

Form #1

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William F. Vieweg
William F. Vieweg, Commissioner

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Cecil H. Underwood
Governor

William F. Vieweg
Commissioner



West Virginia Bureau of Employment Programs

- Job Service/Job Training Programs • Labor Market Information
 - Unemployment Compensation • Workers' Compensation
- an equal opportunity/affirmative action employer*

October 14, 1999

The Honorable Ken Hechler
Secretary of State
State Capitol Building
Charleston, West Virginia 25305

Re: Proposed Exempt Legislative Rule
Title 85, Series 15
"Vocational Rehabilitation"

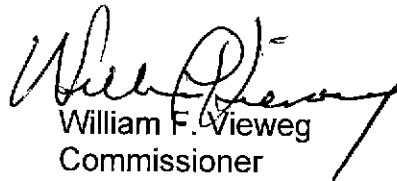
Dear Secretary Hechler:

Please consider this letter to be my written approval for the filing of the above-noted proposed rule

Pursuant to Enrolled Committee Substitute for House Bill 4030, Regular Session, 1994, the Department of Commerce, Labor and Environmental Resources was abolished. Pursuant to that same bill and to Executive Order No. 5-94 of the Governor, the Commissioner of the Bureau of Employment Programs is empowered to promulgate rules without the consent or approval of a department secretary.

Thank you very much for your assistance in this matter.

Very truly yours,


William F. Vieweg
Commissioner

FISCAL NOTE FOR PROPOSED LEGISLATIVE RULE

Rule Title: Title 85 Series 15: Vocational Rehabilitation

Type of Rule: X Legislative Exempt Interpretive Procedural

Agency: Bureau of Employment Programs
Workers' Compensation Division

Address: 112 California Avenue
Charleston, WV 25305

1. Effect of Proposed Rule:

	Annual		Fiscal Year		
	INCREASE	DECREASE	CURRENT	NEXT	THEREAFTER
ESTIMATED TOTAL COST	Unknown	Unknown	Unknown	Unknown	Unknown
PERSONAL SERVICES	Unknown	Unknown	Unknown	Unknown	Unknown
CURRENT EXPENSE	0	0	0	0	0
REPAIRS & ALTERATIONS	0	0	0	0	0
EQUIPMENT	0	0	0	0	0
OTHER: Claims expense	Unknown	Unknown	Unknown	Unknown	Unknown

2. Explanation of above estimates:

Implementation of this rule change may require additional personnel to coordinate and track the rehabilitation effort of injured workers whose evidence of record establishes temporary total disability benefits of 45 days or more versus the current rule of 120 days or more. However, a potential reduction in total temporary disability benefits may result from employees returning to work sooner as a result of the earlier delivery of vocational rehabilitation services. This reduction cannot be reasonably estimated. Therefore, it cannot be determined what the costs and savings will be in claims expense and administrative expenses as a result of the proposed changes of this rule.

3. Objectives of this rule:

This rule establishes the policy and procedure of the Workers' Compensation Division related to assisting workers to return to suitable gainful employment after injury.

4. Explanation of Overall Economic Impact of Proposed Rule:**A. Economic Impact on State Government:**

It is expected that this rule will increase the administrative expenses of tracking and maintaining the rehabilitation process of the affected claims and increase the rehabilitation costs associated with these claims while potentially reducing the amount of temporary total disability benefits paid on these same claims. In addition, the surplus fund must absorb one-third of the rehabilitation costs for regular employers who cooperate with the successful rehabilitation plan and self-insured employers will be reimbursed for one-third of the rehabilitation costs.

B. Economic Impact on Political Subdivisions; Specific Industries; Specific Groups of Citizens:

It is expected that employers who cooperate with the rehabilitation plan will benefit by minimizing the costs associated with work-related injuries. Injured workers will benefit by being returned to the workforce or being awarded appropriate disability benefits.

C. Economic Impact on Citizens/Public at Large.

It is expected that better health care management, specifically rehabilitation services, will contribute toward better health care of injured workers.

Date: October 14, 1999

Signature of Agency Head or Authorized Representative:



William F. Vieweg

Commissioner, Bureau of Employment Programs

Summary of Proposed Exempt Legislative Rule
Statement of Circumstances
Title 85, Series 15
Vocational Rehabilitation

This rule establishes the requirements and procedures to be followed by the workers' compensation division, parties to claims pending before the division, vocational professionals, and others involved in the delivery or proposed delivery of vocational rehabilitation services to claimants.

The workers' compensation division has proposed certain changes to this rule to:

- identify candidates for vocational rehabilitation in a more timely manner;
- schedule candidates for vocational rehabilitation evaluations in a more timely manner;
- require employers to quickly identify and report candidates who may benefit from rehabilitation services;
- require the workers' compensation division to quickly refer candidates for rehabilitation services to a qualified rehabilitation professional;
- require the submission for approval of the compensation programs performance council employer-managed vocational rehabilitation services;
- establish a reporting mechanism for employers who are allowed to manage their own vocational rehabilitation services; and
- provide for reports from the workers' compensation division to the compensation programs performance council concerning employer-managed vocational rehabilitation programs.

TITLE 85
LEGISLATIVE RULE
BUREAU OF EMPLOYMENT PROGRAMS
WORKERS' COMPENSATION DIVISION

SERIES 15
VOCATIONAL AND PHYSICAL REHABILITATION

6/11 3:13 PM '93
OFFICE OF THE
SECRETARY

§85-15-1. General.

1.1. Scope. -- ~~These~~ This legislative rule establishes the requirements and procedures to be followed by the workers' compensation division, parties to claims pending before the division, health care providers, vocational professionals, and others involved in the delivery or proposed delivery of ~~physical or~~ vocational rehabilitation services to ~~workers~~ claimants pursuant to W. Va. Code §23-4-9. Other types of health care services provided or proposed to be provided to ~~claimants~~ workers under other provisions of W. Va. Code §23-4-3, are not within the scope of ~~these~~ this rules.

1.2. Authority. -- W. Va. Code §§21A-3-7(b) & (c) and ~~§23-4-9(e)~~ §23-4-1c, 23-4-6, and 23-4-16.

1.3. Filing Date. -- ~~April 12, 1994~~

1.4. Effective Date. -- ~~July 1, 1994~~

1.5. Repeal of former rule. -- Section 14.13, "Payment for physical or rehabilitation services, or appliances," of WV 85 CSR 1, "Administration Of The Workers' Compensation Fund," filed April 15, 1986, and effective July 1, 1986, is hereby repealed. To the extent that any other provision of WV 85 CSR 1, "Administration of the Workers' Compensation Fund," filed April 15, 1986, and effective July 1, 1986, conflicts with ~~these~~ this rules, then such provision is repealed and replaced by the provisions of this legislative rule. WV 85 CSR 15, "Vocational and Physical Rehabilitation", filed April 12, 1994, and effective July 1, 1994, is hereby repealed and replaced by the provisions of this legislative rule.

§85-15-2. Purpose of Rule; Cooperation.

2.1. ~~W. Va. Code §23-4-9(a), sets forth the legislative findings that are the basis of W. Va. Code §23-4-9, et seq. "The Legislature hereby finds that it is a goal of the workers' compensation program to assist workers to return to suitable gainful employment after an compensable injury. In order to encourage assist workers to return to such employment and to encourage and assist employers in providing suitable such employment to injured employees, it shall be a priority of the commissioner workers' compensation division to achieve early identification of individuals likely to need rehabilitation services and to assess evaluate the rehabilitation needs of these injured employees workers. It shall be the goal of rehabilitation to return injured workers to employment which shall be comparable in work and pay to that which the individual performed prior to the injury. If a return to comparable work is not possible, the goal of rehabilitation shall be to return the individual worker to alternative~~

suitable employment, using all possible alternatives of job modification, restructuring, reassignment, ~~and placement or training~~, so that the ~~individual worker~~ will return to productivity with his or her employer or, if necessary, with another employer. ~~The Legislature further finds that~~ it is the shared responsibility of the employer, the employee, the physician and the ~~commissioner~~ division to cooperate in the development of a rehabilitation process designed to promote re-employment for the ~~worker injured employee.~~"

2.2. Every ~~injured~~ worker and his or her employer are required pursuant to ~~these~~ rules to participate in rehabilitation evaluations, and the development and implementation of rehabilitation plans. ~~and the implementation of rehabilitation programs.~~ Additionally, the ~~injured~~ worker and his or her employer are required to share in the responsibility for the success of the individual ~~injured~~ worker's rehabilitation plan.

2.2.1.a. ~~Injured w~~Workers who cooperate with the ~~rehabilitation assessment process~~ and fully participate in authorized rehabilitation plans are ~~entitled~~ eligible to receive temporary disability benefits upon initiation of the rehabilitation plan. ~~the support benefits set forth under W. Va. Code §23-4-9, and these rules. Further, injured workers who cooperate with the rehabilitation assessment process and fully participate in authorized rehabilitation plans benefit from the rehabilitation services by being returned to the workforce or being awarded appropriate disability benefits.~~ An ~~injured~~ worker's refusal to cooperate with the rehabilitation ~~assessment~~ evaluation process or to participate in an authorized rehabilitation plan without a showing of good cause is a factor ~~(s)~~ for the ~~commissioner~~ division to consider in determining the amount of any permanent partial disability or permanent total disability award to which the ~~injured~~ worker might otherwise be entitled. A worker who fails, without a showing of good cause, to participate in a rehabilitation evaluation or authorized rehabilitation plan will be denied permanent total disability benefits. A worker who fails to cooperate and fully participate in a rehabilitation plan following initiation of temporary benefits upon approval of the rehabilitation plan shall have temporary benefits ceased effective the date the worker ended his or her participation in the rehabilitation plan or upon determination by the division that the worker ceased to be cooperative in the previously approved rehabilitation plan. A worker's cooperation regarding rehabilitation efforts and plans includes, but is not limited to: full participation in the rehabilitation evaluation, adherence to specified terms of the rehabilitation plan, attendance at appointments as required, maintenance of contact as requested with his or her qualified rehabilitation professional and the division regarding progress made in the rehabilitation process and plan, and acceptance of suitable gainful employment as identified by a qualified rehabilitation professional.

