

## 1 HOUSE BILL NO. 446

2 INTRODUCED BY R. MARSHALL

3

4 A BILL FOR AN ACT ENTITLED: "AN ACT DEFINING "PROSTHETIC DEVICE" OR "PROSTHESIS" FOR  
5 WORKERS' COMPENSATION INSURANCE; PROVIDING THAT A PROSTHETIC DEVICE OR PROSTHESIS  
6 IS AN ARTIFICIAL SUBSTITUTE FOR A MISSING BODY PART; AMENDING SECTIONS 39-71-116, 39-71-  
7 119, AND 39-71-1101, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

8

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

10

11 **Section 1.** Section 39-71-116, MCA, is amended to read:

12 **"39-71-116. Definitions.** Unless the context otherwise requires, in this chapter, the following  
13 definitions apply:

14 (1) "Actual wage loss" means that the wages that a worker earns or is qualified to earn after the  
15 worker reaches maximum healing are less than the actual wages the worker received at the time of the injury.

16 (2) "Administer and pay" includes all actions by the state fund under the Workers' Compensation Act  
17 necessary to:

18 (a) investigation, review, and settlement of claims;

19 (b) payment of benefits;

20 (c) setting of reserves;

21 (d) furnishing of services and facilities; and

22 (e) use of actuarial, audit, accounting, vocational rehabilitation, and legal services.

23 (3) "Aid or sustenance" means a public or private subsidy made to provide a means of support,  
24 maintenance, or subsistence for the recipient.

25 (4) "Beneficiary" means:

26 (a) a surviving spouse living with or legally entitled to be supported by the deceased at the time of  
27 injury;

28 (b) an unmarried child under 18 years of age;

1 (c) an unmarried child under 22 years of age who is a full-time student in an accredited school or is  
2 enrolled in an accredited apprenticeship program;

3 (d) an invalid child over 18 years of age who is dependent, as defined in 26 U.S.C. 152, upon the  
4 decedent for support at the time of injury;

5 (e) a parent who is dependent, as defined in 26 U.S.C. 152, upon the decedent for support at the time  
6 of the injury if a beneficiary, as defined in subsections (4)(a) through (4)(d), does not exist; and

7 (f) a brother or sister under 18 years of age if dependent, as defined in 26 U.S.C. 152, upon the  
8 decedent for support at the time of the injury but only until the age of 18 years and only when a beneficiary, as  
9 defined in subsections (4)(a) through (4)(e), does not exist.

10 (5) "Business partner" means the community, governmental entity, or business organization that  
11 provides the premises for work-based learning activities for students.

12 (6) "Casual employment" means employment not in the usual course of the trade, business,  
13 profession, or occupation of the employer.

14 (7) "Child" includes a posthumous child, a dependent stepchild, and a child legally adopted prior to  
15 the injury.

16 (8) (a) "Claims examiner" means an individual who, as a paid employee of the department, of a plan  
17 No. 1, 2, or 3 insurer, or of an administrator licensed under Title 33, chapter 17, examines claims under chapter  
18 71 to:

19 (i) determine liability;

20 (ii) apply the requirements of this title;

21 (iii) settle workers' compensation or occupational disease claims; or

22 (iv) determine survivor benefits.

23 (b) The term does not include an adjuster as defined in 33-17-102.

24 (9) (a) "Construction industry" means the major group of general contractors and operative builders,  
25 heavy construction (other than building construction) contractors, and special trade contractors listed in major  
26 group 23 in the North American Industry Classification System Manual.

27 (b) The term does not include office workers, design professionals, salespersons, estimators, or any  
28 other related employment that is not directly involved on a regular basis in the provision of physical labor at a

1 construction or renovation site.

2 (10) "Days" means calendar days, unless otherwise specified.

3 (11) "Department" means the department of labor and industry.

4 (12) "Direct result" means that a diagnosed condition was caused or aggravated by an injury or  
5 occupational disease.

6 (13) "Fiscal year" means the period of time between July 1 and the succeeding June 30.

7 (14) "Health care provider" means a person who is licensed, certified, or otherwise authorized by the  
8 laws of this state to provide health care in the ordinary course of business or practice of a profession.

9 (15) (a) "Household or domestic employment" means employment of persons other than members of  
10 the household for the purpose of tending to the aid and comfort of the employer or members of the employer's  
11 family, including but not limited to housecleaning and yard work.

