

What has the impact of HB 334 been on Stay at Work/Return to Work (SAW/RTW)?



From a Vocational Rehabilitation Perspective

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Goal of HB 334



- ☞ The goal of HB 334 was to impact the cost drivers of workers' compensation in the State of Montana. As Mr. Jason Swant pointed out during the Governor's Conference the cost drivers identified were:
- 1) Frequency of claims.
 - 2) Duration.
 - 3) Sky rocketing medical costs. And,
 - 4) High percentage of open claims.

SAW/RTW Legislation



- ☞ As you are aware, HB 334 contained language to address the cost driver, “Duration” - the amount of time an injured worker is off work.
- ☞ Sections 39-71-1042, “Request for and Delivery of SAW/RTW Assistance” and 39-71-1041, “SAW/RTW Goals and Options” in HB 334 were some of the pieces of that legislation intended to address duration.



- ☞ Per 39-71-1042-Request for and delivery of SAW/RTW assistance: (1)(a)... The department shall advise the insurer of the request for SAW/RTW assistance and shall coordinate the assistance with the insurer.
- ☞ (b) If an insurer has accepted liability for the claim, the insurer shall provide SAW/RTW assistance either in accordance with the insurer's SAW/RTW assistance policy or by designating a rehabilitation provider to provide rehabilitation services. The insurer is directly liable for paying for the SAW/RTW assistance furnished.

How has it worked?



☞ To get an idea if HB 334 has had the impact intended on duration, I reviewed the Montana Department of Labor and Industry's, Employment Relations Division Worker's Compensation Annual Report. I compared the information in the Annual Report with information Mr. Swant provided at the Governor's Conference.



Table 4.13
Temporary Disability Paid Duration (weeks) - 1 Year Maturity
By Plan Type and Fiscal Year of Injury

PLAN TYPE	FY07	FY08	FY09	FY10	FY11
SELF INSURED	13.6	14.2	14.2	12.4	14.0
PRIVATE	14.9	14.3	14.6	14.5	14.3
STATE FUND	16.1	16.0	16.2	16.0	16.2
TOTAL PLAN	15.2	14.9	15.3	14.4	14.7

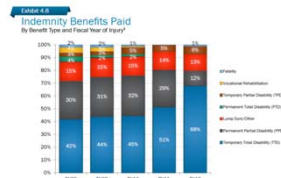
☞ In data collected addressing benefits, the number of weeks of Temporary Total Disability (TTD) Benefits paid in 2011 averaged 14.7 weeks or about 102 days. TTD benefits would be an indication of duration.



☞ In Mr. Swant’s presentation, from the data they had collected since the implementation of HB 334, the duration an injured worker was off work after an injury was 95 days. For those who utilized the SAW/RTW program through their workers’ compensation insurer and received assistance it was an average of 113 days. The national average is 88 days.



BENEFIT DISTRIBUTION



☞ Looking at indemnity benefits paid, in 2011 and 2012 it appears that negligible amounts were paid on Vocational Rehabilitation (VR); TTD expenditures went up substantially, from 51% to 68%; and Temporary Partial Disability (TPD) went up slightly, from 5% to 6%.

Why does this matter?



- This matters because if TTD benefits are going up, that would imply that duration – time an injured worker is off work – is most likely not being impacted as intended by HB 334. Additionally, TPD only went up 1%. The hope would be that TTD benefits would have been reduced and TPD benefits would have increased as injured workers remained or returned to work in modified or alternate positions after an injury if they were unable to return to full duty.



- An interesting side note, while the number of reported claims decreased for all plan types from 2008 to 2012, payment of TTD benefits went from 42% in 2008 to 68% in 2012.

Is SAW/RTW being provided?

From the data above, it is unclear if SAW/RTW assistance is being provided. The data would suggest it is not. To try to answer this question from a Vocational Rehabilitation stand point, I asked my colleagues three questions. Three of my colleagues with their own companies (including myself) and three larger companies employing multiple Vocational Rehabilitation Counselors (CRC's) in Montana responded to my questions as follows:

1) Have you noticed an increase in requests for SAW/RTW assistance given HB 334 in 2011 and the new SAW/RTW legislation?

All respondents but one person answered no. Additional comments included, "We have not received any requests for SAW/RTW assistance within the state of Montana;" and, "Have not noticed a difference in requests (unfortunately).... But maybe others have???"



