

**TITLE 85
LEGISLATIVE RULE
WORKERS' COMPENSATION RULES OF THE WEST VIRGINIA INSURANCE
COMMISSIONER**

**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 Commission, the Insurance Commissioner, private carriers and self-insured employers, whichever is applicable, and to be reimbursed for such services.

1.2. Authority. -- W. Va. Code §§23-1-1 and 23-1-1a(j)(3). Pursuant to W. Va. Code §23-1-1a(j)(3), rules adopted by the board of managers and the commission are not subject to legislative approval as would otherwise be required under W. Va. Code, §29A-3-1 et seq. Public notice requirements of that chapter and article, however, must be followed.

1.3. Filing Date. -- August 31, 2005.

1.4. Effective Date. -- October 1, 2005.

§85-27-2. Purpose of Rule.

2.1. The purpose of this rule is to implement the provisions of W. Va. Code, §§23-4-3, 23-4-3b, and 23-4-9 which relate to the development of standards for vocational rehabilitation services. W. Va. Code §23-4-9(a) provides that "it is a goal of the workers' compensation program to assist workers to return to suitable gainful employment after an injury . . . it is the shared responsibility of the employer, the employee, the physician and the commission 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 under the West Virginia system of workers' compensation insurance.

2.2. Upon termination of the Commission, no registration is required of qualified rehabilitation professionals. Qualified rehabilitation professionals are required to verify and provide proof of their certification or qualifications to the Insurance Commissioner, self-insured employer or private carrier, or to their third party administrator or managed care provider, whomever services are provided under this rule. In turn the Insurance Commissioner, self-insured employer or private carrier, or their third party administrator or managed care provider, is required to maintain this proof of certification or proof of qualifications of the qualified rehabilitation professional.

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

§85-27-3. Definitions.

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

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

3.2. "Insurance Commissioner" means the insurance commissioner of West Virginia as

provided in section one, article two, chapter thirty-three of the West Virginia Code, or any third party administrator of the Insurance Commissioner.

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

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

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

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

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

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

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

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

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

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

3.5. "Qualified Rehabilitation Professional" means a person who has the education, experience and skills necessary to provide vocational rehabilitation services as defined in 85 C.S.R. 15 and pursuant to the rehabilitation priorities set forth in 85 C.S.R. 15, to make recommendations consistent with medical documentation, concerning an injured worker's ability to accept and perform suitable gainful employment, and to design, implement and supervise programs to enhance an injured worker's capacity to accept and perform suitable gainful employment. A qualified rehabilitation professional need not personally have the ability to administer and interpret all medical, psychological or vocational testing, but must be able to evaluate the test results provided by other professionals. A qualified rehabilitation professional is required to consider all appropriate rehabilitation priorities in each case.

3.6. "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 Commission, Insurance Commissioner, private carrier or self-insured employer, whomever services are provided, may request documentation of such supervision. The supervised experience required by this rule must conform to the criteria for acceptable employment experience set forth in this rule.

3.7. “Certified rehabilitation counselor” means that earned designation as awarded by the Commissioner on Rehabilitation Counselor Certification.

3.8. “Certified disability management specialist” means that earned designation as awarded by the Certification of Disability Management Specialists Commission.

3.9. “Certified case manager” means that earned designation as awarded by the Commission for Case Manager Certification.

3.10. “Certified rehabilitation registered nurse” means that earned designation as awarded by the Association of Rehabilitation Nurses.

3.11. “Licensed professional counselor” means that earned designation as awarded by the West Virginia Board of Examiners in Counseling.

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

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

3.14. “Private Carrier” means any insurer, including the successor to the Commission,

authorized by the insurance commissioner to provide workers’ compensation insurance pursuant to chapters twenty-three and thirty-three of the West Virginia Code, but shall not include self-insured employers.

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

3.16. “Board” means the workers’ compensation board of managers created pursuant to the provisions of W. Va. Code §23-1-1a.

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

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

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

4.2. Current licensed professional counselor or certified vocational evaluation specialist 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. Certified case managers, certified rehabilitation counselors, certified disability management specialists, or certified rehabilitation registered nurses. These limited types of qualified rehabilitation professionals are required to verify and provide proof of their certification to the Insurance Commissioner, self-insured employer or private carrier, or to their third party administrator or managed care provider, whomever services are provided under this rule. In turn the Insurance Commissioner, self-insured employer or private carrier, or their

third party administrator or managed care provider, is required to maintain this proof of certification of the qualified rehabilitation professional.

