WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #2

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OFFICE OF WEST VIRGINIA SECRETARY OF STATE

NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE

AGENCY: Workers' Compensation Division Bureau of Employment Programs TITLE NUMBER: 85

RULE TYPE: Legislative* ; CITE AUTHORITY § 21A-3-7(b) & (c); § 23-4-9(e)

AMENDMENT TO AN EXISTING RULE: YES____ NO X

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: 15

TITLE OF RULE BEING PROPOSED: Vocational and Physical Rehabilitation

Per W.Va. Code, § 21A-3-7(c), these rules are not subject to Legislative review

IN LIEU OF A PUBLIC HEARING, A COMMENT PERIOD HAS BEEN ESTABLISHED DURING WHICH ANY INTERESTED PERSON MAY SEND COMMENTS CONCERNING THESE PROPOSED RULES. THIS COMMENT PERIOD WILL END ON October 1, 1993 AT 4:00 pm. ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS.

Executive Office
Workers' Compensation Division
PO Box 3824
Charleston, WV 25338

THE ISSUES TO BE HEARD SHALL BE LIMITED TO THIS PROPOSED RULE.

Andrew N. Richardson
Andrew N. Richardson

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

Bureau of Employment Programs
Workers' Compensation Division
601 Morris Street
Charleston, West Virginia 25301-1446

August 4, 1993

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

Dear Secretary Hechler:

Re: Filing of Proposed Legislative Rule, Title 85, Series 15; "Vocational and Physical Rehabilitation."

Pursuant to West Virginia Code, §5F-2-2(a)(12), please consider this letter to be my written approval of the above noted proposed legislative rule.

With much appreciation for your assistance in this matter, I remain

Very truly yours,

John M. Ranson
Secretary

JMR:JHK

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Vocational and Physical Rehabilitation

Type of Rule: X **Legislative*** ____ **Interpretive** ____ **Procedural**

Agency Workers' Compensation Division, Bureau of Employment Programs

Address Executive Office, Workers' Compensation Division
PO Box 3824
Charleston, WV 25338

*Per W.Va. Code, § 21A-3-7(c), these rules are not subject to Legislative review

1. Effect of Proposed Rule

	ANNUAL		FISCAL YEAR		
	INCREASE	DECREASE	CURRENT	NEXT	THEREAFTER
ESTIMATED TOTAL COST	$ 580,000	$ -	$ 300,000	$ 530,000	$ -
PERSONAL SERVICES	390,000	-	180,000	300,000	-
CURRENT EXPENSE	140,000		70,000	140,000	-
REPAIRS & ALTERNATIONS	-	-	-	-	-
EQUIPMENT	50,000	-	50,000	50,000	-
OTHER	-	-	-	-	-

2. Explanation of above estimates:

It is expected that the size of the rehabilitation staff will need to be doubled in order to implement these rules. Current expense is assigned at $10,000 per person.

3. Objectives of these rules:

To comply with W.Va. Code, § 23-4-9, in order to establish an effective vocational and physical rehabilitation program.

Rule Title: Vocational and Physical Rehabilitation

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

Workers' Compensation is funded solely by special revenue. Hence there will be no impact on the general revenue of the State.

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

There is a cap of $10,000 per claimant for physical rehabilitation. Temporary total and temporary partial rehabilitation benefits are limited to 208 weeks each. There is no limit on medical expenses.

C. Economic Impact on Citizens/Public at Large.

Each permanent total disability award can cost the system from $300,000 to over $500,000. Permanent partial disability adds to that expense. To the extent individual claimants can be returned to work, the number of permanent totals will decrease and the percentages awarded under permanent partial claims will decrease.

