

SENATE BILL NO. 62

INTRODUCED BY SPRAGUE

BY REQUEST OF THE DEPARTMENT OF LABOR AND INDUSTRY

A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING THE PROCESS FOR PAYING REHABILITATION BENEFITS TO DISABLED WORKERS' COMPENSATION CLAIMANTS INJURED ON OR BEFORE JUNE 30, 1997; LIMITING FUNDING FOR CERTAIN REHABILITATION BENEFIT PAYMENTS; PROVIDING FOR DIRECT PAYMENT OF REHABILITATION BENEFITS BY INSURERS TO DISABLED WORKERS INJURED ON OR AFTER JULY 1, 1997; AMENDING SECTIONS 39-71-1003, 39-71-1004, 39-71-1006, 39-71-1011, 39-71-1014, 39-71-1031, AND 39-71-1032, MCA; REPEALING SECTION 39-71-1013, MCA; AND PROVIDING AN EFFECTIVE DATE."

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

Section 1. Section 39-71-1003, MCA, is amended to read:

"39-71-1003. Eligibility Payment for vocational rehabilitation expenses for injuries occurring on or before June 30, 1997. ~~(1) Upon certification by the department of public health and human services~~ For injuries occurring on or before June 30, 1997, a disabled worker may be paid vocational rehabilitation expenses from funds provided in 39-71-1004, in addition to benefits payable under the Workers' Compensation Act.

~~(2) The appeal process provided for in 53-7-106 is the exclusive remedy for an injured worker aggrieved in the receipt of vocational rehabilitation services provided by the department of public health and human services."~~

Section 2. Section 39-71-1004, MCA, is amended to read:

"39-71-1004. **Industrial accident rehabilitation account.** (1) The payments provided in 39-71-1003 must be made from the industrial accident rehabilitation account in the state special revenue fund. Payments to the account must be made on or before July 1 of each year as follows:

(a) by each employer operating under the provisions of plan No. 1 of the Workers' Compensation Act, an amount to be assessed by the department, not exceeding 1% of the compensation paid to the

1 employer's injured employees in Montana for the preceding fiscal year;

2 (b) by each insurer insuring employers under the provisions of plan No. 2 of the Workers'
3 Compensation Act, an amount to be assessed by the department, not exceeding 1% of the compensation
4 paid to injured employees of its insured in Montana during the preceding fiscal year;

5 (c) by the ~~department~~ state fund, an amount to be ~~determined~~ assessed by the department, not
6 exceeding 1% of the compensation paid by the state fund to injured employees in Montana ~~from the~~
7 ~~industrial insurance expendable trust fund and the occupational disease expendable trust fund for~~ during
8 the preceding fiscal year.

9 (2) Separate accounts of the amounts that were collected and disbursements that were made from
10 the industrial accident rehabilitation account in the state special revenue fund must be kept for each of the
11 plans. If in any fiscal year the amount that was collected from the employers under any plan exceeds the
12 amount of payments for employees of the employers under the plan, the assessment against the employers
13 under the plan for the following year must be reduced.

14 (3) The payments provided for in this section must be made to the department, which shall credit
15 the sums paid to the industrial accident rehabilitation account in the custody of the state treasurer.
16 Disbursements from the account must be made after approval by the department ~~of public health and~~
17 ~~human services and upon audit and approval by the department of administration.~~

18 (4) The funds allocated or contributed as provided in this section may not be used for payment of
19 administrative expenses of the department ~~or department of public health and human services.~~

20 (5) The methods and processes used to disburse rehabilitation expense payments to eligible
21 disabled workers are procedural and do not affect the substantive rights of those disabled workers."

22

23 **Section 3.** Section 39-71-1006, MCA, is amended to read:

24 **"39-71-1006. Rehabilitation benefits.** (1) A disabled worker as defined in 39-71-1011 is eligible
25 for rehabilitation benefits if:

26 (a) the worker has an actual wage loss as a result of the injury;

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

30 (c) a rehabilitation plan is agreed upon by the ~~injured~~ worker and the insurer ~~is filed with the~~

1 ~~department.~~ The plan must take into consideration the worker's age, education, training, work history,
 2 residual physical capacities, and vocational interests. The plan must specify a beginning date and a
 3 completion date. ~~If the plan calls for the expenditure of funds under 39-71-1004, the department shall~~
 4 ~~authorize the department of public health and human services to use the funds~~ The plan must specify the
 5 cost of tuition, fees, books, and other reasonable and necessary retraining expenses required to complete
 6 the plan.

