

Nancy Dahlstrom
Lieutenant Governor
State Capitol
Juneau, Alaska 99811
907.465.3520
WWW.LTGOV.ALASKA.GOV



530 West 7th Ave, Suite 1700
Anchorage, Alaska 99501
907.269.7460
LT.GOVERNOR@ALASKA.GOV

**OFFICE OF THE LIEUTENANT GOVERNOR
ALASKA**

M E M O R A N D U M

TO: Alexis Hildebrand, Department of Labor and Workforce Development

FROM: April Simpson, Office of the Lieutenant Governor
465.4081

A handwritten signature in blue ink, appearing to read "April", next to the name April Simpson.

DATE: October 30, 2023

RE: Filed Permanent Regulations: Alaska Workers' Compensation Board

Alaska Workers' Compensation Board regulations re: Rehabilitation Specialists (8 AAC
45.410, .420, .435, .440, .500:)

Attorney General File:	2022200139
Regulation Filed:	10/30/2023
Effective Date:	11/29/2023
Print:	248, January 2024

cc with enclosures: Colleen Bailey, Department of Law
Judy Herndon, LexisNexis



THE STATE
of **ALASKA**
GOVERNOR MIKE DUNLEAVY

Department of Law

CIVIL DIVISION

P.O. Box 110300
Juneau, Alaska 99811
Main: 907.465.3600
Fax: 907.465.2520

October 27, 2023

The Honorable Nancy Dahlstrom
Lieutenant Governor
State of Alaska
P.O. Box 110015
Juneau, AK 99811-0015

Re: 8 AAC 45.410, .420, .435, .440, .500: *Alaska Workers' Compensation
Board - Rehabilitation Specialists*
Our file: 2022200139

Dear Lieutenant Governor Dahlstrom:

The Department of Law has reviewed the attached regulations of the Alaska Workers' Compensation Board against the statutory standards of the Administrative Procedure Act. Based upon our review, we find no legal problems. This letter constitutes the written statement of approval under AS 44.62.060(b) and (c) that authorizes your office to file the attached regulations. The regulations were adopted by the Alaska Workers' Compensation Board after the close of the public comment period.

The regulations update standards governing rehabilitation specialists who provide services under AS 23.30.041, and detail what constitutes "unsuitable behavior" by a rehabilitation specialist.

The March 20, 2022, public notice, the August 24, 2023, supplemental public notice, the October 25, 2023, certification of adoption order, and the October 25, 2023, adoption order from the Department of Labor and Workforce Development all state that this action is not expected to require an increased appropriation. Therefore, a fiscal note under AS 44.62.060 is not required.

No technical corrections were necessary to conform the regulations in accordance with AS 44.62.060.

Sincerely,

TREG TAYLOR
ATTORNEY GENERAL

By: Rebecca C. Polizzotto
Rebecca C. Polizzotto
Chief Assistant Attorney General
Legislation, Regulations, and
Legislative Research Section

Digitally signed by
Rebecca C. Polizzotto
Date: 2023.10.27
11:01:01 -08'00'

RCP/SCW
CC w/enclosure:

Alexis Hildebrand
Department of Labor and Workforce Development

Ned Brasington, Assistant Attorney General
Department of Law

Steven C. Weaver, Assistant Attorney General
Department of Law

APPENDIX I: Adoption Order

ORDER ADOPTING CHANGES TO REGULATIONS
OF THE ALASKA DEPARTMENT OF LABOR AND WORKFORCE DEVELOPMENT AND
THE ALASKA WORKERS' COMPENSATION BOARD

The attached 8 pages of regulations, dealing with rehabilitation specialists, are adopted and certified to be a correct copy of the regulation changes that the Alaska Department of Labor and Workforce Development and the Alaska Workers' Compensation Board adopts under the authority of AS 23.30.005 and after compliance with the Administrative Procedure Act (AS 44.62), specifically including notice under AS 44.62.190 and 44.62.200 and opportunity for public comment under AS 44.62.210.

This action is not expected to require an increased appropriation.

In considering public comments, the Alaska Department of Labor and Workforce Development and the Alaska Workers' Compensation Board paid special attention to the cost to private persons of the regulatory action being taken.