Date: August 4, 1993

Signature of Agency Head or Authorized Reprensentative

Andrew N. Richardson

Andrew N. Richardson

Bureau of Employment Programs
Workers' Compensation Division
601 Morris Street
Charleston, West Virginia 25301-1446

SUMMARY OF PROPOSED

LEGISLATIVE RULE

VOCATIONAL AND PHYSICAL REHABILITATION

TITLE 85, SERIES 15

This proposed 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 of claimants pursuant to West Virginia Code, §23-4-9. Other types of health care services provided or proposed to be provided to claimants under other provisions of West Virginia Code, §23-4-3, are not within the scope of this rule.

The purpose of the program to be implemented by the rule is to return previously injured workers to productive work, thus avoiding relegating such workers to less productive employment or to subsistence on an award from the division. The rule establishes as a priority the returning of the worker to his or her previously held job with the preinjury employer. If that is not possible, then other alternatives are listed in priority order.

The rule provides for reimbursement to the providers of physical and vocational rehabilitation services, for the evaluation of the injured worker with regard to the possible benefits of a rehabilitation effort, the developement of an individually crafted rehabilitation plan, and for the payment of temporary partial rehabilitation benefits or temporary total benefits during the course of the rehabilitation effort.

The rule permits employers to establish their own rehabilitation programs so long as they comply with the requirements of the division's program. Additional benefits may be provided beyond those offered by the division's program. The

rule provides for termination of the employer's right to provide its own program.

Registration of providers is required. The rule requires cooperation between the division and the division of rehabilitation services where feasible. Finally, the rule validates previously existing rehabilitation plans and contains a severability clause.

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

SERIES 15
VOCATIONAL AND PHYSICAL REHABILITATION

§85-15-1. General.

1.1. Scope. -- 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 claimants pursuant to West Virginia Code, §23-4-9. Other types of health care services provided or proposed to be provided to claimants under other provisions of West Virginia Code, §23-4-3, are not within the scope of this rule.

1.2. Authority. -- West Virginia Code, §§21A-3-7(b) & (c) and 23-4-9(e).

1.3. Filing Date. --

1.4. Effective Date. --

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 this rule, then such provision is repealed and replaced by the provisions of this legislative rule.

§85-15-2. Purpose of rule; cooperation.

2.1. West Virginia Code, §23-4-9(a), sets forth the legislative findings that are the basis of West Virginia 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 injury. In order to encourage workers to return to employment and to encourage and assist employers in providing suitable employment to injured employees, it shall be a priority of the commissioner to achieve early identification of individuals likely to need rehabilitation services and to assess the rehabilitation needs of these injured employees. 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 to alternative suitable employment, using all possible alternatives of job modification, restructuring, reassignment and training, so that the individual 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 to cooperate in the development of a rehabilitation process designed to promote re-employment for the injured employee."

2.2. In addition, the Congress of the United States enacted the "Americans with Disabilities Act of 1990," Public Law 101-336, 104 Stat. 327, 42 USC 12101 et seq. on July 26, 1990. Two of the stated purposes of that act are "to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities" and "to provide clear, strong, consistent, enforceable standards addressing discrimination against individuals with disabilities...." 42 USC 12101(b). It is the view of the commissioner that this federal act directly impacts upon this rule and the workers' compensation division's physical and vocational rehabilitation programs. The federal act prohibits discrimination in employment against injured workers by their employers and other employers, and by the workers' compensation division in the administration of the Workers' Compensation act and rules. Therefore, the new federal law is consistent with and adds to the obligations imposed upon the division and employers by West Virginia Code, §23-4-9.

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

2.3.1. Injured workers who cooperate with the rehabilitation assessment process and fully participate in authorized rehabilitation plans are entitled to receive the support benefits set forth under West Virginia Code §23-4-9 and this rule. 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 process or to participate in an authorized rehabilitation plan without a showing of good cause is a factor(s) for the commissioner 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. If a rehabilitation plan is suspended or terminated as a result of an injured workers' failure to cooperate or fully participate in an authorized rehabilitation plan, pursuant to section 7.3 of this rule, the commissioner must credit or refund to the employer, whichever is applicable, the amount of money expended in conjunction with the implementation of the rehabilitation plan. The amount of the credit or refund is an overpayment that the commissioner may collect from the injured worker, as prescribed by law.

