

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

Form #5

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2005 AUG 31 P 2:42

OFFICE WEST VIRGINIA
SECRETARY OF STATE

**NOTICE OF AGENCY ADOPTION OF A PROCEDURAL OR INTERPRETIVE RULE
OR A LEGISLATIVE RULE EXEMPT FROM LEGISLATIVE REVIEW**

AGENCY: Workers' Compensation Commission TITLE NUMBER: 85

CITE AUTHORITY: W. Va. Code §§23-1-1a(j)(3), 23-4-1 et seq.

RULE TYPE: PROCEDURAL _____ INTERPRETIVE _____

EXEMPT LEGISLATIVE RULE X

CITE STATUTE(S) GRANTING EXEMPTION FROM LEGISLATIVE REVIEW

W. Va. Code §23-1-1a(j)(3)

AMENDMENT TO AN EXISTING RULE: YES X NO _____

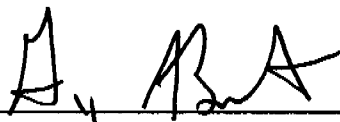
IF YES, SERIES NUMBER OF RULE BEING AMENDED: 27

TITLE OF RULE BEING AMENDED: Qualified Rehabilitation Provider

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: _____

TITLE OF RULE BEING PROPOSED: _____

THE ABOVE RULE IS HEREBY ADOPTED AND FILED WITH THE SECRETARY OF STATE. THE
EFFECTIVE DATE OF THIS RULE IS October 1, 2005


Authorized Signature

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

Form #1

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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



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. P. D. Shien
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 AUG 31 P 2:42

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(c); 23-1-1; and 23-1-15. Pursuant to W. Va. Code §21A-3-7(c), 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 Qualified rehabilitation professionals are required to verify and provide proof of their certification or qualifications to the Insurance Commissioner, self-insured employer or private carrier, or to their third party administrator or managed care provider, whomever services are provided under this rule. In turn the

Insurance Commissioner, self-insured employer or private carrier, or their third party administrator or managed care provider, is required to maintain this proof of certification or proof of qualifications 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, or any third party administrator of the Insurance Commissioner.

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, code or codes to which a qualified rehabilitation professional subscribes and must include at least one of the following:

a. For certified rehabilitation counselors, the "Code of Professional Ethics for Rehabilitation Counselors" administered by the Commission on Rehabilitation Counselor Certification;

b. For certified disability management specialists, the "Code of Professional Conduct" administered by the Certification of Disability Management Specialists Commission;

c. For certified case managers, the "Code of Professional Conduct for Case Managers" administered by the Commission for Case Manager Certification;

d. For certified vocational evaluators, the "Code of Professional Ethics" administered by the Commission on Certification of Work Adjustment and Vocational Evaluation Specialists;

e. For certified rehabilitation registered nurses, the "Code of Ethics for Nurses with Interpretive Statements" administered by the American Nurses Association and endorsed by the Association of Rehabilitation Nurses;

f. For West Virginia licensed professional counselors, the "Code of Ethics and Standards of Practice" promulgated by the American Counseling Association and administered by the West Virginia Examiners in Counseling;

g. For members of the International Association of Rehabilitation Professionals, the "Code of Ethics, Standards of Practice and Competencies" administered by the International Association of Rehabilitation Professionals"; or

h. For qualified rehabilitation professionals, a code of ethics or standards of practice published by a relevant professional organization to which the qualified rehabilitation professional is a member.

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 not 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, private carrier or self-insured employer, whichever is applicable ~~whomever~~ services are provided, 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.

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

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

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

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

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

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

3.143. "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.

3.154. "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.

3.165. "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.