2.2.2.b. Employers who cooperate with the rehabilitation ~~assessment~~ evaluation process and fully participate in authorized rehabilitation plans benefit from the rehabilitation process by minimizing the costs associated with work-related injuries. The ~~commissioner~~ division must consider an employer's workers' compensation vocational rehabilitation record in assigning an experience rating if the employer is a subscriber and in establishing and reviewing a security requirement if the employer is self-insured, to the extent allowed by ~~the~~ legislative rules governing ratemaking and underwriting practices and on workers' compensation premium rates

~~and self insurance, 85 CSR 1 and 85 CSR 9, and the workers' compensation act,~~
chapter 23 of the West Virginia Code. The ~~commissioner~~division may consider an employer's failure to cooperate with the development or implementation of a rehabilitation plan under ~~these~~this rules, without a showing of good cause, in determining the amount of any permanent partial disability or permanent total disability award. Employer's cooperation regarding rehabilitation efforts and plans includes, but is not limited to: full participation in the rehabilitation evaluation, reasonable efforts to provide reemployment opportunities to workers upon full release or release with restrictions, reasonable efforts to provide assistance to the worker returning to transitional, part time, modified or alternate employment. If the preinjury employer cooperates in the development of a rehabilitation plan that ~~result in the injured~~returns the worker returning in an to employment capacity with the preinjury employer pursuant to a rehabilitation plan, then the ~~preinjury~~ employer may request that one-third of the charges associated with vocational services be credited to ~~shall have~~its account, if the employer is a subscriber to the workers' compensation fund. ~~adjusted so that two thirds of the costs of the vocational rehabilitation services are charged to its account and the remaining costs are charged to the surplus fund. In a similar instance, if the preinjury employer is self insured, the employer will be reimbursed one-third of the vocational rehabilitation costs incurred.~~

2.2.3.c. In determining whether an employer or an ~~injured~~ worker has cooperated in the rehabilitative effort, the following standards are to be used:

a.2.2.c.1. Whether ~~medical and medical, surgical, or~~ vocational opinions substantially concur that the ~~operation, treatment,~~ service, or program is indicated to bring about a return to employment;

b.2.2.c.2. Whether it is reasonably safe and not attended by unusual suffering or risk for the ~~claimant~~worker to participate;

c.2.2.c.3. Whether it is likely that the ~~operation, treatment,~~ service, or program will produce ~~material~~measurable physical and/or vocational improvement; and

d.2.2.c.4. Whether a person of ordinary prudence and courage would ~~undergo the operation, treatment, participate in the service, or program for his or her own betterment, regardless of compensation. If each of these requirements are met and continue to be met during the course of the rehabilitative effort, then a claimant's failure to participate or to continue to participate in the program will result in a denial of further compensation benefits or a reduction in those benefits as may be proper in the individual case. If each of these requirements are met and continue to be met during the course of the rehabilitative effort, then an employer's failure to participate or to continue to participate in the program may lead to an increase in the claimant's benefits should other arrangements prove infeasible and is otherwise proper.~~

~~2.2.4.~~ 2.2.c.5. ~~Injured w~~Workers and employers may provide the division with an written explanation of actions or inaction and how that action or inaction affects the ~~disability~~outcome of the ~~claim, injured worker~~ which shall be considered by the ~~commissioner~~division in making the aforesaid determinations under subsections 2.2.4.a. and 2.2.2.b., and 2.2.c. ~~2.2.5. Notwithstanding any other~~

~~provision of these rules, section 2.3 of the rule does not prohibit an employer from assisting an employee in returning to suitable gainful employment.~~

2.2.d. Section 2 of this rule establishes the minimum standard for an employer providing assistance to a worker to return to employment; it is not intended to limit additional assistance that an employer may provide to a worker.

2.3. In making a ruling that a party has failed to cooperate, the division shall issue a protestable order. Where there are disagreements between the ~~injured~~ worker, the employer, or the division so as to cause the filing of a formal objection, the parties are encouraged to utilize the mediation process provided for by W. Va. Code §23-5-1(d).

2.4. Physicians and other health care providers are also responsible for assisting and encouraging workers to return to suitable gainful employment and providing assistance to employers in determining accommodations for each worker. Physicians' and other health care providers' cooperation regarding rehabilitation efforts and plans includes, but is not limited to: full participation in the rehabilitation evaluation, full participation in providing updated medical documentation pertaining to current and anticipated treatment plans and restrictions, encouraging communication between the worker and his or her employer, familiarity with the worker's essential job functions, provision of medical documentation to assist in returning to transitional, part time, modified or alternate employment. Repeated failure by a physician or other health care provider to cooperate in rehabilitation efforts may result in suspension or termination pursuant to §23-4-3c of the W.Va. Code.

2.5. Qualified rehabilitation professionals are responsible for assisting and encouraging the workers, employers, physicians and other health care providers to fully participate and cooperate in the rehabilitation process. The qualified rehabilitation professional must be knowledgeable on all statutory requirements, adhere to required time parameters in providing required services, and provide information to all parties involved in the claim. Repeated failure by a qualified rehabilitation professional to be fully cooperative in the rehabilitation process may result in suspension or termination pursuant to §23-4-3c of the W.Va. Code.

§85-15-3. Definitions.

As used in this legislative rule, the following terms have the stated meanings unless the context of a specific use clearly indicates another meaning is intended.

3.1. "Commissioner" means the commissioner of the bureau of employment programs pursuant to W. Va. Code §21A-2-1, and W. Va. Code §23-1-1, and any deputies designated pursuant to W. Va. Code §21A-2-12 & -13. For the purposes of ~~these~~ this rules the executive ~~director~~ secretary, the director of the office of benefits management, ~~and the supervisor of the rehabilitation section~~ or those positions' respective successors, are designated as deputies. Additional deputies may be designated, as deemed appropriate.

3.2. "Division" means the workers' compensation division within the bureau of employment programs as provided for by W. Va. Code §21A-1-4, and W. Va. Code §23-1-1 et seq.

3.3. "Injury" and derivative words have the meaning ascribed to the term "injury" by W. Va. Code §23-4-1.

~~3.5. "Injured worker's employer" means an employer charged pursuant to W. Va. Code §23-4-1, for a work-related injury and any physical and/or vocational rehabilitation associated with the injury.~~

~~3.6. "Physical rehabilitation hospital" means any of the following institutions or facilities:~~

~~3.6.1. A duly licensed hospital that meets the requirements for rehabilitation hospitals as described in section 2803.2 of the medicare provider reimbursement manual, part 1, as amended, or any successor provision, as published by the United States health care financing administration; and that, for its in-patient services, obtains on or before December 31, 1994, and thereafter maintains accreditation from the Joint Commission on Accreditation of Health Care Organizations and, further, on or before July 1, 1995, obtains and thereafter maintains accreditation from the Commission on the Accreditation of Rehabilitation Facilities.~~

~~3.6.2. A distinct part rehabilitation unit in a duly licensed hospital which distinct part unit meets the requirements of section 2803.61 of the medicare provider reimbursement manual, part 1, as amended, or any successor provision, as published by the United States health care financing administration; or~~

~~3.6.3. A facility operated by the West Virginia division of rehabilitation services.~~

~~3.7. "Physical rehabilitation services" means health care services and devices including but not limited to medical, surgical, dental, or hospital treatments or evaluations; medicines; and crutches, artificial limbs, or other approved mechanical appliances and devices.~~

~~3.8. "Physical rehabilitation services provider" means a provider of health care services, including but not limited to vocational rehabilitation services, provided that the provider is:~~

~~3.8.1. A medicare certified rehabilitation agency;~~

~~3.8.2. A certified outpatient rehabilitation facility;~~

~~3.8.3. A duly licensed health care practitioner;~~

~~3.8.4. A physical rehabilitation hospital; or~~

~~3.8.5. A duly licensed acute care hospital.~~

~~3.94. "Qualified rehabilitation professional" means a person who meets the criteria set forth in 85 CSR 27, Qualified Rehabilitation Professional. has the education, experience and skills necessary to counsel, to make judgments, and to~~

~~make recommendations concerning an injured worker's medical, physical, emotional, intellectual, or motivational ability to accept and perform suitable gainful employment and who has the skills necessary to design, implement and supervise programs to enhance an injured worker's capacity to accept and perform suitable gainful employment. The workers' compensation health care advisory panel will establish guidelines for defining the levels of education, experience and skill necessary for a person to qualify as a rehabilitation professional under this section. A qualified rehabilitation professional need not personally have the ability to administer and interpret all medical, psychological or vocational testing, but must be able to evaluate the test results provided by other professionals. Rehabilitation counselors employed by or under contract with the commissioner or employed by the West Virginia division of rehabilitation services are presumed to be qualified rehabilitation professionals for the purposes of this definition.~~

~~3.9.1. Until the health care advisory panel establishes such guidelines for qualified rehabilitation professionals, any organization meeting the then applicable standards and requirements of the commission on accreditation of rehabilitation facilities, "Standards Manual and Interpretive Guidelines for Organizations Serving People with Disabilities," (1994) shall be presumed to be qualified unless proven otherwise.~~

~~3.9.2. Nothing in this subsection precludes an employer from developing a managed care program or a vocational rehabilitation program, defined elsewhere in this by section 13 of these rules, to promote the worker's return to productive employment; provided that, all providers of vocational rehabilitation services must meet the qualifications requirements of these this rules and must be registered under section 10 to these of this rules.~~

3.425. "Rehabilitation plan" means a plan or a modified plan for physical and/or vocational rehabilitation designed to facilitate the injured worker's return to work developed in accordance with ~~these~~ this rules by a qualified rehabilitation professional and approved by the ~~commissioner~~ division. A rehabilitation plan must be developed utilizing the following standards: the worker should be an active participant in the plan development; all parties to the claim should be in agreement with the plan prior to its implementation; the plan should be signed by the worker, the qualified rehabilitation professional and agreed to by the division; the plan should identify clearly stated goals with action steps directed toward achieving the goal; the plan must identify all individual responsibilities and individual action steps, payment expectations and time frames for completion; rationale for the rehabilitation plan, criteria for completion, suspension and termination of the plan must be addressed; costs associated with the delivery of all services are to be indicated, including professional service costs.

3.446. "Served upon the parties" means depositing the document to be served in the regular United States Mail, properly addressed and postage paid.

3.437. "Suitable gainful employment" means ~~employment~~ work which has been identified by the use of a labor market survey, which exists within the worker's geographic area, within the scope of a worker's transferable skills as identified by a transferable skills analysis or a formal vocational evaluation or both, that restores the

injured worker as closely as possible to the preinjury level of earnings, ~~his or her level of earnings at the time of injury, giving due~~ taking into consideration the worker's future earning capacity and functional abilities resulting from the compensable injury. ~~to the nature and extent of the injured worker's injury; the injured worker's qualifications, interests, motivation level, preinjury earnings, and future earning capacity; and the current and future condition of the labor market.~~ Nothing in this definition prohibits providing an injured worker with vocational rehabilitation services which enable the injured worker to obtain a job with a higher economic status than he or she would have been able to attain without such vocational rehabilitation, provided the rehabilitation plan demonstrates that the injured worker is not able to return to his or her prior employment and that such vocational rehabilitation services are necessary to increase the likelihood of reemployment. It is the responsibility of the qualified rehabilitation professional to fully demonstrate that the chosen vocational goal is both suitable and gainful for the worker.

3.408. "Vocational rehabilitation services" means professional services reasonably necessary due to the compensable injury or resulting from the compensable injury, to enable an injured worker to return to suitable gainful employment as soon as practical. ~~The rehabilitation services include but are not limited to the coordination of medical services, vocational assessment, vocational evaluation, vocational counseling, vocational rehabilitation plan development, vocational rehabilitation plan monitoring, vocational rehabilitation training, job development, job placement, and job modifications.~~

~~3.10.1. The workers' compensation health care advisory panel will establish guidelines for defining the types and requirements of services in order for the services to be included under this section.~~

~~3.10.2. Until the health care advisory panel establishes such guidelines, vocational rehabilitation services offered by organization meeting the then applicable standards and requirements of the commission on accreditation of rehabilitation facilities, "Standards Manual and Interpretive Guidelines for Organizations Serving People with Disabilities," (1994) shall be presumed to be qualified unless proven otherwise.~~

3.8.a. Alternate/Modified job review- The review of a job process and the essential tasks involved to determine if changes can be made that would reasonably accommodate the worker on a temporary or permanent basis to facilitate a return to employment. Changes may include, but are not limited to, adaptation of the work environment, elimination or reassignment of non-essential job tasks, reorganization of work flow or the provision of assistive or adaptive devices. Division assistance is available for the provision of assistive or adaptive devices, as long as the device is required to compensate for the resulting compensable impairment, the employer has demonstrated that they are not in a position to provide reasonable accommodation, and it is demonstrated that the device will be beneficial in returning the worker to temporary or permanent work.

3.8.b. Assistive devices- Physical aides, appliances or mechanical devices that will increase the worker's independence or provide assistance in performing an essential job task to facilitate a return to work. Assistive devices

should be identified in the alternate/modified jobs review, ergonomic evaluation, or upon a later determination of necessity.

3.8.c. College training- Education provided in a post secondary setting such as a college or university, that provides academic and practical skills education in the area of study. To be recognized as "college" training for the purposes of this rule, criteria as set forth in section 15 of this rule must be met.

