

VERMONT DEPARTMENT OF LABOR

Vocational Rehabilitation Rules

I. Purpose Statement

Rule 50.0000 VOCATIONAL REHABILITATION. PURPOSE.

Vocational rehabilitation (V.R.) shall be provided to a worker when, because of the work injury, he or she is unable to return to suitable employment for which he or she has prior training or experience relevant to currently available suitable employment. The services provided include retraining and job placement, as may be reasonably necessary to restore the employee to suitable employment. See 21 V.S.A. §641. The purpose of vocational rehabilitation is to provide those services including retraining, necessary to allow a return to suitable employment. The benefits provided under the statute are specifically tied to restoration of earning skills, *See Bishop v. Town of Barre*, 140 Vt 564 (1982), and not tied to providing specific employment. *See Wentworth v. Crawford & Co.*, 174 VT 118 (2002). A worker is only entitled to vocational rehabilitation if the offered plan will result in suitable employment. *See Bishop v. Town of Barre*, 140 Vt 564 (1982). The statute envisions a collaborative process between a worker and the employer/insurer to develop and implement an appropriate plan. The Commissioner may order such rehabilitation, treatment or training necessary and appropriate to render the employee fit for a remunerative occupation. See 21 V.S.A. §641(a)(4).

II Definitions

Rule 51.0000 DEFINITIONS For the purposes of these rules:

- 51.1000 "Assessment", for the purpose of vocational rehabilitation, means selecting, administering, scoring, and interpreting instruments designed to assess an individual's attitudes, abilities, achievements, interests, personal characteristics, disabilities and mental, emotional, or behavioral disorders as well as the use of methods and techniques for understanding human behavior in relation to coping with, adapting to, or changing life situations.
- 51.1100 "End Medical Result" or "Medical End Result" means the point at which a person has reached a substantial plateau in the medical recovery process, such that significant further improvement is not expected, regardless of treatment.
- 51.1200 "Functional Capacity Evaluation" may also be known as (FCE); (PCA); (PCE); (FCA); (RFE); or (QFE), is defined as the objective determination of the claimant's ability to participate in activities within a work setting. The FCE is used to match physical capabilities to job requirements and should address such activities as bending; lifting; pushing; pulling; balance; reaching; climbing; stooping; standing; sitting; eye-hand-foot coordination; manual finger dexterity; and physical endurance. The FCE shall be performed by a registered physical or occupational therapist or other qualified medical provider.
- 51.1300 "Identifying Information" refers to the employee's name, current mailing address, date of injury, date of birth, employee's phone number, education level, average weekly wage, vocational rehabilitation referral date, Department of Labor's file number, insurer's name, insurer's current mailing address, claims adjuster's name, phone number, insurer's file number, employer's name and phone number, vocational rehabilitation counselor's name, counselor's current address, counselor's phone number and the counselor's registration number.
- 51.1400 "Job Analysis" means a systematic study that reports work activity as follows:
- 51.1410 What the employee does in the job being analyzed in relation to data, people and things;
 - 51.1420 What methods and techniques are employed by the employee;
 - 51.1430 What machines, tools and work aids are used;
 - 51.1440 What materials, products, subject matter, or services result;
 - 51.1450 What traits are required by the employee; **AND**
 - 51.1460 What the physical and mental demands of the job are.
- 51.1500 "Job Development" means a systematic contact of prospective employers resulting in opportunities for interviews and employment that might not otherwise have existed. Job

development facilitates a prospective employer's consideration of a qualified employee for employment.

- 51.1600** "Job Modification" means altering the work environment to accommodate physical or mental limitations. It includes changing or modifying equipment, the methods or procedures for completing tasks, or changing or modifying job duties.
- 51.1700** "Job Placement" means the activities of the counselor and the injured employee that support a worker's search for work, including, but not limited to:
- 51.1710** The identification of job leads;
 - 51.1720** Arranging for job interviews;
 - 51.1730** The preparation of a worker to conduct an effective job search;
 - 51.1740** Communication of information about, but not limited to, the labor market conditions.
- 51.1800** "Labor Market Survey" is information compiled, or the compiling activity, to determine the wages, hiring practices and availability of suitable employment with regard to a specific worker, obtained from direct contact with employers.
- 51.1900** "Medical Case Management" refers to the planning and coordination of health care services appropriate to achieve the goal of medical rehabilitation. Medical case management may include medical case assessment, including personal interview with the injured employee, and the assistance in developing, implementing and coordinating a medical care plan with health care providers, as well as the employee and his or her family and evaluation of treatment results. Medical Case Managers shall not provide medical care or adjust claims. The goal of medical case management should be to avail the disabled individual of all available treatment options to ensure that the client can make an informed choice.
- 51.2000** "On-The-Job-Training" (OJT) means job training provided to a worker while the employee is engaged in productive work. Such training is designed to provide knowledge or skills essential to the satisfactory performance of the job. Specific vocational preparation levels will be used as a guide in determining the length of training on OJT; however, the actual need of the participant is the determining factor.
- 51.2100** "Regular Full Time Employment" means a job, at the time of hire was, or is currently expected to continue indefinitely.
- 51.2200** "Rehabilitation Conference" means a conference conducted for the purpose of addressing disputed issue(s) regarding adequacy, feasibility and sufficiency of the vocational rehabilitation services.
- 51.2300** "Rehabilitation Professional" is defined as a Vocational Evaluator; Vocational Rehabilitation Counselor; Vocational Job Developer/Intern.
- 51.2400** "Rehabilitation Services" means both medical rehabilitation services and vocational rehabilitation services designed to return an individual to "suitable employment" as defined

