

HOUSE BILL NO. 553

INTRODUCED BY T. CALLAHAN

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A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING THAT DESIGNATION OF A REHABILITATION PROVIDER UNDER WORKERS' COMPENSATION MAY BE MADE BY A DISABLED OR INJURED WORKER THROUGH THE DEPARTMENT OF LABOR AND INDUSTRY; PROVIDING THAT THE DISABLED OR INJURED WORKER'S CHOICE SUPERSEDES AN INSURER'S CHOICE; AND AMENDING SECTIONS 39-71-1006, 39-71-1011, 39-71-1014, AND 39-71-1031, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 39-71-1006, MCA, is amended to read:

"39-71-1006. Rehabilitation benefits. (1) A worker is eligible for rehabilitation benefits if:

- (a) (i) the worker meets the definition of a disabled worker as provided in 39-71-1011; or
- (ii) the worker has, as a result of the work-related injury, a whole person impairment rating of 15% or greater, as established by objective medical findings, and has ~~no~~ not had actual wage loss;

(b) a rehabilitation provider, as designated ~~by the insurer~~ under 39-71-1014, certifies that the worker has reasonable vocational goals and reasonable reemployment opportunity-~~if~~ and if the certification states that:

- (i) the worker is expected to have a reasonable increase in the worker's wage compared to the wage that the worker received at the time of injury if the worker is eligible because of an impairment rating of 15% or more;
~~with rehabilitation the worker will have a reasonable increase in the worker's wage compared to the wage that the worker received at the time of injury. If eligible because of a wage loss;~~ or

(ii) the worker will have is expected to have a reasonable reduction in the worker's actual wage loss with rehabilitation if the worker is eligible because of a wage loss;

(c) a rehabilitation plan is agreed upon by the worker and the insurer and a written copy of the plan is provided to the worker. The rehabilitation plan must:

- (i) take into consideration the worker's age, education, training, work history, residual physical capacities, and vocational interests.~~The plan must;~~
- (ii) specify a beginning date and a completion date.~~The plan must;~~ and
- (iii) specify the cost of tuition, fees, books, and other reasonable and necessary retraining expenses



1 required to complete the rehabilitation plan.

2 (2) A disabled worker is entitled to receive biweekly rehabilitation benefits at the worker's temporary total
3 disability rate. The benefits must be paid for the period specified in the rehabilitation plan, not to exceed 104
4 weeks. The rehabilitation plan must be completed within 26 weeks of the completion date specified in the plan.
5 Rehabilitation benefits must be paid biweekly while the worker is satisfactorily progressing in the agreed-upon
6 rehabilitation plan. Rehabilitation benefits payable pursuant to a retraining rehabilitation plan under this section
7 are not payable in a lump sum. Rehabilitation benefits may be paid in a lump sum for job placement services.

8 (3) In addition to rehabilitation benefits payable under subsection (2), a disabled worker who was injured
9 on or after July 1, 1997, is entitled to receive payment for tuition, fees, books, and other reasonable and
10 necessary retraining expenses, excluding travel and living expenses paid pursuant to the provisions of
11 39-71-1025, as set forth in department rules and as specified in the rehabilitation plan. Expenses must be paid
12 directly by the insurer.

13 (4) A worker may not receive temporary total benefits and the benefits under subsection (2) during the
14 same period of time.

15 (5) A rehabilitation provider authorized by the insurer or the disabled or injured worker shall continue to
16 assist the disabled or injured worker until the rehabilitation plan is completed.

17 (6) To be eligible for benefits under this section, a worker is required to begin the rehabilitation plan
18 within 78 weeks of reaching maximum medical healing.

19 (7) A worker may not receive both wages and rehabilitation benefits without the written consent of the
20 insurer. A worker who receives both wages and rehabilitation benefits without written consent of the insurer is
21 guilty of theft and may be prosecuted under 45-6-301."

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23 **Section 2.** Section 39-71-1011, MCA, is amended to read:

24 **"39-71-1011. Definitions.** As used in this chapter, the following definitions apply:

25 (1) "Commission on rehabilitation counselor certification" means the nonprofit, independent,
26 fee-structured organization that is a member of the national commission for health certifying agencies and that
27 is established to certify rehabilitation practitioners.

28 (2) "Disabled worker" means a worker who has a permanent impairment, established by objective
29 medical findings, resulting from a work-related injury that precludes the worker from returning to the job the
30 worker held at the time of the injury or to a job with similar physical requirements and who has an actual wage

1 loss as a result of the injury.

2 (3) "Rehabilitation benefits" means benefits provided in 39-71-1006 and 39-71-1025.

3 (4) "Rehabilitation plan" means a written individualized plan that assists a disabled worker in acquiring
4 skills or aptitudes to return to work through job placement, on-the-job training, education, training, or specialized
5 job modification and that reasonably reduces the worker's actual wage loss.

6 (5) "Rehabilitation provider" means a rehabilitation counselor certified by the commission on rehabilitation
7 counselor certification ~~and designated by the insurer.~~

8 (6) "Rehabilitation services" means a program of evaluation, planning, and implementation of a
9 rehabilitation plan to assist a disabled worker to return to work."
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11 **Section 3.** Section 39-71-1014, MCA, is amended to read:

12 **"39-71-1014. Rehabilitation services -- required and provided by insurers.** (1) Rehabilitation services
13 are required for disabled workers and may be initiated by:

14 (a) an insurer by designating a rehabilitation provider; or

15 (b) a disabled worker through a request to the department. The department shall then ~~require~~ inform the
16 insurer ~~to designate a~~ of the disabled worker's designated rehabilitation provider.

17 (2) If there is a dispute regarding the choice of the rehabilitation provider, the choice is that of the disabled
18 worker.

19 ~~(2)(3)~~ (3) Rehabilitation services provided under this part must be delivered through a rehabilitation
20 counselor certified by the commission on rehabilitation counselor certification."
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22 **Section 4.** Section 39-71-1031, MCA, is amended to read:

23 **"39-71-1031. Exchange of information.** The ~~insurer's designated~~ rehabilitation provider designated
24 under 39-71-1014 and the department shall provide to one another case information as necessary to carry out
25 the purposes of this part."
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