 approving, modifying, or rejecting a plan.

13 If the commissioner refers issues relating to a plan to a
14 compensation judge or an administrative conference pursuant to
15 Minnesota Statutes, section 176.106, all parties shall be
16 notified of that action and of all applicable related procedures.

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

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

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

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

35 The assigned qualified rehabilitation consultant shall
36 monitor registered rehabilitation vendor compliance with the

1 rehabilitation plan.

2 Job placement services shall be provided by rehabilitation
3 providers registered by the commissioner or a facility
4 accredited by the National Commission on Accreditation of
5 Rehabilitation Facilities (CARF), Tucson, Arizona. The CARF
6 Directory of Accredited Organizations Serving People with
7 Disabilities and its Standards Manual for Organizations Serving
8 People with Disabilities are incorporated by reference in part
9 5220.0105.

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

14 5220.0510 PLAN AMENDMENT AND CLOSURE.

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

- 20 A. a new or continuing physical limitation that
21 significantly interferes with the implementation of the plan;
22 B. the employee is not participating effectively in
23 the implementation of the plan;
24 C. a need to change the vocational goal of the
25 rehabilitation plan;
26 D. the projected rehabilitation cost or duration, as
27 stated in the rehabilitation plan, will be exceeded; or
28 E. the employee feels ill-suited for the type of work
29 for which rehabilitation is being provided.

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

1 proposed amendments.

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

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

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

14 B. the proposed amendment;

15 C. a rationale for the amendment;

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

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

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

25 G. employee comments, if any; and

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

28 Subp. 4. Amendment by commissioner. ~~At the discretion of~~
29 ~~the commissioner, the commissioner may amend the rehabilitation~~
30 ~~plan pursuant to Minnesota Statutes, sections 176.102 and~~
31 ~~176.106, and the rules that implement those sections.~~ If a plan
32 is modified for good cause pursuant to Minnesota Statutes,
33 section 176.102, subdivision 8, or as a result of an
34 administrative conference pursuant to Minnesota Statutes,
35 section 176.106, the commissioner shall notify all interested
36 parties of the modification and the reasons for the modification.

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

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

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

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

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

15 Subp. 6. Commissioner's authority to initiate closure.

16 ~~The commissioner may initiate and order closure of~~
 17 ~~rehabilitation services for good cause after notice to the~~
 18 ~~parties of the proposed closure and after an opportunity for~~
 19 ~~interested parties to submit information. The submission may be~~
 20 ~~written or at an in-person meeting at the discretion of the~~
 21 ~~commissioner. If the commissioner initiates the termination of~~
 22 ~~rehabilitation services pursuant to Minnesota Statutes, section~~
 23 ~~176.102, subdivision 6, or through an administrative conference~~
 24 ~~pursuant to Minnesota Statutes, section 176.106, all interested~~
 25 ~~parties shall be provided written notice of the proposed~~
 26 ~~decision and an opportunity to be heard either in person or~~
 27 ~~through the submission of written information.~~

28 Subp. 7. Closure report by assigned qualified
 29 rehabilitation consultant. When an employee's rehabilitation
 30 plan is completed and closure of rehabilitation services is not
 31 disputed, the assigned qualified rehabilitation consultant shall
 32 file a report on a form prescribed by the commissioner. When
 33 the reason for the closure is a return to work, the qualified
 34 rehabilitation consultant shall not complete and file the
 35 closure report until the employee has continued working for at
 36 least 30 calendar days following the return to work. The form

1 reporting plan closure must be sent to the employee and the
 2 insurer when filed with the commissioner. The form shall
 3 contain substantially the following:

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

6 B. the outcome of the rehabilitation plan;

7 C. the employee's employment status:

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

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

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

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

22 Subp. 8. Disputes. In the case of a dispute about a plan
 23 amendment or closure, any party may file a rehabilitation
 24 request for assistance according to Minnesota Statutes, chapter
 25 176, and part 5220.0950.

26 5220.0710 EMPLOYEE CHOICE OF QUALIFIED REHABILITATION
 27 CONSULTANT; CHANGE OF QUALIFIED REHABILITATION CONSULTANT.

28 Subpart 1. Employee right to choose. Pursuant to
 29 Minnesota Statutes, section 176.102, subdivision 4, the
 30 qualified employee has a right to choose an assigned qualified
 31 rehabilitation consultant as defined in part 5220.0100, subpart
 32 3:

33 A. once:

34 (1) when the employee selects a qualified
 35 rehabilitation consultant before a referral by the insurer to a

1 qualified rehabilitation consultant, or before a first in-person
 2 visit between a qualified rehabilitation consultant and the
 3 employee; or

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

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

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

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

36 Subp. 4. **Penalty**--~~A frivolous objection to or~~

1 ~~interference-with-the-employee's-choice-of-assigned-qualified~~
 2 ~~rehabilitation-consultant-under-subpart-1-and-Minnesota~~
 3 ~~Statutes, section 176.102, subdivision 4, may subject the~~
 4 ~~insurer to penalties under part 5220.2780, or a qualified~~
 5 ~~rehabilitation-consultant to disciplinary action pursuant to~~
 6 ~~Minnesota Statutes, section 176.102, subdivisions 3 and 3a.~~
 7 Subp. 5. Employee residing or moving out of Minnesota.
 8 Qualified employees who reside outside of Minnesota or who move
 9 out of Minnesota may receive services from a rehabilitation
 10 professional qualified under that jurisdiction's workers'
 11 compensation law to provide rehabilitation services. This
 12 subpart does not require the assignment of another
 13 rehabilitation professional if the services can be reasonably
 14 furnished by a rehabilitation provider registered in Minnesota.
 15 When services are provided outside of Minnesota by a
 16 rehabilitation professional qualified in that jurisdiction, an
 17 assigned qualified rehabilitation consultant in Minnesota shall
 18 monitor the provision of services, ~~taking reasonable care to~~
 19 ~~ensure that services are rendered according to Minnesota~~
 20 ~~workers' compensation law and rules.~~

21 Subp. 6. 5. Change of consultant not an exercise of choice
 22 by employee. A change of assigned qualified rehabilitation
 23 consultant necessitated by circumstances outside the control of
 24 the employee is not a choice by the employee and does not
 25 exhaust the employee's right to choice. Such circumstances
 26 include, but are not limited to, the assigned qualified
 27 rehabilitation consultant leaving practice or the extended
 28 illness of the assigned qualified rehabilitation consultant.
 29 Disputes about changes shall be resolved according to subpart 3.