The regulation changes adopted under this order take effect on the 30th day after they have been filed by the lieutenant governor, as provided in AS 44.62.180.

Date: 10/25/2023

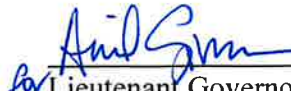

Catherine Muñoz, Acting Commissioner

April Simpson for

FILING CERTIFICATION

I, Nancy Dahlstrom, Lieutenant Governor for the State of Alaska, certify that on

October 30, 2023, at 4:01 p.m., I filed the attached regulations according to the provisions of AS 44.62.040 - 44.62.120.


for Lieutenant Governor Nancy Dahlstrom

Effective: November 29, 2023.

Register: 24th January 2024

APPENDIX J: Certification Order

ORDER CERTIFYING THE CHANGES TO
REGULATIONS OF THE ALASKA DEPARTMENT OF LABOR AND WORKFORCE
DEVELOPMENT AND THE ALASKA WORKERS' COMPENSATION BOARD

The attached 8 pages of regulations, dealing with rehabilitation specialists, are certified to be a correct copy of the regulation changes that the Alaska Department of Labor and Workforce Development and the Alaska Workers' Compensation Board adopted at its October 12-13, 2023 meeting, under the authority of AS 23.30.005 and after compliance with the Administrative Procedure Act (AS 44.62), specifically including notice under AS 44.62.190 and 44.62.200 and opportunity for public comment under AS 44.62.210.

This action is not expected to require an increased appropriation.

On the record, in considering public comments, the Alaska Department of Labor and Workforce Development and the Alaska Workers' Compensation Board paid special attention to the cost to private persons of the regulatory action being taken.

The regulation changes described in this order take effect on the 30th day after they have been filed by the lieutenant governor, as provided in AS 44.62.180.

Date: 10/25/2023

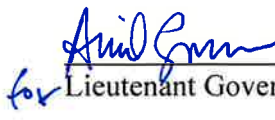

Catherine Muñoz, Acting Commissioner

 April Simpson for

FILING CERTIFICATION

I, Nancy Dahlstrom, Lieutenant Governor for the State of Alaska, certify that on

October 30, 2023 at 4:02 p.m., I filed the attached regulations according to the provisions of AS 44.62.040 - 44.62.120.


for Lieutenant Governor Nancy Dahlstrom

Effective: November 29, 2023.

Register: 24th, January 2024

FOR DELEGATION OF THE LIEUTENANT GOVERNOR'S AUTHORITY

I, NANCY DAHLSTROM, LIEUTENANT GOVERNOR OF THE STATE OF ALASKA, designate the following state employees to perform the Administrative Procedures Act filing functions of the Office of the Lieutenant Governor:

April Simpson, Regulations and Initiatives Specialist

**IN TESTIMONY WHEREOF, I have
signed and affixed the Seal of the State of
Alaska, in Juneau, on May 15th, 2023.**



A handwritten signature in blue ink, reading "Nancy Dahlstrom", is written over a horizontal dotted line.

**NANCY DAHLSTROM
LIEUTENANT GOVERNOR**

Chapter 45.

Compensation, Medical Benefits, and Proceedings

Before the Alaska Workers' Compensation Board.

8 AAC 45.410 is amended by adding a new subsection to read:

(d) A person who is added to the rehabilitation specialist list after July 1, 2023 shall be placed on probationary rotation as set out in 8 AAC 45.420(d). During probationary rotation, the rehabilitation specialist shall undergo training with the administrator and the administrator's staff on the requirements of AS 23.30.041 and other related statutes and regulations. At any time during the probationary rotation, the administrator may decline to permanently add the rehabilitation specialist to the rehabilitation specialist list, for reasons set out under 8 AAC 45.440(a). The administrator may release a rehabilitation specialist from probationary rotation if, after considering the totality of the circumstances and the factors set out under 8 AAC 45.420(d), the administrator determines that the rehabilitation specialist understands and can comply with AS 23.30 and this chapter. (Eff. 7/1/88, Register 107; am 10/28/88, Register 108; am 7/20/97, Register 143; am 7/2/98, Register 146; am 11 / 29 / 2023, Register 248)