2.3.2. Employers who cooperate with the rehabilitation assessment process and fully participate in authorized rehabilitation plans benefit from the rehabilitation process by minimizing the costs associated with work-related injuries. The commissioner must consider an employer's 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 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 may consider an employer's failure to cooperate with the development or implementation of a rehabilitation plan under this rule in determining the amount of any permanent partial disability or permanent total disability award.

2.3.3. Injured workers and employers may provide the division with an explanation of actions or inaction which should be considered by the commissioner in making the aforesaid determinations under subsections 2.3.1 and 2.3.2.

2.3.4. Notwithstanding any other provision of this rule, section 2.3 of the rule does not prohibit an employer from assisting an employee in returning to suitable, gainful employment.

§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 West Virginia Code, §21A-2-1, and West Virginia Code, §23-1-1, and any deputies designated pursuant to West Virginia Code, §§21A-2-12 & -13. For the purposes of this rule the Executive Secretary, the Director of the Office of Medical Case 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 West Virginia Code, §21A-1-4, and West Virginia Code, §23-1-1 et seq.

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

3.4. "Injured worker" means an employee entitled to workers' compensation benefits as the result of a work-related injury, as provided under West Virginia Code, §23-1-4.

3.5. "Injured worker's employer" means an employer charged pursuant to West Virginia 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.

3.9. "Qualified rehabilitation professional" means a person who 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.

Nothing in this subsection precludes an employer from developing a managed care program or a vocational rehabilitation program, defined by section 13 of this rule, to promote the worker's return to productive employment.

3.10. "Vocational rehabilitation services" means professional services reasonably necessary 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.

3.11. "Vocational rehabilitation services providers" means 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 placement services. To qualify as a vocational rehabilitation service provider under this rule, 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 will establish guidelines on the education, training and experience necessary to qualify as a vocational rehabilitation service provider under this rule. 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 provider under this rule. The term does not include licensed physicians, licensed psychologists or hospitals where the services being provided to an injured employee fall under the provisions of West Virginia 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 developed in accordance with this rule by a qualified rehabilitation professional and approved by the commissioner.

3.13. "Suitable gainful employment" means employment which restores the injured worker as closely as possible to his or her level of earnings at the time of injury, giving due consideration 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 such vocational rehabilitation services are necessary to increase the likelihood of reemployment.

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

§85-15-4. Priorities.

4.1. Qualified rehabilitation professionals must utilize the following priorities. No higher numbered priority may be utilized unless the commissioner 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:

4.1.1. Return of the injured worker to the preinjury job with the same employer;

4.1.2. 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. Return of the injured worker to employment with the same employer in a different position;

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

4.1.5. Employment of the injured worker by a new employer and without training;

4.1.6. On-the-job training of the injured worker for employment with a new employer; or

4.1.7. 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.

§85-15-5. Identification of rehabilitation candidates; the rehabilitation evaluation process.

5.1. The commissioner 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 days of temporary total disability benefits, that the injured worker will be able to return to his or her former job after reaching maximum medical improvement, that the injured worker has no permanent disability, or that the injured worker is receiving retirement benefits. The commissioner must issue a notice to the parties informing them of the finding that rehabilitation services are not needed. Within thirty (30) days after receipt of the notice, the injured worker and/or the injured worker's employer may submit evidence to the commissioner to rebut the finding. Within sixty (60) days after the date of the notice, the commissioner must affirm or reverse

his or her initial finding based upon the existing record, including any rebuttal evidence. If the initial finding is affirmed, the commissioner must issue the decision in a protestable order, pursuant to West Virginia Code, §§ 23-5-1 and 1h. If the initial finding is reversed, the commissioner must order a rehabilitation evaluation of the injured worker to determine whether physical and/or vocational rehabilitation services and development of a rehabilitation plan are appropriate for the worker, as set forth in section 5.2 of this rule.

