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Thomas Danenhower, RS MT Municipal Interlocal Authority, Risk Management Specialist 406) 443-0907 ext. 131 Toll Free: (800) 635-3089	...we would support language to strengthen/clarify disclosure of information to providers, employers, examiners in ex parte fashion without prior notice etc.. We would support the DLI idea of providing information to a voc rehab or nurse case manager person in a stay at work situation, possibly pre-claim. As I mentioned, presently MMIA uses a disclosure/release signed waiver as well as the signed FROI. This slows our claim handling and can make it difficult to get prior medical records etc.
Marvin Jordan MCCF Executive Director tel. 406-453-8522	I would suggest adding to (a) The worker's restrictions including prescription/recommended medications;.... This would alert employers if an employee was provided a recommendation by any healthcare provider for Medical Marijuana which could disqualify them from returning to work. It is important to get the word out that Medical Marijuana could derail the entire Early Return to Work Program as employers do not have to accommodate them thus keeping them out on loss time benefits which could be disastrous to the system. I would also recommend considering a ban on Medical Marijuana for those still actively employed.
Nancy Butler Montana State Fund	(5) A signed claim for workers 'compensation or occupational disease benefits authorizes disclosure BY THE INSURER OR HEALTH CARE PROVIDER of the following healthcare information to the workers employer: (a) the workers restrictions; (b) the date or anticipated date the worker is released to return to work; (c) the approval or disapproval of job descriptions for the worker: (d) the date or anticipated date of maximum medical improvement; and (e) other information that is appropriate by law to be disclosed.
Mike Foster Regional Dir. of Advocacy, St. Vincent Healthcare /SCLHS - MT Region Phone: (406) 237-3038	...after examination and discussion, all the hospitals in the Sisters of Charity Health System (St. Vincent Healthcare in Billings, St. James Healthcare in Butte, and Holy Rosary Healthcare in Miles City) and both of the hospitals in the Providence Health and Services system (St. Patrick Hospital in Missoula and St. Joseph Hospital in Polson) support the proposal.

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Annette Hoffman, RN Regional Director of Workers' Comp., Medical Practices Div. SLCHS Montana Region St Vincent Healthcare	The guidelines for RTW information look good and would provide the information the employer needs while protecting the privacy of the injured worker. We run our program HIPAA compliant due to ethical considerations and for the purely business consideration that it is just more efficient to get consent resulting in less time explaining the rules to provider practices and less delay in obtaining records. Obtaining HIPAA consent has worked well for us. I am glad that the proposal will not prevent us from doing so.
Christina Goe General Counsel Office of the Commissioner of Securities and Insurance 444-1942	The Commissioner of Securities and Insurance does not enforce HIPAA privacy laws and has no jurisdiction over health care providers. So, we are presuming that you have sent the proposal to the appropriate federal authorities for their review and input. However, we would make the following observations: (1) The Montana privacy law found at Title 33, Chapter 19 applies to all insurers doing business in Montana (including worker's compensation insurers) and requires that a disclosure authorization have specific content, be signed by the individual, and only last for 24 months. [33-19-206, MCA] Disclosures made without a signed authorization must fall under one of the exceptions listed in 33-19-306, MCA. (2) HIPAA also has specific requirements for disclosure authorizations, including a signature. **(3)** Compelled disclosure of private information, financial or health, to an employer can cause harm to an employee, so it must be considered carefully and limited to the minimum information necessary. **"Other information that is appropriate by law" may be too broad to meet a "minimum disclosure necessary" test.** (4) Given the short time frame, we have not had the opportunity to research whether or not giving this information to employers would fall under any existing exception in HIPAA that would authorize disclosure of protected health information without a signed authorization. (5) Releasing information to an insurer when it is necessary to process a claim is much different and more widely accepted as "reasonably necessary" than disclosing information to an employer.
Al Smith Montana Trial Lawyers 443-3124	**Objection To Statutory Release** The question of whether the current release in Section 39-71-604(3) violates a claimant's right to privacy under Article II, Section 10 of our Montana Constitution has not been settled. The Workers Compensation Court (WCC) found the statute to be unconstitutional in the *Thompson* case *(2005 MTWCC 53)*, the Supreme Court reversed that decision solely on jurisdictional grounds and did not even address the constitutional privacy issue. The WCC is now a "court of record" curing the jurisdictional problem. The WCC found in *Thompson* that there was no compelling state interest that would justify the infringement of a claimant's constitutional right to privacy. In perhaps the most poignant passage, the WCC stated it "would be hard pressed to find that administrative (Continued)

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expediency of a workers' compensation claim is an interest 'of the highest order' justifying the infringement of a fundamental constitutional right. This is particularly so when there are other, less intrusive means available."
The proposed language leaves open the possibility of copies of the claimant's medical records that has the requested information, but also includes other private medical information, being sent to an employer. To allow employers to have access to medical records is a high risk of inappropriate disclosure/ leaking of personal and private information. Medical records typically contain information far beyond the medical issue involved. The "employer" could be a manager, or a secretary, or a co-worker or the janitor. There is no safeguard of confidentiality if the employer gets the record. The claimant should not have to sacrifice privacy to keep her job during the healing period.
A responsible employer will respect a claimant's privacy, while at the same time assisting in a safe return to work. However, we do not need legislation for those types of employers, we need it for those who invade privacy, overstep boundaries and destroy privacy. This language enables those types of employers to do just that. The only need employers have is for the information contained on the physical restrictions form that they are already getting. This proposal is a solution in search of a problem. Given the high value Montanans place on individual privacy, the questionable constitutionality of the current statutory release, the absence of a compelling state interest in this new release provision, the certainty of litigation and the existence of other less intrusive means to ensure that employers receive the necessary information, it makes no sense to enact this proposed release.
Comments Specific To Proposed Language
1. Subsection (e) is an invitation to the release of private medical information that is not relevant to the workers' compensation claim, and to litigation. It should be deleted.

2. Amend to read: "(5) A ~~signed claim~~ physical restrictions form ~~for workers' compensation or occupational disease benefits~~ signed by the claimant authorizes disclosure of the following healthcare information to the worker's employer:"

3. Section 39-71-604(3) provides expressly that the insurer-health care provider exchange is "without prior notice to the injured employee, to the employee's authorized representative or agent". If number 2 is not an option, then to be consistent, this proposed (5) should include the same such language so claimants are clearly aware that they are not entitled to any notice prior to release of their private information.

4. Amend to read: "5) A signed claim for workers' compensation or occupational disease benefits authorizes disclosure of the following healthcare information, only on a form and in a format approved by the department, to the worker's employer:" This would assure that only the limited information would be provided, and hopefully prevent the inappropriate release of private medical information.

Only comment #2 would meet our constitutional concerns expressed above.
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