3.16. "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, physical and/or 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.~~

4.75. 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, or to their third party administrator or managed care provider, whomever services are provided under this rule. In turn the Insurance Commissioner, self-insured employer or private carrier, or their third party administrator or managed care provider, 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 effective date of this rule ~~the application was approved for qualified rehabilitation professional status~~, each qualified rehabilitation professional is required to ~~submit a renewal form~~ maintain and present documentation to the Insurance Commissioner, self-insured employer or private carrier, or to their third party administrator or managed care provider, whomever services are provided under this rule, 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, or to their third party administrator or managed care provider, 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, private carrier or self-insured employer, or to their third party administrator or managed care provider, whomever services are provided under this rule whichever is applicable, when determined necessary by ~~division the applicable Commission, or Insurance Commissioner, private carrier or self-insurance, or their third party~~

administrator or managed care provider, 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.~~

§85-27-97. Other Requirements.

97.1. 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: (1) certified rehabilitation registered nurse; (2) certified case manager; or (3) 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.

§85-27-108. 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.

**WEST VIRGINIA WORKERS' COMPENSATION
BOARD OF MANAGERS**

IN THE MATTER OF:)
)
PUBLIC HEARING ON) HEARING DATE: 7-12-2005
RULE 27, QUALIFIED)
REHABILITATION PROVIDER)

Transcript of proceedings had in the above-styled
matter, were held as therein appears at 4101 MacCorkle Avenue, S.E.,
Charleston, West Virginia, on the 12th day of July, 2005, 1:06 p.m.,
pursuant to notice, from audio cassette tapes provided by the Workers'
Compensation Commission.

**BILLANTI AND ASSOCIATES
COURT REPORTERS
1033 RIDGEMONT DRIVE
ELKVIEW, WV 25071
304-965-7444**

APPEARANCES**BOARD MEMBERS**

ROB ALSOP, BOARD CHAIR

GENE F. BAILEY

CHRIS JARRETT (via telephone)

DOUGLAS MERRITT

PAUL THOMPSON

RICHARD HUMPHREYS

PAUL HARDESTY

BOB PHALEN

EVERETTE SULLIVAN

CRAIG SLAUGHTER

I N D E X

Call to order

4

Reporter's Certificate.....5

1

P R O C E E D I N G S

2

1:05 p.m.

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CHAIRMAN ALSOP: We will open the public hearing for Rule 27, Qualified Rehabilitation Provider.

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No one has signed up to speak with respect to this rule, but if anybody would like to come forward and speak, they may do so now.

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(No response.)

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If not, we'll close the public hearing for Rule 27.

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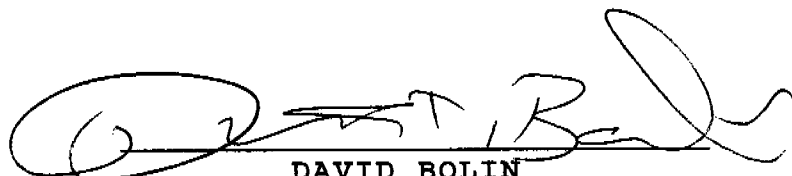
13

(WHEREUPON, the hearing was adjourned at 1:06 p.m.)

REPORTER'S CERTIFICATE

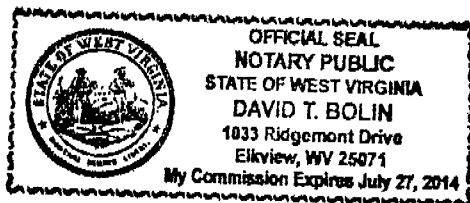
I, DAVID T. BOLIN, a Court Reporter and Notary Public in and for the State of West Virginia, hereby certify that the foregoing is a true and correct transcript of all proceedings had and evidence adduced, together with all the objections made and rulings thereon, and exceptions thereto, as stated in the caption hereto, from audio cassette recordings supplied by the Workers' Compensation Commission and transcribed into the English language.

Given under my hand and official seal
this 20th day of July, 2005.



DAVID BOLIN
Court Reporter and
Notary Public

My commission expires July 27, 2014.



