

HOUSE BILL NO. 143

INTRODUCED BY J. ETCHART

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A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE DEFINITION OF "TREATING PHYSICIAN" TO INCLUDE PHYSICIAN ASSISTANTS WITHOUT REGARD TO THE PROXIMITY OF OTHER PROVIDERS; AMENDING SECTIONS 39-71-116 AND 39-71-711, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

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

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

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

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

- (a) investigation, review, and settlement of claims;
- (b) payment of benefits;
- (c) setting of reserves;
- (d) furnishing of services and facilities; and
- (e) use of actuarial, audit, accounting, vocational rehabilitation, and legal services.

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

(4) "Beneficiary" means:

- (a) a surviving spouse living with or legally entitled to be supported by the deceased at the time of injury;
- (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
6 time 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
17 plan No. 1, 2, or 3 insurer, or of an administrator licensed under Title 33, chapter 17, examines claims under
18 chapter 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
25 builders, heavy construction (other than building construction) contractors, and special trade contractors listed
26 in major group 23 in the North American Industry Classification System Manual.

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

1 a 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
8 the 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
10 of the household for the purpose of tending to the aid and comfort of the employer or members of the
11 employer's 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
13 duties, 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
18 expense 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
26 medical healing" means a point in the healing process when further material functional improvement would not
27 be reasonably expected from primary medical services.

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

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

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

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

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

25 (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 (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 (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 (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 (41) "Temporary worker" means a worker whose services are furnished to another on a part-time or
14 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 (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~~
24 ~~a treating physician, as provided for in subsection (42)(a), in the area where the physician assistant is located;~~

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

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

27 (f) for a claimant residing out of state or upon approval of the insurer, a treating physician defined
28 in subsections (42)(a) through (42)(e) who is licensed or certified in another state; or

1 (g) an advanced practice registered nurse licensed by the state of Montana under Title 37, chapter

2 8.

3 (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 (44) "Year", unless otherwise specified, means calendar year."

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8 **Section 2.** Section 39-71-711, MCA, is amended to read:

9 **"39-71-711. Impairment evaluation -- ratings.** (1) An impairment rating:

10 (a) is a purely medical determination and must be determined by an impairment evaluator after a
11 claimant has reached maximum healing;

12 (b) must be based on the sixth edition of the American medical association Guides to the
13 Evaluation of Permanent Impairment;

14 (c) must be expressed as a percentage of the whole person; and

15 (d) must be established by objective medical findings and may not be based exclusively on
16 complaints of pain.

17 (2) A claimant or insurer, or both, may obtain an impairment rating from an evaluator if the injury
18 falls within the scope of the evaluator's practice and if the evaluator is one of the following:

19 (a) a physician or an osteopath licensed under Title 37, chapter 3, with admitting privileges to
20 practice in one or more hospitals, if any, in the area where the physician or osteopath is located;

21 (b) a chiropractor licensed under Title 37, chapter 12;

22 (c) a physician assistant licensed under Title 37, chapter 20, ~~if there is not a physician as provided~~
23 ~~for in subsection (2)(a) in the area where the physician assistant is located;~~

24 (d) a dentist licensed under Title 37, chapter 4;

25 (e) an advanced practice registered nurse licensed under Title 37, chapter 8; or

26 (f) for a claimant residing out of state or upon approval of the insurer, an evaluator referred to in
27 subsections (2)(a) through (2)(e) who is licensed or certified in another state.

28 (3) If the claimant and insurer cannot agree upon the rating, the mediation procedure in Title 39,

1 chapter 71, part 24, must be followed.

2 (4) Disputes over impairment ratings are subject to the provisions of 39-71-605."

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4 NEW SECTION. **Section 3. Effective date.** [This act] is effective on passage and approval.

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