

**WEST VIRGINIA
SECRETARY OF STATE
BETTY IRELAND
ADMINISTRATIVE LAW DIVISION**

Form #1

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FILED

2005 JUN 10 P 4: 07

OFFICE WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF A PUBLIC HEARING ON A PROPOSED RULE

AGENCY: Workers' Compensation Commission **TITLE NUMBER:** 85

RULE TYPE: Exempt Legislative **CITE AUTHORITY:** W. Va. Code §§23-4-1 et seq. and 23-1-1a(j)(3)

AMENDMENT TO AN EXISTING RULE: YES X NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 27

TITLE OF RULE BEING AMENDED: Qualified Rehabilitation Provider

IF NO, SERIES NUMBER OF RULE BEING PROPOSED:

TITLE OF RULE BEING PROPOSED:

DATE OF PUBLIC HEARING: July 12, 2005

TIME: 1:00 p.m.

LOCATION OF PUBLIC HEARING: Workers' Compensation Commission

4101 MacCorkle Avenue, S.E.

Charleston, WV 25304

COMMENTS LIMITED TO: ORAL , WRITTEN , BOTH X

COMMENTS MAY ALSO BE MAILED TO THE FOLLOWING ADDRESS: T.J. Obrokta, General Counsel

Executive Offices

Workers' Compensation Commission

4700 MacCorkle Avenue, S.E.

Charleston, WV 25304

Fax # (304) 926-5372

The Department requests that persons wishing to make

comments at the hearing make an effort to submit written

comments in order to facilitate the review of these comments.

The issues to be heard shall be limited to the proposed rule.

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

R. P. D. P. Shen

Authorized Signature

\$4.60



Office of General Counsel
4700 MacCorkle Avenue, S. E.
Charleston, West Virginia 25304
Phone Number (304) 926-3423
Fax Number (304) 926-5441

June 10, 2005

The Honorable Betty Ireland
Secretary of State
State Capitol Complex
Building 1, Room W-157
Charleston, West Virginia 25305

Re: Proposed Rule
Title 85, Series 27
"Qualified Rehabilitation Provider"

Dear Secretary Ireland:

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

Pursuant to Senate Bill 2013, Second Extraordinary Session, 2003, the Workers' Compensation Commission is established as a government entity separate from the Bureau of Employment Programs. The Board of Managers of the Workers' Compensation Commission has approved the enclosed 85 C.S.R. 27 for filing as a proposed rule of the Workers' Compensation Commission.

Thank you very much for your assistance in this matter.

Very truly yours,

Gregory A. Burton
Executive Director

Enclosure

FISCAL NOTE FOR PROPOSED LEGISLATIVE RULES

Rule Title: Title 85 Series 27: Qualified Rehabilitation Provider

Type of Rule: X Legislative Exempt Interpretive Procedural

Agency: Workers' Compensation Commission

Address: 4700 MacCorkle Avenue, S.E.
Charleston, WV 25301

1. Effect of Proposed Rule

	Annual		Fiscal Year		
	INCREASE	DECREASE	CURRENT	NEXT	THEREAFTER
ESTIMATED TOTAL COST	0	0	0	0	N/A
PERSONAL SERVICES	0	0	0	0	N/A
CURRENT EXPENSE	0	0	0	0	N/A
REPAIRS & ALTERNATIONS	0	0	0	0	N/A
EQUIPMENT	0	0	0	0	N/A
OTHER	0	0	0	0	N/A