5.2. The commissioner must order a rehabilitation evaluation of the injured worker by a qualified rehabilitation professional, as defined by this rule, 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. A worker has sustained an injury likely to result in temporary disability in excess of one hundred and twenty (120) days;

b. A worker has not returned to work after incurring an injury reasonably suspected to result in a permanent disability;

c. A worker has not returned to work and has been found to have sustained a permanent disability; or

d. A worker was evaluated one hundred (100) days earlier and was not then found to be a candidate for physical or vocational rehabilitation services, but was noted as possibly needing the services in the future.

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.

5.2.3. For the purposes of this rule, a five percent (5%) permanent partial disability award for occupational

pneumoconiosis is not considered an indication of a permanent disability.

5.3. 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 workers' compensation claim pending before the commissioner for a permanent total disability evaluation if a medical or vocational report indicates that the injured worker possibly can benefit from rehabilitation services. The permanent total disability proceeding is stayed pending the outcome of the vocational evaluation performed pursuant to section 5.4 of this rule.

5.3.1. If the commissioner determines pursuant to section 5.5 of this rule that physical and/or vocational rehabilitation services cannot assist the injured worker in returning to suitable, gainful employment, as defined by section 3.13 of this rule, then he or she will lift the stay and enter an order on the permanent total disability request. In rendering a decision on such an injured worker's entitlement to a permanent total disability award, the commissioner must presume that any medical or vocational expert's recommendation for physical and/or vocational rehabilitation, set forth in a report submitted in conjunction with the remand proceeding, is not reliable.

5.3.2. If the commissioner determines pursuant to section 5.5 of this rule that physical and/or vocational rehabilitation services can assist an injured worker in returning to suitable, gainful employment, as defined by section 3.13 of this rule, then he or she will lift the stay and enter an order on the permanent total disability request. In his or her decision, the commissioner must deny a permanent total disability award and refer the injured worker to physical and/or vocational rehabilitation, as recommended by the qualified rehabilitation professional under the authorized rehabilitation plan; Provided that, the decision shall direct that, if the rehabilitation effort fails, then the permanent total disability request shall be reinstated and acted upon. Such a reinstated request will be found to be timely filed if it was timely when first filed.

5.4. The rehabilitation assessment process is comprised of a series of steps, as set forth in the following subsections.

5.4.1. Upon determining that the injured worker may be eligible for physical and/or vocational rehabilitation services, the commissioner must refer the injured worker to a qualified rehabilitation professional for a rehabilitation assessment. The qualified rehabilitation professional must review the injured workers' file and gather additional information, as necessary to assess the injured worker's

potential for returning to the workforce. 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 renumerative 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. The commissioner must enter a protestable order setting forth as a decision the qualified rehabilitation professional's opinion within fifteen (15) days after receipt of the opinion. The order must inform the parties of their appellate rights, defined by W.V. Code, §§23-5-1 and 1h. The order terminates the injured worker's rehabilitation evaluation. 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 either issue cannot be made, then the qualified rehabilitation professional must proceed with a rehabilitation evaluation in accordance with subsection 5.4.2 of this rule, which action is interlocutory in nature and not subject to objection.

5.4.2. The qualified rehabilitation professional must comply with this subsection whenever an in-depth evaluation is necessary to accurately assess an injured worker's status. The evaluation must be 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. In conducting a subsection 5.4.2 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 vocational testing if the qualified rehabilitation professional opines that the testing is warranted in order to provide a full assessment and if the additional testing is preauthorized by the commissioner. The injured worker's employer and treating physician must provide information 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 based upon the evaluation.

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

b. 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 within fifteen (15) days after completing the evaluation.

c. 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 within fifteen (15) days after completing the evaluation.

5.5. The commissioner must decide whether the injured worker is likely to benefit from vocational rehabilitation services based upon a consideration of the qualified rehabilitation professional's report, including but not limited to information about the nature and degree of the injured worker's physical disability and the injured worker's employment history, existing skills, work life expectancy, interests, aptitude, education, and likelihood of reemployment in the labor market.

