

SUPPLEMENTAL NOTICE OF PROPOSED  
CHANGES IN THE REGULATIONS OF THE  
DEPARTMENT OF LABOR AND WORKFORCE DEVELOPMENT

The Alaska Department of Labor and Workforce Development proposes to amend regulations in Title 8 of the Alaska Administrative Code regarding AS 23.30.041 dealing with workers' compensation including provisions for rehabilitation and reemployment of injured workers, and proposes to adopt, in conjunction with approval from the Alaska Workers' Compensation Board, including the following:

1. 8 AAC 45.400, regarding the list of rehabilitation specialists, is amended to add requirements regarding the geographical area of the rehabilitation specialist as it relates to the injured worker.
2. 8 AAC 45.415, which outlines the required qualifications and certifications of a rehabilitation specialist, is amended to correct a typographical error in the statutory citation from AS 23.30.041(p)(6) to (r)(6).
3. 8 AAC 45.420, regarding rehabilitation specialist applications, is repealed and readopted to require additional documentation in applications and to provide a process for the filing of new applications.
4. 8 AAC 45.430, regarding the assignment of rehabilitation specialists, is amended to change rehabilitation specialist assignments based upon locality and to add requirements regarding reassignments of rehabilitation specialists.
5. 8 AAC 45.440, regarding the removal of a rehabilitation specialist from the administrator's list, is amended to provide more detail regarding the circumstances and process for disqualification or removal of a specialist from the list of rehabilitation specialists.
6. 8 AAC 45.500, regarding the reporting requirements of a rehabilitation specialist, is repealed and readopted to require that additional documentation be filed by rehabilitation specialists in making reports.
7. 8 AAC 45.505 will be added to allow the employee and employer to stipulate to vocational eligibility.
8. 8 AAC 45.507 will be added to outline the notification requirements of an employee's right to vocational reemployment benefits as mandated by the changes to AS 23.30.041(c) which took effect in November 2005.
9. 8 AAC 45.510, regarding requests for reemployment benefits is repealed and readopted to outline the process required when requesting vocational benefits as mandated by the changes to AS 23.30.041(c) which took effect in November 2005.
10. 8 AAC 45.520, regarding the determination of unusual and extenuating circumstances to justify late requests for reemployment benefits, is repealed to reflect the legislature's November 2005 repeal of the statutory language which provided for unusual and extenuating circumstances.

11. 8 AAC 45.522 will be added to detail the vocational benefit referral procedure required when an employee has been totally unable to return to their time-of-injury employment for 90 consecutive days as mandated by the statutory changes to AS 23.30.041(c) which took effect in November 2005.
12. 8 AAC 45.525, regarding reemployment benefit eligibility evaluations, is amended to provide further detail of the work required of the rehabilitation specialist when performing an eligibility evaluation for an injured worker, adds a new subsection (g) which sets forth the statutory factors to determine ineligibility and defines the term “rehabilitated” as it appears in AS 23.30.041(f)(3).
13. 8 AAC 45.530(b) and (c), regarding determinations of eligibility for reemployment benefits, are amended to allow for the reassignment of eligibility evaluations and to provide for relocation benefits as adopted by the legislature in its November 2005 amendment to AS 23.30.041(d) and (g).
14. 8 AAC 45.535 is repealed and reenacted to provide a timeline for an employee’s decision whether to seek reemployment benefits or opt for the job dislocation benefits created by the November 2005 changes to AS 23.30.041(g).
15. 8 AAC 45.540, regarding a party’s right to object to the assignment of a rehabilitation specialist to complete a vocational plan, is repealed and reenacted to more fully outline the procedure to be followed when exercising that right.
16. 8 AAC 45.542(a), regarding the assignment of a new rehabilitation specialist in the event of a change in location during development of a vocational plan, is amended to provide for additional bases for reassignment.
17. 8 AAC 45.550(a)(3) and (6), regarding the development of vocational plans, are amended to identify those duties required to be performed by the vocational specialist assigned and to clarify the necessary documentation.
18. 8 AAC 45.550(b), regarding the development of vocational plans, is amended to clarify that it is the rehabilitation specialist assigned to the file who is to prepare and submit the plan.
19. 8 AAC 45.560 is added to provide for an informal rehabilitation conference when requested by a party or the administrator.
20. 8 AAC 45.900, regarding the definition of regulatory and statutory terms, is amended to add a new subsection defining additional terms.

This is a SUPPLEMENTAL NOTICE adding to the NOTICE OF PROPOSED CHANGES that was issued on August 27, 2009 concerning these proposed regulation provisions contained in the Department of Law file number JU2009200715. This SUPPLEMENTAL NOTICE is being issued because the Department of Labor and Workforce Development has added an informative summary and extended the public comment period on these proposed revisions.

You may comment on the proposed regulation changes, including the potential costs to private persons of complying with the proposed changes, by submitting written comments to Jeremy Dodson, Division of Workers’ Compensation, 1016 West 6<sup>th</sup> Ave, Suite 401, Anchorage, AK 99501. The comments must be received no later than 4:00 p.m. on October 1, 2009.

