

Unofficial Draft Copy

As of: August 18, 2000 (2:18PM)

LC5004

**** Bill No. ****

Introduced By *****

By Request of the *****

A Bill for an Act entitled: "An Act clarifying the criteria required before an insurer can convert a claimant's temporary total disability benefits or temporary partial disability benefits to permanent partial disability benefits and providing for payment of a maximum of ten weeks of rehabilitation benefits while a disabled worker or worker with an impairment rating of 15 percent or greater is waiting to begin an agreed upon rehabilitation plan; amending sections 39-71-609 and 39-71-1006, MCA; and providing an effective date and an applicability date."

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 39-71-609, MCA, is amended to read:

"39-71-609. Denial of claim after payments made or termination of all benefits or reduction to partial benefits by insurer -- fourteen days' notice required -- exception. (1)

Except as provided in subsection (2), if an insurer determines to deny a claim on which payments have been made under 39-71-608 during a time of further investigation or, after a claim has been accepted, terminates all biweekly compensation benefits, it may do so only after 14 days' written notice to the claimant, the claimant's authorized representative, if any, and the department. For injuries occurring prior to July 1, 1987, an insurer must

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give 14 days' written notice to the claimant before reducing benefits from total to partial. However, if an insurer has knowledge that a claimant has returned to work, compensation benefits may be terminated as of the time the claimant returned to work.

~~(2) Temporary total disability benefits may be terminated on the date that the worker has been released to return to work in some capacity~~ Unless the claimant is found at maximum healing to be without a permanent physical impairment from the injury, the insurer, prior to converting temporary total disability benefits or temporary partial disability benefits to permanent partial benefits, must have:

(a) a physician's determination that the claimant has reached medical stability;

(b) a physician's determination of the claimant's physical restrictions resulting from the industrial accident;

(c) a physician's determination, based on the physician's knowledge of the claimant's former employment duties, that the claimant can return to work, with or without restrictions, on the job on which the claimant was injured or another job for which the claimant is fitted by age, education, work experience, and physical condition;

(d) notice to the claimant of receipt of the report attached to a copy of the report; and

(e) an evaluation by a rehabilitation provider establishing whether the claimant has an actual wage loss."

{Internal References to 39-71-609: None.}

Section 2. 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 actual wage loss;

(b) a rehabilitation provider, as designated by the insurer, certifies that the worker has reasonable vocational goals and reasonable reemployment opportunity. If 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, the worker will have a reasonable reduction in the worker's actual wage loss with rehabilitation.

(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 plan must take into consideration the worker's age, education, training, work history, residual physical capacities, and vocational interests. The plan must specify a beginning date and a completion date. The plan must specify the cost of tuition, fees, books, and other reasonable and necessary retraining expenses required to complete the plan.

(2) A disabled worker who meets the requirements of subsection (1)(a) is entitled to receive biweekly compensation benefits at the worker's temporary total disability rate. The benefits must be paid for the period specified in the rehabilitation plan, not to exceed 104 weeks. The rehabilitation plan must be completed within 26 weeks of the completion date specified in the plan. Rehabilitation benefits must be paid biweekly while the worker is satisfactorily progressing in the agreed-upon rehabilitation plan. Benefits under this section are not subject to the lump-sum provisions of 39-71-741.

(3) In addition to rehabilitation benefits payable under subsection (2), a worker who meets the requirements of subsection (1)(a) is entitled to receive rehabilitation benefits during a reasonable period, not to exceed 10 weeks, while the worker is waiting to begin the agreed upon rehabilitation plan.

~~(3)~~(4) In addition to rehabilitation benefits payable under ~~subsection (2)~~ subsections (2) and (3), a disabled worker who was injured on or after July 1, 1997, is entitled to receive payment for tuition, fees, books, and other reasonable and necessary retraining expenses, excluding travel and living expenses paid pursuant to the provisions of 39-71-1025, as set forth in department rules and as specified in the rehabilitation plan. Expenses must be paid directly by the insurer.

~~(4)~~(5) A worker may not receive temporary total benefits and the benefits under subsection (2) during the same period of time.

~~(5)~~(6) A rehabilitation provider authorized by the insurer

shall continue to assist the injured worker until the rehabilitation plan is completed.

~~(6)~~(7) To be eligible for benefits under this section, a worker is required to begin the rehabilitation plan within 78 weeks of reaching maximum medical healing.

~~(7)~~(8) A worker may not receive both wages and rehabilitation benefits without the written consent of the insurer. A worker who receives both wages and rehabilitation benefits without written consent of the insurer is guilty of theft and may be prosecuted under 45-6-301."

{Internal References to 39-71-1006:
x39-71-1011 }

NEW SECTION. **Section 3. {standard} Effective date -- applicability.** [This act] is effective on July 1, 2001, and applies to a claim for benefits for an injury occurring on or after [the effective date of this act].

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