12 (b) The term does not include employment beyond the scope of normal household or domestic duties,  
13 such as home health care or domiciliary care.

14 (16) (a) "Indemnity benefits" means any payment made directly to the worker or the worker's  
15 beneficiaries, other than a medical benefit. The term includes payments made pursuant to a reservation of  
16 rights.

17 (b) The term does not include stay-at-work/return-to-work assistance, auxiliary benefits, or expense  
18 reimbursements for items such as meals, travel, or lodging.

19 (17) "Insurer" means an employer bound by compensation plan No. 1, an insurance company  
20 transacting business under compensation plan No. 2, or the state fund under compensation plan No. 3.

21 (18) "Invalid" means one who is physically or mentally incapacitated.

22 (19) "Limited liability company" has the meaning provided in 35-8-102.

23 (20) "Maintenance care" means treatment designed to provide the optimum state of health while  
24 minimizing recurrence of the clinical status.

25 (21) "Medical stability", "maximum medical improvement", "maximum healing", or "maximum medical  
26 healing" means a point in the healing process when further material functional improvement would not be  
27 reasonably expected from primary medical services.

28 (22) "Objective medical findings" means medical evidence, including range of motion, atrophy, muscle

1 strength, muscle spasm, or other diagnostic evidence, substantiated by clinical findings.

2 (23) (a) "Occupational disease" means harm, damage, or death arising out of or contracted in the  
3 course and scope of employment caused by events occurring on more than a single day or work shift.

4 (b) The term does not include a physical or mental condition arising from emotional or mental stress  
5 or from a nonphysical stimulus or activity.

6 (24) "Order" means any decision, rule, direction, requirement, or standard of the department or any  
7 other determination arrived at by the department.

8 (25) "Palliative care" means treatment designed to reduce or ease symptoms without curing the  
9 underlying cause of the symptoms.

10 (26) "Payroll", "annual payroll", or "annual payroll for the preceding year" means the average annual  
11 payroll of the employer for the preceding calendar year or, if the employer has not operated a sufficient or any  
12 length of time during the calendar year, 12 times the average monthly payroll for the current year. However, an  
13 estimate may be made by the department for any employer starting in business if average payrolls are not  
14 available. This estimate must be adjusted by additional payment by the employer or refund by the department,  
15 as the case may actually be, on December 31 of the current year. An employer's payroll must be computed by  
16 calculating all wages, as defined in 39-71-123, that are paid by an employer.

17 (27) "Permanent partial disability" means a physical condition in which a worker, after reaching  
18 maximum medical healing:

19 (a) has a permanent impairment, as determined by the sixth edition of the American medical  
20 association's Guides to the Evaluation of Permanent Impairment, that is established by objective medical  
21 findings for the ratable condition. The ratable condition must be a direct result of the compensable injury or  
22 occupational disease and may not be based exclusively on complaints of pain.

23 (b) is able to return to work in some capacity but the permanent impairment impairs the worker's  
24 ability to work; and

25 (c) has an actual wage loss as a result of the injury.

26 (28) "Permanent total disability" means a physical condition resulting from injury as defined in this  
27 chapter, after a worker reaches maximum medical healing, in which a worker does not have a reasonable  
28 prospect of physically performing regular employment. Lack of immediate job openings is not a factor to be

1 considered in determining if a worker is permanently totally disabled.

2 (29) "Primary medical services" means treatment prescribed by the treating physician, for conditions  
3 resulting from the injury or occupational disease, necessary for achieving medical stability.

4 (30) "Prosthetic device" or "prosthesis" means an artificial substitute for a missing body part.

5 ~~(30)~~(31) "Public corporation" means the state or a county, municipal corporation, school district, city,  
6 city under a commission form of government or special charter, town, or village.

7 ~~(34)~~(32) "Reasonably safe place to work" means that the place of employment has been made as free  
8 from danger to the life or safety of the employee as the nature of the employment will reasonably permit.

9 ~~(32)~~(33) "Reasonably safe tools or appliances" are tools and appliances that are adapted to and that  
10 are reasonably safe for use for the particular purpose for which they are furnished.

11 ~~(33)~~(34) "Regular employment" means work on a recurring basis performed for remuneration in a  
12 trade, business, profession, or other occupation in this state.

13 ~~(34)~~(35) (a) "Secondary medical services" means those medical services or appliances that are  
14 considered not medically necessary for medical stability. The services and appliances include but are not  
15 limited to spas or hot tubs, work hardening, physical restoration programs and other restoration programs  
16 designed to address disability and not impairment, or equipment offered by individuals, clinics, groups,  
17 hospitals, or rehabilitation facilities.

