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# A BILL FOR AN ACT

RELATING TO WORKERS' COMPENSATION.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1           SECTION 1. The legislature finds that early intervention  
2 is vital to ensure the efficient and effective rehabilitation of  
3 employees who suffer a work-related injury. This often begins  
4 with the referral of an injured employee for vocational  
5 rehabilitation services. Vocational rehabilitation services are  
6 intended to help the employee return to work as quickly as  
7 possible with pay as close as possible to pre-injury wages.  
8 Urgency is needed when initiating the vocational rehabilitation  
9 process to avoid prolonged adverse effects on injured employees  
10 and minimize costs for employers and insurers.

11           The legislature further finds that it is crucial for  
12 injured employees to have access to appropriate vocational  
13 rehabilitation services in the State. Many vocational  
14 rehabilitation providers have expressed concern regarding the  
15 future availability of services as several providers retire or  
16 leave the practice. It is important for current and future



1 providers to be properly trained on the vocational  
2 rehabilitation process.

3 The purpose of this Act is to:

4 (1) Clarify the process for selecting a certified provider  
5 of rehabilitation services; and

6 (2) Require a provider to automatically approve an injured  
7 employee for vocational rehabilitation services if the  
8 provider determines that the injured employee will  
9 likely require vocational rehabilitation services to  
10 return to suitable gainful employment.

11 SECTION 2. Section 386-25, Hawaii Revised Statutes, is  
12 amended to read as follows:

13 "**§386-25 Vocational rehabilitation.** (a) The purposes of  
14 vocational rehabilitation are to restore an injured worker's  
15 earnings capacity as nearly as possible to that level that the  
16 worker was earning at the time of injury and to return the  
17 injured worker to suitable gainful employment in the active  
18 labor force as quickly as possible in a cost-effective manner.  
19 Vocational rehabilitation shall not be available for public  
20 employees who have retired from a public employer, as defined in  
21 section 76-11, with whom they sustained their work injury.



1 Employees of public employers, as defined in section 76-11,  
2 who are eligible for their respective public employer's return  
3 to work program, shall participate in and complete the return to  
4 work program, including temporary light duty placement efforts,  
5 as a prerequisite to vocational rehabilitation benefits under  
6 this section.

7 (b) The director may refer employees who may have or have  
8 suffered permanent disability as a result of work injuries and  
9 who, in the director's opinion, can be vocationally  
10 rehabilitated to the department of human services or to private  
11 providers of rehabilitation services for vocational  
12 rehabilitation services that are feasible. A referral shall be  
13 made upon recommendation of the rehabilitation unit established  
14 under section 386-71.5 and after the employee has been deemed  
15 physically able to participate in rehabilitation by the  
16 employee's attending physician. The unit shall include  
17 appropriate professional staff and shall have the following  
18 duties and responsibilities:

19 (1) To review and approve rehabilitation plans developed  
20 by certified providers of rehabilitation services,  
21 whether they be private or public;



- 1           (2) To adopt rules consistent with this section that shall
- 2           expedite and facilitate the identification,
- 3           notification, and referral of industrially injured
- 4           employees to rehabilitation services, and establish
- 5           minimum standards for providers providing
- 6           rehabilitation services under this section;
- 7           (3) To certify private and public providers of
- 8           rehabilitation services meeting the minimum standards
- 9           established under paragraph (2); and
- 10          (4) To enforce the implementation of rehabilitation plans.
- 11          (c) Enrollment in a rehabilitation plan or program shall
- 12          not be mandatory and the approval of a proposed rehabilitation
- 13          plan or program by the injured employee shall be required.
- 14          ~~The~~ If the injured employee elects to enroll in a
- 15          rehabilitation plan or program, the injured employee [may] shall
- 16          select a certified provider of rehabilitation services~~[-]~~ within
- 17          thirty days after the referral is made by the director. Both
- 18          the certified provider and the injured employee, within a
- 19          reasonable time after initiating rehabilitation services, shall
- 20          give proper notice of selection to the employer. If the injured
- 21          employee fails to select a certified provider within thirty



1 days, the employer shall select the certified provider of  
2 rehabilitation services and give proper notice of selection to  
3 the employee. The injured employee shall have thirty days after  
4 the notice of selection is received to select a different  
5 certified provider of rehabilitation services.

