



Montana Department of LABOR & INDUSTRY

2019

Montana Workers' Compensation and Occupational Disease Laws and Administrative Rules

Enclosed is the 2019 edition of the Montana Workers' Compensation and Occupational Disease Laws and Administrative Rules, better known as the "Blue Book."

It is recommended you keep previously issued statutes (laws) sections, and administrative rules for reference since **the date of the incident determines which edition of the "Blue Book" you should use.**

IMPORTANT NOTICE TO THE READER REGARDING ADMINISTRATIVE RULES:

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While the Montana Department of Labor & Industry makes every reasonable effort to ensure the accuracy of the rule text presented in this publication, it is not responsible for typographic or other errors. In the event of a conflict between the rule text published here and the official version of the rules kept by the Secretary of State, the official version prevails.

TAB 1

TAB 1

Chapter 71**Workers' Compensation****Part 1****General Provisions**

- 39-71-101. Short title.
- 39-71-102. Reference to plans.
- 39-71-103. Compensation provisions.
- 39-71-104. Repealed.
- 39-71-105. Declaration of public policy.
- 39-71-106. No liability for reporting violation.
- 39-71-107. Insurers to act promptly on claims – in-state claims examiners – third-party agents – penalties.
- 39-71-108 through 39-71-115 reserved.
- 39-71-116. Definitions.
- 39-71-117. Employer defined.
- 39-71-118. Employee, worker, volunteer, volunteer firefighter, and volunteer emergency care provider defined – election of coverage.
- 39-71-119. Injury and accident defined.
- 39-71-120. Repealed.
- 39-71-121. Repealed.
- 39-71-122. Repealed.
- 39-71-123. Wages defined.
- 39-71-124. Applicability of Workers' Compensation Act – exceptions.

Part 2**Administrative Provisions**

- 39-71-201. Workers' compensation administration fund.
- 39-71-202. Office of department.
- 39-71-203. Powers of department – rules.
- 39-71-204. Hearings – rules of evidence – appeal, rescission, alteration, or amendment by department of its orders, decisions, or awards – effect – appeal.
- 39-71-205. Department authorized to charge certain fees – disposition of.
- 39-71-206. Legal advisers of department and state fund – investigative and prosecution services.
- 39-71-207. Repealed.
- 39-71-208. Blank forms, minutes, and records.
- 39-71-209. Publication of reports and bulletins authorized.
- 39-71-210. Repealed.
- 39-71-211. Fraud detection and prevention unit – expenditure accounting.
- 39-71-212 through 39-71-220 reserved.
- 39-71-221. Repealed.
- 39-71-222. Repealed.
- 39-71-223. Certified copies of public records – fees.
- 39-71-224. Records exempt from disclosure – separation of exempt material from nonexempt.

- 39-71-225. Workers' compensation database system.
 39-71-226. Renumbered 39-71-2370.

Part 3

Miscellaneous Provisions

- 39-71-301. Certificates and certified copies as evidence.
 39-71-302. Repealed.
 39-71-303. Repealed.
 39-71-304. Books, records, and payrolls to be open to inspection – penalty for refusal – subpoenas.
 39-71-305. Repealed.
 39-71-306. Insurers to file summary reports of benefits paid for injuries and miscellaneous expenses and statements of medical expenditures.
 39-71-307. Employers and insurers to file reports – penalty.
 39-71-308. Repealed.
 39-71-309. Repealed.
 39-71-310 through 39-71-314 reserved.
 39-71-315. Prohibited actions – penalty.
 39-71-316. Filing true claim – obtaining benefits through deception or other fraudulent means.
 39-71-317. Employer not to terminate worker for filing claim – preference – jurisdiction over dispute.
 39-71-318. Repealed.
 39-71-319. State to reimburse certain premium costs for learning programs – rulemaking.
 39-71-320. Certification program for claims examiners – purpose – rulemaking – advisory committee – continuing education – fee.
 39-71-321 through 39-71-324 reserved.
 39-71-325. Claim summary and actuarial documentation for impaired insurer.

Part 4

Coverage, Liability, and Subrogation

- 39-71-401. Employments covered and exemptions – elections – notice.
 39-71-402. Extraterritorial applicability and reciprocity of coverage – agreements with other states – rulemaking.
 39-71-403. Plan three exclusive for state agencies – election of plan by public corporations – financing of self-insurance fund – exemption for university system – definitions – rulemaking.
 39-71-404. Repealed.
 39-71-405. Liability of employer who contracts work out.
 39-71-406. Deduction from wages of any part of premium a misdemeanor.
 39-71-407. Liability of insurers – limitations.
 39-71-408. Liability as first lien in case of bankruptcy or failure.
 39-71-409. Waivers by employee invalid.
 39-71-410. Repealed.
 39-71-411. Provisions of chapter exclusive remedy – nonliability of insured employer.

- 39-71-412. Liability of third party other than employer or fellow employee – additional cause of action.
- 39-71-413. Liability of employer or fellow employee for intentional and deliberate acts – additional cause of action – intentional injury defined.
- 39-71-414. Subrogation.
- 39-71-415. Procedure for resolving disputes regarding independent contractor status.
- 39-71-416. Repealed.
- 39-71-417. Independent contractor certification.
- 39-71-418. Suspension or Revocation of Independent Contractor Exemption Certificate.
- 39-71-419. Independent contractor violations – penalty.
- 39-71-420 reserved.
- 39-71-421. Financial incentives to institute safety programs.
- 39-71-422 through 39-71-425 reserved.
- 39-71-426. Repealed.
- 39-71-427. Repealed.
- 39-71-428. Repealed.
- 39-71-429 and 39-71-430 reserved.
- 39-71-431. Repealed.
- 39-71-432. Definitions.
- 39-71-433. Group purchase of workers' compensation insurance.
- 39-71-434. Deductible insurance policy provision for medical benefits.
- 39-71-435. Workers' compensation and employers' liability insurance – optional deductibles.
- 39-71-436 through 39-71-440 reserved.
- 39-71-441. Tribal employment coverage.
- 39-71-442. Employer option for extraterritorial coverage.

Part 5

Uninsured Employers

- 39-71-501. Definition of uninsured employer.
- 39-71-502. Repealed.
- 39-71-503. Uninsured employers' fund – purpose and administration of fund – maintaining balance for administrative costs – appropriation.
- 39-71-504. Funding of fund – option for agreement between department and injured employee.
- 39-71-505. Applicability of other provisions of chapter to fund.
- 39-71-506. Lien for payment of unpaid penalties, fees, and interest – levy and execution.
- 39-71-507. Department to order uninsured employer to cease operations – noncompliance with order a misdemeanor – coordination of remedies.
- 39-71-508. Coordination of remedies – limitation of liability of employee to third-party providers – rights of third-party providers.
- 39-71-509. Action against uninsured employer – limitation of employer's defenses.
- 39-71-510. Limitation on benefit entitlement under fund.

- 39-71-511. Setoffs to claim against fund.
- 39-71-512 through 39-71-514 reserved.
- 39-71-515. Independent cause of action.
- 39-71-516. District court venue and jurisdiction for independent cause of action.
- 39-71-517. Requirement to serve papers.
- 39-71-518. Setoffs against remaining liability.
- 39-71-519. Settlement.
- 39-71-520. Time limit to appeal to mediation – petitioning workers’ compensation court – failure to settle or petition.
- 39-71-521. Burden of proof – insurance coverage.
- 39-71-522. Inspection of construction sites – public policy – penalty.
- 39-71-523 and 39-71-524 reserved.
- 39-71-525. Confidentiality of records – exception for use by public employees.
- 39-71-526 through 39-71-530 reserved.
- 39-71-531. Repealed.
- 39-71-532. Repealed.
- 39-71-533. Repealed.
- 39-71-534. Repealed.
- 39-71-535. Collection of penalties, claim costs, late fees, and interest – liability for payment of collection costs.
- 39-71-536 through 39-71-540 reserved.
- 39-71-541. Uninsured employer as party to benefits disputes – indemnification by uninsured employer for benefits paid – lien for payment – levy and execution.

Part 6

Claims for Benefits

- 39-71-601. Statute of limitation on presentment of claim – waiver.
- 39-71-602. Statute of limitation not to apply during minority or mental incompetency unless guardian appointed.
- 39-71-603. Notice of injuries other than death to be submitted within 30 days – exception.
- 39-71-604. Application for compensation – disclosure and communication without prior notice of health care information.
- 39-71-605. Examination of employee by physician – effect of refusal to submit to examination – report and testimony of physician – cost.
- 39-71-606. Insurer to accept or deny claim within 30 days of receipt — notice of benefits and entitlements to claimants — notice of denial — notice of reopening — notice to employer — employer’s right to loss information.
- 39-71-607. Suspension of payments by insurer pending receipt of medical information.
- 39-71-608. Payments within 30 days by insurer without admission of liability or waiver of defense authorized – notice – limitations on payments over 90 days.
- 39-71-609. Denial of claim after payments made or termination of all benefits or reduction to partial benefits by insurer – 14-day notice required – criteria for conversion of benefits.

- 39-71-610. Termination of benefits by insurer – department order to pay disputed benefits prior to hearing or mediation – limitation on order – right of reimbursement.
- 39-71-611. Costs and attorney fees payable on denial of claim or termination of benefits later found compensable – barring of attorney fees under common fund and other doctrines.
- 39-71-612. Costs and attorney fees that may be assessed against insurer by workers' compensation judge – barring of attorney fees under common fund or other doctrines.
- 39-71-613. Regulation of attorney fees – forfeiture of fee for noncompliance – return of fee when claimant received benefits through fraud or deception.
- 39-71-614. Calculation of attorney fees – limitation.
- 39-71-615. Payment of medical claims without acceptance of liability.

Part 7

Compensation and Benefits Generally

- 39-71-701. Compensation for temporary total disability – exception.
- 39-71-702. Compensation for permanent total disability.
- 39-71-703. Compensation for permanent partial disability.
- 39-71-704. Payment of medical, hospital, and related services – fee schedules and hospital rates – fee limitation.
- 39-71-705. Repealed.
- 39-71-706. Repealed.
- 39-71-707. Repealed.
- 39-71-708. Compensation for disfigurement.
- 39-71-709. Repealed.
- 39-71-710. Termination of benefits upon retirement.
- 39-71-711. Impairment evaluation – ratings.
- 39-71-712. Temporary partial disability benefits.
- 39-71-713. Compensation for occupational diseases and medical benefits – diminution of compensation.
- 39-71-714. Autopsy.
- 39-71-715. Benefits for pneumoconiosis – definition.
- 39-71-716. Prohibiting supplementing of benefits.
- 39-71-717. Reopening of terminated medical benefits – medical review.
- 39-71-718 through 39-71-720 reserved.
- 39-71-721. Compensation for injury causing death – limitation.
- 39-71-722. Who constitutes beneficiary to be determined as of date of accident.
- 39-71-723. How compensation to be divided among beneficiaries.
- 39-71-724. Payment of compensation to beneficiary not a resident of United States.
- 39-71-725. Payment of burial expense.
- 39-71-726. No compensation after death when death not result of injury.
- 39-71-727. Payment for prescription drugs – limitations.
- 39-71-728 through 39-71-735 reserved.
- 39-71-736. Compensation – from what dates paid.
- 39-71-737. Compensation to run consecutively – exceptions.

39-71-738.	Repealed.
39-71-739.	Compensation in case of changes in degree of injury.
39-71-740.	Payments – how made in most cases.
39-71-741.	Settlements and lump-sum payments – legislative intent.
39-71-742.	Who may receive payment.
39-71-743.	Assignment or attachment of payments.
39-71-744.	Benefits not due while claimant is incarcerated – exceptions.
39-71-745.	Calculation of volunteer firefighter benefits and premiums – definitions.

Part 8

Compensation for Occupational Deafness

39-71-801.	Repealed.
39-71-802.	Repealed.
39-71-803.	Repealed.
39-71-804.	Repealed.
39-71-805.	Repealed.
39-71-806.	Repealed.
39-71-807.	Repealed.
39-71-808.	Repealed.
39-71-809.	Repealed.
39-71-810.	Repealed.
39-71-811.	Repealed.
39-71-812.	Repealed.
39-71-813.	Repealed.

Part 9

Subsequent Injury Received by Vocationally Handicapped

39-71-901.	Definitions.
39-71-902.	Repealed.
39-71-903.	Procedure.
39-71-904.	Rules for certification.
39-71-905.	Certification as person with disability – eligibility for benefits under fund.
39-71-906.	Repealed.
39-71-907.	Certified person with a disability to be compensated for injury as provided by chapter – insurer liability for compensation limited.
39-71-908.	Notification of fund of its potential liability under part – review by fund.
39-71-909.	Effect of fund's failure to give notification of its intent to dispute liability – subsequent notification by fund authorized
39-71-910.	Repealed.
39-71-911.	Obligation to make payments on behalf of fund not independent liability.
39-71-912.	Reimbursement to be promptly made.
39-71-913.	Repealed.
39-71-914.	Repealed.
39-71-915.	Assessment of insurer – employers – definition – collection.

- 39-71-916. Reimbursement of subsequent injury fund – effect on claims experience rating.
- 39-71-917 through 39-71-919 reserved.
- 39-71-920. Concurrence of fund in settlements.

Part 10

Stay-at-Work/Return-to-Work Assistance

- 39-71-1001. Repealed.
- 39-71-1002. Repealed.
- 39-71-1003. Repealed.
- 39-71-1004. Repealed.
- 39-71-1005. Repealed.
- 39-71-1006. Rehabilitation benefits.
- 39-71-1007 through 39-71-1010 reserved.
- 39-71-1011. Definitions.
- 39-71-1012. Repealed.
- 39-71-1013. Repealed.
- 39-71-1014. Rehabilitation services – required and provided by insurers.
- 39-71-1015. Repealed.
- 39-71-1016. Repealed.
- 39-71-1017. Repealed.
- 39-71-1018. Repealed.
- 39-71-1019. Repealed.
- 39-71-1020 through 39-71-1022 reserved.
- 39-71-1023. Repealed.
- 39-71-1024. Repealed.
- 39-71-1025. Auxiliary benefits.
- 39-71-1026. Repealed.
- 39-71-1027 through 39-71-1030 reserved.
- 39-71-1031. Exchange of information.
- 39-71-1032. Termination of benefits for noncooperation with rehabilitation provider – appeal.
- 39-71-1033. Repealed.
- 39-71-1034 and 39-71-1035 reserved.
- 39-71-1036. Medical status form.
- 39-71-1037 through 39-71-1040 reserved.
- 39-71-1041. Stay-at-work/return-to-work goals and options – notification by department – agreement between worker and insurer.
- 39-71-1042. Request for and delivery of stay-at-work/return-to-work assistance.
- 39-71-1043. Rehabilitation provider – evaluation.
- 39-71-1044 through 39-71-1048 reserved.
- 39-71-1049. Stay-at-work/return-to-work assistance fund – purpose – payment process – rulemaking.
- 39-71-1050. Assessment for stay-at-work/return-to-work assistance fund – definition.
- 39-71-1051. Rulemaking authority.

Part 11**Treatment by Designated Providers**

- 39-71-1101. Choice of health care provider by worker – insurer designation or approval of treating physician or referral to managed care or preferred provider organization – payment terms – definition.
- 39-71-1102. Preferred provider organizations – establishment – limitations.
- 39-71-1103. Workers' compensation managed care.
- 39-71-1104. Managed care organizations – notification.
- 39-71-1105. Managed care organizations – application – certification.
- 39-71-1106. Compliance with medical treatment required – termination of compensation benefits for noncompliance.
- 39-71-1107. Domiciliary care – requirements – evaluation.
- 39-71-1108. Physician self-referral prohibition.
- 39-71-1109. Repealed.
- 39-71-1110. Schedule II and III drugs – prescriber obligation.

Parts 12 through 13 Reserved**Part 14****Presumptive Occupational Disease for Firefighters**

- 39-71-1401. Presumptive occupational disease for firefighters – rebuttal – applicability – definitions.
- 39-71-1402. Conditions for claiming presumptive occupational disease.

Part 15**Montana Safety Culture Act**

- 39-71-1501. Short title.
- 39-71-1502. Purpose.
- 39-71-1503. Safety consultation.
- 39-71-1504. Safety programs – educational activities.
- 39-71-1505. Rulemaking authority.
- 39-71-1506. Notification of safety consultation services available by insurer.
- 39-71-1507. Safety consultation services – safety program as provision of insurance contract or agreement.
- 39-71-1508. Safety consultation services – insurer's exemption from civil liability – exceptions.

Parts 16 through 19 Reserved

Part 20**Rehabilitation Benefits (Renumbered)**

39-71-2001. Renumbered 39-71-1006.

Part 21**Compensation Plan Number One**

39-71-2101. General requirements for electing coverage under plan.
 39-71-2102. Proof of solvency to be filed.
 39-71-2103. Employer permitted to carry on business and settle directly with employee – individual liability.
 39-71-2104. Renewal of application.
 39-71-2105. Additional proof of solvency – revocation of order.
 39-71-2106. Requiring security of employer.
 39-71-2107. When employer to make deposit or security to guarantee payment of compensation.
 39-71-2108. Failure of employer to pay benefits – duty of department.
 39-71-2109. Repealed.
 39-71-2110 through 39-71-2114 reserved.
 39-71-2115. Transfer of claim liabilities – rules.

Part 22**Compensation Plan Number Two**

39-71-2201. Election to be bound by plan – captive reciprocal insurers.
 39-71-2202. Policies made subject to chapter.
 39-71-2203. Content of policies – policies subject to approval, change, or revision by department.
 39-71-2204. Insurer to submit notice of coverage within 30 days – penalty for failure.
 39-71-2205. Policy in effect until canceled or replaced – 20-day notification of cancellation required – penalty.
 39-71-2206. Repealed.
 39-71-2207. Repealed.
 39-71-2208. Repealed.
 39-71-2209 and 39-71-2210 reserved.
 39-71-2211. Premium rates for construction industry – filing required.
 39-71-2212 through 39-71-2214 reserved.
 39-71-2215. Security deposit to ensure payment of liability of plan No. 2 insurer.

Part 23**Compensation Plan Number Three**

39-71-2301. Repealed.
 39-71-2302. Repealed.
 39-71-2303. Renumbered 39-71-2336.
 39-71-2304. Repealed.

- 39-71-2305. Repealed.
- 39-71-2306. Repealed.
- 39-71-2307. Renumbered 39-71-2339.
- 39-71-2308. Renumbered 39-71-2340.
- 39-71-2309. Repealed.
- 39-71-2310. Repealed.
- 39-71-2311. Intent and purpose of plan – expense constant defined.
- 39-71-2312. Definitions.
- 39-71-2313. State compensation insurance fund created – obligation to insure.
- 39-71-2314. **Repealed.**
- 39-71-2315. Management of state fund – powers and duties of the board – business plan required.
- 39-71-2316. Powers of state fund.
- 39-71-2317. Appointment of executive director – management staff.
- 39-71-2318. Personal liability excluded.
- 39-71-2319. Assets and liabilities of prior state fund.
- 39-71-2320. Property of state fund – investment required – exception.
- 39-71-2321. What to be deposited in state fund.
- 39-71-2322. Money in state fund held in trust – disposition of funds upon repeal of chapter.
- 39-71-2323. Surplus in state fund – payment of dividends.
- 39-71-2324. Repealed.
- 39-71-2325. State fund to keep accounts of segregations.
- 39-71-2326. Repealed.
- 39-71-2327. Earnings of state fund to be credited to fund – improper use a felony.
- 39-71-2328. State fund alternative personal leave plan – exception – collective bargaining negotiation – personal leave definition.
- 39-71-2329 reserved.
- 39-71-2330. Rate setting – surplus – multiple rating tiers.
- 39-71-2331. Workplace safety program.
- 39-71-2332. Pooled risk safety group.
- 39-71-2333 through 39-71-2335 reserved.
- 39-71-2336. Manner of electing – contract or policy of insurance – payment of premium.
- 39-71-2337. State fund to submit notice of coverage within 30 days – penalty for failure.
- 39-71-2338. Repealed.
- 39-71-2339. Cancellation of coverage – 20-day notice required.
- 39-71-2340. Collection in case of default.
- 39-71-2341. Repealed.
- 39-71-2342 through 39-71-2350 reserved.
- 39-71-2351. Purpose of separation of state fund liability as of July 1, 1990, and of separate funding of claims before and on or after that date.
- 39-71-2352. Separate payment structure and sources for claims for injuries resulting from accidents that occurred before July 1, 1990, and on or after July 1, 1990 – spending limit – authorizing transfer of money.
- 39-71-2353. Repealed.

- 39-71-2354. Repealed.
- 39-71-2355. Repealed.
- 39-71-2356. Mutually agreeable lump-sum settlements.
- 39-71-2357 through 39-71-2360 reserved.
- 39-71-2361. Legislative audit of state fund.
- 39-71-2362. **Repealed.**
- 39-71-2363. Agency law – annual report.
- 39-71-2364 through 39-71-2369 reserved.
- 39-71-2370. Claims expenditures codes.
- 39-71-2371 through 39-71-2374 reserved.
- 39-71-2375. Operation of state fund as authorized insurer—issuance of certificate of authority—exceptions—use of calendar year—risk-based capital—reporting requirements.

Part 24

Mediation

- 39-71-2401. Disputes – jurisdiction – settlement requirements – mediation.
- 39-71-2402 through 39-71-2405 reserved.
- 39-71-2406. Purpose.
- 39-71-2407. Department authority – rules.
- 39-71-2408. Mandatory, nonbinding mediation.
- 39-71-2409. Duties of mediator.
- 39-71-2410. Limitations on mediation proceedings.
- 39-71-2411. Mediation procedure.

Part 25

Employer's Old Fund Liability Tax

- 39-71-2501. Repealed.
- 39-71-2502. Repealed.
- 39-71-2503. Repealed.
- 39-71-2504. Repealed.
- 39-71-2505. Repealed.
- 39-71-2506. Repealed.
- 39-71-2507. Repealed.

Part 26

Self-Insurers Guaranty Fund

- 39-71-2601. Short title.
- 39-71-2602. Purpose – construction.
- 39-71-2603. Definitions.
- 39-71-2604. Board of directors of fund.
- 39-71-2605 through 39-71-2608 reserved.
- 39-71-2609. Establishment of fund – employer participation required.
- 39-71-2610. Rulemaking – powers of fund.
- 39-71-2611. Duties, liabilities, and rights of fund.
- 39-71-2612 through 39-71-2614 reserved.

- 39-71-2615. Initial fee – assessment.
 39-71-2616. Reimbursement for obligations paid and assumed.
 39-71-2617. Tax exemption.
 39-71-2618. Immunity.
 39-71-2619. Notification of insolvency by private self-insurer.
 39-71-2620. Audit requirement.

Parts 27 and 28 Reserved

Part 29

Workers' Compensation Judge

- 39-71-2901. Location of office – court powers – withdrawal – substitution -
vacancy.
 39-71-2902. Operating expenses.
 39-71-2903. Administrative procedure act and rules of evidence applicable.
 39-71-2904. Direct appeal to supreme court.
 39-71-2905. Petition to workers' compensation judge – time limit on filing.
 39-71-2906. Repealed.
 39-71-2907. Increase in award for unreasonable delay or refusal to pay.
 39-71-2908. Repealed.
 39-71-2909. Authority to review, diminish, or increase awards.
 39-71-2910. Stay pending posttrial motions and appeal.
 39-71-2911. Stay pending determination by district court.
 39-71-2912 through 39-71-2913 reserved.
 39-71-2914. Signing of petitions, pleadings, motions, and other papers –
requirements – sanctions.

Parts 30 Through 39 Reserved

Part 40

Catastrophically Injured Worker's Travel Assistance Act

- 39-71-4001. Short title.
 39-71-4002. Purpose and intent.
 39-71-4003. Definitions.
 39-71-4004. Catastrophically injured worker's travel assistance program –
rulemaking authority.

Chapter 71**Workers' Compensation****Part 1****General Provisions****39-71-101. Short title.**

This chapter may be cited as the "Workers' Compensation Act".

History: En. Sec. 1, Ch. 96, L. 1915; re-en. Sec. 2816, R.C.M. 1921; re-en. Sec. 2816, R.C.M. 1935; amd. Sec. 29, Ch. 341, L. 1969; amd. Sec. 86, Ch. 23, L. 1975; R.C.M. 1947, 92-101(part); amd. Sec. 51, Ch. 397, L. 1979.

39-71-102. Reference to plans.

Whenever compensation plan No. 1, 2, or 3 is referred to, such reference also includes all other sections which are applicable to the subject matter of such reference.

History: En. Sec. 1, Ch. 96, L. 1915; re-en. Sec. 2817, R.C.M. 1921; re-en. Sec. 2817, R.C.M. 1935; R.C.M. 1947, 92-102; amd. Sec. 52, Ch. 397, L. 1979.

Cross-References

Compensation plan No. 1, Title 39, ch. 71, part 21.

Compensation plan No. 2, Title 39, ch. 71, part 22.

Compensation plan No. 3, Title 39, ch. 71, part 23.

39-71-103. Compensation provisions.

The compensation provisions of this chapter, whenever referred to, shall be held to include the provisions of compensation plan No. 1, 2, or 3 and all other sections of this chapter applicable to the same or any part thereof.

History: En. Sec. 1, Ch. 96, L. 1915; re-en. Sec. 2818, R.C.M. 1921; re-en. Sec. 2818, R.C.M. 1935; R.C.M. 1947, 92-103.

39-71-104. Repealed.

Sec. 68, Ch. 464, L. 1987.

History: En. Sec. 24, Ch. 96, L. 1915; re-en. Sec. 2964, R.C.M. 1921; re-en. Sec. 2964, R.C.M. 1935; R.C.M. 1947, 92-838.

39-71-105. (Temporary) Declaration of public policy.

For the purposes of interpreting and applying this chapter, the following is the public policy of this state:

- (1) An objective of the Montana workers' compensation system is to provide, without regard to fault, wage-loss and medical benefits to a worker suffering from a work-related injury or disease. Wage-loss benefits are not intended to make an injured worker whole but are intended to provide assistance to a worker at a reasonable cost to the employer. Within that limitation, the wage-

loss benefit should bear a reasonable relationship to actual wages lost as a result of a work-related injury or disease.

- (2) It is the intent of the legislature to assert that a conclusive presumption exists that recognizes that a holder of a current, valid independent contractor exemption certificate issued by the department is an independent contractor if the person is working under the independent contractor exemption certificate. The holder of an independent contractor exemption certificate waives the rights, benefits, and obligations of this chapter unless the person has elected to be bound personally and individually by the provisions of compensation plan No. 1, 2, or 3.
- (3) A worker's removal from the workforce because of a work-related injury or disease has a negative impact on the worker, the worker's family, the employer, and the general public. Therefore, an objective of the workers' compensation system is to return a worker to work as soon as possible after the worker has suffered a work-related injury or disease.
- (4) Montana's workers' compensation and occupational disease insurance systems are intended to be primarily self-administering. Claimants should be able to speedily obtain benefits, and employers should be able to provide coverage at reasonably constant rates. To meet these objectives, the system must be designed to minimize reliance upon lawyers and the courts to obtain benefits and interpret liabilities.
- (5) This chapter must be construed according to its terms and not liberally in favor of any party.
- (6) It is the intent of the legislature that:
 - (a) a stress claim, often referred to as a "mental-mental claim" or a "mental-physical claim", is not compensable under Montana's workers' compensation and occupational disease laws. The legislature recognizes that these claims are difficult to objectively verify and that the claims have a potential to place an economic burden on the workers' compensation and occupational disease system. The legislature also recognizes that there are other states that do not provide compensation for various categories of stress claims and that stress claims have presented economic problems for certain other jurisdictions. In addition, not all injuries are compensable under the present system, and it is within the legislature's authority to define the limits of the workers' compensation and occupational disease system. However, it is also within the legislature's authority to recognize the public service provided by firefighters and to join with other states that have extended a presumptive occupational disease recognition to firefighters.
 - (b) for occupational disease or presumptive occupational disease claims, because of the nature of exposure, workers should not be required to provide notice to employers of the disease as required of injuries and that the requirements for filing of claims reflect consideration of when the worker knew or should have known that the worker's condition resulted from an occupational disease or a presumptive occupational disease. The legislature recognizes that occupational diseases in the workplace are caused by events occurring on more than a single day or work shift and that the legislature has the authority to define an occupational disease or a presumptive occupational disease and establish the causal connection to the workplace. (Void on occurrence of contingency—sec. 7, Ch. 158, L. 2019.)

39-71-105. *(Effective on occurrence of contingency)* **Declaration of public policy.**

For the purposes of interpreting and applying this chapter, the following is the public policy of this state:

- (1) An objective of the Montana workers' compensation system is to provide, without regard to fault, wage-loss and medical benefits to a worker suffering from a work-related injury or disease. Wage-loss benefits are not intended to make an injured worker whole but are intended to provide assistance to a worker at a reasonable cost to the employer. Within that limitation, the wage-loss benefit should bear a reasonable relationship to actual wages lost as a result of a work-related injury or disease.
- (2) It is the intent of the legislature to assert that a conclusive presumption exists that recognizes that a holder of a current, valid independent contractor exemption certificate issued by the department is an independent contractor if the person is working under the independent contractor exemption certificate. The holder of an independent contractor exemption certificate waives the rights, benefits, and obligations of this chapter unless the person has elected to be bound personally and individually by the provisions of compensation plan No. 1, 2, or 3.
- (3) A worker's removal from the workforce because of a work-related injury or disease has a negative impact on the worker, the worker's family, the employer, and the general public. Therefore, an objective of the workers' compensation system is to return a worker to work as soon as possible after the worker has suffered a work-related injury or disease.
- (4) Montana's workers' compensation and occupational disease insurance systems are intended to be primarily self-administering. Claimants should be able to speedily obtain benefits, and employers should be able to provide coverage at reasonably constant rates. To meet these objectives, the system must be designed to minimize reliance upon lawyers and the courts to obtain benefits and interpret liabilities.
- (5) This chapter must be construed according to its terms and not liberally in favor of any party.
- (6) It is the intent of the legislature that:
 - (a) stress claims, often referred to as "mental-mental claims" and "mental-physical claims", are not compensable under Montana's workers' compensation and occupational disease laws. The legislature recognizes that these claims are difficult to objectively verify and that the claims have a potential to place an economic burden on the workers' compensation and occupational disease system. The legislature also recognizes that there are other states that do not provide compensation for various categories of stress claims and that stress claims have presented economic problems for certain other jurisdictions. In addition, not all injuries are compensable under the present system, and it is within the legislature's authority to define the limits of the workers' compensation and occupational disease system.
 - (b) for occupational disease claims, because of the nature of exposure, workers should not be required to provide notice to employers of the disease as required of injuries and that the requirements for filing of claims reflect consideration of when the worker knew or should have known that the worker's condition resulted from an occupational disease. The legislature recognizes that occupational diseases in the workplace are caused by

events occurring on more than a single day or work shift and that it is within the legislature's authority to define an occupational disease and establish the causal connection to the workplace.

History: En. Sec. 1, Ch. 464, L. 1987; amd. Sec. 1, Ch. 630, L. 1993; amd. Sec. 1, Ch. 103, L. 2005; amd. Sec. 9, Ch. 416, L. 2005; amd. Sec. 7, Ch. 448, L. 2005; amd. Sec. 1, Ch. 167, L. 2011; amd. Sec. 3, Ch. 158, L. 2019.

39-71-106. No liability for reporting violation.

A person, including but not limited to an insurer or an employer, may not be held liable for civil damages as a result of reporting in good faith information that the person believes proves a violation of the provisions of this chapter.

History: En. Sec. 17, Ch. 619, L. 1993; amd. Sec. 10, Ch. 416, L. 2005.

39-71-107. Insurers to act promptly on claims – in-state claims examiners – third-party agents – penalties.

- (1) Pursuant to the public policy stated in 39-71-105, prompt claims handling practices are necessary to provide appropriate service to injured workers, to employers, and to providers who are the customers of the workers' compensation system.
- (2) All workers' compensation and occupational disease claims filed pursuant to the Workers' Compensation Act must be examined by a claims examiner in Montana. For a claim to be considered as examined by a claims examiner in Montana, the claims examiner examining the claim is required to determine the entitlement to benefits, authorize payment of all benefits due, manage the claim, have authority to settle the claim, maintain an office located in Montana, and examine Montana claims from that office. Use of a mailbox or maildrop in Montana does not constitute maintaining an office in Montana.
- (3) An insurer shall maintain the documents related to each claim filed with the insurer under the Workers' Compensation Act at the Montana office of the claims examiner examining the claim in Montana until the claim is settled. The documents may be either original documents or duplicates of the original documents and must be maintained in a manner that allows the documents to be retrieved from that office and copied at the request of the claimant or the department. Settled claim files stored outside of the claims examiner's office must be made available within 48 hours of a request for the file. Electronic or optically imaged documents are permitted.
- (4) (a) An insurer that uses a third-party agent to provide the insurer with claim examination services shall notify the department in writing of a change of a third-party agent at least 14 days in advance of the change.
 (b) The department may assess a penalty not to exceed \$200 against an insurer that does not comply with the advance notice provision in subsection (4)(a). The penalty may be assessed for each failure by an insurer to give the required advance notice.
- (5) (a) Except for those medical benefits provided by a managed care organization or a preferred provider organization in Title 39, chapter 71, part 11, or paid pursuant to 39-71-704(5), an insurer that uses a third-party agent to review medical bills shall, when first using the agent's services and annually in subsequent years, obtain written certification from the agent that, for each bill the agent reviews, the agent agrees to calculate the payment due based

- on the Montana workers' compensation medical fee schedules, provided for under 39-71-704, that were in effect on the date the service was provided.
- (b) Except for those medical benefits provided by a managed care organization or a preferred provider organization in Title 39, chapter 71, part 11, or paid pursuant to 39-71-704(5), an insurer whose agent neglects or fails to use the proper fee schedule may be assessed a penalty of not less than \$200 or more than \$1,000 for each bill that its agent reviews under a fee schedule other than the proper Montana fee schedule.
 - (c) An insurer that without good cause neglects or fails to pay undisputed medical bills on an accepted liability claim within 60 days of receipt of the bill may be assessed a penalty of not less than \$200 or more than \$1,000 for each bill that is the subject of a delay as provided in this subsection (5)(c).
- (6) An insurer shall provide to the claimant:
- (a) a written statement of the reasons that a claim is being denied at the time of denial;
 - (b) whenever benefits are denied to a claimant, a written explanation of how the claimant may appeal an insurer's decision;
 - (c) a written explanation of the amount of wage-loss benefits being paid to the claimant, along with an explanation of the calculation used to compute those benefits. The explanation must be sent within 7 days of the initial payment of the benefit.
 - (d) a written notice advising the claimant when a change is made to the claims examiner handling the claim, including the name and contact information of the new claims examiner. The notice must be sent within 14 days of the change in claims examiner.
- (7) An insurer shall:
- (a) begin making payments that are due on a claim within 14 days of acceptance of the claim, unless the insurer promptly notifies the claimant that the insurer needs additional information in order to begin paying benefits and specifies the information needed; and
 - (b) pay settlements within 30 days of the date the department issues an order approving the settlement.
- (8) An insurer may contest a penalty assessed pursuant to subsection (4) or (5) in a hearing conducted according to department rules. A party may appeal the final agency order to the workers' compensation court. The court shall review the order pursuant to the requirements of 2-4-704.
- (9) The department may adopt rules to implement this section.
- (10) (a) For the purposes of this section, "settled claim" means a department-approved or court-ordered compromise of benefits between a claimant and an insurer or a claim that was paid in full.
- (b) The term does not include a claim in which there has been only a lump-sum advance of benefits.

History: En. Sec. 4, Ch. 243, L. 1995; amd. Sec. 3, Ch. 214, L. 2001; amd. Sec. 2, Ch. 103, L. 2005; amd. Sec. 2, Ch. 140, L. 2005; amd. Sec. 11, Ch. 416, L. 2005; amd. Sec. 1, Ch. 117, L. 2007; amd. Sec. 5, Ch. 112, L. 2009; amd. Sec. 1, Ch. 150, L. 2011; amd. Sec. 1, Ch. 123, L. 2015; amd. Sec. 5, Ch. 433, L. 2017.

39-71-108 through 39-71-115 reserved.

39-71-116. Definitions.

Unless the context otherwise requires, in this chapter, the following definitions apply:

- (1) “Actual wage loss” means that the wages that a worker earns or is qualified to earn after the worker reaches maximum healing are less than the actual wages the worker received at the time of the injury.
- (2) “Administer and pay” includes all actions by the state fund under the Workers’ Compensation Act necessary to:
 - (a) investigation, review, and settlement of claims;
 - (b) payment of benefits;
 - (c) setting of reserves;
 - (d) furnishing of services and facilities; and
 - (e) use of actuarial, audit, accounting, vocational rehabilitation, and legal services.
- (3) “Aid or sustenance” means a public or private subsidy made to provide a means of support, maintenance, or subsistence for the recipient.
- (4) “Beneficiary” means:
 - (a) a surviving spouse living with or legally entitled to be supported by the deceased at the time of injury;
 - (b) an unmarried child under 18 years of age;
 - (c) an unmarried child under 22 years of age who is a full-time student in an accredited school or is enrolled in an accredited apprenticeship program;
 - (d) an invalid child over 18 years of age who is dependent, as defined in 26 U.S.C. 152, upon the decedent for support at the time of injury;
 - (e) a parent who is dependent, as defined in 26 U.S.C. 152, upon the decedent for support at the time of the injury if a beneficiary, as defined in subsections (4)(a) through (4)(d), does not exist; and
 - (f) a brother or sister under 18 years of age if dependent, as defined in 26 U.S.C. 152, upon the decedent for support at the time of the injury but only until the age of 18 years and only when a beneficiary, as defined in subsections (4)(a) through (4)(e), does not exist.
- (5) “Business partner” means the community, governmental entity, or business organization that provides the premises for work-based learning activities for students.
- (6) “Casual employment” means employment not in the usual course of the trade, business, profession, or occupation of the employer.
- (7) “Child” includes a posthumous child, a dependent stepchild, and a child legally adopted prior to the injury.
- (8) (a) “Claims examiner” means an individual who, as a paid employee of the department, of a plan No. 1, 2, or 3 insurer, or of an administrator licensed under Title 33, chapter 17, examines claims under chapter 71 to:
 - (i) determine liability;
 - (ii) apply the requirements of this title;
 - (iii) settle workers’ compensation or occupational disease claims; or
 - (iv) determine survivor benefits.
 (b) The term does not include an adjuster as defined in 33-17-102.
- (9) (a) “Construction industry” means the major group of general contractors and operative builders, heavy construction (other than building construction) contractors, and special trade contractors listed in major group 23 in the North American Industry Classification System Manual.

- (b) The term does not include office workers, design professionals, salespersons, estimators, or any other related employment that is not directly involved on a regular basis in the provision of physical labor at a construction or renovation site.
- (10) "Days" means calendar days, unless otherwise specified.
- (11) "Department" means the department of labor and industry.
- (12) "Direct result" means that a diagnosed condition was caused or aggravated by an injury or occupational disease.
- (13) "Fiscal year" means the period of time between July 1 and the succeeding June 30.
- (14) "Health care provider" means a person who is licensed, certified, or otherwise authorized by the laws of this state to provide health care in the ordinary course of business or practice of a profession.
- (15) (a) "Household or domestic employment" means employment of persons other than members of the household for the purpose of tending to the aid and comfort of the employer or members of the employer's family, including but not limited to house cleaning and yard work.
- (b) The term does not include employment beyond the scope of normal household or domestic duties, such as home health care or domiciliary care.
- (16) (a) "Indemnity benefits" means any payment made directly to the worker or the worker's beneficiaries, other than a medical benefit. The term includes payments made pursuant to a reservation of rights.
- (b) The term does not include stay-at-work/return-to-work assistance, auxiliary benefits, or expense reimbursements for items such as meals, travel, or lodging.
- (17) "Insurer" means an employer bound by compensation plan No. 1, an insurance company transacting business under compensation plan No. 2, or the state fund under compensation plan No. 3.
- (18) "Invalid" means one who is physically or mentally incapacitated.
- (19) "Limited liability company" has the meaning provided in 35-8-102.
- (20) "Maintenance care" means treatment designed to provide the optimum state of health while minimizing recurrence of the clinical status.
- (21) "Medical stability", "maximum medical improvement", "maximum healing", or "maximum medical healing" means a point in the healing process when further material functional improvement would not be reasonably expected from primary medical services.
- (22) "Objective medical findings" means medical evidence, including range of motion, atrophy, muscle strength, muscle spasm, or other diagnostic evidence, substantiated by clinical findings.
- (23) (a) "Occupational disease" means harm, damage, or death arising out of or contracted in the course and scope of employment caused by events occurring on more than a single day or work shift.
- (b) The term does not include a physical or mental condition arising from emotional or mental stress or from a nonphysical stimulus or activity.
- (24) "Order" means any decision, rule, direction, requirement, or standard of the department or any other determination arrived at by the department.
- (25) "Palliative care" means treatment designed to reduce or ease symptoms without curing the underlying cause of the symptoms.

- (26) “Payroll”, “annual payroll”, or “annual payroll for the preceding year” means the average annual payroll of the employer for the preceding calendar year or, if the employer has not operated a sufficient or any length of time during the calendar year, 12 times the average monthly payroll for the current year. However, an estimate may be made by the department for any employer starting in business if average payrolls are not available. This estimate must be adjusted by additional payment by the employer or refund by the department, as the case may actually be, on December 31 of the current year. An employer’s payroll must be computed by calculating all wages, as defined in 39-71-123, that are paid by an employer.
- (27) “Permanent partial disability” means a physical condition in which a worker, after reaching maximum medical healing:
- (a) has a permanent impairment, as determined by the sixth edition of the American Medical Association’s Guides to the Evaluation of Permanent Impairment, that is established by objective medical findings for the ratable condition. The ratable condition must be a direct result of the compensable injury or occupational disease and may not be based exclusively on complaints of pain.
 - (b) is able to return to work in some capacity but the permanent impairment impairs the worker’s ability to work; and
 - (c) has an actual wage loss as a result of the injury.
- (28) “Permanent total disability” means a physical condition resulting from injury as defined in this chapter, after a worker reaches maximum medical healing, in which a worker does not have a reasonable prospect of physically performing regular employment. Lack of immediate job openings is not a factor to be considered in determining if a worker is permanently totally disabled.
- (29) “Primary medical services” means treatment prescribed by the treating physician, for conditions resulting from the injury or occupational disease, necessary for achieving medical stability.
- (30) “Public corporation” means the state or a county, municipal corporation, school district, city, city under a commission form of government or special charter, town, or village.
- (31) “Reasonably safe place to work” means that the place of employment has been made as free from danger to the life or safety of the employee as the nature of the employment will reasonably permit.
- (32) “Reasonably safe tools or appliances” are tools and appliances that are adapted to and that are reasonably safe for use for the particular purpose for which they are furnished.
- (33) “Regular employment” means work on a recurring basis performed for remuneration in a trade, business, profession, or other occupation in this state.
- (34) (a) “Secondary medical services” means those medical services or appliances that are considered not medically necessary for medical stability. The services and appliances include but are not limited to spas or hot tubs, work hardening, physical restoration programs and other restoration programs designed to address disability and not impairment, or equipment offered by individuals, clinics, groups, hospitals, or rehabilitation facilities.
- (b) (i) As used in this subsection (34), “disability” means a condition in which a worker’s ability to engage in gainful employment is diminished as a result of physical restrictions resulting from an injury. The restrictions may be combined with factors, such as the worker’s age, education,

work history, and other factors that affect the worker's ability to engage in gainful employment.

- (ii) Disability does not mean a purely medical condition.
- (35) "Sole proprietor" means the person who has the exclusive legal right or title to or ownership of a business enterprise.
- (36) "State's average weekly wage" means the mean weekly earnings of all employees under covered employment, as defined and established annually by the department before July 1 and rounded to the nearest whole dollar number.
- (37) "Temporary partial disability" means a physical condition resulting from an injury, as defined in 39-71-119, in which a worker, prior to maximum healing:
 - (a) is temporarily unable to return to the position held at the time of injury because of a medically determined physical restriction;
 - (b) returns to work in a modified or alternative employment; and
 - (c) suffers a partial wage loss.
- (38) "Temporary service contractor" means a person, firm, association, partnership, limited liability company, or corporation conducting business that hires its own employees and assigns them to clients to fill a work assignment with a finite ending date to support or supplement the client's workforce in situations resulting from employee absences, skill shortages, seasonal workloads, and special assignments and projects.
- (39) "Temporary total disability" means a physical condition resulting from an injury, as defined in this chapter, that results in total loss of wages and exists until the injured worker reaches maximum medical healing.
- (40) "Temporary worker" means a worker whose services are furnished to another on a part-time or temporary basis to fill a work assignment with a finite ending date to support or supplement a workforce in situations resulting from employee absences, skill shortages, seasonal workloads, and special assignments and projects.
- (41) "Treating physician" means the person who, subject to the requirements of 39-71-1101, is primarily responsible for delivery and coordination of the worker's medical services for the treatment of a worker's compensable injury or occupational disease and is:
 - (a) a physician licensed by the state of Montana under Title 37, chapter 3, and has admitting privileges to practice in one or more hospitals, if any, in the area where the physician is located;
 - (b) a chiropractor licensed by the state of Montana under Title 37, chapter 12;
 - (c) a physician assistant licensed by the state of Montana under Title 37, chapter 20, if there is not a treating physician, as provided for in subsection (41)(a), in the area where the physician assistant is located;
 - (d) an osteopath licensed by the state of Montana under Title 37, chapter 3;
 - (e) a dentist licensed by the state of Montana under Title 37, chapter 4;
 - (f) for a claimant residing out of state or upon approval of the insurer, a treating physician defined in subsections (41)(a) through (41)(e) who is licensed or certified in another state; or
 - (g) an advanced practice registered nurse licensed by the state of Montana under Title 37, chapter 8.
- (42) "Work-based learning activities" means job training and work experience conducted on the premises of a business partner as a component of school-based learning activities authorized by an elementary, secondary, or postsecondary educational institution.
- (43) "Year", unless otherwise specified, means calendar year.

History: Ap. p. Sec. 6, Ch. 96, L. 1915; re-en. Sec. 2853, R.C.M. 1921; re-en. Sec. 2853, R.C.M. 1935; Sec. 92-401, R.C.M. 1947; (1)En. 92-423.2 by Sec. 1, Ch. 445, L. 1973; Sec. 92-423.2, R.C.M. 1947; (2)En. Sec. 6, Ch. 96, L. 1915; re-en. Sec. 2865, R.C.M. 1921; amd. Sec. 4, Ch. 121, L. 1925; re-en. Sec. 2865, R.C.M. 1935; amd. Sec. 1, Ch. 92, L. 1969; amd. Sec. 1, Ch. 331, L. 1973; amd. Sec. 1, Ch. 269, L. 1974; amd. Sec. 1, Ch. 46, L. 1975; Sec. 92-413, R.C.M. 1947; (3)Ap. p. Sec. 6, Ch. 96, L. 1915; re-en. Sec. 2888, R.C.M. 1921; re-en. Sec. 2888, R.C.M. 1935; Sec. 92-436, R.C.M. 1947; Ap. p. Sec. 12, Ch. 235, L. 1947; Sec. 92-1121.1, R.C.M. 1947; (4)En. Sec. 6, Ch. 96, L. 1915; re-en. Sec. 2869, R.C.M. 1921; re-en. Sec. 2869, R.C.M. 1935; amd. Sec. 2, Ch. 92, L. 1969; Sec. 92-417, R.C.M. 1947; (5)En. Sec. 6, Ch. 96, L. 1915; re-en. Sec. 2878, R.C.M. 1921; re-en. Sec. 2878, R.C.M. 1935; amd. Sec. 7, Ch. 23, L. 1975; Sec. 92-426, R.C.M. 1947; (6), (22)En. Sec. 6, Ch. 96, L. 1915; re-en. Sec. 2885, R.C.M. 1921; re-en. Sec. 2885, R.C.M. 1935; Sec. 92-433, R.C.M. 1947; (7)En. Sec. 6, Ch. 96, L. 1915; re-en. Sec. 2877, R.C.M. 1921; re-en. Sec. 2877, R.C.M. 1935; amd. Sec. 1, Ch. 33, L. 1974; Sec. 92-425, R.C.M. 1947; (8)En. Sec. 6, Ch. 96, L. 1915; re-en. Sec. 2887, R.C.M. 1921; re-en. Sec. 2887, R.C.M. 1935; amd. Sec. 7, Ch. 550, L. 1977; Sec. 92-435, R.C.M. 1947; (9)En. Sec. 6, Ch. 96, L. 1915; re-en. Sec. 2868, R.C.M. 1921; re-en. Sec. 2868, R.C.M. 1935; Sec. 92-416, R.C.M. 1947; (10)En. Sec. 6, Ch. 96, L. 1915; re-en. Sec. 2881, R.C.M. 1921; re-en. Sec. 2881, R.C.M. 1935; amd. Sec. 8, Ch. 23, L. 1975; Sec. 92-429, R.C.M. 1947; (11)En. Sec. 6, Ch. 96, L. 1915; re-en. Sec. 2884, R.C.M. 1921; re-en. Sec. 2884, R.C.M. 1935; amd. Sec. 9, Ch. 23, L. 1975; Sec. 92-432, R.C.M. 1947; (12)En. 92-440 by Sec. 1, Ch. 108, L. 1973; Sec. 92-440, R.C.M. 1947; (13)En. 92-441 by Sec. 1, Ch. 109, L. 1973; Sec. 92-441, R.C.M. 1947; (14)En. Sec. 6, Ch. 96, L. 1915; re-en. Sec. 2873, R.C.M. 1921; re-en. Sec. 2873, R.C.M. 1935; Sec. 92-421, R.C.M. 1947; (15)En. Sec. 6, Ch. 96, L. 1915; re-en. Sec. 2889, R.C.M. 1921; re-en. Sec. 2889, R.C.M. 1935; Sec. 92-437, R.C.M. 1947; (16)En. Sec. 6, Ch. 96, L. 1915; re-en. Sec. 2886, R.C.M. 1921; re-en. Sec. 2886, R.C.M., 1935; Sec. 92-434, R.C.M. 1947; (17)En. Sec. 6, Ch. 96, L. 1915; re-en. Sec. 2860, R.C.M. 1921; re-en. Sec. 2860, R.C.M. 1935; Sec. 92-408, R.C.M. 1947; (18)En. Sec. 6, Ch. 96, L. 1915; re-en. Sec. 2861, R.C.M. 1921; re-en. Sec. 2861, R.C.M. 1935; Sec. 92-409, R.C.M. 1947; (19)En. 92-439 by Sec. 1, Ch. 107, L. 1973; Sec. 92-439, R.C.M. 1947; (20)En. 92-423.1 by Sec. 1, Ch. 444, L. 1973; Sec. 92-423.1, R.C.M. 1947; (21)En. Sec. 6, Ch. 96, L. 1915; re-en. Sec. 2876, R.C.M. 1921; re-en. Sec. 2876, R.C.M. 1935; Sec. 92-424, R.C.M. 1947; R.C.M. 1947, 92-401, 92-408, 92-409, 92-413, 92-416, 92-417, 92-421, 92-423.1, 92-423.2, 92-424, 92-425, 92-426, 92-429, 92-432, 92-433, 92-434, 92-435, 92-436, 92-437, 92-439, 92-440, 92-441, 92-1121.1(part); amd. Sec. 53, Ch. 397, L. 1979; amd. Sec. 1, Ch. 47, L. 1981; amd. Sec. 1, Ch. 349, L. 1981; amd. Sec. 1, Ch. 374, L. 1985; amd. Sec. 2, Ch. 464, L. 1987; amd. Sec. 7, Ch. 333, L. 1989; amd. Sec. 13, Ch. 613, L. 1989; amd. Sec. 6, Ch. 4, Sp. L. May 1990; amd. Sec. 1, Ch. 323, L. 1991; amd. Sec. 2, Ch. 480, L. 1991; amd. Sec. 1, Ch. 574, L. 1991; amd. Sec. 1, Ch. 555, L. 1993; amd. Sec. 1, Ch. 619, L. 1993; amd. Sec. 2, Ch. 628, L. 1993; amd. Sec. 1, Ch. 234, L. 1995; amd. Sec. 5, Ch. 243, L. 1995; amd. Sec. 1, Ch. 516, L. 1995; amd. Sec. 6, Ch. 276, L. 1997; amd. Sec. 1, Ch. 404, L. 1997; amd. Sec. 1, Ch. 500, L. 1997; amd. Sec. 72, Ch. 51, L. 1999; amd. Sec. 30, Ch. 224, L. 2003; amd. Sec. 5, Ch. 26, L. 2005; amd. Sec. 3, Ch. 140, L. 2005; amd. Secs. 12, 41, Ch. 416, L. 2005; amd. Sec. 20, Ch. 519, L. 2005; amd. Sec. 1, Ch. 359, L. 2007; amd. Sec. 2, Ch. 167, L. 2011.

Cross-References

Rehabilitation benefits, 39-71-1006.

Managed care and preferred provider organizations, Title 39, ch. 71, part 11.

39-71-117. Employer defined.

(1) “Employer” means:

- (a) the state and each county, city and county, city school district, and irrigation district; all other districts established by law; all public corporations and quasi-public corporations and public agencies; each person; each prime contractor; each firm, voluntary association, limited liability company, limited liability partnership, and private corporation, including any public service

- corporation and including an independent contractor who has a person in service under an appointment or contract of hire, expressed or implied, oral or written; and the legal representative of any deceased employer or the receiver or trustee of the deceased employer;
- (b) any association, corporation, limited liability company, limited liability partnership, or organization that seeks permission and meets the requirements set by the department by rule for a group of individual employers to operate as self-insured under plan No. 1 of this chapter;
 - (c) any nonprofit association, limited liability company, limited liability partnership, or corporation or other entity funded in whole or in part by federal, state, or local government funds that places community service participants, as described in 39-71-118(1)(e), with nonprofit organizations or associations or federal, state, or local government entities;
 - (d) subject to subsection (5), a religious corporation, religious organization, or religious trust receiving remuneration from nonmembers for:
 - (i) manufacturing or construction activities conducted by its members on or off the property owned or leased by the religious corporation, religious organization, or religious trust; or
 - (ii) agricultural labor and services performed off the property owned or leased by the religious corporation, religious organization, or religious trust; and
 - (e) an approved and authorized fiduciary, agent, or other person acting as fiscal agent under section 3504 of the Internal Revenue Code, 26 U.S.C. 3504, and 26 CFR 31.3504-1.
- (2) A temporary service contractor is the employer of a temporary worker for premium and loss experience purposes.
- (3) Except as provided in chapter 8 of this title, an employer defined in subsection (1) who uses the services of a worker furnished by another person, association, contractor, firm, limited liability company, limited liability partnership, or corporation, other than a temporary service contractor, is presumed to be the employer for workers' compensation premium and loss experience purposes for work performed by the worker. The presumption may be rebutted by substantial credible evidence of the following:
- (a) the person, association, contractor, firm, limited liability company, limited liability partnership, or corporation, other than a temporary service contractor, furnishing the services of a worker to another retains control over all aspects of the work performed by the worker, both at the inception of employment and during all phases of the work; and
 - (b) the person, association, contractor, firm, limited liability company, limited liability partnership, or corporation, other than a temporary service contractor, furnishing the services of a worker to another has obtained workers' compensation insurance for the worker in Montana both at the inception of employment and during all phases of the work performed.
- (4) An interstate or intrastate common or contract motor carrier that maintains a place of business in this state and uses an employee or worker in this state is considered the employer of that employee, is liable for workers' compensation premiums, and is subject to loss experience rating in this state unless:
- (a) the worker in this state is certified as an independent contractor as provided in 39-71-417; or

- (b) the person, association, contractor, firm, limited liability company, limited liability partnership, or corporation furnishing employees or workers in this state to a motor carrier has obtained Montana workers' compensation insurance on the employees or workers in Montana both at the inception of employment and during all phases of the work performed.
- (5) The definition of "employer" in subsection (1)(d) is limited to implementing the administrative purposes of this chapter and may not be interpreted or construed to create an employment relationship in any other context.
- (6) (a) A fiscal agent that qualifies under subsection (1)(e) and that is designated as a payor, using federal, state, or local government funds, under 26 CFR 31.3504-1 is considered to be the employer for the purposes of the Workers' Compensation Act of those workers for whom the fiscal agent is making payments.
- (b) The client of the fiscal agent, despite exercising control over the hiring, scheduling, and direction of the work tasks performed by the worker, is not the employer of that worker for the purposes of the Workers' Compensation Act.

History: En. 92-410.1 by Sec. 1, Ch. 154, L. 1973; R.C.M. 1947, 92-410.1(part); amd. Sec. 1, Ch. 480, L. 1985; amd. Sec. 64, Ch. 613, L. 1989; amd. Sec. 2, Ch. 323, L. 1991; amd. Sec. 1, Ch. 813, L. 1991; amd. Sec. 1, Ch. 458, L. 1993; amd. Sec. 29, Ch. 308, L. 1995; amd. Sec. 18, Ch. 344, L. 1995; amd. Sec. 2, Ch. 516, L. 1995; amd. Sec. 1, Ch. 172, L. 1997; amd. Sec. 4, Ch. 214, L. 2001; amd. Sec. 8, Ch. 448, L. 2005; amd. Sec. 6, Ch. 112, L. 2009; amd. Sec. 1, Ch. 364, L. 2015; amd. Sec. 1, Ch. 89, L. 2017.

39-71-118. Employee, worker, volunteer, volunteer firefighter, and volunteer emergency care provider defined – election of coverage.

- (1) As used in this chapter, the term "employee" or "worker" means:
 - (a) each person in this state, including a contractor other than an independent contractor, who is in the service of an employer, as defined by 39-71-117, under any appointment or contract of hire, expressed or implied, oral or written. The terms include aliens and minors, whether lawfully or unlawfully employed, and all of the elected and appointed paid public officers and officers and members of boards of directors of quasi-public or private corporations, except those officers identified in 39-71-401(2), while rendering actual service for the corporations for pay. Casual employees, as defined by 39-71-116, are included as employees if they are not otherwise covered by workers' compensation and if an employer has elected to be bound by the provisions of the compensation law for these casual employments, as provided in 39-71-401(2). Household or domestic employment is excluded.
 - (b) any juvenile who is performing work under authorization of a district court judge in a delinquency prevention or rehabilitation program;
 - (c) a person who is receiving on-the-job vocational rehabilitation training or other on-the-job training under a state or federal vocational training program, whether or not under an appointment or contract of hire with an employer, as defined in 39-71-117, and, except as provided in subsection (9), whether or not receiving payment from a third party. However, this subsection (1) (c) does not apply to students enrolled in vocational training programs, as outlined in this subsection, while they are on the premises of a public school or community college.

- (d) an aircrew member or other person who is employed as a volunteer under 67-2-105;
 - (e) a person, other than a juvenile as described in subsection (1)(b), who is performing community service for a nonprofit organization or association or for a federal, state, or local government entity under a court order, or an order from a hearings officer as a result of a probation or parole violation, whether or not under appointment or contract of hire with an employer, as defined in 39-71-117, and whether or not receiving payment from a third party. For a person covered by the definition in this subsection (1)(e):
 - (i) compensation benefits must be limited to medical expenses pursuant to 39-71-704 and an impairment award pursuant to 39-71-703 that is based upon the minimum wage established under Title 39, chapter 3, part 4, for a full-time employee at the time of the injury; and
 - (ii) premiums must be paid by the employer, as defined in 39-71-117(3), and must be based upon the minimum wage established under Title 39, chapter 3, part 4, for the number of hours of community service required under the order from the court or hearings officer.
 - (f) an inmate working in a federally certified prison industries program authorized under 53-30-132;
 - (g) a volunteer firefighter as described in 7-33-4109 or a person who provides ambulance services under Title 7, chapter 34, part 1;
 - (h) a person placed at a public or private entity's worksite pursuant to 53-4-704. The person is considered an employee for workers' compensation purposes only. The department of public health and human services shall provide workers' compensation coverage for recipients of cash assistance, as defined in 53-4-201, or for participants in the food stamp program, as defined in 53-2-902, who are placed at public or private worksites through an endorsement to the department of public health and human services' workers' compensation policy naming the public or private worksite entities as named insureds under the policy. The endorsement may cover only the entity's public assistance participants and may be only for the duration of each participant's training while receiving cash assistance or while participating in the food stamp program under a written agreement between the department of public health and human services and each public or private entity. The department of public health and human services may not provide workers' compensation coverage for individuals who are covered for workers' compensation purposes by another state or federal employment training program. Premiums and benefits must be based upon the wage that a probationary employee is paid for work of a similar nature at the assigned worksite.
 - (i) subject to subsection (11), a member of a religious corporation, religious organization, or religious trust while performing services for the religious corporation, religious organization, or religious trust, as described in 39-71-117(1)(d).
- (2) The terms defined in subsection (1) do not include a person who is:
- (a) performing voluntary service at a recreational facility and who receives no compensation for those services other than meals, lodging, or the use of the recreational facilities;
 - (b) performing services as a volunteer, except for a person who is otherwise entitled to coverage under the laws of this state. As used in this subsection

- (2)(b), “volunteer” means a person who performs services on behalf of an employer, as defined in 39-71-117, but who does not receive wages as defined in 39-71-123.
- (c) serving as a foster parent, licensed as a foster care provider in accordance with 52-2-621, and providing care without wage compensation to no more than six foster children in the provider’s own residence. The person may receive reimbursement for providing room and board, obtaining training, respite care, leisure and recreational activities, and providing for other needs and activities arising in the provision of in-home foster care.
 - d) performing temporary agricultural work for an employer if the person performing the work is otherwise exempt from the requirement to obtain workers’ compensation coverage under 39-71-401(2)(r) with respect to a company that primarily performs agricultural work at a fixed business location or under 39-71-401(2)(d) and is not required to obtain an independent contractor’s exemption certificate under 39-71-417 because the person does not regularly perform agricultural work away from the person’s own fixed business location. For the purposes of this subsection, the term “agricultural” has the meaning provided in 15-1-101(1)(a).
- (3) With the approval of the insurer, an employer may elect to include as an employee under the provisions of this chapter a volunteer as defined in subsection (2)(b) or a volunteer firefighter as defined in 7-33-4510.
- (4) (a) If the employer is a partnership, limited liability partnership, sole proprietor, or a member-managed limited liability company, the employer may elect to include as an employee within the provisions of this chapter any member of the partnership or limited liability partnership, the owner of the sole proprietorship, or any member of the limited liability company devoting full time to the partnership, limited liability partnership, proprietorship, or limited liability company business.
- (b) In the event of an election, the employer shall serve upon the employer’s insurer written notice naming the partners, sole proprietor, or members to be covered and stating the level of compensation coverage desired by electing the amount of wages to be reported, subject to the limitations in subsection (4)(d). A partner, sole proprietor, or member is not considered an employee within this chapter until notice has been given.
- (c) A change in elected wages must be in writing and is effective at the start of the next quarter following notification.
- (d) All weekly compensation benefits must be based on the amount of elected wages, subject to the minimum and maximum limitations of this subsection (4)(d). For premium ratemaking and for the determination of the weekly wage for weekly compensation benefits, the electing employer may elect an amount of not less than \$900 a month and not more than 1 1/2 times the state’s average weekly wage.
- (5) (a) If the employer is a quasi-public or a private corporation or a manager-managed limited liability company, the employer may elect to include as an employee within the provisions of this chapter any corporate officer or manager exempted under 39-71-401(2).
- (b) In the event of an election, the employer shall serve upon the employer’s insurer written notice naming the corporate officer or manager to be covered and stating the level of compensation coverage desired by electing the amount of wages to be reported, subject to the limitations in subsection (5)

- (d). A corporate officer or manager is not considered an employee within this chapter until notice has been given.
- (c) A change in elected wages must be in writing and is effective at the start of the next quarter following notification.
- (d) For the purposes of an election under this subsection (5), all weekly compensation benefits must be based on the amount of elected wages, subject to the minimum and maximum limitations of this subsection (5)(d). For premium ratemaking and for the determination of the weekly wage for weekly compensation benefits, the electing employer may elect an amount of not less than \$200 a week and not more than 1 1/2 times the state's average weekly wage.
- (6) Except as provided in Title 39, chapter 8, an employee or worker in this state whose services are furnished by a person, association, contractor, firm, limited liability company, limited liability partnership, or corporation, other than a temporary service contractor, to an employer, as defined in 39-71-117, is presumed to be under the control and employment of the employer. This presumption may be rebutted as provided in 39-71-117(3).
- (7) A student currently enrolled in an elementary, secondary, or postsecondary educational institution who is participating in work-based learning activities and who is paid wages by the educational institution or business partner is the employee of the entity that pays the student's wages for all purposes under this chapter. A student who is not paid wages by the business partner or the educational institution is a volunteer and is subject to the provisions of this chapter.
- (8) For purposes of this section, an "employee or worker in this state" means:
- (a) a resident of Montana who is employed by an employer and whose employment duties are primarily carried out or controlled within this state;
 - (b) a nonresident of Montana whose principal employment duties are conducted within this state on a regular basis for an employer;
 - (c) a nonresident employee of an employer from another state engaged in the construction industry, as defined in 39-71-116, within this state; or
 - (d) a nonresident of Montana who does not meet the requirements of subsection (8)(b) and whose employer elects coverage with an insurer that allows an election for an employer whose:
 - (i) nonresident employees are hired in Montana;
 - (ii) nonresident employees' wages are paid in Montana;
 - (iii) nonresident employees are supervised in Montana; and
 - (iv) business records are maintained in Montana.
- (9) An insurer may require coverage for all nonresident employees of a Montana employer who do not meet the requirements of subsection (8)(b) or (8)(d) as a condition of approving the election under subsection (8)(d).
- (10) (a) An ambulance service not otherwise covered by subsection (1)(g) or a paid or volunteer nontransporting medical unit, as defined in 50-6-302, in service to a town, city, or county may elect to include as an employee within the provisions of this chapter a volunteer emergency care provider who serves public safety through the ambulance service not otherwise covered by subsection (1)(g) or the paid or volunteer nontransporting medical unit. The ambulance service or nontransporting medical unit may purchase workers' compensation coverage from any entity authorized to provide

workers' compensation coverage under plan No. 1, 2, or 3 as provided in this chapter.

