

**WEST VIRGINIA
SECRETARY OF STATE
JOE MANCHIN, III
ADMINISTRATIVE LAW DIVISION**

Form #5 ☐

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FILED

2003 JAN 15 P 3:45

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 Division, BEP TITLE NUMBER: 85

CITE AUTHORITY: W. Va. Code §§21A-2-6; 21A-2-19; 21A-3-7; 23-1-1

RULE TYPE: PROCEDURAL _____ INTERPRETIVE _____

EXEMPT LEGISLATIVE RULE X

CITE STATUTE(S) GRANTING EXEMPTION FROM LEGISLATIVE REVIEW

W. Va. Code §21A-3-7(c)

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 February 17, 2003


Authorized Signature

Bob Wise
Governor

Robert J. Smith
Commissioner



West Virginia Bureau of Employment Programs

• Job Service • Labor Market Information
• Unemployment Compensation • Workers Compensation
an equal opportunity/affirmative action employer

January 16, 2003

The Honorable Joe Manchin III
Secretary of State
State Capitol Complex
Building 1, Room W-157
Charleston, West Virginia 25305

Re: Final Filing
Title 85, Series 27
"Qualified Rehabilitation Provider"

Dear Secretary Manchin:

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

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

Thank you very much for your assistance in this matter.

Very truly yours,

Robert J. Smith
Commissioner

Enclosure

**TITLE 85
LEGISLATIVE RULE
WORKERS' COMPENSATION DIVISION**

**SERIES 27
QUALIFIED REHABILITATION PROVIDER**

FILED

2003 JUN 16 P 3:45

COMMONWEALTH OF 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, 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.

1.3. Filing Date. — May 20, 1997

1.4. Effective Date. — June 20, 1997

§ 85-27-2. Purpose of Rule.

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 that 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 that 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 ~~employees~~ workers and is reimbursed for such services by the Workers' Compensation Division.

§ 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.

3.2. "Division" ~~shall refer to~~ means the Workers' Compensation Division of the Bureau of Employment Programs.

3.3. ~~"HCAP" means Health Care Advisory Panel.~~ "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. ~~"QRP" stands for "Qualified Rehabilitation Professional.~~ "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 an individual that meets the criteria set forth in this rule to provide rehabilitation services to claimants and be reimbursed for such services by the Division.~~ 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.

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

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

4.1. Except as otherwise provided in this section, all individuals seeking recognition as a qualified rehabilitation professional (QRP) must submit evidence of graduation from an accredited college or university with a baccalaureate degree in rehabilitation counseling, nursing or a behavioral sciences field, such as psychology, guidance and counseling, or special education. 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. ~~The following may be substituted for the educational requirement set forth above:~~

~~4.2.1. A baccalaureate degree in any academic field from an accredited college or university AND a license to practice as a registered professional nurse in the State of West Virginia; OR~~

~~4.2.2. A baccalaureate degree in any academic field from an accredited college or university AND two years of full-time or equivalent part-time paid employment as a teacher of the disabled, or in a client-serving capacity in a human service agency; OR~~

~~4.2.3. Completion of an associate degree or diploma program in nursing from an accredited college or university or a diploma nursing program AND a license to practice as a registered professional nurse in the State of West Virginia AND professional certification from a national nursing or rehabilitation certifying organization as a practitioner in the area of rehabilitation nursing or rehabilitation services.~~

4.2. Current certified rehabilitation counselor, licensed professional counselor, certified disability management specialist, certified rehabilitation registered nurse, 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.

§85-27-5. Minimum Experience Requirements

~~5.1. Except as otherwise provided in this section, all individuals seeking recognition as a QRP must submit evidence of one year of full time or equivalent part time paid supervised experience in rehabilitation counseling, and two years of full time or equivalent part time paid supervised experience in providing rehabilitation services to the industrially impaired/disabled population. Work experience required for meeting this provision will not include work experience counted toward meeting the minimum educational requirement set forth in the preceding section.~~

~~5.2. The supervised experience required by this section must conform to the criteria for acceptable employment experience set forth in §85-27-6, below.~~

~~5.3. A masters degree from an accredited college or university in the behavioral sciences or nursing fields may substitute for the training and one two year of the experience requirement set forth in section 5.1, above. The remaining year of required~~

~~experience must be in the field of rehabilitation to the industrially impaired and/or disabled population.~~

§85-27-65. Acceptable Employment Experience.

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

65.2. 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.

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

65.4. ~~Rehabilitation counseling services which count as acceptable employment experience may include, but are not limited to:~~ 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.

65.4.1a. ~~v~~Vocational rehabilitation consulting, career counseling or personal adjustment or affective (mental health) counseling;

65.4.2b. ~~d~~Developing and monitoring vocational rehabilitation services/care;

65.4.3c. ~~j~~Job placement and/or job development;

65.4.4d. ~~j~~Job analyses;

65.4.5e. ~~i~~Individual appraisal;

65.4.6f. ~~s~~Supervision of counselors, provisional qualified rehabilitation professionals or qualified rehabilitation professionals;

65.4.7g. ~~v~~Vocational training;

65.4.8h. ~~e~~Consultation in disability management;

65.4.9i. ~~f~~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.

~~6.5. Employment experience must reflect activity as described in section 6.4.1 above and in at least three other areas, such as those set forth in sections 6.4.2 through 6.4.9, to be considered acceptable.~~

~~6.6. Time spent in travel and waiting are not considered counseling services.~~

§85-27-76. Continuing Education.

~~76.1. Each qualified rehabilitation professional (QRP) is required to present documentation of the completion of twenty (20) hours of continuing education per year. 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.~~

~~76.2. QRP's Qualified rehabilitation professionals and provisional qualified rehabilitation professionals are required as outlined in section 6.1 of this rule to maintain Ddocumentation of continuing education will be required with the application for the July 1, 1998 enrollment period, reflecting continuing education hours completed during the year preceding enrollment at their place to employment, to be reviewed by the Division when determined necessary by division personnel.~~

~~76.3. 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:~~

~~7.3.1a. Principals of Counseling or Theories of Counseling or Methods of Counseling Professional ethics;~~

~~7.3.2b. Career Development or Vocational Counseling Rehabilitation counseling or counseling;~~

~~7.3.3c. Tests and measures or Vocational Assessment Career Development or Vocational Counseling;~~

~~7.3.4d. Medical, vocational and psychosocial aspects of disability;~~

~~7.3.5e. Psychosocial aspects of disability Disability case management;~~

~~7.3.6f. Principals of rehabilitation~~ Managed care and disability management concepts;

~~7.3.7g. Rehabilitation counseling~~ Workers' compensation and/or disability compensation systems;

~~7.3.8h. Community agencies and resources;~~

~~7.3.9i. Group counseling/therapy~~ Plan development in rehabilitation;

~~7.3.10j. Plan development in rehabilitation~~ Job development and placement;

~~7.3.11k. Job development and placement~~ Foundations of rehabilitation;

~~7.3.12l. Research and statistics;~~

~~7.3.13m. Theories of personality~~ Organizational psychology; social psychology; educational psychology;

~~7.3.14n. Individual differences~~ Employer consultation services;

~~7.3.15o. Personality measures~~ Family, gender and multicultural issues;

~~7.3.16p. Cross-cultural counseling~~ Tests and measures or vocational assessment; individual intelligence testing;

~~7.3.17q. Organizational psychology~~ Problems in substance abuse;

~~7.3.18r. Experimental psychology~~ Theories/techniques of work adjustment;

~~7.3.19s. Social psychology~~ Environmental and attitudinal barriers for individuals with disabilities; and

~~7.3.20t. Educational psychology~~ Theories of personality; individual differences; personality measures.

~~7.3.21. Individual intelligence testing;~~

~~7.3.22. Problems in substance abuse; and~~

~~7.3.23. Theories/techniques of work adjustment.~~

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.

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 when determined necessary by division personnel.

§85-27-87. Transitional Period.

87.1. Individuals providing vocational rehabilitation services to claimants injured workers, employers or the Division at the time of the effective date of this rule who lack sufficient experience to be designated QRP qualified rehabilitation professional may continue to provide vocational rehabilitation services under the supervision of a QRP for four (4) years following the effective date of this rule 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 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.

8.2. Individuals who have provided the above-described services through their employers will qualify for the transition period in the same manner as individuals who have provided such services directly to claimants, employers or the Division.

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

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 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, by a qualified rehabilitation professional who is certified by the American Board of Vocational Experts.

9.2. 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 effect without the invalid provisions or application and to this end the provisions of this rule are declared to be severable.

