VERMONT

State of Vermont
Department of Labor
Workers Compensation Division
5 Green Mountain Drive
P.O. Box 488
Montpelier, VT 05601
labor.vermont.gov

[phone] 802-828-4344
[fax] 802-828-2195
[tdd] 800-650-4152

VERMONT WORKERS' COMPENSATION AND OCCUPATIONAL DISEASE RULES

Effective 8/1/2015 (As Amended 11/1/16)

Rule 12.0000 DISCONTINUING BENEFITS	*COVID-19 Application*
12.1100 Generally. Except as provided in Rule 12.1500 with respect to successful return to work and/or in Rule 3.2300 with respect to payment without prejudice, an employer or insurance carrier shall not discontinue an injured worker's compensation benefits until at least seven days after an Employer's Notice of Intention to Discontinue Payments (Form 27) is received by both the Commissioner and the injured worker. 21 V.S.A. §643a. If the injured worker is represented by counsel, a copy of the Notice must also be sent to his or her attorney.	
12.1110 Notwithstanding the provisions of Rule 3.2700, the Employer's Notice of Intention to Discontinue Payments must be accompanied by all relevant evidence in the employer's or insurance carrier's possession that pertains directly to the specific benefit(s) for which discontinuance is sought, including both supporting and countervailing evidence. Previously filed evidence, including medical records referenced in an independent medical examination report or medical records review, need not be duplicated, but should be so referenced in the current filing.	

12.1111 Relevant evidence may be filed in either paper or disc format. If the latter, the disc must not be encrypted or password-protected, and must be submitted in a searchable format. Whether chronologically or otherwise, the evidence must be organized in such fashion that the specific information upon which the discontinuance is based is readily identifiable and available for review. Failure to comply with this Rule may be grounds for rejecting the proposed discontinuance.	Up to 40 MB Evidence may be submitted attached to an email as provided in memorandum issued 3/18/2020
12.1120 If the injured worker is represented by counsel, the parties may stipulate to a discontinuance of benefits as of a specified date, in which case the employer or insurance carrier shall file a copy of the signed stipulation with the Employer's Notice of Intention to Discontinue Payments. Relevant evidence in support of the discontinuance shall also be filed, but countervailing evidence need not be included.	
12.1200 Discontinuing temporary disability benefits; end medical result. An employer or insurance carrier who proposes to discontinue an injured worker's temporary disability benefits on the basis of end medical result shall comply in all respects with the requirements of Rule 12.1100. The employer or insurance carrier shall also comply with the requirements of Rule 10.0000 with respect to evaluating the extent of any permanent impairment referable to the compensable injury and paying permanent disability benefits accordingly.	

12.1300 Discontinuing temporary disability benefits; failure or refusal to return to work. An employer or insurance carrier who proposes to discontinue an injured worker's temporary disability benefits on the basis of his or her failure or refusal to return to work shall comply in all respects with the requirements of Rule 12.1100. In such cases, the Employer's Notice of Intention to Discontinue Payments must be accompanied by written documentation establishing:	During the pandemic, a discontinuance for failure or refusal to return to work shall be denied unless the insurer demonstrates that the employer has offered employee work appropriate to any medical restrictions AND that this work may be performed safely and in full compliance with CDC and OSHA pandemic guidelines
12.1310 That the injured worker has been medically released to return to work, either with or without restrictions; and	Because of the pandemic, and until further notice, a discontinuance based on failure to conduct a work search shall be denied. A discontinuance based on an offer of work shall be denied unless the insurer demonstrates that the employer has offered employee work appropriate to any medical restrictions AND that this work may be performed safely and in full compliance with CDC and OSHA pandemic guidelines
12.1320 That the employer or insurance carrier has notified the injured worker, in writing, that he or she has been medically released to return to work, either with or without restrictions, and either (a) that the employer has made suitable work available; or (b) that the injured worker is obligated to conduct a good faith search for suitable work; and	
12.1330 That the injured worker has failed to conduct a good faith search for suitable work and/or has refused an offer of suitable available work once notified.	
12.1400 Discontinuing temporary disability benefits; other grounds. An employer or insurance carrier who proposes to discontinue an injured worker's temporary disability benefits on other grounds shall comply in all respects with the requirements of Rule 12.1100. Such other grounds may include, but are not limited to:	