Oral or written comments also may be submitted at a hearing to be held on September 24, 2009, from 9:00 a.m. until 12:00 p.m. and might be extended to accommodate those present before 12:00 p.m. who did not have the opportunity to comment at the following locations:

Department of Labor and Workforce Development Building, Anchorage  
3301 Eagle Street, Suite 100  
Anchorage, Alaska

Department of Labor and Workforce Development Building, Juneau  
1111 West 8<sup>th</sup> Street, Suite 303  
Juneau, Alaska

Division of Workers' Compensation Office  
Station K, 675 7<sup>th</sup> Ave.  
Fairbanks, Alaska

If you are a person with a disability who needs a special accommodation in order to participate in this process, please contact Jeremy Dodson at 907-334-2617 no later than seven days before the accommodation is needed to ensure that any necessary accommodations can be provided.

A copy of the proposed regulation changes may be obtained by writing to Jeremy Dodson, Division of Workers' Compensation, 1016 West 6<sup>th</sup> Ave, Suite 401, Anchorage, AK 99501, or go to <http://labor.state.ak.us/wc/home.htm>.

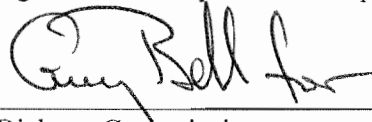
After the public comment period ends, the Alaska Workers' Compensation Board, during a public meeting, and the Department of Labor and Workforce Development will either adopt these or other provisions dealing with the same subject, without further notice, or decide to take no action on them. The language of the final regulations may be different from that of the proposed regulations. **YOU SHOULD COMMENT DURING THE TIME ALLOWED IF YOUR INTERESTS COULD BE AFFECTED.**

**Statutory Authority:** AS 23.30.005; AS 23.30.041

**Statutes Being Implemented, Interpreted, or Made Specific:** AS 23.30.041;

**Fiscal Information:** The proposed regulation changes are not expected to require an increased appropriation.

DATE: 8/31/09



Clark Bishop, Commissioner  
Department of Labor and Workforce Development

**Chapter 45. Compensation, Medical**

**Benefits, and Proceedings**

**Before the Alaska**

**Workers' Compensation Board**

8 AAC 45.400 is amended to read:

**8 AAC 45.400 List of rehabilitation specialists.** (a) This section applies to the rehabilitation specialists' list to be maintained by the administrator for injuries that occur on or after July 1, 1988. The list for a specific geographic area is available upon request from the division.

(b) The list of rehabilitation specialists will be divided into two geographical sections. One section will contain the names and addresses of rehabilitation specialists whose **primary domicile and** business addresses are in the state. The other section will contain names and addresses of rehabilitation specialists whose **primary domicile and** business addresses are in other states or countries. The list

(1) for this state will be further subdivided into three geographical areas based on the senate districts for southeastern and southcentral Alaska, and an area comprised by combining the central and northwestern Alaska senate districts, as those districts are described in art. XIV, sec. 2, of the Constitution of the State of Alaska; a rehabilitation specialist's name will be placed on the list only once for this state by matching the rehabilitation specialist's primary **domicile and** business **addresses** [ADDRESS] to the **geographical area** [SENATE DISTRICT] that contains **those addresses** [THAT ADDRESS];

(2) for other states or countries will be subdivided by city and state, or country; a rehabilitation specialist's name will be placed on the list by matching the rehabilitation

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specialist's **primary domicile and** business **addresses** [ADDRESS] to the appropriate city and state, or country. (Eff. \_\_/\_\_/\_\_\_\_, Register)

**Authority:** AS 23.30.005 AS 23.30.041(c)

8 AAC 45.415 is amended to read:

**8 AAC 45.415. Definition of rehabilitation specialist.** For purposes of 8 AAC 45.500, 8 AAC 45.410, and AS 23.30.041(**r**)[p](6), (Eff. \_\_/\_\_/\_\_\_\_, Register)

**Authority:** AS 23.30.005 AS 23.30.041(r)

8 AAC 45.420 is repealed and readopted to read:

**8 AAC 45.420. Rehabilitation specialist application.** (a) To be added to the administrator's rehabilitation specialists' list under 8 AAC 45.400, a person who qualifies under 8 AAC 45.410(a) must file a completed application that includes

(1) a signed and notarized statement listing the person's legal name; primary domicile address and phone number; the business address and phone number where the person will be receiving evaluation and plan referrals; and an attestation that the rehabilitation specialist will personally provide the reemployment services to assigned employees in accordance with AS 23.30.041;

(2) for persons applying to be placed on the administrator's rehabilitation specialist list for this state, proof of residency or an attestation, claiming the person's primary domicile address and their business address, are in the same geographical area as outlined in 8 AAC 45.400(b)(1);

(3) proof of a current certification as

(A) a certified insurance rehabilitation specialist or certified rehabilitation counselor, as those terms are defined in 8 AAC 45.415; or

(B) a certified disability management specialist who is certified as required by 8 AAC 45.415(3)(B);

(4) a certificate of workers' compensation insurance if the person has employees; the certificate of insurance must provide for 30 day prior notice to the board of cancellation, nonrenewal, or material change of the policy; and

(5) a résumé stating the person's education, training, work experience, and the names and addresses of the professional organizations that have certified the person or in which the person is an active member.

(b) Names will be added to the geographical listing in order of the receipt date of the completed application. If more than one completed application is received in a day, the names for that day will be placed on the list in alphabetical order. If a person's name is not added to the list, the administrator will notify the person and state in writing the reason for exclusion. Reasons for exclusion include an incomplete or illegible application or accompanying documents, misrepresentation or not meeting the requirements of AS 23.30.041(r)(6).

(c) A new application will be required upon expiration of the certifications required in (3)(A) or (B) above. If a rehabilitation specialist has not filed a new application with the administrator within 90 days of the date that the previous certifications expired, the rehabilitation specialist's name will automatically be removed from the geographic list.