3.8.d. Formal vocational evaluation- A systematic, objective evaluation of the worker's skills, aptitudes, interests and functional ability to assist in the formation of suitable vocational goals. A formal vocational evaluation may be used when a worker has a limited work history, limited perceived interests, suspected cognitive impairment or when additional information is required regarding the worker's transferable skills for appropriate rehabilitation plan development.

3.8.e. Job analysis-A formalized process of gathering information regarding the essential tasks of a job. Information is gathered by direct observation of the job, contact with employers and workers, and research of relevant reference material. The information is then translated to required worker traits that are essential for job performance. Job analysis documentation is to be provided to the division, as well as all parties to the claim. All resources utilized to conduct the analysis are to be referenced in the report.

3.8.f. Job placement services- Services that take into consideration the worker's transferable skills, the labor market, functional capacities and reasonable economic requirements, in order to facilitate the direct placement of the worker into the work force. The worker is expected to be fully participant in job placement efforts and document and report to the qualified rehabilitation professional the recommended job contacts per week as called for in the rehabilitation plan. It is reasonable that job seeking be conducted up to fifty (50) miles from the worker's home. The worker is to provide the qualified rehabilitation professional with a job log on a bi weekly basis. The qualified rehabilitation professional will conduct a minimum of one (1) random check per week from the worker's job log, to ensure the worker's compliance and appropriateness. These checks will be fully documented in the qualified rehabilitation professional's monthly progress report. If the qualified rehabilitation professional finds through the random checks that job contacts are not in keeping with the rehabilitation plan or if job logs are not submitted by the worker on a bi weekly basis, the qualified rehabilitation professional will immediately notify the division. Job placement services will be authorized for no longer than ninety (90) days. The qualified rehabilitation professional must substantiate the need for the time period that is being requested. If it is found that the worker does have transferable skills, has been provided with job seeking skills training, appropriate jobs do exist in the labor market and the worker has been unable to obtain employment within a reasonable time period, the qualified rehabilitation professional will recommend case closure. If it is found that the worker has been unable to obtain suitable employment, and/or does not possess transferable skills that are compatible with the labor market, the qualified rehabilitation professional will recommend that the next hierarchy of rehabilitation services be initiated.

3.8.g. Job seeking skills training- Training provided to the worker by the

qualified rehabilitation professional or other qualified vocational provider that instructs the worker in the completion of job applications, interview skills, appropriate dress and appearance, resume preparation, response to difficult questions, telephonic skills, securing job lead resources, follow up with contacted employers and proper documentation of efforts. These services are to be fully documented by the qualified rehabilitation professional and copies of all information generated is to be provided to the division and all parties to the claim.

3.8.h. Labor market survey- A formalized process of determining the number of jobs that are in existence in a geographic area that are compatible with the worker's transferable skills, functional capacities and reasonable salary requirements. It is reasonable that this survey be conducted up to fifty (50) miles from the worker's home and/or previous location of employment. Labor market survey documentation is to be provided to the division and parties to the claim. All resources utilized to conduct the survey are to be referenced in the report.

3.8.i. Medical case management- Assistance in the coordination of medical services to ensure that the worker is receiving and cooperating with medical services appropriately to facilitate a return to employment or to actively participate in a rehabilitation plan. Any qualified rehabilitation professional recommending medical case management as part of a rehabilitation plan must in the plan acknowledge familiarity with the health care advisory panel's recommended treatment guidelines. Programs of this nature shall be limited to three (3) months in duration. Rehabilitation plans that include medical case management as a service must also have concurrent vocational rehabilitation services involved which will enhance and expedite the worker's readiness to return to employment. Cases involving catastrophically injured workers will be reviewed on an individual needs assessment basis, and appropriate authorization as needed will be considered by the division.

3.8.j. On-the-job training- Education to develop knowledge and skills for a particular occupation provided by an employer that allows the learning of essential job tasks under actual employment conditions. To be recognized as "on-the-job" training for the purposes of this rule, criteria as set forth in section 15 of this rule must be met.

3.8.k. Rehabilitation counseling- A service where a qualified rehabilitation professional interacts with workers, employers, physicians and other health care professionals in providing guidance in the selection of a vocational goal that is consistent with the worker's physical, medical and mental capabilities, aptitudes, interests, education, transferable skills, labor market availability and reasonable economic requirements. Rehabilitation counseling is provided in all stages of the rehabilitation process and encourages the worker in independent problem solving to facilitate the transition back to employment. The qualified rehabilitation professional will also provide information to the parties to the claim regarding the requirements of the division and the implementation of those requirements. Consultation with division employees is not defined as part of rehabilitation counseling.

3.8.l. Remedial Education-Training provided through adult basic

education programs through specific course work and tutoring, which assists in obtaining a general education diploma. Programs of this nature shall be limited to 6 months in duration. To the extent it is economically and otherwise feasible, providers who are located in the injured worker's geographic area and within the state of West Virginia are to be given preference. If costs are incurred, the adult basic education program will be required to register with the division as a vendor and submit invoices on forms prescribed by the division. The division may reimburse the worker at a rate of ten cents (\$0.10) per mile, while traveling in relation to the remedial education rehabilitation plan. This reimbursement may not be authorized if the worker is traveling a lesser distance than when employed by the preinjury employer. The division does not pay advancements in remedial education rehabilitation plans. Forms for submission of monthly progress reports will be provided to the worker by the qualified rehabilitation professional developing the rehabilitation plan upon the division's approval of the plan. It is the responsibility of the qualified rehabilitation professional to ensure that the remedial education training center and the worker understand their rights and responsibilities involved with a remedial education rehabilitation plan. Rehabilitation plans that include remedial education as a service must also have concurrent vocational rehabilitation services involved which will enhance and expedite the worker's ability to return to employment.

3.8.m. Vocational/Technical training- Education provided in a formalized setting that provides the worker with practical application of essential job tasks. To be recognized as "vocational/technical" training for the purposes of this rule, criteria as set forth in section 15 of this rule must be met.

3.419. "Vocational rehabilitation services providers" means licensed physicians, licensed psychologists, hospitals, licensed registered nurses, ~~vocational rehabilitation counselors~~ and public and private agencies, companies, and corporations which provide to injured workers vocational rehabilitation services including but not limited to vocational retraining, testing, ~~counseling~~, evaluation and job club or assistive technology placement services. To qualify as a vocational rehabilitation service provider under ~~these~~ this rules, a person must demonstrate that he or she has adequate education, training and experience in the rehabilitation field and must have access to the necessary space and equipment needed to provide the service offered, or the entity must demonstrate that it employs workers who have adequate education, training and experience in the rehabilitation field and that it has access to the necessary space and equipment needed to provide the service offered. The ~~workers' compensation health care advisory panel~~ division will establish guidelines on the education, training and experience necessary to qualify as a vocational rehabilitation service provider under ~~these~~ this rules. The division must decide on a case-by-case basis whether an individual has the education, training, and access or an entity employs individuals who have the education, training and access necessary to qualify as a vocational rehabilitation service providers under ~~these~~ this rules.

3.41.1.9.a. Until the ~~health care advisory panel~~ division establishes such guidelines for vocational rehabilitation services providers, any individual or organization ~~meeting the then applicable standards and requirements of the commission on accreditation of rehabilitation facilities, "Standards Manual and Interpretive Guidelines for Organizations Serving People with Disabilities," (1994) that~~

has obtained nationally recognized certification in the field of rehabilitation and which maintains such certification shall be presumed to be qualified unless proven otherwise.

~~3.11.2.9.b.~~ The term does not include licensed physicians, licensed psychologists or hospitals where the services being provided to ~~an injured employee~~ a worker fall under the provisions of W. Va. Code §23-4-3, and are outside the scope of the pertinent rehabilitation plan.

~~3.12. "Rehabilitation plan" means a plan or a modified plan for physical and/or vocational rehabilitation designed to facilitate the injured worker's return to work developed in accordance with these rules by a qualified rehabilitation professional and approved by the commissioner.~~

~~3.10.~~ "Injured ~~w~~Worker" means an employee entitled to workers' compensation benefits as the direct result of a work-related injury, as provided under W. Va. Code ~~§23-1-4-23-4-1.~~

~~3.11.~~ "Injured ~~w~~Worker's employer" means an employer charged pursuant to W. Va. Code §23-4-1, for a work-related injury and any ~~physical and/or~~ vocational rehabilitation associated with the injury.

§85-15-4. Priorities.

4.1. Qualified rehabilitation professionals must utilize the following priorities. No higher numbered priority may be utilized unless the ~~commissioner~~ division has determined that all lower numbered priorities are unlikely to result in the placement of the ~~injured~~ worker into suitable gainful employment. If a lower numbered priority is clearly inappropriate for the ~~injured~~ worker, the next higher numbered priority must be utilized. The rehabilitation plan must explicitly state the reasons and rationale for the rejection of any lower numbered priority. The priorities are as follows:

~~4.1.4.a.~~ Return of the ~~injured~~ worker to the preinjury job with the same employer;

~~4.1.2.b.~~ Return of the ~~injured~~ worker to the preinjury job with the same employer and with modification of task, work structure or work hours;

~~4.1.3.c.~~ Return of the ~~injured~~ worker to employment with the same employer in ~~a different~~ an alternate position;

~~4.1.4.d.~~ Return of the ~~injured~~ worker to employment in a different position with the same employer and with on-the- job training;

~~4.1.5.e.~~ Employment of the ~~injured~~ worker by a new employer ~~and~~ without training utilizing transferable skills;

~~4.1.6.f.~~ On-the-job training of the ~~injured~~ worker for employment with a new employer designed to lead to suitable gainful employment in the labor market; provided, that there exists a reasonable expectation that the worker will obtain such employment upon completion of the program; or

~~4.1.7.g.~~ Enrollment of the ~~injured~~ worker in a retraining program which consists of a goal-oriented period of formal retraining designed to lead to

suitable gainful employment in the labor market; provided, that there exists a reasonable expectation ~~of that the injured worker~~ will actually obtaining such employment upon completion of the program.

§85-15-5. Identification of Rehabilitation Candidates; the Rehabilitation Evaluation Process.

5.1. The ~~commissioner~~division may presume an ~~injured~~ worker does not need rehabilitation services if the evidence of record establishes that the ~~injured~~ worker will receive less than ~~120~~45 days of temporary total disability benefits, medical documentation exists in the division's files that the injured worker has been or will be released will be able to return to his or her former job after reaching maximum medical improvement ~~unrestricted employment~~, that the ~~injured~~ worker has no permanent ~~disability~~impairment (0%) resulting from the compensable injury, or that the injured worker is receiving retirement benefits. The ~~commissioner~~division must make an entry to the file stating that a finding that rehabilitation services are not needed was made.

~~5.2.1. The commissioner~~5.2.1. The division must ~~order~~authorize a rehabilitation evaluation of the worker by a qualified rehabilitation professional, under subsection 5.4.1 of the injured worker by a qualified rehabilitation professional, as defined by these rules, to determine whether physical and/or vocational rehabilitation services and development of a rehabilitation plan are appropriate for the worker in each of the following cases:

~~a~~5.2.a. information contained on file upon determination of compensability indicates that the a worker has sustained an injury that has or is likely to result in temporary disability in excess of forty-five one hundred and twenty (120) (45)days;

~~b~~5.2.b. a worker has not returned to work after incurring sustaining an injury reasonably suspected expected to result in a permanent disability impairment;

5.2.c. a worker has not returned to work and the medical evidence of record indicates it is likely a permanent impairment will result;

5.2.d. a worker has a history of sustaining an injury to the same body part or body parts which may reasonably be expected to interfere with performance of essential job tasks;

~~e~~5.2.e. a worker has not returned to work and has been found to have sustained a permanent disability impairment;

~~d~~5.2.f. a worker was evaluated one hundred (100)thirty (30) days earlier and was not then found to be a candidate for physical or vocational rehabilitation services and has not returned to work as a result of the injury; or

~~e~~5.2.g. a worker for whom a section 5.1 presumption was not made and whose possible need for rehabilitation services remains undecided.

