



Updates to the Workers' Compensation Act and rehabilitation rules

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2024 legislative updates

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2024 workers' compensation legislation

- The Workers' Compensation Advisory Council (WCAC) bill had 50 sections.
- Amendments recommended by WCAC addressed technical changes, clarifications and concerns raised by various workers' compensation stakeholders.
- The 2024 WCAC bill was codified in the 2024 Minnesota Session Laws, Chapter 97 – H.F. 4661.
- Most changes went into effect on or before Aug. 1, 2024, but some become effective Oct. 1, 2024.

High-level overview of changes – technical and clarifying

- Clarifications and reference updates proposed by Office of Administrative Hearings (OAH) including modifications to statute reflecting current practices regarding venue for certain disputes
- Technical changes including updating certain references from employer to employer or insurer, adding a penalty previously assessed through rule to statute and updating the maximum penalty for untimely payment of benefits after an order
- Clarification of the rulemaking authority for OAH and the Workers' Compensation Court of Appeals
- Updates to attorney access to Work Comp Campus

High-level overview continued – substantive changes

- Allowing the commissioner to request additional proof of identity before assigning a worker identification number if necessary
- Increasing the time allowed for filing an answer to a claim petition to 30 days
- Created a penalty for charging more than the statutorily allowed amount for copies of electronic medical records and increased the penalty for failing to pay compensation benefits after an order
- Revised calculation of average weekly wage for short-term agricultural workers
- Increased the calculation of the maximum compensation rate from 102% of the statewide average weekly wage to 108%; also served to increase the minimum compensation rate
- Raising the allowable costs for remodeling awards from \$75,000 to \$150,000
- Increased the attorney fee cap from a maximum of \$26,000 (20% of first \$130,000 in benefits) to \$55,000 (20% of the first \$275,000 in benefits)

High-level overview continued – related to rehabilitation

- A notice requirement was added to the statute for employers, insurers and third-party administrators (TPAs) utilizing the *Ewing* letter to stop paying for rehabilitation services.
- The ability of a qualified rehabilitation consultant (QRC) to refer a case to the Department of Labor and Industry's (DLI's) Vocational Rehabilitation unit (VRU) and withdraw was limited in certain circumstances.

Notice requirement under Minnesota Statutes 176.102, subdivision 13

- When there is no agreement to discontinue rehabilitation services, procedure under Minnesota Rules 5220.0950 requires the filing of a rehabilitation request for assistance, so the commissioner can determine if there is a dispute and set the dispute for an administrative conference or refer the matter to a compensation judge.
- Following the decision in *Ewing v. Print Craft, Inc.*, 936 N.W.2d 886 (Minn. 2020), there are times when the employer, insurer or TPA have advised the QRC there is a dispute about rehabilitation and they are not liable for or will not pay for rehabilitation services any longer – perhaps temporarily or perhaps for good – leaving the QRC in a position to have to decide whether to continue to provide services and risk non-payment or whether to terminate services. The employee, their attorney (if there is one) and DLI are not typically notified in these cases that there is a dispute about rehabilitation. At times rehabilitation continues for months without the QRC getting paid and without the commissioner knowing there is a dispute.

Notice requirement, continued

- After getting the notice, a QRC has the ability to file a rehabilitation request for assistance to have the commissioner or a compensation judge assist in resolving the dispute.
- New language, effective Aug. 1, 2024, in Minn. Stat. 176.102, subd. 13, requires the employer, insurer or TPA to provide notice to DLI, the employee and the employee's attorney – in addition to the QRC – when there is a dispute about rehabilitation.
- The notice must state the date of the intended discontinuance, a statement of facts indicating the reason for discontinuance, and the reports or other information relied on for the discontinuance.
- Disputes about rehabilitation, including whether services or payment should continue should still be coming before the commissioner or a compensation judge through the rehabilitation request for assistance process. This provision does not provide a new mechanism by which rehabilitation can be discontinued. Rather it requires notice that post-*Ewing* may only have been going to QRCs to go to the employee, their attorney and DLI as well. With the expanded notice, employees will now also be able to file a rehabilitation request for assistance because they will know rehabilitation that was not disputed before is now disputed.

Referral to VRU and withdrawal of QRC

- Minnesota Statutes 176.104, subd. 1, allows for the referral of an injured worker to DLI's VRU if there is dispute about medical causation or whether the injury arose out of and in the course and scope of employment if there has not been a determination of liability.
- This has allowed matters to be referred to VRU by a private QRC with subsequent withdrawal by the private QRC even in cases where the only dispute is on discontinuance of compensation and the employee would only receive services from VRU for a very short period between issuance of the administrative decision and the notice that the decision is being appealed.