WEST VIRGINIA WORKERS' COMPENSATION BOARD OF MANAGERS
PUBLIC HEARING
JULY 12, 2005 – 1:00 P.M.
85CSR27 "QUALIFIED REHABILITATION PROVIDER"

ATTENDANCE SHEET

The Board is required to keep a list of individuals attending its meetings and of those who wish to address the Board.

NAME	COMPANY	Do you wish To speak? (Yes/No)
<i>Delina Hall</i>	<i>Concentra</i>	<i>N</i>

Rule 27 Comments from Ed Watson

6/02/05

THIS NEEDS TO BE DELETED FROM 27 SINCE NO CODE OF ETHICS FOR QRPs WAS EVER ADOPTED.

§85-27-3. Definitions.

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.

6/02/05

THESE 2 SECTIONS OF 27 EXPIRED IN MAY 2003 AND FEBRUARY 2004. YOU PROBABLY SHOULD DELETE THEM RATHER THAN MAKE THEM "GOOD" FROM ANOTHER EFFECTIVE DATE.

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.

6/2/05

As in Rule 15, I think this is a mistake - simplifying the registration process and renewal process for nationally credentialed rehab professionals makes sense for everyone but the Insurance Commission needs to track all QRPs for several reasons

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.

6/02/05

Collective comments on proposed 27 highlighted in text of Rule. Definitely think you will be creating a problem for the Insurance Commission (and, ultimately, QRPs and customers and clients) if all QRPs do not have to register. Thanks.

6/15/05

Comments from Ed Watson contained in re-write of §4 of the rule.

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

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

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~~ **I RECOMMEND 4.4 BE STRICKEN**

~~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~~ **STRIKE 4.5; IT EXPIRED ANYWAY**

~~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~~ **STRIKE 4.6; IT EXPIRED ANYWAY**

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, whichever 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 for the qualified rehabilitation professional. **THIS WAS A CUT AND PASTE FROM RULE 15 BUT MOST OF IT IS NOT RELEVANT HERE; NOTHING AFTER THE FIRST SENTENCE BELONGS HERE**

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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. **THIS WAS A CUT AND PASTE FROM RULE 15 BUT MOST OF IT IS NOT RELEVANT HERE; NOTHING AFTER THE FIRST SENTENCE BELONGS HERE**

From: "Ryan Sims" <Ryan.Sims@wvinsurance.gov>
To: "Thomas Obrokta" <tobrokta@wvwcc.org>, "Randy Suter" <rsuter@wvwcc.org>
Date: 6/14/05 2:04PM
Subject: Comments on rule 27

Gentlemen - Below are initial comments on rule 27 (qualified rehab providers).

General comment re: "registering" with the WCC/IC, and other duties of the IC in regard to QRP's

This rule confers a number of duties upon the IC which the IC is not sure are necessary under the new system. First, under 2.2, it appears that QRP's other than case managers, rehab counselors, disability management specialists and registered nurses need to "register" with the IC. The rule does not make it clear how this "registration" process will work, however. Additionally, the rule gives the IC the duty to review and or approve certain requisites of the "limited" QRP's, such as continuing education requirements and other certification requirements (see sections 6.2, 6.4 and 6.5). Finally, the rule requires the IC to provide hearings to QRP's who make a request for reconsideration of a denial of a QRP "certification" (i.e., a "registration" as a QRP?). This requirement in turn infers that QRP's will be applying for "certification" with the IC and that the IC will either accept or deny such application, etc.

A preliminary review of the relevant code sections under which this rule was promulgated (§§ 23-4-3, 23-4-3b and 23-4-9), does not indicate any specific mandate from the legislature in SB 1004 for the IC to be directly involved in the QRP process. Therefore, the initial thoughts of the IC are that this rule should state that, upon termination of the Commission, private carriers, self-insureds and the IC are required to use only QRP's for voc. rehab services, and set forth the applicable standards for QRP's, but not require QRP's to register or apply for any type of certification with the IC. The IC's only job would be to look into allegations that a private carrier or self-insured is not using a sufficiently "credentialed" QRP, per the standards set forth in this rule. However, it would be the duty of the carrier or self-insured to assure the rehab provider does meet the minimum standards in the rule.