30 5220.0750 RETRAINING.

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

1 to suitable gainful employment.

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

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

7 B. the retraining goal;

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

10 (1) the name of the school;

11 (2) titles of classes;

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

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

16 (5) mileage costs; and

17 (6) other required costs;

18 D. starting and completion dates;

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

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

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

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

36 Subp. 3. Amendment. The commissioner or a compensation

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

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

30 Subp. 5. Retraining plan approval. When the retraining
31 plan is submitted to the commissioner, the commissioner shall
32 review the proposed retraining plan within 30 days of its
33 submission and notify the parties of plan approval or denial.
34 The commissioner may also request additional information from
35 the parties, confer with the parties, recommend modifications
36 and otherwise seek agreement about the plan. The commissioner

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

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

7 5220.0850 ON-THE-JOB TRAINING.

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

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

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

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

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

28 D. a job analysis of the training position;

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

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

33 G. training commencement and completion dates;

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

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

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

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

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

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

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

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

24 Subp. 4. On-the-job training plan approval. When an
25 on-the-job training plan is submitted to the commissioner, the
26 commissioner shall review the proposed plan within 30 days of
27 its submission and notify the parties of plan approval or
28 rejection. ~~The commissioner may also request additional~~
29 ~~information from any of the parties, confer with the parties,~~
30 ~~recommend modifications, and otherwise seek agreement about the~~
31 plan approval process shall be subject to the procedures under
32 part 5220.0410, subpart 6. The commissioner may make a
33 determination or pursue resolution of questions regarding the
34 plan consistent with part 5220.0950, subpart 3.

35 Subp. 5. Disputes. In the case of a dispute about an
36 on-the-job training plan, any party may request resolution

1 according to Minnesota Statutes, chapter 176 and part 5220.0950.
 2 5220.0950 DISPUTES.

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

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

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

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

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

19 E. the requester's name and signature; and

20 F. instructions for completion of the form.

21 Subp. 2. Action by commissioner. If the commissioner may
 22 ~~refer-the~~ refers a dispute to a compensation judge, or, based on
 23 the written ~~submissions~~ submission of the parties, ~~determine~~
 24 determines the ~~issue~~ dispute or ~~schedule~~ schedules an
 25 administrative conference ~~prior to a-determination.--The~~
 26 ~~commissioner-may-request-that-the~~ determine the dispute, all
 27 parties shall be served with written notice of that action.

28 The commissioner may require the parties to meet and confer
 29 informally before prior to a scheduled administrative conference
 30 if the facts and issues involved show that a meeting would
 31 facilitate resolution of the dispute.

32 ~~The-commissioner-may-order-reasonable-medical-examinations~~
 33 ~~and-rehabilitation-evaluations-at-the-expense-of-the-insurer~~
 34 ~~before-a-determination.~~

35 When the commissioner or compensation judge makes a

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

6 Subp. 3. ~~Commissioner-discretion-to-initiate~~
 7 Commissioner's initiation of dispute resolution. If the
 8 commissioner ~~may~~ independently ~~determine~~ determines that issues
 9 exist ~~about~~ regarding an employee's entitlement to
 10 rehabilitation, or the appropriateness of a proposed plan,
 11 ~~or any-other-disputes-involving-rehabilitation.--The~~
 12 ~~commissioner-may-initiate-the-dispute-resolution-process-under~~
 13 ~~subpart-2-by-serving-notice-on-the-parties-of-the-rehabilitation~~
 14 ~~issues-to-be-resolved~~ otherwise initiates proceedings before a
 15 compensation judge or through an administrative conference,
 16 written notice of the issues in dispute shall be served upon the
 17 parties.

18 Subp. 4. Formal hearing. A party that disagrees with a
 19 decision of the commissioner under Minnesota Statutes, section
 20 176.106, may request a formal hearing pursuant to part
 21 5220.1010. The request for hearing will be referred to the
 22 Office of Administrative Hearings pursuant to Minnesota
 23 Statutes, section 176.106, subdivision 7.

24 5220.1010 REQUEST FOR A FORMAL HEARING.

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

34 5220.1100 LEGAL REPRESENTATION.

35 When an employee or insurer is represented by an attorney

1 and if a notice of representation has not already been filed,
2 the attorney shall notify the commissioner as provided in part
3 1415.0800. The attorney will receive notices as provided in
4 part 5220.2890. The value of rehabilitation services shall not
5 be used in the calculation of attorney's fees. The legal fees
6 shall be calculated in the manner provided by law. An attorney
7 who has so advised the commissioner will be notified of any
8 proceedings, and will receive rehabilitation reports as provided
9 by part 5220.1802, subpart 3.

10 5220.1200 REHABILITATION SERVICES, SETTLEMENT AGREEMENTS.

11 ~~An employee's right to rehabilitation services shall not be~~
12 ~~subject to compromise and shall not be convertible into cash or~~
13 ~~other benefits by settlement and release agreement or~~
14 ~~otherwise.~~ When Rehabilitation services pursuant to an approved
15 rehabilitation plan are mandatory for qualified employees.
16 However, if a good faith dispute exists, however, the possible
17 right regarding entitlement to rehabilitation services, that
18 dispute may be converted into cash by settlement agreement
19 between the parties pursuant to Minnesota Statutes, section
20 176.521. Any settlement agreement purporting to compromise all
21 rehabilitation services must be approved by the commissioner, a
22 compensation judge, or the workers' compensation court of
23 appeals.

24 5220.1250 QUALIFIED REHABILITATION CONSULTANT AND REGISTERED
25 REHABILITATION VENDOR.

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

1 5220.1400 QUALIFYING CRITERIA FOR REHABILITATION CONSULTANT.