~~5.2.2. An injured worker is reasonably suspected to have sustained a permanent disability if his or her treating physician indicates to the commissioner that~~

~~the injury resulted in permanent impairment, if the body part injured is important to the performance of the injured worker's job, if the injury suffered is the type of injury that usually and customarily requires frequent medical attention, if the injury suffered is the type of injury that usually and customarily leads to a permanent disability, or if other facts associated with the individual injured worker and the injury he or she has suffered reasonably lead to the conclusion that the worker has sustained a permanent disability. The workers' compensation health care advisory panel will develop guidelines for determining the type of injuries that usually and customarily lead to permanent disability. Each injured worker's situation will be examined individually in making these decisions.~~

5.2.3h. For the purposes of ~~these~~this rules, a five percent (5%) permanent partial disability award for occupational pneumoconiosis is not considered an indication of a permanent disability.

5.3. ~~Any worker must. The commissioner must direct that an injured worker be evaluated for the delivery of physical and/or vocational rehabilitation services and the possible development of a rehabilitation plan in any all workers' compensation claims pending before the commissioner division for a permanent total disability consideration. evaluation if a medical or vocational report indicates a reasonable possibility that the injured worker can benefit from rehabilitation services. Action on any pending petition or other request for a permanent total disability award is stayed pending the outcome of the vocational evaluation performed. All evaluations will be conducted in compliance with this rule by either a qualified rehabilitation professional assigned by the division or by a member of the interdisciplinary examining board as provided for by W.Va. Code §23-4-6 pursuant to section 5.4 of these rules.~~

5.3.4.a. If the ~~commissioner~~division or the interdisciplinary examining board determines pursuant to section 5.5 of ~~these~~this rules that physical and/or vocational rehabilitation services cannot assist the ~~injured~~ worker in returning to suitable, gainful employment, as defined by section 3.437 of ~~these~~this rules, then ~~he or she~~ the division will lift the stay and enter an order on the permanent total disability petition or request.

5.3.2.b. If the ~~commissioner~~division or the interdisciplinary examining board determines pursuant to section 5.5 of ~~these~~this rules that physical and/or vocational rehabilitation services can assist an ~~injured~~ worker in returning to suitable, gainful employment, as defined by section 3.437 of ~~these~~this rules, then ~~he or she will lift the stay~~ will continue and enter an order on the permanent total disability petition or request. ~~In his or her decision, t~~The ~~commissioner~~division will ~~issue a further stay on the petition or request for a permanent total disability award and refer~~authorize the ~~injured~~ worker to participate in physical and/or vocational rehabilitation, as recommended by the qualified rehabilitation professional. ~~The professional under the authorized rehabilitation plan; Provided that, the decision shall direct that, if the rehabilitation effort fails, then the stay of the permanent total disability petition or request shall be removed and the petition or request acted upon appropriately.~~

5.4. The rehabilitation ~~assessment~~evaluation process provides for the collection of information, within reasonable time parameters, for a qualified

rehabilitation professional to use to determine if the worker will likely benefit from rehabilitation plan development to assist in a timely return to employment. is comprised of a series of steps, as set forth in the following subsections.

5.4.1.a. Upon determining that the injured worker may be eligible for physical and/or vocational rehabilitation services, the commissioner division must refer the injured worker to a qualified rehabilitation professional for aevaluation of rehabilitation needsassessment. The qualified rehabilitation professional must review the injured worker's file, contact the worker, contact the employer, contact the treating physician and gather additional information, as necessary, to assessevaluate the injured worker's potential for returning to the work force. The qualified rehabilitation professional must decide whether the injured worker is able to quickly return to his or her preinjury job with the same employer without modification of task, work structure, or work hours or whether the injured worker is not able to return to any remunerative work under any circumstances.

a. If the decision is in the affirmative on either of the above issues, then the qualified rehabilitation professional must issue a written opinion to that effect within fifteen (15) days after the date of the referral and cause copies to be served upon the commissioner and the parties. If the commissioner agrees with the opinion, then a protestable order setting forth the decision based upon the qualified rehabilitation professional's opinion must be entered within fifteen (15) days after receipt of the opinion. The order must inform the parties of their rights of review as defined by W.V. Code, 23-5-1 & 1h. The order terminates the injured worker's rehabilitation evaluation. If the commissioner disagrees with the opinion, then within fifteen (15) days of its receipt, the commissioner shall return the claimant's file to the qualified rehabilitation professional with appropriate instructions. The purpose of this paragraph is to quickly and inexpensively identify those injured workers who will not benefit from further rehabilitation efforts.

b. If an affirmative decision on both issues cannot be made, then the qualified rehabilitation professional must proceed with a rehabilitation evaluation in accordance with subsection 5.4.2 of these rules, which action is interlocutory in nature and not subject to objection.

5.4.2.b. The qualified rehabilitation professional must comply with this subsection and with section 4.1 whenever an in-depth during the evaluation processis necessary to accurately assessevaluate an injured worker's status. The evaluation must be completed and served on the division and parties to the claim within thirty (30) days after the division identifies the need for evaluation and refers the worker to the qualified rehabilitation professional for rehabilitation services.

scheduled within forty five (45) days after the commissioner receives evidence that an injured worker has sustained an injury likely to result in temporary disability in excess of one hundred and twenty (120) days, or within forty five (45) days after the commissioner receives evidence that an injured worker is reasonably suspected to have sustained a permanent disability and has not returned to work, or within forty five (45) days after the commissioner finds that in fact the injured worker has sustained a permanent disability and has not returned to work. An evaluation that is required because the injured worker was previously evaluated one hundred (100) days earlier

~~and was noted as possibly needing physical and/or vocational rehabilitation services in the future must be scheduled within fifteen (15) days after the elapse of the one hundredth day following the last evaluation. The follow up evaluation must be conducted within thirty (30) days after it is scheduled.~~

5.4.3.c. In conducting a ~~subsection 5.4.2~~ rehabilitation evaluation, a qualified rehabilitation professional must collect and analyze information about the ~~injured~~ worker's medical, educational, vocational, social, legal, and economic circumstances, including his or her present physical and mental ability to participate in vocational rehabilitation services. The evaluation may also include additional ~~medical and/or formal~~ vocational testing or functioning evaluation if the qualified rehabilitation professional opines that the testing is warranted in order to provide a full ~~assessment/evaluation~~ and if the additional testing is ~~preauthorized by the commissioner.~~ The ~~injured worker,~~ the employer and the treating physician must provide information and cooperate as outlined in section 2 of this rule ~~on forms prescribed by the commissioner to assist the qualified rehabilitation professional in the rehabilitation assessment process.~~ The qualified rehabilitation professional must decide whether the ~~injured~~ worker is likely to benefit from vocational rehabilitation ~~services~~ plan development based upon the evaluation.

a5.4.c.1. If the qualified rehabilitation professional determines from ~~attempting to performing~~ the ~~subsection 5.4.2~~ rehabilitation evaluation that the medical, physical or emotional status of the ~~injured~~ worker precludes a full ~~assessment/evaluation~~, then the qualified rehabilitation professional must prepare a preliminary report setting forth the facts and reasons that an ~~assessment/evaluation~~ cannot be performed. The qualified rehabilitation professional must state in his or her report whether the ~~injured worker,~~ the employer or the injured worker, ~~treating physician~~ failed to cooperate in the ~~assessment/evaluation~~ process and must state the facts that form the basis of the conclusion.

b5.4.c.2. If the qualified rehabilitation professional determines that the ~~injured~~ worker cannot benefit from rehabilitation services, he or she must issue a written opinion to that effect, explaining the basis for the opinion, to the ~~commissioner~~ division and parties to the claim. ~~within fifteen (15) days after completing the evaluation.~~

c5.4.c.3. If the qualified rehabilitation professional determines that the ~~injured~~ worker can benefit from rehabilitation services, he or she must issue a written opinion to that effect to the ~~commissioner~~ division and parties to the claim. ~~within fifteen (15) days after completing the evaluation.~~

5.5. The ~~commissioner~~ division must, within fifteen (15) days of receipt of the report, decide whether the ~~injured~~ worker is likely to benefit from vocational rehabilitation services based upon a consideration of the qualified rehabilitation professional's evaluation report and all other relevant information available, including information about the ~~nature and degree of the injured worker's physical disability/impairment~~ resulting from the compensable injury, functional capacity, and the injured worker's employment history, existing skills, work life expectancy, interests, aptitudes, education, and likelihood of reemployment in the labor market.

5.5.1.a. If the ~~commissioner~~division concludes that rehabilitation services are not warranted ~~either because: the injured worker has returned to work; has been released to return to work without restrictions; has been found to have sustained no impairment from the compensable injury (0%); is receiving retirement benefits or because he or she can return quickly to his or her preinjury job with the same employer without modification of task, work structure, or work hours or because; he or she cannot return quickly to work even with the assistance of physical and/or rehabilitation services due to unresolved medical concerns related to the compensable injury; or that the reason for the inability to return to work is not a direct result of the compensable injury,~~ then the ~~commissioner~~division will state this finding in a protestable order, entered pursuant to section 5.6 of ~~these~~this rules, and a rehabilitation plan will not be developed for the ~~injured~~ worker; however, the ~~commissioner~~division may direct at some future time that the ~~injured~~ worker be further evaluated if, in the opinion of the ~~commissioner~~division, it later appears that the ~~injured~~ worker may be in need of ~~either physical and/or vocational~~ rehabilitation services.

5.5.2.b. If the ~~commissioner~~division concludes that a rehabilitation plan is appropriate, then the qualified rehabilitation professional who performed the ~~subsection 5.4.2~~ rehabilitation evaluation will be authorized to begin rehabilitation plan development. The qualified rehabilitation professional must prepare a written report and serve it upon the ~~commissioner~~division and the parties within ~~forty five (45)~~thirty (30) days after the date on which the ~~injured worker's evaluation is completed~~division authorized rehabilitation plan development. ~~The commissioner's decision shall be interlocutory and not subject to objection.~~ The written report submitted by the qualified rehabilitation professional must contain the rehabilitation plan. ~~In every case in which the evaluation is performed and/or the plan is developed by a qualified rehabilitation professional who is not employed by or under contract with the commissioner, the evaluation and/or plan must be reviewed to insure that the guidelines are met and, if appropriate, revised by a qualified rehabilitation professional who is employed by or under contract with the commissioner. Copies of any revised plan must be served upon the parties. In addition, the~~Any information obtained and developed by the qualified rehabilitation professional will be ~~made available to~~served upon the ~~division and parties to the claim. The injured worker and/or the injured worker's employer may file comments and request changes to the rehabilitation plan by filing the comments and requested changes in writing with the division within fifteen (15) days after receipt of the rehabilitation plan. The comments must be served upon the other party. Thereafter, the commissioner must make any appropriate modifications to the rehabilitation plan within fifteen (15) days after his or her receipt of the comments and suggested changes and issue the final rehabilitation plan in a protestable order, entered pursuant to section 5.6 of these rules.~~

~~5.5.3. The injured worker must notify the commissioner regarding his or her willingness to receive rehabilitation services in accordance with the rehabilitation plan within fifteen (15) days after receiving notice of the final rehabilitation plan in the protestable order issued pursuant to subsection 5.5.2. The injured worker must provide the employer with a copy of this notification. If the injured worker does desire to receive the physical and/or vocational rehabilitation services, the commissioner must forthwith expend, after due notice to the employer, or must forthwith order the self-~~

~~insured employer to expend the amounts as may be necessary for physical and/or vocational rehabilitation purposes. This action is to be taken despite any objection by the employer to the plan.~~

5.5.4c. In the event that the ~~injured~~ worker declines to receive rehabilitation services as outlined in the rehabilitation plan or fails to participate and cooperate with the rehabilitation services in accordance with the plan, or if the ~~injured~~ worker's employer fails to participate and cooperate in accordance with the plan, the commissioner will invoke the provisions of section 2.2 of ~~these~~ this rules.