7 (2) ~~After filing the rehabilitation plan with the department, the~~ A disabled worker is entitled to
 8 receive biweekly compensation benefits at the ~~injured~~ worker's temporary total disability rate. The benefits
 9 must be paid for the period specified in the rehabilitation plan, not to exceed 104 weeks. The rehabilitation
 10 plan must be completed within 26 weeks of the completion date specified in the plan. Rehabilitation
 11 benefits must be paid biweekly while the worker is satisfactorily progressing in the agreed-upon
 12 rehabilitation plan. Benefits under this section are not subject to the lump-sum provisions of 39-71-741.

13 (3) In addition to rehabilitation benefits payable under subsection (2), a disabled worker who was
 14 injured on or after July 1, 1997, is entitled to receive payment for tuition, fees, books, and other reasonable
 15 and necessary retraining expenses, excluding travel and living expenses, as specified in the rehabilitation
 16 plan. Expenses must be paid directly by the insurer.

17 ~~(3)(4)~~ A worker may not receive temporary total benefits and the benefits under subsection (2)
 18 during the same period of time.

19 ~~(4)(5)~~ A rehabilitation provider authorized by the insurer shall continue to assist the ~~injured~~ worker
 20 until the rehabilitation plan is completed.

21 ~~(5)(6)~~ To be eligible for benefits under this section, a worker is required to begin the rehabilitation
 22 plan within 78 weeks of reaching maximum medical healing.

23 ~~(6)(7)~~ A worker may not receive both wages and rehabilitation benefits without the written consent
 24 of the insurer. A worker who receives both wages and rehabilitation benefits without written consent of
 25 the insurer is guilty of theft and may be prosecuted under 45-6-301."

26

27 **Section 4.** Section 39-71-1011, MCA, is amended to read:

28 **"39-71-1011. Definitions.** As used in this chapter, the following definitions apply:

29 (1) "Board of rehabilitation certification" means the nonprofit, independent, fee-structured
 30 organization that is a member of the national commission for health certifying agencies and that is

1 established to certify rehabilitation practitioners.

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

6 (3) "Rehabilitation benefits" means benefits provided in ~~39-71-1003~~, 39-71-1006, and
7 39-71-1025.

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

11 (5) "Rehabilitation provider" means a rehabilitation counselor certified by the board for rehabilitation
12 certification and designated by the insurer ~~to the department or a department of public health and human~~
13 ~~services counselor when a worker has been certified by the department of public health and human services~~
14 ~~under 39-71-1003.~~

15 (6) "Rehabilitation services" means a program of evaluation, planning, and implementation of a
16 rehabilitation plan to assist a disabled worker to return to work."

17

18 **Section 5.** Section 39-71-1014, MCA, is amended to read:

19 **"39-71-1014. Rehabilitation services -- required and provided by insurers ~~and department of public~~**
20 **~~health and human services.~~** (1) Rehabilitation services are required for disabled workers and may be initiated
21 by:

22 (a) an insurer by designating a rehabilitation provider ~~and notifying the department;~~
23 ~~(b) the department by requiring the insurer to designate a rehabilitation provider; or~~
24 ~~(c) (b)~~ a disabled worker through a request to the department. The department shall then require
25 the insurer to designate a rehabilitation provider.

26 (2) Rehabilitation services provided under this part must be delivered:

27 ~~(a)~~ through a rehabilitation counselor certified by the board of rehabilitation certification;
28 ~~(b) by a vocational rehabilitation counselor employed by the department of public health and human~~
29 ~~services; or~~

30 ~~(c) by both.~~

1 ~~(3) A disabled worker served by the department of public health and human services may receive~~
 2 ~~only those vocational rehabilitation services as provided in Title 53, chapter 7, parts 1 and 2."~~

3
 4 **Section 6.** Section 39-71-1031, MCA, is amended to read:

5 **"39-71-1031. Exchange of information.** ~~The department of public health and human services, the~~
 6 ~~insurer's designated rehabilitation provider,~~ and the department shall provide to one another case
 7 information as necessary to carry out the purposes of this part."