- (b) If there is an election under subsection (10)(a), the employer shall report payroll for all volunteer emergency care providers for premium and weekly benefit purposes based on the number of volunteer hours of each emergency care provider, but no more than 60 hours, times the state's average weekly wage divided by 40 hours.
 - (c) An ambulance service not otherwise covered by subsection (1)(g) or a paid or volunteer nontransporting medical unit, as defined in 50-6-302, may make a separate election to provide benefits as described in this subsection (10) to a member who is either a self-employed sole proprietor or partner who has elected not to be covered under this chapter, but who is covered as a volunteer emergency care provider pursuant to subsection (10)(a). When injured in the course and scope of employment as a volunteer emergency care provider, a member may instead of the benefits described in subsection (10)(b) be eligible for benefits at an assumed wage of the minimum wage established under Title 39, chapter 3, part 4, for 2,080 hours a year. If the separate election is made as provided in this subsection (10), payroll information for those self-employed sole proprietors or partners must be reported and premiums must be assessed on the assumed weekly wage.
 - (d) A volunteer emergency care provider who receives workers' compensation coverage under this section may not receive disability benefits under Title 19, chapter 17, if the individual is also eligible as a volunteer firefighter.
 - (e) An ambulance service not otherwise covered by subsection (1)(g) or a nontransporting medical unit, as defined in 50-6-302, that does not elect to purchase workers' compensation coverage for its volunteer emergency care providers under the provisions of this section shall annually notify its volunteer emergency care providers that coverage is not provided.
 - (f) (i) The term "volunteer emergency care provider" means a person who is licensed by the board of medical examiners as provided in Title 50, chapter 6, part 2, and who serves the public through an ambulance service not otherwise covered by subsection (1)(g) or a paid or volunteer nontransporting medical unit, as defined in 50-6-302, in service to a town, city, or county.
 (ii) The term does not include a volunteer emergency care provider who serves an employer as defined in 7-33-4510.
 - (g) The term "volunteer hours" means the time spent by a volunteer emergency care provider in the service of an employer or as a volunteer for a town, city, or county, including but not limited to training time, response time, and time spent at the employer's premises.
- (11) The definition of "employee" or "worker" in subsection (1)(i) is limited to implementing the administrative purposes of this chapter and may not be interpreted or construed to create an employment relationship in any other context.

History: En. Sec. 6, Ch. 96, L. 1915; re-en. Sec. 2863, R.C.M. 1921; amd. Sec. 3, Ch. 121, L. 1925; amd. Sec. 1, Ch. 139, L. 1931; re-en. Sec. 2863, R.C.M. 1935; amd. Sec. 3, Ch. 88, L. 1945; amd. Sec. 1, Ch. 153, L. 1963; amd. Sec. 1, Ch. 308, L. 1971; amd. Sec. 1, Ch. 44, L. 1975; amd. Sec. 1, Ch. 281, L. 1977; R.C.M. 1947, 92-411; amd. Sec. 1, Ch. 21, L. 1981; amd. Sec. 2, Ch. 336, L. 1985; amd. Sec. 20, Ch. 670, L. 1985; amd. Sec. 96, Ch. 370, L. 1987; amd. Sec. 67, Ch. 464, L. 1987; amd. Sec. 25, Ch. 658, L. 1987; amd. Sec. 11, Ch. 333, L. 1989;

amd. Sec. 1, Ch. 129, L. 1991; amd. Sec. 3, Ch. 323, L. 1991; amd. Sec. 2, Ch. 813, L. 1991; amd. Sec. 1, Ch. 154, L. 1993; amd. Sec. 8, Ch. 279, L. 1993; amd. Sec. 2, Ch. 458, L. 1993; amd. Sec. 1, Ch. 471, L. 1993; amd. Sec. 6, Ch. 561, L. 1993; amd. Sec. 1, Ch. 131, L. 1995; amd. Sec. 30, Ch. 308, L. 1995; amd. Sec. 19, Ch. 344, L. 1995; amd. Sec. 1, Ch. 424, L. 1995; amd. Sec. 3, Ch. 516, L. 1995; amd. Sec. 2, Ch. 172, L. 1997; amd. Sec. 2, Ch. 500, L. 1997; amd. Sec. 2, Ch. 515, L. 1997; amd. Sec. 1, Ch. 124, L. 1999; amd. Sec. 1, Ch. 238, L. 2001; amd. Sec. 3, Ch. 465, L. 2001; amd. Sec. 6, Ch. 26, L. 2005; amd. Sec. 7, Ch. 449, L. 2007; amd. Sec. 7, Ch. 112, L. 2009; amd. Sec. 1, Ch. 312, L. 2009; amd. Sec. 3, Ch. 167, L. 2011; amd. Sec. 8, Ch. 255, L. 2011; amd. Sec. 1, Ch. 262, L. 2011; amd. Sec. 3, Ch. 412, L. 2013; amd. Sec. 1, Ch. 330, L. 2015; amd. Sec. 2, Ch. 364, L. 2015; amd. Sec. 3, Ch. 95, L. 2017; amd. Sec. 2, Ch. 41, L. 2019; amd. Sec. 11, Ch. 220, L. 2019.

Cross-References

Independent contractor certification, 39-71-417.

39-71-119. Injury and accident defined.

- (1) "Injury" or "injured" means:
 - (a) internal or external physical harm to the body that is established by objective medical findings;
 - (b) damage to prosthetic devices or appliances, except for damage to eyeglasses, contact lenses, dentures, or hearing aids; or
 - (c) death.
- (2) An injury is caused by an accident. An accident is:
 - (a) an unexpected traumatic incident or unusual strain;
 - (b) identifiable by time and place of occurrence;
 - (c) identifiable by member or part of the body affected; and
 - (d) caused by a specific event on a single day or during a single work shift.
- (3) "Injury" or "injured" does not mean a physical or mental condition arising from:
 - (a) emotional or mental stress; or
 - (b) a nonphysical stimulus or activity.
- (4) "Injury" or "injured" does not include a disease that is not caused by an accident.
- (5)
 - (a) A cardiovascular, pulmonary, respiratory, or other disease, cerebrovascular accident, or myocardial infarction suffered by a worker is an injury only if the accident is the primary cause of the physical condition in relation to other factors contributing to the physical condition.
 - (b) "Primary cause", as used in subsection (5)(a), means a cause that, with a reasonable degree of medical certainty, is responsible for more than 50% of the physical condition.

History: Ap. p. Sec. 6, Ch. 96, L. 1915; re-en. Sec. 2870, R.C.M. 1921; re-en. Sec. 2870, R.C.M. 1935; amd. Sec. 6, Ch. 162, L. 1961; amd. Sec. 6, Ch. 149, L. 1965; amd. Sec. 1, Ch. 270, L. 1967; amd. Sec. 1, Ch. 488, L. 1973; Sec. 92-418, R.C.M. 1947; Ap. p. Sec. 2, Ch. 488, L. 1973; Sec. 92-418.1, R.C.M. 1947; (3)En. Sec. 6, Ch. 96, L. 1915; re-en. Sec. 2864, R.C.M. 1921; re-en. Sec. 2864, R.C.M. 1935; Sec. 92-412, R.C.M. 1947; R.C.M. 1947, 92-412, 92-418, 92-418.1; amd. Sec. 3, Ch. 464, L. 1987; amd. Sec. 6, Ch. 243, L. 1995.

39-71-120. Repealed.

Sec. 13, Ch. 448, L. 2005.

History: En. 92-438.1 by Sec. 1, Ch. 251, L. 1973; R.C.M. 1947, 92-438.1; amd. Sec. 5, Ch. 314, L. 1987; amd. Sec. 30, Ch. 500, L. 1995; amd. Sec. 11, Ch. 548, L. 1997.

39-71-121. Repealed.

Sec. 68, Ch. 464, L. 1987.

History: En. Sec. 2, Ch. 47, L. 1981.

39-71-122. Repealed.

Sec. 68, Ch. 464, L. 1987.

History: En. Sec. 3, Ch. 47, L. 1981.

39-71-123. Wages defined.

- (1) "Wages" means all remuneration paid for services performed by an employee for an employer, or income provided for in subsection (1)(d). Wages include the cash value of all remuneration paid in any medium other than cash. The term includes but is not limited to:
- (a) monetary commissions, bonuses, and remuneration at the regular hourly rate for overtime work, holidays, vacations, and periods of sickness;
 - (b) backpay or any similar pay made for or in regard to previous service by the employee for the employer, other than retirement or pension benefits from a qualified plan;
 - (c) tips or other gratuities received by the employee to the extent that tips or gratuities are documented by the employee to the employer for tax purposes;
 - (d) income or payment in the form of a draw, wage, net profit, or money received or taken by a sole proprietor or partner, regardless of whether the sole proprietor or partner has performed work or provided services for that remuneration;
 - (e) payments made to an employee on any basis other than time worked, including but not limited to piecework, an incentive plan, or profit-sharing arrangement;
 - (f) board if it constitutes a part of the employee's remuneration and is based on its actual value; and
 - (g) lodging, rent, or housing if it constitutes part of the employee's remuneration and is based on a value as set by administrative rule. The values set by administrative rule must address the general geographic proximity to available housing and may consider other reasonable factors that affect value.
- (2) The term "wages" does not include any of the following:
- (a) employee expense reimbursements or allowances for meals, lodging, travel, subsistence, and other expenses, as set forth in department rules;
 - (b) the amount of the payment made by the employer for employees, if the payment was made for:
 - (i) retirement or pension pursuant to a qualified plan as defined under the provisions of the Internal Revenue Code;
 - (ii) sickness or accident disability under a workers' compensation policy;
 - (iii) medical or hospitalization expenses in connection with sickness or accident disability, including health insurance for the employee or the employee's immediate family;
 - (iv) death, including life insurance for the employee or the employee's immediate family;

- (c) vacation or sick leave benefits accrued but not paid;
 - (d) special monetary rewards for individual invention or discovery; or
 - (e) monetary and other benefits paid to a person as part of public assistance, as defined in 53-4-201.
- (3) (a) Except as provided in subsection (3)(b), for compensation benefit purposes, the average actual earnings for the four pay periods immediately preceding the injury are the employee's wages, except that if the term of employment for the same employer is less than four pay periods, the employee's wages are the hourly rate times the number of hours in a week for which the employee was hired to work.
- (b) For good cause shown, if the use of the last four pay periods does not accurately reflect the claimant's employment history with the employer, the wage may be calculated by dividing the total earnings for an additional period of time, not to exceed 1 year prior to the date of injury, by the number of weeks in that period, including periods of idleness or seasonal fluctuations.
- (4) (a) For the purpose of calculating compensation benefits for an employee working concurrent employments, the average actual wages must be calculated as provided in subsection (3). As used in this subsection, "concurrent employment" means employment in which the employee was actually employed at the time of the injury and would have continued to be employed without a break in the term of employment if not for the injury.
- (b) Except as provided in 39-71-118(10)(c), the compensation benefits for a covered volunteer must be based on the average actual monetary wages in the volunteer's regular employment, except self-employment as a sole proprietor or partner who elected not to be covered, from which the volunteer is disabled by the injury incurred.
- (c) The compensation benefits for an employee working at two or more concurrent remunerated employments must be based on the aggregate of average actual monetary wages of all employments, except for the wages earned by individuals while engaged in the employments outlined in 39-71-401(3)(a) who elected not to be covered, from which the employee is disabled by the injury incurred.
- (5) For the purposes of calculating compensation benefits for an employee working for an employer, as provided in 39-71-117(1)(d), and for calculating premiums to be paid by that employer, the wages must be based upon all hours worked multiplied by the mean hourly wage by area, as published by the department in the edition of Montana Informational Wage Rates by Occupation, adopted annually by the department, that is in effect as of the date of injury or for the period in which the premium is due.

History: En. Sec. 4, Ch. 464, L. 1987; amd. Sec. 12, Ch. 333, L. 1989; amd. Sec. 2, Ch. 129, L. 1991; amd. Sec. 2, Ch. 261, L. 1991; amd. Sec. 2, Ch. 154, L. 1993; amd. Sec. 23, Ch. 619, L. 1993; amd. Sec. 2, Ch. 131, L. 1995; amd. Sec. 7, Ch. 243, L. 1995; amd. Sec. 29, Ch. 491, L. 1997; amd. Sec. 2, Ch. 124, L. 1999; amd. Sec. 2, Ch. 377, L. 1999; amd. Sec. 2, Ch. 238, L. 2001; amd. Sec. 4, Ch. 465, L. 2001; amd. Sec. 8, Ch. 112, L. 2009; amd. Sec. 9, Ch. 255, L. 2011; amd. Sec. 4, Ch. 412, L. 2013; amd. Sec. 1, Ch. 329, L. 2017.

39-71-124. Applicability of Workers' Compensation Act – exceptions.

Except as provided in 39-71-407, 39-71-601, and 39-71-603 [and as specified in 39-71-1401], this chapter applies to injuries and occupational diseases. (Bracketed language void on occurrence of contingency–sec. 7, Ch. 158, L. 2019.)

History: En. Sec. 1, Ch. 416, L. 2005; amd. Sec. 4, Ch. 158, L. 2019.

Part 2**Administrative Provisions****Part Cross-References**

Definitions, 39-71-116.

Employer defined, 39-71-117.

Employee defined, 39-71-118.

39-71-201. (Temporary) Workers' compensation administration fund.

- (1) A workers' compensation administration fund is established out of which are to be paid upon lawful appropriation all costs of administering the Workers' Compensation Act, with the exception of the certification of independent contractors provided for in Title 39, chapter 71, part 4, the subsequent injury fund provided for in 39-71-907, and the uninsured employers' fund provided for in 39-71-503. The department may use the workers' compensation administration fund to reimburse premiums for high-quality work-based learning programs, as provided in 39-71-319. The department shall collect and deposit in the state treasury to the credit of the workers' compensation administration fund:
 - (a) all fees and penalties provided in 39-71-107, 39-71-205, 39-71-223, 39-71-304, 39-71-307, 39-71-315, 39-71-316, 39-71-401(6), 39-71-2204, 39-71-2205, and 39-71-2337; and
 - (b) all fees paid by an assessment on paid losses, plus administrative fines and interest provided by this section.
- (2) For the purposes of this section, paid losses include the following benefits paid during the preceding calendar year for injuries covered by the Workers' Compensation Act without regard to the application of any deductible whether the employer or the insurer pays the losses:
 - (a) total compensation benefits paid; and
 - (b) except for medical benefits in excess of \$200,000 for each occurrence that are exempt from assessment, total medical benefits paid for medical treatment rendered to an injured worker, including hospital treatment and prescription drugs.
- (3) Each plan No. 1 employer, plan No. 2 insurer subject to the provisions of this section, and plan No. 3, the state fund, shall file annually on March 1 in the form and containing the information required by the department a report of paid losses pursuant to subsection (2).
- (4) Each employer enrolled under compensation plan No. 1, compensation plan No. 2, or compensation plan No. 3, the state fund, shall pay its proportionate share determined by the paid losses in the preceding calendar year of all costs of administering and regulating the Workers' Compensation Act, with the exception of the certification of independent contractors provided for in Title 39, chapter 71, part 4, the subsequent injury fund provided for in 39-71-907, and the

- uninsured employers' fund provided for in 39-71-503. In addition, compensation plan No. 3, the state fund, shall pay a proportionate share of these costs based upon paid losses for claims arising before July 1, 1990.
- (5) (a) Each employer enrolled under compensation plan No. 1 shall pay an assessment to fund administrative and regulatory costs. The assessment may be up to 4% of the paid losses paid in the preceding calendar year by or on behalf of the plan No. 1 employer. Any entity, other than the department, that assumes the obligations of an employer enrolled under compensation plan No. 1 is considered to be the employer for the purposes of this section.
- (b) An employer formerly enrolled under compensation plan No. 1 shall pay an assessment to fund administrative and regulatory costs. The assessment may be up to 4% of the paid losses paid in the preceding calendar year by or on behalf of the employer for claims arising out of the time when the employer was enrolled under compensation plan No. 1.
- (c) By April 30 of each year, the department shall notify employers described in subsections (5)(a) and (5)(b) of the percentage of the assessment that comprises the compensation plan No. 1 proportionate share of administrative and regulatory costs. The assessment provided for by this subsection (5) must be paid by the employer in:
- (i) one installment due on July 1; or
 - (ii) two equal installments due on July 1 and December 31 of each year.
- (d) If an employer fails to timely pay to the department the assessment under this section, the department may impose on the employer an administrative fine of \$500 plus interest on the delinquent amount at the annual interest rate of 12%. Administrative fines and interest must be deposited in the workers' compensation administration fund and may be used to pay the reimbursement of premiums required under 39-71-319.
- (6) (a) Compensation plan No. 3, the state fund, shall pay an assessment to fund administrative and regulatory costs attributable to claims arising before July 1, 1990. The assessment may be up to 4% of the paid losses paid in the preceding calendar year for claims arising before July 1, 1990. As required by 39-71-2352, the state fund may not pass along to insured employers the cost of the assessment for administrative and regulatory costs that is attributable to claims arising before July 1, 1990.
- (b) The assessment must be paid in:
- (i) one installment due on July 1; or
 - (ii) two equal installments due on July 1 and December 31 of each year.
- (c) If the state fund fails to timely pay to the department the assessment under this section, the department may impose on the state fund an administrative fine of \$500 plus interest on the delinquent amount at the annual interest rate of 12%. Administrative fines and interest must be deposited in the workers' compensation administration fund.
- (7) (a) Each employer insured under compensation plan No. 2 or plan No. 3, the state fund, shall pay a premium surcharge to fund administrative and regulatory costs. The premium surcharge must be collected by each plan No. 2 insurer and by plan No. 3, the state fund, from each employer that it insures. The premium surcharge must be stated as a separate cost on an insured employer's policy or on a separate document submitted to the insured employer and must be identified as "workers' compensation

regulatory assessment surcharge". The premium surcharge must be excluded from the definition of premiums for all purposes, including computation of insurance producers' commissions or premium taxes. However, an insurer may cancel a workers' compensation policy for nonpayment of the premium surcharge. When collected, assessments may not constitute an element of loss for the purpose of establishing rates for workers' compensation insurance but, for the purpose of collection, must be treated as a separate cost imposed upon insured employers.

- (b) The amount to be funded by the premium surcharge may be up to 4% of the paid losses paid in the preceding calendar year by or on behalf of all plan No. 2 insurers and may be up to 4% of paid losses for claims arising on or after July 1, 1990, for plan No. 3, the state fund, plus or minus any adjustments as provided by subsection (7)(f). The amount to be funded must be divided by the total premium paid by all employers enrolled under compensation plan No. 2 or plan No. 3 during the preceding calendar year. A single premium surcharge rate, applicable to all employers enrolled in compensation plan No. 2 or plan No. 3, must be calculated annually by the department by not later than April 30. The resulting rate, expressed as a percentage, is levied against the premium paid by each employer enrolled under compensation plan No. 2 or plan No. 3 in the next fiscal year.
 - (c) On or before April 30 of each year, the department, in consultation with the advisory organization designated pursuant to 33-16-1023, shall notify plan No. 2 insurers and plan No. 3, the state fund, of the premium surcharge percentage to be effective for policies written or renewed annually on and after July 1 of that year.
 - (d) The premium surcharge must be paid whenever the employer pays a premium to the insurer. Each insurer shall collect the premium surcharge levied against every employer that it insures. Each insurer shall pay to the department all money collected as a premium surcharge within 20 days of the end of the calendar quarter in which the money was collected. If an insurer fails to timely pay to the department the premium surcharge collected under this section, the department may impose on the insurer an administrative fine of \$500 plus interest on the delinquent amount at the annual interest rate of 12%. Administrative fines and interest must be deposited in the workers' compensation administration fund and may be used to pay the reimbursement of premiums required under 39-71-319.
 - (e) If an employer fails to remit to an insurer the total amount due for the premium and premium surcharge, the amount received by the insurer must be applied to the premium surcharge first and the remaining amount applied to the premium due.
 - (f) The amount actually collected as a premium surcharge in a given year must be compared to the assessment on the paid losses paid in the preceding year. Any excess amount collected must be deducted from the amount to be collected as a premium surcharge in the following year. The amount collected that is less than the assessed amount must be added to the amount to be collected as a premium surcharge in the following year.
- (8) By July 1, an insurer under compensation plan No. 2 that paid benefits in the preceding calendar year but that will not collect any premium for coverage in the following fiscal year shall pay an assessment of up to 4% of paid losses paid

- in the preceding calendar year. The department shall determine and notify the insurer by April 30 of each year of the amount that is due by July 1.
- (9) An employer that makes a first-time application for permission to enroll under compensation plan No. 1 shall pay an assessment of \$500 within 15 days of being granted permission by the department to enroll under compensation plan No. 1.
 - (10) The department shall deposit all funds received pursuant to this section in the state treasury, as provided in this section.
 - (11) The administration fund must be debited with expenses incurred by the department in the general administration of the provisions of this chapter, including the salaries of its members, officers, and employees and the travel expenses of the members, officers, and employees, as provided for in 2-18-501 through 2-18-503, incurred while on the business of the department either within or without the state. Reimbursement of premiums required under 39-71-319 by the workers' compensation administration fund also is a debit on the fund.
 - (12) Disbursements from the administration fund must be made after being approved by the department upon claim for disbursement.
 - (13) The department may assess and collect the workers' compensation regulatory assessment surcharge from uninsured employers, as defined in 39-71-501, that fail to properly comply with the coverage requirements of the Workers' Compensation Act. Any amounts collected by the department pursuant to this subsection must be deposited in the workers' compensation administration fund. (Terminates June 30, 2023—sec. 7, Ch. 400, L. 2019.)

39-71-201. (Effective July 1, 2023) **Workers' compensation administration fund.**

- (1) A workers' compensation administration fund is established out of which are to be paid upon lawful appropriation all costs of administering the Workers' Compensation Act, with the exception of the certification of independent contractors provided for in Title 39, chapter 71, part 4, the subsequent injury fund provided for in 39-71-907, and the uninsured employers' fund provided for in 39-71-503. The department shall collect and deposit in the state treasury to the credit of the workers' compensation administration fund:
 - (a) all fees and penalties provided in 39-71-107, 39-71-205, 39-71-223, 39-71-304, 39-71-307, 39-71-315, 39-71-316, 39-71-401(6), 39-71-2204, 39-71-2205, and 39-71-2337; and
 - (b) all fees paid by an assessment on paid losses, plus administrative fines and interest provided by this section.
- (2) For the purposes of this section, paid losses include the following benefits paid during the preceding calendar year for injuries covered by the Workers' Compensation Act without regard to the application of any deductible whether the employer or the insurer pays the losses:
 - (a) total compensation benefits paid; and
 - (b) except for medical benefits in excess of \$200,000 for each occurrence that are exempt from assessment, total medical benefits paid for medical treatment rendered to an injured worker, including hospital treatment and prescription drugs.
- (3) Each plan No. 1 employer, plan No. 2 insurer subject to the provisions of this section, and plan No. 3, the state fund, shall file annually on March 1 in the

- form and containing the information required by the department a report of paid losses pursuant to subsection (2).
- (4) Each employer enrolled under compensation plan No. 1, compensation plan No. 2, or compensation plan No. 3, the state fund, shall pay its proportionate share determined by the paid losses in the preceding calendar year of all costs of administering and regulating the Workers' Compensation Act, with the exception of the certification of independent contractors provided for in Title 39, chapter 71, part 4, the subsequent injury fund provided for in 39-71-907, and the uninsured employers' fund provided for in 39-71-503. In addition, compensation plan No. 3, the state fund, shall pay a proportionate share of these costs based upon paid losses for claims arising before July 1, 1990.
- (5) (a) Each employer enrolled under compensation plan No. 1 shall pay an assessment to fund administrative and regulatory costs. The assessment may be up to 4% of the paid losses paid in the preceding calendar year by or on behalf of the plan No. 1 employer. Any entity, other than the department, that assumes the obligations of an employer enrolled under compensation plan No. 1 is considered to be the employer for the purposes of this section.
- (b) An employer formerly enrolled under compensation plan No. 1 shall pay an assessment to fund administrative and regulatory costs. The assessment may be up to 4% of the paid losses paid in the preceding calendar year by or on behalf of the employer for claims arising out of the time when the employer was enrolled under compensation plan No. 1.
- (c) By April 30 of each year, the department shall notify employers described in subsections (5)(a) and (5)(b) of the percentage of the assessment that comprises the compensation plan No. 1 proportionate share of administrative and regulatory costs. The assessment provided for by this subsection (5) must be paid by the employer in:
- (i) one installment due on July 1; or
 - (ii) two equal installments due on July 1 and December 31 of each year.
- (d) If an employer fails to timely pay to the department the assessment under this section, the department may impose on the employer an administrative fine of \$500 plus interest on the delinquent amount at the annual interest rate of 12%. Administrative fines and interest must be deposited in the workers' compensation administration fund.
- (6) (a) Compensation plan No. 3, the state fund, shall pay an assessment to fund administrative and regulatory costs attributable to claims arising before July 1, 1990. The assessment may be up to 4% of the paid losses paid in the preceding calendar year for claims arising before July 1, 1990. As required by 39-71-2352, the state fund may not pass along to insured employers the cost of the assessment for administrative and regulatory costs that is attributable to claims arising before July 1, 1990.
- (b) The assessment must be paid in:
- (i) one installment due on July 1; or
 - (ii) two equal installments due on July 1 and December 31 of each year.
- (c) If the state fund fails to timely pay to the department the assessment under this section, the department may impose on the state fund an administrative fine of \$500 plus interest on the delinquent amount at the annual interest rate of 12%. Administrative fines and interest must be deposited in the workers' compensation administration fund.

- (7) (a) Each employer insured under compensation plan No. 2 or plan No. 3, the state fund, shall pay a premium surcharge to fund administrative and regulatory costs. The premium surcharge must be collected by each plan No. 2 insurer and by plan No. 3, the state fund, from each employer that it insures. The premium surcharge must be stated as a separate cost on an insured employer's policy or on a separate document submitted to the insured employer and must be identified as "workers' compensation regulatory assessment surcharge". The premium surcharge must be excluded from the definition of premiums for all purposes, including computation of insurance producers' commissions or premium taxes. However, an insurer may cancel a workers' compensation policy for nonpayment of the premium surcharge. When collected, assessments may not constitute an element of loss for the purpose of establishing rates for workers' compensation insurance but, for the purpose of collection, must be treated as a separate cost imposed upon insured employers.
- (b) The amount to be funded by the premium surcharge may be up to 4% of the paid losses paid in the preceding calendar year by or on behalf of all plan No. 2 insurers and may be up to 4% of paid losses for claims arising on or after July 1, 1990, for plan No. 3, the state fund, plus or minus any adjustments as provided by subsection (7)(f). The amount to be funded must be divided by the total premium paid by all employers enrolled under compensation plan No. 2 or plan No. 3 during the preceding calendar year. A single premium surcharge rate, applicable to all employers enrolled in compensation plan No. 2 or plan No. 3, must be calculated annually by the department by not later than April 30. The resulting rate, expressed as a percentage, is levied against the premium paid by each employer enrolled under compensation plan No. 2 or plan No. 3 in the next fiscal year.
- (c) On or before April 30 of each year, the department, in consultation with the advisory organization designated pursuant to 33-16-1023, shall notify plan No. 2 insurers and plan No. 3, the state fund, of the premium surcharge percentage to be effective for policies written or renewed annually on and after July 1 of that year.
- (d) The premium surcharge must be paid whenever the employer pays a premium to the insurer. Each insurer shall collect the premium surcharge levied against every employer that it insures. Each insurer shall pay to the department all money collected as a premium surcharge within 20 days of the end of the calendar quarter in which the money was collected. If an insurer fails to timely pay to the department the premium surcharge collected under this section, the department may impose on the insurer an administrative fine of \$500 plus interest on the delinquent amount at the annual interest rate of 12%. Administrative fines and interest must be deposited in the workers' compensation administration fund.
- (e) If an employer fails to remit to an insurer the total amount due for the premium and premium surcharge, the amount received by the insurer must be applied to the premium surcharge first and the remaining amount applied to the premium due.
- (f) The amount actually collected as a premium surcharge in a given year must be compared to the assessment on the paid losses paid in the preceding year. Any excess amount collected must be deducted from the amount to be collected as a premium surcharge in the following year. The amount

- collected that is less than the assessed amount must be added to the amount to be collected as a premium surcharge in the following year.
- (8) By July 1, an insurer under compensation plan No. 2 that paid benefits in the preceding calendar year but that will not collect any premium for coverage in the following fiscal year shall pay an assessment of up to 4% of paid losses paid in the preceding calendar year. The department shall determine and notify the insurer by April 30 of each year of the amount that is due by July 1.
 - (9) An employer that makes a first-time application for permission to enroll under compensation plan No. 1 shall pay an assessment of \$500 within 15 days of being granted permission by the department to enroll under compensation plan No. 1.
 - (10) The department shall deposit all funds received pursuant to this section in the state treasury, as provided in this section.
 - (11) The administration fund must be debited with expenses incurred by the department in the general administration of the provisions of this chapter, including the salaries of its members, officers, and employees and the travel expenses of the members, officers, and employees, as provided for in 2-18-501 through 2-18-503, incurred while on the business of the department either within or without the state.
 - (12) Disbursements from the administration fund must be made after being approved by the department upon claim for disbursement.
 - (13) The department may assess and collect the workers' compensation regulatory assessment surcharge from uninsured employers, as defined in 39-71-501, that fail to properly comply with the coverage requirements of the Workers' Compensation Act. Any amounts collected by the department pursuant to this subsection must be deposited in the workers' compensation administration fund.

History: En. 92-116.1 by Sec. 1, Ch. 253, L. 1973; amd. Sec. 1, Ch. 318, L. 1975; amd. Sec. 28, Ch. 453, L. 1977; R.C.M. 1947, 92-116.1; amd. Sec. 18, Ch. 104, L. 1979; amd. Sec. 28, Ch. 557, L. 1987; amd. Sec. 14, Ch. 613, L. 1989; amd. Sec. 2, Ch. 558, L. 1991; amd. Sec. 2, Ch. 555, L. 1993; amd. Sec. 2, Ch. 514, L. 1995; amd. Secs. 1, 2, Ch. 385, L. 1997; amd. Secs. 3, 4, Ch. 377, L. 1999; amd. Sec. 51, Ch. 7, L. 2001; amd. Sec. 5, Ch. 214, L. 2001; amd. Sec. 3, Ch. 103, L. 2005; amd. Sec. 3, Ch. 133, L. 2005; amd. Sec. 13, Ch. 416, L. 2005; amd. Sec. 2, Ch. 117, L. 2007; amd. Sec. 15, Ch. 27, L. 2009; amd. Sec. 9, Ch. 112, L. 2009; amd. Sec. 1, Ch. 365, L. 2015; amd. Sec. 3, Ch. 400, L. 2019.

Cross-References

Collection and disposition of fines, penalties, forfeitures, and fees, 3-10-601.

39-71-202. Office of department.

The department shall keep its principal office in the capital of the state. It may rent or lease quarters for the conduct of its administrative duties.

History: En. Sec. 2, Ch. 96, L. 1915; re-en. Sec. 2826, R.C.M. 1921; re-en. Sec. 2826, R.C.M. 1935; amd. Sec. 1, Ch. 234, L. 1969; amd. Sec. 1, Ch. 23, L. 1975; R.C.M. 1947, 92-111; amd. Sec. 64, Ch. 613, L. 1989.

39-71-203. Powers of department – rules.

- (1) The department is hereby vested with full power, authority, and jurisdiction to do and perform any and all things that are necessary or convenient in the exercise of any power, authority, or jurisdiction conferred upon it under this chapter.
- (2) The department may adopt rules to carry out the provisions of this chapter.

History: En. Sec. 18, Ch. 96, L. 1915; re-en. Sec. 2940, R.C.M. 1921; re-en. Sec. 2940, R.C.M. 1935; amd. Sec. 26, Ch. 23, L. 1975; R.C.M. 1947, 92-814; amd. Sec. 5, Ch. 464, L. 1987; amd. Sec. 1, Ch. 525, L. 1987; amd. Sec. 15, Ch. 613, L. 1989.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

39-71-204. Hearings – rules of evidence – appeal, rescission, alteration, or amendment by department of its orders, decisions, or awards – effect – appeal.

- (1) The statutory and common-law rules of evidence do not apply to a hearing before the department under this chapter. A petition for a hearing before the department must be filed within 2 years after benefits are denied.
- (2) A hearing under this chapter may be conducted by telephone or by video conference.
- (3) The department has continuing jurisdiction over all its orders, decisions, and awards and may, at any time, upon notice, and after opportunity to be heard is given to the parties in interest, rescind, alter, or amend any order, decision, or award made by it upon good cause.
- (4) Any order, decision, or award rescinding, altering, or amending a prior order, decision, or award has the same effect as original orders or awards.
- (5) If a party is aggrieved by a department order, the party may appeal the dispute to the workers' compensation judge.

History: En. Sec. 20, Ch. 96, L. 1915; re-en. Sec. 2952, R.C.M. 1921; amd. Sec. 9, Ch. 177, L. 1929; re-en. Sec. 2952, R.C.M. 1935; amd. Sec. 1, Ch. 67, L. 1937; amd. Sec. 40, Ch. 23, L. 1975; R.C.M. 1947, 92-826; amd. Sec. 1, Ch. 63, L. 1979; amd. Sec. 6, Ch. 464, L. 1987; amd. Sec. 64, Ch. 613, L. 1989; amd. Sec. 4, Ch. 103, L. 2005.

39-71-205. Department authorized to charge certain fees – disposition of.

- (1) The department shall have power and authority to charge and collect a fee for copies of papers and records, including certified copies of documents and orders filed in its office, sufficient to recover the cost of the material and the time expended, as fixed by the department.
- (2) The department shall have power and authority to fix and collect reasonable charges for publications issued under its authority.
- (3) The fees charged and collected under this section shall be paid monthly into the treasury of the state to the credit of the state special revenue fund and shall be accompanied by detailed statement thereof.

History: En. Sec. 2, Ch. 96, L. 1915; re-en. Sec. 2834, R.C.M. 1921; re-en. Sec. 2834, R.C.M. 1935; amd. Sec. 165, Ch. 147, L. 1963; amd. Sec. 4, Ch. 23, L. 1975; R.C.M. 1947, 92-119; amd. Sec. 2, Ch. 21, L. 1981; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 64, Ch. 613, L. 1989.

39-71-206. Legal advisers of department and state fund – investigative and prosecution services.

- (1) The attorney general is the legal adviser of the department and the state fund and shall represent either entity in all proceedings if requested by the department or state fund. The department and state fund may employ other attorneys or legal advisers as they consider necessary.
- (2) As provided in 2-15-2015, the attorney general shall provide investigative and prosecution services to the state fund with respect to violations of this chapter.

History: En. Sec. 2, Ch. 96, L. 1915; re-en. Sec. 2835, R.C.M. 1921; re-en. Sec. 2835, R.C.M. 1935; amd. Sec. 1, Ch. 162, L. 1937; amd. Sec. 174, Ch. 147, L. 1963; amd. Sec. 5, Ch. 23, L. 1975; R.C.M. 1947, 92-120; amd. Sec. 1, Ch. 283, L. 1983; amd. Sec. 16, Ch. 613, L. 1989; amd. Sec. 2, Ch. 296, L. 1993; amd. Sec. 14, Ch. 416, L. 2005.

Cross-References

Compensation plan No. 3, Title 39, ch. 71, part 23.

39-71-207. Repealed.

Sec. 4, Ch. 239, L. 1989.

History: En. 92-121 by Sec. 1, Ch. 332, L. 1973; R.C.M. 1947, 92-121; amd. Sec. 51, Ch. 613, L. 1989.

39-71-208. Blank forms, minutes, and records.

The department shall cause to be printed such blank forms as it considers necessary to facilitate or promote the efficient administration of this chapter. It shall provide a record of all awards made by the department and such other books or records as it considers necessary for the purpose and efficient administration of this chapter. All such records are to be kept in the office of the department.

History: En. Sec. 2, Ch. 96, L. 1915; re-en. Sec. 2832, R.C.M. 1921; re-en. Sec. 2832, R.C.M. 1935; amd. Sec. 2, Ch. 23, L. 1975; R.C.M. 1947, 92-117; amd. Sec. 1, Ch. 103, L. 1979; amd. Sec. 64, Ch. 613, L. 1989.

39-71-209. Publication of reports and bulletins authorized.

The department shall have the power and authority to publish and distribute at its discretion from time to time such further reports and bulletins covering its operations, proceedings, and matters relative to its work as it may deem advisable.

History: En. Sec. 2, Ch. 96, L. 1915; re-en. Sec. 2833, R.C.M. 1921; re-en. Sec. 2833, R.C.M. 1935; amd. Sec. 41, Ch. 93, L. 1969; amd. Sec. 3, Ch. 23, L. 1975; R.C.M. 1947, 92-118; amd. Sec. 12, Ch. 125, L. 1983; amd. Sec. 64, Ch. 613, L. 1989.

39-71-210. Repealed.

Sec. 3, Ch. 370, L. 1989.

History: En. Sec. 25, Ch. 96, L. 1915; re-en. Sec. 2968, R.C.M. 1921; re-en. Sec. 2968, R.C.M. 1935; amd. Sec. 50, Ch. 23, L. 1975; R.C.M. 1947, 92-842; amd. Sec. 2, Ch. 103, L. 1979; amd. Sec. 64, Ch. 613, L. 1989.

39-71-211. Fraud detection and prevention unit – expenditure accounting.

- (1) The state fund shall establish a fraud prevention and detection unit. The unit is responsible for developing detection and prevention procedures, providing detection services, and providing training in the prevention and detection of fraudulent conduct under this chapter that is subject to prosecution under Title 45. The unit shall refer all cases of suspected fraudulent conduct to the workers' compensation fraud investigation and prosecution office established in 2-15-2015.
- (2) The state fund shall expend money to investigate fraud pursuant to this section and shall separately account for money expended.

History: En. Sec. 3, Ch. 296, L. 1993; amd. Sec. 15, Ch. 416, L. 2005.

Cross-References

Fraud, 28-2-404 through 28-2-406.

39-71-212 through 39-71-220 reserved.**39-71-221. Repealed.**

Sec. 10, Ch. 26, L. 2005.

History: En. 92-844 by Sec. 1, Ch. 25, L. 1975; R.C.M. 1947, 92-844; amd. Sec. 64, Ch. 613, L. 1989.

39-71-222. Repealed.

Sec. 10, Ch. 26, L. 2005.

History: En. 92-845 by Sec. 2, Ch. 25, L. 1975; R.C.M. 1947, 92-845; amd. Sec. 64, Ch. 613, L. 1989.

39-71-223. Certified copies of public records – fees.

- (1) The department shall, on demand, furnish a certified copy of any public record to a person who has a right to inspect it, if the record is of a nature permitting such copying, or shall furnish reasonable opportunity to inspect or copy.
- (2) The department may establish fees reasonably calculated to reimburse the department for its actual cost in making such records available.

History: En. 92-846 by Sec. 3, Ch. 25, L. 1975; R.C.M. 1947, 92-846; amd. Sec. 64, Ch. 613, L. 1989

Cross-References

Right to know, Art. II, sec. 9, Mont. Const.

Public participation in governmental operations, Title 2, ch. 3.

Adoption and publication of rules, Title 2, ch. 4, part 3.

39-71-224. Records exempt from disclosure – separation of exempt material from nonexempt.

- (1) In assuring that the right of individual privacy so essential to the well-being of a free society shall not be infringed without the showing of a compelling

state interest, the following public records of the department are exempt from disclosure:

- (a) information of a personal nature such as personal, medical, or similar information if the public disclosure thereof would constitute an unreasonable invasion of privacy, unless the public interest by clear and convincing evidence requires disclosure in the particular instance. The party seeking disclosure shall have the burden of showing that public disclosure would not constitute an unreasonable invasion of privacy.
 - (b) any public records or information, the disclosure of which is prohibited by federal law or regulations.
- (2) If any public record of the department contains material which is not exempt under subsection (1) of this section, as well as material which is exempt from disclosure, the department shall separate the exempt and nonexempt and make the nonexempt material available for examination.

History: En. 92-847 by Sec. 4, Ch. 25, L. 1975; R.C.M. 1947, 92-847; amd. Sec. 64, Ch. 613, L. 1989.

39-71-225. Workers' compensation database system.

- (1) The department shall develop a workers' compensation database system to generate management information about Montana's workers' compensation system. The database system must be used to collect and compile information from insurers, employers, health care providers, claimants, claims examiners, rehabilitation providers, and the legal profession.
- (2) Data collected must be used to provide:
 - (a) management information to the legislative and executive branches for the purpose of making policy and management decisions, including but not limited to:
 - (i) performance information to enable the state to enact remedial efforts to ensure quality, control abuse, and enhance cost control;
 - (ii) information on medical, indemnity, and rehabilitation costs, utilization, and trends;
 - (iii) information on litigation and attorney involvement for the purpose of identifying trends, problem areas, and the costs of legal involvement;
 - (b) current and prior claim information to any insurer that is at risk on a claim, or that is alleged to be at risk in any administrative or judicial proceeding, to determine claims liability or for fraud investigation. The department may release information only upon written request by the insurer and may disclose only the claimant's name, claimant's identification number, prior claim number, date of injury, body part involved, and name and address of the insurer and claims examiner on each claim filed. Information obtained by an insurer pursuant to this section must remain confidential and may not be disclosed to a third party except to the extent necessary for determining claim liability or for fraud investigation.
 - (c) current and prior claim information to law enforcement agencies for purposes of fraud investigation or prosecution; and
 - (d) to any insurer that is at risk on a claim, information identifying whether the claimant has been certified by the department as a person with a disability. Information obtained by an insurer pursuant to this subsection (2)(d) must remain confidential and may not be disclosed to a third party except as

- necessary to implement the provisions of Title 39, chapter 71, part 9. An insurer may disclose to the employer that the claimant has been certified by the department and of the potential for a limit on the insurer's liability and of potential reimbursement by the subsequent injury fund.
- (3) The department is authorized to collect from insurers, employers, medical providers, the legal profession, and others the information necessary to generate the workers' compensation database system.
 - (4) The workers' compensation database system must be designed in accordance with the following principles:
 - (a) avoidance of duplication and inconsistency;
 - (b) reasonable availability of data elements;
 - (c) value of information collected to be commensurate with the cost of retrieving the collected information;
 - (d) uniformity to permit efficiency of collection and to allow interstate comparisons;
 - (e) a workable mechanism to ensure the accuracy of the data collected and to protect the confidentiality of collected data;
 - (f) reasonable availability of the data at a fair cost to the user;
 - (g) a broad application to plan No. 1, plan No. 2, and plan No. 3 insurers;
 - (h) compatibility with electronic data reporting;
 - (i) reporting procedures that can be handled through private data collection systems that adhere to the provisions of subsections (4)(a) through (4)(h);
 - (j) implementation of reporting requirements that allow reasonable lead time for compliance.
 - (5) The department shall publish an annual report on the information compiled.
 - (6) Users of information obtained from the workers' compensation database under this section are liable for damages arising from misuse or unlawful dissemination of database information.
 - (7) An insurer or a third-party administrator who submitted 50 or more "first reports of injury" to the department in the preceding calendar year shall electronically submit the reports and any other reports related to the reported claims in a nationally recognized format specified by department rule.
 - (8) The department may adopt rules to implement this section.

History: En. Sec. 1, Ch. 512, L. 1993; amd. Sec. 3, Ch. 310, L. 1997; amd. Sec. 5, Ch. 377, L. 1999; amd. Sec. 4, Ch. 140, L. 2005; amd. Sec. 3, Ch. 48, L. 2007; amd. Sec. 4, Ch. 167, L. 2011.

39-71-226. Renumbered 39-71-2370.

Sec. 11, Ch. 26, L. 2005.

Part 3

Miscellaneous Provisions

Part Cross-References

Definitions, 39-71-116.

Employer defined, 39-71-117.

Employee defined, 39-71-118.

Injury defined, 39-71-119.

39-71-301. Certificates and certified copies as evidence.

- (1) Copies of official documents and orders filed or deposited according to law in the office of the department, certified to by a member of the department or by the secretary under the official seal of the department to be true copies of the original, shall be evidence in like manner as the originals.
- (2) In any court proceeding wherein the question as to whether or not an employer or employee has complied with and is operating under or bound by the provisions of the Workers' Compensation Act of the state of Montana is a question for determination, a certificate by a member of the department, or by the secretary under the official seal of the department, certifying that such employer or employee has or has not complied with and is or is not operating under and is or is not bound by the provisions of the Workers' Compensation Act of the state of Montana shall be prima facie evidence thereof.

History: En. Sec. 18, Ch. 96, L. 1915; re-en. Sec. 2944, R.C.M. 1921; amd. Sec. 8, Ch. 177, L. 1929; re-en. Sec. 2944, R.C.M. 1935; amd. Sec. 31, Ch. 23, L. 1975; R.C.M. 1947, 92-818; amd. Sec. 64, Ch. 613, L. 1989.

Cross-References

Suspension of license for violation of certain labor laws, 18-2-432.

Grounds for disciplinary action as grounds for license denial – conditions to new licenses, 37-1-137.

39-71-302. Repealed.

Sec. 12, Ch. 103, L. 2005.

History: En. Sec. 40, Ch. 96, L. 1915; re-en. Sec. 3009, R.C.M. 1921; re-en. Sec. 3009, R.C.M. 1935; amd. Sec. 11, Ch. 235, L. 1947; amd. Sec. 1, Ch. 146, L. 1971; amd. Sec. 5, Ch. 443, L. 1973; R.C.M. 1947, 92-1121; amd. Sec. 54, Ch. 397, L. 1979; amd. Sec. 8, Ch. 333, L. 1989.

39-71-303. Repealed.

Sec. 12, Ch. 103, L. 2005.

History: En. Sec. 11, Ch. 96, L. 1915; re-en. Sec. 2904, R.C.M. 1921; re-en. Sec. 2904, R.C.M. 1935; amd. Sec. 14, Ch. 23, L. 1975; R.C.M. 1947, 92-607(part); amd. Sec. 64, Ch. 613, L. 1989; amd. Sec. 3, Ch. 172, L. 1997.

39-71-304. Books, records, and payrolls to be open to inspection – penalty for refusal – subpoenas.

- (1) The books, records, and payrolls of an employer pertinent to the administration of this chapter must always be open to inspection by the department or any authorized employee of the department for the purpose of ascertaining the correctness of the payroll, the number of workers employed, and other information that may be necessary for the department and its management under this chapter. Refusal on the part of an employer to submit the books, records, and payrolls for inspection will subject the offending employer to a penalty not exceeding \$500 for each offense, to be collected through a civil action in the name of the state and paid into the state treasury.
- (2) In addition to the remedy provided in subsection (1), the department may issue subpoenas and compel testimony for the production of evidence, including

books, records, papers, documents, and other objects that may be necessary and proper in regard to any investigation or proceeding under this chapter. In the case of disobedience of a subpoena issued and served or the refusal of a witness to testify as to any matter for which the witness may be interrogated in a proceeding before the department, the department may apply to a district court for an order to compel compliance with the subpoena or testimony. Disobedience of the court's order constitutes contempt of court.

History: En. Sec. 19, Ch. 96, L. 1915; re-en. Sec. 2946, R.C.M. 1921; re-en. Sec. 2946, R.C.M. 1935; amd. Sec. 166, Ch. 147, L. 1963; amd. Sec. 33, Ch. 23, L. 1975; R.C.M. 1947, 92-820; amd. Sec. 3, Ch. 103, L. 1979; amd. Sec. 55, Ch. 397, L. 1979; amd. Sec. 64, Ch. 613, L. 1989; amd. Sec. 3, Ch. 555, L. 1993; amd. Sec. 10, Ch. 442, L. 1999; amd. Sec. 6, Ch. 214, L. 2001.

39-71-305. Repealed.

Sec. 16, Ch. 103, L. 1979.

History: En. Sec. 17, Ch. 96, L. 1915; re-en. Sec. 2930, R.C.M. 1921; re-en. Sec. 2930, R.C.M. 1935; amd. Sec. 20, Ch. 23, L. 1975; R.C.M. 1947, 92-804.

39-71-306. Insurers to file summary reports of benefits paid for injuries and miscellaneous expenses and statements of medical expenditures.

- (1) Each insurer shall, on or before the 15th day after each state government fiscal quarter ends, file with the department:
 - (a) summary reports of benefits for all compensation payments made during the previous state fiscal quarter to injured workers or their beneficiaries or dependents;
 - (b) statements showing the amounts expended during the previous state fiscal quarter for all medical services for injured workers; and
 - (c) statements showing all miscellaneous amounts, other than compensation and medical expenditures, paid during the previous state fiscal quarter to or on behalf of injured workers or their beneficiaries or dependents and not otherwise reported as an expenditure for the workers' compensation administration assessment provided for in 39-71-201.
- (2) An insurer that fails to file the summary report required by this section or the annual paid losses report required in 39-71-201 within 5 days after the date on which either report is due may be assessed a penalty in an amount of not less than \$250 or more than \$1,000 to be deposited in the workers' compensation administration fund.

History: En. Sec. 17, Ch. 96, L. 1915; re-en. Sec. 2932, R.C.M. 1921; re-en. Sec. 2932, R.C.M. 1935; amd. Sec. 21, Ch. 23, L. 1975; R.C.M. 1947, 92-806; amd. Sec. 56, Ch. 397, L. 1979; amd. Sec. 17, Ch. 613, L. 1989; amd. Sec. 3, Ch. 558, L. 1991; amd. Sec. 7, Ch. 214, L. 2001; amd. Sec. 2, Ch. 69, L. 2005.

Cross-References

- Compensation plan No. 1, Title 39, ch. 71, part 21.
- Compensation plan No. 2, Title 39, ch. 71, part 22.

39-71-307. Employers and insurers to file reports – penalty.

- (1) Every employer insured by a plan No. 2 or a plan No. 3 insurer is required to file with the employer's insurer, under rules adopted by the department, a full

and complete report of every accident, injury, or occupational disease to an employee arising out of or in the course of employment.

- (2) Every insurer transacting business under this chapter shall, under rules adopted by the department, make and file with the department the reports of every injury or occupational disease.
- (3) An employer or insurer who refuses or neglects to submit the reports necessary for the proper filing and review of a claim, as provided in subsection (1) or (2), shall be assessed a penalty of not less than \$200 or more than \$500 for each offense. The department shall assess and collect the penalty. An employer or insurer may contest a penalty assessment in a hearing conducted according to department rules.

History: (1)En. Sec. 17, Ch. 96, L. 1915; re-en. Sec. 2934, R.C.M. 1921; re-en. Sec. 2934, R.C.M. 1935; amd. Sec. 22, Ch. 23, L. 1975; Sec. 92-808, R.C.M. 1947; (2)En. Sec. 35, Ch. 96, L. 1915; re-en. Sec. 2987, R.C.M. 1921; re-en. Sec. 2987, R.C.M. 1935; amd. Sec. 64, Ch. 23, L. 1975; Sec. 92-1010, R.C.M. 1947; R.C.M. 1947, 92-808, 92-1010; amd. Sec. 14, Ch. 333, L. 1989; amd. Secs. 18, 64, Ch. 613, L. 1989; amd. Sec. 2, Ch. 619, L. 1993; amd. Sec. 5, Ch. 103, L. 2005; amd. Sec. 5, Ch. 140, L. 2005; amd. Sec. 10, Ch. 112, L. 2009.

39-71-308. Repealed.

Sec. 12, Ch. 103, L. 2005.

History: En. Sec. 3, Ch. 96, L. 1915; amd. Sec. 1, Ch. 100, L. 1919; amd. Sec. 1, Ch. 196, L. 1921; re-en. Sec. 2840, R.C.M. 1921; re-en. Sec. 2840, R.C.M. 1935; amd. Sec. 1, Ch. 410, L. 1971; amd. Sec. 6, Ch. 23, L. 1975; R.C.M. 1947, 92-206(part); amd. Sec. 3, Ch. 21, L. 1981; amd. Sec. 19, Ch. 613, L. 1989.

39-71-309. Repealed.

Sec. 68, Ch. 464, L. 1987.

History: En. 92-706.1 by Sec. 1, Ch. 252, L. 1973; amd. Sec. 1, Ch. 43, L. 1975; amd. Sec. 1, Ch. 189, L. 1975; R.C.M. 1947, 92-706.1(2); amd. Sec. 57, Ch. 397, L. 1979.

39-71-310 through 39-71-314 reserved.

39-71-315. Prohibited actions – penalty.

- (1) The following actions by a health care provider constitute violations and are subject to the penalty in subsection (2):
 - (a) failing to certify the provision of the services or treatment for which compensation is claimed under this chapter; or
 - (b) referring a worker for treatment or diagnosis of an injury or illness that is compensable under this chapter to a facility owned wholly or in part by the provider, unless the provider informs the worker of the ownership interest and provides the name and address of alternate facilities, if any exist.
- (2) A person who violates this section may be assessed a penalty of not less than \$200 or more than \$500 for each offense. The department shall assess and collect the penalty. Penalties collected pursuant to this section must be paid into the state general fund. The workers' compensation court has jurisdiction over actions brought to collect the penalty and over disputes concerning the penalty assessment. Disputes brought pursuant to this section are not subject to mediation.

- (3) Subsection (1)(b) does not apply to medical services provided to an injured worker by a treating physician with an ownership interest in a managed care organization that has been certified by the department.

History: En. Sec. 16, Ch. 619, L. 1993; amd. Sec. 4, Ch. 516, L. 1995; amd. Sec. 11, Ch. 442, L. 1999; amd. Sec. 3, Ch. 69, L. 2005; amd. Sec. 16, Ch. 416, L. 2005; amd. Sec. 5, Ch. 167, L. 2011.

39-71-316. Filing true claim – obtaining benefits through deception or other fraudulent means.

- (1) A person filing a claim under this chapter, by signing the claim, affirms the information filed is true and correct to the best of that person's knowledge.
- (2) (a) A person who obtains or assists in obtaining benefits to which the person is not entitled or who obtains or assists another person in obtaining benefits to which the other person is not entitled under this chapter is guilty of theft and may be prosecuted under 45-6-301. A county attorney or the attorney general may initiate criminal proceedings against the person. This subsection includes but is not limited to a person who is receiving temporary total disability benefits, permanent total disability benefits, or rehabilitation benefits while working without the knowledge and concurrence of the insurer.
- (b) As used in subsection (2)(a), "person" includes but is not limited to an employee, employer, insurer, or medical service provider.
- (3) (a) The department may require a person convicted of theft under 45-6-301(5) to pay to the department an amount equal to 10 times the amount paid by an insurer on the false claim, provided that the amount does not exceed \$50,000. If upon demand of the department the person refuses to pay the fine, the department may petition the workers' compensation court to collect the money owed.
- (b) The department shall:
- (i) use the money collected pursuant to subsection (3)(a) to administer and enforce the provisions of this section; and
 - (ii) forward any surplus money to the department of justice. The forwarded money must be used exclusively for the staffing and operation of the workers' compensation fraud investigation and prosecution office established in 2-15-2015.
- (c) This section does not limit an insurer's civil remedies to collect for money paid to a person convicted under 45-6-301(5).
- (4) A person licensed under the provisions of Title 37 is subject to suspension, revocation, or denial of a license if the person knowingly claims or assists in the claiming of benefits in violation of the provisions of this chapter.

History: En. Sec. 7, Ch. 464, L. 1987; amd. Sec. 4, Ch. 296, L. 1993; amd. Sec. 1, Ch. 618, L. 1993; amd. Sec. 9, Ch. 619, L. 1993; amd. Sec. 12, Ch. 442, L. 1999; amd. Sec. 17, Ch. 416, L. 2005.

39-71-317. Employer not to terminate worker for filing claim – preference – jurisdiction over dispute.

- (1) An employer may not use as grounds for terminating a worker the filing of a claim under this chapter. The district court has exclusive jurisdiction over disputes concerning the grounds for termination under this section.

- (2) When an injured worker is capable of returning to work within 2 years from the date of injury and has received a medical release to return to work, the worker must be given a preference over other applicants for a comparable position that becomes vacant if the position is consistent with the worker's physical condition and vocational abilities.
- (3) This preference applies only to employment with the employer for whom the employee was working at the time the injury occurred.
- (4) The workers' compensation court has exclusive jurisdiction to administer or resolve a dispute concerning the reemployment preference under this section. A dispute concerning the reemployment preference is not subject to mediation or a contested case hearing.

History: En. Sec. 20, Ch. 464, L. 1987; amd. Sec. 64, Ch. 613, L. 1989; amd. Sec. 13, Ch. 442, L. 1999; amd. Sec. 18, Ch. 416, L. 2005.

39-71-318. Repealed.

Sec. 12, Ch. 103, L. 2005.

History: En. Sec. 1, Ch. 558, L. 1991; amd. Sec. 5, Ch. 516, L. 1995; amd. Sec. 7, Ch. 276, L. 1997.

39-71-319. (Temporary) State to reimburse certain premium costs for learning programs – rulemaking.

- (1) (a) Subject to subsection (1)(b), the department of labor and industry shall reimburse a private employer who has hired a student enrolled in a high-quality work-based learning opportunity for the added costs of the employer's workers' compensation premium because of employing that student.
 - (b) The reimbursement is subject to available funds and an affirmation by the employer or another indication that the employer adheres to safe working conditions and that the first 2 hours, at a minimum, of the student's employment were devoted to safety instruction through a safety training program that is specific to the student's employment. The department may use funds in the workers' compensation administration fund provided for in 39-71-201 to reimburse the premiums under subsection (1)(a).
- (2) The rules must provide the parameters of the program, the application process, and other components necessary to determine premium payments. The rules must describe the attributes of qualified high-quality work-based learning opportunities and provide for a declaration made under penalty of perjury by the employer of the student that the requested reimbursement is only for the increased premium costs due to the student employment.
- (3) This section does not apply to a private secondary or postsecondary institution that employs students in work-study programs.
- (4) For the purposes of this section, a high-quality work-based learning opportunity:
 - (a) is a term-limited educational program registered with the department; and
 - (b) uses on-the-job training to develop marketable skills.
- (5) The department may adopt rules to implement this section. (Terminates June 30, 2023—sec. 7, Ch. 400, L. 2019.)

History: En. Sec. 1, Ch. 400, L. 2019.

39-71-320. Certification program for claims examiners – purpose – rulemaking – advisory committee – continuing education – fee.

- (1) Pursuant to the public policy stated in 39-71-105, accurate and prompt claims handling practices are necessary to provide appropriate service to injured workers, employers, and health care providers. To further that public policy, the purpose of this section is to authorize the department to establish a certification program for claims examiners. The department shall administer the certification program.
- (2) The certification program is intended to improve the handling of workers' compensation claims by:
 - (a) establishing minimum qualifications and procedures for certifying claims examiners;
 - (b) requiring continuing education for certified claims examiners;
 - (c) better educating certified claims examiners about changes in the law; and
 - (d) providing standards for the qualifications of instructors, courses, and materials.
- (3) The department shall adopt rules for the certification of workers' compensation claims examiners, providing for:
 - (a) minimum qualifications;
 - (b) examination;
 - (c) 2-year certification and renewal;
 - (d) continuing education requirements;
 - (e) a process by which a claims examiner who is newly hired or is in training may perform specified claims functions prior to becoming certified under this section; and (f) a grace period of 12 months in which to take the examination for all noncertified individuals who were working as a claims examiner as of January 1, 2019.
- (4) The department may appoint an advisory committee composed of injured workers, insurers, self-insured employers, third-party administrators, claims examiners, and members of the public to advise the department on setting standards for certification and continuing education.
- (5) The department shall maintain:
 - (a) a list of all certified claims examiners; and
 - (b) the following records related to certified claims examiners:
 - (i) documentation of current and historical certifications;
 - (ii) beginning and ending dates of certifications; and
 - (iii) continuing education records.
- (6) The training curriculum and continuing education used by insurers, self-insured employers, and third-party administrators for claims examiners must relate to the state workers' compensation system or to interactions among injured workers, medical providers, and employers. The training curriculum, course content, instructors, materials, instructional format, and the sponsoring organization must be approved by the department as qualifying for use in certification of claims examiners. The department may offer specialized training for continuing education purposes that is exempt from the approval requirements of this subsection.
- (7) The department shall determine the number of credit hours to be awarded for completion of an approved training curriculum or department-approved specialized training. The department may accept continuing education credits approved by the insurance commissioner's office as provided in Title

33, chapter 17, the office of public instruction, or the state bar of Montana to satisfy the continuing education requirements for renewal of the claims examiner certification. The department, in its discretion, may accept continuing education credits from other accrediting sources.

- (8) The department shall by rule adopt fees commensurate with the costs of administering the certification program. All fees collected by the department as provided in this section must be deposited in the workers' compensation administration fund provided for in 39-71-201. The department may charge a fee for the certification program, including but not limited to fees for:
- (a) initial certification, including examination;
 - (b) certification renewal;
 - (c) approval of training curricula, including continuing education courses, course content, instructors, materials, instructional format, and sponsoring organizations; and
 - (d) specialized training offered by the department.

History: En. Sec. 2, Ch. 125, L. 2009; amd. Sec. 6, Ch. 167, L. 2011; amd. Sec. 1, Ch. 371, L. 2019.

39-71-321 through 39-71-324 reserved.

39-71-325. Claim summary and actuarial documentation for impaired insurer.

- (1) An insurer becomes impaired if the insurer:
 - (a) becomes insolvent;
 - (b) is placed in receivership or administration;
 - (c) declares bankruptcy; or
 - (d) seeks protection from its creditors.
- (2) An impaired insurer shall, within 30 days of the insurer becoming impaired, furnish the department with a claim summary and actuary information relevant to each claim for which the insurer may have future liability.

History: En. Sec. 14, Ch. 117, L. 2007.

Part 4

Coverage, Liability, and Subrogation

Part Cross-References

Definitions, 39-71-116.

Employer defined, 39-71-117.

Employee defined, 39-71-118.

Injury defined, 39-71-119

39-71-401. Employments covered and exemptions – elections – notice.

- (1) Except as provided in subsection (2), the Workers' Compensation Act applies to all employers and to all employees. An employer who has any employee in service under any appointment or contract of hire, expressed or implied, oral or written, shall elect to be bound by the provisions of compensation plan No. 1, 2, or 3 [unless the provisions of 39-71-442 apply]. Each employee whose employer is bound by the Workers' Compensation Act is subject to and bound by the compensation plan that has been elected by the employer.