(d) When the rehabilitation specialist's primary domicile and business addresses are no longer in the same location in which the rehabilitation specialist was receiving referrals, the rehabilitation specialist must notify the administrator within 14 days, so that the rehabilitation specialist's name can be removed from the geographic list.

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(e) Existing rehabilitation specialists must reapply within 60 days of the effective date of this regulation or the rehabilitation specialist's name will be automatically removed from the geographic list. On a one time basis, the reemployment benefits administrator shall notify all existing rehabilitation specialists, in writing, of the effective date of this regulation. This letter shall also include a copy of the new regulations and a new application form as described in (a)(1-5) above. (Eff. \_\_/\_\_/\_\_\_\_, Register)

Authority: AS 23.30.005 AS 23.30.041(c)

8 AAC 45.430(1) is amended to read:

**8 AAC 45.430. Assignment of rehabilitation specialists.** For an injury occurring on or after July 1, 1988, and if required under AS 23.30.041, the administrator shall assign a rehabilitation specialist as follows:

- (1) If the employee lives in this state, the first rehabilitation specialist on the list in the employee's **geographical area** [SENATE DISTRICT] shall be assigned. If there is no rehabilitation specialist on the list or if refusals under AS 23.30.041(g) eliminate all the rehabilitation specialists on the list for that **geographical area** [SENATE DISTRICT], the administrator shall assign a rehabilitation specialist from another **geographical area** [SENATE DISTRICT]. To minimize expenses and delay, the assignment from another **geographical area** [SENATE DISTRICT] must be based on the rehabilitation specialist's proximity to the employee, and not necessarily to placement on the list. (Eff. \_\_/\_\_/\_\_, Register)

Authority: AS 23.30.005 AS 23.30.041

8 AAC 45.430 is amended by adding a new subsection to read:

**8 AAC 45.430. Assignment of rehabilitation specialists.**

(4) Any reassignments of an employee to a rehabilitation specialist under 8 AAC 45.530, 8 AAC 45.540, or 8 AAC 45.542 shall not be made to a rehabilitation specialist in the same, or an affiliated, firm. (Eff. \_\_/\_\_/\_\_, Register)

Authority: AS 23.30.005 AS 23.30.041

8 AAC 45.440(a) is repealed:

**8 AAC 45.440. Removal of rehabilitation specialists.** (a) Repealed \_\_/\_\_/\_\_, Register)

Authority: AS 23.30.005 AS 23.30.041(b)

8 AAC 45.440(b)(1-4) are amended to read:

**8 AAC 45.440. Removal of rehabilitation specialists.**

(b) The administrator may disqualify a rehabilitation specialist from providing services under AS 23.30.041 for

(1) [REPEATED] Failure by the rehabilitation specialist to demonstrate suitable rehabilitation skills;

(2) [REPEATED] Failure by the rehabilitation specialist to timely file **2 or more eligibility evaluations or plan** [REHABILITATION] reports **in a 3 month period** or provide rehabilitation services;

(3) [SIGNIFICANT] Failure by the rehabilitation specialist to adhere to statutory or regulatory requirements, **including but not limited to (2) above;**

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(4) unethical conduct by the rehabilitation specialist as defined by the ethics committee of **an** [THE ALASKA REHABILITATION ASSOCIATION OR OTHER] appropriate professional rehabilitation organization; (Eff. \_\_/\_\_/\_\_\_\_, Register)

**Authority:** AS 23.30.005 AS 23.30.041(b)

8 AAC 45.440(d) is amended to read:

**8 AAC 45.440. Removal of rehabilitation specialist.**

(d) If the administrator believes that a rehabilitation specialist has engaged in unethical practices or activity, after written notification to the rehabilitation specialist, the administrator may refer the issue to the ethics committee of **an** [THE ALASKA REHABILITATION ASSOCIATION OR OTHER] appropriate professional rehabilitation organization for recommendations. (Eff. \_\_/\_\_/\_\_\_\_, Register)

**Authority:** AS 23.30.005 AS 23.30.041(b)

8 AAC 45.440(e) is amended to read:

**8 AAC 45.440. Removal of rehabilitation specialist.**

(e) Before disqualifying a rehabilitation specialist, the administrator shall notify the rehabilitation specialist in writing, served either personally or by certified mail, of the proposed disqualification. A rehabilitation specialist who has been notified of **a** proposed disqualification may, within 30 days after receipt of the notice, file a written request with the administrator for an opportunity to meet with the administrator to discuss the proposed disqualification. **For a proposed disqualification involving a violation of 8 AAC 45.440(b) (5) – (10), the administrator shall immediately and temporarily remove the rehabilitation specialist from the list pending final determination of the proposed disqualification.**

8 AAC 45.440(g)(2) is amended to read:

**8 AAC 45.440. Removal of rehabilitation specialist.**

(g) The administrator's written decision under (f) of this section must

(2) disqualify the rehabilitation specialist **for a minimum of 1 year for the first disqualification and a minimum of 5 years for the second disqualification** and

explain the reasons for the action, [THE DURATION OF THE DISQUALIFICATION] and the conditions, if any, under which the rehabilitation specialist may reapply; [OR]

**(3) permanently remove the rehabilitation specialist from the list for acts arising under 8 AAC 45.440(b)(5) – (9); or**

(Eff. \_\_/\_\_/\_\_\_\_, Register)

**Authority:** AS 23.30.005 AS 23.30.041(b)

8 AAC 45.440(h) is amended to read:

**8 AAC 45.440. Removal of rehabilitation specialist.**

(h) The administrator's decision must be served upon the rehabilitation specialist or the rehabilitation specialist's representative **and the professional organizations that have certified the rehabilitation specialist**, either personally or by certified mail. A copy must be sent to the employee or employer, if any, who requested that the administrator consider disqualifying the rehabilitation specialist. A disqualification decision is effective 10 days after the date of the decision unless a written request for board review is filed with the board and is served in accordance with (i) of this section within 10 days after service of the administrator's decision.