5.6. The ~~commissioner~~ division must issue any ~~protestable~~ decision rendered pursuant to sections 5.5 of ~~these~~ this rules in writing and must serve the decision upon the parties, with notice of the rights of review defined by W. Va. Code §23-5-1 and -1h. If the ~~commissioner~~ division decides that the development of a rehabilitation plan is appropriate, the order is interlocutory in nature and not subject to objection. ~~The then~~ development of the plan will go forward despite the filing of an objection. ~~In lieu of filing an objection, either the injured worker or the injured worker's employer may file with the division a request for reconsideration of the decision within fifteen (15) days of its receipt. The request must set forth in detail the basis for a reconsideration. The request must be served upon the other party. Once filed, the request terminates the need to file an objection to the initial decision. However, once the commissioner rules upon the request, the parties have the right to file an objection to both the initial decision and/or the ruling on the request for reconsideration.~~

§85-15-6. The Rehabilitation Plan.

6.1. ~~A rehabilitation plan may include, but need not be limited to, any of the following: vocational and psychological counseling; prosthetic or adaptive devices that enables an injured worker to work at the same or similar occupation as at the time of injury; work site, work duties or work hours modification to make it possible for the injured worker to resume suitable gainful employment, including, when agreed to by the employer, assistance from individuals with expertise in biomechanical engineering to assess any necessary job modifications; vocational training or on the job training to assist the injured worker to pursue a similar or new occupation; job placement assistance; payment of benefits under the provisions of section 8.2 of these rules; and such other programs or services which comply with the provisions of section 11 of these rules governing maximum disbursement for vocational rehabilitation services and which increase the likelihood of reemployment of the injured worker in suitable gainful employment when the plan is completed. Should an employer refuse to agree to assistance from biomechanical engineers, such refusal shall not constitute a failure to cooperate pursuant to subsection 2.2.2. The purpose of a rehabilitation plan is to clearly identify the return to work objectives and to formulate action steps required to assist the worker in returning to employment. The objectives are obtained from information gathered and analyzed by the qualified rehabilitation professional during the vocational evaluation process. During the development of a rehabilitation plan, the following standards must be addressed within the plan itself, or with a report addressing such, attached directly to the rehabilitation plan.~~

6.1.a. The worker is an active participant in the development of his or

her rehabilitation plan.

6.1.b. The plan, once developed, must be served upon the division and all parties to the claim by the qualified rehabilitation professional.

6.1.c. The plan must be signed by the worker or his or her representative and the qualified rehabilitation professional.

6.1.d. The plan must clearly outline the goals, along with actions required to achieve the goals of the plan.

6.1.e. The plan must identify the responsibilities and action steps of the worker, the employer, physician, qualified rehabilitation professional, the division and other parties who are required to enable the plan to be successful.

6.1.f. Reasonable time frames for completion of the plan must be indicated therein.

6.1.g. A plan explanation must justify the need for the rehabilitation services outlined in the plan, utilizing all information the qualified rehabilitation professional has currently available.

6.1.h. Criteria for completion and termination of the plan must be fully defined in the rehabilitation plan.

6.1.i. Anticipated costs associated with the services to be provided in the plan and anticipated indemnity payments are to be listed in the plan.

6.2. A rehabilitation plan is to include those vocational services as outlined in section 3 of this rule. Services may also include assistance from vocational rehabilitation providers with expertise in biomechanical engineering or assistive technology to assess any necessary job modifications; job placement assistance in the form of job clubs; on-the-job, vocational/technical or college training to assist the worker to pursue a similar or new occupation; payment of benefits under the provisions of section 8.2 of this rule; and such other programs or services which comply with the provisions of section 11 of this rule governing maximum disbursement for vocational rehabilitation services and which increase the likelihood of reemployment of the worker when the plan is completed. Should an employer refuse to agree to recommendations from biomechanical engineers or assistive technologists, such refusal shall not constitute a failure to cooperate pursuant to subsection 2.2. The qualified rehabilitation professional shall assist the employer in determining if recommendations made by a biomechanical or assistive technologists are reasonable.

6.23. A rehabilitation plan must require that all physical and/or vocational rehabilitation services be provided by providers registered as vendors under the provisions of section 10 of ~~these~~ this rules. Except with the prior consent of the ~~commissioner~~ division, no other providers may deliver physical and/or vocational rehabilitation services to an ~~injured~~ injured worker under an approved rehabilitation plan. The ~~commissioner~~ division's consent to utilize unregistered providers will not be given except upon a showing that an appropriate registered provider is not reasonably available to the ~~injured~~ injured worker. To the extent it is economically and otherwise feasible, providers and professionals who are located in the injured worker's geographic area

and within the state of West Virginia are to be given preference. In-state providers and out-of-state providers are both to be compensated pursuant to section 11 of ~~these~~this rules.

~~6.3. A rehabilitation plan that provides for vocational retraining must give preference to the utilization of schools and training facilities located in the injured worker's geographic area and within the state of West Virginia, thereby reducing the need for the injured worker to travel extensively or to relocate. The plan must also give preference to the utilization of public schools and training facilities over private institutions.~~

6.4. Any rehabilitation plan developed and implemented under ~~these~~this rules is subject to the seniority provisions of a valid and applicable collective bargaining agreement, employer-employee contract, or arbitrator's decision thereunder, or to any court or administrative order applying specifically to the ~~injured~~ worker's employer, and will further be subject to any applicable federal statutes or regulations.

§85-15-7. Implementation of the Rehabilitation Plan.

7.1. The ~~commissioner~~division must, within fifteen (15) days of receipt of the rehabilitation plan and report, ~~determine whether the worker is likely to benefit from the vocational rehabilitation services recommended based upon a consideration of the qualified rehabilitation professional's documentation and all other relevant information available, including information about the worker's impairment resulting from the compensable injury, functional capacity, employment history, existing skills, interests, aptitudes, education, and likelihood of reemployment in the labor market.~~implement a rehabilitation plan after the injured worker's acceptance notice is received pursuant to subsection 5.5.3 of these rules.

7.2. While an employer or the ~~injured~~ worker is permitted to object to the plan pursuant to section 5.6 of ~~these~~this rules, the implementation of the plan will proceed notwithstanding the objection. In the event that the employer or the ~~injured~~ worker is successful in challenging the plan, the employer's account will be adjusted to reflect the appropriate charge for costs associated with the rehabilitation plan. In the event that the plan has not been completed at the time of the ultimate decision on the protest, the plan will be modified, if necessary, to conform with the ultimate decision.

~~7.2. The duration of any rehabilitation plan developed, modified, or amended hereunder shall be specified in the plan.~~

7.3. Upon request of any party or upon a determination by the ~~commissioner~~division, the ~~commissioner~~division may order the suspension, termination, or modification of a rehabilitation plan based upon a showing of good cause including, but not limited to:

7.3.1.a. A changed physical condition which does not allow the ~~injured~~ worker to continue pursuing the rehabilitation plan;

7.3.2.b. The ~~injured~~ worker's performance level which indicates that he or she cannot complete the plan successfully;

7.3.3.c. A finding that an ~~injured~~ worker or the ~~injured worker's~~ employer is not cooperating with a plan;

7.3.4.d. A finding that the rehabilitation plan is no longer necessary for the ~~injured worker's~~ reemployment;

7.3.5.e. A finding that a change in economic conditions has caused the rehabilitation plan to be inappropriate; or

7.3.6.f. A joint petition submitted by the employer and the ~~injured~~ worker seeking modification or termination of the plan, which must be accompanied by information specifying the reason for the request for such modification or termination. Any joint petition may include a request to modify the provisions of a rehabilitation plan, including a request to extend benefits beyond the maximum amount otherwise stated in section 11 of ~~these~~ this rules. ~~Supporting reports must be filed with the petition.~~ In ruling upon any petition to exceed the maximum cost stated in section 11 of ~~these~~ this rules, the ~~commissioner~~ division must consider whether an extension of the rehabilitation plan is more likely than a denial of the petition to result in less overall cost to the division or a self-insured employer.

7.4. All physical and/or vocational rehabilitation services must be delivered in accordance with the rehabilitation plan developed under section 5 of ~~these~~ this rules. The ~~commissioner~~ division ~~must assign~~ will authorize a qualified rehabilitation professional ~~employed by or under contract with the commissioner or employed by the West Virginia division of rehabilitation services~~ to monitor compliance with and progress under the rehabilitation plan. The ~~assigned~~ qualified rehabilitation professional must contact the ~~injured~~ worker, the employer, ~~the injured worker's treating health care providers and other pertinent health care providers involved in the care and treatment of the worker,~~ and the ~~injured~~ worker's rehabilitation services providers on a regular basis to monitor compliance with and progress under the plan. In no event are the contacts to be ~~at~~ at least ~~than~~ at thirty day intervals with ~~each of the foregoing individuals or parties~~ worker and the rehabilitation service providers providing direct services in relation to the rehabilitation plan. In the event that the rehabilitation services provided to the ~~injured~~ worker or the ~~injured~~ worker's employment do not comply with the rehabilitation plan, the ~~assigned~~ qualified rehabilitation professional must notify the ~~commissioner~~ division and the division shall modify the plan ~~must be modified~~ as is just and necessary under the circumstances.

§85-15-8. ~~Modification of Work and Payment of Indemnity Benefits.~~

~~8.1. As part of a rehabilitation plan, an injured worker may return to work at a transitional, light duty, restructured or modified work assignment, on either a temporary or trial basis. The length of time of the temporary or trial return to work must be determined on a case by case basis and must be specified in the rehabilitation plan. The work assignment may include modifications of the duties, hours, or any other modification which may assist the injured worker in attaining the goals of the rehabilitation program and the rehabilitation plan.~~

~~8.1.1. Whenever the injured worker is asked to return to work under this section, the prospective employer, whether the original employer or a new employer,~~

~~must furnish to the injured worker's treating physician and the assigned qualified rehabilitation professional a statement describing the available work in terms that will enable the physician to relate the physical activities of the job to the injured worker's impairment. A copy of this statement must be filed with the commissioner and sent to the injured worker. The physician must then advise the assigned qualified rehabilitation professional as to whether the injured worker is physically capable of performing the work described. The injured worker may consent to undertake the work assignment without the approval of his or her treating physician if a physician selected by the commissioner determines that the injured worker is physically capable of performing the work described.~~

~~8.1.2. Upon undertaking a section 8.1 job, the injured worker's temporary total disability benefits, if any, are terminated and he or she becomes eligible for the receipt of temporary partial rehabilitation benefits, if applicable under section 8.3 of these rules. If the work impedes the injured worker's recovery to the extent that he or she cannot continue to work, the injured worker's temporary total disability payments, if applicable, may be resumed when he or she stops working, as provided in section 8.2 of these rules. If the work ends or is no longer otherwise available, the commissioner shall decide whether the injured worker has sufficiently recovered to permit the injured worker to return to his or her usual job or to other available work. If the decision is that the injured worker cannot so return, then temporary total disability benefits will again be paid but only for the period allowed by the rehabilitation plan or the period provided for in W. Va. Code §23-4-1c, whichever is applicable.~~

~~8.1.3. Once the injured worker returns to work under the terms of this section 8.1, the employer may assign the worker only to the work that was approved by the treating health care provider, unless the injured worker gives his or her written consent.~~

~~8.21. Except as stated in section 8.3, in every case in which the commissioner orders division authorizes physical and/or vocational rehabilitation services pursuant to a rehabilitation plan, the injured worker shall be compensated on a receive payment of temporary total disability benefits basis for any the period in which either the rehabilitation treatment renders him or her the worker totally disabled or he or she the worker is receiving participating in vocational rehabilitation services as outlined in the rehabilitation plan.~~

8.2. As part of a rehabilitation plan, a worker may return to work at an alternate, modified or transitional work assignment on a temporary basis with the preinjury employer. The duration of the temporary work must be determined on a case-by-case basis by the qualified rehabilitation professional and be justified in the rehabilitation plan.