WEST VIRGINIA
SECRETARY OF STATE

JOE MANCHIN, III

ADMINISTRATIVE LAW DIVISION

Form #2

Do Not Mark In This Box

NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE

AGENCY: Workers' Compensation Division, BEP TITLE NUMBER: 85

RULE TYPE: Exempt Legislative CITE AUTHORITY: 21A-2-6; 21A-2-19; 21A-3-7; 23-1-1

AMENDMENT TO AN EXISTING RULE: YES X NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 27

TITLE OF RULE BEING AMENDED: 85CSR27, "Qualified Rehabilitation Provider"

IF NO, SERIES NUMBER OF RULE BEING PROPOSED:

TITLE OF RULE BEING PROPOSED:

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 September 13, 2002 AT 5:00 p.m. ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS:

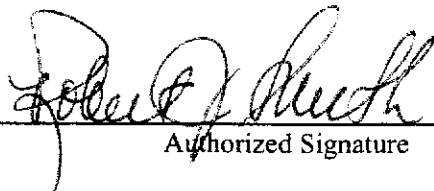
Randall B. Suter, Senior Counsel
Legal Services Division

Workers' Compensation Executive
Offices

Post Office Box 3824

Charleston, WV 25338-3824

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


Authorized Signature

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

Bob Wise
Governor
Robert J. Smith
Commissioner



West Virginia Bureau of Employment Programs

• Job Service • Labor Market Information
• Unemployment Compensation • Workers Compensation
an equal opportunity/affirmative action employer

July 30, 2002

The Honorable Joe Manchin III
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 Manchin:

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

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

Thank you very much for your assistance in this matter.

Very truly yours,

A handwritten signature in black ink, appearing to read "Robert J. Smith", written over the typed name.

Robert J. Smith
Commissioner

RJS:ld

Enclosure

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

The changes to 85 C.S.R. 27, "Qualified Rehabilitation Provider," are proposed for the purpose of setting forth the criteria to determine who is qualified to provide vocational rehabilitation to injured workers in the West Virginia Workers' Compensation System.

The proposed changes clearly denote that vocational rehabilitation is the aim of the rule.

The proposed changes expand the types of baccalaureate degrees that qualified rehabilitation providers (QRPs) are required to have to meet minimum educational standards. The changes further clarify the types of experience necessary to substitute for certain educational requirements.

The proposal changes the experience requirement from one to three years and provides for some education substitutes for certain amounts of experience.

The proposed changes require that QRPs complete and maintain records of continuing education. The changes expand the subject matter of continuing education to include professional ethics.

The proposed changes include requirements for certain individuals to become provisional QRPs for a limited time to meet the QRP experience requirement.

The proposed changes provide for a process to protest Division denials of QRP vendor applications.

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Title 85, Series 27: Qualified Rehabilitation Provider

Type of Rule: Legislative Exempt Interpretive X Procedural

Agency Bureau of Employment Programs

Address 112 California Avenue

Charleston, WV 25305

1. Effect of Proposed Rule

	ANNUAL		FISCAL YEAR		
	INCREASE	DECREASE	CURRENT	NEXT	THEREAFTER
ESTIMATED TOTAL COST	0	0	0	0	0
PERSONAL SERVICES	0	0	0	0	0
CURRENT EXPENSE	0	0	0	0	0
REPAIRS & ALTERNATIONS	0	0	0	0	0
EQUIPMENT	0	0	0	0	0
OTHER	0	0	0	0	0

2. Explanation of above estimates:

No additional costs would be associated with the proposed changes to the education, experience, employment and the annual continuing education requirements necessary to be designated as a qualified vocational rehabilitation provider. There is no significant change in personnel and other costs as existing personnel and resources will be used to perform the review of the minimum credentials of providers for compliance with the specific requirements created by the proposed rule.

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 Division.

Rule Title: Title 85, Series 27: Qualified Rehabilitation Provider

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

It is expected that the proposed rule will improve the quality and effectiveness of Workers' Compensation rehabilitation services by further defining the specific requirements necessary in order to be designated and remain a qualified vocational rehabilitation provider.

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

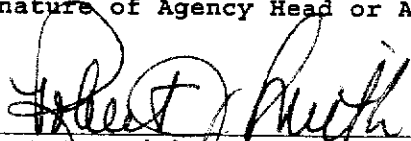
It is expected that the proposed rule will improve and maintain the overall quality of vocational rehabilitation services provided to injured workers.

C. Economic Impact on Citizens/Public at Large.

This proposed rule will not have a direct economic impact on the citizens of West Virginia.

Date: July 29, 2002

Signature of Agency Head or Authorized Representative

A handwritten signature in dark ink, appearing to read "Robert J. Smith", is written over a horizontal line.

Robert J. Smith
Commissioner, Bureau of Employment Programs

CAREER DEVELOPMENT & CONSULTING SERVICES

102 Mt. View Lane

Radford, VA 24141

540-731-8291

CDCSRehabService@aol.com

August 12, 2002

Randall B. Suter, Senior Counsel
Legal Services Division
Workers' Compensation Executive Offices
P.O. Box 3824
Charleston, WV 25338-3824

Re: Workers' Compensation Rule 85CSR27, "Qualified Rehabilitation Provider"

Dear Mr. Suter:

I am writing to comment on Section **85-27-7. Continuing Education.**

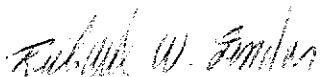
According to the current and proposed rules governing Continuing Education, a QRP is required to present documentation of the completion of twenty (20) hours of CEU's per year.

While I concur that education in the field of expertise is required, I believe that college credits should be allowed as a substitute for the continuing education units.

For example, one CEU translates into about 2 hours total classroom time with no testing while one college credit translates into about 16 hours of classroom time with the participant tested numerous times on the subject matter. In no way can a CEU be equivalent to a college level course yet **Section 85-27-7** does not allow college credits to count toward the CEU requirement. It seems strange that while **Section 85-27-4** specifically requires a QRP to have a college degree, **Section 85-27-7** does not allow college credit to substitute for the CEU.

I suggest **Section 85-27-7** be amended to include a provision that allows graduate and/or undergraduate college level courses from an accredited college or university be permitted to count toward the CEU requirement once a QRP has established his/her eligibility as a Provider.

Respectfully yours,



Richard W. Fender, MS, QRP
Rehabilitation Consultant

IRC

Industrial & Rehabilitation Consultants

P.O. Box 5116 Vienna, WV 26105

(304) 295-8153 FAX: (304) 295-8156

To: Randy Suter

From: Tina Riggs Walsh, CDMS, QRP

Re: Rule 27 Proposal

Date: 09/09/02

Emailed 9/9/02 and mailed on 9/9/02

Dear Mr. Suter,

I am writing in regards to the Rule 27 proposed amendments, which you have issued for public comment as well as the Rehab. Task Force's more recent proposal (completed at the request of the Commissioner to address the ramifications of the McKenzie opinion on Rule 27) that was presented to you by Ed Watson.

I have thoroughly reviewed both versions and must state emphatically that the draft given to you by Mr. Watson is a far superior version that addresses many of the concerns regarding the provision of quality services to injured workers by qualified professionals (an issue raised in McKenzie).

I would like to take a few minutes to comment on the differences in these two proposals. Please be aware that these comments are my own, and I am sure those involved in the Task Force could better address their reasoning behind making the proposed changes; however, I would be remiss in my obligations as a rehab professional concerned with raising the ethical standards of my profession as well as providing assurances that all injured workers receive the same standard services by all rehab. professionals providing such services in this state if I did not make clear to you how and why I prefer the draft presented by Mr. Watson.

THE CHANGES I DETECTED AND MY REASONING BEHIND MY PREFERRED CHOICE OF DRAFTS (My Preference if for the Watson Draft, McKenzie Task Force draft, presented to you recently):

1. 85-27-2 Purpose of Rule: Mr. Watson's draft deleted the phrase: "at any and all levels of the rehabilitation priorities referenced in 85-15-4" from the first paragraph. This appears to be appropriate as this phrase is trite and unnecessary to convey the meaning of the purpose of the rule.

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2. 85-27-3 Definitions:

- A. 3.2 Mr. Watson changed the phrasing "shall refer to the Workers' Compensation Division..." to " means the Workers' Compensation Division..."
- B. Addition of 3.4a. & 3.4b in Mr. Watson's draft: "Vocational rehabilitation services" definition was added. This is a vital issue to address in light of McKenzie. In addition, the general public may not be aware of the specific and unique services that fall under the classification of "vocational rehabilitation services". This section gives us a vital reference and clear definition to assure standard services are rendered by all parties and that all parties are aware of what is classified as "vocational rehabilitation services".
- C. 3.3 changed to 3.5 " in Mr. Watson's draft: 'QRP' stands for..." altered to: "Qualified rehabilitation professional' means..."

To assure that all individuals who provide rehab. services to injured workers are qualified to provide appropriate services to those injured workers this definition needed clarification. Mr. Watson has attempted, in my view, to make clear the expectations of a QRP, better defining the term and the role. This clarification is vital in light of McKenzie and should be kept in this rule.

- D. The addition of 3.6 "Provisional qualified rehab. professional" in Mr. Watson's draft. Again, to assure that certain standards are met to make clear the role of the Provisional QRP this definition is needed.
- E. 3.5 changed to 3.7 in Mr. Watson's proposal: "Supervised experience". Mr. Watson added the phrase: "The supervised experience required by this rule must conform to the criteria for acceptable employment experience set forth in 85-27-5, below." This is clearly needed to assure that the supervised experience meets the criteria, again helping to assure that Provisional QRPs are being properly trained and gaining the appropriate experience to become a full QRP, assuring standard services are being provided to injured workers.
- F. Mr. Watson adds 3.8 through 3.14 to clarify national certifications and the state license designations as well as the definition of "catastrophic injury". These definitions need to be stated in order to clarify additional changes Mr. Watson, and the McKenzie Task Force, has proposed under other sections of this rule.