(Eff. \_\_/\_\_/\_\_\_\_, Register.

**Authority:** AS 23.30.005 AS 23.30.041(b)

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8 AAC 45.500 is repealed and readopted to read:

**8 AAC 45.500. Reporting requirements.** (a) Regardless of the employee's date of injury, the rehabilitation specialist whose name appears on the referral letter must prepare and file with the administrator all evaluations, reports, plans, and itemized billing statements for an employee receiving rehabilitation assistance under the Act and this chapter. If the administrator has prescribed a report form for an evaluation or plan, the rehabilitation specialist must file with the administrator the completed form together with the evaluation or plan. The rehabilitation specialist shall personally sign the original forms and reports. The rehabilitation specialist must serve copies of all evaluations, reports, and plans upon the employer and the employee.

(b) The itemized billing statement must reflect, for each activity, the date of service, the activity performed, the name of the individual who performed the activity and the fee charged for the activity. The original billing statement shall be submitted to the employer for payment with simultaneous copies to the employee and the administrator. Billing statements not in compliance with this subsection will not be processed for payment. (Eff. \_\_/\_\_/\_\_\_\_, Register \_\_\_\_)

Authority: AS 23.30.005 AS 23.30.041(b), (d) and (h)

8 AAC 45 is amended by adding a new section to read:

**8 AAC 45.505. Stipulation to eligibility for reemployment benefits.** (a) For compensable injuries occurring on or after November 7, 2005, an employee and an employer may stipulate to the employee's eligibility for reemployment benefits. The stipulation must be in writing, and completed on a form prescribed by the administrator.

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(b) Within five working days after the administrator receives the completed stipulation form, the administrator will send a notice to the employee and the employer that includes the information required under 8 AAC 45.530 (c)(1-3). (Eff. \_\_/\_\_/\_\_\_\_, Register \_\_\_\_)

**Authority:** AS 23.30.005 AS 23.30.041(c)

8 AAC 45 is amended by adding a new section to read:

**8 AAC 45.507. Notice of employee rights to reemployment benefits.** (a) For compensable injuries occurring on or after November 7, 2005, if the employee has been totally unable to return to the employee's employment at time of injury for 45 consecutive days as a result of the injury, the employer shall notify the administrator in writing on the 46<sup>th</sup> consecutive day. The notification must be completed on a form prescribed by the administrator. The administrator shall notify the employee of their rights to reemployment benefits within 14 days after the 45<sup>th</sup> day.

(b) If the employee has been totally unable to return to the employee's employment at time of injury for 90 consecutive days, as a result of the injury, the employer shall notify the administrator, in writing, on the 91<sup>st</sup> consecutive day. The notification must be completed on a form prescribed by the administrator. (Eff. \_\_/\_\_/\_\_\_\_, Register \_\_\_\_)

**Authority:** AS 23.30.005 AS 23.30.041(c)

8 AAC 45.510 is repealed and readopted to read:

**8 AAC 45.510. Request for reemployment benefits eligibility evaluation.** (a) For compensable injuries occurring on or after November 7, 2005, for which the employee has been totally unable to return to the employee's employment at time of injury for 60 – 89 consecutive

days as a result of the injury, an employee or an employer requesting an eligibility evaluation for reemployment benefits must submit to the administrator

- (1) a written request for the evaluation;
- (2) a physician's prediction that the injury may permanently preclude the employee from returning to the employee's job at time of injury; and
- (3) documentation that the employee has been totally unable to return to the employee's employment at time of injury for 60 -89 consecutive days, as a result of the injury.

(b) The administrator will consider a written request for an eligibility evaluation for reemployment benefits, under (a) above, provided a controversion notice has not been filed stating that the employee's inability to return to their employment is not a result of the injury.

(c) If a controversion notice has been filed in which the employer is stating the employee's inability to return to the employee's employment is not a result of the injury, the administrator will forward the matter to the Alaska Workers' Compensation Board for a hearing regarding the controversion.

(d) Within 14 days after receiving a request for an evaluation for reemployment benefits, the administrator will review the request, determine if the request is complete in accordance with (a) of this section, and send a letter to the employee and the employer indicating whether the employee is entitled to an eligibility evaluation. If the employee is found to be entitled to an eligibility evaluation the administrator will send a letter to the employee and the employer with the name and address of the rehabilitation specialist selected in accordance with AS 23.30.041(c) to evaluate the employee.

(e) Within 5 days of receipt of this letter, the employer at the time of injury shall forward a copy of the employee's resume or job application if available and a job description or summary

of the employee's job duties and the adjuster shall forward a copy of all medical reports, compensation reports, controversions and report of injury to the rehabilitation specialist, the employee and the administrator.