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

6 Subp. 2. Certification and education. A qualified
7 rehabilitation consultant shall possess at least one of the
8 following credentials:

9 A. a baccalaureate degree, together with
10 certification by the Board of Rehabilitation Certification as a
11 certified rehabilitation counselor or a certified insurance
12 rehabilitation specialist; or

13 B. a baccalaureate degree together with certification
14 by the Association of Rehabilitation Nurses as a certified
15 rehabilitation registered nurse.

16 Persons who were qualified rehabilitation consultants on
17 June 15, 1987, must have obtained the certification described in
18 item A or B by June 15, 1989. If a qualified rehabilitation
19 consultant lacks two years or more of the experience required to
20 meet the certifying body's minimum experience or internship
21 requirement, the time for becoming certified shall equal the
22 time remaining for completion of the certifying body's minimum
23 experience or internship requirement. If a qualified
24 rehabilitation consultant must also obtain a baccalaureate
25 degree to meet the certifying body's minimum education
26 requirements, the qualified rehabilitation consultant shall have
27 an additional four years to become certified. If an examination
28 is required for certification, the time allowed for
29 certification under this part must include two scheduled
30 examinations which the applicant is eligible to take. Persons
31 who were qualified rehabilitation consultant interns on June 15,
32 1987, may become qualified rehabilitation consultants under the
33 requirements in place before that date. Upon becoming qualified
34 rehabilitation consultants, such persons must obtain
35 certification as required by this subpart.

36 Subp. 3. Qualified rehabilitation consultant intern. The

1 purpose of internship is to provide a supportive, structured
2 period of professional supervision and case review following
3 registration. An individual who meets the requirements of
4 subpart 2, item A or B may be registered as a qualified
5 rehabilitation consultant intern. An individual who meets the
6 requirements of subpart 2, item A or B, except that two years or
7 less of internship or experience remains as a requirement for
8 certification, may be registered as a qualified rehabilitation
9 consultant intern. A qualified rehabilitation consultant intern
10 must complete an introductory training session sponsored by the
11 department within six months of approval of registration. A
12 qualified rehabilitation consultant intern shall not be a solo
13 practitioner. When the intern is registered, the intern's
14 employer shall provide the commissioner with the name of the
15 qualified rehabilitation consultant under whose direct
16 supervision the intern will work, and shall submit a plan of
17 supervision on forms prescribed by the commissioner. Direct
18 supervision means that the supervisor is directly responsible
19 for the rehabilitation work on any case, and for monitoring
20 progress toward the certification required by this subpart. The
21 intern supervisor need not maintain an office at the same
22 location as the intern. The supervisor shall cosign all written
23 work being done by the intern. There shall be no billing by the
24 supervisor for these supervisory duties. The supervisor shall
25 attend all administrative conferences with the intern and shall
26 arrange for training as required by the commissioner. The
27 intern shall be designated as an "intern" on all documents
28 bearing the name of the intern.

29 ~~Substantiated complaints about professional activities or~~
30 ~~services, or~~ The failure to comply with laws, rules, or orders
31 under the standards of performance and professional conduct
32 contained in parts 5220.1800 and 5220.1801 or the violation of
33 any of the provisions of Minnesota Statutes, chapter 176, are
34 Minnesota Rules, parts 5520.0100 to 5220.1910, or orders issued
35 under the statutes or rules constitute grounds for denial of
36 registration as a qualified rehabilitation consultant under

1 Minnesota Statutes, section 176.102, subdivision 3, discipline
2 under Minnesota Statutes, section 176.102, subdivisions-3-and
3 subdivision 3a, or delay of completion of internship. The
4 intern may appeal the decision of the commissioner denying
5 registration as provided in part 5220.1500, subpart 2.

6 In cases where an intern has been supervised by a qualified
7 rehabilitation consultant who leaves the organization with which
8 the intern has been employed and no other qualified
9 rehabilitation consultant is available to supervise the intern,
10 the intern may, with the prior written approval of the
11 commissioner, sign all required documents in the capacity of a
12 qualified rehabilitation consultant for a period of time deemed
13 appropriate by the commissioner. Past performance and overall
14 experience shall be taken into consideration for this approval.

15 Subp. 4. Completion of internship. The burden of proof of
16 experience shall be on the applicant. The intern must work at
17 least one year full time as an intern in the rehabilitation of
18 injured workers under Minnesota Statutes, section 176.102.
19 Evidence of experience shall include documentation of a history
20 of employment in a position of vocational rehabilitation. For
21 purposes of this subpart, "full-time employment" is consistent
22 with the employment experience requirement of the certifying
23 body chosen by the qualified rehabilitation consultant intern.
24 Where there is no definition of full-time employment by the
25 certifying body chosen by the qualified rehabilitation
26 consultant intern, full-time employment means a minimum of 37
27 hours per week during a 52-week period. Any part-time
28 employment will be prorated based on this definition. The
29 intern may make application for completion of internship when
30 the minimum requirements in subparts 2 to 5 have been met.

31 The commissioner's action on the intern's application for
32 completion of internship shall be based in part on the report of
33 the qualified rehabilitation consultant intern supervisor about
34 the competence of the intern to practice independently. The
35 commissioner shall also consider information about the intern's
36 professional competence including that obtained in the course of

1 any investigation about professional conduct, and on any
2 substantiated complaints regarding professional conduct.

3 Subp. 5. General criteria. All persons who are qualified
4 rehabilitation consultants shall be self-employed or employed by
5 a single organization that is approved for the employment of
6 qualified rehabilitation consultants as a qualified
7 rehabilitation consultant firm or an employer or insurer.
8 Qualified rehabilitation consultants must be available to
9 clients, and for administrative conferences or hearings during
10 normal business hours. A qualified rehabilitation consultant
11 employed by an employer or insurer that is not registered as a
12 qualified rehabilitation consultant firm is permitted to provide
13 rehabilitation consultation and services only for the claims
14 being handled by the entity by whom the consultant is employed.
15 A qualified rehabilitation consultant shall notify the
16 department immediately upon changing employment. Notification
17 shall include the name of the former place of employment, the
18 name, address, and telephone number of the new place of
19 employment and the effective date of new employment.

