Section

4.01: Scope and Authority
4.02: Definitions
4.03: Qualifications and Standards of Providers
4.04: Evaluation, Suspension and Removal of Providers
4.05: Mandatory Meeting
4.06: Notice to Insurer of Suitability
4.07: Design of Individual Written Rehabilitation Program
4.08: Amendment, Suspension or Termination of the Rehabilitation Program
4.09: Notification and Authorization to Insurers Relative to Refusal of Vocational Services
4.10: OEVR Consent to Lump Sum Settlements
4.11: OEVR Director and Rehabilitation Review Officers

4.01: Scope and Authority

452 CMR 4.00 is promulgated pursuant to M.G.L. c. 152, § 1(12) for the purpose of carrying out the requirements of M.G.L. c. 152 relative to the provision of appropriate vocational rehabilitation services as overseen by the Office of Education and Vocational Rehabilitation (OEVR).

4.02: Definitions

Amendment to the Individual Written Rehabilitation Program, as used in 452 CMR 4.00, shall mean any addition, deletion, or substitution in the employment goal, scope of services, responsibilities, or costs of the individual written vocational rehabilitation plan.

Catastrophic Injury, as used in 452 CMR 4.00, shall be one in which an individual has sustained loss of function involving, but not limited to, any of the following conditions:
   (a) mangled, crushing or amputation of a major portion of an extremity;
   (b) traumatic injury to the spinal cord that has caused or may cause paralysis;
   (c) severe burns that require burn center care; or
   (d) serious head injury, loss of vision in both eyes, or loss of hearing in both ears.

Determination of Suitability, as used in 452 CMR 4.00, shall mean an evaluation of an injured employee as to appropriateness for vocational rehabilitation services by a vocational rehabilitation review officer employed by OEVR, referred to in M.G.L. c. 152, § 30G.

Feasibility of Vocational Rehabilitation, as used in M.G.L. c. 152, § 30H, and 452 CMR 4.00, shall mean the practicality of recommending vocational rehabilitation services with respect to the cost-benefit ratio of such services, predictable return to function and duration of future employment, and the injured employee's pre-injury wage.

Functional Limitation, as used in 452 CMR 4.00, shall mean the residual effect of physical or psychiatric injury or occupational disease as related to capacity to work.

Individual Written Rehabilitation Program (IWRP), as used in 452 CMR 4.00, shall mean the source document for the injured employee's individual rehabilitation program, referred to in M.G.L. c. 152, § 30G, which lists the services, costs, and responsibilities of all participants and which is developed by an OEVR certified rehabilitation provider but approved by the office of education and vocational rehabilitation.

Mandatory Meeting, as used in M.G.L. c. 152, § 30G and 452 CMR 4.00, shall mean the initial interview between a workers' compensation recipient and a vocational rehabilitation review officer employed by OEVR.
4.02: continued

Necessity of Rehabilitation, as used in M.G.L. c. 152, § 30H and 452 CMR 4.00, shall mean circumstances in which an injured employee can not return to his or her former job with his or her former employer without job modification or job redesign, or placement in another job with or without retraining because of the functional limitation resulting from his or her injury.

Qualified Rehabilitation Counselor, as used in 452 CMR 4.00, shall mean any person who is approved to serve workers' compensation recipients pursuant to 452 CMR 4.03(2).

Reasonable Incidental Costs, as used in 452 CMR 4.00, shall mean the cost of travel to a rehabilitation program site, as well as other expenses directly related to the rehabilitation program without which the injured employee would be unable to participate.

Successful Rehabilitation, as used in 452 CMR 4.00, shall mean 60 days of consecutive employment in a job compatible with the IWRP.

Systemic Injury, as used in 452 CMR 4.00, shall mean an injury which affects an entire body system, such as the respiratory or neurologic system, as opposed to an injury which limits function in one area, such as a muscle sprain or strain.

Team Meeting, as used in 452 CMR 4.00, shall mean a special meeting with OEVR inclusive of all parties involved in the vocational services being administered to an injured employee.

Transferable Skills, as used in 452 CMR 4.00, shall mean any combination of learned behavior, natural talents, and work-related skills which can be adapted from one work setting to another.

4.03: Qualifications and Standards of Providers

(1) Vocational rehabilitation services may be provided to injured employees only by organizations approved by OEVR as qualified providers. Requests for such approval may be submitted to OEVR by:
   (a) any state vocational rehabilitation agency or employment and training agency which delivers vocational rehabilitation services or placement services to handicapped persons, or
   (b) any insurer, self-insurer, or private vocational rehabilitation organization, including corporations, partnerships, and sole proprietorships engaged in the provision of vocational rehabilitation services or placement of handicapped persons in employment.