8
 9 **Section 7.** Section 39-71-1032, MCA, is amended to read:

10 **"39-71-1032. Termination of benefits for noncooperation with rehabilitation provider -- department**
 11 **hearing and appeal.** (1) If an insurer believes that a worker is refusing unreasonably to cooperate with the
 12 rehabilitation provider, the insurer, with 14 days' notice to the worker and the department ~~on a form~~
 13 ~~approved by the department,~~ may terminate any benefits, except medical benefits and the impairment
 14 award, that the worker is receiving until the worker cooperates.

15 (2) The worker may contest the insurer's termination of benefits by filing a written exception to
 16 the department within 20 working days after the date of the 14-day notice. The worker or insurer may
 17 request a hearing before the department. The department shall hold a hearing within 30 days of receipt of
 18 the request. The department shall issue an order within 15 days of the hearing.

19 (3) If the worker prevails at a hearing before the department, it may award attorney fees and costs
 20 to the worker under 39-71-612.

21 (4) Within 30 days after the department mails its order to the party's last-known address, a party
 22 may appeal to the workers' compensation court."

23
 24 **NEW SECTION.** **Section 8. Repealer.** Section 39-71-1013, MCA, is repealed.

25
 26 **NEW SECTION.** **Section 9. Saving clause.** [This act] does not affect rights and duties that
 27 matured, penalties that were incurred, or proceedings that were begun before [the effective date of this
 28 act].

29
 30 **NEW SECTION.** **Section 10. Effective date.** [This act] is effective July 1, 1997.

-END-

Fiscal Note for SB0062, as introducedDESCRIPTION OF PROPOSED LEGISLATION:


An act clarifying the process for paying rehabilitation benefits to disabled workers' compensation claimants injured on or before June 30, 1997; limiting funding for certain rehabilitation benefit payments; and providing for direct payment of rehabilitation benefits by insurers to disabled workers injured on or after July 1, 1997.

ASSUMPTIONS:


1. The current process provides for a workers' compensation claimant to develop a rehabilitation plan with their workers' compensation insurer. The plan is submitted to the Department of Labor and Industry (DoLI) for authorization, which allows the Department of Public Health and Human Services (DPHHS) to expend funds from the Industrial Accident Rehabilitation Account (IARA) for the claimant's rehabilitation expenses.
2. The DoLI collects the rehabilitation assessment (39-71-1004, MCA) from insurers to pay for the rehabilitation benefit payments incurred by DPHHS.
3. The actual cost to the State Fund for its portion of the Rehabilitation Assessment in fiscal year 1996 was \$149,685. The fiscal year 1997 cost is projected to be \$162,746.
4. Rehabilitation benefit payments and the process for qualifying for the payments on claims prior to July 1, 1997, will remain unchanged.
5. The rehabilitation assessment will continue to be charged to the State Fund to pay the rehabilitation benefits of claims prior to July 1, 1997.
6. The bill provides for insurers to make direct payments of rehabilitation benefits to disabled workers injured on or after July 1, 1997.
7. The bill would streamline the administrative processes for funding rehabilitation plans.
8. The bill would streamline the process for receiving rehabilitation benefit payments for injuries occurring on or after July 1, 1997. The insurer and the claimant would come to agreement on "reasonable and necessary" rehabilitation expenses. The expenses would be paid directly by the insurer.
9. The current rehabilitation assessment is an unallocated expense, it does not impact a specific claim file and does not impact employers' loss experience. Under direct payment by an insurer, required in this bill, the rehabilitation benefits would be allocated to a specific claim file as a direct loss of that claim and impact the employer's loss experience.
10. This bill would remove DPHHS from the Industrial Accident Rehabilitation process and the requirement that DoLI pay rehabilitation benefits.
11. The Executive Budget contains funding to replace the loss of Workers' Compensation funds for the Vocational Rehabilitation Program in DPHHS.
12. The average annual case load is twenty; each case requires between two and eight payments a year. It takes approximately five minutes to process a warrant. Thus, to process the benefit payment warrants would take 13 additional hours per year for DoLI. [$20 \times 8 \times 5 = 800 \text{ minutes} / 60 = 13 \text{ hours}$]. Thirteen hours of workload can be absorbed by DoLI.