5.5.1. If the commissioner concludes that rehabilitation services are not warranted either because the injured worker has returned to work 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 with

the assistance of physical and/or rehabilitation services, then the commissioner will state this finding in a protestable order, entered pursuant to section 5.6 of this rule, and a rehabilitation plan will not be developed for the injured worker; however, the commissioner may direct at some future time that the injured worker be further evaluated if, in the opinion of the commissioner, it later appears that the injured worker maybe in need of either physical and/or vocational rehabilitation services.

5.5.2. If the commissioner concludes that a rehabilitation plan is appropriate, then the qualified rehabilitation professional who performed the subsection 5.4.2 evaluation must prepare a written report and serve it upon the commissioner and the parties within forty-five (45) days after the date on which the injured worker's evaluation is completed. The written report 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 the commissioner, the evaluation and/or plan must be reviewed and, if appropriate, revised by a qualified rehabilitation professional who is employed by the commissioner. Copies of any revised plans must be served upon the parties. 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 this rule.

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.

5.5.4. In the event that the injured worker declines to receive rehabilitation services 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 2.3 of this rule.

5.6. The commissioner must issue any protestable decision rendered pursuant to sections 5.5 of this rule in writing and must serve the decision upon the parties, with notice of the appellate rights defined by West Virginia Code, §23-5-1 and -1h. If the commissioner decides that the development of a rehabilitation plan is appropriate, 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. 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 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: 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 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 injured worker in suitable gainful employment when the plan is completed.

6.2. A rehabilitation plan must require that all physical and/or vocational rehabilitation services be provided by providers registered under the provisions of section 10 of this rule. Except with the prior consent of the commissioner, no other providers may deliver physical and/or vocational rehabilitation services to an injured worker under an approved rehabilitation plan. The commissioner'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 worker. Providers who are located in the injured worker's geographic area and within the state of West Virginia must be utilized, if possible. In state providers

and out of state providers are both compensated pursuant to section 11 of this rule.

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 eliminating 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 this rule is subject to the seniority provisions of a valid and applicable collective bargaining agreement, 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.

§85-13-7. Implementation of the rehabilitation plan.

7.1. The commissioner must implement a rehabilitation plan after the injured worker's acceptance notice is received pursuant to subsection 5.5.3 of this rule. While an employer or the injured worker is permitted to object to the plan pursuant to section 5.6 of this rule, 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 may not exceed two hundred and eight (208) weeks, unless the commissioner agrees to an extension pursuant to the provisions of section 7.3 of this rule.

7.3. Upon request of any party or upon a determination by the commissioner, the commissioner 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 changed physical condition which does not allow the injured worker to continue pursuing the rehabilitation plan;

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

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

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

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

7.3.6. A joint petition submitted by the employer and the injured worker seeking modification or termination of the plan. Any joint petition may include a request to modify the provisions of a rehabilitation plan, including an extension beyond the maximum duration as set out in section 7.2 of this rule or a request to extend benefits beyond the maximum amount otherwise stated in section 11 of this rule. Supporting reports must be filed with the petition. In ruling upon any petition to extend the rehabilitation plan beyond the maximum period set out in section 7.2 of this rule or to exceed the maximum cost stated in section 11 of this rule, the commissioner 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 this rule. The commissioner must assign 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 physician, 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 less than at thirty day intervals with each of the foregoing individuals or parties. 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 rehabilitation professional must notify the commissioner and the plan must be modified as is just and necessary under the circumstances.

7.5. The employment relationship between the injured worker and the injured worker's employer terminates after the employer is charged for the costs associated with a rehabilitation plan implemented pursuant to this rule, if the plan does not provide that the injured worker will return to employment with that preinjury employer or if the injured worker in fact does not not return to employment with that preinjury employer. However, the injured worker's employer continues to bear the responsibility

for the injured worker's disability and medical benefits, as provided under the Workers' Compensation Act, Chapter 23 of the West Virginia Code of 1931, as amended.