(f) If a firm or person who employs a rehabilitation specialist or a rehabilitation specialist assigned to complete an eligibility evaluation is performing any other work on the same workers' compensation claim involving the injured employee, the rehabilitation specialist must notify the administrator within 5 days of receiving the referral letter. The administrator will select a different specialist. The new specialist will be assigned in accordance with AS 23.30.041(c) to evaluate the employee.

(g) If the request for an evaluation for reemployment benefits is incomplete the administrator will send a letter to

(1) the employee and the employer asking for additional medical documentation regarding the employee's total inability to return to the employee's job at time of injury;  
or

(2) the employer asking for documentation, within ten days, of the employee's total inability to return to the employee's job at time of injury for 60 - 89 consecutive days. If the employer fails to respond within ten days to the administrator's request for documentation, the administrator will rely on the materials in the division's electronic and paper file, if available, to determine the employee's total inability to return to the employee's employment at time of injury for 60 – 89 days.

(h) If either party disputes the administrator's decision in (d) or (g), they must petition the board for review of the administrator's decision within 10 days of the filing of that decision.

(i) The board shall expedite all hearings brought under this section giving a preference on the board's calendar. (Eff. \_\_/\_\_/\_\_\_\_, Register \_\_\_\_\_)

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Authority: AS 23.30.005 AS 23.30.041(c)

8 AAC 45.520 is repealed:

**8 AAC 45.520. Determination of unusual and extenuating circumstances.**

Repealed. (Eff. \_\_/\_\_/\_\_\_\_, Register \_\_\_\_)

**Editor's note:** The former statute providing for unusual and extenuating circumstances was repealed effective November 7, 2005.

8 AAC 45 is amended by adding a new section to read:

**8 AAC 45.522. Ordering an eligibility evaluation.** (a) For compensable injuries occurring on or after November 7, 2005, if an employee has been totally unable to return to the employee's employment at time of injury for 90 consecutive days as a result of the injury, the administrator shall refer the employee for an eligibility evaluation provided a controversion notice has not been filed stating that the employee's inability to return to the employee's employment is not a result of the injury. If such a controversion notice has been filed, the administrator will forward the matter to the Alaska Workers' Compensation Board for a hearing regarding the controversion. The board shall expedite all hearings brought under this section giving a preference on the board's calendar.

(b) If no controversion notice has been filed under (a) above, the administrator will send a letter to the parties with the name and address of the rehabilitation specialist selected in accordance with AS 23.30.041(c) to evaluate the employee.

(c) Within 5 days of receipt of this letter, the employer at the time of injury shall forward a copy of the employee's resume or job application if available and a job description or summary of the employee's job duties and the adjuster shall forward a copy of all medical reports,

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compensation reports, controversions and report of injury to the rehabilitation specialist, the employee and the administrator.

(d) If a firm or person who employs a rehabilitation specialist or a rehabilitation specialist assigned to complete an eligibility evaluation is performing any other work on the same workers' compensation claim involving the injured employee, the rehabilitation specialist must notify the administrator within 5 days of receiving the referral letter. The administrator will select a different specialist. The new specialist will be assigned in accordance with AS 23.30.041(c) to evaluate the employee.

(Eff. \_\_/\_\_/\_\_\_\_, Register \_\_\_\_)

Authority: AS 23.30.005 AS 23.30.041(c)

8 AAC 45.525 is amended to read:

**8 AAC 45.525. Reemployment benefit eligibility evaluations.** (a) If an employee is found eligible for an eligibility evaluation for reemployment benefits under 8 AAC 45.510 [or 8 AAC 45.520], the rehabilitation specialist **whose name appears on the referral letter** shall

(1) interview the employee and [IF NECESSARY] the employer at time of injury to obtain a description of the tasks and duties of the employee's job at time of injury;

(2) review the following volume and, from the volume, **select all** [CHOOSE THE MOST APPROPRIATE] job [TITLE OR] titles **which reflect** [BASED ON THE DESCRIPTION OF] the employee's job. [;] **If the job held involved multiple DOT titles, each title must be evaluated and submitted separately.** T[t]he volume to be reviewed under this paragraph is

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(A) on or after July 2, 1988 and until August 29, 1998, the United States Department of Labor's "Selected Characteristics of Occupations Defined in the Dictionary of Occupational Titles" (1981) (SCODDOT); **or** [AND]

(B) on or after August 30, 1998, the effective date of the amendment of AS 23.30.041(e) by sec. 1, ch. 59, SLA 1998, the 1993 edition of the United States Department of Labor's "Selected Characteristics of Occupations Defined in the Revised Dictionary of Occupational Titles" (**SCODRDOT**) unless, under AS 23.30.041(**p**)[(q)], the board has designated a later revision or version of that volume; and

(3) submit the job title or titles chosen under (2) of this subsection to a physician, **the employee, the employer and the administrator. DOT descriptions and physical demands for multiple titles shall not be combined into one document as a separate SCODDOT or SCODRDOT job description, but a separate DOT title shall be provided for each DOT title selected. The employer shall pay costs associated with physician review of the job title or titles.**

(b) When interviewing the employee the rehabilitation specialist **whose name appears on the referral letter** shall obtain descriptions of the tasks and duties for other jobs that the employee has held or for which the employee received training within 10 years before the injury, and any jobs held after the injury. The rehabilitation specialist shall

(1) review the following volume and, from the volume, **select all** [CHOOSE THE MOST APPROPRIATE] job [TITLE OR] titles **which reflect** [BASED ON THE EMPLOYEE'S DESCRIPTIONS OF] the job[']s held and training received **by the employee. If the job held or the training received involved multiple DOT titles, each**