FISCAL IMPACT:

None anticipated above the level recommended in the Executive Budget. The State Fund will make direct benefit payments for rehabilitation expenses verses paying the rehabilitation assessment to DoLI.

 1-13-97

DAVE LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

 1-13-97

MIKE SPRAGUE, PRIMARY SPONSOR DATE

Fiscal Note for SB0062, as introduced

SB 62

SENATE BILL NO. 62

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BY REQUEST OF THE DEPARTMENT OF LABOR AND INDUSTRY

A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING THE PROCESS FOR PAYING REHABILITATION BENEFITS TO DISABLED WORKERS' COMPENSATION CLAIMANTS INJURED ON OR BEFORE JUNE 30, 1997; LIMITING FUNDING FOR CERTAIN REHABILITATION BENEFIT PAYMENTS; PROVIDING FOR DIRECT PAYMENT OF REHABILITATION BENEFITS BY INSURERS TO DISABLED WORKERS INJURED ON OR AFTER JULY 1, 1997; AMENDING SECTIONS 39-71-1003, 39-71-1004, 39-71-1006, 39-71-1011, 39-71-1014, 39-71-1031, AND 39-71-1032, MCA; REPEALING SECTION 39-71-1013, MCA; AND PROVIDING AN EFFECTIVE DATE."

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

Section 1. Section 39-71-1003, MCA, is amended to read:

"39-71-1003. Eligibility Payment for vocational rehabilitation expenses for injuries occurring on or before June 30, 1997. ~~(1) Upon certification by the department of public health and human services For injuries occurring on or before June 30, 1997,~~ a disabled worker may be paid vocational rehabilitation expenses from funds provided in 39-71-1004, in addition to benefits payable under the Workers' Compensation Act.

~~(2) The appeal process provided for in 53-7-106 is the exclusive remedy for an injured worker aggrieved in the receipt of vocational rehabilitation services provided by the department of public health and human services."~~

Section 2. Section 39-71-1004, MCA, is amended to read:

"39-71-1004. Industrial accident rehabilitation account. (1) The payments provided in 39-71-1003 must be made from the industrial accident rehabilitation account in the state special revenue fund. Payments to the account must be made ~~on or before July 1 of each year~~ UPON AN ASSESSMENT BY THE DEPARTMENT as follows:

(a) by each employer operating under the provisions of plan No. 1 of the Workers' Compensation

1 Act, an amount to be assessed by the department, not exceeding 1% of the compensation paid to the
2 employer's injured employees in Montana for the preceding fiscal year;

3 (b) by each insurer insuring employers under the provisions of plan No. 2 of the Workers'
4 Compensation Act, an amount to be assessed by the department, not exceeding 1% of the compensation
5 paid to injured employees of its insured in Montana during the preceding fiscal year;

6 (c) by the ~~department~~ state fund, an amount to be ~~determined~~ assessed by the department, not
7 exceeding 1% of the compensation paid by the state fund to injured employees in Montana ~~from the~~
8 ~~industrial insurance expendable trust fund and the occupational disease expendable trust fund for~~ during
9 the preceding fiscal year.

10 (2) Separate accounts of the amounts that were collected and disbursements that were made from
11 the industrial accident rehabilitation account in the state special revenue fund must be kept for each of the
12 plans. If in any fiscal year the amount that was collected from the employers under any plan exceeds the
13 amount of payments for employees of the employers under the plan, the assessment against the employers
14 under the plan for the following year must be reduced.

15 (3) The payments provided for in this section must be made to the department, which shall credit
16 the sums paid to the industrial accident rehabilitation account in the custody of the state treasurer.
17 Disbursements from the account must be made after approval by the department ~~of public health and~~
18 ~~human services and upon audit and approval by the department of administration.~~

19 (4) The funds allocated or contributed as provided in this section may not be used for payment of
20 administrative expenses of the department ~~or department of public health and human services.~~

21 (5) The methods and processes used to disburse rehabilitation expense payments to eligible
22 disabled workers are procedural and do not affect the substantive rights of those disabled workers."