by these rules. The program begins with the first interview with the employee. The program consists of the sequential delivery and coordination of services by rehabilitation service providers. Specific services under this plan may include, but are not limited to:

- 51.2410 Counseling and guidance by a certified rehabilitation counselor;
- 51.2420 Ergonomic modifications, lifting devices and other reasonable accommodations that would enhance the employability of the injured employee;
- 51.2430 Assistance in job placement by a certified rehabilitation counselor with emphasis on matching the job most closely to the skills, abilities and functional capacity of the injured employee;
- 51.2440 Vocational testing;
- 51.2450 Other rehabilitation services that may include, job analysis, job modification, labor market survey, transferable skills analysis, work adjustment, job seeking skills training, on-the-job training, retraining and coordination of other activities as necessary to return a worker to suitable employment.
- 51.2500 "Return to Work Plan" means a written document cooperatively developed by a rehabilitation counselor, the employee and the employer/insurer that describes the manner and the means by which the employee will be returned to suitable employment. The Return to Work Plan identifies the skills the employee needs to return to suitable employment, an identified job goal, the responsibilities of each party in achieving that goal and the time frame in which the plan will be completed.
- 51.2600 "Suitable Employment" means employment for which the employee has the necessary mental and physical capacities, knowledge, skills and abilities;
 - 51.2601 Located where the employee customarily worked, or within reasonable commuting distance of the employee's residence;
 - 51.2602 Which pays or would average on a year-round basis a suitable wage; **AND**
 - 51.2603 Which is regular full-time work. Temporary work is suitable if the employee's job at injury was temporary and it can be shown that the temporary job will duplicate his or her annual income from the job at injury.
- 51.2610 "Knowledge" is an organized body of factual or procedural information derived from the worker's education, training and experience.
- 51.2620 "Skills" are the demonstrated mental and physical proficiency to apply knowledge.
- 51.2630 "Abilities" are the mental and physical capability to apply the employee's knowledge and skills.
- 51.2700 "Suitable Wage" means a wage as close as possible to 100 percent of the average weekly wage as described in Rule 15.0000. If the goal of 100% of the AWW is not reasonably

attainable then the closest reasonably attainable wage to 100% may be considered suitable.

- 51.2800** "Transferable Skills" means the knowledge and skills demonstrated in past training or employment that make a worker employable in suitable new employment. More general characteristics such as aptitudes or interests do not, by themselves, constitute transferable skills.
- 51.2900** "Vocational Evaluation" means the comprehensive assessment of vocational aptitudes and potential, using information about a worker's past history, medical and psychological status, and information from appropriate vocational testing, which may use paper and pencil instruments, work samples, simulated work stations, or assessment in a real work environment.
- 51.3000** "Vocational Rehabilitation" refers to the delivery and coordination of services designed to achieve the goal of returning the injured employee to suitable employment as quickly as possible. Specific services may include, but would not be limited to: collection of relevant medical information; vocational assessment; counseling; job analysis; job modification; job development and placement; labor market survey; vocational testing; analysis of transferable skills; job-seeking skills training; coordination of on-the-job training and retraining; and follow-up after reemployment.
- 51.3100** "Vocational Rehabilitation Counselor" is an individual that counsels, interviews and evaluates injured employees and confers with medical and professional personnel to determine entitlement to vocational rehabilitation services and feasibility of vocational rehabilitation. In consultation with the employee and the employer/insurer a counselor shall consider the injured employee's desires, aptitudes, physical, mental and emotional limitations and the Department's definition of suitable employment when determining what might be an appropriate job.
- 51.3200** "Vocational Testing" means the measurement of vocational interests, aptitudes, and ability using standardized, professionally accepted psychometric procedures.
- 51.3300** "Division of Vocational Rehabilitation" (DVR) shall refer to the Vermont Department of Aging and Independent Living's (DAIL) Division of Vocational Rehabilitation Services.