§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 this rule. 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 this rule. If the work comes to an end before the injured worker's recovery is sufficient in the judgment of the commissioner to permit a return to his or her usual job or to other available work, the injured worker's temporary total disability benefits, if applicable, may be resumed but only for the period allowed by the rehabilitation plan or the period provided for in West Virginia Code, §23-4-1c, whichever is longer.

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 described to the physician, unless the injured worker gives his or her written consent, or his or her physician conducts a prior review and gives approval.

8.2. In every case in which the commissioner orders physical and/or vocational rehabilitation pursuant to a rehabilitation plan, the injured worker may be compensated on a temporary total disability basis for any period in which the rehabilitation services render him or her totally disabled, pursuant to West Virginia Code, §23-4-1c.

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 a transitional, light duty, restructured or modified work assignment, pursuant to section 8.1 of this rule, 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 earnings. A full-time or part-time educational program undertaken pursuant to a rehabilitation plan is considered a modified work assignment for the purposes of this rule and participating in the program entitles the injured worker to temporary partial rehabilitation benefits if the injured worker is not otherwise employed. The injured worker's average weekly wage earnings is zero for the purpose of calculating temporary partial rehabilitation benefits. 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. 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 West Virginia Code, §§23-4-6, -6d and -14, for calculating temporary total disability benefits;

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

8.4.3. The temporary partial rehabilitation benefits cannot exceed the temporary total disability benefits to which the injured worker would be entitled pursuant to West

Virginia 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) 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 this rule or upon expiration of the plan, payment of all temporary partial rehabilitation benefits must be stopped irregardless of the injured worker's then level of wages.

8.7. Payments of temporary partial rehabilitation benefits 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. An injured worker who has attained maximum medical improvement but cannot return to his or her old job and who is undergoing evaluation pursuant to section 5 of this rule is eligible to receive temporary total disability benefits pursuant to West Virginia Code, §23-4-9.

85-15-9. Final report on rehabilitation plan.

The qualified rehabilitation professional assigned to monitor an individual injured worker's rehabilitation plan pursuant to section 7.5 of this rule must file a final report with the commissioner within 60 days after the rehabilitation plan is terminated or expires. The report must include a description of the plan's outcome, including but not limited to the following information:

9.1. Whether the injured worker successfully completed the plan;

9.2. Whether the injured worker has been placed in suitable gainful employment as defined by section 3.13 of this rule;

9.3. Whether the injured worker continues to search for suitable, gainful employment and the nature of that job search; and

9.4. Whether the injured worker is not likely to return to suitable, gainful employment.

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 providers.

On or before the first day of January 1994, and yearly thereafter, physical and vocational rehabilitation services providers must register with the commissioner using forms prescribed by the commissioner. New providers who enter the field during the year may register at the time their service is first offered. Any provider who does not meet the requirements set forth in section 3 of this rule cannot be accepted for registration. The commissioner must compile a list of rehabilitation services providers and their qualifications and areas of expertise and specialization. The commissioner must use the list of rehabilitation service providers in making rehabilitation referrals. Rehabilitation services may also be provided by employees of the West Virginia Division of Rehabilitation Services or employees of the commissioner. All rehabilitation services must be provided in accordance with rehabilitation plans implemented pursuant to this rule and must be monitored by qualified rehabilitation professional employed by or under contract with the commissioner or employed by the West Virginia Division of Rehabilitation Services. The commissioner must remove or suspend from the list of vendors any provider of rehabilitation services who knowingly fails to comply with the provisions of this rule or a rehabilitation plan, or engages in other practices in violation of West Virginia 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 West Virginia 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 this rule. 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 West Virginia Code, §23-4-9 and section 11.2 of this rule. However, the division cannot reimburse providers for physical rehabilitation services which require prior authorization under the provisions of West Virginia 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.