2. Explanation of above estimates:

Proposed changes since the last filing for this rule address the responsibilities for the Workers' Compensation Commission (commission), the Insurance Commissioner, self-insured employers and other private carriers, whichever is applicable, to verify that only qualified rehabilitation service professionals and designated provisional qualified rehabilitation professionals are used in making rehabilitation referrals. The above estimates are based on the assumption that the rule changes become effective in the current fiscal year (FY'05). There should be no significant change in the estimated costs associated with the commission verifying and maintaining an approved list of qualified rehabilitation professionals and designated provisional qualified rehabilitation professionals providing rehabilitation services thru 12/31/05. Subject to the governor issuing the proclamation set forth in chapter twenty-three, article 2C of the Code of West Virginia that terminates the Workers' Compensation Commission, maintaining proof of certification of certified rehabilitation professionals will be the responsibility of the Insurance Commissioner, self-insured employer or private carrier, depending on whoever is providing the services under this rule. When determined necessary, the review of any certification records or the renewal forms and the documentation of continuing education requirements of any other qualified rehabilitation professionals as well as granting reinstatement of provisional qualified rehabilitation professionals providing services under this rule will become the responsibility of the Insurance Commissioner, beginning on 1/1/06.

Rule Title: Title 85 Series 27: Qualified Rehabilitation Provider

3. Objectives of this rule:

The purpose of the proposed rule is to further define the specific requirements necessary, both initial and ongoing; in order to be qualified to provide vocational rehabilitation services for the Workers' Compensation Commission.

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

It is expected that there will be no direct economic impact from the rule changes.

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

It is expected that there will be no impact from the rule changes.

C. Economic Impact on Citizens/Public at Large.

The rule changes will not have a direct economic impact on the citizens of West Virginia.

Date: _____

6/10/05

Signature of Agency Head or Authorized Representative

R. Philip Shen

Gregory A. Burton

Executive Director, Workers' Compensation Commission

**SUMMARY OF PROPOSED RULE
STATEMENT OF CIRCUMSTANCES
TITLE 85, SERIES 27
QUALIFIED REHABILITATION PROVIDER**

Pursuant to Senate Bill 1004, First Special Session, 2005, the Workers' Compensation Commission may terminate. Thereafter, Workers' Compensation insurance in West Virginia will be provided through the successor to the Commission and other private insurance carriers.

This rule is amended to address the termination of the Commission and to transition certain activities to Office of the Insurance Commissioner for the purpose of registering certain qualified rehabilitation providers. In addition, the rule provides that rehabilitation providers with certain nationally recognized certifications will not have to be registered with the Insurance Commissioner, but that their certification must be provided to whomever services are provided. The recipient of services must maintain the proof of certification.

FILED

TITLE 85
LEGISLATIVE RULE
WORKERS' COMPENSATION ~~DIVISION COMMISSION~~

2005 JUN 10 P 4: 07

SERIES 27
QUALIFIED REHABILITATION PROVIDER ~~OFFICE WEST VIRGINIA SECRETARY OF STATE~~

§85-27-1. General.

1.1. Scope. -- This rule establishes the minimum credentials to be met for an individual to be recognized as qualified to provide vocational rehabilitation services for the Workers' Compensation Division Commission, the Insurance Commissioner, private carriers and self-insured employers, whichever is applicable, and to be reimbursed by the Division for such services.

1.2. Authority. -- W. Va. Code §§21A-2-6(1); 6(2) & 6(14); 21A-2-19; 21A-3-7(b) & 7(e); 23-1-1; and 23-1-15. Pursuant to W. Va. Code §21A-3-7(e), rules adopted by the compensation programs performance council and the commissioner are not subject to legislative approval as would otherwise be required under W. Va. Code §29A-3-1 et seq. Public notice requirements of that chapter and article, however, must be followed. 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 by the Governor, the Commissioner of the Bureau of Employment Programs is empowered to promulgate rules and regulations without consent or approval of a departmental secretary. W. Va. Code §§23-1-1 and 23-1-1a(j)(3). Pursuant to W. Va. Code §23-1-1a(j)(3), rules adopted by the board of managers and the commission are not subject to legislative approval as would otherwise be required under W. Va. Code, §29A-3-1 et seq. Public notice requirements of that chapter and article, however, must be followed.

1.3. Filing Date. -- January 16, 2003.

1.4. Effective Date. -- February 17, 2003.

§85-27-2. Purpose of Rule.