§85-27-5. Acceptable Employment Experience.

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

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

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

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

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

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

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

5.4.d. Job analyses;

5.4.e. Individual appraisal;

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

5.4.g. Vocational training;

5.4.h. Consultation in disability management;

5.4.i. Forensic rehabilitation services;

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

5.4.k. Vocational evaluation; and

5.4.l. Medical rehabilitation case coordination.

§85-27-6. Continuing Education.

6.1. Every two (2) years, commencing from the effective date of this rule, each qualified rehabilitation professional is required to maintain and present documentation to the Insurance Commissioner, self-insured employer or private carrier, or to their third party administrator or managed care provider, whomever services are provided under this rule, of completion of forty (40) contact hours of continuing education. Provided, at least three (3) hours of continuing education credits in ethics must be completed every two (2) years.

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

6.2. Qualified rehabilitation professionals are required as outlined in section 6.1 of this rule to maintain documentation of continuing education at their place to employment, to be reviewed by the Commission or Insurance Commissioner, whichever is applicable, when determined necessary by the applicable, Commission or Insurance commissioner personnel.

6.3. Programs of continuing education are formally organized educational programs offered in the form of a class, course, workshop,

seminar, distance learning, staff development or training activity. Programs should enhance professional skills, values, knowledge, and/or ethical considerations in the qualified rehabilitation professional's practice. The following is a representative list of applicable subjects:

- a. Professional ethics;
- b. Rehabilitation counseling or counseling;
- c. Career Development or Vocational Counseling;
- d. Medical, vocational and psychosocial aspects of disability;
- e. Disability case management;
- f. Managed care and disability management concepts;
- g. Workers' compensation and/or disability compensation systems;
- h. Community agencies and resources;
- i. Plan development in rehabilitation;
- j. Job development and placement;
- k. Foundations of rehabilitation;
- l. Research and statistics;
- m. Organizational psychology; social psychology; educational psychology;
- n. Employer consultation services;
- o. Family, gender and multicultural issues;
- p. Tests and measures or vocational assessment; individual intelligence testing;
- q. Problems in substance abuse;
- r. Theories/techniques of work adjustment;

s. Environmental and attitudinal barriers for individuals with disabilities; and

t. Theories of personality; individual differences; personality measures.

6.4. Continuing education programs approved by the Commission on Rehabilitation Counselor Certification, the Certification of Disability Management Specialists Commission, the Commission for Case Manager Certification, the Commission on Certification of Work Adjustment and Vocational Evaluation Specialists, the American Board of Vocational Experts, the National Board of Certified Counselors, or the West Virginia Board of Examiners in Counseling will be accepted. Fifteen (15) contact hours for each academic graduate semester hour or ten (10) contact hours for each academic graduate quarter hour will be granted for classes in rehabilitation counseling, counseling, psychology, occupational therapy or nursing successfully completed at accredited educational institutions.

6.5. A 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. Documentation of current certification must be maintained at their place of employment to be reviewed by the Commission, Insurance commissioner, private carrier or self-insured employer, or to their third party administrator or managed care provider, whomever services are provided under this rule, when determined necessary by the applicable Commission, Insurance Commissioner, private carrier or self-insurance, or their third party administrator or managed care provider, personnel.

§85-27-7. Other Requirements.

7.1. An injured worker petitioning for permanent total disability benefits referred for a rehabilitation evaluation must be evaluated by a

qualified rehabilitation professional with either a masters or doctorate degree in rehabilitation counseling, counseling and guidance, or psychology, or by a qualified rehabilitation professional with either the certified rehabilitation counselor, licensed professional counselor, vocational evaluation specialist, or certified disability management specialist certification or by a qualified rehabilitation professional who is certified by the American Board of Vocational Experts. Provided, an injured worker determined to have suffered a catastrophic injury must be assigned to a nurse qualified rehabilitation professional with at least one of the following certifications: (1) certified rehabilitation registered nurse; (2) certified case manager; or (3) certified disability management specialist.

§85-27-8. Severability.

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