11.2. The commissioner 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 pursuant to West Virginia Code, §23-4-3, or in accordance with an agreement entered into between the provider and the commissioner. No payment may be made for vocational rehabilitation services unless the service is preauthorized by the commissioner. 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. Any injured worker who previously was the beneficiary of a rehabilitation plan and who subsequently suffers a new injury is entitled to receive additional vocational rehabilitation services reimbursable up to an additional ten thousand ($10,000.00) dollars, if the commissioner determines that a new rehabilitation plan is appropriate;

11.2.2. The costs of evaluations, reevaluations, preparation or modification of a rehabilitation plan or plans, 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 ($10,000.00) dollars under this section; or

11.2.3. With the consent of the employer and the commissioner and upon a showing of good cause, the total reimbursement for an individual injured worker's rehabilitation plan may exceed ten thousand ($10,000.00) dollars pursuant to section 7.3 of this rule. The excess amount must be agreed upon by the employer and the commissioner.

11.3. In order to obtain reimbursement for services rendered, including the costs of medicines and mechanical appliances or devices, physical and vocational rehabilitation services providers must submit a verified statement on forms prescribed by the commissioner. The forms must be filed with the commissioner 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 or any other party including, among others, the injured worker, the applicable employer, or any of their third party health care insurers.

11.4. No physical or vocational rehabilitation service provider is entitled to receive reimbursement from any source other than the commissioner or a self insured employer 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 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.

11.5. In the event that an injured worker insists upon the delivery of a 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 11.4, 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 this rule 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. 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.

85-15-13. Employer-managed physical and vocational rehabilitation services.

13.1. Except with regard to section 12 of this rule, an employer may provide its own vocational and physical rehabilitation services to its injured workers.

13.2. In order to avail itself of the provisions of section 13.1, the employer must petition the commissioner for authorization to provide physical and/or vocational rehabilitation services to its injured workers. The petition must describe in detail the manner in which the employer's program functions and must affirmatively state that the employer's program meets all of the requirements of this rule. The employer's program may supply services over and above the minimum requirements of this rule and may pay for services which would not be paid for under this rule if the program were being operated by the division. 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.

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 payorders for the invoices or charges.

13.4. The employer must post the "petition for authorization to provide rehabilitation services" at its worksite in a manner sufficient to provide all of its employees with notice of the petition. The employees may file with the commissioner comments regarding the petition.

13.5. If the petition is approved, the employer may undertake the responsibilities and duties of the commissioner as stated in this rule, with the exception of section 12. The employer must post notice of the petition approval at its worksite in a manner sufficient to provide all of its employees with notice of the approval. The employer need not obtain the approval of the commissioner on any pertinent issue, after the petition is approved, but may make its own decisions. The employer's decisions must be in writing and must inform the injured worker of his or her right to file a petition with the commissioner objecting to the decision pursuant to the provisions of section 13.6 of this rule. 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 a petition setting forth the disputed decision and the basis for the disagreement. The injured worker must file the petition with the commissioner 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 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 must enter a protestable 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 pursuant to this section 13.6 may be objected to by either the injured worker or the employer pursuant to the provisions of West Virginia Code, §§23-5-1 and 1h.

13.7. After an employer's petition is approved, the employer must provide the division with interim reports on its rehabilitation activities. These interim reports are due on the dates specified by the division in the notice of approval. 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 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 basis and an aggregate 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 must identify any new vendor and its qualifications.

13.8. 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 provide physical and/or vocational rehabilitation services to its injured workers. If the authorization is revoked, the commissioner must provide the employer with a notice of revocation, including notice of the employer's rights to a hearing, as defined by West Virginia Code, §29A-5-1 et seq. The employer must post all notices of

revocation in the manner described under section 13.4 of this rule.

§85-15-14. Preexisting rehabilitation plans.

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

§85-15-15. Severability

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

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

SERIES 15
VOCATIONAL AND PHYSICAL REHABILITATION

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