2.1. The purpose of this rule is to implement the provisions of W. Va. Code, §§23-4-3, 23-4-3b, and 23-4-9 which relate to the development of standards for vocational rehabilitation services. W. Va. Code §23-4-9(a) provides that "it is a goal of the workers' compensation program to assist workers to return to suitable gainful employment after an injury . . . 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 reemployment for the injured employee." This rule is intended to ensure vocational rehabilitation services provided to injured workers are provided in a professional manner by individuals qualified by education and experience to provide such services so the highest quality of rehabilitation services may be afforded to injured workers. This rule is applicable to any provider of vocational rehabilitation services that extends such services to injured workers and is reimbursed for such services by the Workers' Compensation Division under the West Virginia system of workers' compensation insurance.

2.2. Upon termination of the Commission, no registration is required of qualified rehabilitation professionals who are certified case managers, certified rehabilitation counselors, certified disability management specialists, or certified rehabilitation registered nurses. These limited types of qualified rehabilitation professionals are required to verify and provide proof of their certification to the Insurance Commissioner, self-insured employer or private carrier, whomever services are provided under this rule.

In turn the Insurance Commissioner, self-insured employer or private carrier, is required to maintain this proof of certification of the qualified rehabilitation professional.

a. The Commission, Insurance Commissioner, self-insured employer or private carrier, whichever is applicable, must use only qualified rehabilitation service professionals in making rehabilitation referrals.

§85-27-3. 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.~~
"Commission" means the West Virginia Workers' Compensation Commission as provided for by W. Va. Code §23-1-1.

3.2. ~~"Division" means the Workers' Compensation Division of the Bureau of Employment Programs.~~
"Insurance Commissioner" means the insurance commissioner of West Virginia as provided in section one, article two, chapter thirty-three of the West Virginia Code.

3.3. "Code of Professional Ethics" refers to the posted code of ethics set forth by the Division for Qualified Rehabilitation Professionals in West Virginia .

3.4. "Vocational rehabilitation services" means professional counseling, consulting or rehabilitation case management services reasonably necessary to enable an injured worker to return to suitable gainful employment as soon as practical. This may include, but is not limited to, coordination of medical services, vocational assessment, vocational evaluation, vocational counseling, vocational rehabilitation plan development, vocational rehabilitation plan monitoring, job development, and job placement. Furthermore, "vocational rehabilitation services" means services covered by W. Va. Code § 23-4-9, which provide new skills or modified or alternative work to enable an injured worker to return to suitable gainful employment as soon as practical. Services may include, but are limited to, adult basic education, vocational-technical training, college training, on-the-job training, travel expenses related to training, job modifications and placement tools.

3.5. "Qualified Rehabilitation Professional" means a person who has the education, experience and skills necessary to provide vocational rehabilitation services as defined in 85 C.S.R. 15 and pursuant to the rehabilitation priorities set forth in 85 C.S.R. 15, to make recommendations consistent with medical documentation, concerning an injured worker's ability to accept and perform suitable gainful employment, and to design, implement and supervise programs to enhance an injured worker's capacity to accept and perform suitable gainful employment. 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. A qualified rehabilitation professional is required to consider all appropriate rehabilitation priorities in each case.

3.6. "Provisional qualified rehabilitation professional" means a person who meets the educational or certification requirements for qualified rehabilitation professional but lacks the required experience. A provisional qualified rehabilitation professional may provide services only under the direct supervision of a qualified rehabilitation professional.

3.7. "Supervised experience" means work in the field of vocational rehabilitation services in which the individual receives at least one (1) hour of formal instruction, case review, and case direction with a supervising professional for every twenty (20) hours worked. ~~The Division~~ Commission or Insurance

commissioner, whichever is applicable, may request documentation of such supervision. The supervised experience required by this rule must conform to the criteria for acceptable employment experience set forth in this rule.

3.8. "Certified rehabilitation counselor" means that earned designation as awarded by the Commissioner on Rehabilitation Counselor Certification.

3.9. "Certified disability management specialist" means that earned designation as awarded by the Certification of Disability Management Specialists Commission.

3.10. "Certified case manager" means that earned designation as awarded by the Commission for Case Manager Certification.

3.11. "Certified rehabilitation registered nurse" means that earned designation as awarded by the Association of Rehabilitation Nurses.