6 (d) A provider shall submit an initial evaluation report  
7 of the employee to the employer and the director within forty-  
8 five days of the date of referral or selection. The evaluation  
9 shall determine whether the employee requires vocational  
10 rehabilitation services to return to suitable gainful  
11 employment, identify the necessary services, and state whether  
12 the provider can provide these services. The initial evaluation  
13 report shall contain:

- 14 (1) An assessment of the employee's:
- 15 (A) Current medical status;
  - 16 (B) Primary disability;
  - 17 (C) Secondary disability;
  - 18 (D) Disabilities that are not related to the work  
19 injury; and
  - 20 (E) Physical or psychological limitations, or both.



1 If this information is not provided by the treating  
2 physician within a reasonable amount of time,  
3 information from another physician shall be accepted;

4 (2) A job analysis addressing the demands of the  
5 employee's employment;

6 (3) A statement from the provider identifying the  
7 employee's vocational handicaps in relation to the  
8 employee's ability to:

9 (A) Return to usual and customary employment; and

10 (B) Participate in and benefit from a vocational  
11 rehabilitation program;

12 (4) A statement from the provider determining the  
13 feasibility of vocational rehabilitation services,  
14 including:

15 (A) The provider's ability to assist the employee in  
16 the employee's efforts to return to suitable  
17 gainful employment;

18 (B) An outline of specific vocational rehabilitation  
19 services to be provided, justification for the  
20 necessity of services, and how the effectiveness  
21 of these services is measured; and



1 (C) How the vocational rehabilitation services  
2 directly relate to the employee obtaining  
3 suitable gainful employment; and

4 (5) The enrollment form and the statement of worker's  
5 rights and responsibilities form obtained from the  
6 department.

7 (e) A provider shall automatically approve vocational  
8 rehabilitation services for an injured employee if the provider  
9 determines that the injured employee will likely require  
10 vocational rehabilitation services to return to suitable gainful  
11 employment.

12 [~~e~~] (f) A provider shall file the employee's plan with  
13 the approval of the employee. Upon receipt of the plan from the  
14 provider, an employee shall have ten days to review and sign the  
15 plan. The plan shall be submitted to the employer and the  
16 employee and be filed with the director within two days from the  
17 date of the employee's signature. A plan shall include a  
18 statement of the feasibility of the vocational goal, using the  
19 process of:



- 1           (1) First determining if the employee's usual and  
2           customary employment represents suitable gainful  
3           employment, and, should it not;
- 4           (2) Next determining if modified work or other work with  
5           the same employer represents suitable gainful  
6           employment, and, should it not;
- 7           (3) Next determining if modified or other employment with  
8           a different employer represents suitable gainful  
9           employment, and finally, should it not;
- 10          (4) Then providing training to obtain employment in  
11          another occupational field. When training to obtain  
12          employment in another occupational field is required,  
13          the first appropriate option among the following  
14          options shall be selected for the employee:
- 15                (A) On-the-job training;
- 16                (B) Short-term retraining program (less than fifty-  
17                two weeks); or
- 18                (C) Long-term retraining program (more than fifty-two  
19                weeks); and
- 20          (5) Lastly, if training under paragraph (4) is not  
21          feasible, then self-employment may be considered.



1        [~~f~~] (g) A plan may be approved by the director; provided  
2 that the plan includes:

3        (1) A physician's assessment of the employee's physical  
4            limitations, psychological limitations, and ability to  
5            return to work. If this information is not provided  
6            by the treating physician within a reasonable amount  
7            of time, information from another physician shall be  
8            accepted;

9        (2) A labor market survey indicating there are reasonable  
10            assurances that the proposed occupation for which the  
11            employee is to be placed or trained is readily  
12            available in the community when placement begins, or  
13            there are assurances of reemployment by the employer;

14        (3) A job analysis of the proposed occupation, setting  
15            forth its duties, responsibilities, physical demands,  
16            environmental working conditions, specific  
17            qualifications needed for entry-level employment,  
18            reasonable accommodations, expected estimated  
19            earnings, and other relevant information;

20        (4) The nature and extent of the vocational rehabilitation  
21            services to be provided, including:



- 1 (A) Specific services to be provided;
- 2 (B) Justification for the necessity of the services;
- 3 (C) Estimated time frames for delivery of services;
- 4 (D) The manner in which the effectiveness of these
- 5 services is to be measured;
- 6 (E) Criteria for determining successful completion of
- 7 the vocational rehabilitation plan; and
- 8 (F) The employee's responsibilities;
- 9 (5) A report of tests and copies thereof that have been
- 10 administered to the employee, including a statement
- 11 regarding the need for and use of the tests to
- 12 identify a vocational goal;
- 13 (6) If retraining, including on-the-job training, is found
- 14 to be necessary, the estimated cost of retraining, a
- 15 description of specific skills to be learned or
- 16 knowledge acquired with specific time periods and
- 17 clearly defined measurements of success, and the
- 18 nature, amount, and duration of living expenses;
- 19 (7) The total cost of the plan; and
- 20 (8) The employee's approval of the plan.