- (2) Unless the employer elects coverage for these employments under this chapter and an insurer allows an election, the Workers' Compensation Act does not apply to any of the following:
- (a) household or domestic employment;
 - (b) casual employment;
 - (c) employment of a dependent member of an employer's family for whom an exemption may be claimed by the employer under the federal Internal Revenue Code;
 - (d) employment of sole proprietors, working members of a partnership, working members of a limited liability partnership, or working members of a member-managed limited liability company, except as provided in subsection (3);
 - (e) employment of a real estate, securities, or insurance salesperson paid solely by commission and without a guarantee of minimum earnings;
 - (f) employment as a direct seller as defined by 26 U.S.C. 3508;
 - (g) employment for which a rule of liability for injury, occupational disease, or death is provided under the laws of the United States;
 - (h) employment of a person performing services in return for aid or sustenance only, except employment of a volunteer under 67-2-105;
 - (i) employment with a railroad engaged in interstate commerce, except that railroad construction work is included in and subject to the provisions of this chapter;
 - (j) employment as an official, including a timer, referee, umpire, or judge, at an amateur athletic event;
 - (k) employment of a person performing services as a newspaper carrier or freelance correspondent if the person performing the services or a parent or guardian of the person performing the services in the case of a minor has acknowledged in writing that the person performing the services and the services are not covered. As used in this subsection (2)(k):
 - (i) "freelance correspondent" means a person who submits articles or photographs for publication and is paid by the article or by the photograph; and
 - (ii) "newspaper carrier":
 - (A) means a person who provides a newspaper with the service of delivering newspapers singly or in bundles; and
 - (B) does not include an employee of the paper who, incidentally to the employee's main duties, carries or delivers papers.
 - (l) cosmetologist's services and barber's services as referred to in 39-51-204(1)(e);
 - (m) a person who is employed by an enrolled tribal member or an association, business, corporation, or other entity that is at least 51% owned by an enrolled tribal member or members, whose business is conducted solely within the exterior boundaries of an Indian reservation;
 - (n) employment of a jockey who is performing under a license issued by the board of horse racing from the time that the jockey reports to the scale room prior to a race through the time that the jockey is weighed out after a race if the jockey has acknowledged in writing, as a condition of licensing by the board of horse racing, that the jockey is not covered under the Workers' Compensation Act while performing services as a jockey;

- (o) employment of a trainer, assistant trainer, exercise person, or pony person who is performing services under a license issued by the board of horseracing while on the grounds of a licensed race meet;
- (p) employment of an employer's spouse for whom an exemption based on marital status may be claimed by the employer under 26 U.S.C. 7703;
- (q) a person who performs services as a petroleum land professional. As used in this subsection, a "petroleum land professional" is a person who:
 - (i) is engaged primarily in negotiating for the acquisition or divestiture of mineral rights or in negotiating a business agreement for the exploration or development of minerals;
 - (ii) is paid for services that are directly related to the completion of a contracted specific task rather than on an hourly wage basis; and
 - (iii) performs all services as an independent contractor pursuant to a written contract.
- (r) an officer of a quasi-public or a private corporation or, except as provided in subsection (3), a manager of a manager-managed limited liability company who qualifies under one or more of the following provisions:
 - (i) the officer or manager is not engaged in the ordinary duties of a worker for the corporation or the limited liability company and does not receive any pay from the corporation or the limited liability company for performance of the duties;
 - (ii) the officer or manager is engaged primarily in household employment for the corporation or the limited liability company;
 - (iii) the officer or manager either:
 - (A) owns 20% or more of the number of shares of stock in the corporation or owns 20% or more of the limited liability company; or
 - (B) owns less than 20% of the number of shares of stock in the corporation or limited liability company if the officer's or manager's shares when aggregated with the shares owned by a person or persons listed in subsection (2)(r)(iv) total 20% or more of the number of shares in the corporation or limited liability company; or
 - (iv) the officer or manager is the spouse, child, adopted child, stepchild, mother, father, son-in-law, daughter-in-law, nephew, niece, brother, or sister of a corporate officer who meets the requirements of subsection (2)(r)(iii)(A) or (2)(r)(iii)(B);
- (s) person who is an officer or a manager of a ditch company as defined in 27-1-731;
- (t) service performed by an ordained, commissioned, or licensed minister of a church in the exercise of the church's ministry or by a member of a religious order in the exercise of duties required by the order;
- (u) service performed to provide companionship services, as defined in 29 CFR 552.6, or respite care for individuals who, because of age or infirmity, are unable to care for themselves when the person providing the service is employed directly by a family member or an individual who is a legal guardian;
- (v) employment of a person performing the services of an intrastate or interstate common or contract motor carrier when hired by an individual or entity who meets the definition of a broker or freight forwarder, as provided in 49 U.S.C. 13102;

- (w) employment of a person who is not an employee or worker in this state as defined in 39-71-118(8);
 - (x) employment of a person who is working under an independent contractor exemption certificate;
 - (y) employment of an athlete by or on a team or sports club engaged in a contact sport. As used in this subsection, "contact sport" means a sport that includes significant physical contact between the athletes involved. Contact sports include but are not limited to football, hockey, roller derby, rugby, lacrosse, wrestling, and boxing.
 - (z) a musician performing under a written contract.
- (3) (a) (i) A person who regularly and customarily performs services at locations other than the person's own fixed business location shall elect to be bound personally and individually by the provisions of compensation plan No. 1, 2, or 3 unless the person has waived the rights and benefits of the Workers' Compensation Act by obtaining an independent contractor exemption certificate from the department pursuant to 39-71-417.
- (ii) Application fees or renewal fees for independent contractor exemption certificates must be deposited in the state special revenue account established in 39-9-206 and must be used to offset the certification administration costs.
- (b) A person who holds an independent contractor exemption certificate may purchase a workers' compensation insurance policy and with the insurer's permission elect coverage for the certificate holder.
- (c) For the purposes of this subsection (3), "person" means:
- (i) a sole proprietor;
 - (ii) a working member of a partnership;
 - (iii) a working member of a limited liability partnership;
 - (iv) a working member of a member-managed limited liability company; or
 - (v) a manager of a manager-managed limited liability company that is engaged in the work of the construction industry as defined in 39-71-116.
- (4) (a) A corporation or a manager-managed limited liability company shall provide coverage for its employees under the provisions of compensation plan No. 1, 2, or 3. A quasi-public corporation, a private corporation, or a manager-managed limited liability company may elect coverage for its corporate officers or managers, who are otherwise exempt under subsection (2), by giving a written notice in the following manner:
- (i) if the employer has elected to be bound by the provisions of compensation plan No. 1, by delivering the notice to the board of directors of the corporation or to the management organization of the manager-managed limited liability company; or
 - (ii) if the employer has elected to be bound by the provisions of compensation plan No. 2 or 3, by delivering the notice to the board of directors of the corporation or to the management organization of the manager-managed limited liability company and to the insurer.
- (b) If the employer changes plans or insurers, the employer's previous election is not effective and the employer shall again serve notice to its insurer and to its board of directors or the management organization of the manager-managed limited liability company if the employer elects to be bound.

- (5) The appointment or election of an employee as an officer of a corporation, a partner in a partnership, a partner in a limited liability partnership, or a member in or a manager of a limited liability company for the purpose of exempting the employee from coverage under this chapter does not entitle the officer, partner, member, or manager to exemption from coverage.
- (6) Each employer shall post a sign in the workplace at the locations where notices to employees are normally posted, informing employees about the employer's current provision of workers' compensation insurance. A workplace is any location where an employee performs any work-related act in the course of employment, regardless of whether the location is temporary or permanent, and includes the place of business or property of a third person while the employer has access to or control over the place of business or property for the purpose of carrying on the employer's usual trade, business, or occupation. The sign must be provided by the department, distributed through insurers or directly by the department, and posted by employers in accordance with rules adopted by the department. An employer who purposely or knowingly fails to post a sign as provided in this subsection is subject to a \$50 fine for each citation.

(Bracketed language in subsection (1) terminates June 30, 2019—sec. 5, Ch. 315, L. 2015.)

History: (1), (2)(a) thru (f)En. 92-202.1 by Sec. 1, Ch. 492, L. 1973; amd. Sec. 1, Ch. 550, L. 1977; Sec. 92-202.1, R.C.M. 1947; (2)(g)En. Sec. 17, Ch. 96, L. 1915; re-en. Sec. 2931, R.C.M. 1921; re-en. Sec. 2931, R.C.M. 1935; Sec. 92-805, R.C.M. 1947; R.C.M. 1947, 92-202.1, 92-805; amd. Sec. 58, Ch. 397, L. 1979; amd. Sec. 1, Ch. 470, L. 1983; amd. Sec. 1, Ch. 94, L. 1985; amd. Sec. 1, Ch. 100, L. 1985; amd. Sec. 3, Ch. 336, L. 1985; amd. Sec. 1, Ch. 148, L. 1987; amd. Sec. 1, Ch. 290, L. 1987; amd. Sec. 6, Ch. 314, L. 1987; amd. Sec. 10, Ch. 464, L. 1987; amd. Sec. 2, Ch. 526, L. 1987; amd. Sec. 1, Ch. 33, L. 1989; amd. Sec. 64, Ch. 613, L. 1989; amd. Sec. 39, Ch. 16, L. 1991; amd. Sec. 2, Ch. 573, L. 1991; amd. Sec. 4, Ch. 555, L. 1993; amd. Sec. 3, Ch. 48, L. 1995; amd. Sec. 2, Ch. 95, L. 1995; amd. Sec. 1, Ch. 112, L. 1995; amd. Sec. 1, Ch. 142, L. 1995; amd. Sec. 6, Ch. 516, L. 1995; amd. Sec. 4, Ch. 172, L. 1997; amd. Sec. 4, Ch. 310, L. 1997; amd. Sec. 1, Ch. 386, L. 1997; amd. Sec. 30, Ch. 491, L. 1997; amd. Sec. 12, Ch. 548, L. 1997; amd. Sec. 14, Ch. 442, L. 1999; amd. Sec. 1, Ch. 14, L. 2001; amd. Sec. 1, Ch. 43, L. 2001; amd. Sec. 2, Ch. 339, L. 2001; amd. Sec. 3, Ch. 83, L. 2003; amd. Sec. 1, Ch. 193, L. 2003; amd. Sec. 7, Ch. 26, L. 2005; amd. Sec. 4, Ch. 133, L. 2005; amd. Sec. 9, Ch. 448, L. 2005; amd. Sec. 1, Ch. 179, L. 2007; amd. Sec. 1, Ch. 288, L. 2007; amd. Sec. 1, Ch. 234, L. 2009; amd. Sec. 1, Ch. 450, L. 2009; amd. Sec. 1, Ch. 200, L. 2011; amd. Sec. 5, Ch. 412, L. 2013; amd. Sec. 2, Ch. 315, L. 2015.

Cross-References

- Regulation of real estate brokers and salespersons, Title 37, ch. 51.
 Compensation plan No. 1, Title 39, ch. 71, part 21.
 Compensation plan No. 2, Title 39, ch. 71, part 22.
 Compensation plan No. 3, Title 39, ch. 71, part 23.

39-71-402. Extraterritorial applicability and reciprocity of coverage – agreements with other states – rulemaking.

- (1) (a) In the absence of an agreement under subsection (2), if a worker employed in this state who is subject to the provisions of this chapter temporarily leaves this state incidental to that employment and receives an injury arising out of and in the course of employment, the provisions of this chapter apply to the worker as though the worker were injured within this state.

- (b) Except as provided in subsection (1)(c) and in the absence of an agreement under subsection (2), if a worker from another state and the worker's employer from another state are temporarily engaged in work within this state, this chapter does not apply to them:
 - (i) if the employer and employee are bound by the provisions of the workers' compensation law or similar law of the other state that applies to them while they are temporarily engaged in work in the state of Montana; and
 - (ii) if the Workers' Compensation Act of this state is recognized and given effect as the exclusive remedy for workers employed in this state who are injured while temporarily engaged in work in the other state.
- (c) Unless specifically addressed in an agreement as provided in subsection (2)(d), employers from another state that are engaged in the construction industry, as defined in 39-71-116, and that employ workers from another state shall obtain coverage for those workers under the provisions of this chapter.
- (2) (a) The department, with the approval of the governor, may enter into a reciprocal agreement with an authorized officer of the workers' compensation department or similar agency of another state to allow an employer from one state and its employees from that state to work in the other state without obtaining workers' compensation coverage from both states.
 - (b) The reciprocal agreement must contain, at a minimum, the following provisions:
 - (i) the employer and employee must be bound by the provisions of the workers' compensation law or similar law of the other state that applies to them while they are engaged in work in the state of Montana; and
 - (ii) the Workers' Compensation Act of this state must be recognized and given effect as the exclusive remedy for workers employed in this state who are injured while engaged in work in the other state.
 - (c) The agreement may contain other provisions, including but not limited to provisions regarding how long the work may continue and whether limitations or exclusions apply to the types of work covered by the agreement.
 - (d) Unless the agreement specifically provides that the agreement is applicable to employers engaged in the construction industry, as defined in 39-71-116, an employer from another state engaged in the construction industry in Montana does not qualify for extraterritorial coverage that might otherwise be provided by this section.
 - (e) The agreement may be canceled, renewed, or modified from time to time as provided in the agreement.
 - (f) After an agreement has been entered into pursuant to this subsection (2), a certificate from an authorized officer of the workers' compensation department or similar agency of another state certifying that an employer of the other state is bound by the Workers' Compensation Act of the state and that its act will be applied to employees of the employer while engaged in work in the state of Montana is prima facie evidence that:
 - (i) the workers' compensation law of the certifying state applies to the employer and its employees while engaged in work in Montana; and

(ii) the employer is properly insured for workers' compensation purposes in the certifying state as of the date of the certification.

(3) The department may adopt rules to implement this section.

History: En. Sec. 16, Ch. 96, L. 1915; re-en. Sec. 2911, R.C.M. 1921; re-en. Sec. 2911, R.C.M. 1935; amd. Sec. 1, Ch. 70, L. 1967; amd. Sec. 17, Ch. 23, L. 1975; amd. Sec. 8, Ch. 550, L. 1977; R.C.M. 1947, 92-614(2) thru (5); amd. Sec. 64, Ch. 613, L. 1989; amd. Sec. 4, Ch. 480, L. 1991; amd. Sec. 3, Ch. 458, L. 1993; amd. Sec. 1, Ch. 74, L. 2013.

Cross-References

Governor – sole official organ of communication, 2-15-201.

39-71-403. Plan three exclusive for state agencies – election of plan by public corporations – financing of self-insurance fund – exemption for university system – definitions – rulemaking.

- (1) (a) Except as provided in subsection (5), if a state agency is the employer, the terms, conditions, and provisions of compensation plan No. 3, state fund, are exclusive, compulsory, and obligatory upon both employer and employee. Any sums necessary to be paid under the provisions of this chapter by a state agency are considered to be ordinary and necessary expenses of the agency. The agency shall pay the sums into the state fund at the time and in the manner provided for in this chapter, notwithstanding that the state agency may have failed to anticipate the ordinary and necessary expense in a budget, estimate of expenses, appropriations, ordinances, or otherwise.
- (b) (i) Subject to subsection (5), the department of administration, provided for in 2-15-1001, shall manage workers' compensation insurance coverage for all state agencies.
- (ii) The state fund shall provide the department of administration with all information regarding the state agencies' coverage.
- (iii) Notwithstanding the status of a state agency as employer in subsection (1)(a) and contingent upon mutual agreement between the department of administration and the state fund, the state fund shall issue one or more policies for all state agencies.
- (iv) In any year in which the workers' compensation premium due from a state agency is lower than in the previous year, the appropriation for that state agency must be reduced by the same amount that the workers' compensation premium was reduced and the difference must be returned to the originating fund instead of being applied to other purposes by the state agency submitting the premium.
- (2) A public corporation, other than a state agency, may elect coverage under compensation plan No. 1, plan No. 2, or plan No. 3, separately or jointly with any other public corporation, other than a state agency. A public corporation electing compensation plan No. 1 may purchase reinsurance or issue bonds or notes pursuant to subsection (3)(b). A public corporation electing compensation plan No. 1 is subject to the same provisions as a private employer electing compensation plan No. 1.
- (3) (a) A public corporation, other than a state agency, that elects plan No. 1 may establish a fund sufficient to pay the compensation and benefits provided for in this chapter and to discharge all liabilities that are reasonably incurred during the fiscal year for which the election is effective. Proceeds from the fund must be used only to pay claims covered by this chapter and for actual

and necessary expenses required for the efficient administration of the fund, including debt service on any bonds and notes issued pursuant to subsection (3)(b).

- (b) (i) A public corporation, other than a state agency, separately or jointly with another public corporation, other than a state agency, may issue and sell its bonds and notes for the purpose of establishing, in whole or in part, the self-insurance workers' compensation fund provided for in subsection (3)(a) and to pay the costs associated with the sale and issuance of the bonds. Bonds and notes may be issued in an amount not exceeding 0.18% of the total assessed value of taxable property, determined as provided in 15-8-111, of the public corporation as of the date of issue. The bonds and notes must be authorized by resolution of the governing body of the public corporation and are payable from an annual property tax levied in the amount necessary to pay principal and interest on the bonds or notes. This authority to levy an annual property tax exists despite any provision of law or maximum levy limitation, including 15-10-420, to the contrary. The revenue derived from the sale of the bonds and notes may not be used for any other purpose.
 - (ii) The bonds and notes:
 - (A) may be sold at public or private sale;
 - (B) do not constitute debt within the meaning of any statutory debt limitation; and
 - (C) may contain other terms and provisions that the governing body determines.
 - (iii) Two or more public corporations, other than state agencies, may agree to exercise their respective borrowing powers jointly under this subsection (3)(b) or may authorize a joint board to exercise the powers on their behalf.
 - (iv) The fund established from the proceeds of bonds and notes issued and sold under this subsection (3)(b) may, if sufficient, be used in lieu of a surety bond, reinsurance, specific and aggregate excess insurance, or any other form of additional security necessary to demonstrate the public corporation's ability to discharge all liabilities as provided in subsection (3)(a). Subject to the total assessed value limitation in subsection (3)(b)(i), a public corporation may issue bonds and notes to establish a fund sufficient to discharge liabilities for periods greater than 1 year.
- (4) All money in the fund established under subsection (3)(a) not needed to meet immediate expenditures must be invested by the governing body of the public corporation or the joint board created by two or more public corporations as provided in subsection (3)(b)(iii), and all proceeds of the investment must be credited to the fund.
 - (5) For the purposes of subsection (1)(b), the judicial branch or the legislative branch may choose not to have the department of administration manage its workers' compensation policy.
 - (6) The department of administration may adopt rules to implement subsection (1)(b)(i).
 - (7) As used in this section, the following definitions apply:
 - (a) "Public corporation" includes the Montana university system.
 - (b) (i) "State agency" means:

- (A) the executive branch and its departments and all boards, commissions, committees, bureaus, and offices;
 - (B) the judicial branch; and
 - (C) the legislative branch.
- (ii) The term does not include the Montana university system.

History: En. Sec. 3, Ch. 96, L. 1915; amd. Sec. 1, Ch. 100, L. 1919; amd. Sec. 1, Ch. 196, L. 1921; re-en. Sec. 2840, R.C.M. 1921; re-en. Sec. 2840, R.C.M. 1935; amd. Sec. 1, Ch. 410, L. 1971; amd. Sec. 6, Ch. 23, L. 1975; R.C.M. 1947, 92-206(part); amd. Sec. 1, Ch. 155, L. 1979; (2) thru (4)En. Sec. 2, Ch. 155, L. 1979; amd. Sec. 4, Ch. 21, L. 1981; amd. Sec. 97, Ch. 370, L. 1987; amd. Sec. 20, Ch. 613, L. 1989; amd. Sec. 1, Ch. 665, L. 1989; amd. Sec. 1, Ch. 560, L. 1999; amd. Sec. 31, Ch. 29, L. 2001; amd. Sec. 145, Ch. 574, L. 2001; amd. Sec. 19, Ch. 416, L. 2005; amd. Sec. 1, Ch. 17, L. 2009; amd. Sec. 7, Ch. 167, L. 2011.

Cross-References

- Compensation plan No. 1, Title 39, ch. 71, part 21.
- Compensation plan No. 2, Title 39, ch. 71, part 22.
- Compensation plan No. 3, Title 39, ch. 71, part 23.

39-71-404. Repealed.

Sec. 16, Ch. 103, L. 1979.

History: En. Sec. 3, Ch. 96, L. 1915; amd. Sec. 1, Ch. 100, L. 1919; amd. Sec. 1, Ch. 196, L. 1921; re-en. Sec. 2840, R.C.M. 1921; re-en. Sec. 2840, R.C.M. 1935; amd. Sec. 1, Ch. 410, L. 1971; amd. Sec. 6, Ch. 23, L. 1975; R.C.M. 1947, 92-206(part).

39-71-405. Liability of employer who contracts work out.

- (1) An employer who contracts with an independent contractor to have work performed of a kind which is a regular or a recurrent part of the work of the trade, business, occupation, or profession of such employer is liable for the payment of benefits under this chapter to the employees of the contractor if the contractor has not properly complied with the coverage requirements of the Worker's Compensation Act. Any insurer who becomes liable for payment of benefits may recover the amount of benefits paid and to be paid and necessary expenses from the contractor primarily liable therein.
- (2) Where an employer contracts to have any work to be done by a contractor other than an independent contractor, and the work so contracted to be done is a part or process in the trade or business of the employer, then the employer is liable to pay all benefits under this chapter to the same extent as if the work were done without the intervention of the contractor, and the work so contracted to be done shall not be construed to be casual employment. Where an employer contracts work to be done as specified in this subsection, the contractor and the contractor's employees shall come under that plan of compensation adopted by the employer.
- (3) Where an employer contracts any work to be done, wholly or in part for the employer, by an independent contractor, where the work so contracted to be done is casual employment as to such employer, then the contractor shall become the employer for the purposes of this chapter.

History: (1)En. 92-410.1 by Sec. 1, Ch. 154, L. 1973; Sec. 92-410.1, R.C.M. 1947; (2), (3)En. Sec. 11, Ch. 96, L. 1915; re-en. Secs. 2901, 2902, 2903, R.C.M. 1921; re-en. Secs. 2901, 2902,

2903, R.C.M. 1935; Secs. 92-604, 92-605, 92-606, R.C.M. 1947; R.C.M. 1947, 92-410.1(part), 92-604, 92-605, 92-606; amd. Sec. 4, Ch. 103, L. 1979.

Cross-References

Independent contractor certification, 39-71-417.

39-71-406. Deduction from wages of any part of premium a misdemeanor.

It is unlawful for the employer to deduct or obtain any part of any premium required to be paid by this chapter from the wages or earnings of the employer's workers, and the making or attempt to make any premium deduction is a misdemeanor.

History: En. Sec. 17, Ch. 96, L. 1915; re-en. Sec. 2937, R.C.M. 1921; re-en. Sec. 2937, R.C.M. 1935; R.C.M. 1947, 92-811; amd. Sec. 59, Ch. 397, L. 1979; amd. Sec. 6, Ch. 101, L. 1985; amd. Sec. 8, Ch. 637, L. 1993; amd. Sec. 8, Ch. 276, L. 1997.

Cross-References

Penalty for misdemeanor, 46-18-212.

39-71-407. (Temporary) Liability of insurers – limitations.

- (1) For workers' compensation injuries, each insurer is liable for the payment of compensation, in the manner and to the extent provided in this section, to an employee of an employer covered under plan No. 1, plan No. 2, and the state fund under plan No. 3 that it insures who receives an injury arising out of and in the course of employment or, in the case of death from the injury, to the employee's beneficiaries, if any.
- (2) An injury does not arise out of and in the course of employment when the employee is:
 - (a) on a paid or unpaid break, is not at a worksite of the employer, and is not performing any specific tasks for the employer during the break; or
 - (b) engaged in a social or recreational activity, regardless of whether the employer pays for any portion of the activity. The exclusion from coverage of this subsection (2)(b) does not apply to an employee who, at the time of injury, is on paid time while participating in a social or recreational activity or whose presence at the activity is required or requested by the employer. For the purposes of this subsection (2)(b), "requested" means the employer asked the employee to assume duties for the activity so that the employee's presence is not completely voluntary and optional and the injury occurred in the performance of those duties.
- (3)
 - (a) Subject to subsection (3)(c), an insurer is liable for an injury, as defined in 39-71-119, only if the injury is established by objective medical findings and if the claimant establishes that it is more probable than not that:
 - (i) a claimed injury has occurred; or
 - (ii) a claimed injury has occurred and aggravated a preexisting condition.
 - (b) Proof that it was medically possible that a claimed injury occurred or that the claimed injury aggravated a preexisting condition is not sufficient to establish liability.
 - (c) Objective medical findings are sufficient for a presumptive occupational disease as defined in 39-71-1401 but may be overcome by a preponderance of the evidence.

- (4) (a) An employee who suffers an injury or dies while traveling is not covered by this chapter unless:
- (i) the employer furnishes the transportation or the employee receives reimbursement from the employer for costs of travel, gas, oil, or lodging as a part of the employee's benefits or employment agreement and the travel is necessitated by and on behalf of the employer as an integral part or condition of the employment; or
 - (ii) the travel is required by the employer as part of the employee's job duties.
- (b) A payment made to an employee under a collective bargaining agreement, personnel policy manual, or employee handbook or any other document provided to the employee that is not wages but is designated as an incentive to work at a particular jobsite is not a reimbursement for the costs of travel, gas, oil, or lodging, and the employee is not covered under this chapter while traveling.
- (5) Except as provided in subsection (6), an employee is not eligible for benefits otherwise payable under this chapter if the employee's use of alcohol or drugs not prescribed by a physician is the major contributing cause of the accident.
- (6) (a) An employee who has received written certification, as defined in 50-46-302, from a physician for the use of marijuana for a debilitating medical condition and who is otherwise eligible for benefits payable under this chapter is subject to the limitations of subsections (6)(b) through (6)(d).
- (b) An employee is not eligible for benefits otherwise payable under this chapter if the employee's use of marijuana for a debilitating medical condition, as defined in 50-46-302, is the major contributing cause of the injury or occupational disease.
- (c) Nothing in this chapter may be construed to require an insurer to reimburse any person for costs associated with the use of marijuana for a debilitating medical condition, as defined in 50-46-302.
- (d) In an accepted liability claim, the benefits payable under this chapter may not be increased or enhanced due to a worker's use of marijuana for a debilitating medical condition, as defined in 50-46-302. An insurer remains liable for those benefits that the worker would qualify for absent the worker's use of marijuana for a debilitating medical condition.
- (7) The provisions of subsection (5) do not apply if the employer had knowledge of and failed to attempt to stop the employee's use of alcohol or drugs not prescribed by a physician. This subsection (7) does not apply to the use of marijuana for a debilitating medical condition because marijuana is not a prescribed drug.
- (8) If there is no dispute that an insurer is liable for an injury but there is a liability dispute between two or more insurers, the insurer for the most recently filed claim shall pay benefits until that insurer proves that another insurer is responsible for paying benefits or until another insurer agrees to pay benefits. If it is later proven that the insurer for the most recently filed claim is not responsible for paying benefits, that insurer must receive reimbursement for benefits paid to the claimant from the insurer proven to be responsible.
- (9) If a claimant who has reached maximum healing suffers a subsequent nonwork-related injury to the same part of the body, the workers' compensation insurer is not liable for any compensation or medical benefits caused by the subsequent nonwork-related injury.

- (10) Except for cases of presumptive occupational disease as provided in 39-71-1401 and 39-71-1402, an employee is not eligible for benefits payable under this chapter unless the entitlement to benefits is established by objective medical findings that contain sufficient factual and historical information concerning the relationship of the worker's condition to the original injury.
- (11) (a) For occupational diseases, every employer enrolled under plan No. 1, every insurer under plan No. 2, or the state fund under plan No. 3 is liable for the payment of compensation, in the manner and to the extent provided in this chapter, to an employee of an employer covered under plan No. 1, plan No. 2, or the state fund under plan No. 3 if the employee is diagnosed with a compensable occupational disease.
- (b) The provisions of subsection (11)(a) apply to presumptive occupational disease if the employee is diagnosed and meets the conditions of 39-71-1401 and 39-71-1402.
- (12) An insurer is liable for an occupational disease only if the occupational disease:
- (a) is established by objective medical findings; and
- (b) arises out of or is contracted in the course and scope of employment. An occupational disease is considered to arise out of or be contracted in the course and scope of employment if the events occurring on more than a single day or work shift are the major contributing cause of the occupational disease in relation to other factors contributing to the occupational disease. For the purposes of this subsection (12), an occupational disease is not the same as a presumptive occupational disease.
- (13) When compensation is payable for an occupational disease or a presumptive occupational disease, the only employer liable is the employer in whose employment the employee was last injuriously exposed to the hazard of the disease.
- (14) When there is more than one insurer and only one employer at the time that the employee was injuriously exposed to the hazard of the disease, the liability rests with the insurer providing coverage at the earlier of:
- (a) the time that the occupational disease or presumptive occupational disease was first diagnosed by a health care provider; or
- (b) the time that the employee knew or should have known that the condition was the result of an occupational disease or a presumptive occupational disease.
- (15) In the case of pneumoconiosis, any coal mine operator who has acquired a mine in the state or substantially all of the assets of a mine from a person who was an operator of the mine on or after December 30, 1969, is liable for and shall secure the payment of all benefits that would have been payable by that person with respect to miners previously employed in the mine if acquisition had not occurred and that person had continued to operate the mine, and the prior operator of the mine is not relieved of any liability under this section.
- (16) As used in this section, "major contributing cause" means a cause that is the leading cause contributing to the result when compared to all other contributing causes. (Void on occurrence of contingency—sec. 7, Ch. 158, L. 2019.)

39-71-407. *(Effective on occurrence of contingency)* **Liability of insurers – limitations.**

- (1) For workers' compensation injuries, each insurer is liable for the payment of compensation, in the manner and to the extent provided in this section, to an employee of an employer covered under plan No. 1, plan No. 2, and the state fund under plan No. 3 that it insures who receives an injury arising out of and in the course of employment or, in the case of death from the injury, to the employee's beneficiaries, if any.
- (2) An injury does not arise out of and in the course of employment when the employee is:
 - (a) on a paid or unpaid break, is not at a worksite of the employer, and is not performing any specific tasks for the employer during the break; or
 - (b) engaged in a social or recreational activity, regardless of whether the employer pays for any portion of the activity. The exclusion from coverage of this subsection (2)(b) does not apply to an employee who, at the time of injury, is on paid time while participating in a social or recreational activity or whose presence at the activity is required or requested by the employer. For the purposes of this subsection (2)(b), "requested" means the employer asked the employee to assume duties for the activity so that the employee's presence is not completely voluntary and optional and the injury occurred in the performance of those duties.
- (3) (a) An insurer is liable for an injury, as defined in 39-71-119, only if the injury is established by objective medical findings and if the claimant establishes that it is more probable than not that:
 - (i) a claimed injury has occurred; or
 - (ii) a claimed injury has occurred and aggravated a preexisting condition.
 (b) Proof that it was medically possible that a claimed injury occurred or that the claimed injury aggravated a preexisting condition is not sufficient to establish liability.
- (4) (a) An employee who suffers an injury or dies while traveling is not covered by this chapter unless:
 - (i) the employer furnishes the transportation or the employee receives reimbursement from the employer for costs of travel, gas, oil, or lodging as a part of the employee's benefits or employment agreement and the travel is necessitated by and on behalf of the employer as an integral part or condition of the employment; or
 - (ii) the travel is required by the employer as part of the employee's job duties.
 (b) A payment made to an employee under a collective bargaining agreement, personnel policy manual, or employee handbook or any other document provided to the employee that is not wages but is designated as an incentive to work at a particular jobsite is not a reimbursement for the costs of travel, gas, oil, or lodging, and the employee is not covered under this chapter while traveling.
- (5) Except as provided in subsection (6), an employee is not eligible for benefits otherwise payable under this chapter if the employee's use of alcohol or drugs not prescribed by a physician is the major contributing cause of the accident.
- (6) (a) An employee who has received written certification, as defined in 50-46-302, from a physician for the use of marijuana for a debilitating medical condition

- and who is otherwise eligible for benefits payable under this chapter is subject to the limitations of subsections (6)(b) through (6)(d).
- (b) An employee is not eligible for benefits otherwise payable under this chapter if the employee's use of marijuana for a debilitating medical condition, as defined in 50-46-302, is the major contributing cause of the injury or occupational disease.
 - (c) Nothing in this chapter may be construed to require an insurer to reimburse any person for costs associated with the use of marijuana for a debilitating medical condition, as defined in 50-46-302.
 - (d) In an accepted liability claim, the benefits payable under this chapter may not be increased or enhanced due to a worker's use of marijuana for a debilitating medical condition, as defined in 50-46-302. An insurer remains liable for those benefits that the worker would qualify for absent the worker's use of marijuana for a debilitating medical condition.
- (7) The provisions of subsection (5) do not apply if the employer had knowledge of and failed to attempt to stop the employee's use of alcohol or drugs not prescribed by a physician. This subsection (7) does not apply to the use of marijuana for a debilitating medical condition because marijuana is not a prescribed drug.
 - (8) If there is no dispute that an insurer is liable for an injury but there is a liability dispute between two or more insurers, the insurer for the most recently filed claim shall pay benefits until that insurer proves that another insurer is responsible for paying benefits or until another insurer agrees to pay benefits. If it is later proven that the insurer for the most recently filed claim is not responsible for paying benefits, that insurer must receive reimbursement for benefits paid to the claimant from the insurer proven to be responsible.
 - (9) If a claimant who has reached maximum healing suffers a subsequent nonwork-related injury to the same part of the body, the workers' compensation insurer is not liable for any compensation or medical benefits caused by the subsequent nonwork-related injury.
 - (10) An employee is not eligible for benefits payable under this chapter unless the entitlement to benefits is established by objective medical findings that contain sufficient factual and historical information concerning the relationship of the worker's condition to the original injury.
 - (11) For occupational diseases, every employer enrolled under plan No. 1, every insurer under plan No. 2, or the state fund under plan No. 3 is liable for the payment of compensation, in the manner and to the extent provided in this chapter, to an employee of an employer covered under plan No. 1, plan No. 2, or the state fund under plan No. 3 if the employee is diagnosed with a compensable occupational disease
 - (12) An insurer is liable for an occupational disease only if the occupational disease:
 - (a) is established by objective medical findings; and
 - (b) arises out of or is contracted in the course and scope of employment. An occupational disease is considered to arise out of or be contracted in the course and scope of employment if the events occurring on more than a single day or work shift are the major contributing cause of the occupational disease in relation to other factors contributing to the occupational disease.
 - (13) When compensation is payable for an occupational disease, the only employer liable is the employer in whose employment the employee was last injuriously exposed to the hazard of the disease.

- (14) When there is more than one insurer and only one employer at the time that the employee was injuriously exposed to the hazard of the disease, the liability rests with the insurer providing coverage at the earlier of:
- (a) the time that the occupational disease was first diagnosed by a health care provider; or
 - (b) the time that the employee knew or should have known that the condition was the result of an occupational disease.
- (15) In the case of pneumoconiosis, any coal mine operator who has acquired a mine in the state or substantially all of the assets of a mine from a person who was an operator of the mine on or after December 30, 1969, is liable for and shall secure the payment of all benefits that would have been payable by that person with respect to miners previously employed in the mine if acquisition had not occurred and that person had continued to operate the mine, and the prior operator of the mine is not relieved of any liability under this section.
- (16) As used in this section, “major contributing cause” means a cause that is the leading cause contributing to the result when compared to all other contributing causes.

History: En. Sec. 16, Ch. 96, L. 1915; re-en. Sec. 2911, R.C.M. 1921; re-en. Sec. 2911, R.C.M. 1935; amd. Sec. 1, Ch. 70, L. 1967; amd. Sec. 17, Ch. 23, L. 1975; amd. Sec. 8, Ch. 550, L. 1977; R.C.M. 1947, 92-614(1); amd. Sec. 11, Ch. 464, L. 1987; amd. Sec. 1, Ch. 184, L. 1989; amd. Sec. 26, Ch. 619, L. 1993; amd. Sec. 8, Ch. 243, L. 1995; amd. Sec. 1, Ch. 435, L. 2003; amd. Sec. 6, Ch. 103, L. 2005; amd. Sec. 20, Ch. 416, L. 2005; amd. Sec. 8, Ch. 167, L. 2011; amd. Sec. 4, Ch. 315, L. 2011; amd. Sec. 5, Ch. 158, L. 2019.

39-71-408. Liability as first lien in case of bankruptcy or failure.

In case of bankruptcy, insolvency, liquidation, or the failure of an employer or insurer to meet any obligations imposed by this chapter, every liability which may be due under this chapter shall constitute a first lien upon any deposit made by such employer or insurer, and if such deposit shall not be sufficient to secure the payment of such liability in the manner and at the times provided for in this chapter, the deficiency shall be a lien upon all the property of such employer or insurer within this state and shall be prorated with other lienable claims and shall have preference over the claim of any creditor or creditors of such employer or insurer except the claims of other lienors.

History: En. Sec. 17, Ch. 96, L. 1915; re-en. Sec. 2928, R.C.M. 1921; re-en. Sec. 2928, R.C.M. 1935; R.C.M. 1947, 92-802.

Cross-References

Liens generally, Title 71, ch. 3, part 1.

39-71-409. Waivers by employee invalid.

- (1) An agreement by an employee to waive any rights under this chapter is not valid.
- (2) (a) A person who possesses and is working under a current independent contractor exemption certificate issued by the department waives all rights and benefits of the Workers' Compensation Act unless the person elects coverage pursuant to 39-71-401(3)(b).

(b) A waiver by reason of an independent contractor exemption certificate is an exception to the general prohibition of waiving the advantage of a statute enacted for a public reason as provided for in 1-3-204.

History: En. Sec. 17, Ch. 96, L. 1915; re-en. Sec. 2929, R.C.M. 1921; re-en. Sec. 2929, R.C.M. 1935; R.C.M. 1947, 92-803; amd. Sec. 10, Ch. 448, L. 2005.

39-71-410. Repealed.

Sec. 68, Ch. 464, L. 1987.

History: En. Sec. 3, Ch. 96, L. 1915; re-en. Sec. 2842, R.C.M. 1921; re-en. Sec. 2842, R.C.M. 1935; amd. Sec. 1, Ch. 95, L. 1963; amd. Sec. 1, Ch. 145, L. 1971; amd. Sec. 1, Ch. 95, L. 1974; R.C.M. 1947, 92-208; amd. Sec. 60, Ch. 197, L. 1979.

39-71-411. Provisions of chapter exclusive remedy – nonliability of insured employer.

For all employments covered under the Workers' Compensation Act or for which an election has been made for coverage under this chapter, the provisions of this chapter are exclusive. Except as provided in part 5 of this chapter for uninsured employers and except as otherwise provided in the Workers' Compensation Act, an employer is not subject to any liability whatever for the death of or personal injury to an employee covered by the Workers' Compensation Act or for any claims for contribution or indemnity asserted by a third person from whom damages are sought on account of the injuries or death. The Workers' Compensation Act binds the employee and, in case of death, binds the employee's personal representative and all persons having any right or claim to compensation for the employee's injury or death, as well as the employer and the servants and employees of the employer and those conducting the employer's business during liquidation, bankruptcy, or insolvency.

History: En. 92-204.1 by Sec. 1, Ch. 493, L. 1973; amd. Sec. 2, Ch. 550, L. 1977; R.C.M. 1947, 92-204.1(part); amd. Sec. 1, Ch. 329, L. 1979; amd. Sec. 61, Ch. 397, L. 1979; amd. Sec. 1543, Ch. 56, L. 2009.

Cross-References

Liability of railroad or mining company to employee injured by coemployee, 39-2-703, 39-2-704.

39-71-412. Liability of third party other than employer or fellow employee – additional cause of action.

The right to compensation and medical benefits as provided by this chapter is not affected by the fact that the injury, occupational disease, or death is caused by the negligence of a third party other than the employer or the servants or employees of the employer. Whenever injury, occupational disease, or death occurs to an employee while performing the duties of employment and the event is caused by the act or omission of some persons or corporations other than the employee's employer or the servants or employees of the employee's employer, the employee or in case of death the employee's heirs or personal representative, in addition to the right to receive compensation under this chapter, has a right to prosecute any cause

of action that the employee or heirs may have for damages against the persons or corporations.

History: En. 92-204.1 by Sec. 1, Ch. 493, L. 1973; amd. Sec. 2, Ch. 550, L. 1977; R.C.M. 1947, 92-204.1(part); amd. Sec. 1544, Ch. 56, L. 2009.

39-71-413. Liability of employer or fellow employee for intentional and deliberate acts – additional cause of action – intentional injury defined.

- (1) (a) If an employee is intentionally injured by an intentional and deliberate act of the employee's employer or by the intentional and deliberate act of a fellow employee while performing the duties of employment, the employee or in case of death the employee's heirs or personal representatives, in addition to the right to receive compensation under the Workers' Compensation Act, have a cause of action for damages against the person whose intentional and deliberate act caused the intentional injury.
- (b) For the purposes of this section, the standard of proof for an act to be determined to be intentional and deliberate is clear and convincing evidence.
- (2) An employer is not vicariously liable under this section for the intentional and deliberate acts of an employee.
- (3) As used in this section, "intentional injury" means an injury caused by an intentional and deliberate act that is specifically and actually intended to cause injury to the employee injured and there is actual knowledge that an injury is certain to occur.

History: En. 92-204.1 by Sec. 1, Ch. 493, L. 1973; amd. Sec. 2, Ch. 550, L. 1977; R.C.M. 1947, 92-204.1(part); amd. Sec. 1, Ch. 229, L. 2001; amd. Sec. 1, Ch. 148, L. 2013.

Cross-References

Liability of railroad or mining company to employee injured by coemployee, 39-2-703, 39-2-704.

39-71-414. Subrogation.

- (1) If an action is prosecuted as provided for in 39-71-412 or 39-71-413 and except as otherwise provided in this section, the insurer is entitled to subrogation for all compensation and benefits paid or to be paid under the Workers' Compensation Act. The insurer's right of subrogation is a first lien on the claim, judgment, or recovery.
- (2) (a) If the injured employee intends to institute the third-party action, the employee shall give the insurer reasonable notice of the intention to institute the action.
- (b) The injured employee may request that the insurer pay a proportionate share of the reasonable cost of the action, including attorney fees.
- (c) The insurer may elect not to participate in the cost of the action. If this election is made, the insurer waives 50% of its subrogation rights granted by this section.
- (d) If the injured employee or the employee's personal representative institutes the action, the employee is entitled to at least one-third of the amount recovered by judgment or settlement less a proportionate share of reasonable costs, including attorney fees, if the amount of recovery is

- insufficient to provide the employee with that amount after payment of subrogation.
- (3) If an injured employee refuses or fails to institute the third-party action within 1 year from the date of injury, the insurer may institute the action in the name of the employee and for the employee's benefit or that of the employee's personal representative. If the insurer institutes the action, it shall pay to the employee any amount received by judgment or settlement that is in excess of the amounts paid or to be paid under the Workers' Compensation Act after the insurer's reasonable costs, including attorney fees for prosecuting the action, have been deducted from the recovery.
 - (4) An insurer may enter into compromise agreements in settlement of subrogation rights.
 - (5) Regardless of whether the amount of compensation and other benefits payable under the Workers' Compensation Act have been fully determined, the insurer and the claimant's heirs or personal representative may stipulate the proportion of the third-party settlement to be allocated under subrogation. Upon review and approval by the department, the agreement constitutes a compromise settlement of the issue of subrogation. A dispute between the insurer and claimant concerning subrogation is a dispute subject to the mediation requirements of 39-71-2401.
 - (6) (a) The insurer is entitled to full subrogation rights under this section, unless the claimant is able to demonstrate damages in excess of the workers' compensation benefits and the third-party recovery combined. If the insurer is entitled to subrogation under this section, the insurer may subrogate against the entire settlement or award of a third-party claim brought by the claimant or the claimant's personal representative without regard to the nature of the damages.
(b) If a survival action does not exist and the parties reach a settlement of a wrongful death claim without apportionment of damages by a court or jury, the insurer may subrogate against the entire settlement amount, without regard to the parties' apportionment of the damages, unless the insurer is a party to the settlement agreement.
 - (7) Regardless of whether the amount of compensation and other benefits payable have been fully determined, the insurer and the claimant may stipulate the proportion of the third-party settlement to be allocated under subrogation. Upon review and approval by the department, the agreement constitutes a compromise settlement of the issue of subrogation. A dispute between the insurer and claimant concerning subrogation is a dispute subject to the mediation requirements of 39-71-2401.

History: En. 92-204.2 by Sec. 3, Ch. 550, L. 1977; R.C.M. 1947, 92-204.2; amd. Sec. 12, Ch. 464, L. 1987; amd. Sec. 64, Ch. 613, L. 1989; amd. Sec. 4, Ch. 323, L. 1991; amd. Sec. 2, Ch. 574, L. 1991; amd. Sec. 1, Ch. 459, L. 1993; amd. Sec. 5, Ch. 172, L. 1997.

39-71-415. Procedure for resolving disputes regarding independent contractor status.

- (1) If a claimant and insurer have a dispute over benefits and the dispute involves an issue of whether the claimant is an independent contractor or employee, either party may, after mediation pursuant to department rules, petition the workers' compensation judge for resolution of the dispute in accordance with 39-71-2905.

- (2) (a) A dispute involving an employer, a worker, or the department and involving the issue of whether a worker is an independent contractor or an employee, but not involving workers' compensation benefits, must be brought before the independent contractor central unit of the department for resolution.
- (b) (i) A decision of the independent contractor central unit is final unless a party dissatisfied with the decision requests mediation pursuant to department rules within 15 days of the mailing of the decision by the independent contractor central unit.
- (ii) At the conclusion of the mediation process, the mediator shall issue a report summarizing the status of the proceeding and shall mail a copy of the report to the parties.
- (c) If after mediation the parties have not resolved their dispute concerning a worker's status as an independent contractor or an employee, a party may appeal the decision of the independent contractor central unit by filing a petition with the workers' compensation court within 30 days of the mailing of the mediator's report.
- (d) An appeal from the independent contractor central unit to the workers' compensation court brought pursuant to this subsection (2) is a new proceeding.

History: En. Sec. 7, Ch. 314, L. 1987; amd. Sec. 64, Ch. 613, L. 1989; amd. Sec. 15, Ch. 442, L. 1999; amd. Sec. 8, Ch. 214, L. 2001; amd. Sec. 11, Ch. 448, L. 2005; amd. Sec. 3, Ch. 117, L. 2007.

39-71-416. Repealed.

Sec. 10, Ch. 26, L. 2005.

History: En. Sec. 2, Ch. 243, L. 1995.

39-71-417. Independent contractor certification.

- (1) (a) (i) Except as provided in subsection (1)(a)(ii), a person who regularly and customarily performs services at a location other than the person's own fixed business location shall apply to the department for an independent contractor exemption certificate unless the person has elected to be bound personally and individually by the provisions of compensation plan No. 1, 2, or 3.
- (ii) An officer or manager who is exempt under 39-71-401(2)(r)(iii) or (2)(r)(iv) may apply, but is not required to apply, to the department for an independent contractor exemption certificate.
- (b) A person who meets the requirements of this section and receives an independent contractor exemption certificate is not required to obtain a personal workers' compensation insurance policy.
- (c) For the purposes of this section, "person" means:
- (i) a sole proprietor;
 - (ii) a working member of a partnership;
 - (iii) a working member of a limited liability partnership;
 - (iv) a working member of a member-managed limited liability company; or
 - (v) a manager of a manager-managed limited liability company that is engaged in the work of the construction industry as defined in 39-71-116.

- (2) The department shall adopt rules relating to an original application for or renewal of an independent contractor exemption certificate. The department shall adopt by rule the amount of the fee for an application or certificate renewal. The application or renewal must be accompanied by the fee.
- (3) The department shall deposit the application or renewal fee in an account in the state special revenue fund to pay the costs of administering the program.
- (4) (a) To obtain an independent contractor exemption certificate, the applicant shall swear to and acknowledge the following:
 - (i) that the applicant has been and will continue to be free from control or direction over the performance of the person's own services, both under contract and in fact; and
 - (ii) that the applicant is engaged in an independently established trade, occupation, profession, or business and will provide sufficient documentation of that fact to the department.(b) For the purposes of subsection (4)(a)(i), an endorsement required for licensure, as provided in 37-47-303, does not imply or constitute control.
- (5) (a) An applicant for an independent contractor exemption certificate shall submit an application under oath on a form prescribed by the department and containing the following:
 - (i) the applicant's name and address;
 - (ii) the applicant's social security number;
 - (iii) each occupation for which the applicant is seeking independent contractor certification; and
 - (iv) other documentation as provided by department rule to assist in determining if the applicant has an independently established business.(b) The department shall adopt a retention schedule that maintains copies of documents submitted in support of an initial application or renewal application for an independent contractor exemption certificate for a minimum of 3 years after an application has been received by the department. The department shall, to the extent feasible, produce renewal applications that reduce the burden on renewal applicants to supply information that has been previously provided to the department as part of the application process.
- (c) An applicant who applies on or after July 1, 2011, to renew an independent contractor exemption certificate is not required to submit documents that have been previously submitted to the department if:
 - (i) the applicant certifies under oath that the previously submitted documents are still valid and current; and
 - (ii) the department, if it considers it necessary, independently verifies a specific document or decides that a document has not expired pursuant to the document's own terms and is therefore still valid and current.
- (6) The department shall issue an independent contractor exemption certificate to an applicant if the department determines that an applicant meets the requirements of this section.
- (7) (a) When the department approves an application for an independent contractor exemption certificate and the person is working under the independent contractor exemption certificate, the person's status is conclusively presumed to be that of an independent contractor.
- (b) A person working under an approved independent contractor exemption certificate has waived all rights and benefits under the Workers'

Compensation Act and is precluded from obtaining benefits unless the person has elected to be bound personally and individually by the provisions of compensation plan No. 1, 2, or 3.

- (c) For the purposes of the Workers' Compensation Act, a person is working under an independent contractor exemption certificate if:
 - (i) the person is performing work in the trade, business, occupation, or profession listed on the person's independent contractor exemption certificate; and
 - (ii) the hiring agent and the person holding the independent contractor exemption certificate do not have a written or an oral agreement that the independent contractor exemption certificate holder's status with respect to that hiring agent is that of an employee.
- (8) Once issued, an independent contractor exemption certificate remains in effect for 2 years unless:
 - (a) suspended or revoked pursuant to 39-71-418; or
 - (b) canceled by the independent contractor.
- (9) If the department's independent contractor central unit denies an application for an independent contractor exemption certificate, the applicant may contest that decision as provided in 39-71-415(2).

History: En. Sec. 1, Ch. 448, L. 2005; amd. Sec. 4, Ch. 117, L. 2007; amd. Sec. 2, Ch. 340, L. 2007; amd. Sec. 1, Ch. 120, L. 2009; amd. Sec. 2, Ch. 200, L. 2011.

39-71-418. Suspension or Revocation of Independent Contractor Exemption Certificate.

- (1) The department may suspend an independent contractor exemption certificate for a specific business relationship if the department determines that the employing unit exerts or retains a right of control to a degree that causes a certificate holder to violate the provisions of 39-71-417(4).
- (2) The department may revoke an independent contractor exemption certificate after determining that the certificate holder:
 - (a) made misrepresentations in the application affidavit or certificate renewal form;
 - (b) altered or amended the application form, the renewal application form, other supporting documentation required by the department, or the independent contractor exemption certificate;
 - (c) failed to cooperate with the department in providing information relevant to the continued validity of the holder's certificate; or
 - (d) does not have an independently established business as required by 39-71-417(4).
- (3) A decision by the department to suspend or revoke an independent contractor exemption certificate takes effect upon issuance of the decision. Suspension or revocation of the independent contractor exemption certificate does not invalidate the certificate holder's waiver of the rights and benefits of the Workers' Compensation Act for the period prior to notice to the hiring agent by the department of the department's decision to suspend or revoke the independent contractor exemption certificate.
- (4) A decision by the department's independent contractor central unit to suspend or revoke an independent contractor exemption certificate may be contested in the same manner as provided in 39-71-415(2).

History: En. Sec. 2, Ch. 448, L. 2005; amd. Sec. 5, Ch. 117, L. 2007; amd. Sec. 2, Ch. 150, L. 2011.

39-71-419. Independent contractor violations – penalty.

- (1) A person may not:
 - (a) perform work as an independent contractor without first:
 - (i) obtaining from the department an independent contractor exemption certificate unless the individual is not required to obtain an independent contractor exemption certificate pursuant to 39-71-417(1)(a); or
 - (ii) electing to be bound personally and individually by the provisions of compensation plan No. 1, 2, or 3;
 - (b) perform work as an independent contractor when the department has revoked or denied the independent contractor's exemption certificate;
 - (c) transfer to another person or allow another person to use an independent contractor exemption certificate that was not issued to that person;
 - (d) alter or falsify an independent contractor exemption certificate; or
 - (e) misrepresent the person's status as an independent contractor.
- (2) An employer may not:
 - (a) require an employee through coercion, misrepresentation, or fraudulent means to adopt independent contractor status to avoid the employer's obligations to provide workers' compensation coverage; or
 - (b) exert control to a degree that causes the independent contractor to violate the provisions of 39-71-417(4).
- (3) In addition to any other penalty or sanction provided in this chapter, a person or employer who violates a provision of this section is subject to a fine to be assessed by the department of up to \$1,000 for each violation. The department shall deposit the fines in the uninsured employers' fund. The lien provisions of 39-71-506 apply to any assessed fines.
- (4) A person or employer who disputes a fine assessed by the department pursuant to this section may file an appeal with the department within 30 days of the date on which the fine was assessed. If, after mediation, the issue is not resolved, the issue must be transferred to the workers' compensation court for resolution.

History: En. Sec. 3, Ch. 448, L. 2005.

39-71-420 reserved.

39-71-421. Financial incentives to institute safety programs.

Insurers may provide financial incentives to an employer who implements a formal safety program. An insurer may provide to an employer a premium discount that reflects the degree of risk diminished by the implemented safety program.

History: En. Sec. 9, Ch. 464, L. 1987; amd. Sec. 21, Ch. 613, L. 1989.

39-71-422 through 39-71-425 reserved.

39-71-426. Repealed.

Sec. 10, Ch. 26, L. 2005.

History: En. Sec. 1, Ch. 388, L. 1989; amd. Sec. 5, Ch. 480, L. 1991.

39-71-427. Repealed.

Sec. 10, Ch. 26, L. 2005.

History: En. Sec. 2, Ch. 388, L. 1989.

39-71-428. Repealed.

Sec. 10, Ch. 26, L. 2005.

History: En. Sec. 3, Ch. 388, L. 1989.

39-71-429 and 39-71-430 reserved.**39-71-431. Repealed.**

Sec. 13, Ch. 310, L. 1997.

History: En. Sec. 12, Ch. 613, L. 1989; amd. Sec. 5, Ch. 323, L. 1991.

39-71-432. Definitions.

As used in 39-71-433, the following definitions apply:

- (1) "Business entity" means a business enterprise owned by a single person, corporation, organization, business trust, trust, partnership, limited liability company, limited liability partnership, joint venture, association, or other business entity.
- (2) "Group" means two or more business entities that join together to purchase individual workers' compensation insurance policies covering each business entity that is part of a group.

History: En. Sec. 20, Ch. 619, L. 1993; amd. Sec. 7, Ch. 516, L. 1995; amd. Sec. 6, Ch. 172, L. 1997; amd. Sec. 6, Ch. 377, L. 1999.

39-71-433. Group purchase of workers' compensation insurance.

- (1) Two or more business entities may join together to form a group to purchase individual workers' compensation insurance policies covering each member of the group.
- (2) A group formed under this section may purchase individual workers' compensation insurance policies covering each member of the group from any insurer authorized to write workers' compensation insurance in this state, except that the state fund, as defined in 39-71-2312, has the right to refuse coverage of a group and its plan of operation but may not refuse coverage to an individual employer. Under an individual policy, the group is entitled to a premium or volume discount that would be applicable to a policy of the combined premium amount of the individual policies.
- (3) A group shall apportion any discount or policyholder dividend received on workers' compensation insurance coverage among the members of the group according to a formula adopted in the plan of operation for the group.

- (4) A group shall adopt a plan of operation that must include the composition and selection of a governing board, the methods for administering the group, the eligibility requirements to join the group, and guidelines for the workers' compensation insurance coverage obtained by the group, including the payment of premiums, the distribution of discounts, and the method for providing risk management.

History: En. Sec. 21, Ch. 619, L. 1993; amd. Sec. 8, Ch. 516, L. 1995; amd. Sec. 5, Ch. 310, L. 1997.

39-71-434. Deductible insurance policy provision for medical benefits.

- (1) In order to lower the amount an employer is required to pay to obtain workers' compensation insurance coverage under this chapter, a workers' compensation policy issued by the state compensation insurance fund under plan No. 3 or by a private insurer under plan No. 2 must offer a deductible for the medical, hospital, and related services allowed under 39-71-704. The medical deductible must be offered in amounts of at least \$500.
- (2) If the insured employer chooses to accept a medical deductible, the insured employer is liable for the amount of the deductible for the medical benefits paid for each otherwise compensable claim of work injury suffered by an employee.
- (3) The insured employer shall contract with the insurer to have the insurer pay the entire cost of the covered medical benefits directly to the provider of medical or related services and then seek reimbursement from the insured employer for the deductible amount. The insurer is entitled to reimbursement only for medical, hospital, and related services allowed under 39-71-704, up to the amount of the deductible.
- (4) If an insured employer who has contracted with an insurer for a medical deductible does not pay the medical deductible amount to the insurer through reimbursement, the amount paid by the insurer on the claim may be included as benefits paid in a determination of the insured employer's rate.
- (5) If an insured employer chooses to accept a medical deductible, then for purposes of computing rates and rating plans, all medical losses incurred must be reported to the insurer without regard to the application of any medical deductible regardless of whether the employer or the insurer pays the losses.

History: En. Sec. 1, Ch. 641, L. 1989; amd. Sec. 1, Ch. 666, L. 1991; amd. Sec. 1, Ch. 248, L. 1993.

39-71-435. Workers' compensation and employers' liability insurance – optional deductibles.

- (1) An insurer issuing a workers' compensation or an employer's liability insurance policy may offer to the policyholder, as part of the policy or by endorsement, optional deductibles for benefits payable under the policy consistent with the standards contained in subsection (3).
- (2) The advisory organization designated under 33-16-1023 may develop and file a deductible plan or plans on behalf of its members consistent with the standards contained in subsection (3).
- (3) The commissioner of insurance shall approve a deductible plan that is in accordance with the following standards:
 - (a) Claimants' rights are properly protected and claimants' benefits are paid without regard to the deductible.

- (b) Premium reductions reflect the type and level of the deductible, consistent with accepted actuarial standards.
 - (c) Premium reductions for deductibles are determined before application of any experience modification, premium surcharge, or premium discount.
 - (d) Recognition is given to policyholder characteristics, including but not limited to size, financial capabilities, nature of activities, and number of employees.
 - (e) The policyholder is liable to the insurer for the deductible amount in regard to benefits paid for compensable claims.
 - (f) The insurer pays all of the deductible amount applicable to a compensable claim to the person or provider entitled to benefits and then seeks reimbursement from the policyholder for the applicable deductible amount.
 - (g) Failure by the policyholder to reimburse deductible amounts to the insurer is treated under the policy as nonpayment of premium.
 - (h) Losses subject to the deductible must be reported and recorded as losses for purposes of calculating rates for a policyholder on the same basis as losses under policies providing first dollar coverage.
- (4) The state compensation insurance fund, plan No. 3, may adopt the plan filed by the designated advisory organization or adopt an optional deductible plan that meets the requirements of this section.
- (5) For purposes of 39-71-201, 39-71-915, and 50-71-128, liability for assessments must be ascertained without regard to application of any deductible, whether the employer or the insurer pays the losses. For all other taxes and assessments based on premium, the amount of premium or assessment must be determined after application of the deductible.

History: En. Sec. 8, Ch. 619, L. 1993; amd. Sec. 24, Ch. 186, L. 1995; amd. Sec. 9, Ch. 214, L. 2001; amd. Sec. 2, Ch. 365, L. 2015.

39-71-436 through 39-71-440 reserved.

39-71-441. Tribal employment coverage.

The department may, as provided in Title 18, chapter 11, enter into an agreement with a tribal government to recognize, with the same effect as the exclusive remedy and benefits under plans No. 1, 2, and 3, tribal workers' compensation plans or self-insured plans that the department determines provide adequate coverage to persons who are:

- (1) employed by an enrolled tribal member or by an association, business, corporation, or other entity at least 51% of which is owned by one or more enrolled tribal members; and
- (2) working outside the exterior boundaries of an Indian reservation.

History: En.

39-71-442. (Temporary) Employer option for extraterritorial coverage.

- (1) Notwithstanding 39-71-118 (8)(a), an employee of an employer in this state who is employed by the employer to work solely in North Dakota, and who is required by the laws of that state to be covered for workers' compensation purposes while working in that state, is not considered to be an employee in this state covered under Title 39, chapter 71, during any time that the employer maintains workers' compensation coverage for the employee in North

Dakota. For purposes of this section, “work solely in North Dakota” means the employee does not perform job duties in Montana and coverage is required by the state of North Dakota. Travel that is commuting to and from a job site in North Dakota from a location in Montana does not constitute performing job duties in Montana even if the employer pays for all or a portion of the costs of travel or if the worker is paid for the travel time.

- (2) A plan No. 1, 2, or 3 insurer providing coverage to the employer under this chapter may require proof of coverage in North Dakota and records of work in North Dakota. An insurer may use a verification of employment form, developed by the department, to request an attestation by the employer regarding the employees working solely in North Dakota.
- (3) (a) This section does not exempt an employee from coverage under this chapter when the employee's usual job duties begin in this state and the employee is otherwise covered under 39-71-407(4)(a).
 - (b) This section exempts an employee from coverage under this chapter when the employee is engaged in travel while commuting as provided in subsection (1). (*Terminates June 30, 2019—sec. 5, Ch. 315, L. 2015.*)

History: En. Sec. 1, Ch. 315, L. 2015.

Part 5

Uninsured Employers

Part Cross-References

Definitions, 39-71-116.

Employer defined, 39-71-117.

Employee defined, 39-71-118.

Injury defined, 39-71-119.

39-71-501. Definition of uninsured employer.

For the purposes of 39-71-501, 39-71-503 through 39-71-511, 39-71-515 through 39-71-520, and 39-71-541, “uninsured employer” means an employer who has not properly complied with the provisions of 39-71-401.

History: En. 92-212 by Sec. 4, Ch. 550, L. 1977; R.C.M. 1947, 92-212(part); amd. Sec. 62, Ch. 397, L. 1979; amd. Sec. 179, Ch. 42, L. 1997; amd. Sec. 7, Ch. 377, L. 1999; amd. Sec. 11, Ch. 112, L. 2009.

39-71-502. Repealed.

Sec. 22, Ch. 377, L. 1999.

History: En. 92-212 by Sec. 4, Ch. 550, L. 1977; R.C.M. 1947, 92-212(part); amd. Sec. 13, Ch. 464, L. 1987; amd. Sec. 9, Ch. 276, L. 1997.

39-71-503. Uninsured employers' fund – purpose and administration of fund – maintaining balance for administrative costs – appropriation.

- (1) There is created an uninsured employers' fund in the state special revenue account to pay:
 - (a) to an injured employee of an uninsured employer the same benefits the employee would have received if the employer had been properly

- enrolled under compensation plan No. 1, 2, or 3, except as provided in subsection (3);
- (b) the costs of investigating and prosecuting workers' compensation fraud under 2-15-2015; and
 - (c) the expenses incurred by the department in administering the uninsured employers' fund.
- (2) The department may refer to the workers' compensation fraud office, established in 2-15-2015, cases involving:
- (a) false or fraudulent claims for benefits; and
 - (b) criminal violations of 45-7-501.
- (3) (a) Except as provided in subsection (3)(b), surpluses and reserves may not be kept for the fund. The department shall make payments that it considers appropriate as funds become available from time to time. The payment of weekly disability benefits takes precedence over the payment of medical benefits. Lump-sum payments of future projected benefits, including impairment awards, may not be made from the fund. The board of investments shall invest the money of the fund, and the investment income must be deposited in the fund.
- (b) The department shall maintain at least a 3-month balance based on projected budget costs for administration of the fund. The balance for administrative costs may be used by the department only in administering the fund.
 - (c) The maximum aggregate medical benefits expenditure that may be made from the fund may not exceed \$100,000 for any single claim regardless of whether the claim arises from an injury or an occupational disease.
- (4) The amounts necessary for the payment of benefits from the fund are statutorily appropriated, as provided in 17-7-502, from the fund.

History: En. 92-212 by Sec. 4, Ch. 550, L. 1977; R.C.M. 1947, 92-212(part); amd. Sec. 14, Ch. 464, L. 1987; amd. Sec. 64, Ch. 613, L. 1989; amd. Sec. 5, Ch. 555, L. 1993; amd. Sec. 9, Ch. 516, L. 1995; amd. Sec. 6, Ch. 310, L. 1997; amd. Sec. 35, Ch. 422, L. 1997; amd. Sec. 8, Ch. 377, L. 1999; amd. Sec. 18, Ch. 389, L. 1999; amd. Sec. 2, Ch. 193, L. 2003; amd. Sec. 4, Ch. 48, L. 2007.

Cross-References

Investments, Title 17, ch. 6, part 2.

39-71-504. Funding of fund – option for agreement between department and injured employee.

The fund is funded in the following manner:

- (1) (a) The department may require that the uninsured employer pay to the fund a penalty of either up to double the premium amount the employer would have paid on the payroll of the employer's workers in this state if the employer had been enrolled with compensation plan No. 3 or \$200, whichever is greater. In determining the premium amount for the calculation of the penalty under this subsection, the department shall make an assessment based on how much premium would have been paid on the employer's past 3-year payroll for periods within the 3 years when the employer was uninsured.

- (b) The fund shall collect from an uninsured employer an amount equal to all benefits paid or to be paid from the fund to or on behalf of an injured employee of the uninsured employer.
 - (c) In addition to any amounts recovered under subsections (1)(a) and (1)(b), the fund shall collect a penalty of \$200 from an employer that fails to obtain Montana workers' compensation insurance within 30 days of notice of the requirement.
- (2) (a) An uninsured employer that fails to make timely penalty or claim reimbursement payments required under this part must be assessed a late fee of \$50 for each late payment.
 - (b) Any unpaid balance owed to the fund under this part must accrue interest at 12% a year or 1% a month or fraction of a month. Interest on unpaid balances accrues from the date of the original billing.
 - (c) Late fees and interest assessed pursuant to this subsection (2) must be deposited into the fund for payment of administrative expenses and benefits.
- (3) The department may enter into an agreement with the injured employee or the employee's beneficiaries to assign to the employee or the beneficiaries all or part of the funds collected by the department from the uninsured employer pursuant to subsection (1)(b).

History: En. 92-212 by Sec. 4, Ch. 550, L. 1977; R.C.M. 1947, 92-212(2); amd. Sec. 5, Ch. 103, L. 1979; amd. Sec. 1, Ch. 601, L. 1985; amd. Sec. 64, Ch. 613, L. 1989; amd. Sec. 1, Ch. 661, L. 1991; amd. Sec. 10, Ch. 516, L. 1995; amd. Sec. 3, Ch. 284, L. 1997; amd. Sec. 7, Ch. 310, L. 1997; amd. Sec. 3, Ch. 193, L. 2003; amd. Sec. 4, Ch. 69, L. 2005.

39-71-505. Applicability of other provisions of chapter to fund.

All appropriate provisions in the Workers' Compensation Act apply to the fund in the same manner as they apply to compensation plans No. 1, 2, and 3.

History: En. 92-212 by Sec. 4, Ch. 550, L. 1977; R.C.M. 1947, 92-212(5).

Cross-References

- Compensation plan No. 1, Title 39, ch. 71, part 21.
- Compensation plan No. 2, Title 39, ch. 71, part 22.
- Compensation plan No. 3, Title 39, ch. 71, part 23.

39-71-506. Lien for payment of unpaid penalties, fees, and interest – levy and execution.

- (1) (a) If, upon demand of the department, an uninsured employer refuses to make the payments to the fund that are provided for in 39-71-504(1)(a), (1)(c), and (2), the unpaid penalties, fees, and interest have the effect of a judgment against the employer at the time the payments become due. After issuing an order to the uninsured employer requiring payment of penalties, fees, and interest and after the due process requirements of 39-71-2401(2) and (3) are satisfied, the department may issue a certificate setting forth the amount of payment due and direct the clerk of the district court of any county in the state to enter the certificate as a judgment on the docket pursuant to 25-9-301. From the time the judgment is entered on the docket, it becomes a lien upon all real property of the uninsured employer.