III. Obtaining Services

Rule 52.0000 REQUESTING VOCATIONAL REHABILITATION SERVICES

- 52.1000** The employer/insurer may voluntarily initiate V.R. services at any time by filing a V.R. referral for the employee. The referral shall be filed with the department, the employee, and the selected V.R. counselor.
- 52.2000** The employee may request V.R. services at any time by filing a written request with the department and indicating a reason for the request. After filing the request, the employee shall be screened as described below.
- 52.3000** In the event an employer/insurer has not voluntarily made a V.R. referral and/or the employee has not requested V.R. services, any employee who has received temporary total disability benefits for ninety days shall be screened as provided below.

IV. Screening

Rule 53.0000 IDENTIFICATION AND REFERRAL

Vocational rehabilitation (also V.R.) shall be provided to a worker when, because of the work injury, he or she is unable to return to suitable employment for which he or she has prior training or experience relevant to currently available suitable employment. The services provided include retraining and job placement, as may be reasonably necessary to restore the employee to suitable employment. See 21 V.S.A. §641.

53.1000 Any injured worker who has received, or is entitled to receive more than 90 days of continuous temporary total disability benefits, shall be identified and screened.

53.1100 Identification. Insurers are required to file a Memorandum of Payment form (Form 25M) with the department whenever a claimant is eligible to receive more than 90 calendar days of continuous temporary total disability benefits. A Memorandum of Payment is required for any lost time payment issued, regardless of whether payment is issued voluntarily or in an accepted claim. This form shall be filed with the department no later than the ninety-seventh day of eligibility or receipt of continuous temporary total disability benefits. (Failure to file this form is punishable by issuance of an administrative penalty in addition to other sanctions). Using the information in the Memorandum of Payment, the department shall identify injured workers who have received 90 days or more of continuous temporary total disability benefits.

[Interim screening provision Rules 53.1200A – 53.1320A shall govern screening until the Legislature authorizes the Vermont Department of Aging and Independent Living's (DAIL) Division of Vocational Rehabilitation (DVR) to bill and collect from workers' compensation insurers the screening assessment fee authorized by these rules.]

53.1200A Screening shall be performed by qualified vocational rehabilitation professionals assigned by the department. An assigned screener shall promptly notify the department, the employer/insurer, and the claimant of any possible conflict of interest, including any financial relationship with any party, personal friendship, or other matter that might be perceived as interfering with the ability to perform an objective assessment. The department shall evaluate the information and either appoint a new screener, or authorize screening to proceed.

53.1300A Notice/Assignment. Within 10 days of identifying an injured worker, either through the worker's request or pursuant to Rule 53.1100, the department shall:

53.1310A Assign the case to a qualified vocational rehabilitation professional. The assignment shall be made from an alphabetical list of qualified vocational rehabilitation professionals registered with the department. If the geographical location of the assigned screener and the injured worker would create a travel hardship the next qualified vocational rehabilitation professional located closest to the injured worker shall be assigned.

53.1320A Provide the injured worker a vocational rehabilitation notice and response form. The form explains the injured worker's rights, including the choice of provider, the right to challenge a determination, and reimbursement for related expenses. The form also asks the injured worker to indicate whether he or she is interested in receiving

vocational rehabilitation services. The worker shall sign the form and return it to the department. See 21 V.S.A. §641.

[Effective July 1, 2007, Rules 53.1200 – 53.1320 shall supersede interim rules 53.1200A – 53.1320A if prior to that date the Legislature authorizes the Vermont Department of Aging and Independent Living's (DAIL) Division of Vocational Rehabilitation (DVR) to bill and collect from workers' compensation insurers the screening assessment fee authorized by these rules.]

53.1200 Screening shall be performed by qualified vocational rehabilitation professionals employed by the Vermont Department of Aging and Independent Living's (DAIL) Division of Vocational Rehabilitation (DVR).

53.1300 Notice/Assignment. Within 10 days of identifying an injured worker, either through the worker's request or pursuant to **Rule 53.1100**, the department shall:

53.1310 Refer the injured worker's case to the Division of Vocational Rehabilitation (DVR) Screening Coordinator. The screening coordinator shall assign the case to a qualified vocational rehabilitation professional employed by DVR in the district closest to the employer and the injured worker.

53.1320 Provide the injured worker a vocational rehabilitation notice and response form. The form explains the injured worker's rights, including the choice of provider, the right to challenge a determination, and reimbursement for related expenses. The form also asks the injured worker to indicate whether he or she is interested in receiving vocational rehabilitation services. The worker shall sign the form and return it to the department. See 21 V.S.A. §641.

[The remainder of these rules shall apply to all screening conducted before, or after July1, 2007]

53.1400 Screening. The assigned independent screener shall obtain the injured worker's response form from the department and review it, along with the entire worker's compensation file, which must be provided by the employer/insurer. The screener shall also consult with the injured worker and his employer. Based on the record review, response form, and consultation, the screener shall provide a recommendation concerning eligibility after considering:

53.1410 Whether the employee has been medically released to return to work.

53.1420 Whether evidence indicates that the employee will eventually be able to return to his or her job.

53.1430 Whether the employer has suitable work available for the employee.

The recommendation shall be provided to the injured worker, the employer/insurer, and the department. In the event that two or more responses are answered in the negative, the injured worker shall receive an entitlement assessment.