23

24 **Section 3.** Section 39-71-1006, MCA, is amended to read:

25 **"39-71-1006. Rehabilitation benefits.** (1) A disabled worker as defined in 39-71-1011 is eligible
26 for rehabilitation benefits if:

27 (a) the worker has an actual wage loss as a result of the injury;

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

1 (c) a rehabilitation plan is agreed upon by the ~~injured~~ worker and the insurer ~~is filed with the~~
 2 ~~department~~ AND A WRITTEN COPY OF THE PLAN IS PROVIDED TO THE WORKER. The plan must take
 3 into consideration the worker's age, education, training, work history, residual physical capacities, and
 4 vocational interests. The plan must specify a beginning date and a completion date. ~~If the plan calls for the~~
 5 ~~expenditure of funds under 39-71-1004, the department shall authorize the department of public health and~~
 6 ~~human services to use the funds~~ The plan must specify the cost of tuition, fees, books, and other
 7 reasonable and necessary retraining expenses required to complete the plan.

8 (2) ~~After filing the rehabilitation plan with the department, the~~ A disabled worker is entitled to
 9 receive biweekly compensation benefits at the ~~injured~~ worker's temporary total disability rate. The benefits
 10 must be paid for the period specified in the rehabilitation plan, not to exceed 104 weeks. The rehabilitation
 11 plan must be completed within 26 weeks of the completion date specified in the plan. Rehabilitation
 12 benefits must be paid biweekly while the worker is satisfactorily progressing in the agreed-upon
 13 rehabilitation plan. Benefits under this section are not subject to the lump-sum provisions of 39-71-741.

14 (3) In addition to rehabilitation benefits payable under subsection (2), a disabled worker who was
 15 injured on or after July 1, 1997, is entitled to receive payment for tuition, fees, books, and other reasonable
 16 and necessary retraining expenses, excluding travel and living expenses PAID PURSUANT TO THE
 17 PROVISIONS OF 39-71-1025, as SET FORTH IN DEPARTMENT RULES AND AS specified in the
 18 rehabilitation plan. Expenses must be paid directly by the insurer.

19 ~~(3)(4)~~ A worker may not receive temporary total benefits and the benefits under subsection (2)
 20 during the same period of time.

21 ~~(4)(5)~~ A rehabilitation provider authorized by the insurer shall continue to assist the ~~injured~~ worker
 22 until the rehabilitation plan is completed.

23 ~~(5)(6)~~ To be eligible for benefits under this section, a worker is required to begin the rehabilitation
 24 plan within 78 weeks of reaching maximum medical healing.

25 ~~(6)(7)~~ A worker may not receive both wages and rehabilitation benefits without the written consent
 26 of the insurer. A worker who receives both wages and rehabilitation benefits without written consent of
 27 the insurer is guilty of theft and may be prosecuted under 45-6-301."

28
 29 **Section 4.** Section 39-71-1011, MCA, is amended to read:

30 **"39-71-1011. Definitions.** As used in this chapter, the following definitions apply:

1 (1) "Board of rehabilitation certification" means the nonprofit, independent, fee-structured
2 organization that is a member of the national commission for health certifying agencies and that is
3 established to certify rehabilitation practitioners.

4 (2) "Disabled worker" means a worker who has a permanent impairment, established by objective
5 medical findings, resulting from a work-related injury that precludes the worker from returning to the job
6 the worker held at the time of the injury or to a job with similar physical requirements and who has an
7 actual wage loss as a result of the injury.

8 (3) "Rehabilitation benefits" means benefits provided in ~~39-71-1003~~, 39-71-1006, and
9 39-71-1025.

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

13 (5) "Rehabilitation provider" means a rehabilitation counselor certified by the board for rehabilitation
14 certification and designated by the insurer ~~to the department or a department of public health and human~~
15 ~~services counselor when a worker has been certified by the department of public health and human services~~
16 ~~under 39-71-1003.~~

17 (6) "Rehabilitation services" means a program of evaluation, planning, and implementation of a
18 rehabilitation plan to assist a disabled worker to return to work."
19

20 **Section 5.** Section 39-71-1014, MCA, is amended to read:

21 **"39-71-1014. Rehabilitation services -- required and provided by insurers and department of public**
22 **health and human services.** (1) Rehabilitation services are required for disabled workers and may be initiated
23 by:

24 (a) an insurer by designating a rehabilitation provider ~~and notifying the department;~~
25 ~~(b) the department by requiring the insurer to designate a rehabilitation provider; or~~
26 ~~(c)(b)~~ a disabled worker through a request to the department. The department shall then require
27 the insurer to designate a rehabilitation provider.

