

## **Minnesota Department of Labor and Industry (DLI)**

### **DUAL NOTICE: Notice of Intent to Adopt Rules Without a Public Hearing Unless 25 or More Persons Request a Hearing, and Notice of Hearing if 25 or More Requests for Hearing Are Received; Revisor's ID Number R-04438**

#### **Proposed Amendments to Rules Governing Workers' Compensation Vocational Rehabilitation Fees; Minnesota Rules, Part 5220.1900**

**Introduction.** The commissioner of DLI intends to adopt rules without a public hearing following the procedures in the rules of the Office of Administrative Hearings, Minnesota Rules, parts 1400.2300 to 1400.2310, and the Administrative Procedure Act, Minnesota Statutes, sections 14.22 to 14.28. If, however, 25 or more persons submit a written request for a hearing on the rules by 4:30 p.m. on May 31, 2018, DLI will hold a public hearing in the Minnesota Room at the Department of Labor and Industry, 443 Lafayette Road N., St. Paul, MN 55155, starting at 9:30am on Thursday, June 14, 2018. To find out whether the commissioner of DLI will adopt the rules without a hearing or if DLI will hold the hearing, you should contact the agency contact person after May 31, 2018, and before June 14, 2018.

**Agency Contact Person.** Submit any comments or questions on the rules or written requests for a public hearing to the agency contact person. The agency contact person is: Matt Jobe, Office of General Counsel, Minnesota Department of Labor and Industry, 443 Lafayette Road N., St. Paul, MN 55155; telephone: 651-284-5006; email: [dli.rules@state.mn.us](mailto:dli.rules@state.mn.us).

**Subject of Rules and Statutory Authority.** The proposed rules are amendments to the rules governing fees for vocational rehabilitation services provided to injured workers. Specifically, the proposed rules eliminate the fee reduction for lengthy and costly rehabilitation plans and adjust the maximum hourly rate for qualified rehabilitation consultant (QRC) services so that total QRC costs remain neutral as of the effective date of the rules. The proposed rules also increase the hourly limit on QRC services when a person other than the QRC is providing job development or job placement services. Next, the proposed rules provide clarity to rehabilitation providers and insurers about billing and payment for certain types of services and activities. Finally, the rules reference penalty authority that exists under the workers' compensation statutes for an insurer's failure to timely pay or deny a rehabilitation provider's bill.

The statutory authority to adopt the proposed rules is Minnesota Statutes 2016, section 176.102, subdivision 2(a), which grants the commissioner of DLI the authority to adopt rules regarding rehabilitation fees, and Minnesota Statutes 2016, section 176.83, subdivisions 1 & 2, which grant the commissioner the authority to adopt "rules necessary to implement and administer section 176.102" and adopt, amend, or repeal rules to carry out the provisions of chapter 176. A copy of the proposed rules is published in the *State Register* and attached to this notice.

**Comments.** You have until 4:30 p.m. on Thursday, May 31, 2018, to submit written comments in support of or in opposition to the proposed rules or any part or subpart of the rules. Your comments must be in writing and received by the agency contact person by the due date.

Comments are encouraged. Your comments should identify the portion of the proposed rules addressed, the reason for the comment, and any change proposed. You are encouraged to propose any change that you desire. Any comments that you have about the legality of the proposed rules must also be made during this comment period.

**Request for a Hearing.** In addition to submitting comments, you may also request that DLI hold a hearing on the rules. You must make your request for a public hearing in writing, and the agency contact person must receive your request by 4:30 p.m. on Thursday, May 31, 2018. You must include your name and address in your written request. In addition, you must identify the portion of the proposed rules that you object to or state that you oppose the entire set of rules. Any request that does not comply with these requirements is not valid and DLI cannot count it when determining whether it must hold a public hearing. You are also encouraged to state the reason for the request and any changes you want made to the proposed rules.

**Withdrawal of Requests.** If 25 or more persons submit a valid written request for a hearing, DLI will hold a public hearing unless a sufficient number of persons withdraw their requests in writing. If enough requests for hearing are withdrawn to reduce the number below 25, DLI must give written notice of this to all persons who requested a hearing, explain the actions DLI took to effect the withdrawal, and ask for written comments on this action. If a public hearing is required, DLI will follow the procedures in Minnesota Statutes, sections 14.131 to 14.20.

**Alternative Format/Accommodation.** Upon request, this information can be made available in an alternative format, such as large print, braille, or audio. To make such a request, or if you need an accommodation to make the hearing accessible, please contact the agency contact person at the address or telephone number listed above.

**Modifications.** DLI might modify the proposed rules, either as a result of public comment or as a result of the rule hearing process. DLI must support modifications by data and views submitted to DLI or presented at the hearing. The adopted rules may not be substantially different than these proposed rules unless DLI follows the procedure under Minnesota Rules, part 1400.2110. If the proposed rules affect you in any way, DLI encourages you to participate in the rulemaking process.