53.1440 If the recommendation is for an entitlement assessment, the employer/insurer shall promptly file a V.R. referral for an entitlement assessment and send a copy to the

employee. If the employer/insurer wishes to contest the screening results it shall nonetheless file a V.R. referral form at the time it files its denial.

- 53.1500** **Time.** Absent extenuating circumstances the screening process should be completed in no more than 10 days from the date of screener assignment. The screener shall provide all parties and the department with the recommendation.
- 53.1600** In the event no screening response form is received for an identified injured worker, the screener shall conduct telephonic screening to obtain the necessary screening information.
- 53.2000** An employer/insurer who wishes to contest a screener's recommendation shall file a written denial, with supporting evidence. The written denial must be filed within 21 days of receiving the screening results and must be accompanied by a V.R. referral. The Commissioner shall review the evidence upon which the denial is based and if the evidence does not reasonably support the denial, the Commissioner may order an entitlement assessment. See 21 V.S.A. §662 (b).
- 53.3000** In the event a screener recommends against an entitlement assessment, the injured worker may contest the determination in writing to the department indicating their reason for contest and requesting a hearing.
- 53.4000** **Conflict of Interest.** Because screening is being provided by an independent state agency the department does not believe it likely that conflicts of interest will arise. The screener shall exercise independent professional judgment, and shall not provide workers' compensation vocational rehabilitation services to persons he or she has screened. Nonetheless any party who believes that an assigned screener has a conflict of interest, may petition for the assignment of a new screener, and provide evidence of the conflict of interest. The fact that the state agency shall bill and be paid by the employer/insurer is not a conflict of interest.
- 53.5000** Actual vocational rehabilitation services shall be provided by a certified vocational rehabilitation counselor.
- 53.5100** If an employer/insurer does not designate a rehabilitation counselor within 15 days of receiving the screener's report, the employee may choose a counselor by filing a V.R.-8.
- 53.5200** If the employee is not satisfied with a rehabilitation counselor chosen by the employer/insurer, he or she may select another counselor by filing a V.R.-8 and providing their reason for dissatisfaction. The employee should not file a V.R.-8 if the counselor has found them not entitled to vocational rehabilitation services. Instead he or she must contest the denial of services.
- 53.5300** If a change in rehabilitation counselor occurs for a reason other than party selection, the party who chose the counselor has first choice in designating a replacement counselor.
- 53.5400** The Commissioner may order a change in a rehabilitation counselor if presented evidence that the current counselor is not complying with the law or the rules, does not hold current certification, and/or claimant and counselor are unable to engage in an effective working relationship.

- 53.5500** Any request for change of a rehabilitation service provider pursuant to **Rule 53.5400** shall be directed to the Commissioner. The Commissioner (designee) may then schedule an informal conference to discuss the concerns of the requesting party.
- 53.6000** A party may hire a vocational evaluator (V.E.) to provide their opinion concerning a rehabilitation plan, and the reasonableness and necessity of services provided or proposed by a rehabilitation counselor appointed by the opposing party. A counselor who has provided rehabilitation services to a worker for a given work injury may not be a V.E. for that claim.
- 53.7000** If the independent screener determines that the employee's medical condition makes it too difficult to determine whether the injured worker may be eligible for vocational rehabilitation, the employee shall be rescreened after every additional ninety days or at medical end result, whichever ever occurs first.

V. Entitlement Assessment

Rule 54.0000 ENTITLEMENT

Vocational rehabilitation (V.R.) shall be provided to a worker when, because of the work injury, he or she is unable to return to suitable employment for which he or she has prior training or experience relevant to currently available suitable employment.

- 54.1000** The V.R. counselor conducting the entitlement assessment shall contact the employer and the employee to discuss the possibility of the employee's potential for return to work with the employer, including discussion of any opportunity for light duty work, job modifications or any other possibility of return to suitable employment.
- 54.2000** An assessment as to the entitlement for V.R. services shall be made and a report filed with the Workers' Compensation Division within 30 days of the filing of the vocational rehabilitation referral. An extension of the 30 day period may be granted if the parties agree or if, despite good faith efforts to complete the assessment within 30 days, additional time is needed. An entitlement assessment shall include a face-to-face interview between the employee and the V.R. counselor. The written report shall include, at a minimum, the following:
- 54.2100** A summary of current medical status including physical capabilities, secondary conditions affecting recovery, treatment, prognosis and estimate of time frames if possible;
 - 54.2200** A vocational profile that includes an educational background and work history;
 - 54.2300** A summary of positive and negative indicators for return to work; and
 - 54.2400** The counselor's conclusion regarding the employee's entitlement.
- 54.3000** In the event a worker undergoes an entitlement assessment and is found "Not Entitled" to vocational rehabilitation services, then the employer/insurer bears no responsibility for payment or provision of further V.R. benefits.
- 54.4000** In the event the employee is found not entitled to V.R. services the employee may contest the determination in writing to the department indicating their reason for contest and requesting a hearing.
- 54.5000** An employer/insurer who wishes to contest an entitlement recommendation shall file a written denial, with supporting evidence. The written denial must be filed within 21 days of receiving the entitlement assessment. The Commissioner shall review the evidence upon which the denial is based and if the evidence does not reasonably support the denial, the Commissioner may order that V.R. services be provided. See 21 V.S.A. §662 (b).