28 (2) Rehabilitation services provided under this part must be delivered:

29 ~~(a) through a rehabilitation counselor certified by the board of rehabilitation certification;~~
30 ~~(b) by a vocational rehabilitation counselor employed by the department of public health and human~~

1 ~~services; or~~

2 ~~(e) by both.~~

3 ~~(3) A disabled worker served by the department of public health and human services may receive~~
4 ~~only those vocational rehabilitation services as provided in Title 53, chapter 7, parts 1 and 2."~~

5

6 **Section 6.** Section 39-71-1031, MCA, is amended to read:

7 **"39-71-1031. Exchange of information.** ~~The department of public health and human services, the~~
8 ~~insurer's designated rehabilitation provider, and the department shall provide to one another case~~
9 ~~information as necessary to carry out the purposes of this part."~~

10

11 **Section 7.** Section 39-71-1032, MCA, is amended to read:

12 **"39-71-1032. Termination of benefits for noncooperation with rehabilitation provider -- department**
13 **hearing and appeal.** (1) If an insurer believes that a worker is refusing unreasonably to cooperate with the
14 rehabilitation provider, the insurer, with 14 days' WRITTEN notice to the worker and the department on a
15 ~~form approved by the department,~~ may terminate any benefits, except medical benefits and the impairment
16 award, that the worker is receiving until the worker cooperates.

17 (2) The worker may contest the insurer's termination of benefits by filing a written exception to
18 the department within 20 working days after the date of the 14-day notice. The worker or insurer may
19 request a hearing before the department. The department shall hold a hearing within 30 days of receipt of
20 the request. The department shall issue an order within 15 days of the hearing.

21 (3) If the worker prevails at a hearing before the department, it may award attorney fees and costs
22 to the worker under 39-71-612.

23 (4) Within 30 days after the department mails its order to the party's last-known address, a party
24 may appeal to the workers' compensation court."

25

26 **NEW SECTION. Section 8. Repealer.** Section 39-71-1013, MCA, is repealed.

27

28 **NEW SECTION. Section 9. Saving clause.** [This act] does not affect rights and duties that
29 matured, penalties that were incurred, or proceedings that were begun before [the effective date of this
30 act].

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8 PAYMENT OF REHABILITATION BENEFITS BY INSURERS TO DISABLED WORKERS INJURED ON OR AFTER
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10 39-71-1031, AND 39-71-1032, MCA; REPEALING SECTION 39-71-1013, MCA; AND PROVIDING AN
11 EFFECTIVE DATE."

12

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

**THERE ARE NO CHANGES IN THIS BILL AND IT WILL NOT BE
REPRINTED. PLEASE REFER TO SECOND READING COPY
(YELLOW) FOR COMPLETE TEXT.**

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

Section 1. Section 39-71-1003, MCA, is amended to read:

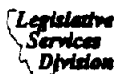
"39-71-1003. Eligibility Payment for vocational rehabilitation expenses for injuries occurring on or before June 30, 1997. ~~(1) Upon certification by the department of public health and human services For injuries occurring on or before June 30, 1997,~~ a disabled worker may be paid vocational rehabilitation expenses from funds provided in 39-71-1004, in addition to benefits payable under the Workers' Compensation Act.

~~(2) The appeal process provided for in 52-7-106 is the exclusive remedy for an injured worker aggrieved in the receipt of vocational rehabilitation services provided by the department of public health and human services."~~

Section 2. Section 39-71-1004, MCA, is amended to read:

"39-71-1004. Industrial accident rehabilitation account. (1) The payments provided in 39-71-1003 must be made from the industrial accident rehabilitation account in the state special revenue fund. Payments to the account must be made ~~on or before July 1 of each year~~ UPON AN ASSESSMENT BY THE DEPARTMENT as follows:

(a) by each employer operating under the provisions of plan No. 1 of the Workers' Compensation



1 Act, an amount to be assessed by the department, not exceeding 1% of the compensation paid to the
2 employer's injured employees in Montana for the preceding fiscal year;

3 (b) by each insurer insuring employers under the provisions of plan No. 2 of the Workers'
4 Compensation Act, an amount to be assessed by the department, not exceeding 1% of the compensation
5 paid to injured employees of its insured in Montana during the preceding fiscal year;

6 (c) by the ~~department~~ state fund, an amount to be ~~determined~~ assessed by the department, not
7 exceeding 1% of the compensation paid by the state fund to injured employees in Montana ~~from the~~
8 ~~industrial insurance expendable trust fund and the occupational disease expendable trust fund for~~ during
9 the preceding fiscal year.

