

Unofficial Draft Copy

As of: May 17, 2010 (10:19am)

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**** Bill No. ****

Introduced By *****

By Request of the *****

A Bill for an Act entitled: "An Act providing that a signed claim for workers' compensation or occupational disease benefits or a signed release authorizes disclosure of certain information, including health care information, to the injured employee's employer by the worker's compensation insurer or by a health provider; amending sections 39-71-604, 50-16-527, and 50-16-805, MCA; and providing an applicability date."

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

Section 1. Section 39-71-604, MCA, is amended to read:

"39-71-604. Application for compensation -- return to work -- disclosure and communication without prior notice of health care information. (1) If a worker is entitled to benefits under this chapter, the worker shall file with the insurer all reasonable information needed by the insurer to determine compensability. It is the duty of the worker's attending physician to lend all necessary assistance in making application for compensation and proof of other matters that may be required by the rules of the department without charge to the worker and to assist in the determination of when and in what capacity the worker may return to work. The filing of forms or other documentation by the attending physician does not constitute a

claim for compensation.

(2) A signed claim for workers' compensation or occupational disease benefits authorizes disclosure to the workers' compensation insurer, as defined in 39-71-116, or to the agent of a workers' compensation insurer by the health care provider. The disclosure authorized by this subsection authorizes the physician or other health care provider to disclose or release only information relevant to the claimant's condition. Health care information relevant to the claimant's condition may include past history of the complaints of or the treatment of a condition that is similar to that presented in the claim, conditions for which benefits are subsequently claimed, other conditions related to the same body part, or conditions that may affect recovery. A release of information related to workers' compensation must be consistent with the provisions of this subsection and with the provisions of subsection (4).

Authorization under this section is effective only as long as the claimant is claiming benefits. This subsection may not be construed to restrict the scope of discovery or disclosure of health care information, as allowed under the Montana Rules of Civil Procedure, by the workers' compensation court or as otherwise provided by law.

(3) A signed claim for workers' compensation or occupational disease benefits or a signed release authorizes a workers' compensation insurer, as defined in 39-71-116, or the agent of the workers' compensation insurer to communicate with a physician or other health care provider about relevant health

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care information, as authorized in ~~subsection~~ subsections (2) and (4), by telephone, letter, electronic communication, in person, or by other means, about a claim and to receive from the physician or health care provider the information authorized in ~~subsection~~ subsections (2) and (4) without prior notice to the injured employee, to the employee's authorized representative or agent, or in the case of death, to the employee's personal representative or any person with a right or claim to compensation for the injury or death.

(4) A signed claim for worker's compensation or occupational disease benefits or a signed release authorizes the workers' compensation insurer, as defined in 39-71-116, the agent of the workers' compensation insurer, or a health care provider to disclose, with respect to the employee's return to work, the following information, including health care information, to the injured employee's employer:

(a) the employee's restrictions related to the employee's claim;

(b) the date or anticipated date the employee is released to return to work;

(c) the approval or disapproval of job descriptions for the employee;

(d) the date or anticipated date of maximum medical improvement; and

(e) other information that is limited to that which is reasonably necessary and is otherwise permitted or required by law and is limited to information that pertains to the issue of

the employee's return to work.

~~(4)~~(5) If death results from an injury, the parties entitled to compensation or someone in their behalf shall file a claim with the insurer. The claim must be accompanied with proof of death and proof of relationship, showing the parties entitled to compensation, certificate of the attending physician, if any, and such other proof as may be required by the department."

{Internal References to 39-71-604:
50-16-805x}

Section 2. Section 50-16-527, MCA, is amended to read:

"50-16-527. Patient authorization -- retention -- effective period -- exception -- communication without prior notice for workers' compensation purposes. (1) A health care provider shall retain each authorization or revocation in conjunction with any health care information from which disclosures are made.

(2) Except for authorizations to provide information to third-party health care payors, an authorization may not permit the release of health care information relating to health care that the patient receives more than 6 months after the authorization was signed.

