

Bonnie Lyytinen-Hale

Good Day:

I would like to thank Representative Hunter (and Committee Members) for allowing me this opportunity to speak with you today about the concerns that Rehabilitation Counselors have about the proposed Workers' Compensation legislation. My name is Bonnie Lyytinen-Hale. I am a Rehabilitation Counselor and the President of the Rehabilitation Association of Montana or RAM. RAM is composed of Rehabilitation Counselors from around the state of Montana. The majority of our membership works with injured workers within the workers' compensation system.

Rehabilitation Counselors in Montana providing rehabilitation services in the Workers' Compensation arena are required to be Certified Rehabilitation Counselors. To achieve this certification, we had to complete a master's degree program in rehabilitation counseling and then sit for a national certification exam. We are certified through the Commission on Rehabilitation Counselor Certification (CRCC) based in Schaumburg, Illinois. We have been trained:

- To evaluate jobs;
- Assess employability;
- To provide counseling services and guidance to persons with disabilities;
- To determine physical appropriateness for employment goals based upon medical recommendations;
- To work with employers in evaluating, developing and modifying jobs;
- To coordinate return to work activities amongst multiple parties; and more.

We are bound by a code of ethics, which defines our primary obligation as being to our clients as defined as individuals with disabilities who are receiving services from Rehabilitation Counselors. Quite simply, we are trained to assist individuals in returning to or remaining in the workforce so they can continue/once again be productive contributors for themselves, their family and community.

We agree that there are changes that need to happen within the current workers' compensation system in Montana. Montana has one of the highest workers' compensation rates in the nation. Form research completed for the Labor Management and Advisor Council or LMAC, the identified cost drivers for Montana are:

- Rate of injury;
- Medical costs; and
- Length of time off work.

What I would like to talk with you about today is the length of time off work. That is where Rehabilitation Counselors can make a difference and a savings.

Earlier involvement of vocational rehabilitation counselors can save employers, insurers and injured workers money. Research done in Florida demonstrated that rehabilitation could save employers and insurers \$6 million each year and increase rehabilitants' earnings by \$9 million.

The benefits of vocational rehabilitation involvement exceeded the additional vocational rehabilitation costs.¹

In a research article which surveyed literature for 25 years prior to the article being written, it was noted that typically a cost benefit analysis looks at economic efficiency. However it was identified that rehabilitation services did not have just an economic goal that could be measured in economic terms. Immeasurable benefits included: reduce costs for future care; production benefits; reduced administrative costs for transfer payments; increased self-esteem; increased well-being; and reduced pain, anxiety and discomfort.

In the literature review it was noted that:

- There was a positive relationship between vocational rehabilitation expenditures and client earnings.
- An earlier referral, defined as six-months post-injury or less, greatly increased rehabilitation success; that a referral for services 180 days or more post injury cost on the average \$7,321.72 as compared to \$1,918.43 in cases referred earlier. These were 1990 figures.
- Lengthening the time between initial referral and initiation of rehabilitation services extend the amount of time the injured worker was in the system.
- When the rehabilitation process was accomplished in a timely fashion post injury wages were higher.
- Overall costs decrease with earlier referral and factors such as weekly earnings and program completion increased.
- A North Western Life Insurance study done by Farrell, Knowlton and Taylor (1989) found a savings of \$30 for every \$1 spent on rehabilitation services.²

In the current Workers' Compensation Law, Rehabilitation Counselors are primarily used to settle claims and research completed by the Department of Labor confirms this statement. The current Law requires that Rehabilitation Counselors document the injured worker's job of injury and/or other jobs they can perform if they are not able to return to their job of injury. If an injured worker is unable to return to their job of injury, we are asked to complete an Employability and Wage Loss Analysis in addition to the alternate job analyses I just spoke about. The Employability and Wage Loss Analysis is used in the settlement of the claim to determine wage loss to compensate the injured worker and to determine if the injured worker qualifies for rehabilitation benefits. At times we are used to assist with and/or facilitate early return to work. At times we assist with a return to work plan involving rehabilitation benefits if the injured worker cannot return to their job of injury and the claim is not settled.

Research completed for LMAC identified that diminishing the time a worker spends away from work due to a work-related injury or occupational disease has a corresponding positive impact on that injured worker's efforts to maintain employment, benefits and their livelihood.

¹ Gardner, J. A. (1988). Improving Vocational Rehabilitation Outcomes: Opportunities for Earlier Intervention. Workers Compensation Research Institute, August 1988

² Weed, R. O. & Lewis, S. H. (1994). Workers Compensation Rehabilitation and Case Management are Cost-Effective: True or False? The Journal of Rehabilitation Administration, 18(4).

These research conclusions were reinforced when people across the state of Montana participated in the 60 Summits meetings in 2008. From 60 Summits it came out as a clear recommendation that employers and employees needed to have a mindset of return to work/stay at work (RTW/SAW) as a priority.