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3. 85-27-4 Minimum Education Requirements: The previous proposal for Rule 27 outlined a listing of Baccalaureate degrees which is convoluted, confusing, and not in keeping with national standards. In addition, 4.1 through 4.2c. in the previously proposed rule does not raise the standards or qualifications of this profession to the level of national standards or even those of surrounding states. As our profession tightens the criteria to become nationally certified, and as the state licensing board increases it's criteria, we too must look to assure that those providing rehab. services to injured workers in this state meet standard nationally recognized criteria. We need to assure the injured workers in this state that they are receiving quality services from rehab. providers who have the experience and educational level to provide appropriate services "to individuals receiving benefits from a disability compensation system." McKenzie and other Supreme Court opinions have brought to light that fact that not all providers of rehab. services understood the basics of a disability compensation system nor understood the injured worker's rights or the means of providing appropriate services to injured workers. This issue must be addressed and Mr. Watson and the McKenzie Task Force has addressed it appropriately with the changes they have proposed to the Minimum Education and Experience Requirements. If you read carefully through Mr. Watson's proposal under the heading of 85-27-4, Minimum Education and Experience Requirements you will observe that the goal is to assure that qualified, experienced individuals provide rehab. services to the injured workers of this state. Mr. Watson's proposal attempts to bring up the standards in these areas to better meet the national standards.

4. 85-27-5 Minimum Experience Requirements: Both section 85-27-4 and 85-27-5 in the public comment draft was altered to 85-27-4 Minimum Education and Experience Requirements in Mr. Watson's draft. Mr. Watson and the McKenzie Task Force has outlined qualifications that address both the educational and experience requirements together in each category under 85-27-4 in Mr. Watson's draft. The listed criteria is consistent, for the most part, with national standards and assures that individuals providing rehab. services in this state meet the minimum standards. His proposal helps to close the loop holes that existed previously and continued to exist in the proposed rule you have issued for public comment. The McKenzie opinion brought to light practices that could be considered inconsistent with national ethical standards and the provision of appropriate rehab. services to injured workers. A flaw in the past criteria and the one you have open for public comment is that it does nothing to assure a standard of care or provision of services. The proposal presented by Mr. Watson and the McKenzie Task Force addresses these concerns and is careful to delineate the specific minimum educational and experience requirements for professionals to assure that standard services should be provided and is in keeping with national criteria.

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5. 85-27-6 Acceptable Employment Experience: in the Public Comment draft is altered to 85-27-5 in Mr. Watson's draft: The designation numbers, of course, are changed in this section. Actual wording changes appears in 6.3 (5.3 in Mr. Watson's draft. Mr. Watson's changes are noted in parenthesis):

- A. **6.3** "Employment verification must provide evidence that 100% of the time counted as acceptable employment experience was spent working as a vocational rehabilitation counselor (Mr. Watson's draft deletes "working as a vocational rehabilitation counselor") 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. (Mr. Watson's draft deletes 6.6 and adds the phrase: "Time spent in travel and waiting are not considered vocational rehabilitation services" to this section. This makes sense since you are discussing employment verification under this section.)
- B. **6.4** - Designating acceptable employment: Altered to 5.4 in Mr. Watson's draft. Mr. Watson has taken 6.5, which notes that experience must reflect at least 3 areas noted in the list of acceptable experience and added it to this section. In addition, he has increased the required 3 areas to 4. By adding the 6.5 wording here it gives the reader knowledge that a certain number of experience areas must be met prior to reading the list of the acceptable experience. This change in wording simply allows for a better flow of the document.
- C. **6.4.a through 6.4.i** - Mr. Watson has this list of acceptable employment as 5.4.1 through 5.4.12.
 - 1. **6.4.a changed to 5.4.1** in Mr. Watson's draft: This wording had to be changed since the original wording did not include "vocational rehabilitation consulting" which is a great portion of what we do in the profession.
 - 2. **6.4.f supervision of counselors:** Mr. Watson, in his **5.4.6** has added some wording: "Supervision of counselors, provisional qualified rehabilitation professionals or qualified rehabilitation professionals;" Not all QRPs are going to be "counselors" as designated by the state counseling licensing board. This state's counseling licensing board has indicated that one may not call one's self a "counselor" unless they have the state license. One may have a Masters degree, be a Certified Rehab. Counselor and yet not be able to use the designation of "counselor" due to the licensing law in this state. The addition of the wording to include supervision of qualified rehab. professionals would avoid any confusion or concerns regarding this matter.

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6. 85-27-7Continuing Education. In Mr. Watson's 85-27-6 Continuing Education he makes the following changes:

- A. Instead of presenting documentation of completion of 20 hours of continuing education per year, Mr. Watson has indicated that every 2 years each QRP must submit a renewal form and documentation of completion of 40 hours of continuing education. Mr. Watson includes 3 hours of credits in ethics must be completed every two years to assure that continued exposure to ethics in this profession is maintained by all QRPs.
- B. 7.2 - Maintaining documentation of continuing education. Mr. Watson notes in his 6.2 that QRPs and provisional QRPs (addition of Provisional QRPs) must be required as outlined in section 7.1 of this rule to maintain documentation... I believe Mr. Watson meant to state "must be required as outlined in section 6.1 of this rule..." and not 7.1 since he has made changes to the designation numbers of sections of the rule.

I differ from the stance taken by the McKenzie Task Force and Rehab. Task Force and have stated previously years ago when this rule was initially instituted my disagreement with this stance. I believe that if one has a national certification that requires one to have continuing education credits in order to continue with the certification then all one must do is to present, or have on record in one's office, the updated certification that notes the renewal dates, since CEUs had to be obtained to gain the renewal. I continue to feel that this is the best and easiest way to monitor Continuing Education Credits for the rehab. population that have National Certifications that already require CEUs.

- C. 7.3 (6.3 in Mr. Watson's draft): 7.3 and the list that follows in the rule 27 open for public comment is a list of graduate courses for a degree in rehab. counseling which may or may not prepare one for work with the disabled population that receive benefits from a compensation system. The McKenzie Task Force draft as presented to you by Mr. Watson includes relevant issues directed towards Workers' Compensation and/or injured workers and has deleted some items from the list that are totally irrelevant to this profession of providing vocational rehabilitation services to individuals receiving benefits from a disability compensation system.

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Although Mr. Watson had included the majority of the previous list in the McKenzie Task Force list, there are a few changes:

- a. He has placed "Professional Ethics" at the top of the list.
- b. He has clarified Psychosocial aspects of disability.
- c. He had deleted the irrelevant "group counseling/therapy", "research and statistics", and "experimental psychology"
- d. He has added the very relevant "Disability case management", "Managed care and disability management concepts", "Workers' compensation and/or disability compensation systems", and "Employer consultation services".

These changes make the CEU list a far more relevant list to meet the purpose of Rule 27.

- D. Mr. Watson has added a few items to the Continuing Education Section: 6.4 and 6.5 of his draft.

He has clarified in **section 6.4** what CEU programs would be accepted. This would be helpful especially if Workers' Comp. sends those not knowledgeable with rehab. issues out, as they have in the past, to review our CEUs. Those without knowledge or experience in this field or those who do not have to obtain CEUs themselves are not aware of the appropriate types of programs. This area may need further clarification down the road but for now at least this section provides a basic guideline to assist in this area and is absolutely necessary to avoid future questions regarding appropriateness of CEUs.

In **section 6.5** Mr. Watson has indicated that those with national certifications whose certification was the basis for their QRP status must submit current certification and renewals to continue the QRP designation. Obviously, this item needed to be included.

7. 85-27-10. Scope of Practice- This section is added to the McKenzie Task Force Draft presented by Mr. Watson.

10.2 indicates that permanent total disability petitions that are referred for a rehab. evaluation must be evaluated by QRPs with certain designations or educational background in order to assure that the expertise of those providing these services meets the need of this unique population and are able to provide the forensic testimony that may be necessary.

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10.3 assures that the catastrophically injured population will have their needs met by those individuals uniquely qualified to provide the appropriate services.

Again, the draft presented by the McKenzie Task Force and sent to you by Mr. Watson addresses the many concerns raised by the McKenzie Supreme Court decision and stands as a superior document in light of this recent decision to that of the one you have issued for public comment. The McKenzie Task Force document better assures quality services for the injured workers in this state. That alone should be sufficient cause to give it great consideration.

Should have any questions regarding my comments, please do not hesitate to contact me. I thank you for your time in review of my comments.