Authority: AS 23.30.005 AS 23.30.041

8 AAC 45.420(b) is amended to read:

(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

Register 248, January 2024 LABOR AND WORKFORCE DEV.

for exclusion include an incomplete or illegible application or accompanying documents, misrepresentation, [OR] not meeting the requirements of AS 23.30.041(r)(6), **or demonstrating unsuitable behavior within the meaning given in 8 AAC 45.440.**

8 AAC 45.420 is amended by adding a new subsection to read:

(d) The administrator shall give a rehabilitation specialist on probationary rotation not more than two cases at a time for a six-month period. The administrator may increase the number of referrals if, after considering the totality of the circumstances, the administrator determines that an increase in referrals is warranted. In determining whether to increase the number of referrals given to a rehabilitation specialist on probationary rotation, the administrator shall consider

- (1) the specific facts of the individual case;
- (2) whether during the applicable period the rehabilitation specialist has demonstrated unsuitable behavior within the meaning given in 8 AAC 45.440;
- (3) the rehabilitation specialist's prior experience in other jurisdictions;
- (4) the quality of the rehabilitation specialist's work product;
- (5) any complaints or positive feedback from employees, employers, insurers, adjusters, attorneys, division staff, or other relevant stakeholders regarding the rehabilitation specialist's performance; and
- (6) any other relevant considerations specific to the rehabilitation specialist or the performance of the rehabilitation specialist's duties under AS 23.30 and this chapter. (Eff. 7/1/88, Register 107; am 7/20/97, Register 143; am 7/2/98, Register 146; am 4/16/2010, Register 194; am 11 / 29 / 2023, Register 248)

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Authority: AS 23.30.005 AS 23.30.041

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

8 AAC 45.435. Review of rehabilitation specialists. (a) An administrator shall review a rehabilitation specialist's work at least once each calendar year.

(b) If the administrator determines that the work completed by a rehabilitation specialist during the review period does not meet the standards of 8 AAC 45.440(a)(1) or (2)(A) or (B), the administrator shall identify the deficiencies in the rehabilitation specialist's work in writing to the rehabilitation specialist. The administrator shall schedule a meeting to discuss the concerns in the letter with the rehabilitation specialist.

(c) After a meeting as set out in (b) of this section, the administrator may

(1) put the rehabilitation specialist on a probationary rotation as set out under 8 AAC 45.420(d);

(2) put the rehabilitation specialist on a plan of correction as set out under 8 AAC 45.440(b); or

(3) take no further action.

(d) If a rehabilitation specialist is placed on probationary rotation under (b) of this section and the rehabilitation specialist's work does not improve after two cases or 90 days, whichever comes first, the administrator shall propose disqualification under 8 AAC 45.440. (Eff.

11 / 29 / 2023, Register 248)

Authority: AS 23.30.005 AS 23.30.041

8 AAC 45.440 is repealed and readopted to read:

8 AAC 45.440. Removal of rehabilitation specialists. (a) The administrator may disqualify a rehabilitation specialist from providing services under AS 23.30.041 if the rehabilitation specialist

(1) demonstrates unsuitable behavior;

(2) fails to

(A) timely file two or more eligibility evaluations, eligibility evaluation reports, or plan reports during a three-month period;

(B) provide rehabilitation services;

(C) adhere to statutory or regulatory requirements; or

(D) maintain workers' compensation insurance if the rehabilitation specialist has employees;

(3) engages in unethical conduct as defined by the ethics committee of an appropriate professional rehabilitation organization;

(4) knowingly falsifies information provided in connection with the rehabilitation specialist's application;

(5) is subject to disciplinary action or decertification by an appropriate certifying agency or professional organization;

(6) commits fraudulent billing or reporting;

(7) is convicted in a state or federal court of any offense involving moral turpitude; or

(8) is declared mentally incompetent by a court of competent jurisdiction.

(b) If the administrator is considering disqualifying a rehabilitation specialist under (a)(1) or (2)(A) - (C) of this section, the administrator may meet with the rehabilitation specialist and develop a plan of corrective action.