20 Registration shall require Minnesota residency. The
21 commissioner may grant an exception for persons who reside no
22 more than 100 miles by road from the Minnesota border. Any such
23 qualified rehabilitation consultant agrees, as an additional
24 condition of registration, to appear at any administrative
25 conference or hearing when requested, in the same manner as if
26 subpoenaed. A qualified rehabilitation consultant shall notify
27 the department immediately upon any change in residency to or
28 from Minnesota.

29 5220.1500 PROCEDURE FOR REGISTRATION AS QUALIFIED REHABILITATION
30 CONSULTANT.

31 Subpart 1. Application to become a qualified
32 rehabilitation consultant intern. An individual desiring to
33 receive approval and registration as a qualified rehabilitation
34 consultant intern shall submit to the commissioner, a complete
35 application consisting of the following:

- 1 A. completed, signed, and notarized application form;
2 B. copy of any pertinent license or certification;
3 C. documentation supporting any applicable experience
4 requirements;
5 D. official transcripts of all pertinent
6 postsecondary education;
7 E. list of services and fees. This filing shall not
8 constitute an approval or disapproval of the services or fees;
9 F. the annual registration application fee of \$100;
10 and
11 G. a plan of supervision as required by part
12 5220.1400, subpart 3.

13 Subp. 1a. **Approval of registration as qualified**
14 **rehabilitation consultant intern.** Where the requirements for
15 registration are met, the commissioner shall issue a letter to
16 the applicant so indicating within 60 days of receiving the
17 completed application. After registration has been approved,
18 the registration application fee is not refundable. If the
19 requirements for qualified rehabilitation consultant intern are
20 not met, the commissioner shall issue a decision and order
21 denying registration to the applicant within 60 days of receipt
22 of the completed application. If the application for
23 registration is not approved, one-half of the registration
24 application fee may be refunded.

25 Subp. 2. **Appeal process.** The appeal process provides a
26 mechanism for applicants to request reconsideration of a
27 decision and order denying registration or renewal of
28 registration.

29 A written notice of appeal shall be filed with the
30 commissioner within 30 days of filing and service of the order.
31 If the appeal is for denial of renewal of registration, the
32 filing will stay the effect of the denial until final
33 disposition.

34 The appeal shall be referred to the rehabilitation review
35 panel according to Minnesota Statutes, section 176.102,
36 subdivision 3.

1 Subp. 3. Registration number and renewal. The
2 commissioner shall assign a registration number to each
3 registered rehabilitation provider.

4 Registration must be renewed annually. A rehabilitation
5 provider shall request renewal on a form prescribed by the
6 commissioner. Application for renewal is due 60 days before
7 expiration of registration, accompanied by the appropriate
8 registration fee. Registration renewal applications that are
9 not complete, are not accompanied by the registration renewal
10 fee, or are not accompanied by documentation of certification or
11 satisfactory documentation of continuing education will be
12 returned to the applicant for completion. Completed
13 registration renewal applications received later than the due
14 date shall be assessed a \$25 late fee. Registration renewal
15 applications received more than 30 days after the due date shall
16 be assessed an additional \$10 per day late fee for each day
17 after the request is 30 days late. No late fee in excess of
18 \$125 may be assessed.

19 Substantiated complaints about activities or services, or
20 failure to comply with laws, rules, or orders under Minnesota
21 Statutes, chapter 176, are grounds for denial of renewal of
22 registration as a qualified rehabilitation consultant under
23 Minnesota Statutes, section 176.102, subdivision 3, discipline
24 under Minnesota Statutes, section 176.102, subdivisions-3-and
25 subdivision 3a, or delay of completion of internship. The
26 decision of the commissioner may be appealed as provided in
27 subpart 2. "Substantiated complaints about activities or
28 services" for purposes of denial of renewal of registration
29 means there has been a stipulation or order of discipline.

30 Service and fee schedules shall be filed with the
31 commissioner whenever there is a change and no less than once
32 each calendar year at the time of renewal of registration. This
33 filing shall not constitute an approval or disapproval of the
34 services and fees.

35 Subp. 3a. Continuing education. To retain registration, a
36 qualified rehabilitation consultant or qualified rehabilitation

1 consultant intern shall submit satisfactory documentation of
2 current certification required by part 5220.1400, subpart 2. A
3 qualified rehabilitation consultant or qualified rehabilitation
4 consultant intern who is not yet certified shall submit
5 satisfactory documentation of continuing education pertinent to
6 the workers' compensation rehabilitation field equivalent to 20
7 contact hours each year at the time registration is renewed.
8 Continuing education includes, but is not limited to, the
9 following:

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

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

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

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

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

27 Continuing education units must be obtained in the 12-month
28 period immediately preceding the date on which registration
29 renewal forms are due.

30 The department of labor and industry's annual
31 rehabilitation provider update sessions are mandatory for all
32 rehabilitation providers.

33 Nonattendance at the mandatory orientation or update
34 sessions is prohibited conduct for rehabilitation providers, but
35 may be allowed only for emergency situations and must be
36 reported to the commissioner.

1 Subp. 4. **Inactive status.** If an interval of one year
2 occurs without providing direct case service to workers'
3 compensation recipients or without providing supervision to
4 qualified rehabilitation consultants or qualified rehabilitation
5 consultant interns who provide direct case service to workers'
6 compensation recipients, the registration will not be renewed
7 upon expiration. A qualified rehabilitation consultant or
8 qualified rehabilitation consultant intern may apply for
9 reinstatement of registration by providing verification to the
10 commissioner of current certification as required by part
11 5220.1400, continued attendance at all annual update sessions,
12 and fulfillment of continuing education requirements as provided
13 by subpart 3a. The applicant must complete an orientation
14 training session before acceptance is final. An order regarding
15 renewal of registration may be appealed to the rehabilitation
16 review panel according to Minnesota Statutes, section 176.102,
17 subdivision 3.

18 Subp. 5. **Monitoring.** The commissioner shall review the
19 professional activities and services of rehabilitation providers
20 to determine if they are reasonable and comply with laws, rules,
21 or orders under Minnesota Statutes, chapter 176.

22 Subp. 6. **Revocation.** The revocation process shall be
23 conducted as provided in Minnesota Statutes, section 176.102,
24 ~~subdivisions-3-and~~ subdivision 3a.