VI. Return to Work

Rule 55.0000 RETURN TO WORK PLAN

- 55.1000** Within 45 days of completing the entitlement assessment, the V.R. counselor shall submit a Return to Work Plan for a worker that has been determined entitled to V.R. services. The plan shall be developed in consultation with the worker and the employer/insurer. The Return to Work Plan shall contain a plan of action for a specific vocational goal or objective and identify the specific skills, training or expertise that will result in the employee's return to suitable employment. The plan shall clearly establish steps and a time table for attainment of the objective. A counselor may request an extension of the 45 day period if, despite good faith efforts to complete the plan within 45 days, additional time is needed.
- 55.2000** The department shall assume a higher likelihood of successful return to work based on the following hierarchy of vocational options, which are listed in descending order of preference.
- 55.2100** Return to the same employer in a modified job or a different job;
 - 55.2200** Return to a different employer in a modified or different job;
 - 55.2300** On-the-Job Training;
 - 55.2400** New Skill Training or Retraining;
 - 55.2500** Educational / Academic Program;
 - 55.2600** Self-Employment.
- 55.3000** The Return to Work Plan shall include such information as is necessary to assess the proposal and to track the claim. In addition the following information shall be included in the plan.
- 55.3100** The Return to Work Plan shall include a specific vocational outcome and associated milestones or output measures. The plan shall contain a firm time frame for completion.
 - 55.3200** The Return to Work Plan shall define specific responsibilities of the employee; counselor; and the employer/insurer.
 - 55.3300** The Return To Work Plan shall include an itemization of the projected costs associated with the vocational plan, including but not limited to total equipment costs, travel, training, and the projected costs of services provided by the rehabilitation service providers. The actual costs associated with this plan shall be included on the Closure Report when submitted. Failure to provide required information may result in the Return to Work Plan being denied, and payment for V.R. services denied.
- 55.4000** The Return to Work Plan shall be forwarded to the department after the employee, the counselor and the employer/insurer have completed the plan and all parties have signed

the plan. In the event that any party fails or refuses to sign the Return to Work Plan, the Return to Work Plan as proposed shall be filed with a written explanation, by the refusing party, of the reasons for failure or refusal to sign the document. An employer/insurer shall promptly review the plan and file any objections within 21 days of receiving it.

55.5000 A properly documented plan shall be deemed approved if it is not rejected within 25 days of its receipt by the department. In the event of a dispute the Return to Work Plan shall be reviewed for the feasibility of the vocational objective and the plan of action. The Commissioner (designee) may extend his or her review period for an additional 25 days by informing all parties of the extension. If the proposed plan is denied the Vocational Rehabilitation provider shall submit a revised plan within 30 days of the date of denial.

If any party has failed or refused to sign the Return to Work Plan, and/or if the Commissioner (designee) has found the vocational objective or plan of action not to be practicable an informal conference and/or formal hearing shall be scheduled in accordance with the Workers' Compensation Rules **5.0000** & **6.0000**. The Commissioner (designee) may issue an interim order requiring or suspending further vocational rehabilitation services pending such a conference and/or hearing in accordance with 21 V.S.A. Sec. 641(b) and/or 662 (b).

55.6000 Vocational rehabilitation services shall terminate on the projected completion date indicated in the agreed upon plan unless an amendment is filed and agreed to by all parties prior to the completion date. Amendments are appropriate under the following circumstances:

55.6100 When it is apparent that the original vocational objective and/or plan has become inappropriate because of the employee's medical condition as documented by medical reports or,

55.6200 When it is apparent that the employee is not able to obtain the objective despite reasonable efforts to do so.

55.6300 When an extension for a defined period will permit achievement of the plans objectives.

55.7000 Any amendment to a Return to Work Plan must be submitted to the department prior to the expiration of the current agreed upon plan. All amendments must have the employee's, counselor's and insurance adjuster's signatures affixed to the document prior to the submission of the document to the department. Proposed amendments shall be reviewed by the Commissioner (designee).

55.8000 The rehabilitation service provider shall file progress reports only as reasonably necessary, or only if requested by the employer/insurer or employee. The progress report shall evaluate progress toward the vocational objective of the agreed upon Return to Work Plan. If such a report is necessary or requested all parties to the plan and the department shall receive a copy of any progress reports provided.