12.1410 The injured worker's failure or refusal to comply with medical treatment recommendations;	During the pandemic a discontinuance based on failure to comply with medical treatment shall be denied unless the insurer demonstrates that such treatment is actually available to the worker and may be provided safely consistent with CDC and Vermont Department of Health guidelines
12.1420 The injured worker's failure or refusal to cooperate with vocational rehabilitation efforts; and/or	This basis for denial shall only apply if the VR services are offered virtually (e.g. by telephone, Video, on-line), do not involve a work search and the worker has refused to cooperate, and all aspects of the VR services offered can be performed safely under CDC/OSHA/VDOH pandemic guidelines.
12.1430 The injured worker's failure or refusal to adhere to other obligations imposed by statute or rule.	
12.1500 Discontinuing temporary disability benefits; notice not required. The provisions of Rule 12.1100 shall not apply in situations where the employer or insurance carrier seeks to discontinue temporary disability benefits on the grounds that the injured worker has successfully returned to work as defined in Rule 2.4100.	In addition to the criteria in rule 2.41 a return to work shall be considered successful if the worker is paid at the pre-injury average weekly wage for at least 60 days.
12.1510 If the injured worker has returned to work under circumstances that entitle him or her to temporary partial disability benefits in accordance with Rule 9.1200, the employer or insurance carrier shall promptly file a new Agreement for Temporary Compensation (Form 32), in accordance with Rule 9.1400, and shall commence paying weekly benefits immediately.	

12.1520 Unless other grounds for discontinuance exist, the employer or insurance carrier shall be obligated to reinstate temporary disability benefits previously discontinued under this Rule upon receiving notice that as a consequence of the compensable injury the injured worker's return to work has proven unsuccessful.	
12.1600 Discontinuing temporary disability benefits; vocational rehabilitation screening verification. In all cases in which the injured worker has been totally disabled from working for a period of 90 days or more, the employer or insurance carrier shall verify in writing that it has offered vocational rehabilitation services as required by 21 V.S.A. §641(a)(3)	
12.1700 Discontinuing medical benefits. An employer or insurance carrier who proposes to discontinue payment for specific medical services or supplies previously covered under 21 V.S.A. §640 shall comply in all respects with the provisions of Rule 12.1100.	In addition to complying with Rule 12.1100, discontinuance on this basis is only permissible if the insurer demonstrates that the injured worker has actual access to medical care, treatment or evaluation.
12.1710 The grounds for such discontinuance include, but are not limited to, proof that the specified service or supply is no longer medically necessary and/or causally related to the compensable injury. In appropriate circumstances, an injured worker's documented pattern of noncompliance with prescribed medical treatment may also provide sufficient grounds for discontinuance.	That includes determination of medical necessity, relation of the treatment to the compensable injury, and the ability to comply with the prescribed treatment.
12.1720 If the proposed discontinuance pertains to narcotic or other medications for which a safe taper plan is medically necessary, the employer or insurance carrier shall provide credible medical evidence establishing that the date of its proposed discontinuance comports with such a plan.	