**title must be evaluated and submitted separately.** T[t]he volume to be reviewed under this paragraph is

(A) on or after July 2, 1988 and until August 29, 1998, the United States Department of Labor’s “Selected Characteristics of Occupations Defined in the Dictionary of Occupational Titles” (1981) (SCODDOT); and

(B) on or after August 30, 1998, the effective date of the amendment of AS 23.30.041(e) by sec. 1, ch. 59, SLA 1998, the 1993 edition of the United States Department of Labor’s “Selected Characteristics of Occupations Defined in the Revised Dictionary of Occupational Titles” (**SCODRDOT**) unless, under AS 23.30.041(**p**)[(q)], the board has designated a later revision or version of that volume;

(2) **identify all titles selected under (b)(1) for which the employee meets**

[DETERMINE WHETHER THE EMPLOYEE HELD THE JOBS LONG ENOUGH TO MEET] the specific vocational preparation codes as described in the **appropriate** volume **outlined in 1(A) or (B) above;**

(3) submit **all** [THE] job title or titles **identified** [CHOSEN] under [(1)—](2) of this subsection[, FOR WHICH THE EMPLOYEE MEETS THE SPECIFIC VOCATIONAL PREPARATION CODES,] to a physician, **the employee, the employer and the administrator. DOT descriptions and physical demands for multiple titles shall not be combined into one document as a separate SCODDOT or SCODRDOT job description but a separate DOT title shall be provided for each DOT title selected. The employer shall pay costs associated with physician review of the job title or titles;**

(4) [IF THE PHYSICIAN PREDICTS THE EMPLOYEE WILL HAVE THE PERMANENT PHYSICAL CAPACITIES EQUAL TO OR GREATER THAN THE PHYSICAL DEMANDS OF A JOB OR JOBS,] conduct [A] labor market **research** [SURVEY] **for each job title submitted under (b)(3) above for which a physician predicts the employee will have the permanent physical capacities to perform** [A REASONABLE NUMBER OF JOB VACANCIES EXIST FOR THOSE JOBS].

(c) The rehabilitation specialist **whose name appears on the referral letter** shall contact the employee's employer at time of injury about employment in accordance with AS 23.30.041(f)(1). If the employer offers employment, the rehabilitation specialist shall

(1) complete a job analysis, including a description of the job duties, tasks, and physical requirements, and **submit the job analysis** [GIVE THIS DESCRIPTION] to a physician, **with a copy to the employee, the employer and the administrator**, to predict whether the job's physical demands are within the employee's post-injury physical capacities. **The employer shall pay costs associated with physician review of the job analysis;**

(2) require the employer to complete an offer of employment on a form prescribed by the administrator, and document that the job offered will pay the employee at least the state minimum wage under AS 23.10.065 or an amount that is at least equal to 75 percent of the employee's gross hourly wages at the time of injury, **whichever is greater;** and

(3) submit [A] labor market **research** [SURVEY] if the offer of employment meets the requirements of AS 23.30.041(f)(1); the **research** [SURVEY] must document that the offered employment prepares the employee to be employable in other jobs that exist in the labor market **at a comparable wage and physical demands.**

(d) The rehabilitation specialist **whose name appears on the referral letter** shall ask if the employee has ever been rehabilitated in a prior workers' compensation claim **or previously declined a reemployment benefits plan and received a job dislocation benefit and then returned to work in the same or similar occupation in terms of physical demands as required of the employee at the time of the previous injury.** If the employee has been rehabilitated in a prior workers' compensation claim, **or received a job dislocation benefit,** the specialist shall obtain documentation of **the previous rehabilitation or job dislocation benefit** for the purposes of AS 23.30.041(f)(2 **– 3**).

(e) The rehabilitation specialist **whose name appears on the referral letter** shall document whether or not a permanent impairment is identified or expected at the time of medical stability. This documentation may be either a physician's rating according to the appropriate edition of the *American Medical Association's Guides to the Evaluation of Permanent Impairment*, use of which is directed by AS 23.30.190 or a physician's statement that an impairment rating is or is not expected.

(f) In accordance with 8 AAC 45.500 and within 30 days after the rehabilitation specialist received notification under 8 AAC 45.510(c)(2)(A) of being selected, the rehabilitation specialist **whose name appears on the referral letter** shall submit **to the administrator, with copies to the employee and employer**

(1) a report of findings, including a recommendation regarding eligibility for reemployment benefits, together with

(A) copies of **all predictions by any physician along with job titles identified under (a)(3) and (b)(3) above and job analyses identified under (c)(1) above** [THE PHYSICIAN'S PREDICTIONS];

(B) the completed offer of employment form, if employment has been offered;

(C) labor market **research** [SURVEYS], if necessary;

(D) documentation of previous rehabilitation, **or job dislocation benefit, if received or evidence of efforts to obtain information if not received;**

(E) the physician's rating or statement regarding permanent impairment;

or

(2) a written request for a 30-day extension explaining the unusual and extenuating circumstances, in accordance with AS 23.30.041(d), that prevented the rehabilitation specialist from completing the evaluation within the 30 days of notification of selection, **along with documentation that the employee, employer, and a physician were all contacted within the first 30 days and the rehabilitation specialist is still waiting for a response from one or more of the contacts;** if the administrator grants an evaluation extension the rehabilitation specialist shall prepare and submit a **final** report of findings in accordance with (1) of this subsection **within a total of 60 days from the date the rehabilitation specialist received notification of selection.**