25 5220.1600 PROCEDURE FOR APPROVAL AS QUALIFIED REHABILITATION
26 CONSULTANT FIRM.

27 Subpart 1. **Criteria.** The qualified rehabilitation
28 consultant firm shall be licensed to do business in Minnesota
29 and shall maintain an administrative office within the state.
30 Each office of the qualified rehabilitation consultant firm that
31 provides services to injured employees under Minnesota Statutes,
32 chapter 176, shall be listed on the application described in
33 subpart 2 and shall employ on the premises at least one
34 qualified rehabilitation consultant or qualified rehabilitation
35 consultant intern. The management staff shall consist of at

1 least one member who is registered as a qualified rehabilitation
2 consultant. Eighty percent of the nonclerical staff shall be
3 qualified rehabilitation consultants or qualified rehabilitation
4 consultant interns; any firm that is not in an office sharing
5 arrangement with another firm may have one nonclerical employee
6 who is not a qualified rehabilitation consultant or qualified
7 rehabilitation consultant intern. Any branch office openings or
8 closings shall be reported to the department immediately.

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

13 A. a completed, signed, and notarized application;

14 B. any data or information attached to support the
15 application;

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

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

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

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

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

28 Subp. 5. **Revocation.** The revocation process shall be
29 conducted as provided in Minnesota Statutes, section 176.102,
30 ~~subdivisions-3-and~~ subdivision 3a.

31 5220.1700 PROCEDURE FOR APPROVAL AS REGISTERED REHABILITATION
32 VENDOR.

33 Subpart 1. **Application.** A private or public entity
34 desiring to be approved as a registered rehabilitation vendor
35 shall submit to the commissioner a complete application

1 consisting of all of the following:

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

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

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

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

10 Subp. 1a. Approval as registered rehabilitation vendor.
11 The approval process shall be conducted the same as provided in
12 part 5220.1500, subpart 1a.

13 Subp. 2. Appeal process. The appeal process herein shall
14 be conducted as provided in part 5220.1500, subpart 2.

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

17 Subp. 4. Revocation. The revocation process herein shall
18 be conducted as provided in Minnesota Statutes, section 176.102,
19 ~~subdivisions-3-and~~ subdivision 3a.

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

23 5220.1800 STANDARDS OF PERFORMANCE.

24 The standards of conduct described in parts 5220.1801 to
25 5220.1806 establish minimum standards concerning the
26 professional activities and services of rehabilitation
27 providers. Performance evaluations and monitoring of
28 rehabilitation providers by the commissioner, and the
29 administration of rehabilitation provider discipline under
30 Minnesota Statutes, section 176.102, subdivision 3a, will be
31 based upon these standards, as well as on adherence to Minnesota
32 Statutes, chapter 176, rules adopted to administer it, and
33 orders of the commissioner or a compensation judge.

34 5220.1801 PROFESSIONAL CONDUCT.

35 Subpart 1. Prompt provision of service and assessment of

1 progress. The assigned qualified rehabilitation consultant and
2 any registered rehabilitation vendor providing services under a
3 plan shall provide prompt and necessary rehabilitation services
4 to assist a qualified employee to return to suitable gainful
5 employment. The qualified rehabilitation consultant shall
6 periodically assess progress toward plan objectives ~~on-a-basis~~
7 ~~agreed-upon-among-the-parties-and-as-required-by-the~~
8 commissioner.

9 Subp. 2. Assigned qualified rehabilitation consultant.

10 Only the assigned qualified rehabilitation consultant, or a
11 qualified rehabilitation consultant designated by the assigned
12 qualified rehabilitation consultant to function in an advisory
13 capacity to the assigned consultant, shall be involved at any
14 given time in the employee's rehabilitation plan, except as
15 stated in subparts 6 and 7. The assigned qualified
16 rehabilitation consultant shall advise the insurer before
17 involving or requesting advisory services from any other
18 qualified rehabilitation consultant. No qualified
19 rehabilitation consultant or qualified rehabilitation consultant
20 firm shall provide rehabilitation services to a case assigned to
21 a qualified rehabilitation consultant employed by another
22 qualified rehabilitation consultant firm. This subpart shall
23 not apply to a qualified rehabilitation consultant acting on
24 behalf of the reinsurance association in a monitoring or
25 advisory capacity on a reinsurance claim file.

26 Subp. 3. [See repealer.]

27 Subp. 4. [See repealer.]

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

33 Subp. 5. Evaluation of employee by other than assigned
34 qualified rehabilitation consultant. Except as provided in
35 subpart 7 and in Minnesota Statutes, section 176.102,
36 subdivision 13 as ordered, a rehabilitation provider is

1 prohibited from performing an independent evaluation of an
2 employee at any time unless ~~a hearing has been scheduled before~~
3 ~~a compensation judge~~ litigation pursuant to part 1415.0100, is
4 pending. If ~~a hearing has been scheduled before a compensation~~
5 ~~judge at the office of administrative hearings~~ that litigation
6 is pending, a qualified rehabilitation consultant who is not the
7 assigned qualified rehabilitation consultant may perform an
8 evaluation of the employee at the request of one of the parties
9 solely for the purpose of the proceeding.

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

16 Subp. 7. **Referrals.** An assigned qualified rehabilitation
17 consultant may make recommendations for referrals to appropriate
18 resources.

19 Subp. 8. **Separate roles and functions.** The roles and
20 functions of a claims agent and a rehabilitation provider are
21 separate. A qualified rehabilitation consultant, qualified
22 rehabilitation consultant intern, registered rehabilitation
23 vendor, or an agent of a rehabilitation provider, shall engage
24 only in those activities designated in Minnesota Statutes,
25 section 176.102, and rules adopted thereunder. A qualified
26 rehabilitation consultant, qualified rehabilitation consultant
27 intern, or registered rehabilitation vendor shall not act as an
28 advocate for or advise any party about a claims or entitlement
29 issue. Qualified rehabilitation consultants, qualified
30 rehabilitation consultant interns, and registered rehabilitation
31 vendors shall not engage in claims adjustment, claims
32 investigation, or related activities. Activities unrelated to
33 rehabilitation services include, but are not limited to, making
34 recommendations about the determination of workers' compensation
35 monetary benefits, the reasonableness of medical charges, or
36 arranging for an independent medical examination and are

1 prohibited. This part shall not prohibit a qualified
2 rehabilitation consultant acting on behalf of the reinsurance
3 association from consulting with the assigned qualified
4 rehabilitation consultant regarding the rehabilitation plan.