**Cancellation of Hearing.** DLI will cancel the hearing scheduled for June 14, 2018, if DLI does not receive requests for a hearing from 25 or more persons. If you requested a public hearing, DLI will notify you before the scheduled hearing whether the hearing will be held. You may also call the agency contact person at the telephone number listed above after May 31, 2018, to find out whether the hearing will be held.

**Notice of Hearing.** If 25 or more persons submit valid written requests for a public hearing on the rules, DLI will hold a hearing following the procedures in Minnesota Statutes, sections 14.131 to 14.20. DLI will hold the hearing on the date and at the time and place listed above. The hearing will continue until all interested persons have been heard. Administrative Law Judge Eric L. Lipman has been appointed to conduct the hearing. Judge Lipman can be reached at the Office of Administrative Hearings, 600 North Robert Street, P.O. Box 64620,

Saint Paul, Minnesota 55164-0620, telephone (651) 361-7911, and fax (651) 539-0310. Judge Lipman's Legal Assistant Katie Lin can be reached at the Office of Administrative Hearings, 600 North Robert Street, P.O. Box 64620, Saint Paul, Minnesota 55164-0620, telephone (651) 361-7900 and FAX (651) 539-0310 or [katie.lin@state.mn.us](mailto:katie.lin@state.mn.us).

**Hearing Procedure.** If DLI holds a hearing, you and all interested or affected persons, including representatives of associations or other interested groups, will have an opportunity to participate. You may present your views either orally at the hearing or in writing at any time before the hearing record closes. All evidence presented should relate to the proposed rules. You may also submit written material to the Administrative Law Judge to be recorded in the hearing record for five working days after the public hearing ends. At the hearing, the Administrative Law Judge may order that this five-day comment period is extended for a longer period, but not more than 20 calendar days. Following the comment period, there is a five-working-day rebuttal period when DLI and any interested person may respond in writing to any new information submitted. No one may submit **new** evidence during the five-day rebuttal period. The Office of Administrative Hearings must receive all comments and responses submitted to the Administrative Law Judge **via the Office of Administrative Hearings Rulemaking e-comments website at <https://minnesotaoah.granicusideas.com/discussions>** no later than 4:30 p.m. on the due date. All comments or responses received will be available for review **at DLI or on DLI's website at <http://www.dli.mn.gov/PDF/docket/5220docket.pdf>**. This rule hearing procedure is governed by Minnesota Rules, parts 1400.2000 to 1400.2240, and Minnesota Statutes, sections 14.131 to 14.20. You may direct questions about the procedure to the Administrative Law Judge.

DLI requests that any person submitting written views or data to the Administrative Law Judge before the hearing or during the comment or rebuttal period also submit a copy of the written views or data to the agency contact person at the address stated above.

**Statement of Need and Reasonableness.** The statement of need and reasonableness summarizes the justification for the proposed rules, including a description of who will be affected by the proposed rules and an estimate of the probable cost of the proposed rules. It is available from the agency contact person. You may review it electronically at <http://www.dli.mn.gov/PDF/docket/5220docket.pdf>. You may obtain copies for the cost of reproduction by contacting the agency contact person.

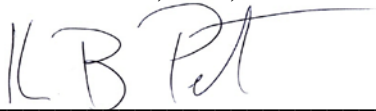
**Lobbyist Registration.** Minnesota Statutes, chapter 10A, requires each lobbyist to register with the State Campaign Finance and Public Disclosure Board. Ask any questions about this requirement of the Campaign Finance and Public Disclosure Board at: Suite #190, Centennial Building, 658 Cedar Street, St. Paul, Minnesota 55155, telephone (651) 539-1180 or 1-800-657-3889.

**Adoption Procedure if No Hearing.** If no hearing is required, the commissioner of DLI may adopt the rules after the end of the comment period. DLI will submit the rules and supporting documents to the Office of Administrative Hearings for a legal review. You may ask to be notified of the date the rules are submitted to the office. If you want either to receive notice of this, to receive a copy of the adopted rules, or to register with DLI to receive notice of future rule proceedings, submit your request to the agency contact person listed above.

**Adoption Procedure after a Hearing.** If a hearing is held, the Administrative Law Judge will issue a report on the proposed rules after the close of the hearing record. You may ask to be notified of the date that the Administrative Law Judge's report will become available, and can make this request at the hearing or in writing to the Administrative Law Judge. You may also ask to be notified of the date that the commissioner of DLI adopts the rules and the rules are filed with the Secretary of State by requesting this at the hearing or by writing to the agency contact person stated above.

**Order.** I order that the rulemaking hearing be held at the date, time, and location listed above.

4-19-2018  
Date

  
Ken B. Peterson, Commissioner