The department may enforce the judgment at any time within 10 years of creation of the lien.

- (b) A judgment lien filed pursuant to this section may be renewed for another 10-year period upon motion of the lienholder or by a judgment for that purpose.
- (2) The department may settle through compromise with an uninsured employer the amount due the fund under subsection (1).

History: En. 92-212 by Sec. 4, Ch. 550, L. 1977; R.C.M. 1947, 92-212(3); amd. Sec. 63, Ch. 397, L. 1979; amd. Sec. 64, Ch. 613, L. 1989; amd. Sec. 6, Ch. 555, L. 1993; amd. Sec. 4, Ch. 193, L. 2003; amd. Sec. 12, Ch. 112, L. 2009.

39-71-507. Department to order uninsured employer to cease operations – noncompliance with order a misdemeanor – coordination of remedies.

- (1) When the department discovers an uninsured employer, it shall order the employer to cease operations until the employer has elected to be bound by a compensation plan.
- (2) When the department discovers a person, business, or other entity functioning as a prime contractor that has subcontracted for the services of an uninsured employer, it may order the person, business, or other entity functioning as a prime contractor to cause all operations performed by the uninsured employer to cease at worksites controlled by the prime contractor until the uninsured employer has elected to be bound by a compensation plan. If after 3 business days following the order by the department the person, business, or other entity functioning as a prime contractor has not complied with the order, the department may order the prime contractor to cease all operations at the affected worksites.
- (3) An employer who does not comply with the department's order to cease operations is guilty of a misdemeanor. Each day of violation is a separate offense. The county attorney may prosecute a criminal action under this subsection in the county in which the violation occurs. Prosecution under this subsection does not bar the department from enforcing its order by a civil action.
- (4) A person, business, or other entity functioning as a prime contractor that does not comply with the department's order to cease all operations is guilty of a misdemeanor. Each day of violation is a separate offense. The county attorney may prosecute a criminal action under this subsection in the county in which the violation occurs. Prosecution under this subsection does not bar the department from enforcing its order by a civil action. In addition, the department may assess a penalty against the person, business, or other entity functioning as a prime contractor of not more than \$1,000 per day for each day of violation.
- (5) The department may institute and maintain in the name of the state, through the attorney general or the county attorney of the county in which the violation occurs, an action for an injunction order or other civil remedy in district court to enforce its order to cease operations.
- (6) The remedies provided in 39-71-506 and subsections (3) through (5) of this section are not mutually exclusive and may be pursued concurrently.

History: En. 92-212 by Sec. 4, Ch. 550, L. 1977; R.C.M. 1947, 92-212(6); amd. Sec. 1, Ch. 586, L. 1987; amd. Sec. 64, Ch. 613, L. 1989; amd. Sec. 11, Ch. 516, L. 1995.

Cross-References

Misdemeanor defined, 45-2-101.

Penalty when no penalty specified, 46-18-212.

39-71-508. Coordination of remedies – limitation of liability of employee to third-party providers – rights of third-party providers.

- (1) An employee who suffers an injury arising out of and in the course of employment while working for an uninsured employer, as defined in 39-71-501, or an employee's beneficiaries in injuries resulting in death may pursue all remedies concurrently, including but not limited to:
 - (a) a claim for benefits from the uninsured employers' fund;
 - (b) a damage action against the employer in accordance with 39-71-509;
 - (c) an independent action against an employer as provided in 39-71-515; or
 - (d) any other civil remedy provided by law.
- (2) An employee who is entitled to recover under this part is not liable to any third-party provider for services provided to the employee that are not reimbursed by the uninsured employers' fund.
- (3) A third-party provider that is not fully reimbursed by the uninsured employers' fund for services provided to an injured employee may bring an action directly against the uninsured employer for the amount of services that were not paid by the uninsured employers' fund.

History: En. 92-213 by Sec. 5, Ch. 550, L. 1977; R.C.M. 1947, 92-213(part); amd. Sec. 2, Ch. 601, L. 1985; amd. Sec. 5, Ch. 48, L. 2007.

39-71-509. Action against uninsured employer – limitation of employer's defenses.

If an injured employee or the employee's beneficiaries bring an action to recover damages for personal injuries sustained or for death resulting from personal injuries sustained, it is not a defense for the employer that the:

- (1) employee was negligent unless the negligence was willful;
- (2) injury was caused by the negligence of a fellow employee; or
- (3) employee had assumed the risks inherent in, incident to, or arising out of the employee's employment or arising from the failure of the employer to provide and maintain a reasonably safe place to work or reasonably safe tools or appliances.

History: En. 92-213 by Sec. 5, Ch. 550, L. 1977; R.C.M. 1947, 92-213(part); amd. Sec. 5, Ch. 601, L. 1985; amd. Sec. 1545, Ch. 56, L. 2009.

39-71-510. Limitation on benefit entitlement under fund.

- (1) Notwithstanding the provisions of 39-71-407, 39-71-503, and subsection (2) of this section, injured employees or an employee's beneficiaries who pursue a claim for benefits from the uninsured employers' fund are not granted an entitlement by this state for full workers' compensation benefits from the fund. Benefits from the fund must be paid in accordance with the money in the fund. If the department determines at any time that the money in the fund is not adequate to fully pay all claims, the department may make appropriate

proportionate reductions in benefits to all claimants. The reductions do not entitle claimants to retroactive reimbursements in the future.

- (2) The maximum medical benefits entitlement for any single claim against the fund is limited to an aggregate amount of \$100,000.

History: En. 92-213 by Sec. 5, Ch. 550, L. 1977; R.C.M. 1947, 92-213(2); amd. Sec. 64, Ch. 397, L. 1979; amd. Sec. 4, Ch. 601, L. 1985; amd. Sec. 64, Ch. 613, L. 1989; amd. Sec. 9, Ch. 377, L. 1999; amd. Sec. 6, Ch. 48, L. 2007.

39-71-511. Setoffs to claim against fund.

A claim for benefits from the uninsured employers' fund must be discharged, finally or periodically, to the extent that an employee or the employee's beneficiaries receive actual monetary compensation by judgment or settlement from the uninsured employer, a third party who shares liability as defined in 39-71-412, or a fellow employee who shares liability as defined in 39-71-413.

History: En. Sec. 3, Ch. 601, L. 1985.

39-71-512 through 39-71-514 reserved.

39-71-515. Independent cause of action.

- (1) An injured employee or the employee's beneficiaries have an independent cause of action against an uninsured employer for failure to be enrolled in a compensation plan as required by this chapter.
- (2) In an action described in subsection (1), prima facie liability of the uninsured employer exists if the claimant proves, by a preponderance of the evidence, that:
 - (a) the employer was required by law to be enrolled under compensation plan No. 1, 2, or 3 with respect to the claimant; and
 - (b) the employer was not enrolled on the date of the injury or death.
- (3) It is not a defense to an action that the employee had knowledge of or consented to the employer's failure to carry insurance or that the employee was negligent in permitting the failure to exist.
- (4) The amount of recoverable damages in an action is the amount of compensation that the employee would have received had the employer been properly enrolled under compensation plan No. 1, 2, or 3.
- (5) A plaintiff who prevails in an action brought under this section is entitled to recover reasonable costs and attorney fees incurred in the action, in addition to damages.

History: En. Sec. 6, Ch. 601, L. 1985; amd. Sec. 1546, Ch. 56, L. 2009.

Cross-References

Costs and attorney fees, Title 25, ch. 10.

39-71-516. District court venue and jurisdiction for independent cause of action.

An injured employee or an employee's beneficiaries pursuing an independent cause of action pursuant to 39-71-515 shall bring the action in the district court in the district where the claimant resides or where the alleged violation occurred. The court may grant interim relief that it considers appropriate, including but not limited

to injunctive relief, attachment, or receivership. The court may request the workers' compensation judge to determine the amount of recoverable damages due to the employee.

History: En. Sec. 7, Ch. 601, L. 1985; amd. Sec. 12, Ch. 516, L. 1995.

Cross-References

Venue generally, Title 25, ch. 2.

Attachment, Title 27, ch. 18.

Injunctions, Title 27, ch. 19.

Receivership, Title 27, ch. 20.

39-71-517. Requirement to serve papers.

In pursuing remedies under 39-71-501, 39-71-503 through 39-71-511, and 39-71-515 through 39-71-520, an injured employee or the employee's beneficiaries shall serve all pleadings and all other litigation papers on the department and the uninsured employer, regardless of whether the department or the uninsured employer is a party to the particular action to which the papers relate.

History: En. Sec. 8, Ch. 601, L. 1985; amd. Sec. 64, Ch. 613, L. 1989; amd. Sec. 180, Ch. 42, L. 1997; amd. Sec. 10, Ch. 377, L. 1999.

39-71-518. Setoffs against remaining liability.

Any actual monetary compensation received by judgment or settlement by the injured employee or the employee's beneficiaries under 39-71-509 or 39-71-515 may be offset by the uninsured employer against the employer's remaining liability under those sections.

History: En. Sec. 9, Ch. 601, L. 1985; amd. Sec. 1547, Ch. 56, L. 2009.

39-71-519. Settlement.

The department, the uninsured employer, the injured employee or the employee's beneficiaries, a third party who shares liability as defined in 39-71-412, or a fellow employee who shares liability as defined in 39-71-413 may enter into a settlement agreement to finally settle the rights and liabilities under 39-71-501, 39-71-503 through 39-71-511, and 39-71-515 through 39-71-520 of any or all of the parties. The settlement is subject to department approval in accordance with 39-71-741.

History: En. Sec. 10, Ch. 601, L. 1985; amd. Sec. 64, Ch. 613, L. 1989; amd. Sec. 181, Ch. 42, L. 1997; amd. Sec. 11, Ch. 377, L. 1999.

39-71-520. Time limit to appeal to mediation – petitioning workers' compensation court – failure to settle or petition.

- (1) A dispute concerning uninsured employers' fund benefits must be appealed to mediation within 90 days from the date of the determination by the department or the determination is considered final.
- (2) (a) If the parties fail to reach a settlement through the mediation process, any party who disagrees with the department's determination may file a petition before the workers' compensation court.

- (b) A party's petition must be filed within 60 days of the mailing of the mediator's report provided for in 39-71-2411 unless the parties stipulate in writing to a longer time period for filing the petition.
- (c) If a settlement is not reached through mediation and a petition is not filed within 60 days of the mailing of the mediator's report, the determination by the department is final.
- (d) A mediator's report is not a determination by the department for the purposes of this section. A determination by the department is final if an appeal to mediation described in subsection (1) or a petition described in subsection (2)(a) is not filed within the required time period.

History: En. Sec. 19, Ch. 555, L. 1993; amd. Sec. 5, Ch. 193, L. 2003; amd. Sec. 13, Ch. 112, L. 2009.

39-71-521. Burden of proof – insurance coverage.

- (1) In a proceeding brought by the department or an employer to resolve the issue of the existence of workers' compensation insurance coverage for that employer, the initial burden of proof is on the department to demonstrate that:
 - (a) the employer is required to have workers' compensation insurance coverage; and
 - (b) either:
 - (i) the database of the recognized agent providing proof of coverage indicates that no coverage is reported by an insurer to cover the employer's Montana operations; or
 - (ii) the department confirms with the insurer that reported coverage for the employer that the policy previously covering the employer's Montana operations has been canceled by that insurer.
- (2) The burden then shifts to the employer to demonstrate that the employer is not required either to have workers' compensation insurance coverage or to produce a valid workers' compensation insurance policy covering the employer's Montana operations during the period of time in question. A valid workers' compensation insurance policy is one acknowledged by the insurer to be valid or adjudged to be valid by a court of competent jurisdiction.

History: En. Sec. 1, Ch. 214, L. 2001.

39-71-522. Inspection of construction sites – public policy – penalty.

- (1) In recognition of the benefit of fair competition among business competitors and the public policy of this state providing for enforcement of workers' compensation insurance coverage requirements, the legislature finds that it is reasonable to allow access by authorized employees of the department onto construction sites for the purpose of determining whether workers are appropriately covered by workers' compensation insurance or a valid exemption from insurance coverage.
- (2) In order to determine if proper workers' compensation insurance coverage is in place or if a valid exemption is held by a worker present on a construction site, authorized employees of the department may enter onto any construction site for which a construction permit is required or has been issued.
- (3) Upon presentation of proper credentials, department employees must be admitted to a construction site to:

- (a) gather information relating to compliance with the coverage requirements of this chapter; and
 - (b) when appropriate, issue a notice of violation to a person who is in violation of 39-71-419.
- (4) This section does not authorize the department's employees to engage in a breach of the peace. The department may request the assistance of appropriate local law enforcement agencies to peaceably enter a construction site.
- (5) A person who purposely or knowingly restricts the access to a construction site by a credentialed department employee or who obstructs the employee in the performance of the employee's duties under this section commits the offense of obstruction of a public servant as provided in 45-7-302.
- (6) As used in this section, the following definitions apply:
- (a) "Construction permit" means any permit that can be issued pursuant to Title 50, chapter 60, and includes:
 - (i) a boiler permit;
 - (ii) a building permit;
 - (iii) an electrical permit;
 - (iv) an elevator permit;
 - (v) a mechanical permit; or
 - (vi) a plumbing permit.
 - (b) "Construction site" means any parcel of real property where work is being performed for which a construction permit is required or has been issued.

History: En. Sec. 1, Ch. 48, L. 2007.

39-71-523 and 39-71-524 reserved.

39-71-525. Confidentiality of records – exception for use by public employees.

Information obtained from any individual under this part is confidential and may not be disclosed, sold, or opened to public inspection except to department employees when necessary to allow them to perform their public duties under this chapter or to provide relevant and necessary information to other public entities or pursuant to a subpoena issued upon a showing of compelling state interest.

History: En. Sec. 21, Ch. 377, L. 1999; amd. Sec. 22, Ch. 416, L. 2005.

39-71-526 through 39-71-530 reserved.

39-71-531. Repealed.

Sec. 9, Ch. 172, L. 1997; Sec. 13, Ch. 310, L. 1997.

History: En. Sec. 1, Ch. 467, L. 1993.

39-71-532. Repealed.

Sec. 9, Ch. 172, L. 1997; Sec. 13, Ch. 310, L. 1997.

History: En. Sec. 2, Ch. 467, L. 1993; amd. Sec. 46, Ch. 18, L. 1995.

39-71-533. Repealed.

Sec. 9, Ch. 172, L. 1997; Sec. 13, Ch. 310, L. 1997.

History: En. Sec. 3, Ch. 467, L. 1993.

39-71-534. Repealed.

Sec. 9, Ch. 172, L. 1997; Sec. 13, Ch. 310, L. 1997.

History: En. Sec. 4, Ch. 467, L. 1993.

39-71-535. Collection of penalties, claim costs, late fees, and interest – liability for payment of collection costs.

- (1) If the department is unable to collect penalties, claim costs, late fees, or interest assessed pursuant to the provisions of this part, the department may assign the debt to a collection service or transfer the debt to the department of revenue pursuant to Title 17, chapter 4, part 1.
- (2) (a) The reasonable collection costs of a collection service, if approved by the department, or assistance costs charged the department by the department of revenue pursuant to 17-4-103(3) may be added to the debt for which collection is being sought.
 - (b) (i) All money collected by the department of revenue is subject to the provisions of 17-4-106.
 - (ii) All money collected by a collection service must be paid to the department, except that the collection service may retain those collection costs or, if the total debt is not collected, that portion of collection costs that are approved by the department.

History: En. Sec. 6, Ch. 193, L. 2003.

39-71-536 through 39-71-540 reserved.**39-71-541. Uninsured employer as party to benefits disputes – indemnification by uninsured employer for benefits paid – lien for payment – levy and execution.**

- (1) An uninsured employer or an employer alleged to be uninsured is a party to all disputes concerning any benefits for which the employer may become obligated to indemnify the department pursuant to 39-71-504(1)(b).
- (2) (a) After mediation pursuant to department rules, an uninsured employer or an employer alleged to be uninsured is joined as a party when a dispute over benefits is brought before the workers' compensation judge pursuant to 39-71-2905.
 - (b) The workers' compensation judge may enter a judgment, including a default judgment, requiring an uninsured employer to indemnify the department with respect to any benefits paid or ordered payable by the department in relation to the claim.
 - (c) If a judgment ordered under subsection (2)(b) includes a specific amount paid or ordered payable, the department may issue to the uninsured employer a certificate listing the amount of payment due and directing the clerk of the district court of any county in the state to enter the certificate as a judgment on the docket pursuant to 25-9-301. The judgment becomes

- a lien on all real property of the uninsured employer from the time of being entered on the docket.
- (3) (a) An uninsured employer is obligated to make claim reimbursements as provided in 39-71-504(1)(b), plus the interest and other charges assessed on the claim reimbursement as provided in 39-71-504(2), when demand for those payments is made to the uninsured employer.
- (b) If the uninsured employer does not make the payments and does not dispute the obligation in the manner provided by 39-71-520, the department may issue a certificate listing the amount of payment due and directing the clerk of the district court of any county in the state to enter the certificate as a judgment on the docket pursuant to 25-9-301. The judgment becomes a lien on all real property of the uninsured employer from the time of being entered on the docket.
- (4) A judgment lien filed pursuant to this section may be renewed for another 10-year period upon motion of the lienholder or by a judgment for that purpose.

History: En. Sec. 3, Ch. 112, L. 2009.

Part 6

Claims for Benefits

Part Cross-References

Definitions, 39-71-116.

Employer defined, 39-71-117.

Employee defined, 39-71-118.

Injury defined, 39-71-119.

39-71-601. Statute of limitation on presentment of claim – waiver.

- (1) Except for a claim for benefits for occupational diseases pursuant to subsections (3) and (4), all claims in the case of personal injury or death must be forever barred unless signed by the claimant or the claimant's representative and presented in writing to the employer, the insurer, or the department within 12 months from the date of the happening of the accident, either by the claimant or someone legally authorized to act on the claimant's behalf.
- (2) The insurer may waive the time requirement up to an additional 24 months upon a reasonable showing by the claimant of:
- (a) lack of knowledge of disability;
- (b) latent injury; or
- (c) equitable estoppel.
- (3) When a claimant seeks benefits for an occupational disease, the claimant's claims for benefits must be in writing, signed by the claimant or the claimant's representative, and presented to the employer, the employer's insurer, or the department within 1 year from the date that the claimant knew or should have known that the claimant's condition resulted from an occupational disease. When a beneficiary seeks benefits under this chapter, claims for death benefits must be presented in writing to the employer, the employer's insurer, or the department within 1 year from the date that the beneficiary knew or should have known that the decedent's death was related to an occupational disease.
- (4) Any dispute regarding the statute of limitations for filing time is considered a dispute that, after mediation pursuant to department rules, is subject to jurisdiction of the workers' compensation court.

History: En. Sec. 10, Ch. 96, L. 1915; amd. Sec. 3, Ch. 100, L. 1919; re-en. Sec. 2899, R.C.M. 1921; amd. Sec. 1, Ch. 34, L. 1935; re-en. Sec. 2899, R.C.M. 1935; amd. Sec. 1, Ch. 264, L. 1973; R.C.M. 1947, 92-601; amd. Sec. 1, Ch. 254, L. 1989; amd. Sec. 64, Ch. 613, L. 1989; amd. Sec. 24, Ch. 619, L. 1993; amd. Sec. 16, Ch. 442, L. 1999; amd. Sec. 23, Ch. 416, L. 2005; amd. Sec. 14, Ch. 112, L. 2009.

39-71-602. Statute of limitation not to apply during minority or mental incompetency unless guardian appointed.

No limitation of time as provided in 39-71-601 or in this chapter, known as the Workers' Compensation Act, shall run as against any injured worker who is mentally incompetent and without a guardian or an injured minor under 18 years of age who may be without a parent or guardian. A guardian in either case may be appointed by any court of competent jurisdiction, in which event the period of limitations as provided for in 39-71-601 shall begin to run on the date of appointment of such guardian or when such minor arrives at 18 years of age, whichever date is earlier.

History: En. Sec. 10, Ch. 96, L. 1915; re-en. Sec. 2900, R.C.M. 1921; amd. Sec. 9, Ch. 121, L. 1925; re-en. Sec. 2900, R.C.M. 1935; amd. Sec. 1, Ch. 79, L. 1939; amd. Sec. 5, Ch. 235, L. 1947; R.C.M. 1947, 92-602; amd. Sec. 65, Ch. 397, L. 1979.

Cross-References

Person under disability – statute of limitations extended, 27-2-401.

Persons under disability – guardianship and conservatorship, Title 72, ch. 5.

39-71-603. Notice of injuries other than death to be submitted within 30 days – exception.

- (1) A claim to recover benefits under the Workers' Compensation Act for injuries not resulting in death may not be considered compensable unless, within 30 days after the occurrence of the accident that is claimed to have caused the injury, notice of the time and place where the accident occurred and the nature of the injury is given to the employer or the employer's insurer by the injured employee or someone on the employee's behalf. Actual knowledge of the accident and injury on the part of the employer or the employer's managing agent or superintendent in charge of the work in which the injured employee was engaged at the time of the injury is equivalent to notice.
- (2) If a sole proprietor, partner, manager of a manager-managed limited liability company, member of a member-managed limited liability company, or corporate officer covered under this chapter is injured in an accident, the sole proprietor, partner, manager, member, or corporate officer or an appointed designee shall, within 30 days, notify the insurer of the time and location of the accident and the nature of the injury.
- (3) This section does not apply to occupational diseases.

History: En. Sec. 17, Ch. 96, L. 1915; re-en. Sec. 2933, R.C.M. 1921; amd. Sec. 7, Ch. 177, L. 1929; re-en. Sec. 2933, R.C.M. 1935; amd. Sec. 9, Ch. 234, L. 1957; R.C.M. 1947, 92-807; amd. Sec. 6, Ch. 103, L. 1979; amd. Sec. 66, Ch. 397, L. 1979; amd. Sec. 1, Ch. 352, L. 1987; amd. Sec. 9, Ch. 243, L. 1995; amd. Sec. 24, Ch. 416, L. 2005.

39-71-604. Application for compensation – 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. 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. 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 care information, as authorized in subsection (2), 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 (2) 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) 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.

History: (1)En. Sec. 40, Ch. 96, L. 1915; re-en. Sec. 3006, R.C.M. 1921; re-en. Sec. 3006, R.C.M. 1935; amd. Sec. 6, Ch. 213, L. 1945; amd. Sec. 78, Ch. 23, L. 1975; Sec. 92-1118, R.C.M. 1947; (2)En. Sec. 40, Ch. 96, L. 1915; re-en. Sec. 3008, R.C.M. 1921; re-en. Sec. 3008, R.C.M. 1935; amd. Sec. 80, Ch. 23, L. 1975; Sec. 92-1120, R.C.M. 1947; R.C.M. 1947, 92-1118, 92-1120; amd. Sec. 7, Ch. 103, L. 1979; amd. Sec. 2, Ch. 525, L. 1987; amd. Sec. 22, Ch. 613, L. 1989; amd. Sec. 4, Ch. 558, L. 1991; amd. Sec. 1, Ch. 464, L. 2003.

39-71-605. Examination of employee by physician – effect of refusal to submit to examination – report and testimony of physician – cost.

- (1) (a) Whenever in case of injury the right to compensation under this chapter would exist in favor of any employee, the employee shall, upon the written request of the insurer, submit from time to time to examination by a physician, psychologist, or panel that must be provided and paid for by the insurer and shall likewise submit to examination from time to time by any physician, psychologist, or panel selected by the department or as ordered by the workers' compensation judge.
 - (b) The request or order for an examination must fix a time and place for the examination, with regard for the employee's convenience, physical condition, and ability to attend at the time and place that is as close to the employee's residence as is practical. An examination that is conducted by a physician, psychologist, or panel licensed in another state is not precluded under this section. The employee is entitled to have a physician present at any examination. If the employee, after written request, fails or refuses to submit to the examination or in any way obstructs the examination, the employee's right to compensation must be suspended and is subject to the provisions of 39-71-607. Any physician, psychologist, or panel employed by the insurer or the department who makes or is present at any examination may be required to testify as to the results of the examination.
- (2) In the event of a dispute concerning the physical condition of a claimant or the cause or causes of the injury or disability, if any, the department or the workers' compensation judge, at the request of the claimant or insurer, as the case may be, shall require the claimant to submit to an examination as it considers desirable by a physician, psychologist, or panel within the state or elsewhere that has had adequate and substantial experience in the particular field of medicine concerned with the matters presented by the dispute. The physician, psychologist, or panel making the examination shall file a written report of findings with the claimant and insurer for their use in the determination of the controversy involved. The requesting party shall pay the physician, psychologist, or panel for the examination.
- (3) As used in this section, a panel includes a practitioner having substantial experience in the field of medicine concerned with the matters presented by the dispute and whose licensure would qualify the practitioner to act as a treating physician, as defined in 39-71-116, and may include a psychologist.
- (4) A claimant is required, upon a written request of an insurer, to submit to a functional capacities evaluation conducted by a licensed physical or occupational therapist.

History: (1)En. Sec. 13, Ch. 96, L. 1915; re-en. Sec. 2906, R.C.M. 1921; re-en. Sec. 2906, R.C.M. 1935; amd. Sec. 16, Ch. 23, L. 1975; Sec. 92-609, R.C.M. 1947; (2)En. Sec. 10, Ch. 234, L. 1957; amd. Sec. 27, Ch. 23, L. 1975; Sec. 92-814.1, R.C.M. 1947; R.C.M. 1947, 92-609, 92-814.1; amd. Sec. 1, Ch. 422, L. 1985; amd. Sec. 15, Ch. 464, L. 1987; amd. Sec. 64, Ch. 613, L. 1989; amd. Sec. 5, Ch. 558, L. 1991; amd. Sec. 3, Ch. 619, L. 1993; amd. Sec. 10, Ch. 276, L. 1997; amd. Sec. 1, Ch. 218, L. 1999; amd. Sec. 12, Ch. 377, L. 1999; amd. Sec. 1, Ch. 141, L. 2005.

39-71-606. Insurer to accept or deny claim within 30 days of receipt — notice of benefits and entitlements to claimants — notice of denial — notice of reopening — notice to employer — employer's right to loss information.

- (1) Each insurer under any plan for the payment of workers' compensation benefits shall, within 30 days of receipt of a claim for compensation signed by the claimant or the claimant's representative, either accept or deny the claim and, if denied, shall inform the claimant and the department in writing of the denial.
- (2) The department shall make available to insurers for distribution to claimants sufficient copies of a document describing current benefits and entitlements available under Title 39, chapter 71. On receipt of a claim, each insurer shall promptly notify the claimant in writing of potential benefits and entitlements available by providing the claimant a copy of the document prepared by the department.
- (3) Each insurer under plan No. 2 or No. 3 for the payment of workers' compensation benefits shall notify the employer of the reopening of the claim within 14 days after the reopening of a claim for the purpose of paying compensation benefits.
- (4) (a) When requested by an employer that an insurer currently insures or has insured in the immediately preceding 5 years or when requested by the employer's designated insurance producer, an insurer shall provide the loss information listed in subsection (4)(b) within 10 days of the request.
(b) Loss information provided under this subsection (4) must include for the period requested:
 - (i) all date of injury or occupational disease data for the employer's claims;
 - (ii) payment data on the employer's closed claims; and
 - (iii) payment data and loss reserve amounts on the employer's open claims, including all compensation benefits that are ongoing and are being charged against that employer's account.
(c) The information provided under this subsection (4) is confidential insurance information. The information may be used by the employer for internal management purposes or for procuring insurance products but may not be disclosed for any other purpose without the express written consent of the insurer.
- (5) Failure of an insurer to comply with the time limitations required in subsections (1) and (3) does not constitute an acceptance of a claim as a matter of law. However, an insurer who fails to comply with 39-71-608 or subsections (1) and (3) of this section may be assessed a penalty under 39-71-2907 if a claim is determined to be compensable by the workers' compensation court.

History: En. Sec. 1, Ch. 477, L. 1973; amd. Sec. 1, Ch. 173, L. 1974; R.C.M. 1947, 92-615(part); amd. Sec. 1, Ch. 122, L. 1981; amd. Sec. 64, Ch. 613, L. 1989; amd. Sec. 22, Ch. 619, L. 1993; amd. Sec. 13, Ch. 630, L. 1993; amd. Sec. 11, Ch. 276, L. 1997; amd. Sec. 2, Ch. 267, L. 2015.

39-71-607. Suspension of payments by insurer pending receipt of medical information.

Under rules adopted by the department, an insurer may suspend compensation payments pending the receipt of medical information when an injured worker unreasonably fails to keep scheduled medical appointments. If, after a medical

examination, the injured worker is released to return to work, the worker forfeits the right to any suspended benefits.

History: En. Sec. 2, Ch. 477, L. 1973; amd. Sec. 2, Ch. 173, L. 1974; R.C.M. 1947, 92-616(part); amd. Sec. 64, Ch. 613, L. 1989; amd. Sec. 4, Ch. 619, L. 1993.

39-71-608. Payments within 30 days by insurer without admission of liability or waiver of defense authorized – notice – limitations on payments over 90 days.

- (1) An insurer may, after written notice to the claimant and the department, make payment of compensation benefits within 30 days of receipt of a claim for compensation without the payments being construed as an admission of liability or a waiver of any right of defense.
- (2) An insurer may not make payments pursuant to this section for more than 90 days without:
 - (a) written consent of the claimant; or
 - (b) approval of the department.

History: En. Sec. 1, Ch. 477, L. 1973; amd. Sec. 1, Ch. 173, L. 1974; R.C.M. 1947, 92-615(part); amd. Sec. 64, Ch. 613, L. 1989; amd. Sec. 7, Ch. 103, L. 2005.

39-71-609. Denial of claim after payments made or termination of all benefits or reduction to partial benefits by insurer – 14-day notice required – criteria for conversion of benefits.

- (1) Except as provided in subsection (2), if an insurer determines to deny a claim on which payments have been made under 39-71-608 during a time of further investigation or, after a claim has been accepted, terminates all biweekly compensation benefits, it may do so only after 14 days' written notice to the claimant, the claimant's authorized representative, if any, and the department. For injuries occurring prior to July 1, 1987, an insurer shall give 14 days' written notice to the claimant before reducing benefits from total to partial. However, if an insurer has knowledge that a claimant has returned to work, compensation benefits may be terminated as of the time the claimant returned to work.
- (2) Temporary total disability benefits may be terminated on the date that the worker has been released to return to work in some capacity. Unless the claimant is found, at maximum healing, to be without a permanent physical impairment from the injury, the insurer, prior to converting temporary total disability benefits or temporary partial disability benefits to permanent partial disability benefits:
 - (a) must have a physician's determination that the claimant has reached medical stability;
 - (b) must have a physician's determination of the claimant's physical restrictions resulting from the industrial injury;
 - (c) must have a physician's determination, based on the physician's knowledge of the claimant's job analysis prepared by a rehabilitation provider, that the claimant can return to work, with or without restrictions, on the job on which the claimant was injured or on another job for which the claimant is suited by age, education, work experience, and physical condition;
 - (d) shall give notice to the claimant of the insurer's receipt of the report of the physician's determinations required pursuant to subsections (2)(a) through (2)(c). The notice must be attached to a copy of the report.

History: En. Sec. 1, Ch. 477, L. 1973; amd. Sec. 1, Ch. 173, L. 1974; R.C.M. 1947, 92-615(part); amd. Sec. 8, Ch. 103, L. 1979; amd. Sec. 5, Ch. 333, L. 1989; amd. Sec. 64, Ch. 613, L. 1989; amd. Sec. 10, Ch. 243, L. 1995; amd. Sec. 1, Ch. 174, L. 2001.

39-71-610. Termination of benefits by insurer – department order to pay disputed benefits prior to hearing or mediation – limitation on order – right of reimbursement.

If an insurer terminates biweekly compensation benefits and the termination of compensation benefits is disputed by the claimant, the department may, upon written request, order an insurer to pay additional biweekly compensation benefits prior to a hearing before the workers' compensation court or prior to mediation, but the biweekly compensation benefits may not be ordered to be paid under this section for a period exceeding 49 days or for any period subsequent to the date of the hearing or mediation. A party may appeal this order to the workers' compensation court. A proceeding in the workers' compensation court brought pursuant to this section is a new proceeding and is not subject to mediation. If after a hearing before the workers' compensation court it is held that the insurer was not liable for the compensation payments ordered by the department, the insurer has the right to be reimbursed for the payments by the claimant.

History: En. 92-617 by Sec. 1, Ch. 124, L. 1975; R.C.M. 1947, 92-617; amd. Sec. 64, Ch. 613, L. 1989; amd. Sec. 13, Ch. 377, L. 1999; amd. Sec. 17, Ch. 442, L. 1999; amd. Sec. 10, Ch. 214, L. 2001.

39-71-611. Costs and attorney fees payable on denial of claim or termination of benefits later found compensable – barring of attorney fees under common fund and other doctrines.

- (1) The insurer shall pay reasonable costs and attorney fees as established by the workers' compensation court if:
 - (a) the insurer denies liability for a claim for compensation or terminates compensation benefits;
 - (b) the claim is later adjudged compensable by the workers' compensation court; and
 - (c) in the case of attorney fees, the workers' compensation court determines that the insurer's actions in denying liability or terminating benefits were unreasonable.
- (2) A finding of unreasonableness against an insurer made under this section does not constitute a finding that the insurer acted in bad faith or violated the unfair trade practices provisions of Title 33, chapter 18.
- (3) Attorney fees may be awarded only under the provisions of subsection (1) and may not be awarded under the common fund doctrine or any other action or doctrine in law or equity.

History: En. Sec. 2, Ch. 477, L. 1973; amd. Sec. 2, Ch. 173, L. 1974; R.C.M. 1947, 92-616(part); amd. Sec. 2, Ch. 63, L. 1979; amd. Sec. 16, Ch. 464, L. 1987; amd. Sec. 2, Ch. 464, L. 2003.

Cross-References

Attorney fees, Title 25, ch. 10, part 3.

39-71-612. Costs and attorney fees that may be assessed against insurer by workers' compensation judge – barring of attorney fees under common fund or other doctrines.

- (1) If an insurer pays or submits a written offer of payment of compensation under this chapter but controversy relates to the amount of compensation due, the case is brought before the workers' compensation judge for adjudication of the controversy, and the award granted by the judge is greater than the amount paid or offered by the insurer, reasonable attorney fees and costs as established by the workers' compensation judge if the case has gone to a hearing may be awarded by the judge in addition to the amount of compensation.
- (2) An award of attorney fees under subsection (1) may be made only if it is determined that the actions of the insurer were unreasonable. Any written offer of payment made 30 days or more before the date of hearing must be considered a valid offer of payment for the purposes of this section.
- (3) A finding of unreasonableness against an insurer made under this section does not constitute a finding that the insurer acted in bad faith or violated the unfair trade practices provisions of Title 33, chapter 18.
- (4) Attorney fees may be awarded only under the provisions of subsections (1) and (2) and may not be awarded under the common fund doctrine or any other action or doctrine in law or equity.

History: En. 92-618 by Sec. 1, Ch. 187, L. 1975; R.C.M. 1947, 92-618; amd. Sec. 1, Ch. 575, L. 1985; amd. Sec. 17, Ch. 464, L. 1987; amd. Sec. 3, Ch. 464, L. 2003; amd. Sec. 25, Ch. 416, L. 2005.

Cross-References

Attorney fees, Title 25, ch. 10, part 3.

39-71-613. Regulation of attorney fees – forfeiture of fee for noncompliance – return of fee when claimant received benefits through fraud or deception.

- (1) When an attorney represents or acts on behalf of a claimant or any other party on any workers' compensation claim, the attorney shall submit to the department a contract of employment, on a form provided by the department, stating specifically the terms of the fee arrangement between the attorney and the claimant.
- (2) The department may regulate the amount of the attorney fees in any workers' compensation case. In regulating the amount of the fees, the department shall consider:
 - (a) the benefits the claimant gained due to the efforts of the attorney;
 - (b) the time the attorney was required to spend on the case;
 - (c) the complexity of the case; and
 - (d) any other relevant matter the department may consider appropriate.
- (3) An attorney who violates a provision of this section, a rule adopted under this section, or an order fixing attorney fees under this section forfeits the right to any fees that the attorney collected or was entitled to collect.
- (4) If, after an attorney receives attorney fees and costs assessed against an insurer, the claimant is convicted of having obtained benefits through fraud or deception, the attorney fees and costs for obtaining the benefits must be returned to the insurer by the attorney.

- (5) (a) A dispute concerning the forfeiture or return of attorney fees is considered a dispute for which the workers' compensation court has original jurisdiction and is not subject to mediation or a contested case hearing.
- (b) The parties to a dispute referred to in subsection (5)(a) may voluntarily request a mediator appointed by the department and proceed to nonbinding mediation.

History: En. 92-619 by Sec. 1, Ch. 402, L. 1975; R.C.M. 1947, 92-619; amd. Sec. 18, Ch. 464, L. 1987; amd. Sec. 64, Ch. 613, L. 1989; amd. Sec. 1, Ch. 235, L. 1995; amd. Sec. 18, Ch. 442, L. 1999; amd. Sec. 15, Ch. 112, L. 2009.

Cross-References

Attorney fees, Title 25, ch. 10, part 3.

39-71-614. Calculation of attorney fees – limitation.

- (1) The amount of an attorney's fee assessed against an insurer under 39-71-611 or 39-71-612 must be based exclusively on the time spent by the attorney in representing the claimant on the issues brought to hearing. The attorney must document the time spent, but the judge is not bound by the documentation submitted.
- (2) The judge shall determine a reasonable attorney fee and assess costs. The hourly rate applied to the time spent must be based on the attorney's customary and current hourly rate for legal work performed in this state, subject to a maximum established by the department.
- (3) This section does not restrict a claimant and an attorney from entering into a contingency fee arrangement under which the attorney receives a percentage of the amount of compensation payments received by the claimant because of the efforts of the attorney. However, an amount equal to any fee and costs assessed against an insurer under 39-71-611 or 39-71-612 and this section must be deducted from the fee an attorney is entitled to from the claimant under a contingency fee arrangement.

History: En. Sec. 2, Ch. 575, L. 1985; amd. Sec. 19, Ch. 464, L. 1987; amd. Sec. 64, Ch. 613, L. 1989.

39-71-615. Payment of medical claims without acceptance of liability.

- (1) An insurer may pay a medical claim that is based upon the report of a nonwage loss injury or occupational disease without the payments being construed as an acceptance of liability for the claim.
- (2) An insurer shall, within 10 days of making payment under subsection (1), notify the worker of the payment of the medical claim without acceptance of liability.
- (3) Upon written request by a worker for the payment of indemnity benefits or for a determination of liability, the insurer shall investigate the claim to determine liability for the injury or occupational disease under 39-71-606 or 39-71-608.

History: En. Sec. 3, Ch. 243, L. 1995.

Part 7**Compensation and Benefits Generally****Part Cross-References**

Definitions, 39-71-116.

Employer defined, 39-71-117.

Employee defined, 39-71-118.

Injury defined, 39-71-119.

Workers' compensation exempt from medical services lien, 71-3-1118.

39-71-701. Compensation for temporary total disability – exception.

- (1) Subject to the limitation in 39-71-736 and subsection (4) of this section, a worker is eligible for temporary total disability benefits:
 - (a) when the worker suffers a total loss of wages as a result of an injury and until the worker reaches maximum healing; or
 - (b) until the worker has been released to return to the employment in which the worker was engaged at the time of the injury or to employment with similar physical requirements.
- (2) The determination of temporary total disability must be supported by a preponderance of objective medical findings.
- (3) Weekly compensation benefits for injury producing temporary total disability are 66 2/3% of the wages received at the time of the injury. The maximum weekly compensation benefits may not exceed the state's average weekly wage at the time of injury. Temporary total disability benefits must be paid for the duration of the worker's temporary disability. The weekly benefit amount may not be adjusted for cost of living as provided in 39-71-702(5).
- (4) If the treating physician releases a worker to return to the same, a modified, or an alternative position that the individual is able and qualified to perform with the same employer at an equivalent or higher wage than the individual received at the time of injury, the worker is no longer eligible for temporary total disability benefits even though the worker has not reached maximum healing. A worker requalifies for temporary total disability benefits if the modified or alternative position is no longer available to the worker for any reason except for the worker's incarceration as provided for in 39-71-744, resignation, or termination for disciplinary reasons caused by a violation of the employer's policies that provide for termination of employment and if the worker continues to be temporarily totally disabled, as defined in 39-71-116.
- (5) In cases in which it is determined that periodic disability benefits granted by the Social Security Act are payable because of the injury, the weekly benefits payable under this section are reduced, but not below zero, by an amount equal, as nearly as practical, to one-half the federal periodic benefits for the week, which amount is to be calculated from the date of the disability social security entitlement.
- (6) If the claimant is awarded social security benefits, the insurer may, upon notification of the claimant's receipt of social security benefits, suspend biweekly compensation benefits for a period sufficient to recover any resulting overpayment of benefits. This subsection does not prevent a claimant and insurer from agreeing to a repayment plan.

- (7) A worker may not receive both wages and temporary total disability benefits without the written consent of the insurer. A worker who receives both wages and temporary total disability benefits without written consent of the insurer is guilty of theft and may be prosecuted under 45-6-301.

History: En. 92-701.1 by Sec. 1, Ch. 471, L. 1973; R.C.M. 1947, 92-701.1; amd. Sec. 5, Ch. 21, L. 1981; amd. Sec. 21, Ch. 464, L. 1987; amd. Sec. 4, Ch. 9, Sp. L. June 1989; amd. Sec. 1, Ch. 52, L. 1991; amd. Sec. 5, Ch. 296, L. 1993; amd. Sec. 25, Ch. 619, L. 1993; amd. Sec. 11, Ch. 243, L. 1995; amd. Sec. 1, Ch. 121, L. 2001.

39-71-702. Compensation for permanent total disability.

- (1) If a worker is no longer temporarily totally disabled and is permanently totally disabled, as defined in 39-71-116, the worker is eligible for permanent total disability benefits. Permanent total disability benefits must be paid for the duration of the worker's permanent total disability, subject to 39-71-710.
- (2) The determination of permanent total disability must be supported by a preponderance of objective medical findings.
- (3) Weekly compensation benefits for an injury resulting in permanent total disability are $66 \frac{2}{3}\%$ of the wages received at the time of the injury. The maximum weekly compensation benefits may not exceed the state's average weekly wage at the time of injury.
- (4) In cases in which it is determined that periodic disability benefits granted by the Social Security Act are payable because of the injury, the weekly benefits payable under this section are reduced, but not below zero, by an amount equal, as nearly as practical, to one-half the federal periodic benefits for the week, which amount is to be calculated from the date of the disability social security entitlement.
- (5) A worker's benefit amount must be adjusted for a cost-of-living increase on the next July 1 after 104 weeks of permanent total disability benefits have been paid and on each succeeding July 1. The adjustment must be the percentage increase, if any, in the state's average weekly wage as adopted by the department over the state's average weekly wage adopted for the previous year.
- (6) A worker may not receive both wages and permanent total disability benefits without the written consent of the insurer. A worker who receives both wages and permanent total disability benefits without written consent of the insurer is guilty of theft and may be prosecuted under 45-6-301.
- (7) If the claimant is awarded social security benefits, the insurer may, upon notification of the claimant's receipt of social security benefits, suspend biweekly compensation benefits for a period sufficient to recover any resulting overpayment of benefits. This subsection does not prevent a claimant and insurer from agreeing to a repayment plan.

History: En. 92-702.1 by Sec. 1, Ch. 202, L. 1973; amd. Sec. 1, Ch. 272, L. 1974; R.C.M. 1947, 92-702.1; amd. Sec. 6, Ch. 21, L. 1981; amd. Sec. 22, Ch. 464, L. 1987; amd. Sec. 64, Ch. 613, L. 1989; amd. Sec. 5, Ch. 9, Sp. L. June 1989; amd. Sec. 3, Ch. 574, L. 1991; amd. Sec. 6, Ch. 296, L. 1993; amd. Sec. 27, Ch. 619, L. 1993; amd. Sec. 12, Ch. 243, L. 1995; amd. Sec. 1, Ch. 138, L. 2003.

39-71-703. Compensation for permanent partial disability.

- (1) If an injured worker suffers a permanent partial disability and is no longer entitled to temporary total or permanent total disability benefits, the worker is entitled to a permanent partial disability award if that worker:
 - (a) has an actual wage loss as a result of the injury; and
 - (b) has a permanent impairment rating as determined by the sixth edition of the American medical association Guides to the Evaluation of Permanent Impairment for the ratable condition. The ratable condition must be a direct result of the compensable injury or occupational disease that:
 - (i) is not based exclusively on complaints of pain;
 - (ii) is established by objective medical findings; and
 - (iii) is more than zero.
- (2) When a worker receives a Class 2 or greater class of impairment as converted to the whole person, as determined by the sixth edition of the American medical association Guides to the Evaluation of Permanent Impairment for the ratable condition, and has no actual wage loss as a result of the compensable injury or occupational disease, the worker is eligible to receive payment for an impairment award only.
- (3) The permanent partial disability award must be arrived at by multiplying the percentage arrived at through the calculation provided in subsection (5) by 400 weeks.
- (4) A permanent partial disability award granted an injured worker may not exceed a permanent partial disability rating of 100%.
- (5) The percentage to be used in subsection (4) must be determined by adding all of the following applicable percentages to the whole person impairment rating:
 - (a) if the claimant is 40 years of age or younger at the time of injury, 0%; if the claimant is over 40 years of age at the time of injury, 1%;
 - (b) for a worker who has completed less than 12 years of education, 1%; for a worker who has completed 12 years or more of education or who has received a high school equivalency diploma, 0%;
 - (c) if a worker has no actual wage loss as a result of the industrial injury, 0%; if a worker has an actual wage loss of \$2 or less an hour as a result of the industrial injury, 10%; if a worker has an actual wage loss of more than \$2 an hour as a result of the industrial injury, 20%. Wage loss benefits must be based on the difference between the actual wages received at the time of injury and the wages that the worker earns or is qualified to earn after the worker reaches maximum healing.
 - (d) if a worker, at the time of the injury, was performing heavy labor activity and after the injury the worker can perform only light or sedentary labor activity, 5%; if a worker, at the time of injury, was performing heavy labor activity and after the injury the worker can perform only medium labor activity, 3%; if a worker was performing medium labor activity at the time of the injury and after the injury the worker can perform only light or sedentary labor activity, 2%.
- (6) The weekly benefit rate for permanent partial disability is $66 \frac{2}{3}$ % of the wages received at the time of injury, but the rate may not exceed one-half the state's average weekly wage. The weekly benefit amount established for an injured worker may not be changed by a subsequent adjustment in the state's average weekly wage for future fiscal years.

- (7) An undisputed impairment award may be paid biweekly or in a lump sum at the discretion of the worker. Lump sums paid for impairments are not subject to the requirements of 39-71-741, except that lump-sum payments for benefits not accrued may be reduced to present value at the rate established by the department pursuant to 39-71-741(5).
- (8) If a worker suffers a subsequent compensable injury or injuries to the same part of the body, the award payable for the subsequent injury may not duplicate any amounts paid for the previous injury or injuries.
- (9) If a worker is eligible for a rehabilitation plan, permanent partial disability benefits payable under this section must be calculated based on the wages that the worker earns or would be qualified to earn following the completion of the rehabilitation plan.
- (10) As used in this section:
 - (a) "heavy labor activity" means the ability to lift over 50 pounds occasionally or up to 50 pounds frequently;
 - (b) "medium labor activity" means the ability to lift up to 50 pounds occasionally or up to 25 pounds frequently;
 - (c) "light labor activity" means the ability to lift up to 20 pounds occasionally or up to 10 pounds frequently; and
 - (d) "sedentary labor activity" means the ability to lift up to 10 pounds occasionally or up to 5 pounds frequently.

History: En. 92-703.1 by Sec. 1, Ch. 155, L. 1973; amd. Sec. 1, Ch. 241, L. 1975; amd. Sec. 1, Ch. 278, L. 1975; R.C.M. 1947, 92-703.1; amd. Sec. 23, Ch. 464, L. 1987; amd. Sec. 64, Ch. 613, L. 1989; amd. Sec. 6, Ch. 9, Sp. L. June 1989; amd. Sec. 4, Ch. 574, L. 1991; amd. Sec. 13, Ch. 243, L. 1995; amd. Sec. 182, Ch. 42, L. 1997; amd. Sec. 12, Ch. 276, L. 1997; amd. Sec. 4, Ch. 464, L. 2003; amd. Sec. 8, Ch. 103, L. 2005; amd. Sec. 1, Ch. 36, L. 2011; amd. Sec. 9, Ch. 167, L. 2011; amd. Sec. 17, Ch. 55, L. 2015.

39-71-704. Payment of medical, hospital, and related services – fee schedules and hospital rates – fee limitation.

- (1) In addition to the compensation provided under this chapter and as an additional benefit separate and apart from compensation benefits actually provided, the following must be furnished:
 - (a) After the happening of a compensable injury or occupational disease and subject to other provisions of this chapter, the insurer shall furnish reasonable primary medical services, including prescription drugs for conditions that are a direct result of the compensable injury or occupational disease, for those periods specified in this section.
 - (b) Subject to the limitations in this chapter, the insurer shall furnish secondary medical services only upon a clear demonstration of cost-effectiveness of the services in returning the injured worker to actual employment.
 - (c) The insurer shall replace or repair prescription eyeglasses, prescription contact lenses, prescription hearing aids, and dentures that are damaged or lost as a result of an injury, as defined in 39-71-119, arising out of and in the course of employment.
 - (d) (i) The insurer shall reimburse a worker for reasonable travel, lodging, meals, and miscellaneous expenses incurred in travel to a health care provider for treatment of an injury pursuant to rules adopted by the department. Reimbursement must be at the rates allowed for reimbursement for state employees.

- (ii) Rules adopted under subsection (1)(d)(i) must provide for submission of claims, within 90 days from the date of travel, following notification to the claimant of reimbursement rules, must provide procedures for reimbursement receipts, and must require the use of the least costly form of travel unless the travel is not suitable for the worker's medical condition. The rules must exclude from reimbursement:
 - (A) 100 miles of automobile travel for each calendar month unless the travel is requested or required by the insurer pursuant to 39-71-605;
 - (B) travel to a health care provider within the community in which the worker resides;
 - (C) travel outside the community in which the worker resides if comparable medical treatment is available within the community in which the worker resides, unless the travel is requested by the insurer; and
 - (D) travel for unauthorized treatment or disallowed procedures.
- (iii) An insurer is not liable for injuries or conditions that result from an accident that occurs during travel or treatment, except that the insurer retains liability for the compensable injuries and conditions for which the travel and treatment were required.
- (e) Pursuant to rules adopted by the department, an insurer shall reimburse a catastrophically injured worker's family or, if a family member is unavailable, a person designated by the injured worker or approved by the insurer for travel assistance expenditures in an amount not to exceed \$2,500 to be used as a match to those funds raised by community service organizations to help defray the costs of travel and lodging expenses incurred by the family member or designated person when traveling to be with the injured worker. These funds must be paid in addition to any travel expenses paid by an insurer for a travel companion when it is medically necessary for a travel companion to accompany the catastrophically injured worker.
- (f)
 - (i) The benefits provided for in this section terminate 60 months from the date of injury or diagnosis of an occupational disease. A worker may request reopening of medical benefits that were terminated under this subsection (1)(f) as provided in 39-71-717.
 - (ii) Subsection (1)(f)(i) does not apply to a worker who is permanently totally disabled as a result of a compensable injury or occupational disease or for the repair or replacement of a prosthesis furnished as a direct result of a compensable injury or occupational disease.
- (g) Notwithstanding subsection (1)(a), the insurer may not be required to furnish, after the worker has achieved medical stability, palliative or maintenance care except:
 - (i) when provided to a worker who has been determined to be permanently totally disabled and for whom it is medically necessary to monitor administration of prescription medication to maintain the worker in a medically stationary condition;
 - (ii) when necessary to monitor the status of a prosthetic device; or
 - (iii) when the worker's treating physician believes that the care that would otherwise not be compensable under this subsection (1)(g) is appropriate to enable the worker to continue current employment or that there is a clear probability of returning the worker to employment.

- A dispute regarding the compensability of palliative or maintenance care is considered a dispute over which, after mediation pursuant to department rule, the workers' compensation court has jurisdiction.
- (h) Notwithstanding any other provisions of this chapter, the department, by rule and upon the advice of the professional licensing boards of practitioners affected by the rule, may exclude from compensability any medical treatment that the department finds to be unscientific, unproved, outmoded, or experimental.
- (2) (a) The department shall annually establish a schedule of fees for medical services that are necessary for the treatment of injured workers. Regardless of the date of injury, payment for medical services is based on the fee schedule rates in this section in effect on the date on which the medical service is provided. Charges submitted by providers must be the usual and customary charges for nonworkers' compensation patients. The department may require insurers to submit information to be used in establishing the schedule.
- (b) (i) The department may not set the rate for medical services at a rate greater than 10% above the average of the conversion factors used by up to the top five insurers or third-party administrators providing group health insurance coverage within this state who use the resource-based relative value scale to determine fees for covered services. To be included in the rate determination, the insurer or third-party administrator must occupy at least 1% of the market share for group health insurance policies as reported annually to the state auditor.
- (ii) The insurers or third-party administrators included under subsection (2)(b)(i) shall provide their standard conversion rates to the department.
- (iii) The department may use the conversion rates only for the purpose of determining average conversion rates under this subsection (2).
- (iv) The department shall maintain the confidentiality of the conversion rates.
- (c) The fee schedule rates established in subsection (2)(b), when adopted, must be based on the following standards as adopted by the centers for medicare and medicaid services, regardless of where services are provided:
- (i) the American medical association current procedural terminology codes, as those codes exist on January 1 of each year;
- (ii) the healthcare common procedure coding system, as those codes and their relative weights exist on January 1 of each year;
- (iii) the medicare severity diagnosis-related groups, as those codes and their relative weights exist on January 1 of each year;
- (iv) the ambulatory payment classifications, as those codes and their relative weights exist on January 1 of each year;
- (v) the ratio of costs to charges for each hospital, as those codes exist on January 1 of each year;
- (vi) the national correct coding initiative edits, as those codes exist on January 1 of each year; and
- (vii) the relative value units in the published resource-based relative value scale, as those codes exist on January 1 of each year.
- (d) The department may establish additional codes and coding standards for use by providers when billing for medical services under this section.

- (3) (a) The department shall establish by rule evidence-based utilization and treatment guidelines for primary and secondary medical services. There is a rebuttable presumption that the adopted utilization and treatment guidelines establish compensable medical treatment for an injured worker.
- (b) (i) The department may adopt a drug formulary as part of its utilization and treatment guidelines. To implement this section, the department may annually adopt by rule an evidence-based commercial or other evidence-based drug formulary as part of its utilization and treatment guidelines.
- (ii) If the department adopts a commercial drug formulary, the formulary automatically includes all of the changes and updates furnished by the commercial vendor that are made during the year. This process is independent of the provisions of 2-4-307.
- (iii) If the department adopts a drug formulary, the department shall, by rule, provide for:
- (A) an appropriate transition of treatment, if the treatment began prior to the adoption of a drug formulary, to treatment that is consistent with the application of the formulary; and
- (B) a timely and responsive dispute resolution process for disputes related to use of the formulary.
- (c) An insurer is not responsible for treatment or services that do not fall within the utilization and treatment guidelines adopted by the department unless the provider obtains prior authorization from the insurer. If prior authorization is not requested or obtained from the insurer, an injured worker is not responsible for payment of the medical treatment or services.
- (d) The department, in consultation with health care providers with relevant experience and education, shall provide for an annual review of the evidence-based utilization and treatment guidelines to consider amendments or changes to the guidelines.
- (4) The department shall hire a medical director. The department may establish by rule an independent medical review process for treatment or services denied by an insurer pursuant to subsection (3) prior to mediation under 39-71-2401.
- (5) For services available in Montana, insurers may pay facilities located outside Montana according to the workers' compensation fee schedule of the state where the medical service is performed.
- (6) (a) An insurer shall make payments at the fee schedule rate within 30 days of receipt of medical bills for which a claim has been accepted and for which no other disputes exist. Disputes must be defined by the department by rule.
- (b) Any unpaid balance under this subsection (6) accrues interest at 12% a year or 1% a month or a fraction of a month. If the charge is not paid within 30 days, interest on the unpaid balance accrues from the date of receipt of the original billing.
- (7) Once a determination has been made regarding the correct reimbursement amount, any overpayment made to a health care provider must be reimbursed to the insurer within 30 days of the determination. Any reimbursement amount remaining unpaid after 30 days accrues interest at 12% a year or 1% a month or a fraction of a month. Interest on the reimbursement amount remaining unpaid accrues from the date of receipt of the determination of the correct reimbursement amount.

- (8) For a critical access hospital licensed pursuant to Title 50, chapter 5, the rate for services is the usual and customary charge.
- (9) Payment pursuant to reimbursement agreements between managed care organizations or preferred provider organizations and insurers is not bound by the provisions of this section.
- (10) After mediation pursuant to department rules, an unresolved dispute between an insurer and a health care provider regarding the amount of a fee for medical services may be brought before the workers' compensation court.
- (11) (a) After the initial visit, the worker is responsible for \$25 of the cost of each subsequent visit to a hospital emergency department for treatment relating to a compensable injury or occupational disease.
 - (b) "Visit", as used in this subsection (11), means each time that the worker obtains services relating to a compensable injury or occupational disease from:
 - (i) a treating physician;
 - (ii) a physical therapist;
 - (iii) a psychologist; or
 - (iv) hospital outpatient services available in a nonhospital setting.
 - (c) A worker is not responsible for the cost of a subsequent visit pursuant to subsection (11)(a) if the visit is for treatment requested by an insurer.

History: En. 92-706.1 by Sec. 1, Ch. 252, L. 1973; amd. Sec. 1, Ch. 43, L. 1975; amd. Sec. 1, Ch. 189, L. 1975; R.C.M. 1947, 92-706.1(1); amd. Sec. 1, Ch. 90, L. 1981; amd. Sec. 2, Ch. 422, L. 1985; amd. Sec. 25, Ch. 464, L. 1987; amd. Sec. 4, Ch. 333, L. 1989; amd. Secs. 23, 64, Ch. 613, L. 1989; amd. Sec. 7, Ch. 9, Sp. L. June 1989; amd. Sec. 1, Ch. 131, L. 1991; amd. Sec. 6, Ch. 558, L. 1991; amd. Sec. 5, Ch. 574, L. 1991; amd. Sec. 3, Ch. 628, L. 1993; amd. Sec. 1, Ch. 308, L. 1997; amd. Sec. 8, Ch. 310, L. 1997; amd. Sec. 19, Ch. 442, L. 1999; amd. Sec. 1, Ch. 138, L. 2001; amd. Sec. 3, Ch. 192, L. 2001; amd. Sec. 1, Ch. 377, L. 2003; amd. Sec. 5, Ch. 69, L. 2005; amd. Sec. 5, Ch. 345, L. 2005; amd. Sec. 3, Ch. 330, L. 2007; amd. Sec. 16, Ch. 112, L. 2009; amd. Sec. 10, Ch. 167, L. 2011; amd. Sec. 2, Ch. 123, L. 2015; amd. Sec. 6, Ch. 433, L. 2017

Cross-References

Catastrophically Injured Worker's Travel Assistance Act, Title 39, Ch. 71, part 40.

39-71-705. Repealed.

Sec. 68, Ch. 464, L. 1987.

History: En. Sec. 16, Ch. 96, L. 1915; amd. Sec. 8, Ch. 100, L. 1919; amd. Sec. 5, Ch. 196, L. 1921; re-en. Sec. 2920, R.C.M. 1921; amd. Sec. 16, Ch. 121, L. 1925; amd. Sec. 16, Ch. 177, L. 1929; re-en. Sec. 2920, R.C.M. 1935; amd. Sec. 5, Ch. 213, L. 1945; amd. Sec. 5, Ch. 230, L. 1947; amd. Sec. 6, Ch. 7, L. 1949; amd. Sec. 5, Ch. 48, L. 1951; amd. Sec. 5, Ch. 38, L. 1953; amd. Sec. 6, Ch. 253, L. 1955; amd. Sec. 7, Ch. 234, L. 1957; amd. Sec. 5, Ch. 162, L. 1961; amd. Sec. 5, Ch. 149, L. 1965; amd. Sec. 5, Ch. 207, L. 1967; amd. Sec. 1, Ch. 140, L. 1971; amd. Sec. 1, Ch. 204, L. 1973; amd. Sec. 2, Ch. 386, L. 1975; R.C.M. 1947, 92-709(part).

39-71-706. Repealed.

Sec. 68, Ch. 464, L. 1987.

History: (1), (2), (4)En. Sec. 16, Ch. 96, L. 1915; amd. Sec. 8, Ch. 100, L. 1919; amd. Sec. 5, Ch. 196, L. 1921; re-en. Sec. 2920, R.C.M. 1921; amd. Sec. 16, Ch. 121, L. 1925; amd. Sec. 16, Ch. 177, L. 1929; re-en. Sec. 2920, R.C.M. 1935; amd. Sec. 5, Ch. 213, L. 1945; amd. Sec. 5, Ch. 230, L. 1947; amd. Sec. 6, Ch. 7, L. 1949; amd. Sec. 5, Ch. 48, L. 1951; amd. Sec. 5,

Ch. 38, L. 1953; amd. Sec. 6, Ch. 253, L. 1955; amd. Sec. 7, Ch. 234, L. 1957; amd. Sec. 5, Ch. 162, L. 1961; amd. Sec. 5, Ch. 149, L. 1965; amd. Sec. 5, Ch. 207, L. 1967; amd. Sec. 1, Ch. 140, L. 1971; amd. Sec. 1, Ch. 204, L. 1973; amd. Sec. 2, Ch. 386, L. 1975; Sec. 92-709, R.C.M. 1947; (3)En. Sec. 16, Ch. 96, L. 1915; re-en. Sec. 2922, R.C.M. 1921; re-en. Sec. 2922, R.C.M. 1935; Sec. 92-711, R.C.M. 1947; R.C.M. 1947, 92-709(part), 92-711.

39-71-707. Repealed.

Sec. 68, Ch. 464, L. 1987.

History: En. Sec. 16, Ch. 96, L. 1915; amd. Sec. 8, Ch. 100, L. 1919; amd. Sec. 5, Ch. 196, L. 1921; re-en. Sec. 2920, R.C.M. 1921; amd. Sec. 16, Ch. 121, L. 1925; amd. Sec. 16, Ch. 177, L. 1929; re-en. Sec. 2920, R.C.M. 1935; amd. Sec. 5, Ch. 213, L. 1945; amd. Sec. 5, Ch. 230, L. 1947; amd. Sec. 6, Ch. 7, L. 1949; amd. Sec. 5, Ch. 48, L. 1951; amd. Sec. 5, Ch. 38, L. 1953; amd. Sec. 6, Ch. 253, L. 1955; amd. Sec. 7, Ch. 234, L. 1957; amd. Sec. 5, Ch. 162, L. 1961; amd. Sec. 5, Ch. 149, L. 1965; amd. Sec. 5, Ch. 207, L. 1967; amd. Sec. 1, Ch. 140, L. 1971; amd. Sec. 1, Ch. 204, L. 1973; amd. Sec. 2, Ch. 386, L. 1975; R.C.M. 1947, 92-709(part).

39-71-708. Compensation for disfigurement.

- (1) Injured workers who suffer serious face, head, or neck disfigurement may be entitled to benefits not to exceed \$2,500, in addition to benefits payable under 39-71-703.
- (2) A payment under this section may not be in lieu of the separate benefit of medical and hospital services or of any benefits paid under 39-71-701 for temporary total disability.

History: En. Sec. 16, Ch. 96, L. 1915; amd. Sec. 8, Ch. 100, L. 1919; amd. Sec. 5, Ch. 196, L. 1921; re-en. Sec. 2920, R.C.M. 1921; amd. Sec. 16, Ch. 121, L. 1925; amd. Sec. 16, Ch. 177, L. 1929; re-en. Sec. 2920, R.C.M. 1935; amd. Sec. 5, Ch. 213, L. 1945; amd. Sec. 5, Ch. 230, L. 1947; amd. Sec. 6, Ch. 7, L. 1949; amd. Sec. 5, Ch. 48, L. 1951; amd. Sec. 5, Ch. 38, L. 1953; amd. Sec. 6, Ch. 253, L. 1955; amd. Sec. 7, Ch. 234, L. 1957; amd. Sec. 5, Ch. 162, L. 1961; amd. Sec. 5, Ch. 149, L. 1965; amd. Sec. 5, Ch. 207, L. 1967; amd. Sec. 1, Ch. 140, L. 1971; amd. Sec. 1, Ch. 204, L. 1973; amd. Sec. 2, Ch. 386, L. 1975; R.C.M. 1947, 92-709(part); amd. Sec. 26, Ch. 464, L. 1987; amd. Sec. 64, Ch. 613, L. 1989; amd. Sec. 7, Ch. 555, L. 1993.

39-71-709. Repealed.

Sec. 68, Ch. 464, L. 1987.

History: En. 92-709.2 by Sec. 1, Ch. 386, L. 1975; R.C.M. 1947, 92-709.2.

39-71-710. Termination of benefits upon retirement.