10 (2) Separate accounts of the amounts that were collected and disbursements that were made from
11 the industrial accident rehabilitation account in the state special revenue fund must be kept for each of the
12 plans. If in any fiscal year the amount that was collected from the employers under any plan exceeds the
13 amount of payments for employees of the employers under the plan, the assessment against the employers
14 under the plan for the following year must be reduced.

15 (3) The payments provided for in this section must be made to the department, which shall credit
16 the sums paid to the industrial accident rehabilitation account in the custody of the state treasurer.
17 Disbursements from the account must be made after approval by the department ~~of public health and~~
18 ~~human services and upon audit and approval by the department of administration.~~

19 (4) The funds allocated or contributed as provided in this section may not be used for payment of
20 administrative expenses of the department ~~or department of public health and human services.~~

21 (5) The methods and processes used to disburse rehabilitation expense payments to eligible
22 disabled workers are procedural and do not affect the substantive rights of those disabled workers."
23

24 **Section 3.** Section 39-71-1006, MCA, is amended to read:

25 **"39-71-1006. Rehabilitation benefits.** (1) A disabled worker as defined in 39-71-1011 is eligible
26 for rehabilitation benefits if:

27 (a) the worker has an actual wage loss as a result of the injury;

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

1 (c) a rehabilitation plan is agreed upon by the ~~injured~~ worker and the insurer ~~is filed with the~~
 2 ~~department~~ AND A WRITTEN COPY OF THE PLAN IS PROVIDED TO THE WORKER. The plan must take
 3 into consideration the worker's age, education, training, work history, residual physical capacities, and
 4 vocational interests. The plan must specify a beginning date and a completion date. ~~If the plan calls for the~~
 5 ~~expenditure of funds under 39-71-1004, the department shall authorize the department of public health and~~
 6 ~~human services to use the funds~~ The plan must specify the cost of tuition, fees, books, and other
 7 reasonable and necessary retraining expenses required to complete the plan.

8 (2) ~~After filing the rehabilitation plan with the department, the~~ A disabled worker is entitled to
 9 receive biweekly compensation benefits at the ~~injured~~ worker's temporary total disability rate. The benefits
 10 must be paid for the period specified in the rehabilitation plan, not to exceed 104 weeks. The rehabilitation
 11 plan must be completed within 26 weeks of the completion date specified in the plan. Rehabilitation
 12 benefits must be paid biweekly while the worker is satisfactorily progressing in the agreed-upon
 13 rehabilitation plan. Benefits under this section are not subject to the lump-sum provisions of 39-71-741.

14 (3) In addition to rehabilitation benefits payable under subsection (2), a disabled worker who was
 15 injured on or after July 1, 1997, is entitled to receive payment for tuition, fees, books, and other reasonable
 16 and necessary retraining expenses, excluding travel and living expenses PAID PURSUANT TO THE
 17 PROVISIONS OF 39-71-1025, as SET FORTH IN DEPARTMENT RULES AND AS specified in the
 18 rehabilitation plan. Expenses must be paid directly by the insurer.

19 ~~(3)(4)~~ A worker may not receive temporary total benefits and the benefits under subsection (2)
 20 during the same period of time.

21 ~~(4)(5)~~ A rehabilitation provider authorized by the insurer shall continue to assist the ~~injured~~ worker
 22 until the rehabilitation plan is completed.

23 ~~(5)(6)~~ To be eligible for benefits under this section, a worker is required to begin the rehabilitation
 24 plan within 78 weeks of reaching maximum medical healing.

25 ~~(6)(7)~~ A worker may not receive both wages and rehabilitation benefits without the written consent
 26 of the insurer. A worker who receives both wages and rehabilitation benefits without written consent of
 27 the insurer is guilty of theft and may be prosecuted under 45-6-301."