The general "goal" of this transition in the IC's mind is to move as much towards a privatized, non-governmental WC system as is permitted within SB 1004, and we believe these changes to this rule would meet this goal. However, there likely should be some additional discussion on this topic (both in regard to the practical and legal issues involved in this rule), and we of course welcome any feedback.

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

WCC never adopted a code of ethics for all QRPs and publicly stated they do not plan to do so. However, there are many QRPs who have no other certification or licensure and, therefore, no enforceable code of ethics. Furthermore, there are QRPs who are not eligible or, perhaps, are disinclined to secure national certification or licensure. This section of this Rule might simply be eliminated or it could be replaced with the following:

“Code of Professional Ethics” refers to the code or codes to which a qualified rehabilitation professional subscribes and must include at least one of the following:

1. The “Code of Professional Ethics for Rehabilitation Counselors” administered by the Commission on Rehabilitation Counselor Certification; the QRP must be a Certified Rehabilitation Counselor;
2. The “Code of Professional Conduct” administered by the Certification of Disability Management Specialists Commission; the QRP must be a Certified Disability Management Specialist;
3. The “Code of Professional Conduct for Case Managers” administered by the Commission for Case Manager Certification; the QRP must be a Certified Case Manager;
4. The “Code of Professional Ethics” administered by the Commission on Certification of Work Adjustment and Vocational Evaluation Specialists; the QRP must be a Certified Vocational Evaluator;
5. The “Code of Ethics for Nurses With Interpretive Statements” administered by the American Nurses Association and endorsed by the Association of Rehabilitation Nurses; the QRP must be a Certified Rehabilitation Registered Nurse;
6. The “Code of Ethics and Standards of Practice” promulgated by the American Counseling Association and administered by the West Virginia Examiners in Counseling; the QRP must be a West Virginia Licensed Professional Counselor;
7. The “Code of Ethics, Standards of Practice and Competencies” administered by the International Association of Rehabilitation Professionals; the QRP must be a member of the International Association of Rehabilitation Professionals; or
8. A code of ethics or standards of practice published by a relevant professional association; the QRP must be a member of that professional association.

**According to IARP By-Laws, any individual, whether qualifying as an Professional Member or simply as an Associate Member, having an interest in the provision of rehabilitation services in the private sector who is willing to comply with the IARP standards and ethics in effect at the time is eligible to be a member of IARP. In other words, the 7th option is an avenue to an enforceable, nationally-recognized code of professional ethics for any QRP either not qualified for or not electing to obtain/maintain certification.*

85-27-3.6 (see strike-through)

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

85-27-4 (see underlined addition)

Minimum Education, Experience and Certification Requirements

WVARP fully supports the obvious intent in the proposed changes 85-27-4 to emphasize recognition of nationally certified rehabilitation professionals This is the norm in other jurisdictions across the country. However, another approach is suggested which strikes 04.01 through the proposed 4.7 and replaces it with:

4.1 As of the effective date of this Rule, a new applicant for qualified rehabilitation professional status must be a certified rehabilitation counselor (CRC), or a certified disability management specialist (CDMS), or a certified rehabilitation registered nurse (CRRN), or a certified vocational evaluation specialist (CVE), or a certified case manager (CCM) or a licensed professional counselor (LPC).

4.2 An individual who has already been classified at a qualified rehabilitation professional by the workers' compensation commission prior to the effective date of this rule will continue to be classified as a qualified rehabilitation as long as renewal requirements are met. Should a qualified rehabilitation professional fail to meet renewal requirements, new applicant requirements must be met if that individual later applies for qualified rehabilitation professional status.