(2) Any such vocational rehabilitation provider shall furnish to the office of education and vocational rehabilitation certification that each rehabilitation counselor who serves workers' compensation recipients has attained any or all of the following credentials:
   (a) the certified rehabilitation counselor designation or the certified disability management specialist designation;
   (b) a master's degree in vocational rehabilitation and a minimum of one years work experience in vocational rehabilitation;
   (c) a bachelor's degree and a minimum of five years work experience in vocational rehabilitation, unless the bachelor's degree is in vocational rehabilitation in which case the counselor shall have attained at least two years work experience in vocational rehabilitation;
   or
   (d) licensure as a rehabilitation counselor from the board of allied mental health and human services professions.

(3) No employee of a vocational rehabilitation provider shall have primary responsibility for a workers' compensation rehabilitation case unless he or she has been approved as a qualified rehabilitation counselor pursuant to 452 CMR 4.03(2). Employees hired to serve workers' compensation rehabilitation recipients during the certification year must be approved by OEVR as qualified rehabilitation counselors prior to working such cases. Qualified providers must notify OEVR in writing of any qualified rehabilitation counselor staff changes when they occur during the certification year.
4.03: continued

(4) Approval of a vocational rehabilitation provider shall be effective for up to one year from the date of approval. Any provider which has secured such approval may request that OEVR renew such approval. Any such renewal shall be effective for up to one year from the date of renewal. In considering whether approval or renewal is appropriate, OEVR shall determine whether the provider has:
   (a) observed all applicable federal, state, and local laws, regulations, as well as OEVR regulations and policies;
   (b) accurately represented its services and credentials in reports or certifications required by OEVR, and in any advertisements;
   (c) avoided conflicts of interest in the provision of vocational rehabilitation services;
   (d) honored injured employees' rights to privacy; and
   (e) maintained a satisfactory performance record with OEVR if applying for recertification.

4.04: Evaluation, Suspension and Removal of Providers

(1) Pursuant to M.G.L. c. 152, § 30H, each rehabilitation provider which offers services to workers' compensation recipients shall be evaluated periodically by OEVR. The evaluation shall focus on the quality of services provided based on file audit and/or a review of monthly progress reports and IWRPs, interactions with OEVR staff and injured workers, the costs of such services, and the results achieved by such services as determined by number of clients returned to employment. OEVR will also consider the providers record relative to the avoidance of conflicts of interest in the provision of vocational rehabilitation services. In conducting such an evaluation, OEVR shall monitor and evaluate each individual written rehabilitation program implemented by the provider, documenting the injured employee's utilization of services and achievement of program goals.

(2) OEVR shall notify in writing any rehabilitation provider who, according to the periodic evaluation, fails to meet service or cost effectiveness standards. Such notice shall state specifically the reasons for OEVR's finding of sub-standard performance. In order to satisfy OEVR that a performance deficiency has been corrected, each such provider shall submit any documentation required by OEVR to monitor and evaluate corrective actions taken by the provider. Unless the provider corrects each stated performance deficiency within 30 calendar days from the receipt of such notice, said provider may be suspended or removed by the commissioner from OEVR's list of approved providers. In the event that the provider is removed from the approved list of providers, an appeal may be submitted in writing to the Director of the Department within 14 days of such providers receipt of notice of removal or suspension.

(3) Certified providers performing any type of claims functions apart from vocational rehabilitation services, including hypothetical labor market surveys and earning capacity evaluations, shall be prohibited from providing vocational services to the same injured employee.

4.05: Mandatory Meeting

(1) Whenever an insurer makes payments pursuant to a memorandum submitted to the department pursuant to 452 CMR 1.05(2), or pursuant to an order or decision of an administrative judge, OEVR may contact the injured employee, to determine whether an initial interview is appropriate.

(2) Information gathered by OEVR at the initial interview shall be used to determine whether rehabilitation services are necessary and feasible. Such information shall include, but need not be limited to the injured employee's:
   (a) functional limitations;
   (b) employment history;
   (c) transferrable skills;
   (d) work habits;
   (e) vocational interests;
   (f) pre-injury earnings;
   (g) financial needs; or
   (h) medical information.
4.06: Notice to Insurer of Suitability

OEVR shall notify the insurer in writing of its determination of suitability and whether vocational rehabilitation has been found to be necessary and feasible for an injured employee. Within ten working days of receipt of such notification, the insurer shall provide to OEVR all pertinent medical records on the injured employee if not previously submitted. If the insurer fails to produce the requested medical information and the treating physician is unable to provide a current medical report, OEVR shall order an impartial medical examination, the reasonable cost of which shall be reimbursed by the insurer. Otherwise, OEVR will determine suitability based on the information submitted.

When the injured employee, on the date of such determination, has not been referred to an approved provider, OEVR will request in writing that the insurer provide vocational rehabilitation services to the injured employee through an approved provider as outlined in 452 CMR 4.03 within 30 days of the receipt of the request.

If the insurer fails to assign an approved provider after they have received a second request from OEVR to do so, OEVR will assign an approved provider who will initiate services and, if appropriate, develop an IWRP. The cost of such services and program shall be assumed by the Workers' Compensation Trust Fund under M.G.L. c. 152, § 65(2)(d) and the insurance company will be assessed pursuant to M.G.L. c. 152, § 30H upon the attainment of a successful rehabilitation as defined in 452 CMR 4.02.