3.12. "Licensed professional counselor" means that earned designation as awarded by the West Virginia Board of Examiners in Counseling

3.13. "Certified vocational evaluation specialist" means that earned designation as awarded by the Commission on Certification of Work Adjustment and Vocational Evaluations Specialists.

3.14. "Catastrophic injury" means an injury with one of the following diagnoses: quadriplegia, paraplegia, hemiplegia, traumatic brain injury (excluding mild brain injury or mild traumatic brain injury), major extremity amputation, or burns requiring admission to a specialized burn center.

3.15. "Private Carrier" means any insurer, including the successor to the Commission, authorized by the insurance commissioner to provide workers' compensation insurance pursuant to chapters twenty-three and thirty-three of the West Virginia Code, but shall not include self-insured employers.

3.16. "Self-insurer" and "self-insured employer" mean employers who are eligible and have been granted self-insured status under the provisions of W. Va. Code §23-2-9.

3.17. "Board" means the workers' compensation board of managers created pursuant to the provisions of W. Va. Code §23-1-1a.

§85-27-4. Minimum Education and Experience Requirements.

The following are considered the minimum education and experience requirements to provide vocational rehabilitation services under the West Virginia workers' compensation insurance system:

4.1. A doctorate or masters degree from an accredited college or university in rehabilitation counseling, counseling, psychology, occupational therapy, social work, nursing, or in a field that promotes the physical, psychosocial or vocational well-being of persons being served as well as at least twelve (12) months of full-time or equivalent part-time employment providing vocational rehabilitation services, as defined in this rule, to individuals receiving benefits or services from a disability compensation system or a public rehabilitation system of which six (6) months must have been under the supervision of a qualified rehabilitation professional; or

4.2. Current ~~certified rehabilitation counselor~~, licensed professional counselor, ~~certified disability management specialist~~, ~~certified rehabilitation registered nurse~~, or certified vocational evaluation specialist, ~~or certified case manager~~ certification as well as at least twelve (12) months of full-time or

equivalent part-time employment providing vocational rehabilitation services, as defined in this rule, to individuals receiving benefits or services from a disability compensation system or a public rehabilitation system, of which six (6) months must have been under the supervision of a qualified rehabilitation professional; or

4.3. A baccalaureate degree from an accredited college or university in rehabilitation counseling, counseling, psychology, occupational therapy, social work, nursing, or in a field that promotes the physical, psychosocial or vocational well-being of persons being served as well as at least thirty-six (36) months of full-time or equivalent part-time employment providing vocational rehabilitation services, as defined this rule, to individuals receiving benefits or services from a disability compensation system or a public rehabilitation system, of which twelve (12) months must have been under the supervision of a qualified rehabilitation professional; or

4.4. A baccalaureate degree from an accredited college or university in any client serving field with transcripts documenting successful completion of at least five (5) of the following courses: medical aspects of disability, psychosocial aspects of disability, vocational-occupational information, job placement, theories of counseling, delivery of rehabilitation services, personal and vocational adjustment, vocational and career development, assessment and standardized testing, human resource management, health care administration or case management. In addition, the applicant must have at least forty-eight (48) months of full-time or equivalent part-time employment providing vocational rehabilitation services, as defined in this rule, to individuals receiving benefits or services from a disability compensation system or a public rehabilitation system, of which twenty-four (24) months must have been under the supervision of a qualified rehabilitation professional; or

4.5. An associate degree or diploma in nursing and a current registered nurse license and at least thirty-six (36) months of full-time or equivalent part-time employment providing vocational rehabilitation services, as defined in this rule, to individuals receiving benefits or services from a disability compensation system or a public rehabilitation system, of which twenty-four (24) months must have been under the supervision of a qualified rehabilitation professional; provided, any application made under this criteria must be filed within twelve (12) months of the effective date of this rule; or