(Eff. \_\_/\_\_/\_\_, Register \_\_\_\_\_)

**Authority:** AS 23.30.005 AS 23.30.041(e-f) AS 23.30.041(p)

8 AAC 45.525 is amended by adding new subsections to read:

**8 AAC 45.525. Reemployment benefit eligibility evaluations.**

**(g) Within ten days of the filing of the rehabilitation specialist's report, the employee and the employer shall submit to the administrator and copy the other party and**

**the rehabilitation specialist with any additional information that should be considered in the administrator's determination of eligibility.**

**(h) The rehabilitation specialist's recommendation under (f)(1) above shall reflect that an employee shall not be eligible for reemployment benefits if:**

**(1) a physician predicts the employee:**

**(A) will have the permanent physical capacities to perform**

**(1) all the titles submitted under (a)(3); or**

**(2) any of the titles submitted under (b)(3) which exist in the labor market; or**

**(3) any job analysis submitted under (c)(1) for which the employer's offer meets the requirements of (c)(2) and (3)**

**or**

**(B) will not have a permanent partial impairment rating greater than zero as a result of the injury**

**or**

**(1) the employee has been rehabilitated in a former workers' compensation claim and returned to work in the same or similar occupation in terms of physical demands required of the employee at the time of the previous injury, or has previously declined the development of a reemployment benefits plan under AS 23.30.041(g), received a job dislocation benefit under AS 23.30.041(g)(2) and returned to work in the same or similar occupation in terms of physical demands required of the employee at the time of the previous injury. Rehabilitated means having been found eligible for retraining and then either having completed a rehabilitation plan or**

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**having waived the benefit under AS 23.30.041(q), under AS 23.30.012 or through a similar process in another jurisdiction;**

(Eff. \_/ \_/ \_\_\_\_, Register \_\_\_\_)

**Authority:** AS 23.30.005 AS 23.30.041(e-f) AS 23.30.041(p)

8 AAC 45.530(b) and (c) are amended to read:

**8 AAC 45.530. Determination on eligibility for reemployment benefits.**

(b) If the administrator determines the eligibility evaluation is not in accordance with 8AAC45.525, or the information on the board's case file is insufficient or does not support the eligibility recommendation, the administrator

(1) may not decide the employee's eligibility for reemployment benefits; and

(2) shall notify the employee, the employer, or the rehabilitation specialist to submit additional information within a specified date so eligibility can be determined **or** [.]

**(3) may reassign the employee to a new rehabilitation specialist in accordance with 8 AAC 45.430.**

(c) If the administrator determines the **employee** [EMPLOYER] is eligible for reemployment benefits, the administrator's notice must

(1) state that the employee shall **either elect reemployment benefits and** select a rehabilitation specialist **to assist in formulating a plan or the employee shall accept a job dislocation benefit. The employee's election must be made** within **30** [10] days after the employee receives the notice;

(2) be accompanied by **copies** [A COPY] of the administrator's **"Election To Either Receive Reemployment Benefits or Waive Reemployment Benefits and**

**Receive A Job Dislocation Benefit Instead” form and a** list of rehabilitation specialists; under this paragraph, if the employee

(A) resides in the state, the administrator will send the list of rehabilitation specialists in Alaska as defined in 8 AAC 45.400(b)(1); or

(B) does not reside in the state, the administrator will send a list of rehabilitation specialists nearest the employee based on the geographic area, as defined in 8 AAC 45.400(b)(2); and

(3) inform the employee on how the employee shall tell the employer and administrator **of either the election of a job dislocation benefit or the name of the rehabilitation specialist selected to assist in the formulation of a plan.**

(Eff. \_\_/\_\_/\_\_\_\_, Register)

**Authority:** AS 23.30.005 AS 23.30.041(d) and (g)

8 AAC 45.535 is repealed and reenacted to read:

**8 AAC 45.535. Election of either a job dislocation benefit or a rehabilitation specialist.** (a) Within 30 days after receipt of the administrator’s notice under 8 AAC 45.530 of the employee’s eligibility for benefits, the employee must file the completed original election form with the administrator and serve a copy of the completed election form upon the employer that provides notice of

(1) the employee’s election of a job dislocation benefit per AS 23.30.041(g)(2);

or

(2) the employee’s selection of a rehabilitation specialist per AS 23.30.041(g)(1).

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(b) The administrator will, within 10 days after receipt of a properly completed election form, serve a copy of the completed form on the employer. (Eff. \_\_/\_\_/\_\_\_\_, Register)

**Authority:** AS 23.30.005 AS 23.30.041(g)

AAC 45.540 is repealed and reenacted to read:

**8 AAC 45.540. Rehabilitation specialist assignment for reemployment benefits. (a)**

If the employer objects to the rehabilitation specialist selected by the employee under 8 AAC 45.535(a)(2)

(1) the employer must file with the administrator, with copies to the employee and the rehabilitation specialist, written notice of that objection within 10 days after receipt of the employee's board-served election;

(2) upon receipt of the employer's notice of objection, the administrator shall contact the parties in an effort to resolve the dispute. If the parties are unable to agree on a rehabilitation specialist, the administrator shall assign a new rehabilitation specialist in accordance with 8 AAC 45.430 and shall notify the employee and the employer by mail of the assignment.