- (1) If a claimant is receiving disability or rehabilitation compensation benefits and the claimant receives social security retirement benefits or is eligible to receive or is receiving full social security retirement benefits or retirement benefits from a system that is an alternative to social security retirement, the claimant is considered to be retired. When the claimant is retired, the liability of the insurer is ended for payment of permanent partial disability benefits other than the impairment award, payment of permanent total disability benefits, and payment of rehabilitation compensation benefits. However, the insurer remains liable for temporary total disability benefits, any impairment award, and medical benefits.
- (2) If a claimant who is eligible under subsection (1) to receive retirement benefits and while gainfully employed suffers a work-related injury, the insurer retains

liability for temporary total disability benefits, any impairment award, and medical benefits.

History: En. Sec. 1, Ch. 386, L. 1981; amd. Sec. 27, Ch. 464, L. 1987; amd. Sec. 14, Ch. 243, L. 1995; amd. Sec. 13, Ch. 516, L. 1995.

39-71-711. Impairment evaluation – ratings.

- (1) An impairment rating:
 - (a) is a purely medical determination and must be determined by an impairment evaluator after a claimant has reached maximum healing;
 - (b) must be based on the sixth edition of the American medical association Guides to the Evaluation of Permanent Impairment;
 - (c) must be expressed as a percentage of the whole person; and
 - (d) must be established by objective medical findings and may not be based exclusively on complaints of pain.
- (2) A claimant or insurer, or both, may obtain an impairment rating from an evaluator if the injury falls within the scope of the evaluator's practice and if the evaluator is one of the following:
 - (a) a physician or an osteopath licensed under Title 37, chapter 3, with admitting privileges to practice in one or more hospitals, if any, in the area where the physician or osteopath is located;
 - (b) a chiropractor licensed under Title 37, chapter 12;
 - (c) a physician assistant licensed under Title 37, chapter 20, if there is not a physician as provided for in subsection (2)(a) in the area where the physician assistant is located;
 - (d) a dentist licensed under Title 37, chapter 4;
 - (e) an advanced practice registered nurse licensed under Title 37, chapter 8; or
 - (f) for a claimant residing out of state or upon approval of the insurer, an evaluator referred to in subsections (2)(a) through (2)(e) who is licensed or certified in another state.
- (3) If the claimant and insurer cannot agree upon the rating, the mediation procedure in Title 39, chapter 71, part 24, must be followed.
- (4) Disputes over impairment ratings are subject to the provisions of 39-71-605.

History: En. Sec. 24, Ch. 464, L. 1987; amd. Sec. 2, Ch. 161, L. 1989; amd. Sec. 64, Ch. 613, L. 1989; amd. Sec. 7, Ch. 558, L. 1991; amd. Sec. 15, Ch. 243, L. 1995; amd. Sec. 2, Ch. 141, L. 2005; amd. Sec. 17, Ch. 112, L. 2009; amd. Sec. 11, Ch. 167, L. 2011.

39-71-712. Temporary partial disability benefits.

- (1) Subject to the provisions of subsection (5), if prior to maximum healing an injured worker has a physical restriction and is approved to return to a modified or alternative employment that the worker is able and qualified to perform and the worker suffers an actual wage loss as a result of a temporary work restriction, the worker qualifies for temporary partial disability benefits.
- (2) An insurer's liability for temporary partial disability must be the difference between the injured worker's average weekly wage received at the time of the injury, subject to a maximum of 40 hours a week, and the actual weekly wages earned during the period that the claimant is temporarily partially disabled, not to exceed the injured worker's temporary total disability benefit rate.
- (3) Except as provided in subsection (5), a worker is not eligible for temporary partial disability benefits or temporary total disability benefits if:

- (a) the worker has been released by the treating physician to return to a modified or alternative position that the individual is able and qualified to perform with the same employer;
 - (b) the wages payable in the modified or alternative position, when combined with the temporary partial disability benefits, would result in an equivalent or higher wage than the worker received at the time of injury; and
 - (c) the worker refuses to accept the modified or alternative position. A worker requalifies for temporary total disability benefits if the modified or alternative position is no longer available to the worker for any reason except for the worker's incarceration as provided for in 39-71-744, resignation, or termination for disciplinary reasons caused by a violation of the employer's policies that provide for termination of employment and if the worker continues to be temporarily totally disabled as defined in 39-71-116.
- (4) Temporary partial disability may not be credited against any permanent partial disability award or settlement under 39-71-703.
 - (5) Unless a collective bargaining agreement precludes an injured worker from working in a modified or alternative position with a different employer or includes criteria different from those outlined in this subsection (5), an injured worker who has not reached maximum healing and who has a physical restriction may return to a modified or alternative position with a different employer at the same or a lower rate of wages as the rate paid by the employer at the time of injury if:
 - (a) a modified or alternative employment with the employer at the time of injury is not provided and the injured worker and that employer agree to the modified or alternative position with a different employer;
 - (b) a written description and all required duties of the modified or alternative position with a different employer are approved by the treating physician;
 - (c) both the employer at the time of injury and the injured worker agree to the type of alternative work, the alternative employer, and the terms and conditions of employment, including payment of benefits and employment taxes for the modified or alternative position with a different employer;
 - (d) an employee is not displaced as a result of the injured worker's placement in the modified or alternative position with a different employer; and
 - (e) the employer at the time of injury, the different employer, and the injured worker agree in writing to the terms and conditions, including payment of benefits, covering the injured worker for subsequent injury, unemployment insurance, employment taxes, and liability and provide a copy of the agreement to the injured employee.
 - (6) Any additional expenses related to the modified or alternative position, including travel, equipment, or training, must be paid by either the employer at the time of injury or the different employer and may not be charged to or deducted from the wages or benefits of the injured employee.
 - (7) Notwithstanding a written agreement between the employer at the time of injury and a different employer, the employer at the time of injury is the primary employer if a dispute over wages, benefits, employment taxes, workers' compensation insurance, or other terms or conditions of employment occurs.
 - (8) The injured worker may refuse to accept a modified or alternative position with an employer other than the employer at the time of injury without penalty. If the injured worker is offered a modified or alternative position with a different employer, the injured worker must be given written notice of the right of refusal

from the employer at the time of injury and the insurer prior to beginning work with the different employer.

History: En. Sec. 6, Ch. 619, L. 1993; amd. Sec. 16, Ch. 243, L. 1995; amd. Sec. 13, Ch. 276, L. 1997; amd. Sec. 2, Ch. 121, L. 2001; amd. Sec. 1, Ch. 292, L. 2001; amd. Sec. 18, Ch. 112, L. 2009.

39-71-713. Compensation for occupational diseases and medical benefits – diminution of compensation.

- (1) Compensation for occupational diseases must be equal to the compensation and medical benefits provided for injuries in this chapter.
- (2) When the same medical condition may be claimed as an injury and an occupational disease, compensation payable to the claimant, the claimant's beneficiaries, or the claimant's dependents may not be duplicated for the same conditions over the same time period.

History: En. Sec. 2, Ch. 416, L. 2005.

39-71-714. Autopsy.

Upon the filing of a claim for compensation for death caused by an occupational disease, if an autopsy is necessary to determine the cause of death, an autopsy may be requested by an insurer. The autopsy must be made under the supervision of the county coroner or a medical examiner. The expense of the autopsy must be paid by the insurer.

History: En. Sec. 3, Ch. 416, L. 2005.

39-71-715. Benefits for pneumoconiosis – definition.

- (1) Pneumoconiosis is an occupational disease that is compensable under this part. However, any benefits granted a claimant under this chapter for pneumoconiosis must be reduced, but not below zero, by an amount equal to the benefits granted the claimant under any program under federal law that pays benefits for a claimant suffering disability from pneumoconiosis.
- (2) "Pneumoconiosis" means a chronic dust disease of the lungs arising out of employment in coal mines and includes anthracosis, coal workers' pneumoconiosis, silicosis, or anthracosilicosis arising out of employment.

History: En. Sec. 4, Ch. 416, L. 2005.

39-71-716. Prohibiting supplementing of benefits.

A person receiving compensation or benefits under chapter 73 of this title is not entitled to compensation or benefits under this chapter.

History: En. Sec. 5, Ch. 416, L. 2005.

39-71-717. Reopening of terminated medical benefits – medical review.

- (1) A petition to reopen medical benefits that terminate under 39-71-704(1)(f) must be reviewed as provided in this section.
- (2) Medical benefits may be reopened only if the worker's medical condition is a direct result of the compensable injury or occupational disease and requires medical treatment in order to allow the worker to continue to work or return to

- work. Medical benefits closed by settlement or court order are not subject to reopening.
- (3) A review of a petition to reopen medical benefits must be conducted by a medical review panel as provided in subsection (4) or, if stipulated by the worker and the insurer, solely by the department's medical director.
 - (4) The medical review panel must be composed of the department's medical director and two additional physicians who are licensed to practice medicine in Montana and who have expertise and experience in the area of medicine that is relevant to the worker's condition. The department's medical director shall serve as the presiding officer of the medical review panel. Participants on the medical review panel must be reimbursed as provided in 2-18-501 through 2-18-503 if travel is required for a review and must be paid a reasonable fee for services.
 - (5) A petition for reopening of medical benefits must be filed with the department within 5 years of the termination of medical benefits pursuant to 39-71-704(1)(f). A petition may not be filed more than 90 days before benefits are to terminate.
 - (6) Upon receipt of a petition to reopen medical benefits, the department shall request from the insurer a copy of the worker's medical records contained in the insurer's claim file. The worker or the insurer may submit additional information that is relevant to the petition to reopen medical benefits.
 - (7) The proof necessary to support reopening of medical benefits must be a preponderance of the evidence.
 - (8) Within 60 days of the submission of a petition to reopen medical benefits, the medical review panel or the department's medical director shall issue a report. The report must provide the rationale for the decision reached. A report issued by the medical review panel must be supported by a majority of the panel members. If the report concludes that medical benefits must be reopened, the report must state the extent to which the benefits must be reopened consistent with the utilization and treatment guidelines. Benefits reopened pursuant to this section remain open for 2 years or until maximum medical improvement is achieved following surgery or the recommended medical treatment, whichever occurs first. If the medical panel specifically approves treatment beyond 2 years, medical benefits remain open for as long as recommended by the medical panel. The petitioner and the insurer shall submit updated information to the medical panel every 2 years, and every subsequent 2 years the medical panel shall review the claims that were reopened for longer than 2 years to determine whether to change the previous recommendation.
 - (9) A party aggrieved by a decision of the department's medical director or medical review panel may, after satisfying the dispute resolution requirements provided in this chapter, file a petition with the workers' compensation court. The report of the department's medical director or the medical review panel is presumed to be correct and may be overcome only by clear and convincing evidence.

History: En. Sec. 29, Ch. 167, L. 2011.

39-71-718 through 39-71-720 reserved.

39-71-721. Compensation for injury causing death – limitation.

- (1) (a) If an injured employee dies and the injury was the proximate cause of the death, the beneficiary of the deceased is entitled to the same compensation as though the death occurred immediately following the injury. A beneficiary's eligibility for benefits commences after the date of death, and the benefit level is established as set forth in subsection (2).
 - (b) The insurer is entitled to recover any overpayments or compensation paid in a lump sum to a worker prior to death but not yet recouped. The insurer shall recover the payments from the beneficiary's biweekly payments as provided in 39-71-741(5).
- (2) To beneficiaries as defined in 39-71-116(4)(a) through (4)(d), weekly compensation benefits for an injury causing death are 66 2/3% of the decedent's wages. The maximum weekly compensation benefit may not exceed the state's average weekly wage at the time of injury. The minimum weekly compensation benefit is 50% of the state's average weekly wage, but in no event may it exceed the decedent's actual wages at the time of death.
- (3) To beneficiaries as defined in 39-71-116(4)(e) and (4)(f), weekly benefits must be paid to the extent of the dependency at the time of the injury, subject to a maximum of 66 2/3% of the decedent's wages. The maximum weekly compensation may not exceed the state's average weekly wage at the time of injury.
- (4) If the decedent leaves no beneficiary, a lump-sum payment of \$3,000 must be paid to the decedent's surviving parent or parents.
- (5) If any beneficiary of a deceased employee dies, the right of the beneficiary to compensation under this chapter ceases. Death benefits must be paid to a surviving spouse for 500 weeks subsequent to the date of the deceased employee's death or until the spouse's remarriage, whichever occurs first. After benefit payments cease to a surviving spouse, death benefits must be paid to beneficiaries, if any, as defined in 39-71-116(4)(b) through (4)(d).
- (6) In all cases, benefits must be paid to beneficiaries.
- (7) Benefits paid under this section may not be adjusted for cost of living as provided in 39-71-702.

History: (1)En. Sec. 12, Ch. 96, L. 1915; re-en. Sec. 2905, R.C.M. 1921; re-en. Sec. 2905, R.C.M. 1935; amd. Sec. 15, Ch. 23, L. 1975; Sec. 92-608, R.C.M. 1947; (2) thru (6)Ap. p. 92-704.1 by Sec. 1, Ch. 203, L. 1973; amd. Sec. 2, Ch. 269, L. 1974; amd. Sec. 1, Ch. 270, L. 1974; amd. Sec. 2, Ch. 272, L. 1974; Sec. 92-704.1, R.C.M. 1947; Ap. p. Sec. 7, Ch. 96, L. 1915; re-en. Sec. 2892, R.C.M. 1921; re-en. Sec. 2892, R.C.M. 1935; amd. Sec. 10, Ch. 23, L. 1975; Sec. 92-502, R.C.M. 1947; R.C.M. 1947, 92-704.1, 92-502, 92-608(1); amd. Sec. 67, Ch. 197, L. 1979; amd. Sec. 29, Ch. 464, L. 1987; amd. Sec. 8, Ch. 9, Sp. L. June 1989; amd. Sec. 6, Ch. 480, L. 1991; amd. Sec. 17, Ch. 243, L. 1995; amd. Sec. 14, Ch. 516, L. 1995; amd. Sec. 9, Ch. 310, L. 1997; amd. Sec. 2, Ch. 36, L. 2011; amd. Sec. 12, Ch. 167, L. 2011.

39-71-722. Who constitutes beneficiary to be determined as of date of accident.

The question as to who constitutes a beneficiary shall be determined as of the date of the happening of the accident to the employee, whether death shall immediately result therefrom or not.

History: En. Sec. 12, Ch. 96, L. 1915; re-en. Sec. 2905, R.C.M. 1921; re-en. Sec. 2905, R.C.M. 1935; amd. Sec. 15, Ch. 23, L. 1975; R.C.M. 1947, 92-608(3).

39-71-723. How compensation to be divided among beneficiaries.

Compensation that is due to beneficiaries must be paid to the surviving spouse, if any, or if none, divided equally among or for the benefit of the children. In cases in which beneficiaries are a surviving spouse and stepchildren of the spouse, the compensation must be divided equally among all beneficiaries. Compensation that is due to beneficiaries, as defined in 39-71-116(4)(e) and (4)(f), if there is more than one, must be divided equitably among them.

History: En. Sec. 16, Ch. 96, L. 1915; re-en. Sec. 2919, R.C.M. 1921; amd. Sec. 15, Ch. 121, L. 1925; re-en. Sec. 2919, R.C.M. 1935; amd. Sec. 4, Ch. 213, L. 1945; amd. Sec. 7, Ch. 235, L. 1947; amd. Sec. 7, Ch. 253, L. 1955; amd. Sec. 1, Ch. 205, L. 1973; amd. Sec. 3, Ch. 269, L. 1974; R.C.M. 1947, 92-708(part); amd. Sec. 64, Ch. 613, L. 1989; amd. Sec. 7, Ch. 480, L. 1991; amd. Sec. 18, Ch. 243, L. 1995; amd. Sec. 15, Ch. 516, L. 1995; amd. Sec. 7, Ch. 172, L. 1997.

39-71-724. Payment of compensation to beneficiary not a resident of United States.

- (1) Before payment of compensation to a beneficiary who is not residing within the United States, satisfactory proof of the relationship as to constitute a beneficiary under this chapter must be furnished by the beneficiary, authenticated under seal of an officer of a court of law in the country where the beneficiary resides. The proof is conclusive as to the identity of the beneficiary, and any other claim of any other person to any compensation is barred from and after the filing of the proof.
- (2) Payment of compensation to a beneficiary not residing within the United States may be made to any plenipotentiary, consul, or consular agent within the United States representing the country in which the nonresident beneficiary resides, and the written receipt of the plenipotentiary, consul, or consular agent acquits the employer or the insurer.

History: (1)En. Sec. 8, Ch. 96, L. 1915; re-en. Sec. 2896, R.C.M. 1921; re-en. Sec. 2896, R.C.M. 1935; amd. Sec. 11, Ch. 23, L. 1975; Sec. 92-506, R.C.M. 1947; (2)En. Sec. 9, Ch. 96, L. 1915; re-en. Sec. 2897, R.C.M. 1921; re-en. Sec. 2897, R.C.M. 1935; amd. Sec. 12, Ch. 23, L. 1975; Sec. 92-507, R.C.M. 1947; R.C.M. 1947, 92-506, 92-507; amd. Sec. 64, Ch. 613, L. 1989; amd. Sec. 8, Ch. 172, L. 1997.

39-71-725. Payment of burial expense.

There must be paid, in case of the death of an employee whose death is the result of an accidental injury arising out of the employment and happening in the course of the employment, the reasonable burial expenses of the employee, not exceeding \$4,000. The payment is not a part of the compensation that might be paid but is a benefit in addition to and separate from compensation.

History: En. Sec. 16, Ch. 96, L. 1915; amd. Sec. 2, Ch. 196, L. 1921; re-en. Sec. 2916, R.C.M. 1921; amd. Sec. 13, Ch. 121, L. 1925; re-en. Sec. 2916, R.C.M. 1935; amd. Sec. 1, Ch. 128, L. 1943; amd. Sec. 1, Ch. 213, L. 1945; amd. Sec. 6, Ch. 38, L. 1953; amd. Sec. 5, Ch. 234, L. 1957; amd. Sec. 1, Ch. 194, L. 1974; R.C.M. 1947, 92-705; amd. Sec. 7, Ch. 21, L. 1981; amd. Sec. 14, Ch. 377, L. 1999.

39-71-726. No compensation after death when death not result of injury.

If the employee dies from some cause other than the injury, there is no liability for compensation after the death.

History: En. Sec. 12, Ch. 96, L. 1915; re-en. Sec. 2905, R.C.M. 1921; re-en. Sec. 2905, R.C.M. 1935; amd. Sec. 15, Ch. 23, L. 1975; R.C.M. 1947, 92-608(2); amd. Sec. 1548, Ch. 56, L. 2009.

39-71-727. Payment for prescription drugs – limitations.

- (1) For payment of prescription drugs, an insurer is liable only for the purchase of generic-name drugs if the generic-name product is the therapeutic equivalent of the brand-name drug prescribed by the physician, unless the generic-name drug is unavailable.
- (2) If an injured worker prefers a brand-name drug, the worker may pay directly to the pharmacist the difference in the reimbursement rate between the brand-name drug and the generic-name product, and the pharmacist may bill the insurer only for the reimbursement rate of the generic-name drug.
- (3) The pharmacist may bill only for the cost of the generic-name product on a signed itemized billing, except if purchase of the brand-name drug is allowed as provided in subsection (1).
- (4) When billing for a brand-name drug, the pharmacist shall certify that the generic-name drug was unavailable.
- (5) The department shall establish a schedule of fees for prescription drugs.
- (6) Except as provided in subsection (8), a pharmacist may not dispense more than a 30-day supply at any one time.
- (7) For purposes of this section, the terms “brand name” and “generic name” have the meanings provided in 37-7-502.
- (8) An insurer may not require a worker receiving benefits under this chapter to obtain medications from an out-of-state mail service pharmacy. However, an insurer may authorize up to a 90-day supply of medications from an in-state mail service pharmacy.
- (9) The provisions of this section do not apply to an agreement between a preferred provider organization and an insurer.

History: En. Sec. 2, Ch. 131, L. 1991; amd. Sec. 4, Ch. 628, L. 1993; amd. Sec. 19, Ch. 243, L. 1995; amd. Sec. 7, Ch. 117, L. 2007; amd. Sec. 19, Ch. 112, L. 2009.

39-71-728 through 39-71-735 reserved.**39-71-736. Compensation – from what dates paid.**

- (1) (a) Except as provided in subsection (1)(c), compensation may not be paid for the first 32 hours or 4 days of loss of wages, whichever is less, that the worker is totally disabled and unable to work because of an injury. A worker is eligible for compensation starting with the 5th day.
- (b) Separate benefits of medical and hospital services must be furnished from the date of injury.
- (c) If the worker is totally disabled and unable to work in any capacity for 21 days or longer, compensation must be paid retroactively to the first day of total wage loss unless the worker waives the payment as provided in subsection (2)(b)(ii).

- (2) (a) For the purpose of this section, except as provided in subsection (3), a worker is not considered to be entitled to compensation benefits if the worker is receiving sick leave benefits, except that each day for which the worker elects to receive sick leave counts 1 day toward the 4-day waiting period.
- (b) A worker who is entitled to receive retroactive compensation benefits pursuant to subsection (1)(c) but who took sick leave as provided in subsection (2)(a) may elect to either:
- (i) repay the employer the amount of salary for the sick leave received; or
 - (ii) waive the retroactive payment of benefits attributable to any days or hours for which the worker received sick leave.
- (3) Augmentation of temporary total disability benefits with sick leave by an employer pursuant to a collective bargaining agreement may not disqualify a worker from receiving temporary total disability benefits.
- (4) Receipt of vacation leave or paid time off leave, other than sick leave, by a worker may not affect the worker's eligibility for temporary total disability benefits.

History: En. Sec. 16, Ch. 96, L. 1915; amd. Sec. 4, Ch. 196, L. 1921; re-en. Sec. 2918, R.C.M. 1921; amd. Sec. 3, Ch. 177, L. 1929; re-en. Sec. 2918, R.C.M. 1935; amd. Sec. 3, Ch. 213, L. 1945; amd. Sec. 5, Ch. 7, L. 1949; amd. Sec. 1, Ch. 144, L. 1969; amd. Sec. 18, Ch. 23, L. 1975; amd. Sec. 45, Ch. 535, L. 1975; R.C.M. 1947, 92-707; amd. Sec. 9, Ch. 103, L. 1979; amd. Sec. 30, Ch. 464, L. 1987; amd. Sec. 6, Ch. 333, L. 1989; amd. Sec. 18, Ch. 619, L. 1993; amd. Sec. 1, Ch. 274, L. 2001; amd. Sec. 1, Ch. 486, L. 2003; amd. Sec. 13, Ch. 167, L. 2011; amd. Sec. 3, Ch. 123, L. 2015

39-71-737. Compensation to run consecutively – exceptions.

Compensation must run consecutively and not concurrently, and payment may not be made for two classes of disability over the same period, except that impairment awards and auxiliary rehabilitation benefits may be paid concurrently with other classes of benefits.

History: En. Sec. 16, Ch. 96, L. 1915; re-en. Sec. 2919, R.C.M. 1921; amd. Sec. 15, Ch. 121, L. 1925; re-en. Sec. 2919, R.C.M. 1935; amd. Sec. 4, Ch. 213, L. 1945; amd. Sec. 7, Ch. 235, L. 1947; amd. Sec. 7, Ch. 253, L. 1955; amd. Sec. 1, Ch. 205, L. 1973; amd. Sec. 3, Ch. 269, L. 1974; R.C.M. 1947, 92-708(part); amd. Sec. 2, Ch. 374, L. 1985; amd. Sec. 1, Ch. 502, L. 1985; amd. Sec. 31, Ch. 464, L. 1987; amd. Sec. 16, Ch. 516, L. 1995.

39-71-738. Repealed.

Sec. 68, Ch. 464, L. 1987.

History: En. Sec. 16, Ch. 96, L. 1915; re-en. Sec. 2923, R.C.M. 1921; amd. Sec. 5, Ch. 177, L. 1929; re-en. Sec. 2923, R.C.M. 1935; R.C.M. 1947, 92-712; amd. Sec. 68, Ch. 397, L. 1979.

39-71-739. Compensation in case of changes in degree of injury.

If aggravation, diminution, or termination of disability takes place or is discovered after the rate of compensation is established or compensation is terminated in any case where the maximum payments for disabilities as provided in this chapter are not reached, adjustments may be made to meet such changed conditions by

increasing, diminishing, or terminating compensation payments in accordance with the provisions of this chapter.

History: En. Sec. 16, Ch. 96, L. 1915; re-en. Sec. 2924, R.C.M. 1921; amd. Sec. 6, Ch. 177, L. 1929; re-en. Sec. 2924, R.C.M. 1935; R.C.M. 1947, 92-713; amd. Sec. 69, Ch. 397, L. 1979.

39-71-740. Payments – how made in most cases.

All payments of compensation as provided in this chapter shall be made at the end of each 2-week period, except as otherwise provided herein.

History: En. Sec. 16, Ch. 96, L. 1915; re-en. Sec. 2925, R.C.M. 1921; re-en. Sec. 2925, R.C.M. 1935; amd. Sec. 9, Ch. 235, L. 1947; amd. Sec. 1, Ch. 197, L. 1961; R.C.M. 1947, 92-714.

39-71-741. Settlements and lump-sum payments – legislative intent.

- (1) By written agreement, a claimant and an insurer may convert benefits under this chapter in whole or in part into a lump sum. An agreement that settles a claim for any type of benefit is subject to department approval as provided in subsection (2). Lump-sum advances and payment of accrued benefits in a lump sum, except permanent total disability benefits under subsection (2) (c), are not subject to department approval. If the department fails to approve or disapprove the agreement in writing within 14 days of the filing with the department, the agreement is approved.
- (2) The department shall directly notify a claimant of a department order approving or disapproving a claimant's settlement or lump-sum payment. Upon approval, the agreement constitutes a compromise and release settlement and may not be reopened by the department. The department may approve a settlement agreement to convert the following benefits to a lump sum only under the following conditions:
 - (a) all benefits if a claimant and an insurer dispute the initial compensability of an injury and there is a reasonable dispute over compensability;
 - (b) permanent partial disability benefits if an insurer has accepted initial liability for an injury. The total of any lump-sum payment in part that is awarded to a claimant prior to the claimant's final award may not exceed the anticipated award under 39-71-703. The department may disapprove an agreement under this subsection (2)(b) only if the department determines that the lump-sum payment amount is inadequate.
 - (c) permanent total disability benefits if the total of all lump-sum payments in part that are awarded to a claimant do not exceed \$20,000. The approval or award of a lump-sum permanent total disability payment in whole or in part by the department or court is the exception. It may be given only if the worker has demonstrated financial need that:
 - (i) relates to:
 - (A) the necessities of life;
 - (B) an accumulation of debt incurred prior to the injury; or
 - (C) a self-employment venture that is considered feasible under criteria set forth by the department; or
 - (ii) arises subsequent to the date of injury or arises because of reduced income as a result of the injury.
 - (d) except as otherwise provided in this chapter, all other settlements and lump-sum payments agreed to by a claimant and insurer;

- (e) medical benefits on an accepted claim if an insurer disputes the insurer's continued liability for medical benefits and there is a reasonable dispute over the medical treatment or medical compensability; or
- (f) medical benefits on an accepted claim if the claimant has reached maximum medical improvement and the following applicable conditions are met:
 - (i) the insurer and claimant mutually agree to a settlement of all or a portion of medical benefits; and
 - (ii) a settlement is in the best interest of the parties to the settlement.
- (3) The parties to a medical settlement agreement shall set out the rationale that is the basis for the settlement under subsection (2)(f), and the claimant shall indicate by a signed acknowledgment an understanding of what medical benefits will terminate because of the settlement.
- (4) Any lump-sum conversion of benefits under this section must be converted to present value using the rate prescribed under subsection (5)(b).
- (5) (a) An insurer may recoup any lump-sum advance amortized at the rate established by the department, prorated biweekly over the projected duration of the compensation period.
- (b) The rate adopted by the department must be based on the average rate for United States 10-year treasury bills in the previous calendar year.
- (c) If the projected compensation period is the claimant's lifetime, the life expectancy must be determined by using the most recent table of life expectancy as published by the United States national center for health statistics.
- (6) A dispute between a claimant and an insurer regarding the conversion of biweekly payments into a lump sum is considered a dispute for which a mediator and the workers' compensation court have jurisdiction to make a determination.
- (7) If an insurer and a claimant agree to a settlement or a lump-sum payment but the department disapproves the agreement, the parties may request the workers' compensation court to review the department's decision without requesting mediation.
- (8) The legislature does not intend to allow settlement of undisputed medical claims under subsection (2)(f) unless all parties willingly agree to the settlement. The failure of the parties to willingly agree to a settlement does not constitute a dispute concerning benefits.

History: En. Sec. 16, Ch. 96, L. 1915; amd. Sec. 9, Ch. 100, L. 1919; re-en. Sec. 2926, R.C.M. 1921; re-en. Sec. 2926, R.C.M. 1935; amd. Sec. 1, Ch. 225, L. 1951; amd. Sec. 8, Ch. 234, L. 1957; amd. Sec. 2, Ch. 197, L. 1961; amd. Sec. 1, Ch. 9, L. 1975; amd. Sec. 1, Ch. 11, L. 1975; amd. Sec. 19, Ch. 23, L. 1975; R.C.M. 1947, 92-715; amd. Sec. 3, Ch. 63, L. 1979; amd. Sec. 1, Ch. 471, L. 1985; amd. Sec. 32, Ch. 464, L. 1987; amd. Sec. 64, Ch. 613, L. 1989; amd. Sec. 6, Ch. 574, L. 1991; amd. Sec. 20, Ch. 243, L. 1995; amd. Sec. 10, Ch. 310, L. 1997; amd. Sec. 9, Ch. 103, L. 2005; amd. Sec. 3, Ch. 36, L. 2011; amd. Sec. 14, Ch. 167, L. 2011.

39-71-742. Who may receive payment.

- (1) A payment due to a child under 18 years of age or to a person adjudged incompetent must be made to the parent or the appointed guardian, and the written receipt for the payment must acquit the employer, the insurer, or the department of further liability.

- (2) A payment due to a member of the highway patrol receiving the salary benefit provided in 44-1-511 must be made to the department of justice to offset the salary benefit until the member is no longer eligible to receive the salary benefit.
- (3) In other cases, payment must be made to the person entitled to the payment or to the person's authorized representative.

History: En. Sec. 9, Ch. 96, L. 1915; re-en. Sec. 2898, R.C.M. 1921; amd. Sec. 8, Ch. 121, L. 1925; re-en. Sec. 2898, R.C.M. 1935; amd. Sec. 13, Ch. 23, L. 1975; R.C.M. 1947, 92-508; amd. Sec. 64, Ch. 613, L. 1989; amd. Sec. 1, Ch. 12, L. 2007.

39-71-743. Assignment or attachment of payments.

- (1) Payments under this chapter are not assignable, subject to attachment or garnishment, or held liable in any way for debts, except:
 - (a) as provided in 71-3-1118;
 - (b) a portion of any lump-sum award or periodic payment to pay a monetary obligation for current or past-due child support, subject to the limitations in subsection (2), whenever the support obligation is established by order of a court of competent jurisdiction or by order rendered in an administrative process authorized by state law;
 - (c) as provided in 53-2-612 or 53-2-613 for medical benefits paid pursuant to this chapter;
 - (d) as provided in 39-71-742; or
 - (e) for workers' compensation benefits payable to an injured worker to pay restitution to an insurer whenever the injured worker is subject to court-ordered restitution for theft of workers' compensation benefits. The insurer shall notify the injured worker in writing of the withholding of any court-ordered restitution from the injured worker's benefits.
- (2) Payments under this chapter are subject to assignment, attachment, or garnishment for child support as follows:
 - (a) for any periodic payment, an amount up to the percentage amount established in the guidelines promulgated by the department of public health and human services pursuant to 40-5-209; or
 - (b) for any lump-sum award, an amount up to that portion of the award that is necessary to pay current child support and a past-due child support obligation.
- (3) After determination that the claim is covered under the Workers' Compensation Act, the liability for payment of the claim is the responsibility of the appropriate workers' compensation insurer. Except as provided in 39-71-704(11), a fee or charge is not payable by the injured worker for treatment of injuries sustained if liability is accepted by the insurer.

History: En. Sec. 17, Ch. 96, L. 1915; re-en. Sec. 2927, R.C.M. 1921; re-en. Sec. 2927, R.C.M. 1935; R.C.M. 1947, 92-801; amd. Sec. 3, Ch. 496, L. 1983; amd. Sec. 1, Ch. 485, L. 1987; amd. Sec. 19, Ch. 702, L. 1989; amd. Sec. 14, Ch. 628, L. 1993; amd. Sec. 2, Ch. 424, L. 1995; amd. Sec. 104, Ch. 546, L. 1995; amd. Sec. 1, Ch. 31, L. 2005; amd. Sec. 10, Ch. 103, L. 2005; amd. Sec. 26, Ch. 416, L. 2005; amd. Sec. 2, Ch. 12, L. 2007; amd. Sec. 2, Ch. 330, L. 2007; amd. Sec. 20, Ch. 112, L. 2009; amd. Sec. 7, Ch. 433, L. 2017.

Cross-References

Property exempt from execution without limitation – exceptions, 25-13-608
Exempt property – bankruptcy proceeding, 31-2-106.

39-71-744. Benefits not due while claimant is incarcerated – exceptions.

- (1) Except as provided in subsection (2), a claimant is not eligible for disability or rehabilitation compensation benefits while the claimant is incarcerated for a period exceeding 30 days in a correctional institution or jail as the result of conviction of a felony or a misdemeanor. The insurer remains liable for medical benefits. A time limit on benefits otherwise provided in this chapter is not extended due to a period of incarceration.
- (2) A person who is employed while participating in a prerelease center program or a diversionary program is eligible for temporary total benefits as provided in 39-71-701 and medical benefits for a work-related injury received while participating in a prerelease center program or a diversionary program. Other disability or rehabilitation benefits are not payable while the worker is participating in a prerelease center. This subsection does not prohibit the reinstatement of other benefits upon release from incarceration, nor does it apply to an employee performing community service described in 39-71-118(1)(e).

History: En. Sec. 28, Ch. 464, L. 1987; amd. Sec. 1, Ch. 457, L. 1993; amd. Sec. 21, Ch. 243, L. 1995; amd. Sec. 31, Ch. 308, L. 1995; amd. Sec. 105, Ch. 546, L. 1995.

39-71-745. Calculation of volunteer firefighter benefits and premiums – definitions.

- (1) (a) A plan No. 1 or plan No. 2 insurer shall designate whether an employer, as defined in 7-33-4510, is to use actual volunteer hours or a flat assumed payroll amount for each volunteer firefighter for calculating premiums. The coverage option must be the same for all fire agencies organized under Title 7, chapter 33, that are covered by that insurer and meet the definition of employer in 7-33-4510. A plan No. 3 insurer shall use a flat assumed payroll amount for each volunteer firefighter for calculating premiums.
- (b) If a plan No. 1 or plan No. 2 insurer uses actual volunteer hours, the payroll calculation is the number of actual volunteer hours of each volunteer firefighter, not to exceed 60 hours a week, times the state's average weekly wage divided by 40 hours.
- (c) When a plan No. 1, plan No. 2, or plan No. 3 insurer uses a flat assumed payroll amount, the assumed payroll for each volunteer firefighter must be reported as a full month for any month in which the volunteer firefighter is on the roster of service as defined in 7-33-4510. The employer shall maintain the roster of service with the effective date of membership for each volunteer firefighter.
- (2) For benefit purposes, if concurrent employment under 39-71-123 does not apply, a volunteer firefighter injured in the course and scope of employment as a volunteer firefighter is eligible for medical and compensation benefits provided in Title 39, chapter 71. Any weekly compensation benefit must be based on either the actual volunteer hours if chosen as provided in subsection (1)(b) or the flat assumed payroll amount on which premiums are based, whichever is applicable.
- (3) For the purposes of this section, the following definitions apply:

- (a) "Volunteer firefighter" has the meaning provided in 7-33-4510.
- (b) "Volunteer hours" means the time spent by a volunteer firefighter in the service of a fire agency organized under Title 7, chapter 33, that meets the definition of employer in 7-33-4510, including but not limited to training time, response time, and time spent at the premises of the fire agency.

History: En. Sec. 6, Ch. 412, L. 2013.

Part 8

Compensation for Occupational Deafness

39-71-801. Repealed.

Sec. 10, Ch. 26, L. 2005.

History: En. 92-710 by Sec. 1, Ch. 366, L. 1971; amd. Sec. 1, Ch. 381, L. 1973; R.C.M. 1947, 92-710(part); amd. Sec. 70, Ch. 397, L. 1979.

39-71-802. Repealed.

Sec. 10, Ch. 26, L. 2005.

History: En. 92-710 by Sec. 1, Ch. 366, L. 1971; amd. Sec. 1, Ch. 381, L. 1973; R.C.M. 1947, 92-710(part).

39-71-803. Repealed.

Sec. 10, Ch. 26, L. 2005.

History: En. 92-710 by Sec. 1, Ch. 366, L. 1971; amd. Sec. 1, Ch. 381, L. 1973; R.C.M. 1947, 92-710(8); amd. Sec. 33, Ch. 464, L. 1987.

39-71-804. Repealed.

Sec. 10, Ch. 26, L. 2005.

History: En. 92-710 by Sec. 1, Ch. 366, L. 1971; amd. Sec. 1, Ch. 381, L. 1973; R.C.M. 1947, 92-710(1)(a).

39-71-805. Repealed.

Sec. 10, Ch. 26, L. 2005.

History: En. 92-710 by Sec. 1, Ch. 366, L. 1971; amd. Sec. 1, Ch. 381, L. 1973; R.C.M. 1947, 92-710(1)(b) thru (f); amd. Sec. 11, Ch. 214, L. 2001.

39-71-806. Repealed.

Sec. 10, Ch. 26, L. 2005.

History: En. 92-710 by Sec. 1, Ch. 366, L. 1971; amd. Sec. 1, Ch. 381, L. 1973; R.C.M. 1947, 92-710(2).

39-71-807. Repealed.

Sec. 10, Ch. 26, L. 2005.

History: En. 92-710 by Sec. 1, Ch. 366, L. 1971; amd. Sec. 1, Ch. 381, L. 1973; R.C.M. 1947, 92-710(3); amd. Sec. 71, Ch. 397, L. 1979.

39-71-808. Repealed.

Sec. 10, Ch. 26, L. 2005.

History: En. 92-710 by Sec. 1, Ch. 366, L. 1971; amd. Sec. 1, Ch. 381, L. 1973; R.C.M. 1947, 92-710(4).

39-71-809. Repealed.

Sec. 10, Ch. 26, L. 2005.

History: En. 92-710 by Sec. 1, Ch. 366, L. 1971; amd. Sec. 1, Ch. 381, L. 1973; R.C.M. 1947, 92-710(9).

39-71-810. Repealed.

Sec. 10, Ch. 26, L. 2005.

History: En. 92-710 by Sec. 1, Ch. 366, L. 1971; amd. Sec. 1, Ch. 381, L. 1973; R.C.M. 1947, 92-710(6).

39-71-811. Repealed.

Sec. 10, Ch. 26, L. 2005.

History: En. 92-710 by Sec. 1, Ch. 366, L. 1971; amd. Sec. 1, Ch. 381, L. 1973; R.C.M. 1947, 92-710(10).

39-71-812. Repealed.

Sec. 10, Ch. 26, L. 2005.

History: En. 92-710 by Sec. 1, Ch. 366, L. 1971; amd. Sec. 1, Ch. 381, L. 1973; R.C.M. 1947, 92-710(7).

39-71-813. Repealed.

Sec. 10, Ch. 26, L. 2005.

History: En. 92-710 by Sec. 1, Ch. 366, L. 1971; amd. Sec. 1, Ch. 381, L. 1973; R.C.M. 1947, 92-710(5); amd. Sec. 72, Ch. 397, L. 1979.

Part 9**Subsequent Injury Received by Vocationally Handicapped**

Part Cross-References

Definitions, 39-71-116, 39-71-901.

Employer defined, 39-71-117.

Employee defined, 39-71-118.

Injury defined, 39-71-119.

39-71-901. Definitions.

As used in this part, the following definitions apply:

- (1) "Certificate" means documentation issued by the department to an individual who is a person with a disability.
- (2) "Fund" means the subsequent injury fund in the proprietary fund category.

- (3) "Person with a disability" means a person who has a medically certifiable permanent impairment that is a substantial obstacle to obtaining employment or to obtaining reemployment if the person should become unemployed, considering such factors as the person's age, education, training, experience, and employment rejection.

History: En. 92-709.1 by Sec. 1, Ch. 254, L. 1973; R.C.M. 1947, 92-709.1(1); amd. Sec. 10, Ch. 103, L. 1979; amd. Sec. 73, Ch. 397, L. 1979; amd. Sec. 24, Ch. 613, L. 1989; amd. Sec. 40, Ch. 472, L. 1997; amd. Sec. 19, Ch. 389, L. 1999; amd. Sec. 7, Ch. 193, L. 2003.

39-71-902. Repealed.

Sec. 7, Ch. 284, L. 1997.

History: En. 92-709.1 by Sec. 1, Ch. 254, L. 1973; R.C.M. 1947, 92-709.1(part); amd. Sec. 74, Ch. 397, L. 1979; amd. Sec. 64, Ch. 613, L. 1989; amd. Sec. 8, Ch. 555, L. 1993; amd. Sec. 17, Ch. 516, L. 1995.

39-71-903. Procedure.

When a person with a disability receives an injury, as defined in 39-71-119, the procedure provided in this chapter applies to all proceedings under this part, except when specifically otherwise provided.

History: En. 92-709.1 by Sec. 1, Ch. 254, L. 1973; R.C.M. 1947, 92-709.1(part); amd. Sec. 75, Ch. 397, L. 1979; amd. Sec. 4, Ch. 284, L. 1997; amd. Sec. 41, Ch. 472, L. 1997.

39-71-904. Rules for certification.

The department shall promulgate rules for certification of persons with disabilities.

History: En. 92-709.1 by Sec. 1, Ch. 254, L. 1973; R.C.M. 1947, 92-709.1(4); amd. Sec. 64, Ch. 613, L. 1989; amd. Sec. 42, Ch. 472, L. 1997.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

39-71-905. Certification as person with disability – eligibility for benefits under fund.

- (1) A person who wishes to be certified as a person with a disability for purposes of this part shall apply to the department on forms furnished by the department. The department shall conduct an investigation and shall issue a certificate to a person who, in the department's discretion, meets the requirements for certification. A person shall apply for certification before an injury occurs that is covered by this part. The certification is effective retroactively to the date the department received the application.
- (2) If a claimant has met the provisions of subsection (1) and a subsequent claim has been accepted by an insurer, the claim is eligible for the benefits under the fund.

History: En. 92-709.1 by Sec. 1, Ch. 254, L. 1973; R.C.M. 1947, 92-709.1(2); amd. Sec. 11, Ch. 103, L. 1979; amd. Sec. 1, Ch. 151, L. 1987; amd. Sec. 64, Ch. 613, L. 1989; amd. Sec. 8, Ch. 558, L. 1991; amd. Sec. 43, Ch. 472, L. 1997; amd. Sec. 15, Ch. 377, L. 1999; amd. Sec. 1, Ch. 257, L. 2005; amd. Sec. 21, Ch. 112, L. 2009.

39-71-906. Repealed.

Sec. 2, Ch. 257, L. 2005.

History: En. 92-709.1 by Sec. 1, Ch. 254, L. 1973; R.C.M. 1947, 92-709.1(3); amd. Sec. 12, Ch. 103, L. 1979; amd. Sec. 64, Ch. 613, L. 1989; amd. Sec. 44, Ch. 472, L. 1997; amd. Sec. 12, Ch. 214, L. 2001.

39-71-907. Certified person with a disability to be compensated for injury as provided by chapter – insurer liability for compensation limited.

- (1) A person certified as having a physical or mental disability that constitutes or results in a substantial impediment to employment who receives an injury, as defined in 39-71-119, that results in death or disability must be paid compensation in the manner and to the extent provided in this chapter or, in case of death resulting from the injury, the compensation must be paid to the person's beneficiaries or dependents. The liability of the insurer for payment of medical and burial benefits as provided in this chapter is limited to those benefits arising from services rendered during the period of 104 weeks after the date of injury. The liability of the insurer for payment of benefits as provided in this chapter is limited to 104 weeks of compensation benefits actually paid. Thereafter, all compensation and the cost of all medical care and burial are the liability of the fund.
- (2) The liability of the fund for reimbursement under this section is limited to the amount currently in the fund at the time the reimbursement request is received by the fund and the amount collectible in the next assessment period pursuant to 39-71-915.

History: En. 92-709.1 by Sec. 1, Ch. 254, L. 1973; R.C.M. 1947, 92-709.1(5); amd. Sec. 76, Ch. 397, L. 1979; amd. Sec. 1, Ch. 213, L. 1987; amd. Sec. 9, Ch. 555, L. 1993; amd. Sec. 5, Ch. 284, L. 1997; amd. Sec. 45, Ch. 472, L. 1997; amd. Sec. 20, Ch. 389, L. 1999; amd. Sec. 7, Ch. 48, L. 2007.

39-71-908. Notification of fund of its potential liability under part – review by fund.

Not less than 90 or more than 150 days before the expiration of 104 weeks after the date of injury, the insurer shall notify the fund whether it is likely that compensation may be payable beyond a period of 104 weeks after the date of the injury. The fund thereafter may review, at reasonable times, such information as the insurer has regarding the accident and the nature and extent of the injury and disability.

History: En. 92-709.1 by Sec. 1, Ch. 254, L. 1973; R.C.M. 1947, 92-709.1(part); amd. Sec. 77, Ch. 397, L. 1979; amd. Sec. 25, Ch. 613, L. 1989.

39-71-909. Effect of fund's failure to give notification of its intent to dispute liability – subsequent notification by fund authorized

If the fund does not notify the insurer of its intent to dispute the payment of compensation, medical, and burial benefits, the insurer shall continue to make payments on behalf of the fund and shall be reimbursed by the fund for all benefits paid in excess of the insurer's liability. However, at any time subsequent to 104 weeks after the date of injury, the fund may notify the insurer of a dispute as to

payment of benefits. The liability of the fund to reimburse the insurer shall be suspended 30 days thereafter until the controversy is determined.

History: En. 92-709.1 by Sec. 1, Ch. 254, L. 1973; R.C.M. 1947, 92-709.1(7); amd. Sec. 2, Ch. 213, L. 1987.

39-71-910. Repealed.

Sec. 7, Ch. 284, L. 1997.

History: En. 92-709.1 by Sec. 1, Ch. 254, L. 1973; R.C.M. 1947, 92-709.1(9) thru (12); amd. Sec. 78, Ch. 397, L. 1979; amd. Secs. 26, 64, Ch. 613, L. 1989.

39-71-911. Obligation to make payments on behalf of fund not independent liability.

Except as provided in 39-71-909 and 39-71-920, the obligation imposed by this part on the insurer to make payments on behalf of the fund does not impose an independent liability on the insurer.

History: En. 92-709.1 by Sec. 1, Ch. 254, L. 1973; R.C.M. 1947, 92-709.1(part); amd. Sec. 27, Ch. 613, L. 1989; amd. Sec. 8, Ch. 193, L. 2003.

39-71-912. Reimbursement to be promptly made.

After the right to reimbursement has been established, reimbursement payment shall be made promptly on a proper showing every 6 months.

History: En. 92-709.1 by Sec. 1, Ch. 254, L. 1973; R.C.M. 1947, 92-709.1(part).

39-71-913. Repealed.

Sec. 7, Ch. 284, L. 1997.

History: En. 92-709.1 by Sec. 1, Ch. 254, L. 1973; R.C.M. 1947, 92-709.1(part); amd. Sec. 28, Ch. 613, L. 1989.

39-71-914. Repealed.

Sec. 68, Ch. 464, L. 1987.

History: En. 92-709.1 by Sec. 1, Ch. 254, L. 1973; R.C.M. 1947, 92-709.1(part).

39-71-915. Assessment of insurer – employers – definition – collection.

- (1) As used in this section, “paid losses” means the following benefits paid during the preceding calendar year for injuries covered by the Workers’ Compensation Act without regard to the application of any deductible, regardless of whether the employer or the insurer pays the losses:
 - (a) total compensation benefits paid; and
 - (b) except for medical benefits in excess of \$200,000 for each occurrence that are exempt from assessment, total medical benefits paid for medical treatment rendered to an injured worker, including hospital treatment and prescription drugs.
- (2) The fund must be maintained by assessing each plan No. 1 employer, each employer insured by a plan No. 2 insurer, plan No. 3, the state fund, with respect to claims arising before July 1, 1990, and each employer insured by

plan No. 3, the state fund. The assessment amount is the total amount from April 1 of the previous year through March 31 of the current year paid by the fund plus the expenses of administration less other realized income that is deposited in the fund. The total assessment amount to be collected must be allocated among plan No. 1 employers, plan No. 2 employers, plan No. 3, the state fund, and plan No. 3 employers, based on a proportionate share of paid losses for the calendar year preceding the year in which the assessment is collected. The board of investments shall invest the money of the fund, and the investment income must be deposited in the fund.

- (3) On or before May 31 each year, the department shall notify each plan No. 1 employer, plan No. 2 insurer, and plan No. 3, the state fund, of the amount to be assessed for the ensuing fiscal year. The amount to be assessed against the state fund must separately identify the amount attributed to claims arising before July 1, 1990, and the amount attributable to state fund claims arising on or after July 1, 1990. On or before April 30 each year, the department, in consultation with the advisory organization designated under 33-16-1023, shall notify plan No. 2 insurers and plan No. 3 of the premium surcharge rate to be effective for policies written or renewed on and after July 1 in that year.
- (4) The portion of the plan No. 1 assessment assessed against an individual plan No. 1 employer is a proportionate amount of total plan No. 1 paid losses during the preceding calendar year that is equal to the percentage that the total paid losses of the individual plan No. 1 employer bore to the total paid losses of all plan No. 1 employers during the preceding calendar year.
- (5) The portion of the assessment attributable to state fund claims arising before July 1, 1990, is the proportionate amount that is equal to the percentage that total paid losses for those claims during the preceding calendar year bore to the total paid losses for all plans in the preceding calendar year. As required by 39-71-2352, the state fund may not pass along to insured employers the cost of the subsequent injury fund assessment that is attributable to claims arising before July 1, 1990.
- (6) The remaining portion of the assessment must be paid by way of a surcharge on premiums paid by employers being insured by a plan No. 2 insurer or plan No. 3, the state fund, for policies written or renewed annually on or after July 1. The surcharge rate must be computed by dividing the remaining portion of the assessment by the total amount of premiums paid by employers insured under plan No. 2 or plan No. 3 in the previous calendar year. The numerator for the calculation must be adjusted as provided by subsection (9).
- (7) Each plan No. 2 insurer providing workers' compensation insurance and plan No. 3, the state fund, shall collect from its policyholders the assessment premium surcharge provided for in subsection (6). When collected, the assessment premium surcharge may not constitute an element of loss for the purpose of establishing rates for workers' compensation insurance but, for the purpose of collection, must be treated as separate costs imposed upon insured employers. The total of this assessment premium surcharge must be stated as a separate cost on an insured employer's policy or on a separate document submitted by the insured employer and must be identified as "workers' compensation subsequent injury fund surcharge". Each assessment premium surcharge must be shown as a percentage of the total workers' compensation policyholder premium. This assessment premium surcharge must be collected at the same time and in the same manner that the premium for the coverage

- is collected. The assessment premium surcharge must be excluded from the definition of premiums for all purposes, including computation of insurance producers' commissions or premium taxes, except that an insurer may cancel a workers' compensation policy for nonpayment of the assessment premium surcharge. Cancellation must be in accordance with the procedures applicable to the nonpayment of premium. If an employer fails to remit to an insurer the total amount due for the premium and assessment premium surcharge, the amount received by the insurer must be applied to the assessment premium surcharge first and the remaining amount applied to the premium due.
- (8)
 - (a) All assessments paid to the department must be deposited in the fund.
 - (b) Each plan No. 1 employer shall pay its assessment by July 1.
 - (c) Each plan No. 2 insurer and plan No. 3, the state fund, shall remit to the department all assessment premium surcharges collected during a calendar quarter by not later than 20 days following the end of the quarter.
 - (d) The state fund shall pay the portion of the assessment attributable to claims arising before July 1, 1990, by July 1.
 - (e) If a plan No. 1 employer, a plan No. 2 insurer, or plan No. 3, the state fund, fails to timely pay to the department the assessment or assessment premium surcharge under this section, the department may impose on the plan No. 1 employer, the plan No. 2 insurer, or plan No. 3, the state fund, an administrative fine of \$100 plus interest on the delinquent amount at the annual interest rate of 12%. Administrative fines and interest must be deposited in the fund.
 - (9) The amount of the assessment premium surcharge actually collected pursuant to subsection (7) must be compared each year to the amount assessed and upon which the premium surcharge was calculated. The amount undercollected or overcollected in any given year must be used as an adjustment to the numerator provided for by subsection (6) for the following year's assessment premium surcharge.
 - (10) If the total assessment is less than \$1 million for any year, the department may defer the assessment amount for that year and add that amount to the assessment amount for the subsequent year.

History: En. Sec. 1, Ch. 284, L. 1997; amd. Sec. 16, Ch. 377, L. 1999; amd. Sec. 13, Ch. 214, L. 2001; amd. Sec. 9, Ch. 193, L. 2003; amd. Sec. 6, Ch. 69, L. 2005; amd. Sec. 27, Ch. 416, L. 2005; amd. Sec. 8, Ch. 48, L. 2007; amd. Sec. 22, Ch. 112, L. 2009; amd. Sec. 4, Ch. 123, L. 2015.

39-71-916. Reimbursement of subsequent injury fund – effect on claims experience rating.

An insurer that uses an employer's claims costs experience as a factor that influences the amount of premium charged to that particular employer by using an experience modification factor or similar rating technique may not base that factor on those claims costs that are reimbursed by the subsequent injury fund.

History: En. Sec. 2, Ch. 48, L. 2007.

39-71-917 through 39-71-919 reserved.

39-71-920. Concurrence of fund in settlements.

- (1) Petitions for compromise settlements that potentially involve payments from the fund must have written concurrence by an authorized representative of the fund prior to submission for department approval.
- (2) The failure to receive written concurrence from the fund's representative relieves the fund of any liability for payment of benefits for a compromise settlement, and the obligation to pay remains with the insurer.

History: En. Sec. 10, Ch. 193, L. 2003.

Part 10**Stay-at-Work/Return-to-Work Assistance****Part Cross-References**

Definitions, 39-71-116.

Employer defined, 39-71-117.

Employee defined, 39-71-118.

Injury defined, 39-71-119.

39-71-1001. Repealed.

Sec. 68, Ch. 464, L. 1987.

History: En. Sec. 1, Ch. 21, L. 1961; amd. Sec. 1, Ch. 221, L. 1963; amd. Sec. 83, Ch. 23, L. 1975; R.C.M. 1947, 92-1401; amd. Sec. 79, Ch. 397, L. 1979.

39-71-1002. Repealed.

Sec. 68, Ch. 464, L. 1987.

History: En. Sec. 2, Ch. 21, L. 1961; amd. Sec. 84, Ch. 23, L. 1975; R.C.M. 1947, 92-1402.

39-71-1003. Repealed.

Sec. 7, Ch. 51, L. 2019.

History: En. Sec. 3, Ch. 21, L. 1961; amd. Sec. 1, Ch. 363, L. 1971; R.C.M. 1947, 92-1403; amd. Sec. 80, Ch. 397, L. 1979; amd. Sec. 3, Ch. 374, L. 1985; amd. Sec. 35, Ch. 464, L. 1989; amd. Sec. 7, Ch. 574, L. 1991; amd. Sec. 106, Ch. 546, L. 1995; amd. Sec. 1, Ch. 122, L. 1997

39-71-1004. Repealed.

Sec. 7, Ch. 51, L. 2019.

History: En. Sec. 7, Ch. 21, L. 1961; amd. Sec. 3, Ch. 221, L. 1963; amd. Sec. 85, Ch. 23, L. 1975; R.C.M. 1947, 92-1406; amd. Sec. 2, Ch. 283, L. 1983; amd. Sec. 64, Ch. 613, L. 1989; amd. Sec. 107, Ch. 546, L. 1995; amd. Sec. 2, Ch. 122, L. 1997; amd. Sec. 17, Ch. 377, L. 1999; amd. Sec. 11, Ch. 193, L. 2003

39-71-1005. Repealed.

Sec. 68, Ch. 464, L. 1987.

History: En. Sec. 1, Ch. 123, L. 1979.

39-71-1006. Rehabilitation benefits.

- (1) A worker is eligible for rehabilitation benefits if:
 - (a) (i) the worker meets the definition of a disabled worker as provided in 39-71-1011; or
 - (ii) the worker has, as a result of the work-related injury, a whole person impairment rating of 15% or greater, as established by objective medical findings, and has no actual wage loss;
 - (b) a rehabilitation provider, as designated by the insurer, certifies that the worker has reasonable vocational goals and reasonable reemployment opportunity. If eligible because of an impairment rating of 15% or more, with rehabilitation the worker will have a reasonable increase in the worker's wage compared to the wage that the worker received at the time of injury. If eligible because of a wage loss, the worker will have a reasonable reduction in the worker's actual wage loss with rehabilitation.
 - (c) a rehabilitation plan is agreed upon by the worker and the insurer and a written copy of the plan is provided to the worker. The plan must take into consideration the worker's age, education, training, work history, residual physical capacities, and vocational interests. The plan must specify a beginning date and a completion date. The plan must specify the cost of tuition, fees, books, and other reasonable and necessary retraining expenses required to complete the plan.
- (2) A disabled worker is entitled to receive biweekly rehabilitation benefits at the worker's temporary total disability rate. The benefits must be paid for the period specified in the rehabilitation plan, not to exceed 104 weeks. The rehabilitation plan must be completed within 26 weeks of the completion date specified in the plan. Rehabilitation benefits must be paid biweekly while the worker is satisfactorily progressing in the agreed-upon rehabilitation plan. Rehabilitation benefits payable pursuant to a retraining rehabilitation plan under this section are not payable in a lump sum. Rehabilitation benefits may be paid in a lump sum for job placement services.
- (3) In addition to rehabilitation benefits payable under subsection (2), a disabled worker who was injured on or after July 1, 1997, is entitled to receive payment for tuition, fees, books, and other reasonable and necessary retraining expenses, excluding travel and living expenses paid pursuant to the provisions of 39-71-1025, as set forth in department rules and as specified in the rehabilitation plan. Expenses must be paid directly by the insurer.
- (4) A worker may not receive temporary total benefits and the benefits under subsection (2) during the same period of time.
- (5) A rehabilitation provider authorized by the insurer shall continue to assist the injured worker until the rehabilitation plan is completed.
- (6) To be eligible for benefits under this section, a worker is required to begin the rehabilitation plan within 78 weeks of reaching maximum medical healing.
- (7) A worker may not receive both wages and rehabilitation benefits without the written consent of the insurer. A worker who receives both wages and rehabilitation benefits without written consent of the insurer is guilty of theft and may be prosecuted under 45-6-301.

History: En. Sec. 10, Ch. 574, L. 1991; amd. Sec. 7, Ch. 296, L. 1993; amd. Sec. 24, Ch. 243, L. 1995; amd. Sec. 111, Ch. 546, L. 1995; Sec. 39-71-2001, MCA 1993; redes. 39-71-1006 by Code Commissioner, 1995; amd. Sec. 3, Ch. 122, L. 1997; amd. Sec. 14, Ch. 276, L. 1997; amd. Sec. 11, Ch. 103, L. 2005.

39-71-1007 through 39-71-1010 reserved.

39-71-1011. Definitions.

As used in this part, the following definitions apply:

- (1) “Assistance fund” means the stay-at-work/return-to-work assistance fund provided for in 39-71-1049.
- (2) “Commission on rehabilitation counselor certification” means the nonprofit, independent, fee-structured organization that is a member of the national commission for health certifying agencies and that is established to certify rehabilitation providers.
- (3) “Disabled worker” means a worker who has a permanent impairment, established by objective medical findings, resulting from a work-related injury that precludes the worker from returning to the job the worker held at the time of the injury or to a job with similar physical requirements and who has an actual wage loss as a result of the injury.
- (4) “Insurer’s stay-at-work/return-to-work assistance policy” or “assistance policy” means a written stay-at-work/return-to-work policy that explains to the worker the process of evaluation, planning, implementation, and provision of services by the insurer prior to the determination that the worker meets the definition of a disabled worker. The services are intended to facilitate a worker’s return to work as soon as possible following the worker’s injury or occupational disease. This assistance may include a rehabilitation plan.
- (5) “Rehabilitation benefits” means benefits provided in 39-71-1006 and 39-71-1025.
- (6) “Rehabilitation plan” means a written individualized plan that assists a disabled worker in acquiring skills or aptitudes to return to work through job placement, on-the-job training, education, training, or specialized job modification and that reasonably reduces the worker’s actual wage loss.
- (7) “Rehabilitation provider” means a rehabilitation counselor certified by the commission on rehabilitation counselor certification and designated by the insurer.
- (8) “Rehabilitation services” means a program of evaluation, planning, and implementation of a rehabilitation plan to assist a disabled worker to return to work.
- (9) “Stay-at-work/return-to-work assistance” or “assistance” means the evaluation, planning, implementation, and provision of appropriate services prior to the determination that the worker meets the definition of a disabled worker that are designed to facilitate a worker’s return to work as soon as possible following the worker’s injury or occupational disease. This assistance may include a rehabilitation plan.

History: En. Sec. 34, Ch. 464, L. 1987; amd. Sec. 2, Ch. 333, L. 1989; amd. Sec. 64, Ch. 613, L. 1989; amd. Sec. 8, Ch. 574, L. 1991; amd. Sec. 22, Ch. 243, L. 1995; amd. Sec. 108, Ch. 546, L. 1995; amd. Sec. 4, Ch. 122, L. 1997; amd. Sec. 49, Ch. 130, L. 2005; amd. Sec. 15, Ch. 167, L. 2011.

39-71-1012. Repealed.

Sec. 14, Ch. 574, L. 1991.

History: En. Sec. 36, Ch. 464, L. 1987.

39-71-1013. Repealed.

Sec. 8, Ch. 122, L. 1997; Sec. 13, Ch. 310, L. 1997.

History: En. Sec. 43, Ch. 464, L. 1987; amd. Sec. 9, Ch. 574, L. 1991.

39-71-1014. Rehabilitation services – required and provided by insurers.

- (1) Rehabilitation services are required for disabled workers and may be initiated by:
 - (a) an insurer by designating a rehabilitation provider; or
 - (b) a disabled worker through a request to the department. The department shall then require the insurer to designate a rehabilitation provider.
- (2) Rehabilitation services provided under this part must be delivered through a rehabilitation counselor certified by the commission on rehabilitation counselor certification.

History: En. Sec. 37, Ch. 464, L. 1987; amd. Sec. 64, Ch. 613, L. 1989; amd. Sec. 109, Ch. 546, L. 1995; amd. Sec. 5, Ch. 122, L. 1997; amd. Sec. 50, Ch. 130, L. 2005.

39-71-1015. Repealed.

Sec. 14, Ch. 574, L. 1991.

History: En. Sec. 38, Ch. 464, L. 1987; amd. Sec. 64, Ch. 613, L. 1989.

39-71-1016. Repealed.

Sec. 14, Ch. 574, L. 1991.

History: En. Sec. 39, Ch. 464, L. 1987; amd. Sec. 64, Ch. 613, L. 1989.

39-71-1017. Repealed.

Sec. 14, Ch. 574, L. 1991.

History: En. Sec. 40, Ch. 464, L. 1987; amd. Sec. 9, Ch. 333, L. 1989; amd. Sec. 64, Ch. 613, L. 1989.

39-71-1018. Repealed.

Sec. 14, Ch. 574, L. 1991.

History: En. Sec. 41, Ch. 464, L. 1987; amd. Sec. 64, Ch. 613, L. 1989.

39-71-1019. Repealed.

Sec. 14, Ch. 574, L. 1991.

History: En. Sec. 42, Ch. 464, L. 1987; amd. Sec. 64, Ch. 613, L. 1989; amd. Sec. 40, Ch. 16, L. 1991.

39-71-1020 through 39-71-1022 reserved.

39-71-1023. Repealed.

Sec. 14, Ch. 574, L. 1991.

History: En. Sec. 44, Ch. 464, L. 1987; amd. Sec. 3, Ch. 333, L. 1989; amd. Sec. 64, Ch. 613, L. 1989.

39-71-1024. Repealed.

Sec. 14, Ch. 574, L. 1991.

History: En. Sec. 45, Ch. 464, L. 1987; amd. Sec. 64, Ch. 613, L. 1989; amd. Sec. 9, Ch. 9, Sp. L. June 1989.

39-71-1025. Auxiliary benefits.

- (1) In addition to benefits otherwise provided in this chapter, separate benefits not exceeding a total of \$4,000, adjusted as provided in subsection (2), may be paid by the insurer for specialized job modification, reasonable travel, and relocation expenses used for any of the following:
 - (a) search for new employment;
 - (b) return to work but in a new location;
 - (c) the implementation of a rehabilitation plan that has been filed with the department; or
 - (d) attendance at an on-the-job training program.
- (2) The separate benefit may be adjusted by an amount that is the percentage increase, if any, in the current state's average weekly wage over the state's average weekly wage adopted for the previous year.

History: En. Sec. 46, Ch. 464, L. 1987; amd. Sec. 64, Ch. 613, L. 1989; amd. Sec. 11, Ch. 574, L. 1991; amd. Sec. 22, Ch. 167, L. 2011.

39-71-1026. Repealed.

Sec. 14, Ch. 574, L. 1991.

History: En. Sec. 47, Ch. 464, L. 1987; amd. Sec. 64, Ch. 613, L. 1989.

39-71-1027 through 39-71-1030 reserved.**39-71-1031. Exchange of information.**

The insurer, the rehabilitation provider, and the department shall provide to one another case information as necessary to carry out the purposes of this part.