4.6. A baccalaureate degree from an accredited college or university in any academic field with at least twenty-four (24) months of experience in a client services or case management capacity will qualify an applicant to be considered for provisional qualified rehabilitation professional status; an additional thirty-six (36) months of full-time or equivalent part-time employment providing vocational rehabilitation services, as defined in this rule, to individuals receiving benefits or services from a disability compensation system or a public rehabilitation system, under the supervision of a qualified rehabilitation professional will qualify the applicant to be considered for qualified rehabilitation professional status; provided, any application made under this criteria must be filed within ninety (90) days of the effective date of this rule; or;

4.7. Certified case managers, certified rehabilitation counselors, certified disability management specialists, or certified rehabilitation registered nurses. These limited types of qualified rehabilitation professionals are required to verify and provide proof of their certification to the Insurance Commissioner, self-insured employer or private carrier, whomever services are provided under this rule. In turn the Insurance Commissioner, self-insured employer or private carrier, is required to maintain this proof of certification of the qualified rehabilitation professional.

§85-27-5. Acceptable Employment Experience.

5.1. Full-time employment is considered as 35 hours per week.

5.2. Part-time experience is determined by calculating the total number of hours of acceptable experience divided by 35 hours, to result in the number of weeks of credit for acceptable experience.

5.3. Employment verification must provide evidence that 100% of the time counted as acceptable employment experience was spent providing vocational rehabilitation services to persons with impairments and disabilities. At least 50% of the activities must be directly related to serving persons with disabilities. Time spent in travel and waiting are not considered vocational rehabilitation services.

5.4. Employment experience must reflect activity in at least four (4) of the areas described in 5.4.a through 5.4.l to be considered acceptable.

5.4.a. Vocational rehabilitation consulting, career counseling or mental health counseling;

5.4.b. Developing and monitoring vocational rehabilitation services/care;

5.4.c. Job placement and/or job development;

5.4.d. Job analyses;

5.4.e. Individual appraisal;

5.4.f. Supervision of counselors, provisional qualified rehabilitation professionals or qualified rehabilitation professionals;

5.4.g. Vocational training;

5.4.h. Consultation in disability management;

5.4.i. Forensic rehabilitation services;

5.4.j. Return-to-work plan development and implementation;

5.4.k. Vocational evaluation; and

5.4.l. Medical rehabilitation case coordination.

§85-27-6. Continuing Education.

6.1. Every two (2) years, commencing from the date the application was approved for qualified rehabilitation professional status, each qualified rehabilitation professional is required to submit a renewal form and present documentation of completion of forty (40) contact hours of continuing education. Provided, at least three (3) hours of continuing education credits in ethics must be completed every two (2) years.

a. Certified case managers, certified rehabilitation counselors, certified disability management specialists, and certified rehabilitation registered nurses are exempt from the provisions of this section, but are required to verify and provide proof of their certification to the Insurance Commissioner, self-insured employer or private carrier, whomever services are provided under this rule.

6.2. Qualified rehabilitation professionals and provisional qualified rehabilitation professionals are required as outlined in section 6.1 of this rule to maintain documentation of continuing education at their

place to employment, to be reviewed by the ~~Division~~ Commission or Insurance Commissioner, whichever is applicable, when determined necessary by ~~division~~ the applicable, Commission or Insurance commissioner personnel.

6.3. Programs of continuing education are formally organized educational programs offered in the form of a class, course, workshop, seminar, distance learning, staff development or training activity. Programs should enhance professional skills, values, knowledge, and/or ethical considerations in the qualified rehabilitation professional's practice. The following is a representative list of applicable subjects:

- a. Professional ethics;
- b. Rehabilitation counseling or counseling;
- c. Career Development or Vocational Counseling;
- d. Medical, vocational and psychosocial aspects of disability;
- e. Disability case management;
- f.. Managed care and disability management concepts;
- g. Workers' compensation and/or disability compensation systems;
- h. Community agencies and resources;
- i. Plan development in rehabilitation;
- j. Job development and placement;
- k. Foundations of rehabilitation;
- l. Research and statistics;
- m. Organizational psychology; social psychology; educational psychology;
- n. Employer consultation services;
- o. Family, gender and multicultural issues;
- p. Tests and measures or vocational assessment; individual intelligence testing;
- q. Problems in substance abuse;
- r. Theories/techniques of work adjustment;
- s. Environmental and attitudinal barriers for individuals with disabilities; and
- t. Theories of personality; individual differences; personality measures.