Sincerely,



Tina Riggs Walsh, CDMS, QRP

Industrial & Rehabilitation Consultants
P.O. Box 5116, Vienna, WV 26105
(304) 295-8153 FAX: (304) 295-8156
trw@citynet.net

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WATSON REHABILITATION SERVICES

Edwin S. Watson, CRC, CCM, CDMS, LPC, QRP
PO Box 798
Winfield, WV 25213-0798

Phone: (304) 755-0599
E-mail: watsonrehabwv@att.net
Fax: (304) 755-0599

September 6, 2002

Randall B. Suter, Senior Counsel
Legal Services Division
Workers Compensation Executive Offices
PO Box 3824
Charleston, WV 25338-3824

RE: 85CSR27 ("Qualified Rehabilitation Provider")

Dear Mr. Suter:

My comments in response to the proposed Rule amendment are:

1. The proposed Rule, with all due respect to the recent efforts of the Rehabilitation Task Force and of the Health Care Advisory Panel in the 1990's includes shortcomings, which are, in my opinion, more pronounced in light of the *McKenzie* and *Skaggs* decisions.
2. For the most part, I completely rewrote the Rule and then, with valued input from other professionals, revised the draft further. A final draft is attached. You may find yourself receiving separate correspondence from those other Qualified Rehabilitation Professionals supporting this proposal.
3. The changes are so extensive that "A BRIEF SUMMARY" is simply not possible.

Thank you for an opportunity to share my thoughts on this matter.

Sincerely,



Edwin S. Watson

LEGISLATIVE RULE

WORKERS' COMPENSATION DIVISION

SERIES 27

QUALIFIED REHABILITATION PROVIDER

§ 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, 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.

1.3. Filing Date. –

1.4. Effective Date. –

§ 85-27-2. Purpose of Rule.

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.

§ 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.

3.2. "Division" means the Workers' Compensation Division of the Bureau of Employment Programs.

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.

3.4a. "Vocational rehabilitation services" means professional counseling, consulting or case management services reasonably necessary to assist an individual 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.

3.4b. Furthermore, "vocational rehabilitation services" means services covered by WV Code, 23-4-9, which provide new skills or modified or alternate 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, for reimbursement by the Division, has the education, experience and skills necessary to provide vocational rehabilitation services as defined in §85-15-3 and pursuant to the rehabilitation priorities set forth in §85-15-4, to make recommendations consistent with medical report, 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 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 §85-27-5, below.

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.

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

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 12 months of full-time or equivalent part-time employment providing vocational rehabilitation services, as defined in § 85-27-3.4a, to individuals receiving benefits from a disability compensation system, of which 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, certified vocational evaluation specialist, or certified case manager certification as well as at least 12 months of full-time or equivalent part-time employment providing vocational rehabilitation services, as defined in § 85-27-3.4a, to individuals receiving benefits from a disability compensation system, of which 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 36 months of full-time or equivalent part-time employment providing vocational rehabilitation services, as defined in § 85-27-3.4a, to individuals receiving benefits from a disability compensation system, of which 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. Additionally, the applicant must have at least 48 months of full-time or equivalent part-time employment providing vocational rehabilitation services, as defined in § 85-27-3.4a, to individuals receiving benefits from a disability compensation system, of which 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 as well as at least 36 months of full-time or equivalent part-time employment providing vocational rehabilitation services, as defined in § 85-27-3.4a, to individuals receiving benefits from a disability compensation system, of which 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 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 36 months of full-time or equivalent part-time employment providing vocational rehabilitation services, as defined in § 85-27-3.4a, to individuals receiving benefits from a disability compensation 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.

§85-27-5. Acceptable Employment Experience.

5.1 Full-time employment is considered 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 sections 5.4.1 through 5.4.12 above to be considered acceptable.

5.4.1. Vocational rehabilitation consulting, career counseling, or mental health counseling;

5.4.2. Developing and monitoring vocational rehabilitation services/care;

5.4.3. Job placement and/or job development;

5.4.4. Job analyses;

5.4.5. Individual appraisal;

5.4.6. Supervision of counselors, provisional qualified rehabilitation professionals or qualified rehabilitation professionals;

5.4.7. Vocational training;

5.4.8. Consultation in disability management;

5.4.9. Forensic rehabilitation services;

5.4.10. Return-to-work plan development and implementation;

5.4.11. Vocational evaluation;

5.4.12. Medical rehabilitation case coordination;

§85-27-6. Continuing Education.

6.1. Every 2 years, commencing from the date the application was approved for qualified rehabilitation professional status, each qualified rehabilitation professional and provisional 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.

6.2. Qualified rehabilitation professionals and provisional qualified rehabilitation professionals will be required as outlined in section 7.1 of this rule to maintain documentation of continuing education at their place to employment, to be reviewed by the division when determined necessary by division 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:

- 6.3.1. Professional ethics;
- 6.3.2. Rehabilitation counseling or counseling;
- 6.3.3. Career development or vocational counseling;
- 6.3.4. Medical, vocational and psychosocial aspects of disability;
- 6.3.5. Disability case management;
- 6.3.6. Managed care and disability management concepts;
- 6.3.7. Workers compensation and/or disability compensation systems;
- 6.3.8. Community agencies and resources;
- 6.3.9. Plan development in rehabilitation;
- 6.3.10. Job development and placement;
- 6.3.11. Foundations of rehabilitation;
- 6.3.12. Theories of personality; individual differences; personality measures;
- 6.3.13. Organizational psychology; social psychology; educational psychology;
- 6.3.14. Employer consultation services;
- 6.3.15. Family, gender and multicultural issues;
- 6.3.16. Tests and measures or vocational assessment; individual intelligence testing;
- 6.3.17. Problems in substance abuse;
- 6.3.18. Theories/techniques of work adjustment;
- 6.3.19. Environmental and attitudinal barriers for individuals with disabilities;

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.

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 must be maintained at their place of employment to be reviewed by the division as scheduled when determined necessary by division personnel.

§85-27-7. Transitional Period.

7.1. Individuals providing vocational rehabilitation services to injured workers, employers or the Division at the time of the effective date of this rule 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 §85-27-4. A provisional qualified rehabilitation professional shall be granted the right to apply for reinstatement in cases where a medical, familial, or other Division 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

§85-27-4. A provisional qualified rehabilitation professional must remain under an appropriate qualified rehabilitation professional supervision plan until the requirements outlined in §85-27-4 have been fully met.

§85-27-8. Right to Protest

8.1. Qualified Rehabilitation Professionals will be granted the right to file a protest if their request for QRP certification is denied. Protest to QRP certification will be referred to an Appeals Committee for review and determination. Such a committee will be established by the Division, which shall be comprised of members selected by the Commissioner.

§85-27-9. Code of Ethics

9.1. Persons granted the designation of qualified rehabilitation professional are charged with abiding by the Code of Professional Ethics for Qualified Rehabilitation Professionals in West Virginia.

§85-27-10. Scope of Practice

10.1 Only qualified rehabilitation professionals may provide vocational rehabilitation services at any and all levels of the rehabilitation priorities described in §85-15-4.

10.2 Provided, 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.

10.3 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.

September 5, 2002

WORKTECH



Occupational Consulting Services, LLC

Michael D. Reel, President/CEO

www.worktech.org

Mr. Randall B. Suter, Senior Counsel
Legal Services Division
Workers' Compensation Executive Offices
P.O. Box 3824
Charleston, WV 25338-3824

RE: Comments on Proposed Rule §85CSR27, Qualified Rehabilitation Provider

Dear Mr. Suter:

I have reviewed the proposed Rule and have the following comments:

1. Overall, I find this Rule to be very cumbersome, for both the Division and for the Rehabilitation Practitioner.
2. Definitions section (§85-27-3) does not include definitions for: Catastrophic Case Management, Vocational Evaluation, or Life Care Planner. The current QRP Application does include a section intended to identify individuals with those areas of speciality, as well as others.
3. There is no section addressing the registration process for QRP's.
4. There is no section addressing expiration and renewal of registrations.
5. The formula for determining minimum education requirements (§85-27-4) is confusing, as it has become inundated with too much emphasis on types and varieties of degrees. Rehabilitation counseling, human services, psychology, education or a related field is sufficient.
6. Minimum experience requirements should appear under one section only. As proposed, experience requirements are included under both the Education section and Experience section. (*§85-27-4.2.b requires baccalaureate AND two years employment. In addition, §85-27-5-1 requires an additional three years of experience that does not include work experience counted toward meeting the minimum educational requirement*).
7. Minimum educational requirements should pertain strictly to education, unless a decision is made to combine minimum education, experience and supervision.
8. The Continuing Education section (§85-27-7) should be deleted.

P.O. Box 113, Petersburg, WV 26847 * 304-257-9515 * 304-257-1878 FAX

Mr. Randall B. Suter
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9. Individuals who currently have a related national certification (i.e. CRC, CCM, CDMS, CRRN, etc.) are required to maintain continuing education as part of their certification maintenance.
10. QRP's with national certifications should be required to submit evidence that their respective certifications are still current.
11. QRP's who do not have a national certification (i.e. CRC, CCM, CDMS, CRRN, etc.) should be encouraged to pursue same. Only those individuals without national certification should be required to submit evidence of continuing education.
12. The presences of national certifications also accommodates transitional QRP's. This would ensure proper supervision and training for the transitional QRP.
13. Section §85-27-9 references the creation of an Appeals Committee, comprised of members selected by the Commissioner. Suggest that this Advisory Committee be comprised of QRP's registered with the Division. Members should be appointed on a rotational basis and represent all geographical areas of the State (Northern panhandle, Eastern panhandle, Central, Southern, and Western). This Committee should be utilized to review applications for registration whenever further clarification is needed.
14. The Code of Professional ethics referenced in Section §85-27-10 should be included within this Rule, or contained within the Title 85CSR Series for ease of reference.