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

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

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

16 C. Conviction of crimes against persons. For
17 purposes of this chapter, a crime against a person means a
18 violation of any of the following sections: Minnesota Statutes,
19 section 609.185, 609.19, 609.195, 609.20, 609.205, 609.21,
20 609.215, 609.221, 609.222, 609.223, 609.224, 609.23, 609.231,
21 609.235, 609.24, 609.245, 609.25, 609.255, 609.265, 609.26,
22 609.342, 609.343, 609.344, 609.345, 609.365, 609.498, 609.50,
23 609.561, 609.562, or 609.595.

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

32 E. Failure or inability to perform professional
33 rehabilitation services with reasonable skill because of
34 negligence, habits, or other cause, including the failure of a
35 qualified rehabilitation consultant to monitor a vendor or
36 qualified rehabilitation consultant intern, or the failure of a

1 rehabilitation provider to adequately monitor the performance of
2 services provided by a person working at the rehabilitation
3 provider's direction.

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

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

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

15 I. Engaging in fraudulent billing practice.

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

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

22 (1) requesting or reporting information not
23 directly related to an employee's rehabilitation plan;

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

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

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

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

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

36 N. Failure to take due care to ensure that a

1 rehabilitation client is placed in a job that is within the
2 client's physical restrictions.

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

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

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

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

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

21 Rehabilitation providers shall not administer or interpret
22 tests without proper training, experience, or credentials.
23 Administration of tests must be supervised by a person who is so
24 trained, experienced, or credentialed.

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

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

35 Rehabilitation providers shall not use a professional
36 relationship to further personal, religious, political, or

1 financial interests, although adherence to ethical norms shall
2 not be construed as personal or religious interest.

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

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

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

15 5220.1802 COMMUNICATIONS.

16 Subpart 1. **Legibility and content of required reports.**

17 All required rehabilitation reports and required progress
18 records prepared by a rehabilitation provider shall be legible
19 and show the employee's name, department file number, and date
20 of injury.

21 Subp. 2. **Submission of reports.** All required
22 rehabilitation reports shall be submitted on department forms
23 prescribed by the commissioner.

24 Subp. 3. **Copies of reports and records.** The assigned
25 qualified rehabilitation consultant shall file all required
26 rehabilitation reports with the commissioner, and provide copies
27 to all parties and their attorneys as the reports are created by
28 the consultant. The qualified rehabilitation consultant shall
29 also provide a copy of required progress records to all parties
30 and their attorneys upon the party's request. The qualified
31 rehabilitation consultant may not charge for the initial copy or
32 photocopy of required rehabilitation reports or required
33 progress records. If additional copies are requested by any
34 party, the qualified rehabilitation consultant is entitled to
35 reasonable compensation for cost from the requesting party. A

1 dispute about cost is not a basis for a provider to withhold
2 required reports or records when requested.

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

7 Subp. 4. Registered rehabilitation vendor reporting. At
8 least each 30 days, the registered rehabilitation vendor shall
9 submit all required progress records, required rehabilitation
10 reports and cost information on an employee's case directly to
11 the assigned qualified rehabilitation consultant.

12 Subp. 4a. Transfer of information. Whenever there is a
13 change of assigned qualified rehabilitation consultants or
14 consultant firms, the former qualified rehabilitation consultant
15 firm shall cooperate in transferring to the new assigned
16 qualified rehabilitation consultant or qualified rehabilitation
17 consultant firm all data, required rehabilitation reports,
18 required progress records, and incurred rehabilitation cost
19 information along with other relevant information within 15 days
20 from the receipt of notice that a new consultant is assigned
21 under part 5220.0710. The former qualified rehabilitation
22 consultant firm may not charge a party for the transfer of
23 information to the new assigned qualified rehabilitation
24 consultant or qualified consultant firm.

25 Subp. 5. Data privacy. A rehabilitation provider must
26 comply with Minnesota Statutes, chapters 175 and 176, the rules
27 adopted under those chapters, Code of Federal Regulations, title
28 42, part 2, Minnesota Statutes, sections 129A.05; 144.335;
29 144.651; 147.091; 181.954; 181.960; 268A.05; 363.03, subdivision
30 1a; and 595.02, as applicable, and all other applicable data
31 privacy laws.

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

35 A rehabilitation provider shall safeguard and maintain
36 under conditions of security all information obtained in the

1 course of providing rehabilitation consultation and services and
2 shall limit records access to those parties for whom access is
3 prescribed by Minnesota Statutes, section 176.102, subdivision
4 7, this chapter, or other applicable law.

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

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

12 Subp. 6. [See repealer.]

13 Subp. 7. [See repealer.]

14 Subp. 8. [See repealer.]

15 Subp. 9. [See repealer.]

16 Subp. 10. Providing records. The rehabilitation provider
17 assigned to a case shall maintain all required progress records
18 and copies of all required rehabilitation reports regarding a
19 case and shall make these records available upon request to the
20 commissioner. This subpart shall not apply to the reinsurance
21 association, unless the reinsurance association has assumed
22 primary responsibility for the claim pursuant to Minnesota
23 Statutes, section 79.35, clause (g).

24 Subp. 11. Access to medical and rehabilitation reports.
25 The assigned qualified rehabilitation consultant shall furnish
26 other rehabilitation providers designated by the rehabilitation
27 plan with copies of all appropriate medical and rehabilitation
28 reports necessary for effective service provision by the other
29 providers.

30 5220.1803 RESPONSIBILITIES.

31 Subpart 1. Instruction by qualified rehabilitation
32 consultant. The assigned qualified rehabilitation consultant
33 shall, at the first in-person contact, instruct employees of
34 their rights and responsibilities relating to rehabilitation and
35 of the purpose of rehabilitation services. The assigned

1 qualified rehabilitation consultant shall sign and date the
2 prescribed rehabilitation rights and responsibilities form at
3 the first in-person contact with the employee, and provide the
4 employee, insurer, and commissioner with a copy.