6.4. Continuing education programs approved by the Commission on Rehabilitation Counselor Certification, the Certification of Disability Management Specialists Commission, the Commission for Case Manager Certification, the Commission on Certification of Work Adjustment and Vocational

Evaluation Specialists, the American Board of Vocational Experts, the National Board of Certified Counselors, or the West Virginia Board of Examiners in Counseling will be accepted. Fifteen (15) contact hours for each academic graduate semester hour or ten (10) contact hours for each academic graduate quarter hour will be granted for classes in rehabilitation counseling, counseling, psychology, occupational therapy or nursing successfully completed at accredited educational institutions. Acceptance of continuing education credits from other programs is subject to approval by the division Commission or Insurance commissioner, whichever is applicable.

6.5. A qualified rehabilitation professional or provisional qualified rehabilitation professional whose eligibility was established based on certification as a certified rehabilitation counselor, certified disability management specialist, certified vocational evaluation specialist, certified rehabilitation registered nurse or certified case manager must maintain that certification to continue to be a qualified rehabilitation professional or provisional qualified rehabilitation professional. Documentation of current certification, ~~as well as proof of completion of the continuing education requirements,~~ must be maintained at their place of employment to be reviewed by the division Commission or Insurance commissioner, whichever is applicable, when determined necessary by division the applicable Commission or Insurance Commissioner personnel.

§85-27-7. Transitional Period.

7.1. Individuals providing vocational rehabilitation services to injured workers, employers or the Division Commission or Insurance commissioner, whichever is applicable, ~~at the time of the effective date of this rule on February 17, 2003,~~ who lack sufficient experience to be designated qualified rehabilitation professional may continue to provide vocational rehabilitation services as a provisional qualified rehabilitation professional. All individuals providing vocational rehabilitation services on a "provisional basis" will be granted five (5) years from the date with which they have applied for qualified rehabilitation professional status to complete the experience requirements as outlined in this rule. A provisional qualified rehabilitation professional shall be granted the right to apply for reinstatement in cases where a medical, familial, or other Division Commission or Insurance commissioner, whichever is applicable, approved leave of absence is taken. Reinstatement shall be considered upon receipt of the provisional employee's request for reinstatement of provisional qualified rehabilitation professional status. If reinstatement is granted to a provisional qualified rehabilitation professional, the employment experience completed prior to taking a medical or familial leave of absence shall be applied toward the experience requirements outlined in this rule. A provisional qualified rehabilitation professional must remain under an appropriate qualified rehabilitation professional supervision plan until the requirements outlined in this rule have been met.

§85-27-8. Right to Request Reconsideration; Petition for Hearing.

8.1. If a request for QRP certification is denied, persons so denied may file a request for reconsideration. The reconsideration and hearing process shall be conducted under the Division's Commission's or Insurance Commissioner's, whichever is applicable, hearing rules for health care vendors.

§85-27-9. Other Requirements.

9.1. An injured worker petitioning for permanent total disability benefits referred for a rehabilitation evaluation must be evaluated by a qualified rehabilitation professional with either a masters or doctorate degree in rehabilitation counseling, counseling and guidance, or psychology, or by a qualified rehabilitation professional with either the certified rehabilitation counselor, licensed professional counselor, vocational evaluation specialist, or certified disability management specialist certification or by a qualified rehabilitation professional who is certified by the American Board of Vocational Experts.

Provided, an injured worker determined to have suffered a catastrophic injury must be assigned to a nurse qualified rehabilitation professional with at least one of the following certifications: certified rehabilitation registered nurse; certified case manager or certified disability management specialist; or to a nurse qualified rehabilitation professional or a nurse provisional qualified rehabilitation professional working under direct supervision of a qualified rehabilitation professional with at least one of those certifications.

§85-28-10. Severability.

If any provision of this rule or the application thereof to any entity or circumstances shall be held invalid, such invalidity shall not affect 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.