2) Do you feel you are being asked to provide assistance to injured workers and employers earlier in a claim?

All respondents but two people answered no. Additional comments included, "We have not received any files for SAW/RTW Assistance;" "I've gotten a total of two files that I know were for ERTW/SAW - one the claimant requested those services and the other was through ERD just a few months ago;" "No, actually later as insurers and adjusters seem to be holding off on using CRC's until they feel they absolutely have to;" and, "No – The claims are often quite old."



3) Have your requests for SAW/RTW assistance increased, decreased or has there been no change at all?

All respondents but one person answered no change. One respondent indicated an increase.

Conclusions?



- ⌘ Given the response received from Vocational Rehabilitation providers; Mr. Swant's presentation; the duration off work; and from reviewing the data regarding types of benefits paid out - it does not appear that SAW/RTW assistance is being requested or utilized as well as it could be.

Thoughts?



- ⌘ Per 39-71-1042, if an insurer has accepted liability for the claim, the insurer shall provide SAW/RTW assistance either in accordance with their SAW/RTW assistance policy or by designating a rehabilitation provider, or CRC, to provide rehabilitation services. So the questions are:
 - 1) Are insurers providing SAW/RTW assistance in accordance with their policies? If so, why isn't this assistance impacting duration and types of benefits paid out?
 - 2) Are injured workers, employers and/or health care providers aware they can request assistance?
 - 3) Is there a reluctance to designate a CRC?

Why a CRC?



- ☞ Throughout the Montana Workers' Compensation statutes there is reference to services being provided by a Rehabilitation Counselor certified by the Commission on Rehabilitation Counselor Certification. It has been recognized by the State of Montana and the Department of Labor and Industry that CRC's have been educated and trained to provide services to disabled individuals, which includes injured workers.



- ☞ To achieve certification as a Rehabilitation Counselor, a CRC must complete a master's degree program in rehabilitation counseling and then sit for a national certification exam with the Commission on Rehabilitation Counselor Certification. They must maintain their certification by completing 100 hours (10 of which must be in ethics) of continuing education or by retaking the certification exam every 5 years. In addition to being a CRC, many have additional certifications such as:
 - Certified Disability Management Specialists
 - Certified Case Managers
 - Certified Life Care Planners
 - Certified Vocational EvaluatorsWe are a highly trained group.



☞ We have been trained to:

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



☞ We are bound by a code of ethics, which defines our primary obligation to be 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 the workforce so they can once again be productive contributors for themselves, their family and community.

Are CRC's an underutilized resource?



- ☞ Given Mr. Swant's presentation, the information reported in the Worker's Compensation Annual Report and reports by CRC's, it would appear that we are underutilized.
- ☞ From my own experience and from hearing from my colleagues, there may be a reluctance to designate a CRC as a cost savings measure.

Is there value in designating a CRC?



- ☞ I did a quick literature review regarding the value of a CRC's education and training in assisting people in returning to work. Please understand that the following three articles do not constitute a full literature review.



☞ In Dr. John A. Gardner's article "Improving Vocational Rehabilitation Outcomes: Opportunities for Earlier Intervention," for the Workers Compensation Research Institute in Cambridge, Massachusetts in August 1988; he noted that from their research earlier evaluation for vocational rehabilitation could save employers, insurers and injured workers money. From their research; referring an injured worker no later than six months after injury increased the rates of program completion, return to work and earnings recovery. Early involvement did not mean that the injured worker was involved with schooling, training or placement activities within six months of an injury; rather that the evaluation should be made, not later than that time.



- ☞ In 1994, Dr. Roger O. Weed and Ms. Stephanie H. Lewis' article titled "Workers Compensation Rehabilitation and Case Management are Cost-Effective: True or False?" was published in the Journal of Rehabilitation Administration, Volume (18)4. They concluded 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.
 - 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.



☞ Terry L. Blackwell, Stephen Leierer, Stephanie Haupt and Angeliki Kampotsis' article titled "Predictors of Vocational Rehabilitation Return to Work Outcomes in Workers Compensation" was published in the Rehabilitation Counseling Bulletin, volume 46, number 108, Winter 2003. What they found was that the most significant predictors of return to work status were education, age, mandated vocational rehabilitation, time from injury to referral and attorney involvement. 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.

Importance of SAW/RTW.