8.2.a. Whenever the worker returns to work under section 8.2 of this rule, the employer, with the assistance of the qualified rehabilitation professional, must furnish to the worker's treating physician a statement describing the work in terms that will enable the physician to relate the essential tasks of the job to the worker's functional abilities. In cases where the worker has no treating physician, the Division's independent medical evaluator may review job descriptions and provide a

functional ability opinion. A copy of this statement must also be served upon the division and the worker. The physician must then advise the qualified rehabilitation professional within 15 days of receipt of information pertaining to the essential tasks of the job, as to whether the worker is physically capable of performing the work described. The worker may consent to undertake the work assignment without the approval of his or her treating physician if a physician selected by the division determines that the worker is physically capable of performing the work described.

8.2.b. Upon undertaking employment under section 8.2 of this rule, the worker's temporary total disability benefits, if any, will be terminated and he or she may become eligible for the receipt of temporary partial rehabilitation benefits, if applicable under section 8.3 of this rule. If the work impedes the worker's recovery to the extent that he or she cannot continue to work or if his or her compensable condition worsens due to the work being performed, the temporary total disability payments, if applicable, may be resumed when objective medical documentation is presented to the division directly relating the inability to work to the compensable injury or results thereof. If the work ends or is no longer otherwise available, the division shall decide whether the worker has sufficiently recovered to permit the worker to return to his or her usual job or to other available work, or if other rehabilitative services are required to return the worker to employment. If the decision is that the worker cannot return to employment, temporary total disability benefits will be reinstated, but only for the period previously authorized in the rehabilitation plan or the period provided for in W. Va. Code §23-4-1c, whichever is applicable.

8.2.c. Once the worker returns to work under the terms of section 8.2 of this rule, the employer may assign the worker only to the work that was approved by the releasing physician, unless the injured worker gives his or her written consent.

8.3. If the ~~injured~~ worker, pursuant to a rehabilitation plan, returns to employment with the same employer or a new employer on either a temporary, ~~trial~~ or permanent basis, in either a full time or part time capacity, and to either gainful employment or to a transitional, light duty, restructured or modified, or alternate work assignment, pursuant to section 8.42 of these rules, and if the ~~injured~~ worker's average weekly wage earnings are less than the average weekly wage earnings earned by the ~~injured~~ worker at the time of the injury, then he or she may be entitled to receive temporary partial rehabilitation benefits. The ~~injured~~ worker's average weekly wage earnings for the purposes of section 8.4 will be the worker's actual gross earnings, as reported to the state tax department and the federal internal revenue service and substantiated by payroll documentation or other information as requested by the division. ~~Participation in a full time or part time educational program undertaken pursuant to a rehabilitation plan entitles the injured worker to temporary total disability benefits if the injured worker is not otherwise employed or receiving state or federal assistance to pursue the program through the job training partnership act or similar program. If the injured worker is receiving income or assistance, then the amount of that income or assistance shall be used in calculating temporary partial rehabilitation benefits that are payable to the injured worker. Temporary partial rehabilitation benefits must be paid on the same schedule as are temporary total disability benefits.~~

8.4. Temporary partial rehabilitation benefits are calculated, as follows:

8.4.1.a. The temporary partial rehabilitation benefit is seventy percent (70%) of the difference between the average weekly wage earned at the time of the injury and the average weekly wage earned at the new employment, to be calculated as provided under W. Va. Code §23-4-6, -6d and -14, for calculating temporary total disability benefits;

8.4.2.b. The temporary partial rehabilitation benefits are not subject to the minimum benefit amounts required by the provisions of W. Va. Code §23-4-6(b); and

8.4.3.c. The temporary partial rehabilitation benefits cannot exceed the temporary total disability benefits to which the ~~injured~~ worker would be entitled pursuant to W. Va. Code §23-4-6, -6d, and -14, during any period of temporary total disability resulting from the injury in the claim.

8.5. The amount of temporary partial rehabilitation benefits payable under this section must be reviewed at least every ~~ninety (90)~~thirty (30) days to determine whether the ~~injured~~ worker's average weekly wage in the new employment has changed and, if such change has occurred, the amount of benefits payable hereunder must be adjusted prospectively.

8.6. Temporary partial rehabilitation benefits are only payable during the implementation of a rehabilitation plan. Upon termination of the plan, as under section 7.3 of ~~these~~ this rules, or upon expiration of the plan, payment of all temporary partial rehabilitation benefits must be stopped ~~regardless~~ regardless of the ~~injured~~ worker's then level of wages.

8.7. Payments of temporary partial rehabilitation benefits for differences of five percent (5%) or less in the preinjury average weekly wage and the new employment average weekly wage ~~below the sum of five (\$5.00) dollars~~ will not be made because the benefit gives no economic incentive to the ~~injured~~ worker and would be administratively too costly.

8.8. The ~~injured~~ worker cannot receive both temporary total disability benefits and temporary partial rehabilitation benefits for the same time period.

8.9. A worker who has attained maximum medical improvement but cannot return to his or her job and who has been recommended for a permanent partial disability award may receive permanent partial disability benefits and temporary partial rehabilitation benefits for the same time period.

8.10. An ~~injured~~ worker who has attained maximum medical improvement but cannot return to his or her ~~old job~~ preinjury employment and who is undergoing evaluation pursuant to section 5 of ~~these~~ this rules is eligible to receive temporary total disability benefits, pursuant to W. Va. Code §23-4-9, as long as the worker remains eligible for rehabilitation consideration pursuant to section 5.2 of this rule.

§85-15-9. Final Closure Report on Rehabilitation Plan.

9.1. The qualified rehabilitation professional ~~assigned~~ authorized and assigned to assist the worker ~~monitor an individual injured worker's rehabilitation plan pursuant to section 7.5 of these rules~~ must file a final closure report with the ~~commissioner~~ division and parties to the claim within 60 days after the rehabilitation plan is terminated, ~~or expires~~, or as requested by the division. The report must include a description of the plan's outcome, including but not limited to the following information:

- 9.1.a. Whether the ~~injured~~ worker successfully completed the plan;
- 9.2.1.b. Whether the ~~injured~~ worker has been placed in suitable, gainful employment as defined by section 3.137 of ~~these~~ this rules;
- 9.3.1.c. Whether the ~~injured~~ worker continues to search for suitable, gainful employment and the nature of that job search; and
- 9.4.1.d. Whether the ~~injured~~ worker is ~~not likely~~ unlikely to return to suitable, gainful employment.

The closure report must be served on all parties of record by the qualified rehabilitation professional.

~~The final report must be served on the parties of record. The parties may file comments on the report within fifteen (15) days after receipt of the report.~~

§85-15-10. Registration of Rehabilitation Providers as Vendors.

10.1. On or before the first day of ~~September 1994~~ March 2000, and by every first day of July thereafter, ~~physical and vocational rehabilitation services providers~~ qualified rehabilitation professionals must register with the ~~commissioner~~ division as vendors, using forms prescribed by the ~~commissioner~~ division. New providers who enter the field during the year may register at the time their services ~~is~~ are first offered. Any provider who does not meet the requirements set forth in section 3 of ~~these~~ this rules cannot be accepted for registration.

10.2. The ~~commissioner~~ division must compile a list of ~~registered~~ qualified rehabilitation ~~services providers~~ professionals and their qualifications and areas of expertise and specialization. The ~~commissioner~~ division or an employer with a program approved under sections 13 or 14 of ~~these~~ this rules must use only registered qualified rehabilitation ~~service providers~~ professionals in making rehabilitation referrals. Rehabilitation services may be provided by employees of the division. ~~Rehabilitation services may also be provided by employees of the West Virginia division of rehabilitation services or employees of the commissioner.~~ In addition, qualified rehabilitation professionals and rehabilitation services providers who are located outside of West Virginia and are in areas in which appropriate services are not frequently used may provide services under ~~these~~ this rules on a case by case basis if otherwise qualified. A qualified rehabilitation professional or rehabilitation services provider who fails to register as outlined in section 10.1 of this rule shall be suspended from the list of registered qualified rehabilitation professionals and rehabilitation services providers, pending receipt and acknowledgment of required forms by the division.

10.3. All rehabilitation services must be provided in accordance with rehabilitation plans implemented pursuant to ~~these~~this rules and must be monitored by a qualified rehabilitation professional employed by or ~~under contract with the commissioner or employed by the West Virginia division of rehabilitation services~~ registered with the division. The ~~commissioner~~division must remove or suspend from the list of vendors any provider of rehabilitation services who knowingly fails to comply with the provisions of ~~these~~this rules or a rehabilitation plan, or who engages in other practices in violation of W. Va. Code §23-4-3c.

§85-15-11. Reimbursement for ~~Physical and~~ Vocational Rehabilitation Services.

~~11.1. The commissioner must reimburse physical rehabilitation providers for physical rehabilitation services in accordance with the fee schedule in effect at the time the service is rendered, adopted by the commissioner pursuant to W. Va. Code §23-4-3. Only those physical rehabilitation services that are medically necessary and within the scope of the applicable rehabilitation plan can be reimbursed pursuant to these rules. The costs of physical rehabilitation services are not included in the ten thousand dollar (\$10,000.00) limit on the cost of vocational rehabilitation, set forth under W. Va. Code §23-4-9 and section 11.2 of these rules. However, the division cannot reimburse providers for physical rehabilitation services which require prior authorization under the provisions of W. Va. Code §23-4-3, or any rule adopted thereunder, unless:~~

~~11.1.1. The physical rehabilitation services provider obtains prior authorization;~~

~~11.1.2. The physical rehabilitation services provider requested prior authorization but did not receive the approval of the commissioner prior to the rendering of the service, provided that the commissioner later determines the service should have been authorized as being medically necessary and related to a compensable injury; or~~

~~11.1.3. The physical rehabilitation service provider did not request prior authorization, but later filed a reasonable explanation for the failure to request authorization prior to the delivery of the service, and the commissioner determines that the request would have been authorized if it had been submitted.~~

11.21. The ~~commissioner~~division reimburses vocational rehabilitation providers for vocational rehabilitation services in accordance with the fee schedule in effect at the time the service is rendered and as adopted by the ~~commissioner~~division pursuant to W. Va. Code §23-4-3, or in accordance with an agreement entered into between the provider and the ~~commissioner~~division. No payment may be made for vocational rehabilitation services unless the service is preauthorized or otherwise approved by the ~~commissioner~~division. Additionally, no ~~injured~~ worker may receive vocational rehabilitation services which cost in excess of ten thousand (\$10,000.00) under any rehabilitation plan, with the following exceptions:

11.2.1.a. Any ~~injured~~ worker who previously ~~was the beneficiary of~~ participated in a rehabilitation plan or plans and who subsequently suffers a new compensable injury is entitled to receive additional vocational rehabilitation services

reimbursable up to an additional ten thousand (\$10,000.00) dollars, if the ~~commissioner~~ division determines that a new rehabilitation plan is appropriate;

11.1.b. The costs associated directly with those vocational services as specified in section 3.8.c., 3.8.j., 3.8.l. and 3.8.m. are to be considered a part of the reimbursements which may not exceed ten thousand dollars (\$10,000) under this section;

11.21.2c. The costs of evaluations, reevaluations, preparation or modification of a rehabilitation plan or plans, physical rehabilitation services required as a direct result of the compensable injury or its residual results, temporary total disability benefits, and temporary partial rehabilitation benefits are not considered a part of the reimbursements which may not exceed the sum of ten thousand dollars (\$10,000.00) ~~dollars~~ under this section; or

11.21.3d. With the consent of the employer and the ~~commissioner~~ division and upon a showing of good cause, the total reimbursement for an individual ~~injured~~ worker's rehabilitation plan may exceed ten thousand dollars (\$10,000.00) ~~dollars~~ pursuant to section 7.34 of ~~these~~ these rules. The excess amount must be agreed upon by the employer and the ~~commissioner~~ division. Should an employer refuse to agree to exceed ten thousand dollars (\$10,000.00) ~~dollars~~, such refusal shall not constitute a failure to cooperate pursuant to subsection 2.2.b.