I have enclosed a copy of the Title 85 Series 27 Rule, with areas of concern highlighted. Should you have any questions or comments, please feel free to contact me at your convenience. I may be reached toll-free at 1-866-214-0958, or you may E-mail me at mdreel@hotmail.com.

Best Regards,

Michael D. Reel, Senior Disability Analyst and Diplomat
Certified Disability Management Specialist
American Board of Disability Analysts
Cert. # G0079
O #287

Enclosure

MDR/mpw

TITLE 85
LEGISLATIVE RULE
WORKERS' COMPENSATION DIVISION
SERIES 27
QUALIFIED REHABILITATION PROVIDER

§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 rehabilitation services for the Workers' Compensation Division, 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 the consent or approval of a departmental secretary.

1.3. Filing Date. -- ~~May 20, 1997.~~

1.4. Effective Date. -- ~~June 20, 1997.~~

§85-27-2. Purpose of Rule.

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 that rehabilitation services provided to injured workers are provided in a professional manner by individuals qualified by education and experience to provide such services, so that the highest quality of rehabilitation services may be afforded to injured workers, at any and all levels of the rehabilitation priorities referenced in §85-15-4. This rule is applicable to any provider of rehabilitation services that extends such services to injured employees workers and is reimbursed for such services by the Workers' Compensation Division.

§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.

3.2. "Division" shall refer to the Workers Compensation Division of the Bureau of Employment Programs.

3.3. ~~"HCAP" means the Health Care Advisory Panel.~~ "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. "QRP" stands for "qualified rehabilitation professional."

3.5. "Qualified Rehabilitation Professional" means an individual that meets the criteria set forth in this rule to provide vocational rehabilitation services to claimants injured workers at any and all levels of the rehabilitation priorities referenced in §85-14-4, and be reimbursed for such services by the Division.

3.6. Qualified Rehabilitation Professional Medical Case Coordinator means a nurse certified by the state board of nursing that meets the criteria set forth in this rule to provide vocational rehabilitation services to claimants injured workers at any and all levels of the rehabilitation priorities referenced in §85-14-4, and be reimbursed for such services by the Division.

3.7. Qualified Rehabilitation Professional Catastrophic Case Manager means a nurse certified by the state board of nursing that meets the criteria set forth in this rule to provide vocational rehabilitation services to claimants injured workers at any and all levels of the rehabilitation priorities referenced in §85-14-4, and be reimbursed for such services by the Division.

3.8. Vocational Evaluator means an individual who is certified or has met all of the educational and experience requirements to be eligible to be certified by the Commission on Certification of Work Adjustment and Vocational Evaluation Specialists.

3.8. "Supervised experience" means work in the field of rehabilitation services in which the individual receives at least one (1) hour of formal interaction instruction, case review, and case direction with a supervising professional for every twenty (20) hours worked. The Division may request documentation of such supervision.

§85-27-4 Advisory Committee on Registration of Rehabilitation Practitioners

4.1. The Advisory Committee consists of seven members appointed by the Division in accordance with this section.

4.2. The Advisory Committee shall be comprised of Qualified Rehabilitation Professionals who are registered with the Division under this subtitle.

4.3. The Division shall appoint members of the Advisory Committee so that its membership reflects the geographic, racial, ethnic and gender makeup of the population of the State.

4.4. The term of an Advisory Committee member is three (3) years.

4.5. In making appointments to the Advisory Committee, the Division shall provide for continuity and rotation through a staggering of terms.

4.6. A majority of the fully authorized Advisory Committee is a quorum.

4.7. The Advisory Committee shall meet at the request of the Division.

4.8. In addition to the duties set forth elsewhere in this title, the Advisory Committee shall:

4.8.1. review applications for registration submitted to the Division whenever further clarification regarding the applicant is requested by the Division; and

4.8.2. after review and evaluation, provide recommendations to the Division on the applicant.

§85-27-5 Registration

5.1. To qualify for registration, an applicant shall be an individual who meets the requirements set forth in this section.

5.2. The applicant shall be at least eighteen (18) years of age; and

5.3. and satisfy the education, experience, and supervision requirements of §85-27-6 of this subtitle.

§85-27-4 27-6. Minimum Educational, Experience and Supervision Requirements.

4.1. ~~6.1. Except as otherwise provided in this section, all individuals seeking recognition as a qualified rehabilitation professional (QRP) must submit evidence of graduation from an accredited college or university with a baccalaureate degree in rehabilitation counseling, nursing or a behavioral sciences field, such as psychology, guidance and counseling, or special education. To qualify for registration as a Qualified Rehabilitation Professional, an individual shall:~~

6.1.1. have a bachelor's degree from an accredited institution in rehabilitation counseling, human services, psychology, education or a related field; with at least 2 years of paid supervised experience under the administrative supervision of a Certified Rehabilitation Counselor, Certified Vocational Evaluator, Certified

Disability Management Specialist, Certified Case Manager or Certified Rehabilitation Registered Nurse.

6.1.2. a master's or doctoral degree from an accredited institution in rehabilitation counseling, human services, psychology, education or a related field; with at least 1 year of paid supervised experience under the administrative supervision of a Certified Rehabilitation Counselor, Certified Vocational Evaluator, Certified Disability Management Specialist, Certified Case Manager or Certified Rehabilitation Registered Nurse.

6.1.2. be a Certified Rehabilitation Counselor, Certified Vocational Evaluator, Certified Disability Management Specialist, Certified Case Manager or Certified Rehabilitation Registered Nurse; or hold an equivalent national certification that is acceptable to the Division, or have met all of the education and experience requirements to be eligible to be certified.

4.2. 6.2. The following may be substituted for the educational requirement set forth above: To qualify for registration as a Qualified Rehabilitation Professional Medical Case Coordinator, an individual must;

6.2.1. be a licensed, registered nurse certified by the WV state board of nursing; with at least 2 years of paid supervised experience under the administrative supervision of a Certified Rehabilitation Counselor, Certified Vocational Evaluator, Certified Disability Management Specialist, Certified Case Manager or Certified Rehabilitation Registered Nurse;

6.2.2. be a Certified Rehabilitation Counselor, Certified Vocational Evaluator, Certified Disability Management Specialist, Certified Case Manager or Certified Rehabilitation Registered Nurse; or hold an equivalent national certification that is acceptable to the Division, or have met all of the education and experience requirements to be eligible to be certified.

4.2. 6.3. The following may be substituted for the educational requirement set forth above: To qualify for registration as a Qualified Rehabilitation Professional Catastrophic Case Manager, an individual must;

6.3.1. be a licensed, registered nurse certified by the WV state board of nursing; with at least 2 years of paid supervised experience under the administrative supervision of a Certified Rehabilitation Counselor, Certified Vocational Evaluator, Certified Disability Management Specialist, Certified Case Manager or Certified Rehabilitation Registered Nurse;

6.3.2. be a Certified Rehabilitation Counselor, Certified Disability Management Specialist, Certified Case Manager or Certified Rehabilitation Registered Nurse; or hold an equivalent national certification that is acceptable to the Division.

4.2.1. 6.4. A baccalaureate degree in any academic field from an accredited college or university AND a license to practice as a registered professional nurse in the State of

West Virginia; OR To qualify for registration as a Qualified Rehabilitation Professional Vocational Evaluator, an individual must;

6.4.a. have a bachelor's degree from an accredited institution in vocational evaluation, rehabilitation psychology, human services, education, or a related field with 2 years of paid supervised experience under the administrative supervision of a Certified Rehabilitation Counselor, Certified Vocational Evaluator, Certified Disability Management Specialist, Certified Case Manager or Certified Rehabilitation Registered Nurse;

6.4.b. have a master's or doctoral degree in rehabilitation, vocational evaluation, psychology, human services, education, or a related field with one year of paid supervised experience under the administrative supervision of a Certified Rehabilitation Counselor, Certified Vocational Evaluator, Certified Disability Management Specialist, Certified Case Manager or Certified Rehabilitation Registered Nurse;

6.4.c. be certified or have met all of the educational and experience requirements to be eligible to be certified in vocational evaluation by the Commission on Certification of Work Adjustment and Vocational Evaluation Specialists, or have met all of the education and experience requirements to be eligible for certification.

4.2.2. A baccalaureate degree in any academic field from an accredited college or university AND two years of full-time or equivalent part time paid employment as a teacher of the disabled or in a client-serving capacity in a human service agency; OR

4.2.3. Completion of an associate degree or diploma program in nursing from an accredited college or university or a diploma nursing program AND a license to practice as a registered professional nurse in the State of West Virginia AND professional certification from a national nursing or rehabilitation certifying organization as a practitioner in the area of rehabilitation nursing or rehabilitation services.