Referral to VRU and withdrawal of QRC, continued

- Minnesota Statutes 176.104, subd. 1, has been updated to prevent a file being referred to VRU too early, when the only dispute is about discontinuance of compensation.
- Now the private QRC must wait until there has been an administrative decision on the discontinuance and the losing party has objected to that decision before the file can be referred to VRU with subsequent withdrawal by the private QRC.
- New language only applies if the *only* dispute is a discontinuance of compensation. If there is a causation dispute or dispute about whether the injury arose out of or in the course and scope of employment, that can still be referred to VRU at any time.

Rehabilitation rules update

Ethan Landy | Deputy general counsel

Rehabilitation registration rule updates

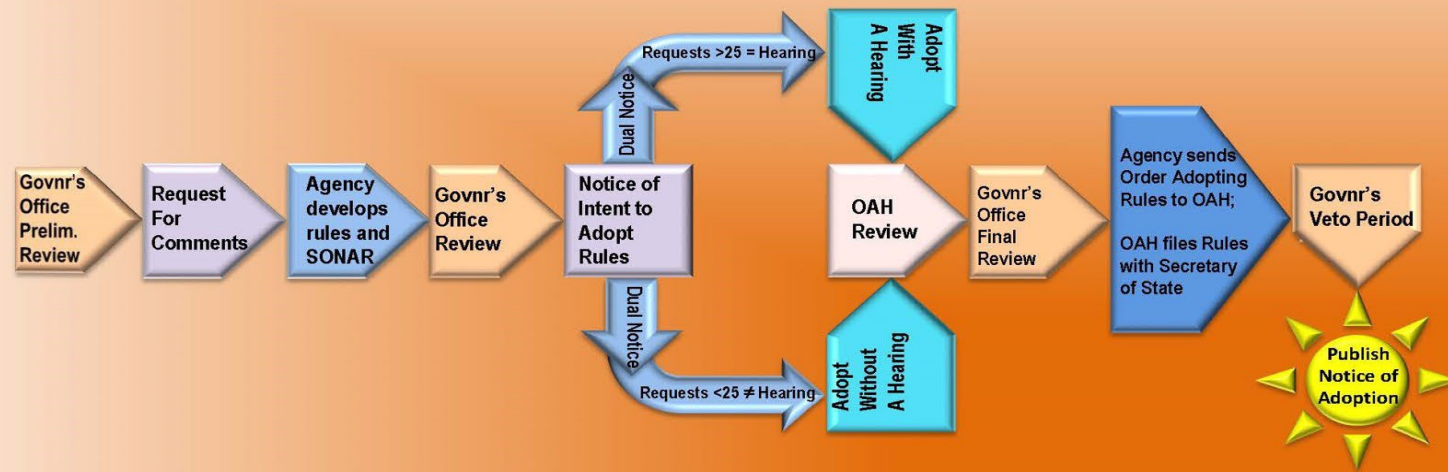
- DLI published a request for comments on updates to the rehabilitation registration rules in chapter 5220 on May 16, 2022.
- Since that date, DLI has shared updated drafts with the rehabilitation provider community.
- DLI has also presented on the rules at a number of Rehabilitation Review Panel meetings.
 - The Rehabilitation Review Panel recommended DLI move forward with adopting the rules at its October 2023 meeting.

Rule overview

- Changes in the proposed rules include:
 - amending the structure to be more user-friendly by creating standalone requirements for registration of QRCs, QRC interns, QRC firms and vendors;
 - updating and adding key definitions and clarifying documents incorporated by reference;
 - clarifying approved rehabilitation vendor services; and
 - making administrative changes for consistency.

Rule process

Rulemaking Progress Chart



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Notice of proposed rules

- DLI will publish a Dual Notice of Intent to Adopt Rules in the *State Register*.
 - All rehabilitation providers, firms and vendors registered with DLI will receive notice of the publication.
- The dual notice triggers the comment period for stakeholders to offer written comment in support or opposition to the proposed rules or any part of the proposed rules.
 - All comments are reviewed by DLI and included in the record for review at OAH.
- Interested parties may also request that DLI hold a hearing on the rules.
 - DLI will hold a hearing if 25 or more people submit valid written requests.

Resources: Rehabilitation rule updates

- [Rulemaking docket page](#)
- Comments or questions can be submitted to agency contact person Ethan Landy at:
 - Department of Labor and Industry, 443 Lafayette Road N., St. Paul, MN 55155;
 - 651-284-5006; or
 - dli.rules@state.mn.us.

Thank you

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