18 (b) (i) As used in this subsection ~~(34)~~(35), "disability" means a condition in which a worker's ability to  
19 engage in gainful employment is diminished as a result of physical restrictions resulting from an injury. The  
20 restrictions may be combined with factors, such as the worker's age, education, work history, and other factors  
21 that affect the worker's ability to engage in gainful employment.

22 (ii) Disability does not mean a purely medical condition.

23 ~~(35)~~(36) "Sole proprietor" means the person who has the exclusive legal right or title to or ownership of  
24 a business enterprise.

25 ~~(36)~~(37) "State's average weekly wage" means the mean weekly earnings of all employees under  
26 covered employment, as defined and established annually by the department before July 1 and rounded to the  
27 nearest whole dollar number.

28 ~~(37)~~(38) "Temporary partial disability" means a physical condition resulting from an injury, as defined in

1 39-71-119, in which a worker, prior to maximum healing:

2 (a) is temporarily unable to return to the position held at the time of injury because of a medically  
3 determined physical restriction;

4 (b) returns to work in a modified or alternative employment; and

5 (c) suffers a partial wage loss.

6 ~~(38)~~(39) "Temporary service contractor" means a person, firm, association, partnership, limited liability  
7 company, or corporation conducting business that hires its own employees and assigns them to clients to fill a  
8 work assignment with a finite ending date to support or supplement the client's workforce in situations resulting  
9 from employee absences, skill shortages, seasonal workloads, and special assignments and projects.

10 ~~(39)~~(40) "Temporary total disability" means a physical condition resulting from an injury, as defined in  
11 this chapter, that results in total loss of wages and exists until the injured worker reaches maximum medical  
12 healing.

13 ~~(40)~~(41) "Temporary worker" means a worker whose services are furnished to another on a part-time  
14 or temporary basis to fill a work assignment with a finite ending date to support or supplement a workforce in  
15 situations resulting from employee absences, skill shortages, seasonal workloads, and special assignments  
16 and projects.

17 ~~(41)~~(42) "Treating physician" means the person who, subject to the requirements of 39-71-1101, is  
18 primarily responsible for delivery and coordination of the worker's medical services for the treatment of a  
19 worker's compensable injury or occupational disease and is:

20 (a) a physician licensed by the state of Montana under Title 37, chapter 3, and has admitting  
21 privileges to practice in one or more hospitals, if any, in the area where the physician is located;

22 (b) a chiropractor licensed by the state of Montana under Title 37, chapter 12;

23 (c) a physician assistant licensed by the state of Montana under Title 37, chapter 20, if there is not a  
24 treating physician, as provided for in subsection ~~(41)~~(42)(a), in the area where the physician assistant is  
25 located;

26 (d) an osteopath licensed by the state of Montana under Title 37, chapter 3;

27 (e) a dentist licensed by the state of Montana under Title 37, chapter 4;

28 (f) for a claimant residing out of state or upon approval of the insurer, a treating physician defined in

- 1 subsections ~~(44)~~ (42)(a) through ~~(44)~~ (42)(e) who is licensed or certified in another state; or
- 2 (g) an advanced practice registered nurse licensed by the state of Montana under Title 37, chapter 8.
- 3 ~~(42)~~(43) "Work-based learning activities" means job training and work experience conducted on the
- 4 premises of a business partner as a component of school-based learning activities authorized by an
- 5 elementary, secondary, or postsecondary educational institution.
- 6 ~~(43)~~(44) "Year", unless otherwise specified, means calendar year."

7

8 **Section 2.** Section 39-71-119, MCA, is amended to read:

9 **"39-71-119. Injury and accident defined.** (1) "Injury" or "injured" means:

- 10 (a) internal or external physical harm to the body that is established by objective medical findings;
- 11 (b) damage to prosthetic devices;
- 12 (c) ~~\_\_or damage to~~ appliances, except for damage to eyeglasses, contact lenses, dentures, or hearing
- 13 aids; or
- 14 ~~(e)~~(d) death.

15 (2) An injury is caused by an accident. An accident is:

- 16 (a) an unexpected traumatic incident or unusual strain;
- 17 (b) identifiable by time and place of occurrence;
- 18 (c) identifiable by member or part of the body affected; and
- 19 (d) caused by a specific event on a single day or during a single work shift.