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

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

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

15 Subp. 2. **Knowledge of laws and rules.** A rehabilitation
16 provider shall be knowledgeable and informed regarding portions
17 of the workers' compensation law and rules that directly relate
18 to the provision of rehabilitation services. Communication of
19 inaccurate information regarding workers' compensation is
20 grounds for discipline.

21 Subp. 3. [See repealer.]

22 Subp. 4. [See repealer.]

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

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

36 The rehabilitation provider registration number assigned by

1 the commissioner shall be on all reports submitted by the
2 rehabilitation provider.

3 The assigned qualified rehabilitation consultant shall
4 maintain individual employee files containing required
5 rehabilitation reports and required progress records about an
6 employee's case and shall provide copies to the commissioner, a
7 compensation judge, or the parties at their request or as
8 required by rule. ~~Files must be maintained by the qualified~~
9 ~~rehabilitation consultant firm for five years from the date of~~
10 ~~file closure.~~ For the purpose of Minnesota Statutes, chapter
11 176, and parts 5220.0100 to 5220.1910, individual employee files
12 containing all required rehabilitation reports and required
13 progress records must be maintained by the qualified
14 rehabilitation consultant firm for five years from the date of
15 file closure. This requirement is in addition to and does not
16 otherwise change or alter any other data retention time period
17 required by law.

18 The assigned qualified rehabilitation consultant must
19 provide the commissioner with any other requested pertinent
20 information about a qualified employee's rehabilitation for
21 purposes of rehabilitation monitoring by the department.

22 5220.1805 BUSINESS PRACTICES.

23 All rehabilitation providers shall abide by the following
24 rules concerning a provider's business practices:

25 A. Rehabilitation providers shall adhere to all
26 applicable federal, state, and local laws.

27 B. Rehabilitation providers shall not misrepresent
28 themselves, their duties, or credentials. Rehabilitation
29 providers must not promise or offer services or results they
30 cannot deliver or have reason to believe they cannot provide.
31 Advertising must be factually accurate and must avoid
32 exaggerating claims as to costs, results, and endorsements by
33 other parties.

34 C. A rehabilitation provider shall not solicit
35 referrals directly or indirectly by offering money or gifts. De

1 minimis gifts are not considered the offering of money or
2 gifts. De minimis gifts are those that have a fair market value
3 of less than \$25.

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

7 E. A rehabilitation provider shall advise the
8 referral source and payer of its fees and reporting procedures
9 in advance of rendering any services and shall also furnish,
10 upon request, detailed and accurate time records regarding any
11 bills in question.

12 Rehabilitation providers shall fully disclose to a payer
13 the basis for computing and prorating a fee so that the payer
14 may determine the reasonableness of the fee charged. When more
15 than one employee is served during the same time period, the
16 rehabilitation provider shall prorate the fee.

17 F. Any fee arrangement which prevents or compromises
18 individualized assessment and services for each employee is
19 grounds for discipline. This may include any fee arrangement
20 which provides employees with standardized services whether or
21 not the services are necessary.

22 G. A rehabilitation provider shall not incur profit,
23 split fees, or have an ownership interest with another
24 rehabilitation provider outside of the firm that employs the
25 provider.

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

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

33 5220.1806 DISCIPLINARY ACTION.

34 Subpart 1. Discipline. A rehabilitation provider is
35 subject to disciplinary action, including a fine as provided by

1 statute, suspension, and revocation of registration. Discipline
 2 ~~shall be based on substantiated complaints about activities or~~
 3 ~~or that violate laws, rules, or orders under Minnesota Statutes,~~
 4 ~~chapter 176.~~ Failure to comply with the standards of
 5 performance and professional conduct contained in parts
 6 5220.1800 and 5220.1801 or the violation of any of the
 7 provisions of Minnesota Statutes, chapter 176, Minnesota Rules,
 8 parts 5220.0100 to 5220.1910, or orders issued under the
 9 statutes or rules constitute grounds for discipline.

10 Subp. 2. Complaints. ~~For the purpose of determining~~
 11 ~~compliance with laws, rules, or orders,~~ The commissioner may
 12 shall review the activities of rehabilitation providers.
 13 Complaints about activities or services of rehabilitation
 14 providers relating to noncompliance with laws, rules, or orders
 15 shall be made in writing to the commissioner. A complaint may
 16 be submitted by any party who becomes aware of a violation,
 17 including designees of the commissioner, administrative law
 18 judges, and presiding officials at judicial proceedings.

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

23 Subp. 3. Review and investigation. The commissioner shall
 24 review investigate all complaints to determine ~~if the complaint~~
 25 ~~alleges~~ whether there has been a violation of the workers'
 26 compensation laws act, rules, or orders as alleged. If the
 27 ~~commissioner may dismiss complaints or refer a~~ matter is outside
 28 the ~~department's~~ jurisdiction of the commissioner, the
 29 commissioner may refer the matter to a forum or agency that has
 30 jurisdiction. ~~The complaining party shall be notified of a~~
 31 ~~dismissal or referral.~~ ~~The commissioner may elect to resolve a~~
 32 ~~complaint through the informal instruction of a provider.~~

33 If an investigation indicates ~~a violation of the workers'~~
 34 ~~compensation act, rules, or orders~~ that discipline is warranted,
 35 the commissioner ~~may~~ shall begin a contested case for
 36 disciplinary action under Minnesota Statutes, section 176.102,

1 subdivision 3a, and the Minnesota Administrative Procedure Act.
2 The report of the administrative law judge shall be made to the
3 rehabilitation review panel which shall make the determination
4 on disciplinary action.

5 If the commissioner determines that discipline is not
6 warranted, but if the facts and issues involved warrant
7 instruction of the provider, the commissioner shall issue the
8 instruction in writing. The commissioner shall notify the
9 complaining party of the disposition of the case.

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

21 Subp. 5. **In-person meeting.** When conferring with the
22 parties to a complaint is deemed appropriate for clarification
23 or settlement of issues, the commissioner may schedule a
24 meeting. The commissioner may conduct a meeting for the purpose
25 of obtaining information, instructing parties to the complaint,
26 or for the purpose of resolving issues.