28
 29 **Section 4. Section 39-71-1011, MCA, is amended to read:**

30 **"39-71-1011. Definitions.** As used in this chapter, the following definitions apply:

1 (1) "Board of rehabilitation certification" means the nonprofit, independent, fee-structured
 2 organization that is a member of the national commission for health certifying agencies and that is
 3 established to certify rehabilitation practitioners.

4 (2) "Disabled worker" means a worker who has a permanent impairment, established by objective
 5 medical findings, resulting from a work-related injury that precludes the worker from returning to the job
 6 the worker held at the time of the injury or to a job with similar physical requirements and who has an
 7 actual wage loss as a result of the injury.

8 (3) "Rehabilitation benefits" means benefits provided in ~~39-71-1003~~, 39-71-1006, and
 9 39-71-1025.

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

13 (5) "Rehabilitation provider" means a rehabilitation counselor certified by the board for rehabilitation
 14 certification and designated by the insurer ~~to the department or a department of public health and human~~
 15 ~~services counselor when a worker has been certified by the department of public health and human services~~
 16 ~~under 39-71-1003.~~

17 (6) "Rehabilitation services" means a program of evaluation, planning, and implementation of a
 18 rehabilitation plan to assist a disabled worker to return to work."
 19

20 **Section 5.** Section 39-71-1014, MCA, is amended to read:

21 **"39-71-1014. Rehabilitation services -- required and provided by insurers and department of public**
 22 **health and human services.** (1) Rehabilitation services are required for disabled workers and may be initiated
 23 by:

24 (a) an insurer by designating a rehabilitation provider ~~and notifying the department;~~
 25 ~~(b) the department by requiring the insurer to designate a rehabilitation provider; or~~
 26 ~~(b)~~ (b) a disabled worker through a request to the department. The department shall then require
 27 the insurer to designate a rehabilitation provider.

28 (2) Rehabilitation services provided under this part must be delivered:
 29 ~~(a)~~ through a rehabilitation counselor certified by the board of rehabilitation certification;
 30 ~~(b) by a vocational rehabilitation counselor employed by the department of public health and human~~

1 ~~services; or~~

2 ~~(e) by both.~~

3 ~~(3) A disabled worker served by the department of public health and human services may receive~~
 4 ~~only those vocational rehabilitation services as provided in Title 53, chapter 7, parts 1 and 2."~~

5
 6 **Section 6.** Section 39-71-1031, MCA, is amended to read:

7 **"39-71-1031. Exchange of information.** ~~The department of public health and human services, the~~
 8 ~~insurer's designated rehabilitation provider,~~ and the department shall provide to one another case
 9 information as necessary to carry out the purposes of this part."

10
 11 **Section 7.** Section 39-71-1032, MCA, is amended to read:

12 **"39-71-1032. Termination of benefits for noncooperation with rehabilitation provider -- department**
 13 **hearing and appeal.** (1) If an insurer believes that a worker is refusing unreasonably to cooperate with the
 14 rehabilitation provider, the insurer, with 14 days' WRITTEN notice to the worker and ~~the~~ department ~~on a~~
 15 ~~form approved by the department,~~ may terminate any benefits, except medical benefits and the impairment
 16 award, that the worker is receiving until the worker cooperates.

17 (2) The worker may contest the insurer's termination of benefits by filing a written exception to
 18 the department within 20 working days after the date of the 14-day notice. The worker or insurer may
 19 request a hearing before the department. The department shall hold a hearing within 30 days of receipt of
 20 the request. The department shall issue an order within 15 days of the hearing.

21 (3) If the worker prevails at a hearing before the department, it may award attorney fees and costs
 22 to the worker under 39-71-612.

23 (4) Within 30 days after the department mails its order to the party's last-known address, a party
 24 may appeal to the workers' compensation court."

25
 26 **NEW SECTION. Section 8. Repealer.** Section 39-71-1013, MCA, is repealed.

27
 28 **NEW SECTION. Section 9. Saving clause.** [This act] does not affect rights and duties that
 29 matured, penalties that were incurred, or proceedings that were begun before [the effective date of this
 30 act].

1 NEW SECTION. **Section 10. Effective date.** [This act] is effective July 1, 1997.

2 -END-