12.1730 A medical provider who prescribes opioid medications to an injured worker for chronic pain resulting from a compensable work-related injury must comply in all respects with the Rule Governing the Prescribing of Opioids for Chronic Pain, as currently promulgated at 4A Code of Vermont Rules 13 140 076 (2015) and as amended from time to time by the Vermont Department of Health. If credible evidence establishes that he or she has failed to do so, a rebuttable presumption shall arise that the medications, as prescribed, do not constitute reasonable medical treatment. If the employer or insurance carrier proposes to discontinue payment on those grounds, it shall file an Employer's Notice of Intention to Discontinue Payments (Form27) with the Commissioner and the injured worker, and shall comply in all respects with the requirements of this Rule 12.0000. In addition, it shall notify the prescribing provider of the specific basis for its determination that he or she has failed to comply with the above-referenced Department of Health rule. Thereafter, the injured worker shall have the burden of proving that the treatment is reasonable notwithstanding the prescribing provider's failure to comply. In any event, the Commissioner shall not approve a proposed discontinuance under this Rule unless credible medical evidence establishes that the effective date thereof comports with a safe taper plan as required by Rule 12.1720. 21 V.S.A. §640c.	
12.1800 Discontinuing permanent partial disability, permanent total disability and death benefits. The provisions of Rule 12.1100 shall not apply in situations where the employer or insurance carrier seeks to discontinue permanent partial disability, permanent total disability or death benefits. However, where the employer or insurance carrier seeks to discontinue permanent total disability or death benefits on the grounds of	

a change in status on the part of the injured worker or his or her dependent beneficiaries, it shall provide notification in accordance with Rule 3.2800.	
12.1900 Injured worker's objection to discontinuance; request for extension. If the injured worker disputes a discontinuance proposed by the employer or insurance carrier, he or she may request that the Commissioner extend its effective date for a period of 14 days. The request must be in writing, and must be filed with the Commissioner, with a copy to the employer or insurance carrier, within 7 days after the injured worker receives the Employer's Notice of Intention to Discontinue Benefits. The request must specifically identify the reason(s) why the proposed discontinuance is objectionable and must be accompanied by supporting evidence. The Commissioner shall review the request for extension promptly upon receipt, and shall either approve or deny it, which decision shall not be subject to reconsideration or appeal. 21 V.S.A. §643a.	Until further notice, a request for an extension shall be immediately granted to allow the injured worker to obtain additional evidence supporting the claim. If the worker demonstrates that despite good faith efforts the worker is unable to obtain a medical evaluation of evidence, the extension may be granted beyond fourteen days.
12.2000 Commissioner's review of discontinuance. The Commissioner shall review every Employer's Notice of Intention to Discontinue Benefits to determine whether a sufficient basis exists for the proposed discontinuance.	
12.2010 If a preponderance of the relevant evidence reasonably supports discontinuance, the Commissioner shall approve it as of its effective date. In that event, the employer or insurance carrier shall be entitled to offset any benefit payments made either during the seven-day notice period required by Rule 12.1100 and/or during the 14-day extension period granted in accordance with Rule 12.1900 against any	

permanent partial disability benefits subsequently determined to be due. 21 V.S.A. §643a.	
12.2020 If a preponderance of the relevant evidence fails to reasonably support discontinuance, the Commissioner shall issue an interim order that benefits continue. 21 V.S.A. §643a.	
12.2100 Appeal. If any party is aggrieved by the Commissioner's decision upon review of a proposed discontinuance, it may request a formal hearing in accordance with Rule 14.0000. If following a formal hearing the Commissioner concludes that some or all of the benefits paid subsequent to a proposed discontinuance were not in fact owed, the employer or insurance carrier may request that the injured worker be ordered to make repayment, and may enforce such order in any court of law having jurisdiction. 21 V.S.A. §643a.	
12.2110 The injured worker may request that discontinued benefits be reinstated prior to formal hearing by providing sufficient new evidence to the Commissioner establishing that a preponderance of the relevant evidence no longer reasonably supports discontinuance. 21 V.S.A. §643a.	
12.2120 Notwithstanding the issuance of an interim order against it under Rule 12.2020, the employer or insurance carrier may at any time seek to discontinue benefits on grounds not previously alleged by filing a new Employer's Notice of Intention to Discontinue Benefits in accordance with Rule 12.1100.	