History: En. Sec. 48, Ch. 464, L. 1987; amd. Sec. 64, Ch. 613, L. 1989; amd. Sec. 110, Ch. 546, L. 1995; amd. Sec. 6, Ch. 122, L. 1997; amd. Sec. 23, Ch. 167, L. 2011.

39-71-1032. Termination of benefits for noncooperation with rehabilitation provider – appeal.

- (1) If an insurer believes that a worker is refusing unreasonably to cooperate with the rehabilitation provider, the insurer, with 14 days' written notice to the worker and the department, may terminate any benefits, except medical benefits and the impairment award, that the worker is receiving until the worker cooperates.

- (2) If the worker disputes the termination of benefits, the worker may, after mediation pursuant to department rule, petition the workers' compensation court for resolution of the dispute.

History: En. Sec. 49, Ch. 464, L. 1987; amd. Sec. 64, Ch. 613, L. 1989; amd. Sec. 12, Ch. 574, L. 1991; amd. Sec. 23, Ch. 243, L. 1995; amd. Sec. 7, Ch. 122, L. 1997; amd. Sec. 20, Ch. 442, L. 1999.

39-71-1033. Repealed.

Sec. 14, Ch. 574, L. 1991.

History: En. Sec. 50, Ch. 464, L. 1987; amd. Sec. 64, Ch. 613, L. 1989.

39-71-1034 and 39-71-1035 reserved.

39-71-1036. Medical status form.

- (1) The department shall create a medical status form to be provided to a health care provider providing treatment for a compensable injury or occupational disease.
- (2) The form must contain, at a minimum, the following information:
 - (a) the worker's first and last names and claim number;
 - (b) the diagnosed condition that is a direct result of the compensable injury or occupational disease;
 - (c) the treatment plan for the worker;
 - (d) identification of any medications prescribed for treatment of the worker;
 - (e) the time frame during which the treating physician recommends that the worker be completely off work;
 - (f) the date or anticipated date of the worker's release to modified duty;
 - (g) the date or anticipated date of the worker's release to full duty;
 - (h) any temporary work restrictions applicable to the worker;
 - (i) any permanent work restrictions applicable to the worker;
 - (j) the anticipated date of maximum medical improvement; and
 - (k) the date of the worker's next appointment.
- (3) An insurer may request additional information from the health care provider not contained in the department's form.
- (4) The treating physician or a designee shall complete the form following every office visit with the worker.

History: En. Sec. 28, Ch. 167, L. 2011.

39-71-1037 through 39-71-1040 reserved.

39-71-1041. Stay-at-work/return-to-work goals and options – notification by department – agreement between worker and insurer.

- (1) The goal of stay-at-work/return-to-work assistance is to minimize avoidable disruption caused by a work-related injury or occupational disease by assisting the worker in the worker's return to the same position with the same employer or to a modified position with the same employer as soon as possible after an injury or an occupational disease occurs.

- (2) To further the goal in subsection (1), the department shall, upon receipt from the insurer of a report of injury or occupational disease pursuant to 39-71-307(2), distribute to the worker a document that describes the stay-at-work/return-to-work assistance that is available upon request by the worker.
- (3) Services provided as part of stay-at-work/return-to-work assistance are provided in addition to or prior to rehabilitation services and are intended to help a worker return to work.

History: En. Sec. 16, Ch. 167, L. 2011.

39-71-1042. Request for and delivery of stay-at-work/return-to-work assistance.

- (1) (a) A worker who is claiming an injury or occupational disease, an employer, or a medical provider may ask that the department furnish stay-at-work/return-to-work assistance. After the worker signs a claim for benefits, the department shall promptly attempt to determine which insurer is at risk for the injury or occupational disease and contact that insurer. The department shall advise the insurer of the request for stay-at-work/return-to-work assistance and shall coordinate the assistance with the insurer.
- (b) If an insurer has accepted liability for the claim, the insurer shall provide stay-at-work/return-to-work assistance either in accordance with the insurer's stay-at-work/return-to-work assistance policy or by designating a rehabilitation provider to provide rehabilitation services. The insurer is directly liable for paying for the stay-at-work/return-to-work assistance furnished.
- (c) If an insurer at risk has not accepted liability for the claim, the insurer may choose one of the following actions:
 - (i) The insurer at risk for the claim may initiate stay-at-work/return-to-work assistance either in accordance with the insurer's stay-at-work/return-to-work assistance policy or by designating a rehabilitation provider to provide rehabilitation services and shall notify the department within 3 business days of being contacted by the department that the insurer is acting under this subsection (1)(c)(i). If the insurer provides either type of assistance, the insurer becomes responsible for directly paying for the assistance. Payment of assistance pursuant to this subsection (1)(c)(i) does not constitute admission of liability or a waiver of any right of defense.
 - (ii) If the insurer at risk for the claim does not notify the department within 3 business days of being contacted by the department that the insurer will provide assistance, the department shall obtain stay-at-work/return-to-work assistance for the worker by designating a rehabilitation provider.
- (d) If the department cannot promptly determine which insurer is at risk for coverage, the department shall obtain stay-at-work/return-to-work assistance for the worker by designating a rehabilitation provider.
- (e) A rehabilitation provider designated by the department under this section shall bill the department for services provided. The department shall pay for the stay-at-work/return-to-work assistance out of the assistance fund until the maximum allowed amount of assistance is provided or until the insurer denies the claim and notifies the department of the denial.

- (f) If an insurer is providing assistance pursuant to the insurer's stay-at-work/return-to-work assistance policy, the insurer shall provide in writing to a worker, with a copy to the department, an explanation of the stay-at-work/return-to-work assistance being provided to the worker under this section and shall include contact information for the person providing the assistance.
- (2) Rather than make a request to the department, a worker, an employer, or a medical provider may directly ask the insurer to provide stay-at-work/return-to-work assistance.
- (3) In the absence of a request by a worker, an employer, or a medical provider, an insurer may initiate and provide stay-at-work/return-to-work assistance by providing the worker with a copy of the insurer's stay-at-work/return-to-work assistance policy or by designating a rehabilitation provider to provide rehabilitation services.
- (4) Stay-at-work/return-to-work assistance requested under this section is available as a service apart from a determination regarding indemnity benefits. A worker or an employer may decline to accept stay-at-work/return-to-work assistance. The failure of a worker to voluntarily agree to assistance is not a dispute concerning benefits. However, if the assistance provided under this part results in a job offer for a position that is within the worker's physical abilities, for which the worker is qualified, and for which the wages are at least equal to the worker's wages at the time of injury and the worker refuses the offer, the workers' indemnity benefits may end as provided in 39-71-701 and 39-71-712.
- (5) Stay-at-work/return-to-work assistance is available at any time unless:
 - (a) the worker, prior to a determination that the worker meets the definition of a disabled worker, has refused a job offer for a position that is within the worker's physical abilities, for which the worker is qualified, and for which the wages are at least equal to the worker's wages at the time of injury;
 - (b) the worker has actually returned to work; or
 - (c) the claim has been closed pursuant to 39-71-704(1)(f)(i) or indemnity benefits have been settled pursuant to the definition of a settled claim in 39-71-107.
- (6) If the insurer determines that the worker has not suffered a compensable injury or occupational disease and denies liability for the claim, the insurer or the department shall terminate any stay-at-work/return-to-work assistance that was initiated before the insurer's denial of liability.

History: En. Sec. 17, Ch. 167, L. 2011.

39-71-1043. Rehabilitation provider – evaluation.

- (1) Stay-at-work/return-to-work assistance must be provided by a rehabilitation provider pursuant to this section if:
 - (a) the department provides assistance; or
 - (b) an insurer elects to designate a rehabilitation provider instead of using the insurer's own stay-at-work/return-to-work assistance policy.
- (2) (a) The rehabilitation provider shall evaluate and determine the stay-at-work/return-to-work capabilities of the worker pursuant to the stay-at-work/return-to-work goals listed in 39-71-1041.

- (b) If the worker has returned to work, the rehabilitation provider shall provide documentation of the assistance to the worker, the insurer, and the department.
- (c) If the worker has not returned to work and has not received a job offer to return to work, the rehabilitation provider shall document the reasons the stay-at-work/return-to-work assistance was unsuccessful. The documentation must be provided to the worker, the insurer, the treating physician, and the department.
- (d) The following conditions allow termination of assistance prior to the time a worker meets the definition of a disabled worker:
 - (i) the worker has returned to work earning wages that are at least as much as at the time of injury;
 - (ii) the worker has received an offer to return to work at a position that is within the worker's physical abilities, for which the worker is qualified, and for which the wages are at least equal to the worker's wages at the time of injury;
 - (iii) the worker has returned to work in an alternative position that pays less than the worker's wages at the time of injury and that qualifies the worker for temporary partial disability benefits pursuant to 39-71-712; or
 - (iv) the worker receives a job offer to return to work in a position that is within the worker's physical abilities, for which the worker is qualified, for which the wages are less than the worker's wages at the time of injury, and that qualifies the worker for temporary partial disability benefits under 39-71-712.
- (e) If a worker has requested stay-at-work/return-to-work assistance and a rehabilitation plan has been agreed to by the worker and the insurer, the plan continues until completed.
- (3) If the worker or insurer disputes the availability or level of assistance, the worker or insurer may, after mediation, petition the workers' compensation court for resolution of the dispute.

History: En. Sec. 18, Ch. 167, L. 2011.

39-71-1044 through 39-71-1048 reserved.

39-71-1049. Stay-at-work/return-to-work assistance fund – purpose – payment process – rulemaking.

- (1) There is a stay-at-work/return-to-work assistance fund in the proprietary fund category.
- (2) The purpose of the assistance fund is to pay for stay-at-work/return-to-work assistance provided by the department so that assistance may be provided as early as practicable in the workers' compensation claims process.
- (3) (a) The department may establish by rule:
 - (i) the amounts and types of assistance to be provided; and
 - (ii) the maximum hourly rate that may be charged for stay-at-work/return-to-work assistance obtained by the department and paid for by the assistance fund.

- (b) The rules adopted under subsection (3)(a) regarding the payment amounts to rehabilitation providers do not apply if the insurer has taken direct responsibility for providing stay-at-work/return-to-work assistance.
- (c) If rules are not adopted to implement subsection (3)(a), the department may not provide more than \$2,000 in assistance.

History: En. Sec. 19, Ch. 167, L. 2011.

39-71-1050. Assessment for stay-at-work/return-to-work assistance fund – definition.

- (1) (a) The assistance fund must be maintained by assessing employers insured by plan No. 1, plan No. 2, and plan No. 3 an amount as provided in subsections (2) through (10).
(b) The board of investments shall invest the money in the assistance fund. The investment income must be deposited in the assistance fund.
- (2) The assessment amount is the total amount paid by the assistance fund in the preceding fiscal year less other realized income that is deposited in the assistance fund. Allocation of the total assessment amount among employers insured by plan No. 1, plan No. 2, and plan No. 3 must be based on each plan's proportionate share of money expended from the assistance fund for the calendar year preceding the year in which the assessment is collected.
- (3) On or before May 31 of each year, the department shall notify each plan No. 1 employer, plan No. 2 insurer, and plan No. 3, the state fund, of the amount to be assessed for the ensuing fiscal year. On or before April 30 of each year, the department shall consult with the advisory organization designated under 33-16-1023 and notify plan No. 2 insurers and plan No. 3, the state fund, of the premium surcharge rate to be effective for policies written or renewed on or after July 1 in that year.
- (4) The portion of the plan No. 1 assessment assessed against an individual plan No. 1 employer is the amount actually expended by the assistance fund on behalf of injured workers employed by that plan No. 1 employer. A group of employers insured jointly under plan No. 1 is considered to be an individual employer for the purposes of this subsection.
- (5) After subtracting plan No. 1 assessments from the total assessment, the department shall determine the surcharge rate for plan No. 2 insurers and plan No. 3, the state fund, by dividing the remaining portion of the assessment by the total amount of premiums paid by employers insured under plan No. 2 or plan No. 3 in the previous calendar year. The numerator for the calculation must be adjusted as provided in subsection (9).
- (6) Employers insured under plan No. 2 or plan No. 3 shall pay their portion of the assessment in a surcharge on premiums for policies written or renewed annually on or after July 1.
- (7) (a) Each plan No. 2 insurer and plan No. 3, the state fund, shall collect from its policyholders the assessment premium surcharge provided for in subsection (5). When collected, the assessment premium surcharge may not constitute an element of loss for the purpose of establishing rates for workers' compensation insurance but, for the purpose of collection, must be treated as separate costs imposed upon insured employers. The total of this assessment premium surcharge must be stated as a separate cost on an insured employer's policy or on a separate document submitted by

the insured employer and must be identified as “workers’ compensation stay-at-work/return-to-work assistance fund surcharge”. Each assessment premium surcharge must be shown as a percentage of the total workers’ compensation policyholder premium. This assessment premium surcharge must be collected at the same time and in the same manner as the premium for the coverage. The assessment premium surcharge must be excluded from the definition of premium for all purposes, including computation of insurance producers’ commissions or premium taxes, except that an insurer may cancel a workers’ compensation policy for nonpayment of the assessment premium surcharge. Cancellation must be in accordance with the procedures applicable to the nonpayment of premium.

- (b) If an employer fails to remit to an insurer the total amount due for the premium and assessment premium surcharge, the amount received by the insurer must be applied to the assessment premium surcharge described in 39-71-201 first, then to the assessment premium surcharge described in 50-71-128, then to the assessment premium surcharge in this section, and then to the surcharge in 39-71-915, with any remaining amount applied to the premium due.
- (8) (a) The department shall deposit all assessments due under this section into the assistance fund.
- (b) Each plan No. 1 employer shall pay its assessment due under this section by July 1.
- (c) Each plan No. 2 insurer and plan No. 3, the state fund, shall remit to the department all assessment premium surcharges collected during a calendar quarter no later than 20 days following the end of the quarter.
- (d) If a plan No. 1 employer, a plan No. 2 insurer, or plan No. 3, the state fund, fails to timely pay to the department the assessment or assessment premium surcharge under this section, the department may impose on the plan No. 1 employer, the plan No. 2 insurer, or plan No. 3, the state fund, an administrative fine of \$100 plus interest on the delinquent amount at the annual interest rate of 12%. Administrative fines and interest must be deposited in the assistance fund.
- (9) Each year, the department shall compare the amount of the assessment premium surcharge actually collected pursuant to subsection (5) with the amount assessed and upon which the premium surcharge was calculated. The amount undercollected or overcollected in any given year must be used as an adjustment to the numerator for the following year’s assessment premium surcharge as provided in subsection (5).
- (10) If the total assessment is less than \$100,000 for any year, the department may defer the assessment for that year and add that amount to the assessment amount for the subsequent year.
- (11) As used in this section, “money expended” means expenditures for stay-at-work/return-to-work assistance from the assistance fund.

History: En. Sec. 20, Ch. 167, L. 2011; amd. Sec. 3, Ch. 365, L. 2015.

39-71-1051. Rulemaking authority.

The department may adopt rules to implement this part.

History: En. Sec. 21, Ch. 167, L. 2011.

Part 11**Treatment by Designated Providers****39-71-1101. Choice of health care provider by worker – insurer designation or approval of treating physician or referral to managed care or preferred provider organization – payment terms – definition.**

- (1) Prior to the insurer's designation or approval of a treating physician as provided in subsection (2) or a referral to a managed care organization or preferred provider organization as provided in subsection (8), a worker may choose a person who is listed in 39-71-116(41) for initial treatment. Subject to subsection (2), if the person listed under 39-71-116(41) chosen by the worker agrees to comply with the requirements of subsection (2), that person is the treating physician.
- (2) Any time after acceptance of liability by an insurer, the insurer may designate or approve a treating physician who agrees to assume the responsibilities of the treating physician. The designated or approved treating physician:
 - (a) is responsible for coordinating the worker's receipt of medical services as provided in 39-71-704;
 - (b) shall provide timely determinations required under this chapter, including but not limited to maximum medical healing, physical restrictions, return to work, and approval of job analyses, and shall provide documentation;
 - (c) shall provide or arrange for treatment within the utilization and treatment guidelines or obtain prior approval for other treatment; and
 - (d) shall conduct or arrange for timely impairment ratings.
- (3) The treating physician may refer the worker to other health care providers for medical services, as provided in 39-71-704, for the treatment of a worker's compensable injury or occupational disease. A health care provider to whom the worker is referred by the designated treating physician is not responsible for coordinating care or providing determinations as required of the treating physician.
- (4) The treating physician designated or approved by the insurer must be reimbursed at 110% of the department's fee schedule.
- (5) A health care provider to whom the worker is referred by the treating physician must be reimbursed at 90% of the department's fee schedule.
- (6) A health care provider providing health care on a compensable claim prior to the designation or approval of the treating physician by the insurer must be reimbursed at 100% of the department's fee schedule.
- (7) Regardless of the date of injury, the medical fee schedule rates in effect as adopted by the department in 39-71-704 and the percentages referenced in subsections (4) through (6) of this section apply to the medical service on the date on which the medical service was provided.
- (8) The insurer may direct the worker to a managed care organization or a preferred provider organization for designation of the treating physician.
- (9) After the insurer directs a worker to a managed care organization or preferred provider organization, a health care provider who otherwise qualifies as a treating physician but who is not a member of a managed care organization may not provide treatment unless authorized by the insurer.
- (10) After the date that a worker subject to the provisions of subsection (9) receives individual written notice of a referral, the worker must, unless otherwise

authorized by the insurer, receive medical services from the organization designated by the insurer, in accordance with 39-71-1102 and 39-71-1104. The designated treating physician in the organization then becomes the worker's treating physician. The insurer is not liable for medical services obtained otherwise, except that a worker may receive immediate emergency medical treatment for a compensable injury from a health care provider who is not a member of a managed care organization or a preferred provider organization.

- (11) Posting of managed care requirements in the workplace on bulletin boards, in personnel policies, in company manuals, or by other general or broadcast means does not constitute individual written notice. To constitute individual written notice under this section, information regarding referral to a managed care organization must be provided to the worker in written form by mail or in person after the date of injury or occupational disease.

History: En. Sec. 5, Ch. 628, L. 1993; amd. Sec. 1, Ch. 468, L. 1999; amd. Sec. 24, Ch. 167, L. 2011; amd. Sec. 18, Ch. 55, L. 2015.

39-71-1102. Preferred provider organizations – establishment – limitations.

- (1) In order to promote cost containment of medical care provided for in 39-71-704, development of preferred provider organizations by insurers is encouraged. Insurers may establish arrangements with suppliers of soft and durable medical goods and health care providers in addition to or in conjunction with managed care organizations. Workers' compensation insurers may contract with other entities to use the other entities' preferred provider organizations. After the date that an injured worker is given an individual written notice by the insurer of a preferred provider, the insurer is not liable for charges from nonpreferred providers.
- (2) Posting of preferred provider requirements in the workplace on bulletin boards, in personnel policies, in company manuals, or by other general or broadcast means does not constitute individual written notice. To constitute individual written notice under this section, information regarding referral to preferred providers must be provided to the worker in written form by mail or in person after the date of injury.

History: En. Sec. 6, Ch. 628, L. 1993; amd. Sec. 2, Ch. 468, L. 1999; amd. Sec. 25, Ch. 167, L. 2011.

39-71-1103. Workers' compensation managed care.

- (1) A managed care system is a program organized to serve the medical needs of injured workers in an efficient and cost-effective manner by managing the delivery of medical services for a defined population of injured workers, pursuant to 39-71-1101, through appropriate health care professionals.
- (2) The department shall develop criteria pursuant to 39-71-1105 for certification of managed care organizations. The department may adopt rules for certification of managed care organizations.
- (3) Insurers may contract with certified managed care organizations for medical services for injured workers. A worker who is subject to managed care may choose from managed care organizations in the worker's community that have a contract with the insurer responsible for the worker's medical services.

History: En. Sec. 7, Ch. 628, L. 1993.

39-71-1104. Managed care organizations – notification.

Workers who are subject to managed care must receive medical services in the manner prescribed in the contract. Each contract must comply with the certification requirements provided in 39-71-1105. Insurers who contract with a managed care organization for medical services shall give written notice to workers of eligible service providers and shall give notice of the manner of receiving medical services.

History: En. Sec. 8, Ch. 628, L. 1993.

39-71-1105. Managed care organizations – application – certification.

- (1) A health care provider, a group of medical service providers, or an entity with a managed care organization may make written application to the department to become certified under this section to provide managed care to workers for injuries or occupational diseases that are covered under this chapter. However, this section does not authorize an organization that is formed, owned, or operated by a workers' compensation insurer or self-insured employer other than a health care provider to become certified to provide managed care. When a health care provider, a group of medical service providers, or an entity with a managed care organization is establishing a managed care organization and independent physical therapy practices exist in the community, the managed care organization is encouraged to utilize independent physical therapists as part of the managed care organization if the independent physical therapists agree to abide by all the applicable requirements for a managed care organization set forth in this section, in rules established by the department, and in the provisions of a managed care plan for which certification is being sought.
- (2) Each application for certification must be accompanied by an application fee if prescribed by the department. A certificate is valid for the period prescribed by the department, unless it is revoked or suspended at an earlier date.
- (3) The department shall establish by rule the form for the application for certification and the required information regarding the proposed plan for providing medical services. The information includes but is not limited to:
 - (a) a list of names of each individual who will provide services under the managed care plan, together with appropriate evidence of compliance with any licensing or certification requirements for that individual to practice in the state;
 - (b) names of the individuals who will be designated as treating physicians and who will be responsible for the coordination of medical services;
 - (c) a description of the times, places, and manner of providing primary medical services under the plan;
 - (d) a description of the times, places, and manner of providing secondary medical services, if any, that the applicants wish to provide; and
 - (e) satisfactory evidence of the ability to comply with any financial requirements to ensure delivery of service in accordance with the plan that the department may require.
- (4) The department shall certify a group of medical service providers or an entity with a managed care organization to provide managed care under a plan if the department finds that the plan:
 - (a) proposes to provide coordination of services that meet quality, continuity, and other treatment standards prescribed by the department and will

- provide all primary medical services that may be required by this chapter in a manner that is timely and effective for the worker;
- (b) provides appropriate financial incentives to reduce service costs and utilization without sacrificing the quality of services;
 - (c) provides adequate methods of peer review and service utilization review to prevent excessive or inappropriate treatment, to exclude from participation in the plan those individuals who violate these treatment standards, and to provide for the resolution of any medical disputes that may arise;
 - (d) provides for cooperative efforts by the worker, the employer, the rehabilitation providers, and the managed care organization to promote an early return to work for the injured worker;
 - (e) provides a timely and accurate method of reporting to the department necessary information regarding medical and health care service cost and utilization to enable the department to determine the effectiveness of the plan;
 - (f) authorizes workers to receive medical treatment from a primary care physician who is not a member of the managed care organization but who maintains the worker's medical records and with whom the worker has a documented history of treatment, if that primary care physician agrees to refer the worker to the managed care organization for any specialized treatment, including physical therapy, that the worker may require and if that primary care physician agrees to comply with all the rules, terms, and conditions regarding services performed by the managed care organization. As used in this subsection (4)(f), "primary care physician" means a physician who is qualified to be a treating physician and who is a family practitioner, a general practitioner, an internal medicine practitioner, or a chiropractor.
 - (g) complies with any other requirements determined by department rule to be necessary to provide quality medical services and health care to injured workers.
- (5) The department shall refuse to certify or may revoke or suspend the certification of a health care provider, a group of medical service providers, or an entity with a managed care organization to provide managed care if the department finds that:
- (a) the plan for providing medical care services fails to meet the requirements of this section; and
 - (b) service under the plan is not being provided in accordance with the terms of a certified plan.

History: En. Sec. 9, Ch. 628, L. 1993; amd. Sec. 28, Ch. 416, L. 2005.

39-71-1106. Compliance with medical treatment required – termination of compensation benefits for noncompliance.

An insurer that provides 14 days' notice to the worker and the department may terminate any compensation benefits that the worker is receiving until the worker cooperates, if the insurer believes that the worker is unreasonably refusing:

- (1) to cooperate with a managed care organization, a preferred provider organization, or the treating physician;
- (2) to submit to medical treatment recommended by the treating physician, except for invasive procedures; or

- (3) to provide access to health care information to health care providers, the insurer, or an agent of the insurer.

History: En. Sec. 10, Ch. 628, L. 1993; amd. Sec. 26, Ch. 167, L. 2011.

39-71-1107. Domiciliary care – requirements – evaluation.

- (1) Reasonable domiciliary care must be provided by the insurer:
- (a) from the date the insurer knows of the employee's need for home medical services that results from an industrial injury;
 - (b) when the preponderance of credible medical evidence demonstrates that nursing care is necessary as a result of the accident and describes with a reasonable degree of particularity the nature and extent of duties to be performed;
 - (c) when the services are performed under the direction of the treating physician who, following a nursing analysis, prescribes the care on a form provided by the department;
 - (d) when the services rendered are of the type beyond the scope of normal household duties; and
 - (e) when subject to subsections (3) and (4), there is a means to determine with reasonable certainty the value of the services performed.
- (2) When a worker suffers from a condition that requires domiciliary care, which results from the accident, and requires nursing care as provided for in Title 37, chapter 8, a licensed nurse shall provide the services.
- (3) When a worker suffers from a condition that requires 24-hour care and that results from the accident but that requires domiciliary care other than as provided in Title 37, chapter 8, the care may be provided by a family member. The insurer's responsibility for reimbursement for the care is limited to no more than the daily statewide average medicaid reimbursement rate for the current fiscal year for care in a nursing home. The insurer is not responsible for respite care.
- (4) Domiciliary care by a family member that is necessary for a period of less than 24 hours a day may not exceed the hourly mean wage by area for home health aides, as published by the department in the most recent edition of the Montana Informational Wage Rates by Occupation and adopted annually by the department prior to January 1. The insurer is not liable for more than 8 hours of care each day at the rate in effect at the time that the services are rendered.

History: En. Sec. 11, Ch. 628, L. 1993; amd. Sec. 8, Ch. 117, L. 2007.

39-71-1108. Physician self-referral prohibition.

- (1) Unless authorized by the insurer, a treating physician may not refer a claimant to a health care facility at which the physician does not directly provide care or services when the physician has an investment interest in the facility, unless there is a demonstrated need in the community for the facility and alternative financing is not available. The insurer or the claimant is not liable for charges incurred in violation of this section.
- (2) Subsection (1) does not apply to care or services provided directly to an injured worker by a treating physician with an ownership interest in a managed care organization that has been certified by the department.

History: En. Sec. 12, Ch. 628, L. 1993; amd. Sec. 18, Ch. 516, L. 1995.

39-71-1109. Repealed.

Sec. 13, Ch. 310, L. 1997.

History: En. Sec. 13, Ch. 628, L. 1993.

39-71-1110. Schedule II and III drugs – prescriber obligation.

- (1) In order to ensure high-quality health care for an individual with a compensable occupational injury or disease, prescriptions for Schedule II or Schedule III drugs identified in Title 50, chapter 32, part 2, may be carefully monitored for potential abuse, dependence, interaction, and diversion. Ongoing prescriptions for Schedule II and Schedule III drugs may be prescribed only by a treating physician.
- (2) (a) A treating physician authorized to prescribe prescription drugs may query the prescription drug registry provided for in Title 37, chapter 7, part 15, prior to the initial prescribing or refilling of a Schedule II or Schedule III drug for treatment of a workers' compensation injury or occupational disease. After consulting the prescription drug registry, a treating physician may decline to prescribe or refill a Schedule II or Schedule III drug if, in the treating physician's judgment, the drug should not be prescribed or refilled.
 - (b) Prior to the initial prescribing of a Schedule II or Schedule III drug, a treating physician may discuss the risks and benefits of the use of the controlled substance, including risk of tolerance and drug dependence, with the patient or the patient's legal guardian.
 - (c) A treating physician shall note in the patient's medical file each query conducted.
- (3) This section does not apply to a health care provider administering a Schedule II or Schedule III drug under the following circumstances:
 - (a) immediately prior to or after surgery;
 - (b) at the scene of an emergency;
 - (c) in a licensed ambulance; or
 - (d) in the emergency department or intensive care unit of a licensed hospital.

History: En. Sec. 1, Ch. 407, L. 2013.

Parts 12 through 13 reserved**Part 14****Presumptive Occupational Disease for Firefighters****39-71-1401. (Temporary) Presumptive occupational disease for firefighters – rebuttal – applicability – definitions.**

- (1) (a) A firefighter for whom coverage is required under the Workers' Compensation Act is presumed to have a claim for a presumptive occupational disease under the Workers' Compensation Act if the firefighter meets the requirements of 39-71-1402 and is diagnosed with one or more of the diseases listed in subsection (2) within the period listed.
 - (b) Coverage under 39-71-1402 and this section is optional for the employer of a firefighter for whom coverage under the Workers' Compensation Act is voluntary. An employer of a volunteer firefighter under 7-33-4109 or 7-33-4510 may elect as part of providing coverage under the

Workers' Compensation Act to additionally obtain the presumptive occupational disease coverage, subject to the insurer agreeing to provide presumptive coverage.

- (2) The following diseases are presumptive occupational diseases proximately caused by firefighting activities, provided that the evidence of the presumptive occupational disease becomes manifest after the number of years of the firefighter's employment as listed for each occupational disease and within 10 years of the last date on which the firefighter was engaged in firefighting activities for an employer:
 - (a) bladder cancer after 12 years;
 - (b) brain cancer of any type after 10 years;
 - (c) breast cancer after 5 years if the diagnosis occurs before the firefighter is 40 years old and is not known to be associated with a genetic predisposition to breast cancer;
 - (d) myocardial infarction after 10 years;
 - (e) colorectal cancer after 10 years;
 - (f) esophageal cancer after 10 years;
 - (g) kidney cancer after 15 years;
 - (h) leukemia after 5 years;
 - (i) mesothelioma or asbestosis after 10 years;
 - (j) multiple myeloma after 15 years;
 - (k) non-Hodgkin's lymphoma after 15 years; and
 - (l) lung cancer after 4 years.
- (3) For purposes of calculating the number of years of a firefighter's employment history under subsection (2), a firefighter's employment history after July 1, 2014, may be calculated.
- (4) The beneficiaries of a firefighter who otherwise would be eligible for presumptive occupational disease benefits under this section but who dies prior to filing a claim, as provided in 39-71-1402, are eligible for death benefits in the same manner as for a death from an injury, as provided in 39-71-407. The beneficiaries under this subsection are similarly bound by the provisions of exclusive remedy as provided in 39-71-411 and subject to the filing requirements in 39-71-601.
- (5)
 - (a) Subject to the provisions of subsection (5)(c), an insurer is liable for the payment of compensation for presumptive occupational disease benefits under this chapter in the same manner as provided in 39-71-407, including objective medical findings of a disease listed in subsection (2) but excluding the requirement in 39-71-407(10) that the objective medical findings trace a relationship between the presumptive occupational disease and the claimant's job history. For myocardial infarction or lung cancer under subsection (2), the diseases must be the type that can reasonably be caused by firefighting activities.
 - (b)
 - (i) An insurer under plan 1, 2, or 3 that disputes a presumptive occupational disease claim has the burden of proof in establishing by a preponderance of the evidence that the firefighter is not suffering from a compensable presumptive occupational disease. An insurer that disputes the claim may pay benefits under 39-71-608 or 39-71-615 and may pursue dispute mechanisms established in Title 39, chapter 71, part 24.

- (ii) An insurer is not liable for the payment of workers' compensation benefits for presumptive occupational disease if the insurer establishes by a preponderance of the evidence that the firefighter was not exposed during the course and scope of the firefighter's duties to smoke or particles in a quantity sufficient to have reasonably caused the disease claimed.
- (c) A total claim payment by an insurer under this section is limited to \$5 million for each claim.
- (6) This section does not limit an insurer's ability to assert that the occupational disease was not caused by the firefighter's employment history as a firefighter.
- (7) A firefighter or the firefighter's beneficiaries may pursue the dispute remedies as provided in Title 39, chapter 71, part 24, if an insurer disputes a claim.
- (8) The use of the term "occupational disease" includes a presumptive occupational disease when used in the definitions in 39-71-116 for "claims examiner", "permanent partial disability", "primary medical services", and "treating physician" and when used in 39-71-107, 39-71-307, 39-71-412, 39-71-503, 39-71-601, 39-71-604, 39-71-606, 39-71-615, 39-71-703, 39-71-704, 39-71-713, 39-71-714, 39-71-717, 39-71-1011, 39-71-1036, 39-71-1041, 39-71-1042, 39-71-1101, 39-71-1110, 39-71-1504, 39-71-2311, 39-71-2312, 39-71-2313, 39-71-2316, and 39-71-4003.
- (9) Section 39-71-1402 and this section:
 - (a) apply only to presumptive occupational diseases for firefighters; and
 - (b) do not apply to any other issue relating to workers' compensation and may not be used or cited as guidance in the administration of Title 33 or 37.
- (10) For the purposes of 39-71-1402 and this section, the following definitions apply:
 - (a) "Firefighter" means an individual whose primary duties involve extinguishing or investigating fires, with at least 1 year of firefighting operations in Montana beginning on or after July 1, 2019, as:
 - (i) a firefighter defined in 19-13-104;
 - (ii) a volunteer firefighter defined in 7-33-4510, but only if the volunteer firefighter's employer has elected coverage under Title 39, chapter 71, with an insurer that allows an election and the employer has opted separately to include presumptive occupational disease coverage under 39-71-1402 and this section; or
 - (iii) a volunteer described in 7-33-4109 for a firefighting entity that has elected coverage under Title 39, chapter 71, with an insurer that allows an election and that has opted separately to include presumptive occupational disease coverage.
 - (b) "Firefighting activities" means actions required of a firefighter that expose the firefighter to extreme heat or inhalation or physical exposure to chemical fumes, smoke, particles, or other toxic gases arising directly out of employment as a firefighter.
 - (c) "Presumptive occupational disease" means harm or damage from one or more of the diseases listed under subsection (2) that is established by objective medical findings and that is contracted in the course and scope of employment as a firefighter from either a single day or work shift or for more than a single day or work shift but that is not specific to an accident. (Void on occurrence of contingency-sec. 7, Ch. 158, L. 2019.)

History: En. Sec. 1, Ch. 158, L. 2019.

39-71-1402. (Temporary) Conditions for claiming presumptive occupational disease.

- (1) Except as provided in subsection (4), the following must be satisfied for the presumption in 39-71-1401 to apply:
 - (a) the firefighter must timely file a claim for a presumptive occupational disease under Title 39, chapter 71, as soon as the firefighter knows or should have known that the firefighter's condition resulted from a presumptive occupational disease; and
 - (b)
 - (i) the firefighter must have undergone, within 90 days of hiring, a medical examination that did not reveal objective medical evidence or a family history of the presumptive occupational disease for which the presumption under 39-71-1401 is sought; and
 - (ii) the firefighter must have undergone subsequent periodic medical examinations at least once every 2 years.
- (2)
 - (a) Subsection (1)(b) does not require the employer of a firefighter to provide or pay for a medical examination, either at the time of hiring or during the subsequent term of employment.
 - (b) If the employer of a firefighter does not provide or pay for a medical examination under subsection (1)(b), the firefighter may satisfy the requirements of subsection (1)(b) by obtaining the medical examination at the firefighter's expense or at the expense of another party.
- (3) To qualify for a presumptive occupational disease, a firefighter may not:
 - (a) be a regular user of tobacco products;
 - (b) have a history of regular tobacco use in the 10 years preceding the filing of the claim under subsection (1)(a); or
 - (c) have been exposed by a cohabitant who regularly and habitually used tobacco products within the home for a period of 10 or more years prior to the diagnosis.
- (4) A firefighter who, prior to July 1, 2019, did not receive a medical examination as frequently as the intervals set forth in subsection (1)(b) is not ineligible on that basis for a presumptive occupational disease claim under 39-71-1401 and this section. (Void on occurrence of contingency—sec. 7, Ch. 158, L. 2019.)

History: En. Sec. 2, Ch. 158, L. 2019.

Part 15**Montana Safety Culture Act****39-71-1501. Short title.**

This part may be cited as the "Montana Safety Culture Act".

History: En. Sec. 1, Ch. 295, L. 1993; amd. Sec. 1, Ch. 170, L. 2003.

39-71-1502. Purpose.

The purpose of this part is to reduce the incidence of occupational injury and illness by promoting safety in the workplace in order to control the costs of claims for workers' compensation insurance. The creation of a safety culture requires employers to provide training and education to make safety awareness part of the requirement for each worker's satisfactory job performance and requires the department to promote safety awareness for the public through the education

and preparation of each student for entrance into the labor market. A reduction in workplace injuries, illnesses, and deaths through enhanced safety on the job benefits the public as well as the employers and the employees by lowering both financial and physical costs. Ensuring immunity to insurers in the provision of safety consultation services encourages and promotes safety in the workplace and improves the relationship between employers and employees.

History: En. Sec. 2, Ch. 295, L. 1993; amd. Sec. 2, Ch. 170, L. 2003.

39-71-1503. Safety consultation.

- (1) As used in this part, "safety consultation services" means assistance rendered by an insurer or the department to advise and aid an employer in the identification, evaluation, and control of existing and potential accidental and occupational health problems. The services may be delivered in person, by mail, electronically, or by telephone, based upon need.
- (2) Safety consultation services include but are not limited to:
 - (a) surveys consisting of onsite identification and subsequent evaluation of exposures relative to employees, materials, equipment, work methods, processes, and facilities;
 - (b) recommendations expressed in the form of communications to an employer, with reference to control of exposures to occupational accident, injury, or illness and to improvement of safety programs and systems;
 - (c) education and training programs, including aids, programs, and materials made available to assist in the control of exposures;
 - (d) consultations to advise employers relative to risk, exposure, and experience in the employer's business;
 - (e) accident analysis consisting of review of reported accidents to determine cause and trends; and
 - (f) industrial hygiene services, including recognition, evaluation, and control of chemical, physical, and biological exposures.

History: En. Sec. 3, Ch. 295, L. 1993; amd. Sec. 3, Ch. 170, L. 2003; amd. Sec. 16, Ch. 27, L. 2009.

39-71-1504. Safety programs – educational activities.

- (1) To promote health and safety in places of employment in this state:
 - (a) each public or private employer shall establish and administer a safety program in accordance with rules adopted by the department pursuant to 39-71-1505; and
 - (b) the department, relying upon the support and assistance of concerned private entities or other governmental agencies, shall produce and distribute material to the schools of Montana and provide guest speakers intended to:
 - (i) educate students about the necessity for safe work practices;
 - (ii) prepare students to embark on accident-free careers; and
 - (iii) disseminate information promoting the reduction and control of the rate of incidence of workplace injuries or occupational disease.
- (2) An employer who employs temporary workers shall include those workers in the employer's safety program. A temporary services contractor shall provide a safety program for employees not employed by other employers.

- (3) The department may issue a safety recommendation to an employer who fails to comply with the requirements of this section or with rules adopted by the department pursuant to 39-71-1505.

History: En. Sec. 4, Ch. 295, L. 1993; amd. Sec. 1, Ch. 58, L. 2001.

39-71-1505. Rulemaking authority.

The department shall adopt rules, including but not limited to rules that require:

- (1) each employer to conduct an educational-based safety program, including but not limited to:
 - (a) a safety training program to provide:
 - (i) new employee general safety orientation;
 - (ii) job- or task-specific safety training; and
 - (iii) continuous refresher safety training, including periodic safety meetings;
 - (b) periodic hazard assessment, with corrective actions identified; and
 - (c) appropriate documentation of performance of the activities; and
- (2) an employer of more than five employees to have a comprehensive and effective safety program, including but not limited to:
 - (a) subject to subsection (3), a safety committee composed of employee and employer representatives that holds regularly scheduled meetings;
 - (b) procedures of reporting and investigating all work-related incidents, accidents, injuries, and illnesses; and
 - (c) policies and procedures that assign specific safety responsibilities and safety performance accountability.
- (3) The department may adopt rules authorizing:
 - (a) a plan No. 2 or plan No. 3 insurer to waive the requirement in subsection (2)(a) for a safety committee if the employer presents sufficient evidence of an effective written safety plan and has a satisfactory modification factor, if applicable, or has a low incident record of injuries; or
 - (b) the department to waive the requirement in subsection (2)(a) for a safety committee if a plan No. 1 insurer approved by the department presents sufficient evidence of an effective safety program, including a written safety plan. A waiver granted under this subsection (3)(b) to a member of the self-insurers guaranty fund must be made with the concurrence of the fund.

History: En. Sec. 5, Ch. 295, L. 1993; amd. Sec. 1, Ch. 238, L. 1995.

39-71-1506. Notification of safety consultation services available by insurer.

To implement safety requirements, each insurer shall notify each insured employer of the type of safety consultation services available and the location where the safety consultation services may be requested.

History: En. Sec. 6, Ch. 295, L. 1993.

39-71-1507. Safety consultation services – safety program as provision of insurance contract or agreement.

- (1) Each insurer shall provide safety consultation services to each of its insured employers who request the assistance.

- (2) The safety consultation services to be provided are within the discretion of the insurer but must include consideration of the hazard, experience, and size of the insured employer's operations.
- (3) The insurer shall establish a system of priorities to use in responding to worksite safety consultation service requests, giving first priority to insured employers that have an unreasonably high actual or potential loss experience.
- (4) Each insurer's insurance contract or agreement must require each insured employer to implement a safety program as part of the contract or agreement to provide workers' compensation coverage.

History: En. Sec. 7, Ch. 295, L. 1993.

Cross-References

Safety program requirement in workers' compensation policies, 33-15-318.

39-71-1508. Safety consultation services – insurer's exemption from civil liability – exceptions.

- (1) The furnishing of or the failure to furnish safety consultation services related to, in connection with, or incidental to a workers' compensation insurance contract or agreement to provide workers' compensation coverage does not subject the insurer or its agents, employees, or service contractors to liability for damages from injury, loss, or death, whether direct or consequential, occurring as a result of any act or omission by any person in the course of providing safety consultation services.
- (2) Subsection (1) does not apply:
 - (a) if the injury, loss, or death occurred during the actual performance of safety consultation services and was directly and proximately caused by the negligence of the insurer or its agents, employees, or service contractors;
 - (b) to any safety consultation services required to be performed under the provisions of a written service contract for which a specific charge is made and not incidental to a policy of insurance; or
 - (c) in an action against an insurer or its agents, employees, or service contractors for damages caused by the act or omission of the insurer or its agents, employees, or service contractors in which it is judicially determined that the act or omission constituted a crime or involved actual malice.

History: En. Sec. 9, Ch. 295, L. 1993.

Parts 16 through 19 Reserved

Part 20

Rehabilitation Benefits (Renumbered)

39-71-2001. Renumbered 39-71-1006.

Code Commissioner, 1995.

Part 21**Compensation Plan Number One****Part Cross-References**

Definitions, 39-71-116.

Employer defined, 39-71-117.

Employee defined, 39-71-118.

Injury defined, 39-71-119.

39-71-2101. General requirements for electing coverage under plan.

- (1) An employer may elect to be bound by compensation plan No. 1 upon furnishing satisfactory proof to the department and the Montana self-insurers guaranty fund of solvency and financial ability to pay the compensation and benefits provided for in this chapter and to discharge all liabilities that are reasonably likely to be incurred during the fiscal year for which the election is effective. The employer may, by order of the department and with the concurrence of the guaranty fund, make the payments directly to employees as they become entitled to receive payments under the terms and conditions of this chapter.
- (2) Employers who comply with the provisions of this chapter and who are participating in collectively bargained, jointly administered Taft-Hartley trust funds are eligible to provide self-insured workers' compensation benefits for their employees.

History: En. Sec. 30, Ch. 96, L. 1915; re-en. Sec. 2970, R.C.M. 1921; re-en. Sec. 2970, R.C.M. 1935; amd. Sec. 2, Ch. 443, L. 1973; R.C.M. 1947, 92-901; amd. Sec. 81, Ch. 397, L. 1979; amd. Sec. 64, Ch. 613, L. 1989; amd. Sec. 1, Ch. 163, L. 1991; amd. Sec. 7, Ch. 619, L. 1993.

39-71-2102. Proof of solvency to be filed.

Each employer who has elected to be bound by compensation plan No. 1 shall file proof of solvency within the time and in the form prescribed by the rules or orders of the department.

History: En. Sec. 30, Ch. 96, L. 1915; re-en. Sec. 2971, R.C.M. 1921; amd. Sec. 5, Ch. 139, L. 1931; re-en. Sec. 2971, R.C.M. 1935; amd. Sec. 3, Ch. 176, L. 1957; amd. Sec. 169, Ch. 147, L. 1963; amd. Sec. 1, Ch. 183, L. 1965; amd. Sec. 1, Ch. 170, L. 1969; amd. Sec. 1, Ch. 143, L. 1971; amd. Sec. 3, Ch. 443, L. 1973; amd. Sec. 2, Ch. 318, L. 1975; R.C.M. 1947, 92-902; amd. Sec. 64, Ch. 613, L. 1989; amd. Sec. 1549, Ch. 56, L. 2009.

39-71-2103. Employer permitted to carry on business and settle directly with employee – individual liability.

- (1) If the employer making the election is found by the department and the Montana self-insurers guaranty fund to have the requisite financial ability to pay the compensation and benefits in this chapter, then the department, with the concurrence of the guaranty fund, shall grant to the employer permission to carry on business for the year within which the election is made and proof filed, or the remaining portion of the year, and to make payments directly to the employees as they may become entitled to receive the payments.
- (2) Each individual employer in an association, corporation, limited liability company, or organization of employers given permission by the department to operate as self-insured under plan No. 1 of this chapter is jointly and severally

liable for all obligations incurred by the association, corporation, limited liability company, or organization under this chapter. An association, corporation, limited liability company, or organization of employers given permission to operate as self-insured shall maintain excess liability coverage in amounts and under conditions as provided by rules of the department.

History: En. Sec. 30, Ch. 96, L. 1915; re-en. Sec. 2972, R.C.M. 1921; re-en. Sec. 2972, R.C.M. 1935; amd. Sec. 51, Ch. 23, L. 1975; R.C.M. 1947, 92-903(part); amd. Sec. 2, Ch. 480, L. 1985; amd. Sec. 64, Ch. 613, L. 1989; amd. Sec. 2, Ch. 163, L. 1991; amd. Sec. 19, Ch. 516, L. 1995.

39-71-2104. Renewal of application.

An employer, so long as that employer continues to employ and continues to be bound by compensation plan No. 1, shall annually renew the application to be permitted to continue to make payments directly to employees for the next year. The department may, with the concurrence of the Montana self-insurers guaranty fund, renew the application from year to year. The annual renewal application must be in the form, for the period, and subject to the time limits prescribed by the department.

History: En. Sec. 30, Ch. 96, L. 1915; re-en. Sec. 2972, R.C.M. 1921; re-en. Sec. 2972, R.C.M. 1935; amd. Sec. 51, Ch. 23, L. 1975; R.C.M. 1947, 92-903(part); amd. Sec. 64, Ch. 613, L. 1989; amd. Sec. 3, Ch. 163, L. 1991; amd. Sec. 10, Ch. 555, L. 1993.

39-71-2105. Additional proof of solvency – revocation of order.

- (1) The department, with the concurrence of the Montana self-insurers guaranty fund, may at any time require from any employer acting under compensation plan No. 1 additional proof of solvency and financial ability to pay the benefits provided by this chapter.
- (2) The department may, after providing an opportunity for an administrative review conference to consider information submitted by a plan No. 1 employer, revoke any order of approval upon 20 days' notice to the employer. A decision to revoke approval involving a plan No. 1 employer who is a member of the Montana self-insurers guaranty fund requires the concurrence of the guaranty fund. A plan No. 1 employer that is dissatisfied with the decision following the administrative review conference may appeal the decision and request a contested case hearing pursuant to 39-71-2401(2).
- (3) A decision revoking an order of approval is final unless the employer files an appeal with the department within 20 days of the issuance of the notice. An employer may not continue to self insure after the 20-day period provided for in subsection (2) has expired unless the department is satisfied that the employer has provided sufficient security and financial ability to pay the benefits provided by this chapter. A decision issued pursuant to this subsection involving a plan No. 1 employer who is a member of the Montana self-insurers guaranty fund requires the concurrence of the guaranty fund.

History: En. Sec. 30, Ch. 96, L. 1915; re-en. Sec. 2973, R.C.M. 1921; re-en. Sec. 2973, R.C.M. 1935; amd. Sec. 52, Ch. 23, L. 1975; R.C.M. 1947, 92-904; amd. Sec. 64, Ch. 613, L. 1989; amd. Sec. 1, Ch. 150, L. 1993; amd. Sec. 7, Ch. 69, L. 2005.

39-71-2106. Requiring security of employer.

- (1) (a) The department, with the concurrence of the Montana self-insurers guaranty fund, may require any employer who elects to be bound by compensation

- plan No. 1 to provide a security deposit in accordance with rules adopted by the department. All securities of the United States treasury must be in book-entry form. The security deposit may be a surety bond, government bond, certificate of deposit, or letter of credit approved by the department and the Montana self-insurers guaranty fund. For the first 3 years of operating as a self-insured employer, the employer's security deposit must be the greater of:
- (i) \$250,000; or
 - (ii) an average of the workers' compensation liabilities incurred by the employer in Montana for the first 3 of the last 4 completed calendar years.
- (b) The department, with the concurrence of the Montana self-insurers guaranty fund, may, in accordance with rules adopted by the department, require a larger deposit as additional evidence of ability to pay the benefits provided by this chapter.
- (c) The department may, with the concurrence of the Montana self-insurers guaranty fund, reduce the amount of the security deposit if the evidence indicates that the full amount of the deposit is unnecessary.
- (2) (a) The department, with the concurrence of the Montana self-insurers guaranty fund, may require an employer to give security in addition to the security deposit described in subsection (1) if:
- (i) the department, with the concurrence of the Montana self-insurers guaranty fund, determines that the employer lacks the ability to pay the benefits that are expected to be paid by the employer under the terms and conditions of this chapter that are chargeable to the employer during the year to be covered by the permission provided for in 39-71-2103; or
 - (ii) the employer is a group of individual employers seeking permission to operate under compensation plan No. 1.
- (b) The additional security required in subsection (2)(a) must be an amount that the department, with the concurrence of the Montana self-insurers guaranty fund, finds reasonable and necessary to pay the benefits provided under the terms and conditions of this chapter that the employer may accrue during the year.
- (3) (a) The security deposit provided for in subsection (1) must be deposited with the department. The security deposit may consist of:
- (i) a bond executed to the department with a surety. The security deposit must state that the employer will pay or cause to be paid to employees the amount for which the employer was given permission under 39-71-2103 and for which the employer is liable under the terms and conditions of this chapter during the year.
 - (ii) any Montana state, county, municipal, or school district bonds that the department and the Montana self-insurers guaranty fund consider solvent; or
 - (iii) other security deposits allowed in subsection (1)(a).
- (b) Each security deposit and the character and amount of the security deposit are subject to approval, revision, or change considered necessary by the department and the Montana self-insurers guaranty fund.

- (c) Upon proof of the final payment of the liability for which the security deposit is given, the security deposit or any remainder of the security deposit must be returned to the depositor.
 - (d) Payment must be made from the security deposit within 30 days of a demand by the department for payment. If payment is not made within 30 days by the obligor on the security deposit, the obligor is liable to the department for interest at the annual rate of 10% on the amount unpaid.
- (4) The department is liable for the value and safekeeping of all security deposits and shall, at any time, upon demand of the depositor, account for the security deposits.

History: En. Sec. 30, Ch. 96, L. 1915; re-en. Sec. 2974, R.C.M. 1921; re-en. Sec. 2974, R.C.M. 1935; amd. Sec. 53, Ch. 23, L. 1975; R.C.M. 1947, 92-905; amd. Sec. 3, Ch. 480, L. 1985; amd. Sec. 51, Ch. 464, L. 1987; amd. Sec. 64, Ch. 613, L. 1989; amd. Sec. 1, Ch. 120, L. 1991; amd. Sec. 9, Ch. 558, L. 1991; amd. Sec. 2, Ch. 150, L. 1993; amd. Sec. 11, Ch. 555, L. 1993; amd. Sec. 1, Ch. 83, L. 1995; amd. Sec. 9, Ch. 117, L. 2007.

39-71-2107. When employer to make deposit or security to guarantee payment of compensation.

Within 30 days after the happening of an accident where death or the nature of the injury renders the amount of future payments certain or reasonably certain, the employer shall make a deposit or give security, as herein defined, with the department for the protection and guaranty of the payment of such liability in such sum as the department may direct. However, if sufficient securities are already on deposit with the department or if the department determines that the employer has sufficient financial responsibility to meet the liability of the employer, together with other liabilities already accrued, no such additional deposit or security shall be demanded.

History: En. Sec. 30, Ch. 96, L. 1915; re-en. Sec. 2976, R.C.M. 1921; re-en. Sec. 2976, R.C.M. 1935; amd. Sec. 55, Ch. 23, L. 1975; R.C.M. 1947, 92-907; amd. Sec. 64, Ch. 613, L. 1989.

39-71-2108. Failure of employer to pay benefits – duty of department.

Upon the failure of the employer to pay any benefits provided for in this chapter upon the terms, in the amounts, and at the times when the benefits become due and payable, the department shall, upon demand of the person to whom benefits are due, apply any deposits made with the department to the payment of the benefits, and the department shall take the proper steps to convert any securities on deposit with the department or sufficient deposits to pay the liabilities of the employer accruing under the terms of this chapter. The department shall, when necessary, collect and enforce the collection of the liability of all sureties upon any bonds that may be given by the employer to ensure the payment of the employer's liability. The department is considered the owner of the deposit and security and the obligee in the bond in trust for the purposes and may proceed in its own name to recover upon the bonds or foreclose and liquidate the securities. All interest earnings on liquidated security deposits must be retained by the department for payment of benefits pursuant to this section.

History: En. Sec. 30, Ch. 96, L. 1915; re-en. Sec. 2975, R.C.M. 1921; re-en. Sec. 2975, R.C.M. 1935; amd. Sec. 54, Ch. 23, L. 1975; R.C.M. 1947, 92-906; amd. Sec. 64, Ch. 613, L. 1989; amd. Sec. 8, Ch. 69, L. 2005.

39-71-2109. Repealed.

Sec. 21, Ch. 555, L. 1993.

History: En. Sec. 30, Ch. 96, L. 1915; re-en. Sec. 2977, R.C.M. 1921; re-en. Sec. 2977, R.C.M. 1935; amd. Sec. 56, Ch. 23, L. 1975; R.C.M. 1947, 92-908; amd. Sec. 2, Ch. 471, L. 1985; amd. Sec. 64, Ch. 613, L. 1989; amd. Sec. 4, Ch. 163, L. 1991.

39-71-2110 through 39-71-2114 reserved.**39-71-2115. Transfer of claim liabilities – rules.**

- (1) A current or former self-insurer or group may transfer existing workers' compensation claim liabilities to another entity upon authorization from the department and concurrence of the Montana self-insurers guaranty fund by:
 - (a) submitting an application on a form designated by the department;
 - (b) completing an agreement of assumption and guarantee of workers' compensation liabilities;
 - (c) submitting a loss portfolio transfer agreement; and
 - (d) posting a security deposit.
- (2) If the assuming entity fails to meet the terms of the transfer agreement, liability reverts to the original self-insurer.
- (3) The entity assuming liability for a claim shall comply with all reporting requirements set by the department.
- (4) The department shall adopt rules to implement this section.

History: En. Sec. 2, Ch. 112, L. 2009.

Part 22**Compensation Plan Number Two****Part Cross-References**

Definitions, 39-71-116.

Employer defined, 39-71-117.

Employee defined, 39-71-118.

Injury defined, 39-71-119.

39-71-2201. Election to be bound by plan – captive reciprocal insurers.

- (1) Any employer except those specified in 39-71-403 may, by filing an election to become bound by compensation plan No. 2, insure the employer's liability to pay the compensation and benefits provided by this chapter with any insurance company authorized to transact such business in this state.
- (2) Any employer electing to become bound by compensation plan No. 2 shall make the election on the form and in the manner prescribed by the department.
- (3) A captive reciprocal insurer established by or on behalf of an employer or a group of employers is considered to be a compensation plan No. 2 insurer. Pursuant to 33-28-205, a captive reciprocal insurer may not be a member of an insurance guaranty association or guaranty fund.

History: (1)En. Sec. 35, Ch. 96, L. 1915; re-en. Sec. 2978, R.C.M. 1921; re-en. Sec. 2978, R.C.M. 1935; amd. Sec. 1, Ch. 49, L. 1961; Sec. 92-1001, R.C.M. 1947; (2)En. Sec. 35, Ch. 96, L. 1915; re-en. Sec. 2979, R.C.M. 1921; re-en. Sec. 2979, R.C.M. 1935; amd. Sec. 2, Ch. 49, L. 1961; amd. Sec. 57, Ch. 23, L. 1975; amd. Sec. 1, Ch. 324, L. 1977; Sec. 92-1002, R.C.M.

1947; R.C.M. 1947, 91-1001, 92-1002(1); amd. Sec. 82, Ch. 397, L. 1979; amd. Sec. 64, Ch. 613, L. 1989; amd. Sec. 10, Ch. 117, L. 2007.

39-71-2202. Policies made subject to chapter.

Every policy for insurance written under compensation plan No. 2 shall be considered to be made subject to the provisions of this chapter.

History: En. Sec. 35, Ch. 96, L. 1915; re-en. Sec. 2982, R.C.M. 1921; re-en. Sec. 2982, R.C.M. 1935; amd. Sec. 1, Ch. 217, L. 1951; amd. Sec. 5, Ch. 176, L. 1957; amd. Sec. 1, Ch. 203, L. 1959; amd. Sec. 170, Ch. 147, L. 1963; amd. Sec. 1, Ch. 142, L. 1971; amd. Sec. 59, Ch. 23, L. 1975; amd. Sec. 3, Ch. 318, L. 1975; R.C.M. 1947, 92-1005; amd. Sec. 13, Ch. 103, L. 1979.

39-71-2203. Content of policies – policies subject to approval, change, or revision by department.

- (1) All policies insuring the payment of compensation under this chapter must contain a clause to the effect that, as between the employee and the insurer:
 - (a) the notice to or knowledge of the occurrence of the injury on the part of the insured constitutes notice or knowledge, as the case may be, on the part of the insurer;
 - (b) jurisdiction of the insured for the purpose of this chapter is the jurisdiction of the insurer; and
 - (c) the insurer is in all things bound by and subject to the awards, orders, judgments, or decrees rendered against the insured.
- (2) A policy may not be issued unless it contains the agreement of the insurer that it will promptly pay to the person entitled to compensation all the installments of compensation or other payments provided for in this chapter and that the obligation is not affected by any default of the insured after the injury or by any default in the giving of any notice required by the policy or by this chapter or otherwise. The agreement must be construed to be a direct promise by the insured to the person entitled to compensation.
- (3) Every policy or contract insuring against liability for compensation under compensation plan No. 2 must contain a clause to the effect that the insurer is directly and primarily liable to and will pay directly to the employee or in case of death to the employee's beneficiaries or major or minor dependents the compensation, if any, for which the employer is liable.
- (4) Every policy must at all times be subject to approval, change, or revision by the department and must contain the clauses, agreements, and promises required by this chapter.
- (5) All Montana operations of an employer, as defined in 39-71-117, covered under plan No. 2 must be insured by the same insurer.

History: (1)En. Sec. 35, Ch. 96, L. 1915; re-en. Sec. 2980, R.C.M. 1921; amd. Sec. 6, Ch. 139, L. 1931; re-en. Sec. 2980, R.C.M. 1935; amd. Sec. 4, Ch. 176, L. 1957; Sec. 92-1003, R.C.M. 1947; (2)En. Sec. 35, Ch. 96, L. 1915; amd. Sec. 10, Ch. 100, L. 1919; re-en. Sec. 2981, R.C.M. 1921; amd. Sec. 11, Ch. 177, L. 1929; re-en. Sec. 2981, R.C.M. 1935; amd. Sec. 1, Ch. 141, L. 1971; amd. Sec. 58, Ch. 23, L. 1975; Sec. 92-1004, R.C.M. 1947; (3), (4)En. Sec. 35, Ch. 96, L. 1915; re-en. Sec. 2988, R.C.M. 1921; re-en. Sec. 2988, R.C.M. 1935; Sec. 92-1011, R.C.M. 1947; R.C.M. 1947, 92-1003, 92-1004(part), 92-1011; amd. Sec. 64, Ch. 613, L. 1989; amd. Sec. 9, Ch. 69, L. 2005.

Cross-References

Policies to provide for freedom of choice in selection of practitioners – professional practice not enlarged, 33-22-111.

39-71-2204. Insurer to submit notice of coverage within 30 days – penalty for failure.

- (1) The insurer shall, within 30 days after the issuance of a policy of workers' compensation insurance, submit to the department the notice of coverage stating the effective date of the policy insuring the employer and other information that may be required by the department. Notice to the department under this section must be provided electronically.
- (2) The department:
 - (a) may recognize the advisory organization designated under 33-16-1023 or recognize other organizations as agents for authorized workers' compensation insurers in Montana; and
 - (b) shall, under terms and conditions acceptable to the department, accept notice of coverage received from the agents recognized under subsection (2)(a) as the insurer's notice of coverage.
- (3) The department may, in its discretion, assess a penalty of not more than \$200 against an insurer that does not comply with the 30-day notice requirement set forth in subsection (1). The penalty may be assessed for each policy that is not reported to the department in a timely manner.

History: En. Sec. 35, Ch. 96, L. 1915; re-en. Sec. 2979, R.C.M. 1921; re-en. Sec. 2979, R.C.M. 1935; amd. Sec. 2, Ch. 49, L. 1961; amd. Sec. 57, Ch. 23, L. 1975; amd. Sec. 1, Ch. 324, L. 1977; R.C.M. 1947, 92-1002(part); amd. Sec. 64, Ch. 613, L. 1989; amd. Sec. 12, Ch. 555, L. 1993; amd. Sec. 25, Ch. 186, L. 1995; amd. Sec. 14, Ch. 214, L. 2001; amd. Sec. 10, Ch. 69, L. 2005; amd. Sec. 11, Ch. 117, L. 2007.

39-71-2205. Policy in effect until canceled or replaced – 20-day notification of cancellation required – penalty.

- (1) The policy remains in effect until canceled, and cancellation may take effect only by written notice to the named insured and to the department at least 20 days prior to the date of cancellation. However, the policy terminates on the effective date of a replacement or succeeding workers' compensation insurance policy issued to the insured. Nothing in this section prevents an insurer from canceling a policy of workers' compensation insurance before a replacement policy is issued to the insured. Notice to the department under this section must be provided electronically.
- (2) The department:
 - (a) may recognize the advisory organization designated under 33-16-1023 or recognize other organizations as agents for authorized workers' compensation insurers in Montana; and
 - (b) shall, under terms and conditions acceptable to the department, accept notice of cancellation received from the agents recognized under subsection (2)(a) as the insurer's notice of cancellation.
- (3) (a) The department may assess a penalty of up to \$200 against an insurer that does not comply with the notice requirement in subsection (1). The penalty

may be assessed for each policy cancellation that is not reported to the department in a timely manner.

- (b) An insurer may contest the penalty assessment in a hearing conducted according to department rules.

History: En. Sec. 35, Ch. 96, L. 1915; re-en. Sec. 2979, R.C.M. 1921; re-en. Sec. 2979, R.C.M. 1935; amd. Sec. 2, Ch. 49, L. 1961; amd. Sec. 57, Ch. 23, L. 1975; amd. Sec. 1, Ch. 324, L. 1977; R.C.M. 1947, 92-1002(part); amd. Sec. 1, Ch. 333, L. 1989; amd. Sec. 64, Ch. 613, L. 1989; amd. Sec. 13, Ch. 555, L. 1993; amd. Sec. 26, Ch. 186, L. 1995; amd. Sec. 15, Ch. 214, L. 2001; amd. Sec. 11, Ch. 69, L. 2005; amd. Sec. 12, Ch. 117, L. 2007.

39-71-2206. Repealed.

Sec. 13, Ch. 310, L. 1997.

History: (1)En. Sec. 35, Ch. 96, L. 1915; amd. Sec. 10, Ch. 100, L. 1919; re-en. Sec. 2981, R.C.M. 1921; amd. Sec. 11, Ch. 177, L. 1929; re-en. Sec. 2981, R.C.M. 1935; amd. Sec. 1, Ch. 141, L. 1971; amd. Sec. 58, Ch. 23, L. 1975; Sec. 92-1004, R.C.M. 1947; (2)En. Sec. 35, Ch. 96, L. 1915; amd. Sec. 11, Ch. 100, L. 1919; re-en. Sec. 2984, R.C.M. 1921; re-en. Sec. 2984, R.C.M. 1935; amd. Sec. 61, Ch. 23, L. 1975; Sec. 92-1007, R.C.M. 1947; (3)En. Sec. 35, Ch. 96, L. 1915; re-en. Sec. 2989, R.C.M. 1921; re-en. Sec. 2989, R.C.M. 1935; Sec. 92-1012, R.C.M. 1947; R.C.M. 1947, 92-1004(part), 92-1007, 92-1012; amd. Sec. 83, Ch. 397, L. 1979; amd. Sec. 1, Ch. 242, L. 1987; amd. Sec. 64, Ch. 613, L. 1989; amd. Sec. 14, Ch. 555, L. 1993.

39-71-2207. Repealed.

Sec. 21, Ch. 555, L. 1993.

History: En. Sec. 35, Ch. 96, L. 1915; re-en. Sec. 2985, R.C.M. 1921; re-en. Sec. 2985, R.C.M. 1935; amd. Sec. 62, Ch. 23, L. 1975; R.C.M. 1947, 92-1008; amd. Sec. 3, Ch. 471, L. 1985; amd. Sec. 64, Ch. 613, L. 1989.