4.07: Design of Individual Written Rehabilitation Program

(1) In the event that OEVR determines that vocational rehabilitation services are necessary and feasible for an injured employee, and a certified provider has been assigned, OEVR shall proceed as follows:

(a) The qualified provider must provide progress reports every 30 days beginning 30 days after the first meeting with the injured worker.

(b) An individual written rehabilitation plan shall be developed for injured employees found suitable for services within 90 days of the qualified provider's receipt of the referral from the insurer or OEVR. If circumstances do not allow for such a plan to be developed within such time then OEVR shall be notified of the delay, in writing by the provider, as soon as possible but no later than 30 days after the original due date of the IWRP. That written notice from the qualified provider shall note the reasons for the delay and a proposed timeline for submission of the written plan.

(2) Vocational rehabilitation services set out in an individual written rehabilitation program may include, but need not be limited to:

(a) vocational assessment;
(b) work evaluation;
(c) job analysis;
(d) job modification;
(e) vocational counseling;
(f) job placement and follow-up;
(g) on the job training; or
(h) retraining.

(3) All IWRPs shall be signed by all parties and submitted to OEVR on forms approved by OEVR.

OEVR shall require that the individual written rehabilitation program (IWRP) be sent to OEVR and to any person participating in the implementation of the program. OEVR shall either approve or disapprove the program within ten calendar days from the date of receipt of the program. Any comments on the program shall be submitted by participants to OEVR within seven calendar days of date of OEVR's receipt of the program. In the event that the insurer, OEVR, or the injured employee disapproves of the rehabilitation services planned for him or her, no such IWRP shall be approved by OEVR until a representative of the insurer authorized to approve expenditures for rehabilitation, the rehabilitation provider, and the injured employee have met with OEVR and agreed on the employment goal, the scope of services, and the cost of the program.
4.08: Amendment, Suspension or Termination of the Rehabilitation Program

(1) Whenever significant change in the life circumstances of the injured employee such as a medical reversal occurs, the IWRP shall be amended, suspended or terminated. Any amendment shall document the changed life situation and reflect appropriate medical, vocational or environmental intervention of the injured employee. Although an amendment may be substantive, such as a change in the employment goal or scope of service, the insurer shall not be liable for the cost of multiple or successive rehabilitation programs as defined by OEVR.

(2) In any circumstance in which OEVR determines that the health or well-being of the injured employee is jeopardized, OEVR may order that services be terminated immediately.

4.09: Notification and Authorization to Insurers Relative to Refusal of Vocational Services

(1) If it is determined by OEVR that an initial interview is appropriate, OEVR shall schedule the mandatory meeting of said injured employee at a mutually convenient time as soon as practicable. If the injured employee fails to appear at the scheduled interview, OEVR shall reschedule by certified letter, however, if the injured employee fails to appear again, OEVR shall notify the insurer in writing, pursuant to M.G.L. c. 152, § 30G, that the injured employee is not entitled to weekly compensation during the period of such refusal to attend the mandatory meeting.

(2) When an injured employee is determined suitable for vocational rehabilitation services by OEVR and refuses such services, the insurer may request written authorization from OEVR for a 15% reduction in weekly benefits for the time such injured employee refuses vocational services. In accordance with M.G.L. c. 152, § 8(2)(f), OEVR will confirm authorization for reduction for refusal of such services in writing after the following:
   (a) where OEVR holds a team meeting of all parties to resolve vocational issues and obstacles in the process; and/or
   (b) where a certified letter is sent to the injured employee instructing s/he to contact OEVR within five working days;
   Reinstatement will be authorized by OEVR when an injured employee actively resumes services or otherwise justifies to the satisfaction of OEVR the appropriateness of the refusal.

(3) Whenever an injured employee attends a mandatory meeting, actively resumes services, or otherwise justifies to the satisfaction of OEVR the appropriateness of his or her refusal of services, OEVR will confirm in writing to the insurer that no authorization for suspension or reduction of benefits remains in effect.

4.10: OEVR Consent to Lump Sum Settlements

Where an injured employee who has been deemed suitable for vocational rehabilitation services by OEVR but has not completed an appropriate rehabilitation program requests the consent of OEVR to a proposed lump sum settlement, a letter must be submitted to the Director of OEVR at least two weeks prior to the lump sum conference. The letter must include the following information:
   (a) employee name;
   (b) DIA board number;
   (c) date and region of lump sum conference; and
   (d) reason why a review for consent is being requested.

4.11: OEVR Director and Rehabilitation Review Officers

No Vocational Rehabilitation Review Officer or OEVR Director shall be called to testify at any proceeding within the Division of Dispute Resolution regarding any vocational issue which has come before him or her as the Director or as the Vocational Review Officer.

REGULATORY AUTHORITY

452 CMR 4.00: M.G.L. c. 152, § 5.