(3) Health care information disclosed under an authorization is otherwise subject to this part. An authorization becomes invalid after the expiration date contained in the authorization, which may not exceed 30 months. If the authorization does not contain an expiration date, it expires 6 months after it is signed.

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(4) (a) Notwithstanding subsections (2) and (3), a signed claim for workers' compensation or occupational disease benefits authorizes disclosure to the workers' compensation insurer, as defined in 39-71-116, or to the agent of a workers' compensation insurer by the health care provider. The disclosure authorized by this subsection authorizes the physician or other health care provider to disclose or release only information relevant to the claimant's condition. Health care information relevant to the claimant's condition may include past history of the complaints of or the treatment of a condition that is similar to that presented in the claim, conditions for which benefits are subsequently claimed, other conditions related to the same body part, or conditions that may affect recovery. A release of information related to workers' compensation must be consistent with the provisions of this subsection. Authorization under this section is effective only as long as the claimant is claiming benefits. This subsection may not be construed to restrict the scope of discovery or disclosure of health care information as allowed under the Montana Rules of Civil Procedure, by the workers' compensation court, or as otherwise provided by law.

(b) Notwithstanding the provisions of subsections (2) and (3), a signed claim for worker's compensation or occupational disease benefits or a signed release authorizes the workers' compensation insurer, as defined in 39-71-116, the agent of the workers' compensation insurer, or a health care provider to disclose, with respect to the employee's return to work, the following information, including health care information, to the

injured employee's employer:

(a) the employee's restrictions related to the employee's claim;

(b) the date or anticipated date the employee is released to return to work;

(c) the approval or disapproval of job descriptions for the employee;

(d) the date or anticipated date of maximum medical improvement; and

(e) other information that is limited to that which is reasonably necessary and is otherwise permitted or required by law and is limited to information that pertains to the issue of the employee's return to work.

(5) A signed claim for workers' compensation or occupational disease benefits or a signed release authorizes a workers' compensation insurer, as defined in 39-71-116, or the agent of the workers' compensation insurer to communicate with a physician or other health care provider about relevant health care information, as authorized in subsection (4)(a), and to communicate with the claimant's employer with respect to relevant information, including health care information, as authorized in subsection (4)(b), by telephone, letter, electronic communication, in person, or by other means, about a claim and to receive from the physician or health care provider the information authorized in subsection (4) without prior notice to the injured employee, to the employee's authorized representative or agent, or in the case of death, to the employee's personal

representative or any person with a right or claim to compensation for the injury or death."

{Internal References to 50-16-527:
50-16-531 50-16-551 50-16-805a}

Section 3. Section 50-16-805, MCA, is amended to read:

"50-16-805. Disclosure of information for workers' compensation and occupational disease claims and law enforcement purposes. (1) To the extent provided in 39-71-604 and 50-16-527, a signed claim for workers' compensation or occupational disease benefits authorizes disclosure to the workers' compensation insurer, as defined in 39-71-116, by the health care provider and the signed claim also authorizes the workers' compensation insurer, the agent of the workers' compensation insurer, and the health care provider to disclose to the claimant's employer the information, including health care information, set out in 39-71-604(4).

(2) A health care provider may disclose health care information about an individual for law enforcement purposes if the disclosure is to:

(a) federal, state, or local law enforcement authorities to the extent required by law; or

(b) a law enforcement officer about the general physical condition of a patient being treated in a health care facility if the patient was injured by the possible criminal act of another."

{Internal References to 50-16-805: None.}

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NEW SECTION. **Section 4. {standard} Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

NEW SECTION. **Section 5. {standard} Applicability.** [This act] applies to signed claims for workers' compensation or occupational disease benefits filed on or after [the effective date of this act].

- END -

{Name : Bartley J. Campbell
Title : Staff Attorney
Agency : LSD
Phone : 444-3087
E-Mail : bacampbell@mt.gov}