39-71-2208. Repealed.

Sec. 16, Ch. 117, L. 2007.

History: En. Sec. 1, Ch. 69, L. 2005.

39-71-2209 and 39-71-2210 reserved.

39-71-2211. Premium rates for construction industry – filing required.

- (1) With respect to each classification of risk in the construction industry under plan No. 2, the advisory organization designated under 33-16-1023 shall file with the commissioner of insurance a method of computing premiums that does not impose a higher insurance premium solely because of an employer's higher rate of wages paid.
- (2) The commissioner shall accept a filing under subsection (1) that includes a reasonable method of recognizing differences in rates of pay. This method must use a credit scale with the starting point set at 1.168 times the state's average weekly wage as reported by the department.
- (3) The advisory organization shall file a revenue neutral plan for new and renewed policies for prompt and orderly transition to a method of computing premiums that is in compliance with the requirements of this section.

- (4) The state compensation insurance fund, plan No. 3, shall use the plan filed by the designated advisory organization or use a credit scale plan that meets the requirements of this section.
- (5) For the purposes of this section, "construction industry" means the construction group of code classifications filed with and approved by the commissioner to be used by the advisory organization to comply with this section.

History: En. Sec. 3, Ch. 480, L. 1991; amd. Sec. 1, Ch. 224, L. 1993; amd. Sec. 14, Ch. 630, L. 1993; amd. Sec. 27, Ch. 186, L. 1995; amd. Sec. 1, Ch. 131, L. 1999; amd. Sec. 8, Ch. 26, L. 2005; amd. Sec. 1, Ch. 193, L. 2017.

39-71-2212 through 39-71-2214 reserved.

39-71-2215. Security deposit to ensure payment of liability of plan No. 2 insurer.

- (1) Except as provided in subsection (7), a plan No. 2 insurer issuing or renewing a policy on or after January 1, 2008, shall post a security deposit with the department as provided by this section. The purpose of the security deposit is to provide a ready source of funds to pay claims arising under this chapter if the plan No. 2 insurer:
 - (a) becomes insolvent;
 - (b) is placed in receivership;
 - (c) declares bankruptcy;
 - (d) seeks protection from its creditors; or
 - (e) is otherwise unwilling or unable to pay its liabilities arising under this chapter.
- (2) The amount of the security deposit, which is subject to the discretion of the department, must be in an amount from \$25,000 to \$250,000. The security deposit must be posted in the form of:
 - (a) a certificate of deposit;
 - (b) a United States treasury note; or
 - (c) an irrevocable letter of credit.
- (3) If a plan No. 2 insurer fails to discharge any determined liability within the time set by the department, the department may convert the security deposit to cash and use the proceeds to pay the liability. Upon the conversion, the plan No. 2 insurer shall immediately furnish additional security to the department in an amount determined by the department to provide reasonable assurance that all current and future liabilities incurred by the plan No. 2 insurer as a result of the coverage provided under this chapter can be fully paid.
- (4)
 - (a) The security deposit required by this section is the property of the department and is held in trust by the department for the payment of the liabilities of the plan No. 2 insurer incurred under this chapter.
 - (b) Any earnings made by the security deposit accrue to the insurer.
 - (c) Upon proof of final payment of all liabilities incurred under this chapter, the unexpended portion of the security deposit must be discharged and any proceeds remaining are payable to the plan No. 2 insurer.
- (5) In the event of the insolvency of a plan No. 2 insurer, the department may, in its discretion, release part or all of the security deposit to the Montana insurance guaranty association, provided for in 33-10-103, for payment of the plan No. 2 insurer's Montana workers' compensation claims if:

- (a) the plan No. 2 insurer has been determined to be insolvent by a court of competent jurisdiction or is the debtor in a bankruptcy proceeding;
 - (b) the plan No. 2 insurer is unable to pay its workers' compensation claims; and
 - (c) the plan No. 2 insurer's Montana workers' compensation liabilities have become the responsibility of the Montana insurance guaranty association.
- (6) The department is authorized to share information and coordinate its actions with the Montana insurance commissioner and other appropriate regulatory agencies with respect to actions taken pursuant to this section.
- (7) A captive reciprocal insurer specified in 39-71-2201 is not subject to this section.

History: En. Sec. 15, Ch. 117, L. 2007; amd. Sec. 3, Ch. 150, L. 2011.

Part 23

Compensation Plan Number Three

Part Cross-References

Definitions, 39-71-116.

Employer defined, 39-71-117.

39-71-2301. Repealed.

Sec. 59, Ch. 613, L. 1989.

History: En. Sec. 40, Ch. 96, L. 1915; re-en. Sec. 2993, R.C.M. 1921; re-en. Sec. 2993, R.C.M. 1935; amd. Sec. 4, Ch. 123, L. 1957; amd. Sec. 176, Ch. 147, L. 1963; amd. Sec. 22, Ch. 329, L. 1969; amd. Sec. 69, Ch. 23, L. 1975; amd. Sec. 1, Ch. 171, L. 1975; R.C.M. 1947, 92-1105(1); amd. Sec. 14, Ch. 103, L. 1979.

39-71-2302. Repealed.

Sec. 59, Ch. 613, L. 1989.

History: En. Sec. 40, Ch. 96, L. 1915; re-en. Sec. 2990, R.C.M. 1921; re-en. Sec. 2990, R.C.M. 1935; amd. Sec. 1, Ch. 123, L. 1957; amd. Sec. 175, Ch. 147, L. 1963; amd. Sec. 1, Ch. 233, L. 1969; amd. Sec. 20, Ch. 329, L. 1969; amd. Sec. 65, Ch. 23, L. 1975; R.C.M. 1947, 92-1101; amd. Sec. 1, Ch. 232, L. 1987.

39-71-2303. Renumbered 39-71-2336.

Code Commissioner, 1989.

39-71-2304. Repealed.

Sec. 59, Ch. 613, L. 1989.

History: (1)En. Sec. 40, Ch. 96, L. 1915; re-en. Sec. 2992, R.C.M. 1921; re-en. Sec. 2992, R.C.M. 1935; amd. Sec. 3, Ch. 123, L. 1957; amd. Sec. 21, Ch. 329, L. 1969; amd. Sec. 68, Ch. 23, L. 1975; Sec. 92-1104, R.C.M. 1947; (2) thru (5)En. Sec. 40, Ch. 96, L. 1915; re-en. Sec. 2993, R.C.M. 1921; re-en. Sec. 2993, R.C.M. 1935; amd. Sec. 4, Ch. 123, L. 1957; amd. Sec. 176, Ch. 147, L. 1963; amd. Sec. 22, Ch. 329, L. 1969; amd. Sec. 69, Ch. 23, L. 1975; amd. Sec. 1, Ch. 171, L. 1975; Sec. 92-1105, R.C.M. 1947; R.C.M. 1947, 92-1104, 92-1105(3), (4); amd. Sec. 4, Ch. 283, L. 1983; amd. Sec. 2, Ch. 232, L. 1987; amd. Sec. 1, Ch. 239, L. 1987; amd. Sec. 10, Ch. 333, L. 1989; amd. Sec. 2, Ch. 641, L. 1989.

39-71-2305. Repealed.

Sec. 59, Ch. 613, L. 1989.

History: En. 92-1105.1 by Sec. 28, Ch. 341, L. 1969; amd. Sec. 70, Ch. 23, L. 1975; R.C.M. 1947, 92-1105.1; amd. Sec. 1, Ch. 109, L. 1987.

39-71-2306. Repealed.

Sec. 59, Ch. 613, L. 1989.

History: En. Sec. 40, Ch. 96, L. 1915; re-en. Sec. 2996, R.C.M. 1921; re-en. Sec. 1996, R.C.M. 1935; amd. Sec. 4, Ch. 233, L. 1969; amd. Sec. 71, Ch. 23, L. 1975; R.C.M. 1947, 92-1108; amd. Sec. 15, Ch. 103, L. 1979.

39-71-2307. Renumbered 39-71-2339.

Code Commissioner, 1989.

39-71-2308. Renumbered 39-71-2340.

Code Commissioner, 1989.

39-71-2309. Repealed.

Sec. 16, Ch. 103, L. 1979.

History: En. Sec. 40, Ch. 96, L. 1915; re-en. Sec. 3003, R.C.M. 1921; re-en. Sec. 3003, R.C.M. 1935; amd. Sec. 182, Ch. 147, L. 1963; amd. Sec. 76, Ch. 23, L. 1975; R.C.M. 1947, 92-1115.

39-71-2310. Repealed.

Sec. 16, Ch. 103, L. 1979.

History: (1)En. Sec. 40, Ch. 96, L. 1915; re-en. Sec. 3004, R.C.M. 1921; re-en. Sec. 3004, R.C.M. 1935; amd. Sec. 183, Ch. 147, L. 1963; Sec. 92-1116, R.C.M. 1947; (2)En. Sec. 40, Ch. 96, L. 1915; re-en. Sec. 3005, R.C.M. 1921; re-en. Sec. 3005, R.C.M. 1935; amd. Sec. 77, Ch. 23, L. 1975; Sec. 92-1117, R.C.M. 1947; R.C.M. 1947, 92-1116, 92-1117.

39-71-2311. Intent and purpose of plan – expense constant defined.

- (1) It is the intent and purpose of the state fund to allow employers an option to insure their liability for workers' compensation and occupational disease coverage with the state fund. The state fund must be neither more nor less than self-supporting. Premium rates must be set at least annually at a level sufficient to ensure the adequate funding of the insurance program, including the costs of administration, benefits, and adequate reserves, during and at the end of the period for which the rates will be in effect. In determining premium rates, the state fund shall make every effort to adequately predict future costs. When the costs of a factor influencing rates are unclear and difficult to predict, the state fund shall use a prediction calculated to be more than likely to cover those costs rather than less than likely to cover those costs. The prediction must take into account the goal of pooling risk and may not place an undue burden on employers that are not eligible for the tier with the lowest-rated premium for workers' compensation purposes.

- (2) Unnecessary surpluses that are created by the imposition of premiums found to have been set higher than necessary because of a high estimate of the cost of a factor or factors may be refunded by the declaration of a dividend as provided in this part. For the purpose of keeping the state fund solvent, the board of directors may implement multiple rating tiers as provided in 39-71-2330 and may assess an expense constant, a minimum premium, or both.
- (3) As used in this section, “expense constant” means a premium charge applied to each workers’ compensation policy to pay expenses related to issuing, servicing, maintaining, recording, and auditing the policy.

History: En. Sec. 1, Ch. 613, L. 1989; amd. Sec. 7, Ch. 4, Sp. L. May 1990; amd. Sec. 6, Ch. 323, L. 1991; amd. Sec. 12, Ch. 295, L. 1993; amd. Sec. 1, Ch. 305, L. 1995; amd. Sec. 7, Ch. 314, L. 2001; amd. Sec. 3, Ch. 218, L. 2009.

39-71-2312. Definitions.

Unless the context requires otherwise, in this part the following definitions apply:

- (1) “Board” means the board of directors of the state compensation insurance fund provided for in 2-15-1019.
- (2) “Commissioner” means the commissioner of insurance as provided in 2-15-1903.
- (3) “Executive director” means the chief executive officer of the state compensation insurance fund.
- (4) “Fiscal year” means for the purposes of the state fund under Title 33 and this part the period from January 1 in one year to December 31 of that same year. A fiscal year for the purposes of assessments under Title 39, chapter 71, is as defined in 39-71-116.
- (5) “Guaranteed market” means the insurer that is required to insure any employer in this state who requests to insure their liability for workers’ compensation and occupational disease coverage and that may not refuse to provide coverage unless an employer or the employer’s principals have defaulted on an obligation and the default remains unsatisfied.
- (6) “State fund” means the state compensation insurance fund provided for in 39-71-2313 that serves as the guaranteed market for this state. It is also known as compensation plan No. 3 or plan No. 3.

History: En. Sec. 2, Ch. 613, L. 1989; amd. Sec. 14, Ch. 630, L. 1993; amd. Sec. 9, Ch. 26, L. 2005; amd. Sec. 13, Ch. 320, L. 2015.

39-71-2313. State compensation insurance fund created – obligation to insure.

- (1) There is a state compensation insurance fund known as the state fund that is a nonprofit, independent public corporation established for the purpose of allowing an option for employers to insure their liability for workers’ compensation and occupational disease coverage under this chapter.
- (2) The state fund is required to insure any employer in this state who requests coverage, and it may not refuse to provide coverage unless an employer or the employer’s principals have defaulted on a state fund obligation and the default remains unsatisfied.

History: En. Sec. 4, Ch. 613, L. 1989; amd. Sec. 8, Ch. 4, Sp. L. May 1990; amd. Sec. 14, Ch. 630, L. 1993; amd. Sec. 2, Ch. 305, L. 1995.

39-71-2314. Repealed.

History: En. Sec. 10, Ch. 613, L. 1989; amd. Sec. 9, Ch. 4, Sp. L. May 1990; amd. Sec. 3, Ch. 630, L. 1993; amd. Sec. 11, Ch. 310, L. 1997.

39-71-2315. Management of state fund – powers and duties of the board – business plan required.

- (1) The management and control of the state fund is vested in the board, subject to the statutory limitations imposed by this part.
- (2) The board is vested with full power, authority, and jurisdiction over the state fund except that the board may not dissolve or liquidate the state fund. To fulfill the objectives and intent of this part, the board may perform all acts necessary or convenient in the exercise of any power, authority, or jurisdiction over the administration of the state fund or in connection with the insurance business to be carried on under the provisions of this part, as fully and completely as the governing body of a private mutual insurance carrier and subject to the regulatory authority of the insurance commissioner in Title 33, except as provided in 33-1-115 and 39-71-2375.
- (3) Neither the board, the state fund, nor the executive director may issue bonds on behalf of the state fund.
- (4) (a) The board shall adopt a business plan no later than December 31 for the next fiscal year.
(b) At a minimum, the plan must include:
 - (i) specific goals for the fiscal year for financial performance. The standard for measurement of financial performances must include an evaluation of premium to surplus.
 - (ii) specific goals for the fiscal year for operating performance. Goals must include but not be limited to specific performance standards for staff in the area of senior management, underwriting, and claims administration. Goals must, in general, maximize efficiency, economy, and equity as allowed by law.
- (5) The business plan must be available upon request to the general public for a fee not to exceed the actual cost of publication. However, performance goals relating to a specific employment position are confidential and not available to the public.
- (6) No sooner than January 1 or later than March 31, the board shall convene a public meeting to review the performance of the state fund, using the business plan for comparison of all the established goals and targets. The board shall publish, by May 30 of each year, a report of the state fund's actual performance as compared to the business plan.
- (7) The state fund board of directors shall establish in-house guidelines for procurement of insurance-related services and shall include guidelines for the solicitation of submissions of information regarding insurance-related services from more than one vendor. The board may include guidelines for the circumstances when business necessity or expedience may preclude the solicitation of submissions from more than one vendor. The board may also include in the guidelines the exemptions to the procurement process in 18-4-132.

History: En. Sec. 5, Ch. 613, L. 1989; amd. Sec. 10, Ch. 4, Sp. L. May 1990; amd. Sec. 19, Ch. 619, L. 1993; amd. Sec. 2, Ch. 407, L. 1999; amd. Sec. 14, Ch. 320, L. 2015.

39-71-2316. Powers of state fund.

- (1) For the purposes of carrying out its functions, the state fund may:
 - (a) insure any employer for workers' compensation and occupational disease liability as the coverage is required by the laws of this state and, as part of the coverage, provide related employers' liability insurance upon approval of the board;
 - (b) sue and be sued;
 - (c) enter into contracts relating to the administration of the state fund, including claims management, servicing, and payment;
 - (d) collect and disburse money received;
 - (e) except as provided in subsection (1)(f), use the uniform classification system as required in 33-16-1023 and charge premiums for the classifications so that the state fund will be neither more nor less than self-supporting;
 - (f) continue the use of special classification codes that were in use prior to January 1, 2016, for agriculture, municipalities, towns, cities, counties, and state agencies. The board shall file with the commissioner rates and supplementary rate information for these special classifications.
 - (g) use the uniform experience rating plan provided for in 33-16-1023, except upon approval of the board may adopt experience modification thresholds for use by the state fund for its insured employers;
 - (h) pay the amounts determined to be due under a policy of insurance issued by the state fund;
 - (i) hire personnel;
 - (j) declare dividends if there is an excess of assets over liabilities. However, dividends may not be paid until adequate actuarially determined reserves are set aside.
 - (k) adopt and implement one or more alternative personal leave plans pursuant to 39-71-2328;
 - (l) upon approval of the board, contract with licensed resident insurance producers;
 - (m) upon approval of the board, enter into agreements with licensed workers' compensation insurers, insurance associations, or insurance producers to provide workers' compensation coverage in other states to Montana-domiciled employers insured with the state fund;
 - (n) upon approval of the board, expend funds for scholarship, educational, or charitable purposes;
 - (o) upon approval of the board, including terms and conditions, provide employers coverage under the federal Longshore and Harbor Workers' Compensation Act, 33 U.S.C. 901, et seq., the federal Merchant Marine Act, 1920 (Jones Act), 46 U.S.C. 688, and the federal Employers' Liability Act, 45 U.S.C. 51, et seq.;

- (p) perform all functions and exercise all powers of a private insurance carrier that are necessary, appropriate, or convenient for the administration of the state fund.
- (2) The state fund shall include a provision in every policy of insurance issued pursuant to this part that incorporates the restriction on the use and transfer of money collected by the state fund as provided for in 39-71-2320.

History: En. Sec. 8, Ch. 613, L. 1989; amd. Sec. 11, Ch. 4, Sp. L. May 1990; amd. Sec. 4, Ch. 630, L. 1993; amd. Sec. 28, Ch. 186, L. 1995; amd. Sec. 3, Ch. 305, L. 1995; amd. Secs. 15, 16, Ch. 276, L. 1997; amd. Sec. 8, Ch. 314, L. 2001; amd. Sec. 1, Ch. 603, L. 2003; amd. Sec. 51, Ch. 130, L. 2005; amd. Sec. 15, Ch. 320, L. 2015.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

Workers' compensation coverage, liability, and subrogation, Title 39, ch. 71, part 4.

39-71-2317. Appointment of executive director – management staff.

The board shall appoint an executive director of the state fund who has general responsibility for the operations of the state fund. The executive director must have executive level experience, with knowledge of the insurance industry. The executive director must receive compensation as set by the board and serve at the pleasure of the board. The executive director may hire the management staff of the state fund, each of whom serves at the pleasure of the executive director.

History: En. Sec. 7, Ch. 613, L. 1989.

39-71-2318. Personal liability excluded.

The members of the board, the executive director, and employees of the state fund are not liable personally, either jointly or severally, for any debt or obligation created or incurred by the state fund.

History: En. Sec. 6, Ch. 613, L. 1989.

Cross-References

State subject to suit, Art. II, sec. 18, Mont. Const.

Liability exposure of state government, Title 2, ch. 9, part 1.

39-71-2319. Assets and liabilities of prior state fund.

All assets and funds held by the state compensation insurance fund established in former 39-71-2301, 39-71-2302, 39-71-2304 through 39-71-2306, and 39-71-2324 and 39-71-2321 through 39-71-2323, 39-71-2325 through 39-71-2327, 39-71-2336, 39-71-2339, and 39-71-2340 must be transferred to the state fund, and the state fund shall assume liability for all outstanding claims and indebtedness of the previously existing state fund.

History: En. Sec. 11, Ch. 613, L. 1989.

39-71-2320. Property of state fund – investment required – exception.

All premiums and other money paid to the state fund, all property and securities acquired through the use of money belonging to the state fund, and all interest and dividends earned upon money belonging to the state fund are the sole property of the state fund and must be used exclusively for the operations and obligations of the state fund. The money collected by the state fund for claims for injuries occurring on or after July 1, 1990, may not be used for any other purpose and may not be transferred by the legislature to other funds or used for other programs. However, state fund money must be invested by the board of investments provided for in 2-15-1808, and subject to the investment agreement with the board of investments, the earnings on investments are the sole property of the state fund as provided in this section.

History: En. Sec. 9, Ch. 613, L. 1989; amd. Sec. 3, Ch. 424, L. 1995; amd. Sec. 17, Ch. 276, L. 1997; amd. Sec. 2, Ch. 603, L. 2003.

39-71-2321. What to be deposited in state fund.

- (1) All premiums, penalties, recoveries by subrogation, interest earned upon money belonging to the state fund, securities acquired by or through use of money, and all interest and penalties on taxes in accordance with 17-2-124 must be deposited in the state fund. Except for a transfer authorized under 39-71-2352, the money must be separated into two accounts based upon whether they relate to claims for injuries resulting from accidents that occurred before July 1, 1990, or claims for injuries resulting from accidents that occur on or after that date.
- (2) All funds deposited in the state fund may be spent as provided in 17-8-101(2)(b).

History: En. Sec. 40, Ch. 96, L. 1915; re-en. Sec. 2993, R.C.M. 1921; re-en. Sec. 2993, R.C.M. 1935; amd. Sec. 4, Ch. 123, L. 1957; amd. Sec. 176, Ch. 147, L. 1963; amd. Sec. 22, Ch. 329, L. 1969; amd. Sec. 69, Ch. 23, L. 1975; amd. Sec. 1, Ch. 171, L. 1975; R.C.M. 1947, 92-1105(2); amd. Sec. 5, Ch. 283, L. 1983; amd. Sec. 32, Ch. 613, L. 1989; amd. Sec. 12, Ch. 4, Sp. L. May 1990; amd. Sec. 4, Ch. 797, L. 1991; amd. Sec. 10, Ch. 630, L. 1993; amd. Secs. 18, 19, Ch. 276, L. 1997; amd. Sec. 6, Ch. 184, L. 1999; amd. Sec. 21, Ch. 389, L. 1999; amd. Sec. 26, Ch. 475, L. 2007.

39-71-2322. Money in state fund held in trust – disposition of funds upon repeal of chapter.

The money coming into the state fund must be held in trust for the purpose for which the money was collected. If this chapter is repealed, the money is subject to the disposition provided by the legislature repealing this chapter. In the absence of a legislative provision, distribution must be in accordance with the justice of the matter, due regard being given to obligations of compensation incurred and existing.

History: En. Sec. 24, Ch. 96, L. 1915; re-en. Sec. 2966, R.C.M. 1921; re-en. Sec. 2966, R.C.M. 1935; amd. Sec. 168, Ch. 147, L. 1963; R.C.M. 1947, 92-840; amd. Sec. 6, Ch. 283, L. 1983; amd. Sec. 33, Ch. 613, L. 1989; amd. Sec. 20, Ch. 276, L. 1997; amd. Sec. 3, Ch. 603, L. 2003.

39-71-2323. Surplus in state fund – payment of dividends.

Subject to the provisions of 39-71-2316, if at the end of any fiscal year there exists in the state fund account created by 39-71-2321 for claims for injuries resulting

from accidents that occur on or after July 1, 1990, an excess of assets over liabilities, including necessary reserves and an appropriate surplus as determined by the board in accordance with 39-71-2330, and if the excess may be refunded safely, then the board, after consultation with the independent actuary engaged pursuant to 39-71-2330, may declare a dividend. The state fund must prescribe the manner of payment to those employers who have paid premiums into the state fund in excess of liabilities.

History: En. Sec. 40, Ch. 96, L. 1915; re-en. Sec. 2998, R.C.M. 1921; re-en. Sec. 2998, R.C.M. 1935; amd. Sec. 6, Ch. 123, L. 1957; amd. Sec. 180, Ch. 147, L. 1963; amd. Sec. 72, Ch. 23, L. 1975; R.C.M. 1947, 92-1110; amd. Sec. 7, Ch. 283, L. 1983; amd. Sec. 34, Ch. 613, L. 1989; amd. Sec. 13, Ch. 4, Sp. L. May 1990; amd. Sec. 5, Ch. 630, L. 1993; amd. Sec. 3, Ch. 407, L. 1999; amd. Sec. 16, Ch. 320, L. 2015.

39-71-2324. Repealed.

Sec. 59, Ch. 613, L. 1989.

History: En. Sec. 40, Ch. 96, L. 1915; amd. Sec. 7, Ch. 196, L. 1921; re-en. Sec. 3000, R.C.M. 1921; re-en. Sec. 3000, R.C.M. 1935; amd. Sec. 17, Ch. 176, L. 1953; amd. Sec. 186, Ch. 147, L. 1963; amd. Sec. 73, Ch. 23, L. 1975; R.C.M. 1947, 92-1112; amd. Sec. 8, Ch. 283, L. 1983.

39-71-2325. State fund to keep accounts of segregations.

The state fund shall keep an accurate account of all the segregations of the state fund and shall divert from the fund any sums necessary to meet monthly payments, pending the conversion into cash of any security, and in such case shall repay the same out of the cash realized from the security.

History: En. Sec. 40, Ch. 96, L. 1915; re-en. Sec. 3001, R.C.M. 1921; re-en. Sec. 3001, R.C.M. 1935; amd. Sec. 187, Ch. 147, L. 1963; amd. Sec. 74, Ch. 23, L. 1975; R.C.M. 1947, 92-1113; amd. Sec. 9, Ch. 283, L. 1983; amd. Sec. 35, Ch. 613, L. 1989.

39-71-2326. Repealed.

Sec. 6, Ch. 664, L. 1987.

History: En. Sec. 40, Ch. 96, L. 1915; re-en. Sec. 3010, R.C.M. 1921; re-en. Sec. 3010, R.C.M. 1935; amd. Sec. 184, Ch. 147, L. 1963; amd. Sec. 81, Ch. 23, L. 1975; R.C.M. 1947, 92-1122; amd. Sec. 10, Ch. 283, L. 1983.

39-71-2327. Earnings of state fund to be credited to fund – improper use a felony.

All earnings made by the state fund by reason of interest paid for the deposit of funds or otherwise must be credited to and become a part of the fund, and the making of profit, either directly or indirectly, by any person out of the use of the fund is a felony. A person convicted of an offense under this section is punishable by imprisonment in the state prison for a term not to exceed 2 years or a fine of not more than \$5,000, or both.

History: En. Sec. 40, Ch. 96, L. 1915; re-en. Sec. 3011, R.C.M. 1921; re-en. Sec. 3011, R.C.M. 1935; amd. Sec. 185, Ch. 147, L. 1963; amd. Sec. 82, Ch. 23, L. 1975; R.C.M. 1947, 92-1123; amd. Sec. 11, Ch. 283, L. 1983; amd. Sec. 36, Ch. 613, L. 1989; amd. Sec. 21, Ch. 276, L. 1997; amd. Sec. 4, Ch. 603, L. 2003.

39-71-2328. State fund alternative personal leave plan – exception – collective bargaining negotiation – personal leave definition.

- (1) Except as provided in subsection (2), the state fund, after consultation with the department of administration, may develop an alternative personal leave plan for all state compensation insurance fund employees. The number of days and the rate at which the number of days are earned for the alternative personal leave plan must be the same as the combined total of days provided for in 2-18-612 and 2-18-618. Prior to implementation, the alternative personal leave plan must be adopted by the board and the board may adopt changes to the plan.
- (2) The state fund, after consultation with the department of administration, may develop one or more alternative personal leave plans for some or all of its employees or may choose to develop an alternative personal leave plan for a particular class of employees or work unit.
- (3) To the extent that an alternative personal leave plan applies to an employee who is a member of a collective bargaining unit, the implementation of the personal leave plan is subject to negotiation under 39-31-305.
- (4) As used in this section, “personal leave” means all leave provided to an employee under the provisions of Title 2, chapter 18, part 6.

History: En. Sec. 1, Ch. 314, L. 2001.

39-71-2329 reserved.

39-71-2330. Rate setting – surplus – multiple rating tiers.

- (1) The board has the authority to establish the rates to be charged by the state fund and the supplementary rate information to determine the applicable premium as provided in 39-71-2311 and 39-71-2316 and shall file the rates and supplementary rate information with the commissioner as provided in Title 33, chapter 16. The board shall engage the services of an independent actuary who is a member in good standing with the American academy of actuaries to develop and recommend actuarially sound rates. Rates must be set at amounts sufficient, when invested, to carry the estimated cost of all claims to maturity, to meet the reasonable expenses of conducting the business of the state fund, and to amass and maintain an excess of surplus over the amount produced by the national association of insurance commissioners’ risk-based capital requirements for a casualty insurer.
- (2) Because surplus is desirable in the insurance business, the board shall annually determine the level of surplus that must be maintained by the state fund pursuant to this section. The state fund shall use the amount of the surplus above the risk-based capital requirements to secure the state fund against various risks inherent in or affecting the business of insurance and not accounted for or only partially measured by the risk-based capital requirements.
- (3) The board may establish multiple rating tiers for classifications that take into consideration losses, premium size, and other factors relevant in placing an employer within a rating tier. The board shall file any multiple rating tiers with the commissioner for review as provided in Title 33, chapter 16.

History: En. Sec. 7, Ch. 630, L. 1993; amd. Sec. 4, Ch. 407, L. 1999; amd. Sec. 9, Ch. 314, L. 2001; amd. Sec. 17, Ch. 320, L. 2015.

Cross-References

Powers of State Fund, 39-71-2316.

39-71-2331. Workplace safety program.

- (1) An employer that is not eligible for the tier with the lowest-rated premium for workers' compensation purposes is eligible to join a state fund pooled risk safety group, as provided in 39-71-2332, if the employer:
 - (a) adopts and maintains a written, comprehensive workplace safety program that has been in place for more than 1 year and that meets the criteria established by rule implementing Title 39, chapter 71, part 15;
 - (b) adopts transitional and return-to-work programs;
 - (c) has at least 3 years of experience without losses;
 - (d) uses available safety consultation services or programs offered by the department or the state fund. Safety consultation may be provided to individual employers or to groups. The department and the state fund shall notify each employer in a group, as provided in 39-71-2332, regarding the availability of safety and return-to-work resources.
 - (e) complies with the terms and conditions of the state fund pooled risk safety group as provided in 39-71-2332.
- (2) The state fund and the department shall share information on workplace safety programs and transitional and return-to-work programs.

History: En. Sec. 1, Ch. 218, L. 2009.

39-71-2332. Pooled risk safety group.

- (1) Subject to Title 33, chapter 16, the state fund may establish one or more groups of individual policies in a pooled risk safety group to promote safety as a way to reduce losses among members of the pooled risk safety group.
- (2) Each member of a pooled risk safety group must be eligible as provided in 39-71-2331 and must have an individual workers' compensation plan No. 3 policy. An individual policy may be included in only one group.
- (3) The state fund shall annually establish the terms and conditions of the plan that defines the requirements of participation for a pooled risk safety group. The plan must include the criteria to be eligible for an aggregate return of premium and a method for apportioning the return of premium among members of the group.
- (4) The aggregate record of the individual members of the pooled risk safety group is the basis for determining if the members of the pooled risk safety group qualify for a return on premiums.

History: En. Sec. 2, Ch. 218, L. 2009; amd. Sec. 18, Ch. 320, L. 2015.

39-71-2333 through 39-71-2335 reserved.**39-71-2336. Manner of electing – contract or policy of insurance – payment of premium.**

The state fund shall prescribe the procedure by which an employer may elect to be bound by compensation plan No. 3, the effective time of the election, and the manner in which the election is terminated for reasons other than default in

payment of premiums. Every employer electing to be bound by compensation plan No. 3 must receive from the state fund a contract or policy of insurance in a form approved by the department. All Montana operations of an employer, as defined in 39-71-117, covered by compensation plan No. 3 must be insured by the state compensation insurance fund. The premium must be paid by the employer to the state fund at times that the state fund prescribes and must be paid over by the state fund to the state treasurer to the credit of the state fund.

History: En. Sec. 40, Ch. 96, L. 1915; amd. Sec. 6, Ch. 196, L. 1921; re-en. Sec. 2991, R.C.M. 1921; re-en. Sec. 2991, R.C.M. 1935; amd. Sec. 2, Ch. 123, L. 1957; amd. Sec. 178, Ch. 147, L. 1963; amd. Sec. 2, Ch. 233, L. 1969; amd. Sec. 67, Ch. 23, L. 1975; R.C.M. 1947, 92-1103; amd. Sec. 3, Ch. 283, L. 1983; amd. Sec. 29, Ch. 613, L. 1989; Sec. 39-71-2303, MCA 1987; redes. 39-71-2336 by Code Commissioner, 1989; amd. Sec. 12, Ch. 69, L. 2005.

39-71-2337. State fund to submit notice of coverage within 30 days – penalty for failure.

- (1) The state fund shall, within 30 days after the issuance of an insurance policy, submit to the department the notice of coverage stating the effective date of the policy insuring the employer and other information the department requires. Notice to the department under this section must be provided electronically.
- (2) The department:
 - (a) may recognize the advisory organization designated under 33-16-1023 or recognize other organizations as agents for the state fund; and
 - (b) shall, under terms and conditions acceptable to the department, accept notice of coverage received from the agents recognized under subsection (2)(a) as the state fund's notice of coverage.
- (3) The department may assess a penalty of not more than \$200 against the state fund if the state fund does not comply with the 30-day notice requirement. The penalty may be assessed for each policy that is not reported to the department in a timely manner.

History: En. Sec. 44, Ch. 613, L. 1989; amd. Sec. 16, Ch. 214, L. 2001; amd. Sec. 13, Ch. 69, L. 2005; amd. Sec. 13, Ch. 117, L. 2007.

39-71-2338. Repealed.

Sec. 8, Ch. 323, L. 1991.

History: En. Sec. 45, Ch. 613, L. 1989.

39-71-2339. Cancellation of coverage – 20-day notice required.

- (1) The state fund may cancel an employer's coverage under this part for failure to report payroll or pay the premiums due or for another cause provided in the insurance policy. Cancellation may take effect only by written notice to the named insured and the department at least 20 days prior to the date of cancellation or, in cases of nonreporting of payroll or nonpayment of a premium, by failure of the employer to submit payroll reports or pay a premium within 20 days after the due date. The state fund shall notify the department of the names and effective dates of all policies canceled. However, the policy terminates on the effective date of a replacement or succeeding insurance policy issued to the insured. This section does not prevent the state fund from canceling an insurance policy before a replacement policy is issued to the

insured. After the cancellation date, the employer has the same status as an employer who is not enrolled under the Workers' Compensation Act unless a replacement or succeeding insurance policy has been issued. Notice to the department under this section must be provided electronically.

- (2) The department:
 - (a) may recognize the advisory organization designated under 33-16-1023 or recognize other organizations as agents for the state fund; and
 - (b) shall, under terms and conditions acceptable to the department, accept notice of cancellation received from the agents recognized under subsection (2)(a) as the state fund's notice of cancellation.
- (3) (a) The department may assess a penalty of up to \$200 against the state fund if it does not comply with the notice requirement in subsection (1).
 - (b) The penalty may be assessed for each policy cancellation that is not reported to the department in a timely manner.
 - (c) The state fund may contest the penalty assessment in a hearing conducted according to department rules.

History: En. Sec. 40, Ch. 96, L. 1915; re-en. Sec. 3002, R.C.M. 1921; amd. Sec. 1, Ch. 201, L. 1935; re-en. Sec. 3002, R.C.M. 1935; amd. Sec. 10, Ch. 235, L. 1947; amd. Sec. 7, Ch. 123, L. 1957; amd. Sec. 181, Ch. 147, L. 1963; amd. Sec. 75, Ch. 23, L. 1975; amd. Sec. 1, Ch. 225, L. 1975; R.C.M. 1947, 92-1114(part); amd. Sec. 30, Ch. 613, L. 1989; Sec. 39-71-2307, MCA 1987; redes. 39-71-2339 by Code Commissioner, 1989; amd. Sec. 7, Ch. 323, L. 1991; amd. Sec. 4, Ch. 305, L. 1995; amd. Sec. 17, Ch. 214, L. 2001; amd. Sec. 14, Ch. 69, L. 2005; amd. Sec. 23, Ch. 112, L. 2009.

39-71-2340. Collection in case of default.

- (1) If an employer under plan No. 3 defaults in any payment to the state fund, the state fund may collect the sum due in a civil action in the name of the state. The right of action is cumulative.
- (2) If an employer's right to operate has been canceled by the state fund for failure to pay premiums and the state fund finds that the property and assets of the employer are not sufficient to pay the premiums, the state fund may compromise the claim for premiums and accept a payment of an amount less than the total amount due.

History: En. Sec. 40, Ch. 96, L. 1915; re-en. Sec. 3002, R.C.M. 1921; amd. Sec. 1, Ch. 201, L. 1935; re-en. Sec. 3002, R.C.M. 1935; amd. Sec. 10, Ch. 235, L. 1947; amd. Sec. 7, Ch. 123, L. 1957; amd. Sec. 181, Ch. 147, L. 1963; amd. Sec. 75, Ch. 23, L. 1975; amd. Sec. 1, Ch. 225, L. 1975; R.C.M. 1947, 92-1114(part); amd. Sec. 31, Ch. 613, L. 1989; Sec. 39-71-2308, MCA 1987; redes. 39-71-2340 by Code Commissioner, 1989.

39-71-2341. Repealed.

Secs. 11, 14(3), Ch. 314, L. 2001.

History: En. Sec. 10, Ch. 295, L. 1993; amd. Sec. 5, Ch. 407, L. 1999.

39-71-2342 through 39-71-2350 reserved.

39-71-2351. Purpose of separation of state fund liability as of July 1, 1990, and of separate funding of claims before and on or after that date.

- (1) The legislature has determined that it is necessary to the public welfare to make workers' compensation insurance available to all employers through the state fund as the guaranteed market. In previous years of making this insurance available, and prior to July 1, 1990, the state fund incurred an unfunded liability. The legislature determined that the most cost-effective and efficient way to provide a source of funding for and to ensure payment of the unfunded liability and the best way to administer the unfunded liability was to separate the liability of the state fund on the basis of whether a claim is for an injury resulting from an accident that occurred before July 1, 1990, or an accident that occurs on or after that date.
- (2) The legislature further determines that in order to prevent the creation of a new unfunded liability with respect to claims for injuries for accidents that occur on or after July 1, 1990, certain duties of the state fund should be clarified and regulation of the state fund, effective January 1, 2016, and subject to 33-1-115 and 39-71-2375, should be under Title 33, which governs plan No. 2 and plan No. 3 insurers operating in this state.

History: En. Sec. 1, Ch. 4, Sp. L. May 1990; amd. Sec. 5, Ch. 797, L. 1991; amd. Sec. 1, Ch. 637, L. 1993; amd. Sec. 22, Ch. 276, L. 1997; amd. Sec. 19, Ch. 320, L. 2015.

39-71-2352. Separate payment structure and sources for claims for injuries resulting from accidents that occurred before July 1, 1990, and on or after July 1, 1990 – spending limit – authorizing transfer of money.

- (1) Premiums paid to the state fund based upon wages payable before July 1, 1990, may be used only to administer and pay claims for injuries resulting from accidents that occurred before July 1, 1990. Premiums paid to the state fund based upon wages payable on or after July 1, 1990, may be used only to administer and pay claims for injuries resulting from accidents that occur on or after July 1, 1990.
- (2) The state fund shall:
 - (a) determine the cost of administering and paying claims for injuries resulting from accidents that occurred before July 1, 1990, and separately determine the cost of administering and paying claims for injuries resulting from accidents that occur on or after July 1, 1990;
 - (b) keep adequate and separate accounts of the costs determined under subsection (2)(a); and
 - (c) fund administrative expenses and benefit payments for claims for injuries resulting from accidents that occurred before July 1, 1990, and claims for injuries resulting from accidents that occur on or after July 1, 1990, separately from the sources provided by law.
- (3) The state fund may not spend more than [\$625,000] a year to administer claims for injuries resulting from accidents that occurred before July 1, 1990.
- (4) As used in this section, "adequately funded" means the present value of:
 - (a) the total cost of future benefits remaining to be paid; and
 - (b) the cost of administering the claims.
- (5) An amount of funds in excess of the adequate funding amount established in subsection (4), based on audited financial statements adjusted for unrealized gains and losses, must be transferred to the general fund.

- (6) If in any fiscal year after the old fund liability tax is terminated claims for injuries resulting from accidents that occurred before July 1, 1990, are not adequately funded, any amount necessary to pay claims for injuries resulting from accidents that occurred before July 1, 1990, must be transferred from the general fund to the account provided for in 39-71-2321.
- (7) The independent actuary engaged by the state fund pursuant to 39-71-2330 shall project the unpaid claims liability for claims for injuries resulting from accidents that occurred before July 1, 1990, each fiscal year until all claims are paid. (Bracketed language in subsection (3) terminates June 30, 2019, and reverts to \$1.25 million effective July 1, 2019—secs. 13, 35, Ch. 429, L. 2017.)

History: En. Sec. 2, Ch. 4, Sp. L. May 1990; amd. Sec. 6, Ch. 797, L. 1991; amd. Sec. 6, Ch. 630, L. 1993; amd. Secs. 23, 24, Ch. 276, L. 1997; amd. Sec. 7, Ch. 184, L. 1999; amd. Sec. 1, Ch. 16, Sp. L. August 2002; amd. Sec. 1, Ch. 588, L. 2003; amd. Sec. 57, Ch. 2, L. 2009; amd. Sec. 13, Ch. 429, L. 2017.

39-71-2353. Repealed.

Sec. 9, Ch. 797, L. 1991.

History: En. Sec. 4, Ch. 4, Sp. L. May 1990.

39-71-2354. Repealed.

Secs. 31(2), 34(3), Ch. 276, L. 1997.

History: En. Sec. 1, Ch. 797, L. 1991; amd. Sec. 9, Ch. 637, L. 1993; amd. Sec. 38, Ch. 422, L. 1997.

39-71-2355. Repealed.

Secs. 31(2), 34(3), Ch. 276, L. 1997.

History: En. Sec. 2, Ch. 797, L. 1991.

39-71-2356. Mutually agreeable lump-sum settlements.

During the period beginning October 1, 1991, and ending September 30, 1992, a workers' compensation claimant and the state fund may, regardless of the lump-sum law in effect on the date of the injury, mutually agree to a lump-sum settlement of a claim. If a mutual agreement is not reached, the lump-sum law in effect on the date of the injury applies.

History: En. Sec. 3, Ch. 797, L. 1991.

39-71-2357 through 39-71-2360 reserved.

39-71-2361. Legislative audit of state fund.

The legislative auditor shall annually conduct or have conducted by persons appointed under 5-13-305 a financial and compliance audit of the state fund, including its operations relating to claims for injuries resulting from accidents that occurred before July 1, 1990. The audit must include evaluations of the amounts reserved. The evaluations may be conducted by persons appointed under 5-13-305. Audit and evaluation costs are an expense of and must be paid by the state fund and must be allocated between those claims for injuries resulting from

accidents that occurred before July 1, 1990, and those claims for injuries resulting from accidents that occur on or after that date.

History: En. Sec. 5, Ch. 4, Sp. L. May 1990; amd. Sec. 27, Ch. 167, L. 2011; amd. Sec. 20, Ch. 320, L. 2015.

39-71-2362. Repealed.

History: En. Sec. 8, Ch. 630, L. 1993.

39-71-2363. Agency law – annual report.

- (1) The state fund is subject to state laws applying to state agencies, except as otherwise provided by law, and it is exempt from the provisions of The Legislative Finance Act in Title 5, chapter 12, and the provisions of Title 17, chapter 7, parts 1 through 4. The state fund may use the debt collection procedures provided in Title 17, chapter 4, part 1.
- (2) (a) Except as provided in 2-15-2015, the executive director shall annually submit to the board for its approval an estimated budget of the entire expense of administering the state fund for the succeeding fiscal year, with due regard to the business interests and contract obligations of the state fund. A copy of the approved budget must be delivered to the governor and the legislature.
 - (b) Dividends may not be included as administrative expenditures as provided in subsection (2)(a) but are a disbursement of excess surplus pursuant to 39-71-2323 after a determination by the state fund of income from operations.
- (3) The board shall submit an annual financial report to the governor and to the legislature as provided in 5-11-210, indicating the business done by the state fund during the previous year and containing a statement of the estimated liabilities of the state fund as determined by an independent actuary.

History: En. Sec. 9, Ch. 630, L. 1993; amd. Sec. 4, Ch. 424, L. 1995; amd. Sec. 25, Ch. 276, L. 1997; amd. Sec. 52, Ch. 7, L. 2001; amd. Sec. 10, Ch. 314, L. 2001; amd. Sec. 12, Ch. 120, L. 2013; amd. Sec. 21, Ch. 320, L. 2015.

39-71-2364 through 39-71-2369 reserved.

39-71-2370. Claims expenditures codes.

The state fund shall continually review its claims expenditure coding structure to separately account for claims and administrative expenses. If a review demonstrates a compelling need for expenditure information that is not available, the state fund shall expand or modify its claims expenditure coding structure.

History: En. Sec. 20, Ch. 555, L. 1993; Sec. 39-71-226, MCA 2003; redes. 39-71-2370 by Sec. 11, Ch. 26, L. 2005.

39-71-2371 through 39-71-2374 reserved.**39-71-2375. (Effective January 1, 2016) Operation of state fund as authorized insurer—issuance of certificate of authority—exceptions—use of calendar year—risk-based capital—reporting requirements.**

- (1) The state fund provided for in 39-71-2313 is an authorized insurer and, except as provided in this section, is subject to the provisions in Title 33 that are generally applicable to authorized workers' compensation insurers in this state and the provisions of Title 39, chapter 71, part 23.
- (2) (a) The commissioner shall issue a certificate of authority to the state fund to write workers' compensation insurance coverages, as provided in 39-71-2316, and except as otherwise provided in this section the requirements of Title 33, chapter 2, part 1, do not apply. The certificate of authority must be continuously renewed by the commissioner.
 - (b) The state fund shall pay the annual fee under 33-2-708, provide the surplus funds required under 33-2-109 and 33-2-110, and provide to the commissioner the available documentation and information that is provided by other insurers when applying for a certificate of authority under 33-2-115.
 - (c) The state fund is subject to the reporting requirements under 33-2-705 but is not subject to the tax on net premiums.
- (3) (a) The state fund, as the guaranteed market for workers' compensation insurance for employers pursuant to 39-71-2313, is not subject to:
 - (i) formation requirements of an insurer under Title 33, chapter 3;
 - (ii) revocation or suspension of its certificate of authority under any provision of Title 33 or any order or any provision that requires forfeiture of the state fund's obligation to insure employers as required in 39-71-2313;
 - (iii) liquidation or dissolution under Title 33;
 - (iv) participation in the guaranty association provided for in Title 33, chapter 10;
 - (v) 33-12-104; or
 - (vi) any assessment of punitive or exemplary damages.
- (b) The state fund is subject to 33-16-1023, except as provided in 39-71-2316(1)(e), (1)(f), and (1)(g).
- (4) The state fund shall complete financial reporting and accounting on a calendar year basis.
- (5) (a) If the state fund's risk-based capital falls below the company action level RBC as defined in 33-2-1902, the commissioner shall issue a report to the governor, the state fund board of directors, and to the legislature. If the legislature is not in session, the report must go to the economic affairs interim committee and to the legislative auditor. The report must provide a description of the RBC measurement, the regulatory implications of the state fund falling below the RBC criteria, and the state fund's corrective action plan. If the commissioner is reporting on a regulatory action level RBC event, the report must include the state fund's corrective action plan, results of any examination or analysis by the commissioner, and any corrective orders issued by the commissioner.
 - (b) If the state fund fails to comply with any lawful order of the commissioner, the commissioner may initiate supervision proceedings under Title 33, chapter 2, part 13, against state fund. If the state fund fails to comply with

- the commissioner's lawful supervision order under this subsection (5)(b), the commissioner may institute rehabilitation proceedings under Title 33, chapter 2, part 13, only if the commissioner is petitioning for rehabilitation based on the grounds provided in 33-2-1321(1) or (2).
- (6) The state fund shall annually transfer funds to the commissioner, out of its surplus, for all necessary staffing and related expenses for a full-time attorney licensed to practice law in Montana and a full-time examiner qualified by education, training, experience, and high professional competence to examine the state fund pursuant to Title 33, chapter 1, part 4, and this section. The attorney and examiner must be employees of the commissioner.
- (7) For the purposes of this section, the term "guaranteed market" has the definition provided in 39-71-2312.

History: En. Sec. 1, Ch. 320, L. 2015.

Part 24

Mediation

Part Cross-References

Uniform Arbitration Act, Title 27, ch. 5.

39-71-2401. Disputes – jurisdiction – settlement requirements – mediation.

- (1) A dispute concerning benefits arising under this chapter, other than the disputes described in subsection (2), must be brought before a department mediator as provided in this part. If a dispute still exists after the parties satisfy the mediation requirements in this part, either party may petition the workers' compensation court for a resolution.
- (2) A dispute arising under this chapter that does not concern benefits or a dispute for which a specific provision of this chapter gives the department jurisdiction must be brought before the department.
- (3) An appeal from a department order may be made to the workers' compensation court.
- (4) Except as otherwise provided in this chapter, before a party may bring a dispute concerning benefits before a mediator, the parties shall attempt to settle as follows:
- The party making a demand shall present the other party with a specific written demand that contains sufficient explanation and documentary evidence to enable the other party to thoroughly evaluate the demand.
 - The party receiving the demand shall respond in writing within 15 working days of receipt. If the demand is denied in whole or in part, the response must state the basis of the denial.
 - Upon motion of a party or upon the mediator's own motion, the mediator has the authority to dismiss a petition if the mediator finds that either party did not comply with this subsection (4). A decision dismissing a petition under this subsection (4)(c) must be in writing and must state in detail the grounds for dismissal. The mediator's decision may be reviewed by the workers' compensation court upon motion of a party.
 - This subsection (4) does not relieve a party of an obligation otherwise contained in this chapter.

History: En. Sec. 8, Ch. 464, L. 1987; amd. Sec. 1, Ch. 427, L. 1989; amd. Sec. 64, Ch. 613, L. 1989; amd. Sec. 10, Ch. 558, L. 1991; amd. Sec. 29, Ch. 416, L. 2005; amd. Sec. 1550, Ch. 56, L. 2009.

39-71-2402 through 39-71-2405 reserved.

39-71-2406. Purpose.

The purpose of this part is to prevent when possible the filing in the workers' compensation court of actions by claimants or insurers relating to claims under this chapter if an equitable and reasonable resolution of the dispute may be effected at an earlier stage. To achieve this purpose, this part provides for a procedure for mandatory, nonbinding mediation. It is the intent of this part that the mediation process be used to resolve cases on an informal basis at minimal cost to the parties, and to this end, the parties are required to fully present their cases at the mediation level. However, if a cause proceeds to the workers' compensation court, the parties are not precluded from presenting additional evidence before the court. If a new issue is raised at the workers' compensation court that was not raised at mediation, the court shall remand the issue to the mediator for consideration.

History: En. Sec. 52, Ch. 464, L. 1987; amd. Sec. 2, Ch. 427, L. 1989; amd. Sec. 30, Ch. 416, L. 2005.

39-71-2407. Department authority – rules.

- (1) The department shall designate mediators and shall implement the provisions of this part.
- (2) The department may adopt the rules necessary to implement this part. The rules may prescribe:
 - (a) the qualifications of mediators; and
 - (b) a procedure for the conduct of mediation proceedings.
- (3) The cost to the department of implementing this part must be paid out of the workers' compensation administration fund.

History: En. Sec. 53, Ch. 464, L. 1987.

39-71-2408. Mandatory, nonbinding mediation.

- (1) Except as otherwise provided, in a dispute arising under this chapter, the insurer and claimant shall mediate any issue concerning benefits and the mediator shall issue a report following the mediation process recommending a solution to the dispute before either party may file a petition in the workers' compensation court.
- (2) The resolution recommended by the mediator is without administrative or judicial authority and is not binding on the parties.

History: En. Sec. 54, Ch. 464, L. 1987; amd. Sec. 31, Ch. 416, L. 2005.

39-71-2409. Duties of mediator.

A mediator shall assist the parties in negotiating a resolution to their dispute by:

- (1) facilitating an exchange of information between the parties;
- (2) assuring that all relevant information is brought forth during the mediation process;

- (3) suggesting possible solutions to issues of dispute between the parties;
- (4) recommending a solution; and
- (5) assisting the parties to voluntarily resolve their dispute.

History: En. Sec. 55, Ch. 464, L. 1987; amd. Sec. 3, Ch. 427, L. 1989.

39-71-2410. Limitations on mediation proceedings.

- (1) Except as may be necessary for the workers' compensation court to rule on issues arising under 39-71-2401(4)(c) or 39-71-2411(8)(c), mediation proceedings must be:
 - (a) held in private;
 - (b) informal and held without a verbatim record; and
 - (c) confidential.
- (2) All communications, verbal or written, from the parties to the mediator and any information and evidence presented to the mediator during the proceeding are confidential.
- (3) A mediator's files and records are closed to all persons but the parties.
- (4) (a) A mediator may not be called to testify in any proceeding concerning the issues discussed in the mediation process.
 (b) The mediator's report and any of the information or recommendations contained in the report are not admissible as evidence in any action subsequently brought in any court of law.
- (5) Subsections (1) through (4) do not prohibit a mediator from issuing a report and the parties and the mediator may be required to attend a conference before the workers' compensation court as set forth in 39-71-2411.

History: En. Sec. 56, Ch. 464, L. 1987; amd. Sec. 4, Ch. 427, L. 1989; amd. Sec. 11, Ch. 558, L. 1991; amd. Sec. 1, Ch. 39, L. 2005.

39-71-2411. Mediation procedure.

- (1) Except as otherwise provided, a claimant or an insurer having a dispute relating to benefits under this chapter may petition the department for mediation of the dispute.
- (2) A party may take part in mediation proceedings with or without representation.
- (3) The mediator shall review the department file for the case and may receive any additional documentation or argument either party submits.
- (4) The claimant and an employee of the insurer or an authorized third-party examiner with settlement authority shall attend any scheduled mediation conference in person or shall participate by telephone conference call.
- (5) The mediator shall request that each party offer an argument summarizing the party's position. A party's argument must fully present the party's case. The argument is not limited by the rules of evidence.
- (6) After the parties have presented all their information and arguments to the mediator, the mediator shall recommend a solution to the parties within a reasonable time to be established by rule.
- (7) A party shall notify the mediator within 25 days of the mailing of the mediator's report as to whether the party accepts the mediator's recommendation. If either party does not accept the mediator's recommendation, the party may petition the workers' compensation court for resolution of the dispute.
- (8) (a) If a mediator determines that either party failed to cooperate in the mediation process, the mediator shall prepare a written report setting forth

the determination and the grounds for the determination. The report must be mailed to the parties and to the workers' compensation court. Unless a party disputes the determination as set forth in subsection (8)(c), the parties shall repeat the mediation process, but only one time.

- (b) A mediator may determine that a party has failed to cooperate in the mediation process only if the party failed to:
- (i) supply information or offer a summary of the party's position as reasonably requested by the mediator;
 - (ii) attend scheduled mediation conferences unless excused by the mediator; or
 - (iii) listen to and review the information and position offered by the opposing party.
- (c) If a party disputes a mediator's determination that the party failed to cooperate in the mediation process, the party may file a petition with the workers' compensation court. Upon receipt of a petition, the court shall summon the parties and the mediator to determine by oral discussion whether the mediator's determination of noncooperation is supportable. If the court finds that the mediator's determination is supportable, the court may order the parties to attempt a second time to mediate their dispute.

History: En. Sec. 57, Ch. 464, L. 1987; amd. Sec. 5, Ch. 427, L. 1989; amd. Sec. 64, Ch. 613, L. 1989; amd. Sec. 20, Ch. 516, L. 1995; amd. Sec. 2, Ch. 39, L. 2005; amd. Sec. 32, Ch. 416, L. 2005.

Part 25

Employer's Old Fund Liability Tax

39-71-2501. Repealed.

Secs. 31(2), 34(3), Ch. 276, L. 1997.

History: En. Sec. 1, Ch. 664, L. 1987; amd. Sec. 57, Ch. 83, L. 1989; amd. Sec. 43, Ch. 613, L. 1989; amd. Sec. 14, Ch. 4, Sp. L. May 1990; amd. Sec. 14, Ch. 630, L. 1993; amd. Sec. 2, Ch. 637, L. 1993; amd. Sec. 2, Ch. 172, L. 1995; amd. Sec. 1, Ch. 246, L. 1995; amd. Sec. 48, Ch. 509, L. 1995; amd. Sec. 6, Ch. 572, L. 1995; amd. Sec. 26, Ch. 276, L. 1997; amd. Sec. 31, Ch. 491, L. 1997.

39-71-2502. Repealed.

Secs. 31(2), 34(3), Ch. 276, L. 1997.

History: En. Sec. 2, Ch. 664, L. 1987; amd. Sec. 15, Ch. 4, Sp. L. May 1990; amd. Sec. 3, Ch. 637, L. 1993.

39-71-2503. Repealed.

Secs. 31(2), 34(3), Ch. 276, L. 1997.

History: En. Sec. 3, Ch. 664, L. 1987; amd. Sec. 16, Ch. 4, Sp. L. May 1990; amd. Sec. 1, Ch. 220, L. 1991; amd. Sec. 7, Ch. 797, L. 1991; amd. Sec. 4, Ch. 637, L. 1993; amd. Sec. 3, Ch. 172, L. 1995; amd. Sec. 2, Ch. 246, L. 1995; amd. Sec. 49, Ch. 509, L. 1995; amd. Sec. 6, Ch. 529, L. 1995; amd. Sec. 7, Ch. 572, L. 1995; amd. Sec. 27, Ch. 276, L. 1997; amd. Sec. 39, Ch. 422, L. 1997; amd. Secs. 32, 33, 39(2), Ch. 491, L. 1997.

39-71-2504. Repealed.

Sec. 31(1), Ch. 276, L. 1997.

History: En. Sec. 4, Ch. 664, L. 1987; amd. Sec. 10, Ch. 9, Sp. L. June 1989; amd. Sec. 17, Ch. 4, Sp. L. May 1990; amd. Sec. 8, Ch. 797, L. 1991; amd. Sec. 33, Ch. 455, L. 1993; amd. Sec. 6, Ch. 637, L. 1993; amd. Sec. 47, Ch. 18, L. 1995; amd. Sec. 50, Ch. 509, L. 1995.

39-71-2505. Repealed.

Sec. 8, Ch. 184, L. 1999.

History: En. Sec. 5, Ch. 637, L. 1993; amd. Sec. 1, Ch. 27, L. 1995; amd. Sec. 28, Ch. 276, L. 1997; amd. Sec. 34, Ch. 491, L. 1997.

39-71-2506. Repealed.

Secs. 31(2), 34(3), Ch. 276, L. 1997.

History: En. Sec. 3, Ch. 572, L. 1995.

39-71-2507. Repealed.

Sec. 8, Ch. 184, L. 1999.

History: En. Sec. 6, Ch. 491, L. 1997.

Part 26**Self-Insurers Guaranty Fund****Part Cross-References**

Insurance guaranty associations, Title 33, ch. 10.

39-71-2601. Short title.

This part may be cited as the “Montana Self-Insurers Guaranty Fund Act”.

History: En. Sec. 1, Ch. 244, L. 1989.

39-71-2602. Purpose – construction.

- (1) The purposes of this part are to provide a mechanism for the payment of covered workers’ compensation claims of employers bound by compensation plan No. 1 who are unable to pay the claims because of insolvency, to establish a fund from which the claims may be paid, and to establish a board to assess the cost of the protection among those employers.
- (2) This part must be liberally construed to effect its purposes. The statement of its purposes constitutes an aid and a guide to the act’s interpretation.

History: En. Sec. 2, Ch. 244, L. 1989.

39-71-2603. Definitions.

As used in this part, unless the context requires otherwise, the following definitions apply:

- (1) “Board” means the board of directors of the Montana self-insurers guaranty fund.

- (2) "Fund" means the Montana self-insurers guaranty fund established pursuant to 39-71-2609.
- (3) "Insolvent private self-insurer" means an employer:
 - (a) (i) that is unable to pay workers' compensation claims because:
 - (A) it has been determined to be insolvent by a court of competent jurisdiction; or
 - (B) bankruptcy proceedings have been instituted by or against it; or
 - (ii) whose claims are not being paid on its behalf; and
- (b) whose security has been exhausted pursuant to 39-71-2108.
- (4) "Member" means an employer bound by compensation plan No. 1 that participates in the Montana self-insurers guaranty fund.
- (5) "Private self-insurer" means a private employer bound by compensation plan No. 1 that has secured the payment of workers' compensation claims pursuant to 39-71-2101.

History: En. Sec. 3, Ch. 244, L. 1989.

39-71-2604. Board of directors of fund.

- (1) There is a board of directors of the Montana self-insurers guaranty fund.
- (2) The board consists of five members who are representatives of private self-insurers and who shall serve staggered 4-year terms.
- (3) Board members are elected by the members of the fund, with each member having one vote.
- (4) Board members may be reimbursed from the assets of the fund for the actual expenses incurred in connection with their duties as board members.

History: En. Sec. 4, Ch. 244, L. 1989.

39-71-2605 through 39-71-2608 reserved.

39-71-2609. Establishment of fund – employer participation required.

- (1) There is a nonprofit unincorporated legal entity, to be known as the Montana self-insurers guaranty fund, financed as provided in 39-71-2615 and 39-71-2616. The fund shall perform its functions under rules adopted by, and powers exercised through, the board established under 39-71-2604.
- (2) A private self-insurer shall participate as a member in the fund as a condition of the authority to self-insure in this state under 39-71-2101.

History: En. Sec. 5, Ch. 244, L. 1989; amd. Sec. 5, Ch. 163, L. 1991.

39-71-2610. Rulemaking – powers of fund.

- (1) The board shall establish the rules necessary to carry out the purposes of this part and to meet the responsibilities of the fund.
- (2) The fund may carry out its responsibilities directly or by contract. It may, if it considers necessary, purchase services and insurance and borrow funds.
- (3) The fund may receive confidential information concerning the financial condition of a private self-insurer whose liabilities to pay compensation may devolve upon the fund. The board shall adopt rules to prevent dissemination of the information.

History: En. Sec. 6, Ch. 244, L. 1989.

39-71-2611. Duties, liabilities, and rights of fund.

- (1) The fund shall assume the workers' compensation obligations of a private self-insurer that come due after the private self-insurer has been determined to be an insolvent self-insurer.
- (2) The fund is not liable for the payment of any penalties or interest assessed for any act or omission of a person acting on behalf of the fund.
- (3) The fund is a party in interest in all proceedings involving workers' compensation claims against an insolvent private self-insurer whose workers' compensation obligations have been paid or assumed by the fund. The fund has the same rights and defenses as the insolvent private self-insurer, including but not limited to all of the following:
 - (a) to appear and deny, defend, and appeal a claim; and
 - (b) to receive notice of, investigate, adjust, compromise, settle, and pay a claim.
- (4) The fund shall concur in department decisions relating to allowing an employer to self-insure.

History: En. Sec. 7, Ch. 244, L. 1989; amd. Sec. 6, Ch. 163, L. 1991.

39-71-2612 through 39-71-2614 reserved.**39-71-2615. Initial fee – assessment.**

- (1) A private self-insurer shall pay to the fund an initial fee of \$1,000 upon becoming a member. Thereafter, a member's financial obligation to the fund must be established by assessment as provided in subsection (2).
- (2) (a) The fund may assess each of its members a pro rata share of the amount necessary to carry out the purposes of this part. However, the total annual assessments in any calendar year may not exceed 5% of the following benefits paid by each member during the preceding calendar year:
 - (i) compensation benefits; and
 - (ii) except for medical benefits in excess of \$200,000 for each occurrence that are exempt from assessment, the total medical benefits paid for medical treatment rendered to an injured worker, including hospital treatment and prescription drugs.
- (b) Funds obtained by assessment pursuant to this subsection may be used only for the purposes of this part.
- (3) A former member is liable for assessments made by the fund in any year following the date the member's status as a private self-insurer is terminated, whether the termination is by action of the private self-insurer or the department. A former member's assessment must be based on the benefits paid during the last calendar year immediately preceding the annual assessment.
- (4) The board shall certify to the department the collection and receipt of assessments, noting any delinquencies. The board shall take appropriate action to collect a delinquent assessment.

History: En. Sec. 8, Ch. 244, L. 1989; amd. Sec. 15, Ch. 555, L. 1993; amd. Sec. 1, Ch. 68, L. 2001; amd. Sec. 1, Ch. 226, L. 2003.

39-71-2616. Reimbursement for obligations paid and assumed.

- (1) The fund shall obtain reimbursement from an insolvent private self-insurer up to the amount of the insolvent private self-insurer's workers' compensation obligations paid and assumed by the fund. This includes reimbursement for reasonable administrative and legal costs.
- (2) This right, as subrogee of any claimants in any action to collect against the private self-insurer as the debtor, includes but is not limited to a right to a claim for wages and other necessities of life advanced to any claimants.
- (3) The fund may obtain from the security deposit or proceeds of other workers' compensation insurance of an insolvent private self-insurer the amount of the insolvent private self-insurer's compensation obligations, including reasonable administrative and legal costs, paid or assumed by the fund.
- (4) The fund may bring an action against any other insurance carrier and person to recover compensation paid and liability assumed by the fund, including but not limited to:
 - (a) any excess insurance carrier of the private self-insurer; and
 - (b) any person whose negligence or breach of any obligation contributed to any underestimation of the private self-insurer's total accrual of liability as reported to the department.

History: En. Sec. 9, Ch. 244, L. 1989.

39-71-2617. Tax exemption.

The fund is exempt from payment of all fees and taxes levied by this state or by any city, county, or other political subdivision, except taxes levied on real or personal property.

History: En. Sec. 10, Ch. 244, L. 1989.

39-71-2618. Immunity.

There is no liability on the part of, and no claim for relief of any nature may arise against, any member, the fund, its agents or employees, or the board for any action taken by them in the performance of their powers and duties under this part.