In the proposed legislation, there is a recognition of the positive impact Rehabilitation Counselors can have on the return to work process. Part of the recommended changes involves addressing early return to work in the Law; and possible earlier involvement with a Rehabilitation Counselor. However, in the proposed legislation, rehabilitation benefits and/or return-to-work assistance must be requested by the injured workers, employers, medical providers or other involved parties. It is not mandated which creates a set of problems.

The concerns we have about the proposed legislation are:

- The injured worker and/or employer must request rehabilitation services to get return to work assistance.
- If an employer cannot provide a RTW/SAW opportunity the only option for the injured worker is to remain off work until they are declared to be at maximum medical improvement (MMI), this could take a year or more.
- If the employer cannot provide a RTW opportunity at MMI, the injured worker must declare themselves to be permanently totally disabled to receive RTW assistance.
- This will further drive up the cost of workers' compensation for Montana workers and employers by lengthening the time an injured worker is off work.

From our participation in LMAC meetings, it seems this "voluntary request" language was a compromise for those employers who already have RTW/SAW programs. Typically larger employers already have in place RTW/SAW programs. There was concern on the part of these employers that they would be required to provide a Rehabilitation Counselor to injured workers even though they had their own programs.

While their concerns are understandable, in reality, the majority of employers in Montana are small employers who typically do not have RTW/SAW programs.

In Montana:

- Small employers, employing <5 people make up 62.3% of the employers of Montana.
- 17.8% of the employers in Montana employ 10-19 employees; and
- 6.4% of the employers in Montana employ 20-49 employees.

Thus 2.6% of the employers in Montana employ more than 50 employees, with:

- 1.8% of those employers employing 50-99;
- 0.7% of those employers employing 100-249; and
- 0.1% of those employers employing 250-499 employees.

If you are a small employer and cannot provide a RTW/SAW opportunity for your injured worker what next? The proposed legislation does not address this. And what happens if at MMI the injured worker cannot return to their job of injury and the employer cannot provide another employment option? The proposed legislation does address this.

In the proposed legislation, the injured worker must declare themselves to be permanently totally disabled before they can receive rehabilitation benefits and/or return-to-work assistance from a Rehabilitation Counselor. Permanently totally disabled is defined as: "no reasonable prospect of performing regular employment."

If the injured worker is not aware they must declare themselves permanently totally disabled to receive benefits in the proposed legislation once they reach MMI and have been provided an impairment rating, wage loss benefits (temporary total disability benefits) are terminated. The injured worker is paid their impairment rating twice to compensate for their wage loss and left on their own to figure out they can request benefits by declaring themselves permanently totally disabled.

In the past, the process developed by the Department of Labor to inform injured workers of their workers' compensation benefits was a pamphlet. The Department plans to continue this practice in notifying the injured workers about their benefits.

Our experience is that typically the injured worker does not receive the pamphlet. Additionally, the injured worker and employer have little knowledge of the workers compensation process until our initial contact with them. Rehabilitation Counselors have typically been in the position of providing the first information that injured workers and employers have regarding the return-to-work and workers' compensation processes.

The Department of Labor completed surveys with employers, medical providers, Rehabilitation Counselors and injured workers. From their survey with injured workers, 40% of the respondents reported that their employer had never contacted them or only contacted them after returning to work. 53% of the respondents reported that they had discussed RTW options with their employer. Of those 52% discussed modified work while healing and 19% discussed RTW only after they were fully healed. Conclusions from the survey were that nearly 1/2 of employers did not discuss RTW options with injured workers and 52% of vocational rehabilitation users found their experience useful.

At the current time, we are involved with claims where the injured worker is unable to work or return to their job of injury. The recent 2009 Annual Workers' Compensation Report from the Department of Labor indicated there were 4,048 time loss injuries in fiscal year 2009 (claims where the person is not able to work). Less than 1,000 of these claims were referred for vocational rehabilitation services. These statistics fuel our concern that under the current notification process, most injured workers and employers are not getting the information, which keeps costs high. To continue this process as the proposed legislation suggests does not accomplish the goal of lowering costs. It works against the objective of this whole legislative endeavor.

The proposed legislation "hopes" that people will do the "right thing" and notify injured workers of their benefits if they experience a work-related injury and inform the employers. The language of the proposed legislation provides no mandates for informing workers and employers; and no penalties for failing to notify. We see real problems with a system that is purely voluntary without a mechanism for ensuring that workers and employers are informed of their benefits under the law.

In a 2003 article, research was completed with regard to injured workers in Montana. It was found that the most significant predictors of return to work were education, age, mandated vocational rehabilitation, time from injury to referral and attorney involvement. Injured workers who were less than 50 years of age; had more education pre-injury; were referred for vocational rehabilitation services within six months post injury; and were not represented by an attorney were more likely to return to work. Substantial barriers to return to work included: older age; less education; delay in the time from injury to referral for vocational rehabilitation services; and attorney involvement.