4.3 As of the effective date of this Rule, a new applicant without any of the certifications listed in 85 C.S.R. 27-4.1 but with a doctorate or masters degree from an accredited college or university in rehabilitation counseling, counseling, career counseling, vocational evaluation, psychology, nursing, occupational therapy, social work, or a field that promotes the physical, psychosocial or vocational well-being of persons being served, or with a baccalaureate degree from an accredited college or university in rehabilitation counseling, counseling, career counseling, vocational evaluation, psychology, occupational therapy or nursing will be classified as a provisional qualified rehabilitation professional.

4.4 All provisional qualified rehabilitation professionals must achieve and maintain at least one (1) of the certifications listed in 85 C.S.R. 27-4.1. Individuals already classified as provisional qualified rehabilitation professionals must secure their certification within forty-eight (48) months of the effective date of this rule. Individuals approved as provisional qualified rehabilitation professionals after the effective date of this rule must secure their certification within forty-eight (48) months of the date of provisional qualified rehabilitation professional approval.

85-27-2.2

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.

As with Rule 15, we think simplifying the registration and renewal processes for nationally credentialed rehab professionals makes sense for everyone, but the Insurance Commission needs to track all QRPs for several reasons so WVARP does not support this addition:

1. Presumably the Mutual is going to require the UPIN on bills submitted in the future- if an incoming CRC or CDMS is not required to register, where does he or she get that UPIN?
2. The Insurance Commission is going to want to be able to advise all QRPs on policy issues. If all QRPs are not registered, that will be difficult.
3. A list of all Qualified Rehabilitation Professionals should be readily available to carriers, self-insured employer and injured workers and 9.2 actually requires it- but if all QRPs are not registered, how can that be a complete list?

85-27-6

To be consistent, WVARP recommends the following replacement for this proposed addition:

- a. Certified rehabilitation counselors, certified disability management specialists, certified vocational evaluators, certified rehabilitation registered nurses, certified case managers and licensed professional counselors are exempt from the provisions of this section, but are required to verify and provide proof of their ongoing certification to the Insurance Commissioner.

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To: "Thomas Obrokta" <tobrokta@wvwcc.org>, "Randy Suter"
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Commission Responses
"Qualified Rehabilitation Provider"
85CSR27

2.2. Insurance Commissioner's Office. The Insurance Commissioner requested that it not be charged with the responsibility of qualifying rehabilitation providers.

Response: As a result, numerous changes were made to the rule including the elimination the registration requirement for QRPs and the elimination of provisional QRPs as there would be no authority to regulate this activity.

2.2. Internal. If the Insurance Commissioner's Office does not register providers then carriers, self-insurers and others, including third party administrators and managed health care plans will need to maintain records of the qualifications of QRPs.

Response: Change made.

3.3. WVARP. Codes of Ethics of the various national certifying bodies need to be a part of the qualifications of the rule.

Response: Change made.

3.4. Internal. Typo. "Not" is to be included in last sentence.

Response: Change made.

3.5. Elimination of provisional QRPs.

Response: see 2.2. for explanation.

4.1. Mick Bates. Include physical with occupational therapy.

Response: change made.

4.5. & 4.6. Internal. These provisions expired after the earlier passage of the rule in 2003.

Response: Change made. Provisions stricken.

5.4.f. & 6.2. Removed "provisional QRP."

Response: See 2.2.

6.4. Removed acceptance of continuing education credits from the Insurance Commission's responsibility.

Response: See 2.2.

7.1. Removed section dealing with "provisional" QRPs.

Response: See 2.2.

8.1. Removed section dealing with denial of a request for QRP certification.

Response: See 2.2. The Insurance Commissioner will no longer be certifying QRPs.

Former 9.1., now 7.1. Removal of “provisional” QRP nurse provider and removal of “nurse QRP” as providing for a lesser requirement than contained earlier in the same phrase.

Response: See 2.2.