(b) Within 10 days after receipt of the administrator's notice under 8 AAC 45.540(a)(2), either the employer or the employee may file with the administrator, with copies to the other party and the rehabilitation specialist, a written notice objecting to the assignment. Upon receipt of the employer or the employee's notice of objection, the administrator shall assign a new rehabilitation specialist in accordance with 8 AAC 45.430 and shall notify the employee and the employer by mail of the assignment.

(c) If the employer does not object to the rehabilitation specialist selected by the employee under 8 AAC 45.535(a)(2), the administrator shall send a letter to the rehabilitation specialist, with a copy to the parties, notifying the rehabilitation specialist to begin formulating a reemployment plan. If the rehabilitation specialist did not perform the eligibility evaluation, the adjuster shall send a copy of the items identified in 8 AAC 45.510(e) to the assigned rehabilitation specialist, within 5 days after receipt of the letter. (Eff. \_\_/\_\_/\_\_\_\_, Register)

**Authority:** AS 23.30.005 AS 23.30.041(g)(1-3)

8 AAC 45.542(a) is amended to read:

**8 AAC 45.542. Change of rehabilitation specialist.** (a) If an employee has selected or been assigned a rehabilitation specialist **to perform an evaluation or** to develop a plan and, before the **evaluation is completed or the** plan is formulated, a change of residence by the employee or a change of business address by the rehabilitation specialist places the employee and rehabilitation specialist in different geographical locations, upon written notice that the worker or rehabilitation specialist has relocated, the administrator will decide if another rehabilitation specialist should be assigned to **complete the evaluation or to** develop a plan. (Eff. \_\_/\_\_/\_\_\_\_, Register)

**Authority:** AS 23.30.005 AS 23.30.041

8 AAC 45.550(a)(3) and (6) are amended to read:

**8 AAC 45.550. Plans.** (a) If an employee is found eligible for development of a reemployment plan, the rehabilitation specialist **whose name appears on the referral letter** shall

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(3) compute the employee’s remunerative employability wage; the wage computed under this paragraph must meet the standards of compensation set out in the definition of “remunerative employability” under AS 23.30.041(r)(7) [(p)] and meet the requirements of “gross hourly wages at the time of injury” under 8 AAC 45.490;

(6) submit **research** [A SURVEY] **documenting** that **the plan will provide** [FOR] the **employee** [EMPLOYEE’S] **the** occupational **skills to be employable within the plan’s occupational** goal, [DOCUMENTS EMPLOYMENT OPPORTUNITIES] **and that the occupational goal exists** in the labor market, as that term is defined by AS 23.30.041(r)(3)(A-D) [(p)(3)], **and** that **the plan ensures remunerative employability**; [PAY A WAGE THAT COMPLIES WITH THIS SUBSECTION;] (Eff. \_\_/\_\_/\_\_\_\_, Register)

**Authority:** AS 23.30.005 AS 23.30.041(h-i) AS 23.30.041(r)

8 AAC 45.550(b) is amended to read:

**8 AAC 45.550. Plans.**

(b) Within 90 days after the date of the employee’s referral to the rehabilitation specialist for development of a reemployment plan, the rehabilitation specialist **whose name appears on the referral letter** shall submit (Eff. \_\_/\_\_/\_\_\_\_, Register)

**Authority:** AS 23.30.005 AS 23.30.041 (h-i)

8 AAC 45 is amended by adding a new section to read:

**8 AAC 45.560. Informal Rehabilitation Conferences.** (a) When an employee is in the reemployment benefits process, either the employee, the employer, the administrator or its designee may request an informal conference to be held before the administrator or its designee. The request shall be in writing to the administrator and include the issues to be discussed at the

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conference. A copy of the request shall be provided to all parties and the assigned or selected rehabilitation specialist. The administrator will exercise discretion in scheduling and directing the parties or their representatives and the assigned rehabilitation specialist to appear for an informal rehabilitation conference.

(b) If an informal conference is held, the administrator will issue a written conference summary within 10 days of the date the conference is held. Copies of the summary will be issued to the employee, the employer, and the assigned or selected rehabilitation specialist.

(Eff. \_\_/\_\_/\_\_\_\_. Register).

**Authority:** AS 23.30.005 AS 23.30.041

8 AAC 45.900 is amended by adding a new subsection to read:

**8 AAC 45.900. Definitions.**

(j) In AS 23.30.041,

(1) “totally unable” means the employee has not been released by the attending physician to return to the employee’s employment at the time of injury on either a modified or unmodified basis;

(2) “employment at the time of injury” means the employee’s essential job duties and tasks, including the physical requirements of the duties and tasks, that the employee performed at the time of injury;

(3) “rehabilitation casework” does not include the following:

- (A) acting as the primary contact for the employee and employer/insurer;
- (B) conducting the interviews with the employee and employer;

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(C) selecting appropriate titles from the Dictionary of Occupational  
Titles

(D) determining whether SVP has been met and which titles are  
submitted to a physician;

(E) meeting with the physician;

(F) evaluating physician responses;

(G) evaluating an employer's offer of alternate employment;

(H) evaluating previous rehabilitation and dislocation benefits in prior  
claims;

(I) making a recommendation regarding the employee's eligibility

(J) selecting the occupational goal, method of training and specific  
training provider for a reemployment benefits plan

(K) providing vocational guidance and counseling

(L) reviewing and signing all reports and accompanying forms.

. (Eff. \_\_/\_\_/\_\_\_\_, Register)

**Authority:** AS 23.30.005 AS 23.30.041 (c) and (m)