20 (3) "Injury" or "injured" does not mean a physical or mental condition arising from:

- 21 (a) emotional or mental stress; or
- 22 (b) a nonphysical stimulus or activity.

23 (4) "Injury" or "injured" does not include a disease that is not caused by an accident.

24 (5) (a) A cardiovascular, pulmonary, respiratory, or other disease, cerebrovascular accident, or

25 myocardial infarction suffered by a worker is an injury only if the accident is the primary cause of the physical

26 condition in relation to other factors contributing to the physical condition.

27 (b) "Primary cause", as used in subsection (5)(a), means a cause that, with a reasonable degree of

28 medical certainty, is responsible for more than 50% of the physical condition."

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2           **Section 3.** Section 39-71-1101, MCA, is amended to read:

3           **"39-71-1101. Choice of health care provider by worker -- insurer designation or approval of**  
4 **treating physician or referral to managed care or preferred provider organization -- payment terms --**  
5 **definition.** (1) Prior to the insurer's designation or approval of a treating physician as provided in subsection (2)  
6 or a referral to a managed care organization or preferred provider organization as provided in subsection (8), a  
7 worker may choose a person who is listed in 39-71-116~~(41)~~(42) for initial treatment. Subject to subsection (2), if  
8 the person listed under 39-71-116~~(41)~~(42) chosen by the worker agrees to comply with the requirements of  
9 subsection (2), that person is the treating physician.

10           (2) Any time after acceptance of liability by an insurer, the insurer may designate or approve a  
11 treating physician who agrees to assume the responsibilities of the treating physician. The designated or  
12 approved treating physician:

- 13           (a) is responsible for coordinating the worker's receipt of medical services as provided in 39-71-704;  
14           (b) shall provide timely determinations required under this chapter, including but not limited to  
15 maximum medical healing, physical restrictions, return to work, and approval of job analyses, and shall provide  
16 documentation;  
17           (c) shall provide or arrange for treatment within the utilization and treatment guidelines or obtain prior  
18 approval for other treatment; and  
19           (d) shall conduct or arrange for timely impairment ratings.

20           (3) The treating physician may refer the worker to other health care providers for medical services, as  
21 provided in 39-71-704, for the treatment of a worker's compensable injury or occupational disease. A health  
22 care provider to whom the worker is referred by the designated treating physician is not responsible for  
23 coordinating care or providing determinations as required of the treating physician.

24           (4) The treating physician designated or approved by the insurer must be reimbursed at 110% of the  
25 department's fee schedule.

26           (5) A health care provider to whom the worker is referred by the treating physician must be  
27 reimbursed at 90% of the department's fee schedule.

28           (6) A health care provider providing health care on a compensable claim prior to the designation or



1 approval of the treating physician by the insurer must be reimbursed at 100% of the department's fee schedule.

2 (7) Regardless of the date of injury, the medical fee schedule rates in effect as adopted by the  
3 department in 39-71-704 and the percentages referenced in subsections (4) through (6) of this section apply to  
4 the medical service on the date on which the medical service was provided.

5 (8) The insurer may direct the worker to a managed care organization or a preferred provider  
6 organization for designation of the treating physician.

7 (9) After the insurer directs a worker to a managed care organization or preferred provider  
8 organization, a health care provider who otherwise qualifies as a treating physician but who is not a member of  
9 a managed care organization may not provide treatment unless authorized by the insurer.

10 (10) After the date that a worker subject to the provisions of subsection (9) receives individual written  
11 notice of a referral, the worker must, unless otherwise authorized by the insurer, receive medical services from  
12 the organization designated by the insurer, in accordance with 39-71-1102 and 39-71-1104. The designated  
13 treating physician in the organization then becomes the worker's treating physician. The insurer is not liable for  
14 medical services obtained otherwise, except that a worker may receive immediate emergency medical  
15 treatment for a compensable injury from a health care provider who is not a member of a managed care  
16 organization or a preferred provider organization.

17 (11) Posting of managed care requirements in the workplace on bulletin boards, in personnel policies,  
18 in company manuals, or by other general or broadcast means does not constitute individual written notice. To  
19 constitute individual written notice under this section, information regarding referral to a managed care  
20 organization must be provided to the worker in written form by mail or in person after the date of injury or  
21 occupational disease."  
22

23 **NEW SECTION. Section 4. Effective date.** [This act] is effective on passage and approval.

24 - END -