§85-27-5 27-7. Minimum Experience Requirements. Expiration and Renewal of Registration

5.1. Except as otherwise provided in this section, all individuals seeking recognition as a QRP must submit evidence of one year of full-time or equivalent part time paid supervised experience in rehabilitation counseling and two years of full-time or equivalent part time paid supervised experience in providing rehabilitation services to the industrially impaired/disabled population. Work experience required for meeting this provision will not include work experience counted toward meeting the minimum educational requirement set forth in the preceding section.

7.1. a registration expires on the date set by the Division, unless the registration is renewed for an additional term as provided in this section. A registration may not be renewed for a term longer than 3 years.

7.2. at least 1 month before a registration expires, the Division shall send to the registrant, by first-class mail to the last known address of the registrant;

7.2.1 a renewal application form; and

7.2.2 a renewal notice that states:

7.2.2.a the date on which the current registration expires

7.2.3. the date by which the Division must receive the renewal application in order that the renewed registration may be issued and mailed before the current registration expires.

7.3. to be considered for renewal, the registrant must provide satisfactory evidence of compliance with continuing education requirements and other qualifications and requirements specified under this subtitle for registration renewal.

7.4 the Division shall renew the registration of any registrant who meets the requirements of this section.

7.5 each registrant shall give the Division written notice of any change of address.

5.2. The supervised experience required by this section must conform to the criteria for acceptable employment experience set forth in §85-27-6, below.

5.3. A Masters degree from an accredited college or university in the behavioral sciences or nursing fields may substitute for the training and one year of the experience requirement set forth in section 5.1, above. The remaining year of required experience must be in the field of rehabilitation to the industrially impaired and/or disabled population.

§85-27-6 27-8. Acceptable Employment Experience. Fraudulent Practices in Connection with Registration

8.1 the Division may deny registration to any applicant, reprimand any registrant, or suspend or revoke any registration if the applicant or registrant:

8.1.1 fraudulently or deceptively obtains or attempts to obtain a registration for the applicant or for another;

8.1.2. fraudulently or deceptively uses a registration; or

8.1.3. does not comply with the rules and regulations governing the standards and practice with regard to the delivery of vocational rehabilitation services.

8.2. the Division may review the status of any rehabilitation practitioner registered under this subtitle ant any time.

6.1. Full-time employment is considered as 35 hours a week.

6.2. 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.

~~6.3. Employment verification must provide evidence that 100% of the time counted as acceptable employment experience was spent working as a rehabilitation counselor providing rehabilitation services to persons with impairments and disabilities. At least 50% of the activities must be directly related to counseling services to persons with disabilities.~~

~~6.4. Rehabilitation counseling services which count as acceptable employment experience may include, but are not limited to:~~

~~6.4.1. vocational or personal adjustment or affective (mental health) counseling;~~

~~6.4.2. developing and monitoring rehabilitation services/care;~~

~~6.4.3. job placement and/or job development;~~

~~6.4.4. job analyses;~~

~~6.4.5. individual appraisal;~~

~~6.4.6. supervision of counselors;~~

~~6.4.7. vocational training;~~

~~6.4.8. consultation in disability management;~~

~~6.4.9. forensic rehabilitation services.~~

~~6.5. Employment experience must reflect activity as described in section 6.4.1 above and in at least three other areas, such as those set forth in sections 6.4.2 through 6.4.9, to be considered acceptable.~~

~~6.6. Time spent in travel and waiting are not considered counseling services.~~

§85-27-7 27-9 Continuing Education. Hearings

9.1. before the Division takes any final action under §85-27-8 of this subtitle, the Division

9.1.1 shall give the individual against whom the action is contemplated an opportunity for a hearing before the Division.

9.1.2 the individual may be represented at the hearing by counsel.

9.1.3. the Division shall give notice and hold a hearing in accordance with hearing regulations adopted by the Division; may administer oaths in connection with any proceedings under this section; and may issue subpoenas in connection with any proceeding under this section.

9.2 If an individual fails to comply with the subpoena issued under this section, on petition of the Division, a court of competent jurisdiction may compel compliance with the subpoena.

9.3. If, after due notice, the individual against whom the action is contemplated fails or refuses to appear, the Division may hear and determine the matter.

~~7.1. Each qualified rehabilitation professional (QRP) is required to present documentation of the completion of twenty (20) hours of continuing education per year.~~

~~7.2. Documentation of continuing education will be required with the application for the July 1, 1998 enrollment period, reflecting continuing education hours completed during the year preceding enrollment.~~

~~7.3. The following is a representative list of acceptable subjects:~~

~~7.3.1. Principles of Counseling or Theories of Counseling or Methods of Counseling;~~

~~7.3.2. Career Development or Vocational Counseling;~~

~~7.3.3. Tests and Measures or Vocational Assessment;~~

~~7.3.4. Medical aspects of disability;~~

~~7.3.5. Psychosocial aspects of disability;~~

~~7.3.6. Principles of rehabilitation;~~

~~7.3.7. Rehabilitation counseling;~~

~~7.3.8. Community agencies and resources;~~

~~7.3.9. Group counseling/therapy;~~

~~7.3.10. Plan development in rehabilitation;~~

~~7.3.11. Job development and placement;~~

~~7.3.12. Research and statistics;~~

~~7.3.13. Theories of personality;~~

~~7.3.14. Individual differences;~~

~~7.3.15. Personality measures;~~

~~7.3.16. Cross-cultural counseling;~~

~~7.3.17. Organizational psychology;~~

~~7.3.18. Experimental psychology;~~

~~7.3.19. Social psychology;~~

~~7.3.20. Educational psychology;~~

, L&i5W000?
~~7.3.21. Individual intelligence testing;~~

~~7.3.22. Problems in substance abuse; and~~

~~7.3.23. Theories/techniques of work adjustment.~~

§85-27-8 27-10. Transition Period. Right to Protest

10.1 Any individual aggrieved by a decision of the Division under this subtitle may appeal the decision and request a review by the Advisory Committee as allowed under §85-27-5.

~~8.1. Individuals providing rehabilitation services to claimants, employers or the Division at the time of the effective date of this rule who lack sufficient experience to be designated QRP may continue to provide rehabilitation services under the supervision of a QRP for four (4) years following the effective date of this rule.~~

~~8.2. Individuals who have provided the above-described services through their employers will qualify for the transition period in the same manner as individuals who have provided such services directly to claimants, employers or the Division.~~

Baldwin and Associates, Inc.

P.O. Box 1759 • Huntington, WV 25718-1759 • 304-525-3439

Gina Baldwin, BA, CDMS, CCM, F/ABDA, QRP
Rehabilitation Specialist
Qualified Rehabilitation Provider-WV, OH
Huntington, WV
304-525-3439

Angie Simmerman, M.Ed., CRC, QRP
Rehabilitation Counselor
Qualified Rehabilitation Provider-WV, OH
Charleston, WV
304-344-0553

Kelli Burns, M.A., M.S., QRP
Rehabilitation Consultant
Qualified Rehabilitation Provider-WV
Craigsville, WV
304-742-5227

September 7, 2002

Randall B. Suter
Senior Counsel
Legal Services Division
Workers' Compensation Executive Offices
P.O. Box 3824
Charleston, WV 25338-3824

Re: 85CSR27, "Qualified Rehabilitation Provider"

Dear Mr. Suter:

I have read the Division's Title 85 Proposed Legislative Rule Series 27 "Qualified Rehabilitation Provider". I have also read Title 85 Proposed Legislative Rule Series 27 "Qualified Rehabilitation Provider" Draft as proposed by Edwin Watson, QRP, LPC, CCM, CRC, CDMS. Mr. Watson's Draft was delivered to your office on September 6, 2002. My comments will be restricted to Mr. Watson's proposed Draft as it is my opinion his Draft should replace the Division's Proposed QRP Rule.

85-27-3. Definitions

Mr. Watson's Draft clearly defines: vocational rehabilitation services; qualified rehabilitation professional; provisional qualified rehabilitation professional; supervised experience and national certifications. In my opinion, including the above detailed definitions as proposed by Mr. Watson eliminates present confusion over each of these terms.

85-27-4. Minimum Education and Experience Requirement

Mr. Watson's Draft clearly outlines the minimum education and employment experience required by the Division for QRP eligibility. Mr. Watson's Draft once again eliminates present confusion over the education and experience requirement to be a QRP. I support Mr. Watson's Draft including "supervision of counselors, provisional qualified rehabilitation professionals or qualified rehabilitation professionals" as acceptable employment experience under this section.

85-27-4. Minimum Education and Experience Requirement; 85-27-6. Continuing Education

Mr. Watson has included CRC, LPC, CDMS, CRRN, CVE and CCM along with 12 months of experience (6 months under the supervision of a QRP) under the education and experience requirement in his Draft. Furthermore, under continuing education, Mr. Watson's Draft accepts the continuing education programs approved by the various Commissioners for CRC, LPC, CDMS, CRRN, CVE and CCM. In my opinion **it is time** for the Division to recognize and accept each of these designations along with their respective continuing education requirements as established by each of these commissions. Therefore, I support Mr. Watson's Draft as proposed relative to CRC, LPC, CDMS, CRRN, CVE and CCM as outlined under education and experience as well as continuing education.