1           ~~(g)~~ (h) The employer shall have ten calendar days from  
2 the postmark date on which the plan was mailed to submit in  
3 writing to the director any objections to the plan.

4           ~~(h)~~ (i) The director may approve a plan that does not  
5 include all of the requirements outlined in subsection ~~(f)~~  
6 (g); provided that the director finds the plan:

- 7           (1) Is in the best interest of the employee;  
8           (2) Contains reasonable assurances that the employee will  
9           be placed in suitable gainful employment; and  
10          (3) Has been approved by the employee.

11          ~~(i)~~ (j) If the plan requires the purchase of any tools,  
12 supplies, or equipment, the purchase deadline shall be included  
13 in the plan. Tools, supplies, and equipment shall be considered  
14 to be the property of the employer until the plan is determined  
15 by the director to be successfully completed, after which it  
16 shall become the property of the employee. If the plan requires  
17 the purchase, etc., the employer shall purchase the items ~~prior~~  
18 ~~to~~ before the purchase deadline in the plan.

19          ~~(j)~~ (k) An employee with an approved plan who is  
20 determined as able to return to usual and customary employment



1 may choose to complete the plan or request a new plan of which  
2 the goal may be the employee's usual and customary employment.

3       ~~(k)~~ (l) An injured employee's enrollment in a  
4 rehabilitation plan or program shall not affect the employee's  
5 entitlement to temporary total disability compensation if the  
6 employee earns no wages during the period of enrollment. If the  
7 employee receives wages for work performed under the plan or  
8 program, the employee shall be entitled to temporary total  
9 disability compensation in an amount equal to the difference  
10 between the employee's average weekly wages at the time of  
11 injury and the wages received under the plan or program, subject  
12 to the limitations on weekly benefit rates prescribed in section  
13 386-31(a). The employee shall not be entitled to temporary  
14 total disability compensation for any week during this period  
15 where the wages equal or exceed the average weekly wages at the  
16 time of injury.

17       ~~(l)~~ (m) The director shall adopt rules for additional  
18 living expenses necessitated by the rehabilitation program,  
19 together with all reasonable and necessary vocational training.



1           ~~[(m)]~~ (n) If the rehabilitation unit determines that  
2 vocational rehabilitation is not possible or feasible, it shall  
3 certify the determination to the director.

4           ~~[(n)]~~ (o) Except as otherwise provided, determinations of  
5 the rehabilitation unit shall be final unless a written request  
6 for reconsideration is filed with the rehabilitation unit within  
7 ten calendar days of the date of the determination.

8           The rehabilitation unit shall issue a reconsideration  
9 determination to affirm, reverse, or modify the determination or  
10 refer the request for reconsideration for hearing.

11           ~~[(o)]~~ (p) A reconsideration determination shall be final  
12 unless a written request for hearing is filed within ten  
13 calendar days from the date of the reconsideration  
14 determination. All hearings shall be held before a hearings  
15 officer designated by the director. A written decision shall be  
16 issued in the name of the director.

17           ~~[(p)]~~ (q) The eligibility of any injured employee to  
18 receive other benefits under this chapter shall in no way be  
19 affected by the employee's entrance upon a course of vocational  
20 rehabilitation as ~~[herein]~~ provided~~[-]~~ in this section.



1            [~~(e)~~] (r) Vocational rehabilitation services for the  
2 purpose of developing a vocational rehabilitation plan may be  
3 approved by the director and the director may periodically  
4 review progress in each case."

5            SECTION 3. Statutory material to be repealed is bracketed  
6 and stricken. New statutory material is underscored.

7            SECTION 4. This Act shall take effect on July 1, 3000.



**Report Title:**

Workers' Compensation; Vocational Rehabilitation Services;  
Certified Providers

**Description:**

Clarifies the process for selecting a certified provider of rehabilitation services. Requires providers to automatically approve vocational rehabilitation services for an injured employee if those services will likely be required for suitable gainful employment. Effective 7/1/3000. (HD2)

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