Rule 55.9000 SELF-EMPLOYMENT

55.9100 Self-employment is the least favored vocational goal because of the capital usually required to undertake it, the time it usually takes to achieve an appropriate wage level and the inherent risks associated with any new business venture. For this reason, a Return to Work Plan that proposes self-employment as the means of returning a claimant to suitable employment must be carefully considered to ensure that this is in fact the most appropriate vocational goal and that no other vocational goal is as likely to lead to suitable employment. This may include reviewing and applying the hierarchy of vocational options as defined in **Rule 55.2000**.

55.9200 A Return to Work Plan that proposes self-employment as the employee's vocational goal shall be accompanied by a Self-Employment Workbook completed by the employee with the V.R. counselor's assistance. In addition to the workbook, the employee, if he or she is seeking any financial assistance from the insurance employer/insurer, must submit documentation that he or she has contacted and discussed the business plans with a qualified small business consultant with a written evaluation including recommendations to be completed by the consultant.

55.9300 In determining the required extent of an employer/insurer's financial contribution to an approved self-employment plan, the following factors shall be considered:

55.9310 The total amount required to adequately finance the business' start-up, as itemized in the Self Employment Workbook; and

55.9320 The extent to which the employee has or will incur extraordinary costs as a result of his or her injury that are distinguishable from the ordinary costs associated with the proposed business venture, such as the cost of modified equipment and/or assistive technology; and

55.9330 The availability of financing from other sources.

VII. Disputes; Termination

Rule 56.0000 VOCATIONAL REHABILITATION DISPUTE RESOLUTION

In the case of any dispute involving vocational rehabilitation, the Commissioner (designee) either on his or her own motion or upon request of the employer/insurer or employee, may schedule an informal conference to resolve the issue(s) in dispute. A party dissatisfied with the results of an informal conference(s) may request a formal hearing but shall comply with the directives of the informal conference until a formal hearing is held and a decision rendered.

Rule 56.1000 TERMINATIONS OF VOCATIONAL REHABILITATION SERVICES

56.1100 Vocational rehabilitation services may be suspended and/or terminated under the following circumstances:

56.1110 Upon successful completion of an approved Return to Work Plan, documented by the claimant's successful return to suitable employment, not including any on-the-job training period, for at least 60 days.

56.1120 When it becomes apparent because of a change in the employee's current medical condition that the provision of further vocational rehabilitation services would serve no useful purpose at this time.

56.1130 When it becomes apparent the employee is unable to participate in V.R. because circumstances are such that the provision of further V.R. services would serve no useful purpose at this time.

56.1140 Upon the employee's return to suitable employment that is not contingent upon successful completion of the plan.

56.1150 When it becomes apparent the employee is refusing to cooperate with the V.R. process.

56.2000 An employer/insurer's decision to suspend or terminate the employee's vocational rehabilitation benefits because of refusal or failure to cooperate with the rehabilitation process shall be filed with the department at least 10 days prior to the discontinuance of vocational rehabilitation services, along with supporting evidence. The notice shall be given to the employee at the same time it is filed with the department. Evidence of a worker's refusal or failure to cooperate with rehabilitation may include but is not limited to the following:

56.2100 Failure to cooperate with the initial assessment to determine entitlement within the time limitations specified in these rules;

56.2200 Failure to follow through with the responsibilities of an approved Return to Work Plan without good cause;

56.2300 Failure to maintain contact with the rehabilitation counselor;

- 56.2400** Failure to follow employment leads provided by the rehabilitation counselor in a reasonable and timely manner; or
- 56.2500** Failure to accept and perform suitable employment, unless refusal is justified.
- 56.3000** Prior to suspending or terminating vocational rehabilitation services, a Vocational Rehabilitation Closure Report shall be filed with the division, with a copy to the employee. Upon review, the Commissioner may either approve or deny the closure. If the closure is denied, the Commissioner (designee) may order the prompt resumption of vocational rehabilitation services. At either party's request, or at the Commissioner's discretion, an informal conference and/or formal hearing may be scheduled to resolve any dispute concerning the continuation, modification or termination of vocational rehabilitation services.
- 56.4000** The injured worker has the burden of proving entitlement to services and the reasonableness and necessity of a return to work plan. If an insurer/employer agrees that an injured worker is entitled or accepts a return to work plan, or fails to timely dispute that entitlement or return to work plan, it shall have the burden of proving that the injured worker is no longer entitled, or that the return to work plan is not reasonable, necessary, or will not result in suitable employment.

VIII. V.R. Provider Credentials/Discipline

Rule 57.0000 QUALIFYING CRITERIA FOR REHABILITATION PROFESSIONALS

An applicant seeking certification as a Vermont Certified Rehabilitation Professional shall submit an application to the Commissioner of the Department of Labor. The Commissioner may require rehabilitation professionals to regularly report information describing their services, including the geographic areas served by the professionals and the nature, cost and outcome of services provided to employees under these rules. After evaluating the application and all supporting documents the Commissioner may certify the person as a Vermont registered vocational rehabilitation evaluator; counselor; job developer, or intern, if the applicant has completed the following minimum education and experience. The education must have been received from an accredited school.