11.32. In order to obtain reimbursement for services rendered, ~~including the costs of medicines and mechanical appliances or devices, physical and vocational~~ qualified rehabilitation professionals and rehabilitation services providers must submit a verified statement on forms prescribed by the ~~commissioner~~ division. The forms must be filed with the ~~commissioner~~ division within two (2) years after the service is provided ~~or the medicines, mechanical appliances or devices are delivered~~. Failure to timely submit a reimbursement form bars the provider from any right of recovery from the ~~commissioner~~ division or any other party including, among others, the ~~injured~~ worker, the applicable employer, or any of their third party health care insurers.

11.43. No qualified rehabilitation professional or physical or vocational rehabilitation service provider is entitled to receive reimbursement from any source other than the ~~commissioner~~ division or ~~a self-insured~~ an employer with an employer-managed program for any service, ~~including the costs of medicines, mechanical appliances or devices~~, deemed to be medically or vocationally necessary as part of the rehabilitation plan or as a result of the compensable injury. Further, all qualified rehabilitation professionals and physical and vocational rehabilitation service providers are prohibited from making any charge against an ~~injured~~ worker or any other person, firm or corporation for any service rendered as a part of a rehabilitation plan or as a result of a compensable injury. Nothing in this section prevents another agency of any governmental unit from agreeing to reimburse a service provider for services rendered.

11.54. In the event that an ~~injured~~ worker insists upon the delivery of a ~~physical and/or~~ physical and/or vocational rehabilitation service after being advised in writing by the service provider that the service has been determined not to be medically or vocationally necessary, the provider may charge the ~~injured~~ worker for the costs of such service notwithstanding the provisions of section 11.43, but only if the provider first informs the ~~injured~~ worker that he or she will be personally responsible for the costs of the service

and informs the ~~injured~~ worker as to the amount of the charge. If the ~~injured~~ worker has other health care insurance which will pay for the service described in this section, then the provider may bill that insurer for the service and no provision of ~~these~~ this rules prevents the provider from receiving reimbursement under the terms of the insurance policy.

§85-15-12. Cooperative Efforts.

The division engages, where feasible and cost-effective, in cooperative programs with the West Virginia division of rehabilitation services to provide vocational rehabilitation services to ~~injured~~ workers, and with the other divisions of the bureau of employment programs to provide job placement services for ~~injured employees~~ workers. The division develops and cultivates other cooperative programs with other human service agencies and organizations, both public and private, to maximize the availability of ~~physical and~~ vocational rehabilitation services to ~~the industrially injured~~ workers. All services engaged or developed pursuant to this section shall be in adherence to this rule unless otherwise authorized or agreed to by the division.

§85-15-13. Employer-Managed ~~Physical and~~ Vocational Rehabilitation Services.

13.1. ~~Except with regard to section 12 of these rules, a~~ After first obtaining the ~~commissioner's~~ division's approval, an employer may establish its own vocational ~~and physical~~ rehabilitation services program for its ~~injured~~ workers. Once approved, such a program will encompass all of that employer's ~~injured~~ workers that have sustained an on- the-job injury or occupational disease. The employer's program may supply services over and above the minimum requirements of this rule and may pay for services for which payment would not be made under this rule if the program were operated by the division. If services are required in a claim and the employer's program does not provide the recommended or needed services: ~~provided that, in a specific case for which the employer's program does not provide appropriate services,~~ the employer will defer to the division's program and the division will assume full responsibility for the vocational management of the claim. Every ~~such~~ employer that has received approval from the division to establish their own vocational rehabilitation services program must file a renewal petition with the division for extension of its approval by the first day of January of every year thereafter. Previously approved programs may continue to operate until and ~~if~~ unless renewal is denied. If a petition for renewal is not received by the division by the first day of January each year, the previous petition will no longer be considered valid and the division's approval of the employer operated program will expire.

13.2. In order to obtain the ~~commissioner's~~ division's approval to provide its own program, the employer must petition the ~~commissioner~~ division for authorization to provide ~~physical and/or~~ vocational rehabilitation services to its ~~injured~~ workers. The employer must be in good standing with the division's employer accounts unit and the policy number of the employer must be contained in the petition. The dated petition is to be submitted on the employer's company letterhead and must be signed and titled

by the requesting authority for the employer. The petition must contain the following information and the employer may be required to provide further information as requested by the division on a case by case basis:

13.2.a. A complete description of ~~describe in detail~~ the manner in which the employer's program will operate and monitor its effectiveness;

13.2.b. Acknowledgment of the requirements set forth in this rule;

13.2.c. An ~~functions and must~~ affirmatively statement that the employer's proposed program meets all of the requirements of ~~these~~ this rules.

13.2.d. The employer's ~~program~~ must assure that ~~claimant~~ worker specific medical and vocational rehabilitation information is treated and handled in a confidential manner and on a need to know basis only. ~~The employer's program may supply services over and above the minimum requirements of these rules and may pay for services which would not be paid for under these rules if the program were being operated by the division.~~

13.2.e. If it is the employer's intention to contract with a vendor of ~~physical and/or~~ vocational rehabilitation services on a standing basis, then the identity and qualifications of the vendor ~~or vendors~~ must be disclosed in the petition. Any such vendor must be registered or must obtain registration under section 10 of ~~these~~ this rules before the vendor provides any services.

13.3. The petition must acknowledge that the employer will undertake the processing and direct payment of all invoices and charges for ~~physical and/or~~ vocational rehabilitation services. If the petition is approved, the division will not be responsible for receiving, processing or issuing ~~pay orders~~ ~~pay orders~~ for the invoices or charges. The employer's program may utilize any fee schedule promulgated by the division for reimbursement for services to be provided under ~~these~~ this rules. Any ~~provider~~ vendor of such services will be bound by such fee schedule in the same manner ~~in~~ by which the vendor would be bound if the services were being provided under the division's program. Disputes over the application of the fee schedule shall be submitted to the division for resolution.

13.4. The employer must post the "petition for authorization to provide rehabilitation services" and each renewal petition at its worksite for fifteen (15) days in a manner sufficient to provide all of its employees with notice of the petition. The employees may file with the ~~commissioner~~ division comments regarding the petition. If the petition is approved, the employer may undertake the responsibilities and duties of the ~~commissioner~~ division as stated in ~~these~~ this rules, ~~with the exception of section 12.~~ The employer must post notice of the petition's approval at its worksite in a manner sufficient to provide all of its employees with notice of the approval. In addition, the employer must provide to each new employee and must annually provide to every employee thereafter, a description of its program, the services offered, and the procedures to be followed by an ~~injured~~ worker to obtain such services.

13.5. After a petition is approved, the employer need not obtain the prior approval of the ~~commissioner~~ division on any issue pertinent to an ~~injured~~ worker's rehabilitation services. The employer's decisions must be in writing, served upon the division and the worker, and must inform the ~~injured~~ worker of his or her right to file a

petition with the ~~commissioner~~ division objecting to the decision pursuant to the provisions of section 13.6 of ~~these~~ this rules. The written decision must explain the section 13.6 specifications for the objection petition and the time and manner in which the petition must be filed.

13.6. If an ~~injured~~ worker disagrees with a decision rendered by his or her employer pursuant to section 13, he or she may file with the ~~commissioner~~ division a petition setting forth the disputed decision and the basis for the disagreement. The ~~injured~~ worker must file the petition with the ~~commissioner~~ division within fifteen (15) days after receiving the employer's decision and must serve a copy of the petition upon the employer. The employer may file a response with the ~~commissioner~~ division within fifteen (15) days after receiving the petition and must serve a copy of the response upon the ~~injured~~ worker. ~~The injured worker must file any reply he or she wishes to make to the employer's response within ten (10) days after he or she receives the response. A copy of the reply must be served upon the employer.~~ The employer must furnish the division and the ~~injured~~ worker with all available factual information in its possession or the possession of any vendor ~~under its control~~ which relates to the disputed decision. Thereafter, the ~~commissioner~~ division must enter an ~~order~~ order affirming, modifying, or reversing the disputed decision within thirty (30) days of the receipt of all requested information. Any order entered by the ~~commissioner~~ division pursuant to this section 13.6 which finds that vocational rehabilitation services should not be authorized may be objected to by either the ~~injured~~ worker or the employer pursuant to the provisions of W. Va. Code §§23-5-1 and 23-5-1h. An order entered by the division pursuant to this section 13.6 which finds that vocational rehabilitation services should be authorized is interlocutory in nature, and not subject to objection; in the event an objection is filed, vocational rehabilitation services shall commence and continue despite the objection.

13.7. Upon motion by the worker or the employer, or upon its own initiative, the division may, with a showing of just cause, reassign responsibility for management of the worker's rehabilitation process. Such cause might include but is not limited to past or present family or social relationships between the worker and the rehabilitation services provider, common financial interests between the worker and the rehabilitation services provider, or evidence that the rehabilitation process is not in compliance with this rule.

13.8. After the employer's petition is approved, the employer must notify the division in writing that rehabilitation has been initiated on each and every claim that is found to require evaluation by a qualified rehabilitation professional for rehabilitation services. The vendor selected to be the qualified rehabilitation professional in relation to the employer's petition must serve upon the division and the worker all reports pertaining to the worker's evaluation, plan development, plan initiation and monitoring.

~~13.79.~~ After an employer's petition is approved, the employer must provide the division with ~~interim~~ quarterly reports on its rehabilitation activities. These ~~interim~~ quarterly reports are due on the dates specified by the division in the notice of March 1, June 1, September 1 and December 1 following the division's approval of

the employer's petition. An annual report of the employer's rehabilitation activities for the period covered by the division's fiscal year must be filed by the employer with the division not later than sixty (60) days following the end of each state fiscal year. The ~~interim~~ quarterly and annual reports must provide all information requested by the division and must be in the form required by the division. The information must be provided on both an individual ~~injured worker~~ claim basis and an aggregate claim basis. The employer must immediately report to the division any changes it makes with regard to vendors under a standing contract with the employer, ~~which report~~. The employer must identify any new vendor and its qualifications.

13.10. Upon approval of an employer's petition, the division may request review and conduct audits of claims that have been referred for rehabilitation services under the employer's program. The employer must comply in full with all requests for claim and other information as required by the division.

13.11. Failure by the employer to comply with any of the requirements of ~~these~~ this rules is good cause for the division to revoke the employer's authorization to provide ~~physical and/or~~ vocational rehabilitation services to its ~~injured~~ workers. If the authorization is revoked, the ~~commissioner~~ division must provide the employer with a notice of revocation, including notice of the employer's rights to a hearing, as defined by W. Va. Code §29A-5-1 et seq. Any such hearing and all appeals resulting therefrom shall be conducted in accordance with W. Va. Code §29A-5-1 et seq. The employer must post all notices of revocation in the manner described under section 13.4. of ~~these~~ this rules.

§85-15-14. Employer-Preferred Vocational Rehabilitation Services.

14.1. Every employer that has received approval from the division to have a preferred vocational vendor to provide a vocational rehabilitation services program must file a renewal petition by the first day of March, 1999 and the first day of January of every year thereafter. Previously approved programs may continue to operate until and unless renewal is denied. If a petition for renewal is not received by the division by the first day of January each year, the previous petition will no longer be considered valid and the division's approval of the employer preferred vocational rehabilitation program will expire.