(c) If the administrator believes that a rehabilitation specialist has engaged in unethical practices or activity, the administrator may refer the issue to the ethics committee of an appropriate professional rehabilitation organization for recommendations after sending written notification to the rehabilitation specialist.

(d) Before disqualifying a rehabilitation specialist under this section, the administrator shall notify the rehabilitation specialist of the proposed disqualification in writing. A notification under this subsection must be served by personal service, certified mail, or electronic mail if the rehabilitation specialist has explicitly requested electronic mail service on a form prescribed by the administrator. A rehabilitation specialist who has been notified of a proposed disqualification may file a written request with the administrator to meet and to discuss the proposed disqualification not more than 30 days after the specialist receives the notice. The requested meeting must be set not later than 30 days after the administrator receives the written request unless otherwise agreed to by both the administrator and the rehabilitation specialist.

(e) The administrator shall issue a written decision not later than 30 days after a meeting requested under (d) of this section. If no meeting is requested, the administrator shall issue a written decision not later than 45 days after the written notice of proposed disqualification was served under (d) of this section.

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

(1) require the rehabilitation specialist to change unsuitable behavior or upgrade skills by putting the rehabilitation specialist on a probationary rotation as described in 8 AAC

45.420(d);

(2) disqualify the rehabilitation specialist for at least one year for the first disqualification and at least five years for the second disqualification for acts arising under (a)(1), (2)(A) - (C), (3), or (8) of this section; the decision must explain the reasons for the action and the conditions under which the rehabilitation specialist may reapply, if any;

(3) permanently remove the rehabilitation specialist from the list for acts arising under (a)(2)(D) or (4) - (7) of this section;

(4) state that no grounds for disqualification or disciplinary action were found; or

(5) for acts under (a)(8) of this section, disqualify the rehabilitation specialist until a court of competent jurisdiction determines the rehabilitation specialist to be competent.

(g) The administrator's decision must be served upon the rehabilitation specialist or the rehabilitation specialist's representative. A decision under this subsection must be served either personally, by certified mail, or electronic mail if the rehabilitation specialist or the rehabilitation specialist's representative has explicitly requested electronic mail service on a form prescribed by the administrator. A copy must be sent to the employee or employer who requested that the administrator consider disqualifying or removing the rehabilitation specialist, if any. A disqualification or removal decision is effective 10 days after the date of the decision. If a written request for board review is filed with the board and is served in accordance with (h) of this section not more than 10 days after service of the administrator's decision, the disqualified or removed rehabilitation specialist will keep any assigned cases but not be assigned new cases.

(h) A disqualified rehabilitation specialist, an employee, or an employer, may request board review of the administrator's decision. If the

(1) disqualified rehabilitation specialist requests review, the rehabilitation specialist must serve a copy of the review request on any other person the administrator served with a copy of the decision; or

(2) employee or employer requests board review, the employee or employer must serve a copy of the review request on the disqualified rehabilitation specialist.

(i) Upon a request under (h) of this section, the board will schedule and hold a hearing in accordance with AS 23.30.110 and 8 AAC 45.070. The board's decision is final upon filing in accordance with AS 23.30.110.

(j) In this section, "unsuitable behavior" includes

(1) failure to promptly and professionally respond to the administrator or the administrator's staff;

(2) refusal to engage with the administrator or the administrator's staff;

(3) failure to file complete and accurate reports required under AS 23.30 or this chapter;

(4) repeated failure to adhere to the administrator's directives with respect to the rehabilitation specialist's performance under AS 23.30 or this chapter; or

(5) a pattern of abusive behavior toward injured workers, employers, medical professionals, attorneys, the administrator, department personnel, or other persons involved in the reemployment process. (Eff. 7/1/88, Register 107; am 10/28/88, Register 108; am 4/16/2010,

Register 194; am 11 / 29 / 2023, Register 248)

Authority: AS 23.30.005 AS 23.30.041

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8 AAC 45.500(b) is amended to read:

(b) An 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 and copied to the employee and the administrator. Billing statements not in compliance with this subsection will not be processed for payment. (Eff. 7/20/97, Register 143; am 4/16/2010, Register 194; am 11 / 29 / 2023, Register 248)

Authority: AS 23.30.005 AS 23.30.041