From the research it was opined that when State law requires injured workers, employers and service providers to be actively engaged in the vocational rehabilitation process the injured worker's return to work was more likely to occur. Additionally, their findings underscored the importance of an early vocational rehabilitation referral and vocational rehabilitation intervention, six months or less post injury.³

Earlier the immeasurable benefits provided to the injured worker by the Rehabilitation Counselor were discussed. As a Rehabilitation Counselor, I also provide immeasurable benefits to employers. Those benefits include helping the employer to understand the workers compensation process; suggestions on how to develop an early return to work opportunity; instruction on how to maintain effective and positive communication with the injured worker; the benefit of developing personnel policies and where they can go for assistance in developing them; and recommendations for job modifications or accommodations. These immeasurable benefits not only benefit the employer, but also the injured worker and other employees. Often the goal of the injured worker is to return to work with their employer of injury. However, if the employer does not understand the workers compensation process, early return to work, and/or has poor communication and management skills these issues often become barriers that inhibit the return to work process. It should also be noted that we are key persons coordinating the return to work activities between the physician, injured worker, employer, physical therapists, occupational therapist, speech therapist, claims examiner and/or other providers involved.

In the current law – the money spent on vocational rehabilitation is at the end of the claim, to settle it. In the proposed legislation, vocational rehabilitation services must be requested. How people will be informed of this is unclear which will result in prolonging the RTW process and increasing costs. Research has shown that spending money on vocational rehabilitation at the start of the claim is the way to save money. By having Rehabilitation Counselors facilitate RTW/SAW processes you are helping employers and injured workers so that the injured worker can remain in the work force and continue to be a productive, contributing member of society.

With regard to the proposed legislation, we recommend that a formal process be specified in the statute for informing injured workers and employers of their benefits. One possible method for ensuring injured workers have been informed of their benefits would be to mandate an interview process, which would include the employer, regarding workers' compensation benefits and

³Blackwell, T. L., Leierer, S., Haupt, S. & Kampotsis, A. Predictors of Vocational Rehabilitation Return to Work Outcomes in Workers Compensation". The Rehabilitation Counseling Bulletin, 46, (108), Winter 2003.

vocational rehabilitation if the need exists. This type of formal process should be a requirement for any workers' compensation injury involving any level of permanent injured worker disability.

With regard to those employers who have effective RTW/SAW programs, a formal interview process would not interfere or take over their RTW/SAW programs. It would only confirm and validate what they are already successfully doing. There would be no need for vocational rehabilitation services unless the injured worker was unable to return to their job of injury and the employer could not provide a continued employment opportunity.

Again, thank you for your time and for taking into consideration our concerns and recommendations. Please feel free to contact me any time to ask questions or to arrange an appointment if you would like to meet to talk about this further. You can reach me at (406) 285-3433.

Bonnie Lyytinen-Hale, M.S., C.R.C.
Rehabilitation Counselor

Current Law

Injury

- ↓
- IW may receive pamphlet discussing benefits and rights.
- ↓
- IW cannot return to job of injury.
- ↓
- Per law, IW referral to RC for TOI JA
- ↓
- IW unable to return to job of injury.
- ↓
- Per law IW referral to RC for alternate JA's & EWLA.
- ↓
- Per law IW may qualify for VR w/RC or IW settles

Proposed Law

Injury

- ↓
- IW may receive pamphlet discussing benefits and rights.
- ↓
- IW cannot return to full duty, can request RTW/SAW help.
- ↓
- If RTW/SAW help requested, RC assists IW & employer.
- ↓
- May request TOI JA form RC.
- ↓
- No RTW with employer IW declares themselves PTD
- ↓
- RC assists IW with RTW.

IW - Injured Worker	RC - Rehabilitation Counselor	TOI - Time-of-injury	JA - Job Analysis
EWLA - Employability & Wage Loss Analysis	VR - Vocational Rehabilitation		RTW - Return to Work
SAW - Stay at Work	MMI - Maximum Medical Improvement		



Our Recommendation

Injury

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Cannot return to full duty, per law interview

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If RTW/SAW assistance is not needed; advised IW of rights and benefits.

Or

If RTW/SAW assistance is needed, per law RC assists IW & employer.

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Per law RC documents TOI JA for RTW planning.

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No RTW/SAW opportunity with employer

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Per law RC continues working with IW on RTW planning; volunteer or community ed programs or RTW with alternate employer.

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If employer has no RTW op at MMI per law RC continues with RTW if IW has not RTW

IW – Injured Worker

EWLA – Employability & Wage Loss Analysis

SAW – Stay at Work

RC – Rehabilitation Counselor

WLA – Wage Loss Analysis

MMI – Maximum Medical Improvement

TOI – Time-of-injury

VR – Vocational Rehabilitation

MMI – Maximum Medical Improvement

JA – Job Analysis

RTW – Return to Work