85-27-10. Scope of Practice

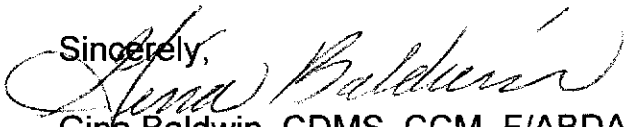
Under Scope of Practice, Mr. Watson's proposed Draft states an injured worker petitioning for permanent total disability benefits be referred for a rehabilitation evaluation "to a QRP with either a masters or doctorate degree in rehabilitation counseling, counseling and guidance, or psychology, or by a qualified rehabilitation professional with either the CRC, LPC, vocational evaluation specialist, CDMS, or by a QRP who is certified by the ABVE. Based upon the recent **McKenzie** and **Skaggs** Decisions by the State Supreme Court the Division must establish a higher standard for QRP's". By requiring a specific masters, doctorate or national designations the Division will ensure injured workers petitioning for PTD benefits undergo rehabilitation evaluations by QRP's who demonstrate a minimum level of competency by virtue of education and work experience. As previously documented, Workers' Compensation Systems and Insurance Disability Management Systems in other states require the same standards for QRP's as proposed in Mr. Watson's Draft. It is my opinion the West Virginia Workers' Compensation Division should implement the same standards of practice for QRP's.

Under Scope of Practice, Mr. Watson's proposed Draft states "an injured worker determined to have suffered a catastrophic injury must be assigned a nurse QRP with at least one of the following certifications: CRRN; CCM; CDMS; a nurse QRP, or a provisional nurse QRP working under the direct supervision of a QRP with at least one of those certifications". Workers' Compensation Systems and Disability Management Systems in other states require this minimum standard. It is my opinion the West Virginia Workers' Compensation Division should implement the same standards of

practice for nurse QRP's assigned to provide services to workers who have sustained catastrophic injuries.

Finally, I commend all of those who have expended time and tremendous effort to assist the Division in the proposed Draft for Title 85 Legislative Rule Workers' Compensation Division Series 27 Qualified Rehabilitation Provider.

Thank you for the opportunity to comment on the Series 27 Draft as proposed by Mr. Watson.

Sincerely,

Gina Baldwin, CDMS, CCM, F/ABDA
Rehabilitation Specialist

pc: file

Workers' Compensation Division's

Response to Comments

85 C.S.R. 27

Qualified Rehabilitation Provider

SECTION	SOURCE	COMMENT	RECOMMENDATION
85-27-2.	Ed Watson Tina Walsh	Delete "at any and all levels of the rehabilitation priorities referenced in 85-15-4." Agrees with Mr. Watson Phrase is trite and unnecessary.	Agree with deletion
85-27-3. Definitions	Ed Watson	Replace "shall refer to" with "means."	Agree
Add to definitions	Ed Watson Tina Walsh Gina Baldwin	Add definition for "vocational rehabilitation services" to clarify	Agree- however add word "rehabilitation" to read "rehabilitation case management"
3.3	Ed Watson Tina Walsh Gina Baldwin	Changed definition of "qualified rehabilitation professional" to clarify	Agree except delete "for reimbursement by the Division". Change "report" to "documentation." Also refer to 85-15 in general -not specific sections.
Add to definitions	Ed Watson Tina Walsh Gina Baldwin	Add definition for "provisional qualified rehabilitation professional" to clarify	Agree
3.5	Ed Watson Tina Walsh Gina Baldwin	Added language to definition of "supervised experience" to conform with another section of the rule for clarification	Agree. Change 85-27-5 to "this rule"
Add to definitions	Ed Watson Tina Walsh Gina Baldwin	Added definitions for : "certified rehabilitation counselor"; "certified disability management specialist"; "certified case manager"; "certified rehabilitation registered nurse"; "licensed professional counselor"; and "certified vocational evaluation" Definitions were added to clarify national and state certifications	Agree
Add to definitions	Ed Watson Tina Walsh	Add definition of "catastrophic injury" to coincide with later proposals on level of experience necessary to provide services to these individuals.	Agree

Add to definitions	Michael Reel	Add definition of "catastrophic case management"; "vocational evaluation"; and "life care planner" to comport (agree) with the current QRP app	Agree. Covered in later section Life Care Planner- not in and of themselves QRP's. The Division will gather information and will use this service as necessary.
Section 4 and 5	Ed Watson Tina Walsh Gina Baldwin	4 and 5 concerning education and experience should be combined in one section. Limits education requirements to certain masters or doctorate degrees; or to certain certified occupations; or specific bachelor's degrees; or a bachelor's degree within a "client serving field" with specific classes; or certain nursing area; or a baccalaureate degree in any field. Note: As the education requirements lessen, the experience requirements become greater. The goal is to be consistent with national standards.	Agree, however with some changes. "to individuals receiving benefits <i>or services</i> , from a disability compensation system, <i>or a public rehabilitation system</i> ,"
4 and 5	Michael Reel	Formula for determining minimum education requirements has too much emphasis on types of degrees; rehabilitation counseling, human services, psychology, education or a related field is sufficient	See above changes

4 and 5	Michael Reel	4 and 5 are confusing because in 4 experience is combined with education. Education and experience should be separate unless determination made to combine the education and experience.	See above changes
6 Acceptable employment experience 6.3	Ed Watson Tina Walsh	Deletes "working as a vocational rehabilitation counselor" from employment experience. Add(from 6.6) the phrase that travel and wait time are not counted toward experience	Agree
6.4	Ed Watson Tina Walsh	The twelve areas of acceptable experience should be changed to include "vocational rehabilitation consulting" at 6.4.a. At 6.4.f. should include supervisory experience beyond "counselors" and include supervisory experience over provisional QRP's and QRP's.. Reason: Counselor is too specific and includes a very limited class of QRP's.	Agree
6.5	Ed Watson Tina Walsh	Moved this section to before the various types of experience allowed. Increased number of additional areas of experience from 3 to 4. Changes made for better document flow and to increase required experience	Agree
7 Continuing Education 7.1	Ed Watson Tina Walsh	Suggests changing 20 per year CEU requirement to 40 hours every two years including 3 hours of ethics per two-year	Agree

		period.	
7 General Comment	Tina Walsh Michael Reel	Suggest that a national certification requiring continuing education be sufficient to meet continuing education requirements. Believes that this is the easiest way to measure and monitor continuing education	The burden is on the QRP to show that Continued Education Units are equal to or greater than the Division requires.
7 General Comment	Michael Reel	Only individuals without a national certification should provide evidence continuing education	See above response.

7.3	Ed Watson Tina Walsh	Introduction for continuing education re-written for clarity. Various items deleted as irrelevant to the provision of vocational rehabilitation services or redundant. 7.3a. Principles of counseling or Methods of counseling f. Principles of rehabilitation; i. Group counseling/therapy; l. Research and statistics p. Cross cultural counseling r. Experimental psychology. Various items added as relevant: Disability Case Mgt. Managed Care and disability management concepts; Workers' Compensation and /or disability compensation systems; Foundations of rehabilitation; Employer consultation services; Family, gender and multicultural issues; Environmental and attitudinal barriers for individuals with disabilities. Suggestions that other criteria be combined in various suggested changes. Suggestions that: 7.3.g include "or counseling" and 7.3 d. and e. (combined) include word "vocational"	Agree
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7 Addition of two sections	Ed Watson Tina Walsh Richard Fender (re: CEU's for Graduate class hours)	New section suggested that recognizes various bodies that grant CEU's for various designations of QRP Provide CEU credit for graduate hours in specific fields. Add section to require QRP to maintain certification to continue as a QRP	Agree
9	Michael Reel	Suggests that the Appeals Committee be comprised of QRP's from various geographic locales registered with the Division. The committee should also be used to review applications where further clarifications needed.	Disagree. This would present opportunity for conflict of interest. Instead have suggested a right to request reconsideration. See 27-8.
New Section	Ed Watson Tina Walsh Gina Baldwin	Suggests the addition of a new section entitled "Scope of Practice" which provides a higher level of competency for QRP review of permanent total disability matters or catastrophic injury matters. The provisions indicate that certain specialties will only be allowed to provide services in these cases	Agree
New Section	Michael Reel	Proposes that the QRP registration process be identified in the rule	Not necessary to include registration process in Rule.
New Section	Michael Reel	Proposes that there be included a section regarding expiration and renewal registration	See above response.