57.1000 All vocational rehabilitation services shall be provided by a certified vocational rehabilitation counselor, evaluator or job developer/intern. Those individuals certified as a Job Developer/Intern shall be supervised by a certified vocational rehabilitation counselor who shall co-sign and assume all responsibility for all of the intern's determinations, evaluations, rehabilitation plans, reports and billing.

57.1100 Vocational Rehabilitation Counselor, defined as anyone directly providing services or supervising vocational rehabilitation counselors, interns or job developers.

Education: Master's in Rehabilitation Counseling from an accredited institution; Completion of the Vermont Rehabilitation Professional's Orientation workshop no later than six months after submission of an application for Vermont registration as a rehabilitation professional, or

Master's in Counseling from an accredited institution with documentation that the following courses had been successfully completed:

One graduate course with a primary focus on the Theories and Techniques of Counseling; **and**

One graduate course with a primary focus on Assessment; **and**

One graduate course with a primary focus on Occupational Information; **and**

One graduate course with a primary focus on medical or psychosocial aspects of disability **and**

Completion of the Vermont Rehabilitation Professional's Orientation workshop no later than six months after submission of an application for certification as a Vermont certified rehabilitation professional.

Experience: Twelve months of acceptable employment experience including six months of the past 24 months working with Vermont Workers' Compensation claimants.

- 57.1110 Notwithstanding the specific education requirements, any counselor who has been continuously certified, as a vocational counselor by the department for the past six years; who has completed the required core courses shall and complied with all continuing education requirements shall be deemed to have met the education requirement.
- 57.1200 **Vocational Evaluator:**
- Education:** Same as that required of the Vocational Rehabilitation Counselor.
- Experience:** Sixty months of acceptable employment experience including 24 months working with Vermont Workers' Compensation claimants.
- 57.1300 **Vocational Job Developer/Intern:**
- Education:** Baccalaureate degree in any field. Completion of the Vermont Rehabilitation Professional's Orientation workshop no later than six months after submission of an application for certification as a Vermont certified rehabilitation professional.
- Experience:** None.
- 57.1400 **Continuing Education:** All of the above mentioned positions shall attend annual training in either vocational rehabilitation or Vermont workers' compensation.
- 57.1500 **Required knowledge:** Each applicant applying to be a Vermont certified rehabilitation professional shall have a working knowledge of the Vermont Department of Labor rules and regulations. The Commissioner may require an examination as proof of that knowledge.
- 57.1600 **Education criteria.** Applicants shall have the burden of proof establishing education. Proof of education shall include an official transcript from any accredited school or college.
- 57.1700 **Experience criteria.** Applicants shall have the burden of proof establishing experience. School internships shall not be acceptable as employment experience. Supporting documents shall consist of signed statements, regarding the applicant's work by present and previous employers which shall include, but not be limited to, the specifications of services, the applicant's position description including caseload, and amount of time spent in vocational rehabilitation or medical case management work.
- 57.1800 **Professional Conduct.** All rehabilitation professionals shall comply with the Code of Professional Ethics as published by the Commission on Rehabilitation Counselor Certification (CRCC) until such time the Vermont Department of Labor publishes its own. In the event any ethical standard appears to conflict with the Vermont Workers' Compensation statutes, rules, or orders, the statutes, rules, or orders shall control.
- 57.2000 The Vermont certification shall be valid for three years from the date of the certification. Written application for renewal shall be received by the Commissioner no earlier than one hundred twenty days, but not later than seventy-five days prior to the current certification's expiration date. If the certification has lapsed or has been withdrawn by the Commissioner, the applicant must follow the procedures established for new applicants. If

the certification lapses or is withdrawn the counselor may not provide any vocational rehabilitation services in Vermont until the certification has been reinstated. All renewals shall only submit a new application.

- 57.2100** The department shall maintain a current listing of all Vermont certified rehabilitation professionals, including the areas served, and shall provide the list at no charge to employees, employers and insurers.
- 57.3000** Each Vermont certified rehabilitation professional offering rehabilitation services to workers' compensation claimants shall be evaluated periodically by the Workers' Compensation & Safety Division of the Vermont Department of Labor. The evaluation shall focus on the quality of the services provided, the costs of such services, the results achieved by such services and the professional's compliance with any Department of Labor established standards of performance. The Department of Labor shall notify in writing any rehabilitation professional who fails to attain a satisfactory rating. Such notice shall state specifically the reasons for the unsatisfactory rating. The Commissioner may suspend or revoke the professional's certification based on the results of the evaluation.
- 57.4000** Rehabilitation professionals who provide services to employees without obtaining prior certification from the Commissioner or during periods when their certification is suspended or has been revoked, shall be required to terminate those services immediately, and shall not be considered for certification for a period of two years from the date of the infraction. An uncertified person providing vocational services shall not be paid for those services.
- 57.5000** The Commissioner may revoke the certification of a vocational rehabilitation professional for a period, not to exceed three years if following an investigation, to include an opportunity for the professional to respond, the Commissioner finds that the professional failed to:
- 57.5100** Comply with the Department of Labor's established rules and regulations; or
 - 57.5200** Fulfill any obligation in providing the rehabilitation services prescribed in an approved rehabilitation plan; or
 - 57.5300** Comply with the established Vermont rehabilitation professional's performance standards or Code of Ethics; or
 - 57.5400** Comply with any state or federal laws relating to employment practices; or
 - 57.5500** Comply with the established continuing education requirements.