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

31 5220.1900 REHABILITATION SERVICE FEES AND COSTS.

32 Subpart 1. **Monitoring.** The insurer has the primary
33 responsibility for monitoring and paying the cost of necessary
34 rehabilitation services provided.

35 The commissioner shall monitor rehabilitation services and

1 costs and shall also conduct periodic audits of costs, services,
 2 case outcomes, and compliance with reporting and record keeping
 3 requirements. The insurer and the rehabilitation provider shall
 4 furnish the commissioner with itemized listings of case services
 5 and costs upon request. ~~The commissioner may require uniform
 6 billing on a prescribed form and may contact parties to discuss
 7 services and costs;--Invoices and itemized billings for
 8 rehabilitation services shall be provided to the commissioner
 9 upon request.~~

10 Subp. 1a. Billing. All rehabilitation provider billings
 11 shall be on the uniform billing form prescribed by the
 12 commissioner.

13 Subp. 2. Reasonable and necessary services. A
 14 rehabilitation provider shall bill for only those necessary and
 15 reasonable services which are rendered in accordance with
 16 Minnesota Statutes, section 176.102 and the rules adopted to
 17 administer that section. A dispute about reasonable and
 18 necessary services and costs shall be determined by the
 19 commissioner or a compensation judge. The commissioner's or a
 20 compensation judge's review must include all the following
 21 factors:

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

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

28 C. an evaluation of whether services provided were
 29 unnecessary, duplicated other services, were available at no
 30 charge to public, or were excessive relative to the actual needs
 31 of the employee; and

32 D. an evaluation of whether services rendered were
 33 expressly called for by the employee's rehabilitation plan.

34 Subp. 3. [See repealer.]

35 Subp. 4. [See repealer.]

36 Subp. 5. [See repealer.]

1 Subp. 6. [See repealer.]

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

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

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

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

17 D. unanswered attempted phone calls;

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

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

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

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

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

36 J. time spent by a supervisor, another qualified

1 rehabilitation consultant, or support staff in addition to the
2 assigned qualified rehabilitation consultant;

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

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

8 M. services that duplicate services already provided;

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

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

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

17 Subp. 8. **Disputes.** In the event of a dispute about the
18 reasonableness and necessity or cost of a rehabilitation
19 service, the insurer or a rehabilitation provider may make a
20 request for a determination by the commissioner or a
21 compensation judge of reasonable costs and necessity of
22 services. Such a request may be made by filing a request for
23 resolution of a dispute according to Minnesota Statutes, chapter
24 176 or part 5220.0950.

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

32 5220.1910 APPROVED CLAIMS HANDLER.

33 Subpart 1. **Qualifications.** A person meeting all the
34 requirements of this subpart is eligible for certification as an
35 approved claims handler:

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

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

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

8 Subp. 2. Procedure for obtaining approval. The insurer
9 shall certify to the commissioner on a form prescribed for that
10 purpose that the claims handler meets the requirements of this
11 part. Approval is effective upon the commissioner's receipt of
12 the certification. The approval remains in effect until the
13 claims handler leaves the employ of the certifying entity, or
14 the certification is withdrawn by the certifying entity. At the
15 request of the commissioner, the certifying entity must consult
16 with the commissioner regarding withdrawal of certification.
17 The commissioner is authorized to withdraw approval if the
18 claims handler does not meet the requirements of subpart 1.

19 5220.2650 RETURN TO WORK CONFERENCES.

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

21 Subp. 2. Scope. This part applies when an employee has
22 received temporary total or temporary partial compensation for a
23 total of at least 45 work days whether continuously or
24 intermittently; and no rehabilitation plan in effect at the time
25 the 14-day check is due has been approved under part 5220.0410,
26 subpart 6. In addition, a return to work conference is also
27 available when properly requested by the employee under subpart
28 4 and Minnesota Statutes, section 176.2421 because of an
29 inability to work at least 14 work days upon the employee's
30 return to work.

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

32 5220.2780 FAILURE TO PAY UNDER ORDER OR PROVIDE REHABILITATION;
33 PENALTY.

34 Subpart 1. Basis. Where payment of compensation is not
35 made within 14 days following an order as required by Minnesota

1 Statutes, section 176.221, subdivisions 6a and 8, the division
2 may assess the penalties provided in Minnesota Statutes, section
3 176.221, subdivisions 3 and 3a. Where rehabilitation services
4 are not provided as required by Minnesota Statutes, sections
5 176.102, 176.221, subdivision 6a, and parts 5220.0130, subpart 2
6 and 5220.0410, subpart 2, the division may assess the penalty
7 provided in Minnesota Statutes, section 176.221, subdivision 3a.

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

9
10 EFFECTIVE DATE. Minnesota Rules, parts 5220.0105,
11 5220.0110, 5220.0120, 5220.0130, 5220.0410, 5220.0510,
12 5220.0710, 5220.0750, 5220.0850, 5220.0950, 5220.1010,
13 5220.1250, 5220.1806, and the amendments to parts 5220.0100,
14 5220.1100, 5220.1200, 5220.1400, 5220.1500, 5220.1600,
15 5220.1700, 5220.1800, 5220.1801, 5220.1802, 5220.1803,
16 5220.1805, 5220.1900, 5220.1910, 5220.2650, and 5220.2780 are
17 effective ~~January-2~~ July 1, 1992.

18 Minnesota Rules, part 5220.1900, subpart 1a, is effective
19 January 4, 1993.

20 REPEALER. Minnesota Rules, parts 5220.0100, subparts 6, 7, 8,
21 10a, 11, 14, and 15; 5220.0210; 5220.0300; 5220.0400; 5220.0500;
22 5220.0600; 5220.0700; 5220.0800; 5220.0900; 5220.1000;
23 5220.1300; 5220.1801, subparts 3 and 4; 5220.1802, subparts 6,
24 7, 8, and 9; 5220.1803, subparts 3 and 4; and 5220.1900,
25 subparts 3, 4, 5, and 6, are repealed July 1, 1992.