14.2. In order to obtain the division's approval to have a preferred vocational vendor, the employer must petition the division for authorization to recognize the vendor of their choice for the provision of vocational rehabilitation services to its workers. The employer must be in good standing with the division's employer accounts unit and the policy number of the employer must be contained in the petition. The dated petition is to be submitted on the employer's company letterhead and must be signed and titled by the requesting authority for the employer. The petition must contain the following information and the employer may be required to provide further information as requested by the division on a case by case basis:

14.2.a. Acknowledgment of the requirements set forth in this rule.

14.2.b. The employer must assure that worker specific medical and

vocational rehabilitation information is treated and handled in a confidential manner and on a need to know basis only.

14.2.c. If it is the employer's intention to contract with a vendor of vocational rehabilitation services on a standing basis, then the identity and qualifications of the vendor must be disclosed in the petition. Any such vendor must be registered or must obtain registration under section 10 of this rule before the vendor may provide any services.

14.3. The employer must post the "petition for authorization of selection of preferred rehabilitation vendor" and each renewal petition at its worksite for fifteen (15) days in a manner sufficient to provide all of its employees with notice of the petition. The employees may file with the division comments regarding the petition. If the petition is approved, the employer must post notice of the petition's approval at its worksite in a manner sufficient to provide all of its employees with notice of the approval. In addition, the employer must advise each new employee and must annually advise every employee thereafter, of their selection a preferred rehabilitation vendor.

14.4. After the employer's petition is approved, the division must identify appropriate rehabilitation candidates and refer the worker for rehabilitation evaluation, plan development, monitoring and closure as appropriate as set for as outlined in section 5 of this rule.

14.5. After the employer's petition is approved, the employer must notify the division in writing if it identifies a worker that may require rehabilitation evaluation. The vendor selected to be a qualified rehabilitation professional in relation to the employer's petition must serve upon the division and parties to the claim any and all reports pertaining to the worker's rehabilitation evaluation, plan development, plan initiation, monitoring and closure as appropriate.

14.6. After an employer's petition is approved, the employer must provide the division with semi-annual reports on rehabilitation activities. These semi-annual reports are due on March 1 and September 1 following the division's approval of the employer's petition. An annual report of the employer's rehabilitation activities for the period covered by the division's fiscal year must be filed by the employer with the division not later than sixty (60) days following the end of each state fiscal year. The semi -annual and annual reports must provide all information requested by the division and must be in the form required by the division. The information must be provided on both an individual claim and an aggregate claim basis. The employer must immediately report to the division any changes it makes with regard to a vendor under a standing contract with the employer. The employer must identify any new vendor and its qualifications.

14.7. Upon approval of an employer's petition, the division may request review and conduct audits of claims that have been referred for rehabilitation services under the employer's preferred vocational vendor. The employer must comply in full with all requests for claim and other information as required by the division.

14.8. Upon motion by the worker or the employer, or upon its own initiative, the division may, with a showing of just cause, reassign responsibility for management of the worker's rehabilitation process. Such cause might include but not be limited to past or present family or social relationships between the worker and the rehabilitation services provider, common financial interests between the worker and the rehabilitation services provider, or evidence that the rehabilitation process is not in compliance with this rule.

14.9. Failure by the employer to comply with any of the requirements of this rule is good cause for the division to revoke the employer's authorization to select a preferred vocational vendor for its workers. If the authorization is revoked, the division must provide the employer with a notice of revocation, including notice of the employer's rights to a hearing, as defined by W. Va. Code §29A-5-1 et seq. Any such hearing and all appeals resulting therefrom shall be conducted in accordance with W. Va. Code §29A-5-1 et seq. The employer must post all notices of revocation in the manner described under section 14.3. of this rule.

§85-15-15. Training.

15.1. Requests for the Division to pay for on-the-job, vocational/technical, or college training as part of rehabilitation must be submitted to the Division and approved prior to the beginning of such training.

15.1.a. The length of a training program for which the Division provides payment or reimbursement must be less than two (2) years duration, except that the duration of an on-the-job training program will be determined by the dictionary of occupational titles svp (specific vocational preparation), not to exceed two years.

15.1.b. Training programs requested at facilities located geographically throughout the state will be considered as requested.

15.1.b.1. Public facilities within the state of West Virginia will be given preferential consideration for vocational/technical and college training.

15.1.b.2. If a private, for-profit training facility is recommended by the qualified rehabilitation professional for vocational/technical or college training as part of the rehabilitation plan, the qualified rehabilitation professional must include information with the training request supporting why such selection is appropriate.

15.1.c. An employer providing on-the-job training must include the following information in the application to the Division for approval of the program:

15.1.c.1. The trainer's professional opinion as to the length of time required for the worker to develop skills and to acquire knowledge to perform the essential job tasks required for a specific occupation;

15.1.c.2. A training curriculum outlining skills and essential job tasks the worker will learn;

15.1.c.3. The training employer's professional opinion regarding the employability of the worker upon completion of the on-the-job training rehabilitation plan, with the training employer or with other employers; and

15.1.c.4. The training employer's professional opinion as to the required tools, equipment and supplies for the worker's participation in the on-the-job training program.

15.1.c.4.A. Equipment normally supplied by an employer is not to be listed and will not be considered part of the on-the-job training rehabilitation plan.

15.1.c.4.B. Circumstances may occur where tools, equipment or supplies are requested; such requests must be accompanied by specific justification of need and will be reviewed and determined on a case by case basis.

15.1.d. A vocational/technical training program must include the course outline along with the vocational/technical training rehabilitation plan; the worker will be expected to follow the course outline to ensure that a timely completion of the rehabilitation plan occurs.

15.1.e. A college training program must include the course curriculum along with the college training rehabilitation plan.

15.1.e.1. The worker must follow the course curriculum closely to ensure timely completion of the rehabilitation plan.

15.1.e.2. The worker must register and complete fifteen (15) credit hours per quarter or semester.

15.1.e.2.A. The Division may authorize the worker to register for and complete twelve (12) credit hours during the first semester/quarter of attendance, if a standardized college entry exam demonstrates basic academic deficits or if the worker's compensable medical condition objectively demonstrates inability to maintain the required number of credit hours.

15.1.e.2.B. The worker must register for and complete six (6) credit hours during summer school sessions.

15.1.e.3. The worker must maintain a minimum of a 2.0 grade point average (on an A=4.0 scale) at all times.

15.2. The Division will receive progress reports from the educational institution or the training employer and the worker regarding progress in the educational program.

15.2.a. The worker is required to provide the Division with reports of progress in training at prescribed intervals; failure to provide materials within thirty (30) days of the date upon which they are due may result in suspension of training benefits.

15.2.a.1. The worker will provide the Division with monthly progress reports, on forms to be provided to the worker by the qualified rehabilitation professional developing the rehabilitation plan, upon the Division's approval of the plan.

15.2.a.2. The worker enrolled in a vocational/technical program or in a college program is responsible for providing all grade reports to the Division within two (2) weeks of receipt of the report from the educational facility.

15.2.a.3. The worker enrolled in an on-the-job-training program is responsible for providing the Division with work schedules for the coming month prior to the beginning of that month; the worker enrolled in a vocational/technical or college program is responsible for providing all schedules of courses for the upcoming quarters/sessions to the Division, within two (2) weeks of schedule approval from the educational facility.

15.2.a.4. If a qualified rehabilitation professional is authorized by the Division to monitor an educational program, the worker will provide copies of the monthly reports to the qualified rehabilitation professional.

15.2.a.5. It is the responsibility of the qualified rehabilitation professional to ensure that the training employer or the educational facility and the worker understand their rights and responsibilities during the term of the on-the-job-training, vocational/technical training, or college training program.

15.3. The worker and the training facility must comply with the Division's requirements regarding financial limits and responsibilities during the training program.

15.3.a. The Division may reimburse the worker for travel at a rate of ten cents per mile, while traveling in relation to the approved training program; this reimbursement will not be authorized if the worker is traveling a lesser distance than when employed by the pre-injury employer.

15.3.b. The Division will not pay advancements for training included in a rehabilitation plan.

15.3.c. In an on-the-job training program, the Division may reimburse the training employer \$100.00 per month to defray administrative costs; the training employer must register with the Division as a vendor and submit invoices on forms prescribed by the Division.

15.3.c.1. During the training period, the training employer is not responsible for payment of any type of insurance premium, retirement benefits, workers' compensation premium, unemployment or other costs associated with the usual employer-employee relationship.

15.3.c.2. The training employer must be in good standing with the division's employer accounts unit.

15.3.c.3. The division does not purchase placement tools for workers.

15.3.d. In a vocational/technical training program, the vocational/technical school must register with the division as a vendor and submit invoices on forms prescribed by the division.

15.3.e. In a college training program, the worker is required to apply for state and federal funding available through the college or university financial aid office for each quarter or semester that the worker is enrolled and participating under the

division's authorization in a college training rehabilitation plan. Any and all application forms and documentation relating to the application and determination of eligibility of state or federal funding are to be served upon the division and made a part of the permanent claim file.

15.3.e.1. Any and all amounts for which the worker is found eligible in the form of state and federal funding shall be applied toward the costs of tuition and fees for the applicable quarter or semester.

15.3.e.2. The college or university must register with the division as a vendor and submit invoices on forms prescribed by the division.

15.4. The aggregate cost of training is not to exceed \$10,000 (indemnity excluded) unless agreed to in writing by the pre-injury employer.

15.4.a. The joint request from the worker and the pre-injury employer to exceed the \$10,000 limit will be considered by the division.

15.4.b. It is the worker's responsibility to contact the pre-injury employer with the request for training in excess of \$10,000.

15.4.c. If the pre-injury employer is no longer operational, the worker him or herself may petition the division for authorization for training in excess of \$10,000.

15.4.d. In cases where an extension of either time or of the \$10,000 limit is requested, the division will take into consideration the worker's cooperation, the worker's functional and mental capacity and whether approval of the extension would incur less overall cost to the division and the employer.

15.5. Upon completion of the training program, job placement services will be authorized for no longer than sixty (60) days. The qualified rehabilitation professional must substantiate the need for the time period that is being requested.

§85-15-146. Preexisting Rehabilitation Plans.

Nothing in ~~these~~this rules prohibits the completion of vocational rehabilitation plans approved prior to the effective date of ~~these~~this rules.

§85-15-157. Periodic Review of the Implementation of ~~These~~This Rules and of Employer Managed Programs and Employer Preferred Vocational Vendors.

The compensation programs performance council will undertake periodic reviews of the implementation and effectiveness of ~~these~~this rules. The compensation programs performance council will monitor division, claimant, and employer compliance with ~~these~~this rules. The division shall submit quarterly reports to the compensation programs performance council in a form and including content which the compensation programs performance council will prescribe in writing to the division, ~~anticipates the receipt of monthly reports from the division regarding the division's compliance with the time requirements of these~~anticipates the receipt of monthly reports from the division regarding the division's compliance with the rules and of the outcomes of claims in which ~~these~~this rules ~~are~~is applied. Based upon these reviews, reports, and any comments received

from the public, the compensation programs performance council will consider taking corrective action regarding the rules. In addition, the compensation programs performance council will closely monitor the implementation of approved employer managed programs and employer preferred vocational vendors and will make any changes that are then found to be necessary to ~~these~~this rules to correct any problems that are encountered.

§85-15-168. Severability.

If any provision of ~~these~~this rules or the application thereof to any entity or circumstance is held invalid, the invalidity will not effect the provisions or the applications of ~~these~~this rules which can be given affect without the invalid provisions or application and to this end the provisions of ~~these~~this rules are declared to be severable.