IX. V.R. Provider Fee Schedule

Rule 58.0000 Vocational Rehabilitation Fee Schedule

A vocational rehabilitation fee schedule is authorized by 21 V.S.A. §641(a) in order to establish reasonable reimbursement rates for vocational rehabilitation benefits and services while providing reasonable choice and access. The employer/insurer shall not be liable for fees that exceed the maximum set by this schedule. All fees shall be supported by an itemized statement at the time of the bill, initialed and certified as accurate by the counselor. Failure to provide an itemized statement may result in a denial of the fee. By submitting an itemized bill for services to the employer/insurer the vocational rehabilitation counselor is attesting to the reasonableness and necessity of the services provided and the accuracy of the bill. Counselors are reminded that false statements may constitute workers' compensation fraud.

- 58.1000** The employer/insurer shall pay the vocational rehabilitation counselor's charge or the maximum allowable payment under this fee schedule within 30 days of receipt of the bill and legible, supporting documentation. If the employer/insurer is denying all or a portion of a bill it shall notify the vocational rehabilitation counselor and the injured worker within 21 days of receipt of the bill and legible supporting documentation. If the employer/insurer wishes to obtain a vocational evaluation of the services prior to accepting or denying the charges, it shall notify the vocational rehabilitation counselor within 21 days of receiving the bill. Review shall occur within 30 days. If the vocational rehabilitation counselor's bill is not denied, scheduled for an evaluation, or paid within 30 days, then the employer/insurer shall be liable for interest in addition to payment of the bill.
- 58.2000** The employer/insurer shall pay the Department of Aging and Independent Living \$160.00 per screening conducted by the Division of Vocational Rehabilitation (DVR). During the period the interim screening provisions are in effect, the employer/insurer shall pay the counselor performing the screening \$160.00 per screening.
- 58.3000** The fee for an Entitlement Assessment shall be \$95.00 per hour not to exceed \$1,200.00 per assessment, unless a higher amount is authorized by the employer/insurer, or ordered by the Commissioner if determined reasonable and necessary. All bills must be supported with an itemized statement.
- 58.4000** Plan development fees in excess of \$2,500.00 require employer/insurer authorization.
- 58.5000** The maximum hourly fee for vocational rehabilitation services shall be \$95.00.
- 58.5500** Beginning July 1, 2017 and on each subsequent July 1, the hourly rates stated in **Rule 58.3000 and 58.5000** shall be increased by (a) the percentage increase of the Consumer Price Index, CPI-U, U.S. city average, not seasonally adjusted, or successor index, as calculated by the U.S. Department of Labor or successor agency for the 12 months preceding the previous May 1; or (b) five percent, whichever is smaller, but in no event shall the hourly rates and/or maximums be decreased. The hourly rates shall be rounded off to the nearest \$5.00. Beginning July 1, 2022 and continuing every five years thereafter, the maximum amounts stated in **Rules 58.3000 and 58.4000** shall be reviewed and

increased as necessary to reflect intervening changes to the hourly rates upon which they are based.

- 58.6000** The contracting or subcontracting out of services shall not serve to raise the maximum allowable fee, unless agreed upon in advance by the employer/insurer and the claimant and counselor.
- 58.7000** Time for a counselor's travel in excess of two hours per trip shall be reimbursed at a rate not to exceed 50% of the maximum allowable hourly rate. Mileage shall be reimbursed at the same rate as that paid state employees.
- 58.7100** Workers shall be reimbursed reasonable and necessary travel expenses for travel related to a screening, entitlement assessment, or required meetings with a counselor or necessary to fulfill requirements of a return to work plan. Mileage shall be reimbursed at the same rate as that paid state employees.
- 58.8000** Fees shall not be reimbursed that are not reasonable and necessary. The party requesting the fee shall have the burden of proving the reasonableness and necessity of the charges.
- 58.9000** In the event a worker is either unable or not expected to be able to participate in vocational rehabilitation for a period of 30 days or more, V.R. shall be suspended and no V.R. services shall be due nor reimbursed for the suspension period, except as agreed upon by the parties.