**PREMIUM
CHOICE
REHABILITATION, INC.**

*317 West Main Street, Suite 200, Carnegie, PA, 15106 * (412)278-8550 or (412)278-1501 Fax (412)278-2350

FAX COVER SHEET

**TO: Secretary of State: Joe Manchin, III, Administrative Law Division
Address: Building # 1, Suite 157-K
Workers Compensation Executive Offices
1900 Kanawha Blvd. East
Charleston, WV., 25305-0770**

**Fax: (304) 558-8000-0900
Phone: (304) 558-6000**

Carbon Copy Which was Previously sent to : Randy Suter, Esquire

**From: Kathy Wanat, RN., QRP., C.M.-C.
President
Board Member: American Academy Of Case Managers**

Comments: Enclosed is our comment to the Proposed changes to Title 85. Since we did not receive this information, until it was hand-delivered to me, by Lisa Hamrick, while I was in Charleston, 2 weeks ago, & after the Deadline to respond: (09/13/02), Ms. Hamrick granted our company an extension to respond, indicating that you were still reading comments. Therefore, please take our comments into consideration. Should you have any questions, please don't hesitate to contact me at the above number, &/or on my cell Phone At: (412)225-4618. I look forward to speaking with you.

Thank you for your time & consideration.

RECEIVED

OCT 09 2002

**JOE MANCHIN III
WV SECRETARY OF STATE**

**PREMIUM
CHOICE
REHABILITATION, INC.**

*317 West Main Street, Suite 200, Carnegie, PA, 15106 * (412)278-8550 or (412)278-1501 Fax (412)278-2350

Randall B. Suter, Senior Counsel
Legal Services Division
Workers Compensation Executive Offices
P.O. Box 3824
Charleston, WV., 25338-3824

October 4, 2002

COMMENTS ON PROPOSED RULE:

Title Number: 85

Dear Mr. Suter:

As per the information that was handed to me personally by Ms. Lisa Hamrick only 2 weeks ago, I realize that my comment is late, as you wished for all comments to be received by 09/13/02. However, our company never received this information until 2 weeks ago. Ms. Lisa Hamrick indicated that our comment would still be read & taken into consideration, as we did not receive it until then, which was after 09/13/02. Therefore in lite of the fact that we were not notified to participate in commenting until then, please accept this late response, due to these circumstances.

There are several points of concern for us regarding the proposed changes. they are as follows:

- 1.) There appears to be many sections of the law, Title 85 either omitted, or changed, or not fully explained to the proposed amendments. I noticed that the word "Vocational" is now being added to many sections of the Law, as opposed to just the word "Rehabilitation", but yet there is no added Definition for this word. What does that mean for Nurses, wishing to become a QRP, as it has always been my Opinion that they should automatically qualify, because they work with the Disabled Population, as well as provide Counseling Services. These Services are called Patient Teaching & Discharge instructions, however it boils down to Counseling. I feel that the word "Rehabilitation" should suffice, & that the word, "Vocational" Should not be utilized unless properly defined between the two words.

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- 2.) One of the many sections that have either been eliminated or combined, is section 3.3, The elimination of The Health Care Advisory Panel. We feel that this Panel should remain an active part of Title 85, & should not be eliminated.
- 3.) Section 3.4 references Section 85-15-4 in which "Vocational" has not been added before "Rehabilitation Services" nor has the Health Care Advisory Panel been omitted from involvement.
- 4.) Proposed Amendments for section 5.1 now reads: "Except as otherwise provided.. All Individuals seeking recognition as a QRP must submit evidence of 3 Years of Full-Time Experience, (This was always a debate, as it read on the internet as 1 Year for a Masters Degree, 2 For a Bachalors Degree in a related field, and 3 Years in an un-related field or for a Nurse with an Associates Degree Certified Nationally in Case Management.) Or equivalent part-time paid Supervised experience in providing Vocational Rehabilitation Services. (Once again the word Vocational instead of Rehabilitation) To Continue: one of the 3 Years is to be Full time or equivalent part time paid to the Industrial Impaired/Disabled Population.." We feel That the " Industrially Impaired/Disabled Population should read "Industrial Impaired And/or Disabled Population" as Stated in Section 5.3.
- 5.) Section 8.2 has been completely omitted from the Proposed Amendments. We feel that this should remain, as well as other sections that have been omitted. we fell by the Omission of this section, it will unjustly penalize individuals who have been working Towards obtaining QRP Status.
- 6.) Section 9.1 needs better explained. What is the review process, who are the members, How are they chosen, & who are the Members of the Appeals Committee. We feel that they should be Divisional Employees who are well versed in *Law as well as In Rehabilitation*. We do not feel that this should be a Rehabilitation Company &/or Members of a Rehabilitation Company. After all, who Would want to be judged by a Competitor. Also, what if there is a Conflict of

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Interest between one or more of the Members. How will that be resolved?

- 7.) Section 10.1 has been added & States that "Persons granted Designation as QRP charged *with* not abiding by the Code of Professional Ethics for QRP's in WV. Are These the Rules that have been Properly Posted on the internet, & made by the Division, or are these the Proposed rules that were handed out to us in May, 2002, & Developed for the Division by only One Rehabilitation Competitor, & are not Necessarily those opinions *expressed by all Rehabilitation Providers*? If these are the *proposed rules*, then I respectfully object to them being enacted, as there were Many sections in this voluminous Document that can be construed as Un-Constitutional. I feel that the Guidelines that have been in Place for Years, should remain *in effect*. Also, what types of sanctions could be imposed by the possibility Of breaking one of these rules.
- 8.) Section R1.10 e Code of ethics, QRP who " Engages in sexually intimate behavior With an Injured Worker" is in Violation of the Code of Ethics, is actually just one Example of Un-Constitutional Rules & Regulations. We do feel that a QRP should Not manage the Case of an Injured Worker, as a Conflict, if they are so Intimately Involved. However, with the way that this reads, it would mean any QRP & Any Injured Worker. That means that the State is Dictating who one can or can not date.
- 9.) Referring to Code of Conduct: Gift Giving. As you know it has been traditional for Gifts of \$25.00 or under to be acceptable, both by WV as a State as well as by Federal Guidelines, we feel that this Policy should continue. Also, the Division should *not have the right* to Dictate what an Individual can or can not do on their own *Personal Time*, as well as who they can do it with. IE: Meaning Lunch Hours As well as After Hours Time. This is un-paid Time to State Employees, & it is Against Wage & Hour, Federal Guidelines & Law, & is an Infringement upon the State Employee(s) rights, as well as the Rehabilitation Vendor's rights. After all We are not Vendors or State Employee(s) 24Hours per day, & over the Years many Friendships have developed, & should be permitted to continue.

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Applications, as there are too many differences of opinions with regards to who is qualified, and many Individual(s) Past Experience is not being taken into consideration, unless it is actually obvious that the Individual *actually worked for a Rehabilitation Firm*. As we all know, there are other ways to getting your experience, than actually working for a Rehabilitation Firm. The Title 85 States "Individuals *working with the Disabled &/or the Industrial Impaired...* should qualify you as having experience. However, I have found that ever since there has Been a change within the Rehabilitation Compliance Unit, that many Individuals are Not getting any credit for their experience outside of the Rehabilitation Field. Also, It has been brought to my attention, that for Individuals who posses a higher level- type of degree, the Rehabilitation Compliance Unit is actually asking for copies of all Levels of degree(s). I feel that this is not necessary, unless that Individual has a Masters in a totally un-related field, & wishes to utilize their Bachelor's Degree Which May be in a related field. I feel that not only is this a pure waste of man power Hours, but many Individuals who have achieved a Masters or PHD Degree, Don't Even know where their lower level degree(s) are kept. Therefore, I am suggesting: For the "New Rehabilitation Compliance Unit" to either accept the Final, Higher Level Degree, &/or call the College themselves for verification. After all, I am most Certain that Degrees are being verified any ways, at least they were in the past with The "old Member(s) of the Rehabilitation Compliance Unit". I guess, I am just confused, as to what bearing an Individuals' Lower Level of Degree would have, unless they are asking for their Lower Level Degree to be considered, &/ or they have Double Majored, in which case, I am certain that both Degrees should be attached. This suggestion would save a lot of time, money & effort on everyone's part. I am also certain that you would see less request(s) for Appeals before the Appeals Committee for the reason of a Protest. I also feel that this "*Appeals Committee*" should *not* be chosen by the Commissioner, & feel that it should be made up of Divisional Employee(S) having knowledge of the *Law as well as the Rehabilitation Process*. I am strongly against it being made up of "*Peer Competitors*." I also feel that the meeting should be highly Confidential, and that a Competitor may Breech that Individuals' Confidentiality.

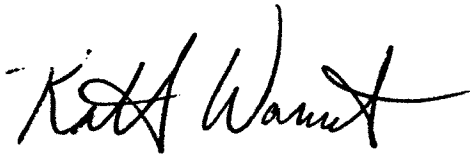
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I feel that there are many problems with the way that the "New" & "Proposed" Rehabilitation Rules & Regulations are going & would like to voice my opinions & Comments. Therefore, Please take these comments under advisement. If you have any questions, Please feel free to contact me Directly.

Sincerely,



Kathy Wanat, R.N., Q.R.P., C.M.-C.
President
Board Member: American Academy of Case Managers

cc: Lisa Hamrick, Rehabilitation
cc: March Tucker, Associate Director
cc: Steve White, Director
cc: State Senate, Secretary of State, Joe Manchin III
cc: Commissioner, Bob Smith
cc: Governor, Bob Wise
cc: Jim Smith, Rehabilitation
cc: Kirk Aguire, Associate Director