☞ It is obvious from working with all of you over the years as well as from legislation developed and passed in HB 334 that the importance of SAW/RTW cannot be overly emphasized in reducing duration and cost. But at this time, there does not seem to be an impact on duration. SAW/RTW will impact duration. So - How do we provide SAW/RTW assistance and education? How do you get the word out that assistance is available?



- ❧ Post cards have been sent in an effort to inform injured workers about the assistance available. However, per Mr. Swant's presentation, only 24.5% of the survey respondents recalled receiving the post card. Obviously it is not working. CRC's are concerned that injured workers are not being notified of their right to SAW/RTW assistance.

Other ideas?



- ❧ In my questions to my colleagues, I also asked, if they were going to make a recommendation to LMAC about HB 334 and SAW/RTW what would that be? These are the suggestions I received:
 - A discussion regarding the purpose of SAW/RTW and if it is felt that that objective is being met. If not, then the process will need to be revised such as automatic triggers for CRC involvement.
 - There needs to be a check and balance to document whether or not the employer and employee are being informed of SAW/RTW assistance. Perhaps a short form to/from the employer reporting on their ability to provide a SAW/RTW opportunity and/or request assistance with SAW/RTW.
 - There were several recommendations for an onsite visit by a CRC to assist with educating about SAW/RTW and providing assistance.



- ✧ From talking with CRC's at our annual meeting, they commented that there was no information available on the Department of Labor and Industry's website providing education and information about CRC's, such as:
 - Who are CRC's and how their training and expertise could assist with the SAW/RTW process.
 - Provide a listing of the CRC's and their location in Montana.
 - Who to contact if the insurer is not providing SAW/RTW assistance.



- ✧ It may also be beneficial to include in training to healthcare providers information about CRC's, such as:
 - Who we are.
 - What our expertise is and how we can assist with providing them information for SAW/RTW planning.
 - That our client is the individual with the disability (the injured worker).
 - And that we can provide the injured worker as well as their employer assistance with SAW/RTW with the goal of maintaining the injured worker's wages, health insurance and other benefits.



☞ Concern was also voiced that employers are likely unaware of SAW/RTW. Not only would they benefit from education about SAW/RTW assistance but about CRC's as well. The goal of SAW/RTW assistance was to promote communication between the employer and worker regarding SAW/RTW following a work related injury. Often an employer does not consider SAW/RTW with a temporary or modified position and the assistance of a CRC can provide optional employment recommendations, ergonomic and/or equipment suggestions, etc.



☞ Suggestions were made to provide some type of tracking mechanism to determine if an insurer is providing SAW/RTW assistance or designating a CRC. If not, how can we change that?

Bottom Line



- From research previously completed for LMAC, studies have consistently shown that the longer an individual remains off work, the greater their chance of returning to work decreases – and costs increase. The goal of HB 334 and the SAW/RTW components of the legislation was to decrease duration off work for the benefit of all, especially the injured worker.

Note of Interest



- In 2008, I provided a presentation to LMAC at the request of Ms. Diana Ferriter for the Rehabilitation Association of Montana. As a part of that presentation, she asked what recommendations CRC's would make for change in the current system. These were the recommendations:



⌘ Earlier CRC intervention with referrals less than six months post injury to contain overall costs and improve the return to work outcomes.



⌘ Continued coordination of return to work activities with all parties involved versus identifying options and then discontinuing CRC involvement. This would aid in containing overall costs and improve the return to work outcomes.



☞ Continued follow up with the injured worker and employer after the injured worker returns to work, whether with the employer of injury or a new employer, to assure that return to work is going well and there are no barriers instead of the CRC being asked to close their files once the injured worker is employed.



☞ And, the understanding of the insurer that CRC expenses will be higher at the beginning of the claim but will result in an overall cost savings by initiating early intervention.

Quick Recap



- ✧ For those that do not know, here is a very short history on how vocational rehabilitation came to be:
- It began in 1917 with the passage of the Smith-Hughes Vocational Act in Washington, D.C.
- In 1973 the Rehabilitation Act was passed.
- In 1991, we had the passage of the Americans with Disabilities Act (ADA), which is an extension of the Rehabilitation Act of 1973 and broadens the intent of the Rehabilitation Act to provide opportunities and services in our society for all people with disabilities with regard to employment; public services; public accommodations and services; telecommunications; and miscellaneous provisions.



Thank you.