

TESTIMONY OF NORM NEWHALL
IN SUPPORT OF HOUSE BILL 382

I am an attorney actively engaged in practicing workers compensation law in Great Falls for many years. Section 39-71-105 declares that removal of a worker from the work force has a "negative impact on the worker, the worker's family, the employer, and the general public" and therefore declares that in enacting the workers compensation laws it is the public policy of the State of Montana to return a worker to work as soon as possible.

To this end, S.39-71-1001 et seq. provides that a worker who qualifies as a "disabled worker" is eligible for vocational rehabilitation. Webster's defines *rehabilitation* as "the restoration of a condition of health or of useful and constructive activity". Thus, the statutes promise of vocational rehabilitation is far more than some cursory and temporary assistance with job placement. Unfortunately, as presently enacted, the vocational rehabilitation promised by the statute is rarely delivered. This failure of the present statute to fulfill the express public policy of the State arises in large part from the fact that the rehabilitation provider is selected by the insurer, rather than by the worker.

It is not a criticism of insurers or rehabilitation providers to observe that they, like most other people, will act in accordance with their own economic self interest. Thus the insurer selects the rehabilitation provider who consistently delivers rehabilitation plans which minimize the cost to the insurer, regardless of the workers best interests. Indeed, to accomplish this end, some insurers, and several third party adjusters, have hired "in-house" rehabilitation providers to whom *all* eligible workers are referred, thereby making the "selection" process contemplated by the statute a sham.

Like the insurer, the rehabilitation provider, if he wishes to stay in business, must also act according to his economic self interest. Thus, so long as rehab providers are selected by the insurer, rehabilitation providers must deliver plans which minimize the cost to the insurer to assure that they will continue to be hired by insurers in the future.

Vocational rehabilitation requires objectivity by the provider and a relationship of trust between the worker and the rehabilitation provider. Selection of the rehab provider by the insurer fosters resentment and suspicion of the provider by the worker and undermines the objectivity and the trust necessary to meaningful vocational rehabilitation as promised by the statute. A worker would not willingly retain a rehab provider "selected", and in many cases employed, by the insurer, anymore than the worker would retain an attorney who was selected by the opposing party in a lawsuit.

Permitting the worker to select the voc rehab provider promotes the trust necessary for successful rehabilitation. Successful and meaningful rehabilitation results in savings to the workers comp system as a whole by returning satisfied and rehabilitated workers to the workplace. Resentful and distrustful workers, who feel pigeon-holed or railroaded by short-term, cursory rehab plans, developed by providers selected and paid for by the insurer, invariably resist rehabilitation and hire attorneys to resist unfair treatment, whether perceived or real.

Nor will selection of the rehab provider by the worker result in abuse. S. 39-71-1011(5) limits the pool of permissible rehabilitation providers to "rehabilitation counselors certified by the board for rehabilitation certification." By analogy, a worker presently has the right to select his initial treating physician. It cannot reasonably be suggested that he should not have the right to do so and no one has suggested that the exercise of such right has resulted in significant abuse.

Meaningful vocational rehabilitation requires that a worker have the same right to select the rehab provider who will be instrumental in determining his vocational future.



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