History: En. Sec. 11, Ch. 244, L. 1989.

39-71-2619. Notification of insolvency by private self-insurer.

As a condition of the privilege to self-insure pursuant to Title 39, chapter 71, part 21, a private self-insurer shall agree in writing to notify the department and the fund within 24 hours of the filing of any bankruptcy or determination of insolvency relating to that private self-insurer.

History: En. Sec. 12, Ch. 244, L. 1989.

39-71-2620. Audit requirement.

Biannually or within 6 months after the close of any fiscal year in which the fund has assumed the workers' compensation obligations of an insolvent private self-insurer, the fund shall:

- (1) contract for an independent certified audit of the financial activities of the fund; and

- (2) report on the financial status of the fund to the department and to fund members.

History: En. Sec. 13, Ch. 244, L. 1989.

Parts 27 and 28 Reserved

Part 29

Workers' Compensation Judge

Part Cross-References

Definitions, 39-71-116.

39-71-2901. Location of office – court powers – withdrawal – substitution - vacancy.

- (1) The principal office of the workers' compensation judge must be in the city of Helena.
- (2) The workers' compensation court has power to:
 - (a) preserve and enforce order in its immediate presence;
 - (b) provide for the orderly conduct of proceedings before it and its officers;
 - (c) compel obedience to its judgments, orders, and process in the same manner and by the same procedures as in civil actions in district court;
 - (d) compel the attendance of persons to testify; and
 - (e) punish for contempt in the same manner and by the same procedures as in district court.
- (3) The workers' compensation judge shall withdraw from all or part of any matter if the judge believes the circumstances make disqualification appropriate. In the case of a withdrawal, the workers' compensation judge shall designate and contract for a substitute workers' compensation judge to preside over the proceeding from the list provided for in subsection (7).
- (4) If the office of the workers' compensation judge becomes vacant and before the vacancy is permanently filled pursuant to Title 3, chapter 1, part 10, the chief justice of the Montana supreme court shall appoint a substitute judge within 30 days of receipt of the notice of vacancy. The chief justice shall select a substitute judge from the list provided for in subsection (7) or from the pool of retired state district court judges. The chief justice may appoint a substitute judge for a part of the vacancy or for the entire duration of the vacancy, and more than one substitute judge may be appointed to fill a vacancy.
- (5) If a temporary vacancy occurs because the workers' compensation judge is suffering from a disability that temporarily precludes the judge from carrying out the duties of office for more than 60 days, a substitute judge must be appointed from the substitute judge list identified in subsection (7) by the current judge, if able, or by the chief justice of the supreme court. The substitute judge may not serve more than 90 days after appointment under this subsection. This subsection applies only if the workers' compensation judge is temporarily unable to carry out the duties of office due to a disability, and proceedings to permanently replace the judge under Title 3, chapter 1, part 10, may not be instituted.
- (6) A substitute judge must be compensated at the same hourly rate charged by the department of justice agency legal services bureau for the provision of legal

services to state agencies. A substitute judge must be reimbursed for travel expenses as provided for in 2-18-501 through 2-18-503. When a substitute judge has accepted jurisdiction, the clerk of the workers' compensation court shall mail a copy of the assumption of jurisdiction to each attorney or party of record. The certificate of service must be attached to the assumption of jurisdiction form in the court file.

- (7) The workers' compensation judge shall maintain a list of persons who are interested in serving as a substitute workers' compensation judge in the event of a recusal by the judge or a vacancy and who prior to being put on the list of potential substitutes have been admitted to the practice of law in Montana for at least 5 years, currently reside in Montana, and have resided in the state for 2 years.

History: En. 92-850 by Sec. 4, Ch. 537, L. 1975; R.C.M. 1947, 92-850; amd. Sec. 58, Ch. 464, L. 1987; amd. Sec. 1, Ch. 20, L. 2009; amd. Sec. 1, Ch. 39, L. 2015.

Cross-References

Rules describing agency organization and procedures, 2-4-201.

39-71-2902. Operating expenses.

The workers' compensation judge may employ such employees as may be required to carry out the duties under this part. All expenditures of the workers' compensation judge, including but not limited to salaries, traveling expenses, office rent, office equipment, and supplies, shall be paid out of the workers' compensation administration fund.

History: En. 92-851 by Sec. 5, Ch. 537, L. 1975; R.C.M. 1947, 92-851.

39-71-2903. Administrative procedure act and rules of evidence applicable.

All proceedings and hearings before the workers' compensation judge shall be in accordance with the appropriate provisions of the Montana Administrative Procedure Act. The workers' compensation judge is bound by common law and statutory rules of evidence.

History: En. 92-852 by Sec. 6, Ch. 537, L. 1975; R.C.M. 1947, 92-852(1); amd. Sec. 59, Ch. 464, L. 1987.

Cross-References

Montana Administrative Procedure Act, Title 2, ch. 4.

39-71-2904. Direct appeal to supreme court.

Notwithstanding 2-4-701 through 2-4-704, an appeal from a final decision of the workers' compensation judge shall be filed directly with the supreme court of Montana in the manner provided by law for appeals from the district court in civil cases.

History: En. 92-852 by Sec. 6, Ch. 537, L. 1975; R.C.M. 1947, 92-852(2).

39-71-2905. Petition to workers' compensation judge – time limit on filing.

- (1) If a claimant, an insurer, an employer alleged to be an uninsured employer, or the uninsured employers' fund has a dispute concerning any benefits under this chapter, it may petition the workers' compensation judge for a determination of the dispute after satisfying dispute resolution requirements otherwise provided in this chapter. In addition, the district court that has jurisdiction over a pending action under 39-71-515 may request the workers' compensation judge to determine the amount of recoverable damages due to the employee. The judge, after a hearing, shall make a determination of the dispute in accordance with the law as set forth in this chapter. If the dispute relates to benefits due to a claimant under this chapter, the judge shall fix and determine any benefits to be paid and specify the manner of payment. After parties have satisfied dispute resolution requirements provided elsewhere in this chapter, the workers' compensation judge has exclusive jurisdiction to make determinations concerning disputes under this chapter, except as provided in 39-71-317 and 39-71-516. The penalties and assessments allowed against an insurer under this chapter are the exclusive penalties and assessments that can be assessed by the workers' compensation judge against an insurer for disputes arising under this chapter.
- (2) A petition for a hearing before the workers' compensation judge must be filed within 2 years after benefits are denied.

History: En. 92-848 by Sec. 2, Ch. 537, L. 1975; R.C.M. 1947, 92-848(1); amd. Sec. 4, Ch. 63, L. 1979; amd. Sec. 11, Ch. 601, L. 1985; amd. Sec. 60, Ch. 464, L. 1987; amd. Sec. 21, Ch. 516, L. 1995; amd. Sec. 29, Ch. 276, L. 1997; amd. Sec. 24, Ch. 112, L. 2009.

39-71-2906. Repealed.

Sec. 68, Ch. 464, L. 1987.

History: En. 92-848 by Sec. 2, Ch. 537, L. 1975; R.C.M. 1947, 92-848(2).

39-71-2907. Increase in award for unreasonable delay or refusal to pay.

- (1) The workers' compensation judge may increase by 20% the full amount of benefits due a claimant during the period of delay or refusal to pay, when:
 - (a) the insurer agrees to pay benefits but unreasonably delays or refuses to make the agreed-upon payments to the claimant; or
 - (b) prior or subsequent to the issuance of an order by the workers' compensation judge granting a claimant benefits, the insurer unreasonably delays or refuses to make the payments.
- (2) The question of unreasonable delay or refusal shall be determined by the workers' compensation judge, and such a finding constitutes good cause to rescind, alter, or amend any order, decision, or award previously made in the cause for the purpose of making the increase provided herein.
- (3) A finding of unreasonableness under this section does not constitute a finding that the insurer acted in bad faith or violated the unfair trade practices provisions of Title 33, chapter 18.

History: En. 92-849 by Sec. 3, Ch. 537, L. 1975; R.C.M. 1947, 92-849; amd. Sec. 5, Ch. 63, L. 1979; amd. Sec. 61, Ch. 464, L. 1987; amd. Sec. 1, Ch. 174, L. 1991.

39-71-2908. Repealed.

Sec. 68, Ch. 464, L. 1987.

History: En. 92-848 by Sec. 2, Ch. 537, L. 1975; R.C.M. 1947, 92-848(3).

39-71-2909. Authority to review, diminish, or increase awards.

The judge may, upon the petition of a claimant or an insurer that the disability of the claimant has changed or that the claimant received benefits through fraud or deception, review, diminish, or increase, in accordance with the law on benefits as set forth in chapter 71 of this title, any benefits previously awarded by the judge. An insurer's petition alleging that the claimant received benefits through fraud or deception must be filed within 2 years after the insurer discovers the fraud or deception.

History: En. 92-848 by Sec. 2, Ch. 537, L. 1975; R.C.M. 1947, 92-848(4); amd. Sec. 6, Ch. 63, L. 1979; amd. Sec. 62, Ch. 464, L. 1987; amd. Sec. 2, Ch. 235, L. 1995.

39-71-2910. Stay pending posttrial motions and appeal.

- (1) Upon the filing of a judgment or order of the workers' compensation judge, a party may apply to the workers' compensation judge, upon notice or ex parte, for a stay of execution of the judgment or order. The stay may be for a period of time and be under conditions that the judge considers proper. A stay of execution under this subsection may not extend for more than 30 days following the judge's disposition of posttrial motions.
- (2) The appellant may request of the workers' compensation judge or the supreme court, upon service of a notice of appeal, a stay of execution of the judgment or order pending resolution of the appeal. The appellant may request a stay by presenting a supersedeas bond to the workers' compensation judge and obtaining the approval of the bond. The bond must have two sufficient sureties or a corporate surety as authorized by law. A court granting a stay may waive the bond requirement. The procedure for requesting a stay and posting a supersedeas bond must be the same as the procedure in Rule 22, Montana Rules of Appellate Procedure.

History: En. Sec. 1, Ch. 74, L. 1989; amd. Sec. 1551, Ch. 56, L. 2009.

39-71-2911. Stay pending determination by district court.

Upon a motion and filing of an affidavit by either party and after a hearing, the workers' compensation judge may grant a stay of proceedings in the workers' compensation court if a criminal action involving workers' compensation insurance fraud by a claimant has been filed in district court.

History: En. Sec. 1, Ch. 243, L. 1995.

39-71-2912 and 39-71-2913 reserved.

39-71-2914. Signing of petitions, pleadings, motions, and other papers – requirements – sanctions.

- (1) Every petition, pleading, motion, or other paper of a party appearing before the workers' compensation court and represented by an attorney must be signed by at least one attorney of record in the attorney's individual name. The signer's address also must be stated.
- (2) A party who is not represented by an attorney shall sign the party's petition, pleading, motion, or other paper and state the party's address.
- (3) The signature of an attorney or party constitutes a certificate by the attorney or party that:
 - (a) the attorney or party has read the petition, pleading, motion, or other paper;
 - (b) to the best of the attorney's or party's knowledge, information, and belief formed after reasonable inquiry, it is well grounded in fact;
 - (c) it is warranted by existing law or by a good faith argument for the extension, modification, or reversal of existing law; and
 - (d) it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.
- (4) If a petition, pleading, motion, or other paper is signed in violation of this section, the court, upon motion or upon its own initiative, shall impose an appropriate sanction upon the person who signed it, a represented party, or both. The sanction may include an order to pay to the other party or parties the amount of the reasonable expense incurred because of the filing of the petition, pleading, motion, or other paper, including reasonable attorney fees.

History: En. Sec. 63, Ch. 464, L. 1987; amd. Sec. 1552, Ch. 56, L. 2009.

Parts 30 Through 39 Reserved

Part 40

Catastrophically Injured Worker's Travel Assistance Act

39-71-4001. Short title.

This part may be cited as the "Catastrophically Injured Worker's Travel Assistance Act".

History: En. Sec. 1, Ch. 345, L. 2005.

39-71-4002. Purpose and intent.

The purpose of this part is to assist catastrophically injured workers and their families by providing that funds raised by community service organizations may be matched with funds from insurers to help the workers and their families defray the costs of travel and lodging expenses incurred by family members or, if a family member is unavailable, by a person designated by the injured worker or approved by the insurer when traveling to be with the worker.

History: En. Sec. 2, Ch. 345, L. 2005.

39-71-4003. Definitions.

As used in this part, the following definitions apply:

- (1) "Catastrophically injured" means a physical injury or occupational disease incurred by a worker to the extent that treatment for the injury or occupational disease:
 - (a) requires inpatient care for at least 21 consecutive days in a hospital or rehabilitation center that is in Montana but that is more than 100 miles from the worker's place of residence; or
 - (b) requires inpatient care for at least 21 consecutive days in a hospital or rehabilitation center that is located outside Montana; and
 - (c) occurs within 90 days of the accident or events causing the worker to be catastrophically injured.
- (2) "Community service organization" means a community-based, nonprofit, tax-exempt organization under section 501(c)(3) of the Internal Revenue Code that raises money to assist the catastrophically injured worker.
- (3) "Worker" has the meaning as provided in 39-71-118.

History: En. Sec. 3, Ch. 345, L. 2005.

39-71-4004. Catastrophically injured worker's travel assistance program – rulemaking authority.

- (1) Pursuant to subsection (3), the department of labor and industry shall establish criteria to certify that the funds raised by community service organizations are eligible for matching funds from an insurer.
- (2) Money raised by community service organizations to pay travel expenses for a catastrophically injured worker pursuant to this section may not be used by community service organizations to require matching funds by an insurer in an amount greater than \$2,500 for each catastrophic injury.
- (3) The department shall adopt rules to administer 39-71-704 and this section.

History: En. Sec. 4, Ch. 345, L. 2005.

TAB 2

TAB 2

Chapter 28**Workers' Compensation Dispute Mediation****Subchapter 1****Jurisdiction Procedures and Reports**

24.28.101	Jurisdiction
24.28.102	Parties, Attendance, Representation
24.28.103	Requests for Mediation
24.28.104	Time Frames for Settlement Conferences - Notices
24.28.105	Motions to Dismiss for Failure to Meet Settlement Requirements
24.28.106	Mediation Conferences
24.28.107	Role of Mediator—Unrepresented Claimant
24.28.108	Mediator's Report—Recommendation
24.28.109	Mediator's Report of Non-Cooperation (REPEALED)
24.28.110	Notice to Mediator When Dispute Settled
24.28.111	Time-Computation Under Mediation Rules
24.28.112	File Information

Chapter 28**Workers' Compensation Dispute Mediation****Subchapter 1****Jurisdiction Procedures and Reports****24.28.101 Jurisdiction**

- (1) Parties having a dispute about any issue concerning claimant's benefits under Title 39, chapters 71 and 72, MCA, must bring the dispute before a department of labor and industry mediator prior to petitioning the workers' compensation court. Except as otherwise provided in statute or rule, the practices and procedures described in these rules apply to all benefit disputes under Title 39, chapters 71 and 72, MCA.
- (2) Within five working days after the receipt of a request for mediation, the department shall determine whether it has jurisdiction over the subject of the dispute. If the department determines that it does not have jurisdiction, it shall issue an order dismissing the request, stating the reasons for the dismissal, and setting forth the proper procedure for resolving the dispute.

History: 39-71-2407, MCA; IMP, 39-71-2408, MCA; NEW, 1987 MAR p. 890, Eff. 6/26/87; AMD, 1995 MAR p. 2818, Eff. 1/1/96; AMD, 1998 MAR p. 2871, Eff. 11/1/98.

24.28.102 Parties, Attendance, Representation

- (1) Parties to a dispute are the claimant and the insurer, or alleged insurer.
- (2) A claimant may be self-represented, or represented by an unpaid representative, or an attorney licensed to practice law in Montana. An insurer may be represented by a designated representative. However, a claimant must attend mediation conferences, except if the mediator excuses the claimant for good cause.
- (3) Parties may bring witnesses to a mediation conference with the consent of the mediator.

History: 39-71-2407, MCA; IMP, 39-71-2411, MCA; NEW, 1987 MAR p. 890, Eff. 6/26/87; AMD, 1995 MAR p. 2818, Eff. 1/1/96.

24.28.103 Requests for Mediation

- (1) A party may request mediation by submitting a completed mediation request form to: Employment Relations Division, Mediation Unit, and P.O. Box 1728, Helena, MT 59624.
- (2) Mediation request forms are available from the employment relations division of the department of labor and industry at the address above or by telephoning (406) 444-6534; and from local job service offices. For assistance in completing the form, a party may telephone the employment relations division at (406) 444-6534.

History: 39-71-2407, MCA; IMP, 39-71-2411, MCA; NEW, 1987 MAR p. 890, Eff. 6/26/87; AMD, 1995 MAR p. 2818, Eff. 1/1/96.

24.28.104 Time Frames for Settlement Conferences - Notices

- (1) The mediator shall have 45 days from the date the mediation request was received by the department to hold mediation conferences. The mediator shall send notice to the parties identifying the following: issues to be mediated; information required prior to the time of the mediation conference; and the time and place of the mediation conference. The 45 day period may be extended by mutual agreement of the parties. If a party requests an in-person mediation conference, the mediator may extend the 45 day period to 60 days to set up the in-person conference. If the mediator does not hold a mediation conference within the time frames provided herein, the parties may proceed directly to workers' compensation court.

History: 39-71-2407, MCA; IMP, 39-71-2411, MCA; NEW, 1987 MAR p. 890, Eff. 6/26/87; AMD, 1995 MAR p. 2818, Eff. 1/1/96.

24.28.105 Motions to Dismiss for Failure to Meet Settlement Requirements

- (1) A party may request a mediator to dismiss a mediation request because the settlement requirements of 39-71-2401, MCA, have not been met. The request must be in writing, setting forth the party's specific objections, and filed with the mediator within ten working days after the department's mailing of a copy of the mediation request form to the opposing parties. A copy of the request for dismissal shall be mailed by the party requesting dismissal to all other parties.
- (2) Upon receipt of a request under this rule, the mediator shall attempt to communicate with the parties to ascertain whether the settlement requirements have been met. After the communication, or a reasonable attempt at communication, if the mediator determines that the settlement requirements have not been met, the mediator may issue an order dismissing the request. The order must state specifically what the requesting party must do to meet the settlement requirements. The order may be appealed to the workers' compensation court within ten working days after the date of the order.
- (3) Parties may waive the settlement requirements by mutual agreement.

History: 39-71-2407, MCA; IMP, 39-71-2411, MCA; NEW, 1987 MAR p. 890, Eff. 6/26/87; AMD, 1995 MAR p. 2818, Eff. 1/1/96.

24.28.106 Mediation Conferences

- (1) The mediator shall conduct one mediation conference and re-convene if necessary, or upon request. Conferences may be conducted by telephone conference call. If an in-person conference is requested, it must be held in Helena, Montana.

History: 39-71-2407, MCA; IMP, 39-71-2411, MCA; NEW, 1987 MAR p. 890, Eff. 6/26/87; AMD, 1995 MAR p. 818, Eff. 1/1/96.

24.28.107 Role of Mediator—Unrepresented Claimant

- (1) As set forth in 39-71-105 and 39-71-2406, MCA, it is the purpose of the mediation process to facilitate resolution of disputes as early as possible, and it is the general purpose of the Workers' Compensation Act to allow claimants who wish to proceed without an attorney to do so. When claimants are represented in mediation by legal counsel, it is assumed by the mediator

that counsel is aware of what must be done to meet settlement and mediation requirements, and how to meet those requirements. Accordingly, the mediator shall hold them to that standard in determining whether the settlement requirements have been met and whether they are cooperating with the mediation process. It is also assumed that insurer's agents, even though they may not be licensed attorneys, work in the area of workers' compensation regularly and are versed in the workers' compensation laws and procedures. However, most claimants who choose to represent themselves are not assumed to be knowledgeable about the workers' compensation system. In order to provide a process where it is reasonable for a claimant to be self-represented, the mediator's and department's role shall be to make efforts to assist unrepresented claimants in meeting information and settlement requirements. The mediator, while doing this, must also maintain neutrality regarding the issues. Nothing herein is intended to discourage claimants from seeking legal counsel if they so choose. The intent is simply to avoid a situation where legal counsel is necessary to resolve routine disputes.

History: Sec. 39-71-2407 MCA; IMP, Sec. 39-71-2411 MCA; NEW, 1987 MAR p. 890, Eff. 6/26/87; AMD, 1995 MAR p. 2818, Eff. 1/1/96.

24.28.108 Mediator's Report—Recommendation

- (1) The parties and the mediator are encouraged to attempt to resolve issues at a mediation conference. If issues are not resolved at or before a mediation conference, the mediator shall issue a report as set forth in (2).
- (2) Within 10 working days after a mediation conference, the mediator shall prepare a written report to the parties setting forth the mediator's recommended solution and the basis for the recommendation. If the mediator does not prepare a written report within 10 working days after a mediation conference, the parties may proceed directly to workers' compensation court. The mediator may also set forth alternative solutions. When parties have offered specific solutions which are not recommended by the mediator, the mediator shall explain why the solutions are not recommended.

History: Sec. 39-71-2407 MCA; IMP, Sec. 39-71-2409 and 39-71-2411 MCA; NEW, 1987 MAR p. 890, Eff. 6/26/87; AMD, 1995 MAR p. 2818, Eff. 1/1/96.

24.28.109 Mediator's Report of Non-Cooperation

This rule has been repealed.

History: Sec. 39-71-2407 MCA; IMP, Sec. 39-71-2411 MCA; NEW, 1987 MAR p. 890, Eff. 6/26/87; REP, 1995 MAR p. 2818, Eff. 1/1/96.

24.28.110 Notice to Mediator When Dispute Settled

Whenever parties settle their dispute after a request for mediation is filed and before a mediation report is issued by the mediator under ARM 24.28.108, the party requesting mediation shall advise the mediator immediately.

History: 39-71-2407, MCA; IMP, 39-71-2411, MCA; NEW, 1987 MAR p. 890, Eff. 6/26/87.

24.28.111 Time-Computation Under Mediation Rules

- (1) When reference is made to the date of an order for computing time, the date from which the time runs shall be the date appearing on the order.
- (2) When reference is made to filing with or receipt by the department or a mediator, time shall be computed from the date a document is actually received at the department's central office in Helena, Montana. However, if the department or a mediator directs a party to file documents at a different location, time shall be computed from the date a document is actually received at that location.

History: 39-71-2407, MCA; IMP, 39-71-2411, MCA; NEW, 1987 MAR p. 890, Eff. 6/26/87; AMD, 1995 MAR p. 2818, Eff. 1/1/96.

24.28.112 File Information

- (1) The petitioner shall submit with the petition a copy of all information or documentation that supports their position and that will be used at the mediation conference. Upon receipt of notice of mediation conference, the respondent shall submit to the mediator a copy of all information or documentation that supports their position and that will be used at the mediation conference. In addition, the parties are responsible for exchanging pertinent information with each other. If appropriate, the mediator may ask for additional information. The information must be sent to the mediator at least one week prior to the conference date.
- (2) The mediator, at the mediator's option and with the approval of the insurer, may review and copy the insurer's file at the insurer's place of business.

History: 39-71-2407, MCA; IMP, 39-71-2411, MCA; NEW, 1995 MAR p. 2818, Eff. 1/1/96; AMD, 1998 MAR p. 2871, Eff. 11/1/98.

Chapter 29**Workers' Compensation and Occupational Disease****Subchapter 1****Organizational Rule**

24.29.101 Division Organizational Rule (REPEALED)

Subchapter 2**Procedural Rules**

- 24.29.201 Introduction
- 24.29.202 Public Participation (REPEALED)
- 24.29.203 Adopting, Amending, and Repealing Division Rules (REPEALED)
- 24.29.204 Issuing Declaratory Rulings (REPEALED)
- 24.29.205 Issuing Orders
- 24.29.206 Administrative Review
- 24.29.207 Contested Cases
- 24.29.208 Subpoenas (REPEALED)
- 24.29.209 Representation (REPEALED)
- 24.29.210 Service (REPEALED)
- Rules 24.29.211 and 24.29.212 reserved
- 24.29.213 Procedure For Issuing Workers' Compensation Determinations
Regarding Employment Status, Including That of Independent
Contractor
- Rule 24.29.214 reserved
- 24.29.215 Time Limits
- 24.29.221 Use of Signatures When Documents Are Being Electronically
Transmitted

Subchapters 3 through 5 Reserved**Subchapter 6****Plan 1 Self-Insurance**

- 24.29.601 Definitions
- Rules 24.29.602 and 24.29.603 reserved
- 24.29.604 Montana Self-Insurers Guaranty Fund-Acceptance Required for
Private Employers or Private Groups
- Rules 24.29.605 and 24.29.606 reserved
- 24.29.607 Public Employers Other Than State Agencies
- 24.29.608 Election To Be Bound By Compensation Plan No. 1-Eligibility
- 24.29.609 Ability to Pay—Evidence Required
- 24.29.610 When Security Required
- 24.29.611 Security Deposit—Criteria
- Rules 24.29.612 through 24.29.615 reserved
- 24.29.616 Excess Insurance—When Required
- 24.29.617 Initial Election—Individual Employers

24.29.618	Initial Election—Employer Groups
Rules 24.29.619	and 24.29.620 reserved
24.29.621	New Members Of Employer Groups
24.29.622	Permission to Self-Insure
24.29.623	Renewal Required
24.29.624	Revocation, Suspension, Termination and Withdrawal of Permission
Rules 24.29.625	and 24.29.626 reserved
24.29.627	Right to Review
24.29.628	Notification of Changes in Self-Insurer Status Required
Rules 24.29.629	and 24.29.630 reserved
24.29.631	Self-Insured Employers and Groups – Transfer of Claim Liabilities

Subchapter 7

Employers Insurance Requirements

24.29.701	Introduction (REPEALED)
24.29.702	Election to be Bound by Compensation Plan No.1—Eligibility (REPEALED)
24.29.702A	Solvency and Ability to Pay (REPEALED)
24.29.702B	When Security Required (REPEALED)
24.29.702C	Surety Bond Security Deposit—Amounts Required (REPEALED)
24.29.702D	Surety Bonds—Criteria (REPEALED)
24.29.702E	Excess Insurance (REPEALED)
24.29.702F	Initial Election—Individual Employers (REPEALED)
24.29.702G	Initial Election—Groups of Employers and New Members of Existing Groups (REPEALED)
24.29.702H	Permission (REPEALED)
24.29.702I	Renewal Required (REPEALED)
24.29.702J	Renewal—Individual Employers (REPEALED)
24.29.702K	Renewal—Group Of Employers (REPEALED)
24.29.702L	Suspension and Revocation of Permission (REPEALED)
24.29.702M	Termination by Self-Insurer (REPEALED)
24.29.702N	Review Process (REPEALED)
24.29.702O	Notification of Changes (REPEALED)
24.29.703	Election to be Bound by Compensation Plan No. 2 or 3
24.29.704	Who Must be Bound
24.29.705	Corporate Officer Exemption (REPEALED)
24.29.706	Election not to be Bound—Independent Contractor (REPEALED)
24.29.706A	Application For Independent Contractor Exemption (TRANSFERRED)
24.29.706B	Renewal of Independent Contractor Exemption (TRANSFERRED)
24.29.706C	Application Fee for Independent Contractor Exemption (TRANSFERRED)
24.29.706D	Suspension or Revocation of Independent Contractor Exemption (TRANSFERRED)
24.29.706E	Guidelines for Determining Whether an Independent Contractor Exemption is Needed (TRANSFERRED)
24.29.707	Ineffective Election to be Bound, Resulting Division Action (REPEALED)

- 24.29.708 Posting Insurance Status in Workplace (REPEALED)
 24.29.709 Security Deposits for Plan Number Two Insurers – Reports
 Rule 24.29.710 reserved
 24.29.711 Status of Certain Personal Assistants for the Purpose of Workers’
 Compensation Laws
 Rule 24.29.712 reserved
 24.29.713 Evidence of Insurance Coverage
 Rules 24.29.714 through 24.29.719 reserved
 24.29.720 Payments that are not Wages—Employee Expenses
 24.29.721 Value of Employer-Furnished Housing

Subchapter 8

Rules of Practice

- 24.29.801 Accident Reporting
 24.29.802 Support Documents for Reporting (REPEALED)
 24.29.803 Compensation to be Paid (REPEALED)
 24.29.804 Examiners and Third-Party Administrators in Montana
 24.29.805 Continuity of Compensation Payment (REPEALED)
 24.29.806 Medical Evaluations (REPEALED)
 24.29.807 Protection of Persons (REPEALED)
 24.29.808 General Rules (REPEALED)
 Rules 24.29.809 and 24.29.810 reserved
 24.29.811 Purpose of Rules
 Rule 24.29.812 reserved
 24.29.813 Definitions
 Rules 24.29.814 through 24.29.816 reserved
 24.29.817 Applicability of Rules
 Rules 24.29.818 through 24.29.820 reserved
 24.29.821 Certification of Claims Examiners
 Rules 24.29.822 and 24.29.823 reserved
 24.29.824 Examination for Claims Examiners
 Rules 24.29.825 and 24.29.826 reserved
 24.29.827 Waiver of Examination
 Rules 24.29.828 through 24.29.830 reserved
 24.29.831 Lapse in Certification
 Rules 24.29.832 and 24.29.833 reserved
 24.29.834 Continuing Education Requirements for Renewal
 Rules 24.29.835 and 24.29.836 reserved
 24.29.837 Review and Approval of Continuing Education Courses by
 Department
 Rules 24.29.838 through 24.29.840 reserved
 24.29.841 Course Submissions
 Rules 24.29.842 and 24.29.843 reserved
 24.29.844 Qualifications for Instructors
 Rules 24.29.845 and 24.29.846 reserved
 24.29.847 Fees for Certification, Examination, Renewal, and Course
 Submission
 Rules 24.29.848 through 24.29.850 reserved
 24.29.851 Maintenance of Certification Documentation

Subchapter 9**Administrative Assessment**

- 24.29.901 Definitions (REPEALED)
- 24.29.902 Definitions
- Rule 24.29.903 reserved
- 24.29.904 Administrative Assessment Methodology in General (REPEALED)
- 24.29.905 Administrative Assessment Methodology in General (REPEALED)
- Rule 24.29.906 reserved
- 24.29.907 Billing and Payment of the Administration Fund Assessment
- 24.29.908 Penalties, Administrative Fines and Interest
- 24.29.909 Recalculation of Administrative Assessments Made in Fiscal Years 1992 - 1995 (REPEALED)
- Rules 24.29.910 and 24.29.911 reserved
- 24.29.912 Administrative Assessment Methodology for Fiscal Year 1992 (REPEALED)
- 24.29.913 Administrative Assessment Methodology for Fiscal Year 1993 (REPEALED)
- 24.29.914 Administrative Assessment Methodology for Fiscal Year 1994 (REPEALED)
- 24.29.915 Administrative Assessment Methodology for Fiscal Year 1995 (REPEALED)
- 24.29.916 Administrative Assessment Methodology for Fiscal Year 1996 (REPEALED)
- 24.29.917 Administrative Assessment Methodology for Fiscal Year 1997 (REPEALED)
- 24.29.918 Assessment Methodology for Fiscal Years 1998 and 1999 (REPEALED)
- Rules 24.29.919 and 24.29.920 reserved
- 24.29.921 Recalculation of Administration Fund Assessments Made in Fiscal Years 1992 - 1995 (REPEALED)
- 24.29.922 Administration Fund Assessment Methodology for Fiscal Year 1992 (REPEALED)
- 24.29.923 Administration Fund Assessment Methodology for Fiscal Year 1993 (REPEALED)
- 24.29.924 Administration Fund Assessment Methodology for Fiscal Year 1994 (REPEALED)
- 24.29.925 Administration Fund Assessment Methodology for Fiscal Year 1995 (REPEALED)
- 24.29.926 Administration Fund Assessment Methodology for Fiscal Year 1996 (REPEALED)
- 24.29.927 Administration Fund Assessment Methodology for Fiscal Year 1997 (REPEALED)
- 24.29.928 Assessment Methodology for Fiscal Years 1998 and 1999 (REPEALED)
- 24.29.929 Assessments other than the Administration Fund Assessment
- Rules 24.29.930 through 24.29.940 reserved
- 24.29.941 Assessments other than Administrative Assessment (REPEALED)
- Rules 24.29.942 through 24.29.950 reserved
- 24.29.951 Definitions (REPEALED)

- Rules 24.29.952 and 24.29.953 reserved
- 24.29.954 Calculation of Amount of Administration Fund Assessment
- 24.29.955 Billing for and Payment of the Administrative Assessment
(REPEALED)
- 24.29.956 Computation and Collection of the Administration Fund and Safety
Fund Assessment Premium Surcharge Rate for Plan No. 2 and
No. 3
- Rules 24.29.957 through 24.29.960 reserved
- 24.29.961 The Subsequent Injury Fund Assessments for Years Beginning on
or after (REPEALED)
- 24.29.962 Computation of the Subsequent Injury Fund Assessment
Surcharge
- 24.29.963 Calculating SIF Paid Previous Year Through Current Year
- Rules 24.29.964 through 24.29.965 reserved
- 24.29.966 Industrial Accident Rehabilitation Account (REPEALED)
- Rules 24.29.967 through 24.29.970 reserved
- 24.29.971 Failure of Insurer To Timely Report Paid Losses–Department
Estimate of Paid Losses–Recalculation of Assessment and
Premium Surcharge–Penalty

Subchapters 10 and 11 Reserved

Subchapter 12

Rules on Lump Sum Conversions of Benefits

- 24.29.1201 Introduction
- 24.29.1202 Documentation Requirements
- 24.29.1203 Methods the Department will apply to Evaluate Information
Provided
- 24.29.1204 Further Studies may be Required (REPEALED)

Subchapter 13 Reserved

Subchapter 14

General Medical Rules and Facility Service Rules

- 24.29.1401 Initial Liability
- 24.29.1401A Definitions
- 24.29.1402 Payment of Medical Claims
- 24.29.1403 Selection of Physician (REPEALED)
- 24.29.1404 Disputed Medical Claims
- 24.29.1405 Physicians' Reports (REPEALED)
- 24.29.1406 Facility Bills
- 24.29.1407 Prosthetic Appliances
- 24.29.1408 Suspension Allowed
- 24.29.1409 Travel Expense Reimbursement

- Rules 24.29.1410 through 24.29.1414 reserved
- 24.29.1415 Impairment Rating Dispute Procedure
- 24.29.1416 Applicability of Date Of Injury, Date of Service
- Rules 24.29.1417 through 24.29.1419 reserved
- 24.29.1420 Relative Value Fee Schedule (REPEALED)
- Rules 24.29.1421 through 24.29.1424 reserved
- 24.29.1425 Rates for Hospital Services Provided Prior to July 1, 1997 (REPEALED)
- 24.29.1426 Hospital Service Rules for Services Provided from April 1, 1998, through December 31, 2007 (REPEALED)
- 24.29.1427 Hospital Service Rules for Services Provided from January 1, 2008, Through November 30, 2008 (REPEALED)
- 24.29.1428 Hospital Rates for July 1, 1997, through June 30, 1998 (REPEALED)
- Rule 24.29.1429 reserved
- 24.29.1430 Hospital Rates from July 1, 1998, through June 30, 2001 (REPEALED)
- 24.29.1431 Hospital Rates from July 1, 2001, through November 30, 2008 (REPEALED)
- 24.29.1432 Facility Service Rules and Rates for Services Provided from December 1, 2008 through June 30, 2013
- 24.29.1433 Facility Service Rules and Rates for Services Provided on or after July 1, 2013

Subchapter 15

Nonfacility Service Rules and Utilization Rules

- 24.29.1501 Purpose
- Rules 24.29.1502 and 24.29.1503 reserved
- 24.29.1504 Definitions (TRANSFERRED)
- Rules 24.29.1505 through 24.29.1509 reserved
- 24.29.1510 Selection of Physician for Claims Arising From July 1, 1993 through June 30, 2013
- 24.29.1511 Selection of Physician for Claims Arising Before July 1, 1993 (REPEALED)
- 24.29.1512 Selection of Physician for Claims Arising on or After July 1, 2013
- 24.29.1513 Documentation Requirements
- Rule 24.29.1514 reserved
- 24.29.1515 Functional Improvement Status
- Rule 24.29.1516 reserved
- 24.29.1517 Prior Authorization for Certain Services
- Rule 24.29.1518 reserved
- 24.29.1519 Second Opinions for Services Provided on or Before June 30, 2011 (REPEALED)
- Rule 24.29.1520 reserved
- 24.29.1521 Medical Equipment and Supplies for Dates of Service Before January 1, 2008 (REPEALED)
- 24.29.1522 Medical Equipment and Supplies Provided by a Nonfacility for Dates of Service on or After January 1, 2008 Through June 30, 2013

- 24.29.1523 Medical Equipment and Supplies for Dates of Service on or after July 1, 2013
 Rules 24.29.1524 and 24.29.1525 reserved
- 24.29.1526 Disallowed Procedures
 Rules 24.29.1527 and 24.29.1528 reserved
- 24.29.1529 Prescription Drugs Fee Schedule
 Rule 24.29.1530 reserved
- 24.29.1531 Use of Fee Schedules for Services Provided from April 1, 1993 through June 30, 2002 (REPEALED)
- 24.29.1532 Use of Fee Schedules for Services Provided from July 1, 2002, through December 31, 2007 (REPEALED)
- 24.29.1533 Nonfacility Fee Schedule for Services Provided From January 1, 2008 through June 30, 2013
- 24.29.1534 Professional Fee Schedule for Services Provided on or After July 1, 2013
 Rule 24.29.1535 reserved
- 24.29.1536 Conversion Factors–Methodology for Services Provided from April 1, 1993, Through December 31, 2007 (REPEALED)
- 24.29.1537 Special Monitoring and Adjustment of Physical Medicine Fees During the Period July 1, 2002 through December 31, 2003 (REPEALED)
- 24.29.1538 Conversion Factors for Services Provided on or After January 1, 2008
 Rules 24.29.1539 and 24.29.1540 reserved
- 24.29.1541 Acupuncture Fees for Services Provided from April 1, 1993, through December 31, 2007 (REPEALED)
 Rules 24.29.1542 through 24.29.1550 reserved
- 24.29.1551 Dental Specialty Area Fees for Services Provided from April 1, 1993, through December 31, 2007 (REPEALED)
 Rules 24.29.1552 through 24.29.1560 reserved
- 24.29.1561 Physician Fees – Medicine for Services Provided from April 1, 1993, through December 31, 2007 (REPEALED)
 Rules 24.29.1562 through 24.29.1565 reserved
- 24.29.1566 Physician Fees – Anesthesia Specialty Area for Services Provided from April 1, 1993, through December 31, 2007 (REPEALED)
 Rules 24.29.1567 through 24.29.1570 reserved
- 24.29.1571 Chiropractic Fees for Services Provided from April 1, 1993 through June 30, 2002 (REPEALED)
- 24.29.1572 Chiropractic Fees for Services Provided from July 1, 2002, through December 31, 2007 (REPEALED)
- 24.29.1573 Prior Authorization and Billing Limitations for Chiropractic Services Provided from July 1, 2002, through December 31, 2007 (REPEALED)
- 24.29.1574 Chiropractic Fee Schedule for Services Provided from January 1, 2008, through June 30, 2011 (REPEALED)
- 24.29.1575 Chiropractic–Prior Authorization and Billing Limitations for Services Provided from January 1, 2008, through June 30, 2011 (REPEALED)
 Rules 24.29.1576 through 24.29.1580 reserved

- 24.29.1581..... Provider Fees–Occupational and Physical Therapy Specialty Area for Services Provided from April 1, 1993 through June 30, 2002 (REPEALED)
- 24.29.1582..... Provider Fees–Occupational and Physical Therapy Specialty Area for Services Provided from July 1, 2002 through September 30, 2003 (REPEALED)
- 24.29.1583..... Prior Authorization and Billing Limitations for Services Provided by Occupational Therapists and Physical Therapists From July 1, 2002, through December 31, 2007 (REPEALED)
- 24.29.1584..... Provider Fees–Occupational and Physical Therapy Specialty Area for Services Provided from October 1, 2003, through December 31, 2007 (REPEALED)
- 24.29.1585..... Occupational and Physical Therapy Fee Schedule for Services Provided from January 1, 2008, through June 30, 2011 (REPEALED)
- 24.29.1586..... Occupational and Physical Therapists–Prior Authorization and Billing Limitations for Services Provided from January 1, 2008, through June 30, 2011 (REPEALED)
- Rules 24.29.1587 through 24.29.1590 reserved
- 24.29.1591..... Utilization and Treatment Guidelines (TRANSFERRED)
- Rule 24.29.1592 reserved
- 24.29.1593..... Prior Authorization (TRANSFERRED)
- Rule 24.29.1594 reserved
- 24.29.1595..... Independent Medical Review Process (TRANSFERRED)
- 24.29.1596..... Applicability of Utilization and Treatment Rules (TRANSFERRED)
- Rules 24.29.1597 and 24.29.1598 reserved
- 24.29.1599..... Applicability of Utilization and Treatment Guidelines for Managed Care Organizations or Preferred Provider Organizations (TRANSFERRED)

Subchapter 16**Utilization and Treatment Guidelines**

- 24.29.1601..... Definitions
- 24.29.1604..... Applicability of Utilization and Treatment Rules
- 24.29.1607..... Applicability of Formulary Rules to Out-Patient Services
- 24.29.1609..... Applicability of Utilization and Treatment Guidelines for Managed Care Organizations or Preferred Provider Organizations
- 24.29.1611..... Utilization and Treatment Guidelines
- 24.29.1616..... Incorporation by Reference And Updates to the Formulary
- 24.29.1621..... Prior Authorization
- 24.29.1624..... Integration of Formulary With Montana Utilization and Treatment Guidelines – When Prior Authorization Is Required
- 24.29.1631..... Special Provisions for Transition of Legacy Claims – When Applicable
- 24.29.1641..... Independent Medical Review Process

- 24.29.1645..... Expedited Case Review for Prescription Medications by DLI
Medical Director
- 24.29.1648..... Dispute Resolution for Formulary

Subchapter 17

Rehabilitation

- 24.29.1701..... Rehabilitation Provider Designation
- 24.29.1702..... Rehabilitation Panels for Claims between July 1, 1987 and June
30, 1991 (REPEALED)
- Rules 24.29.1703 and 24.29.1704 reserved
- 24.29.1705..... Local Job Pool Area Definition
- Rules 24.29.1706 through 24.29.1709 reserved
- 24.29.1710..... Auxiliary Rehabilitation Benefits
- Rules 24.29.1711 through 24.29.1720 reserved
- 24.29.1721..... Payment of Rehabilitation Expenses from the Industrial Accident
Rehabilitation Account for Claims Arising before July 1, 1991
(REPEALED)
- 24.29.1722..... Payment Of Rehabilitation Expenses from the Industrial Accident
Rehabilitation Account for Claims Arising on or After July 1, 1991
and before July 1, 1997 (REPEALED)
- Rules 24.29.1723 and 24.29.1724 reserved
- 24.29.1725..... Information to be Included in the Rehabilitation Plan
- Rule 24.29.1726 reserved
- 24.29.1727..... Department's Notice of Authorization or Denial of Use of Trust
Funds (REPEALED)
- Rules 24.29.1728 through 24.29.1730 reserved
- 24.29.1731..... Allowable Rehabilitation Expenses (REPEALED)
- Rule 24.29.1732 reserved
- 24.29.1733..... Disallowed Rehabilitation Expenses (REPEALED)
- Rule 24.29.1734 reserved
- 24.29.1735..... Documentation Required (REPEALED)
- Rule 24.29.1736 reserved
- 24.29.1737..... Insurer Responsibility to Provide Information to the Department
(REPEALED)
- Rules 24.29.1738 through 24.29.1740 reserved
- 24.29.1741..... Payment of Rehabilitation Expenses for Claims Arising on or after
July 1, 1997
- Rules 24.29.1742 through 24.29.1760 reserved
- 24.29.1761..... Disputes over Rehabilitation Expenses

Subchapter 18

Stay at Work/Return to Work

- 24.29.1801..... Definitions
- Rule 24.29.1802 reserved
- 24.29.1803..... Applicability
- Rules 24.29.1804 through 24.29.1806 reserved
- 24.29.1807..... Responsibilities of the Insurer
- Rules 24.29.1808 through 24.29.1810 reserved

- 24.29.1811..... Duties of the Department
 Rules 24.29.1812 through 24.29.1814 reserved
 24.29.1815..... Payment Schedule for Department-Provided SAW/RTW Assistance
 Rules 24.29.1816 through 24.29.1820 reserved
 24.29.1821..... Vocational Rehabilitation Counselor for Department-Provided
 SAW/RTW Assistance

Subchapter 19 Reserved**Subchapter 20****Chiropractic Service Rules**

- 24.29.2001..... Treatment and Reporting (REPEALED)
 24.29.2002..... Standards for Diagnosis for Services Provided on or before June
 30, 2011
 24.29.2003..... Workers' Compensation Does Pay for Certain Services Provided
 on or before June 30, 2011
 24.29.2004..... Workers' Compensation Does Not Pay (REPEALED)

Subchapters 21 through 22 Reserved**Subchapter 23****Managed Care Organizations**

- 24.29.2301..... Purpose
 Rule 24.29.2302 reserved
 24.29.2303..... Definitions
 Rules 24.29.2304 through 24.29.2310 reserved
 24.29.2311..... Selection of Managed Care Organization and Treating Physician
 within a Managed Care Organization
 Rules 24.29.2312 through 24.29.2320 reserved
 24.29.2321..... Preliminary Application
 Rule 24.29.2322 reserved
 24.29.2323..... Time, Place and Manner of Providing Services
 Rules 24.29.2324 and 24.29.2325 reserved
 24.29.2326..... Areas Served by the Managed Care Organization
 Rules 24.29.2327 and 24.29.2328 reserved
 24.29.2329..... Structure of Organization
 Rule 24.29.2330 reserved
 24.29.2331..... Contents of the Managed Care Plan
 Rules 24.29.2332 through 24.29.2335 reserved
 24.29.2336..... Financial Ability of Organization
 Rules 24.29.2337 and 24.29.2338 reserved
 24.29.2339..... Approval of Preliminary Application
 Rule 24.29.2340 reserved
 24.29.2341..... Final Application

- Rules 24.29.2342 through 24.29.2345 reserved
- 24.29.2346..... Original Certification
- Rules 24.29.2347 through 24.29.2350 reserved
- 24.29.2351..... Reporting Requirements
- Rules 24.29.2352 through 24.29.2355 reserved
- 24.29.2356..... Department May Inspect or Audit
- Rules 24.29.2357 through 24.29.2360 reserved
- 24.29.2361..... Application to Renew Certification, Notice of Intent not to Renew Certification
- Rules 24.29.2362 through 24.29.2365 reserved
- 24.29.2366..... Renewal Certification
- Rules 24.29.2367 through 24.29.2370 reserved
- 24.29.2371..... Application to Modify Plan
- Rule 24.29.2372 reserved
- 24.29.2373..... Addition and Termination of Members
- Rules 24.29.2374 and 24.29.2375 reserved
- 24.29.2376..... Revocation or Suspension of Certification
- Rules 24.29.2377 and 24.29.2378 reserved
- 24.29.2379..... Dispute Resolution

Subchapters 24 through 25 Reserved

Subchapter 26

Subsequent Injury Fund Rules

- 24.29.2601..... Notification When Compensation to be Continued Beyond 104 Weeks (REPEALED)
- 24.29.2602..... Introduction
- Rules 24.29.603 and 24.29.604 reserved
- 24.29.2605..... Definitions
- Rule 24.29.2606 reserved
- 24.29.2607..... Certification Process
- Rules 24.29.2608 and 24.29.2609 reserved
- 24.29.2610..... Certification Requirements
- Rules 24.29.2611 through 24.29.2613 reserved
- 24.29.2614..... Reimbursement Process

Subchapter 27

Silicosis Benefits

- 24.29.2701..... Payment of Silicosis Benefits

Subchapter 28

Uninsured Employers' Fund

- 24.29.2801..... Uninsured Employers' Fund Distribution (REPEALED)
- Rule 24.29.2802 reserved

- 24.29.2803..... Definitions (REPEALED)
 Rules 24.29.2804 through 24.29.2810 reserved
- 24.29.2811..... Monthly Payments—UEF
 Rules 24.29.2812 and 24.29.2813 reserved
- 24.29.2814..... Determining the Amount of the Administrative Costs Balance—
 UEF (REPEALED)
 Rules 24.29.2815 and 24.29.2816 reserved
- 24.29.2817..... Determining Whether There is a Positive Fund Balance—UEF
 (REPEALED)
 Rules 24.29.2818 through 24.29.2820 reserved
- 24.29.2821..... Monthly Calculations of Fund Balances and Transfers—UIEF
 (REPEALED)
 Rules 24.29.2822 and 24.29.2823 reserved
- 24.29.2824..... Determining the Amount of the Administrative Costs Balance—
 UIEF (REPEALED)
 Rules 24.29.2825 and 24.29.2826 reserved
- 24.29.2827..... Determining Whether There is a Positive Fund Balance—UIEF
 (REPEALED)
- Rule 24.29.2828 reserved
- 24.29.2829..... No Benefits Paid from the UIEF to Claimants (REPEALED)
- Rule 24.29.2830 reserved
- 24.29.2831..... Collection of Penalties and other Payments from Uninsured
 Employers
 Rules 24.29.2832 and 24.29.2833 reserved
- 24.29.2834..... Collection of Penalties and other Payments from Underinsured
 Employers (REPEALED)
 Rules 24.29.2835 and 24.29.2836 reserved
- 24.29.2837..... Calculation of Penalty on Underinsured Employers (REPEALED)
- Rule 24.29.2838 reserved
- 24.29.2839..... Compromise of Penalties Assessed
 Rule 24.29.2840 reserved
- 24.29.2841..... Claims for Benefits
 Rule 24.29.2842 reserved
- 24.29.2843..... Payment of Accrued Benefits
 Rules 24.29.2844 and 24.29.2845 reserved
- 24.29.2846..... Priority of Payment of Current Benefits
 Rules 24.29.2847 and 24.29.2848 reserved
- 24.29.2849..... Payment of Claims Where Liability is Disputed
- 24.29.2851..... Limitation on Expenditures for Medical Benefits Payable by the
 UEF—Applicability
- 24.29.2853..... Rights of Third-Party Providers after the UEF Reaches \$100,000
 Medical Benefit Expenditure Limitation—Applicability
- 24.29.2855..... Rights of Third-Party Providers upon the UEF's Proportionate
 Reduction in Benefit Payments—Applicability

Subchapters 29 through 30 Reserved

Subchapter 31

Reopening of Closed Medical Benefits

- 24.29.3101 Introduction - Applicability - Voluntary Payments
- 24.29.3103 Definitions
- 24.29.3107 Timelines and Explanation of Status Classifications of a Petition
- 24.29.3111 Petition for Reopening
- 24.29.3114 Submission of Medical Records and Additional Information - Effect of Failure to Submit Medical Records or Additional Information
- 24.29.3117 Joint Petition for Reopening
- 24.29.3121 **Review by Medical Director - Consent of Both Parties**
- 24.29.3124 Review by Medical Review Panel - Report and Recommendations
- 24.29.3127 Periodic Review of Certain Reopened Medical Benefits

Subchapter 32

Officers of Private Corporations Election

- 24.29.3201 Election not to be Bound – Corporate Officer (TRANSFERRED)

Subchapters 33 through 34 Reserved

Subchapter 35

Coverage under State Compensation Insurance Fund

- 24.29.3501 Electing Coverage under Plan Three (REPEALED)
- 24.29.3502 Election of Optional Coverages (REPEALED)
- 24.29.3503 Election of Corporate Officers not to be Bound (REPEALED)
- 24.29.3504 Policy and Declarations (REPEALED)
- 24.29.3505 Termination of Coverage (REPEALED)

Subchapter 36 Reserved

Subchapter 37

Trade Group Discounts

- 24.29.3701 Purpose (REPEALED)
- Rule 24.29.3702 reserved
- 24.29.3703 Definitions (REPEALED)
- 24.29.3704 Plan of Operation (REPEALED)
- Rules 24.29.3705 and 24.29.3706 reserved
- 24.29.3707 Organizational Structure (REPEALED)
- Rules 24.29.3708 through 24.29.3710 reserved
- 24.29.3711 Certification of a Group (REPEALED)

- Rules 24.29.3712 through 24.29.3720 reserved
 24.29.3721..... Annual Report (REPEALED)
 Rules 24.29.3722 through 24.29.3725 reserved
 24.29.3726..... Decertification of a Group (REPEALED)
 Rules 24.29.3727 through 24.29.3730 reserved
 24.29.3731..... Individual Applicants (REPEALED)
 Rules 24.29.3732 through 24.29.3740 reserved
 24.29.3741..... Disputes (REPEALED)

Subchapter 38**Attorney Fees**

- 24.29.3801..... Attorney Fee Regulation (REPEALED)
 24.29.3802..... Attorney Fee Regulation

Subchapter 39 Reserved**Subchapter 40****Plan Number Two Insurers Rules**

- 24.29.4001..... Security Deposits for Plan Number Two Insurers (REPEALED)

Subchapters 41 and 42 Reserved**Subchapter 43****Workers' Compensation Data Base System**

- 24.29.4301..... Purpose
 Rule 24.29.4302 reserved
 24.29.4303..... Definitions
 Rules 24.29.4304 through 24.29.4306 reserved
 24.29.4307..... Claim File Records Maintenance and Retention
 Rules 24.29.4308 through 24.29.4310 reserved
 24.29.4311..... Forms Used for Reporting
 Rules 24.29.4312 and 24.29.4313 reserved
 24.29.4314..... Electronic Reporting
 24.29.4315..... Insurer and Employer Reporting Requirements – Coverage and
 Cancellation Notification
 Rule 24.29.4316 reserved
 24.29.4317..... Reports Produced by the Department
 Rules 24.29.4318 through 24.29.4320 reserved
 24.29.4321..... Insurer Reporting Requirements—Injuries and Occupational
 Diseases
 24.29.4322..... Transitional Rule for Injury and Occupation Disease Information
 Reporting Requirements
 Rules 24.29.4323 through 24.29.4328 reserved

- 24.29.4329..... Verification and Additional Information
- Rules 24.29.4330 through 24.29.4331 reserved
- 24.29.4332..... Claimant Legal Fees and Costs Reporting Requirements
- Rules 24.29.4333 through 24.29.4334 reserved
- 24.29.4335..... Insurer Legal Fees Reporting Requirements
- 24.29.4336..... In-House Counsel Cost Allocation
- Rules 24.29.4337 through 24.29.4338 reserved
- 24.29.4339..... Verification of Consultant and Legal Fee Reporting

Chapter 29**Workers' Compensation and Occupational Disease****Subchapter 1****Organizational Rule****24.29.101 Division Organizational Rule**

This rule has been repealed.

History: Secs. 2-15-1702, 2-4-201 MCA; IMP, 2-4-201 MCA; Eff. 12/31/72; AMD, Eff. 1/3/76; AMD, Eff. 2/25/78; AMD, Eff. 6/30/83; AMD, Eff. 9/30/83; AMD, Eff. 3/31/84; AMD, Eff. 9/30/84; AMD, Eff. 3/31/85; AMD, Eff. 6/30/85; AMD, 1985 MAR p. 1563, Eff. 10/18/85; AMD, Eff. 12/31/87; REP, 1994 MAR p. 2351, Eff. 8/12/94.

Subchapter 2**Procedural Rules****24.29.201 Introduction**

- (1) The purpose of this subchapter is to ensure compliance with the workers' compensation and occupational disease acts administered by the department. The department strives to accomplish this purpose through education, consensus building, and dedication to customer service.
- (2) Except as noted in ARM 24.2.101, the procedural rules applicable to this subchapter are the attorney general's model procedural rules found in ARM 1.3.102 and 1.3.205 through 1.3.233. A copy of the model rules may be obtained by contacting the Attorney General's Office, Justice Center, 215 North Sanders, P.O. Box 201401, Helena, MT 59604, telephone (406) 444-2026.
- (3) Persons wanting information about these rules or workers' compensation issues may contact the Employment Relations Division, 1805 Prospect, P.O. Box 8011, Helena, Montana 59604-8011, telephone (406) 444-6530.

History: 2-4-201, 39-71-203 and 39-72-203 MCA; IMP, Title 2, chapters 3 and 4 MCA; Eff. 12/31/72; AMD, 1983 MAR p. 992, Eff. 7/29/83; AMD, 1996 MAR p. 1673, Eff. 7/1/96.

24.29.202 Public Participation

This rule has been repealed.

History: 2-15-1702 and 2-3-103 MCA; IMP, Title 2, chapter 3, part 1 MCA; NEW, 1983 MAR p. 992, Eff. 7/29/83; REP, 1996 MAR p. 1673, Eff. 7/1/96.

24.29.203 Adopting, Amending, and Repealing Division Rules

This rule has been repealed.

History: 2-15-1702 and 2-4-201 MCA; IMP, Title 2, chapter 4, part 3 MCA; NEW, 1983 MAR p. 992, Eff. 7/29/83; REP, 1996 MAR p. 1673, Eff. 7/1/96.

24.29.204 Issuing Declaratory Rulings

This rule has been repealed.

History: 2-15-1702 and 2-4-201 MCA; IMP, Title 2, chapter 4, part 5 MCA; NEW, 1983 MAR p. 992, Eff. 7/29/83; REP, 1996 MAR p. 1673, Eff. 7/1/96.

24.29.205 Issuing Orders

- (1) All orders issued by the department must be in writing and signed by a department employee.
- (2) An order may be issued without a hearing:
 - (a) as a result of action initiated by the department;
 - (b) as part of the department's response to inquiries from the public and which leads to a department investigation;
 - (c) as a result of department investigation, mandated statutorily; or
 - (d) as a result of the receipt of a petition requesting an order.
- (3) Any department order issued pursuant to this rule without a hearing may be appealed in the manner provided by law. Appeals can be made to the workers' compensation court after prior statutory remedies have been exhausted (see ARM 24.5.101).
 - (a) Before a party may request a contested case hearing on an order which is issued by the uninsured employers' fund without a hearing and establishes only the amount of penalty owed and no other issue, the party must first obtain an administrative review of that order pursuant to ARM 24.29.206.
 - (b) Department determinations rendered by the independent contractor central unit regarding employment status issues are not considered department orders for purposes of these rules. These determinations are issued pursuant to ARM Title 24, chapter 35, subchapters 2 and 3.

History: 2-4-201, 39-71-203 and 39-72-203, MCA; IMP, 2-4-201, 2-4-202, 39-71-116, 39-71-120, 39-71-415 and 39-72-203, MCA; NEW, 1983 MAR p. 992, Eff. 7/29/83; AMD, 1996 MAR p. 1673, Eff. 7/1/96; AMD, 2000 MAR p. 2701, Eff. 10/6/00.

24.29.206 Administrative Review

- (1) The department shall conduct an administrative review of a department order, requested pursuant to ARM 24.29.205(3) (a), for the purpose of resolving the case and avoiding an unnecessary hearing, upon:
 - (a) receipt of a petition for administrative review which must contain:
 - (i) the name and address of the petitioner;
 - (ii) a short, plain statement of the petitioner's contentions; and
 - (iii) a statement of the resolution the petitioner is seeking; or
 - (b) receipt of a written mutual request by all of the parties to the dispute to agree to waive the formal contested case proceedings until an administrative review is conducted in accordance with 2-4-603 , MCA.
- (2) An administrative review caused by a petition pursuant to ARM 24.29.206(1) (a) includes:
 - (a) at the discretion of the petitioner, an informal conference with the department by telephone or in person at the department office in Helena; and
 - (b) a review by the department of all relevant facts and applicable laws involved in the action by the department. Such a review is not subject to the Rules of Civil Procedure or the Rules of Evidence.
 - (c) Upon completion of the informal conference and review, the department shall issue a notice to the parties in a timely manner.
- (3) An administrative review caused by a petition and waiver of formal proceedings pursuant to ARM 24.29.206(1) (b) must be conducted as an informal proceeding in accordance with the provisions of 2-4-604 , MCA.

- (4) The department may rescind, alter or amend any action at any time during the administrative review, in which case a contested case hearing will not be held unless a party does not concur with the notice and requests the hearing be held.

History: 2-4-201, 39-71-203 and 39-72-202, MCA; IMP, 39-71-204 and 39-72-402, MCA; NEW, 1983 MAR p. 992, Eff. 7/29/83; AMD, 1996 MAR p. 1673, Eff. 7/1/96; AMD, 2000 MAR p. 2701, Eff. 10/6/00.

24.29.207 Contested Cases

- (1) Except as provided in (2), parties having a dispute involving legal rights, duties, or privileges, where the dispute is one over which the department has jurisdiction to hold a hearing, must bring the dispute to the department for a contested case hearing.
- (2) The following disputes are required to follow the administrative rules on mediation before proceeding as provided by statute to either a contested case hearing before the department or a case in the workers' compensation court:
- (a) disputes over benefits available directly to a claimant under Title 39, chapter 71, MCA;
 - (b) disputes between an insurer and a medical service provider regarding medical services provided; and
 - (c) disputes involving a determination of the independent contractor central unit regarding the issue of whether a worker is an independent contractor or an employee.
- (3) A contested case concerning employment classifications assigned to an employer by a Plan 2 or Plan 3 insurer is administered by the classification review committee in accordance with 33-16-1012, MCA.
- (4) A contested case held by the department under Title 39, chapters 71 or 73, MCA, is administered by the department in accordance with ARM 24.2.101 and 24.29.201(2).

History: 2-4-201, 39-71-203, MCA; IMP, Title 2, chapter 4, part 6, 33-16-1012, 39-71-204, 39-71-415, 39-71-704, 39-71-2401, 39-71-2905, MCA; NEW, 1983 MAR p. 992, Eff. 7/29/83; AMD, 1996 MAR p. 1673, Eff. 7/1/96; AMD, 1998 MAR p. 2872, Eff. 11/1/98; AMD, 2000 MAR p. 2701, Eff. 10/6/00; AMD, 2007 MAR p. 1670, Eff. 10/26/07.

24.29.208 Subpoenas

This rule has been repealed.

History: 2-15-1702 and 2-4-201 MCA; IMP, 2-4-104 MCA; NEW, 1983 MAR p. 992, Eff. 7/29/83; REP, 1996 MAR p. 1673, Eff. 7/1/96.

24.29.209 Representation

This rule has been repealed.

History: 2-15-1702 and 2-4-201 MCA; IMP, 2-4-106 MCA; NEW, 1983 MAR p. 992, Eff. 7/29/83; REP, 1996 MAR p. 1673, Eff. 7/1/96.

24.29.210 Service

This rule has been repealed.

History: 2-15-1702 and 2-4-201 MCA; IMP, 2-4-106 MCA; NEW, 1983 MAR p. 992, Eff. 7/29/83; REP, 1996 MAR p. 1673, Eff. 7/1/96.

Rules 24.29.211 and 24.29.212 reserved**24.29.213 Procedure For Issuing Workers' Compensation Determinations Regarding Employment Status, Including That of Independent Contractor**

- (1) Disputes regarding the employment status of an individual for workers' compensation purposes, including whether that individual is acting as an independent contractor, are regulated by the provisions contained in ARM Title 24, chapter 35, subchapters 2 and 3.
- (2) The test for determining whether an individual is acting as an independent contractor for workers' compensation purposes is that found at ARM 24.35.301 through 24.35.303.
- (3) Notwithstanding the provisions of ARM 24.29.213(1), an individual may apply to the department for an exemption from the Workers' Compensation Act pursuant to the provisions contained in ARM Title 24, chapter 35, subchapter 1.

History: 39-71-203 MCA; IMP, 39-71-120 and 39-71-415 MCA; NEW, 1996 MAR p. 1673, Eff. 7/1/96.

Rule 24.29.214 reserved**24.29.215 Time Limits**

- (1) A party seeking administrative review under ARM 24.29.206 must make a written request for administrative review to the department within 30 days of notice of adverse action.
- (2) A party seeking a contested case hearing under ARM 24.29.207 must make a written request to the department for a contested case hearing within 10 days of notice of the results of an administrative review or within 30 days of notice of adverse action.
- (3) A party seeking judicial review of a final order of the department after a contested case hearing must file a petition with the workers' compensation court within 30 days after notice of the final order.
- (4) A party is considered to have been given notice on the date a written notice is personally delivered or 3 days after a written notice is mailed. A request for administrative review, contested case hearing or judicial review must be received in the department or court within the time limits set forth above. The time limits for request for administrative review or contested case hearing may be extended by the department for good cause.

History: 39-71-203 and 39-72-203 MCA; IMP, Title 2, chapter 6 and 2-4-702 MCA; NEW, 1987 MAR p. 1212, Eff. 7/31/87; AMD, 1996 MAR p. 1673, Eff. 7/1/96.

24.29.221 Use of Signatures When Documents Are Being Electronically Transmitted

- (1) The department may accept signatures in an electronically reproduced format on claims filing forms and petitions for settlement. The document must bear an original, manual signature, but it may be transmitted to the department electronically. The document may be transmitted to the department by means of:
 - (a) a fax copy;
 - (b) a portable document format (.pdf copy), transmitted electronically;
 - (c) an electronic scan, transmitted electronically; or
 - (d) a photocopy.
- (2) The department may, in its sole discretion, accept appropriately authenticated digital signatures on documents, except as provided in (4).
- (3) An insurer may, at its discretion, require a document being submitted directly to it to bear an original manual signature.
- (4) Electronically reproduced signatures are not accepted by the department for independent contractor exemption certificate applications or waivers, in order to ensure that all such signatures are genuine and made under oath as provided by law.

History: 39-71-203, MCA, IMP, 39-71-203, 39-71-717, MCA; NEW, 2018 MAR p. 2527, Eff. 1/1/19.

Subchapters 3 through 5 Reserved**Subchapter 6****Plan 1 Self-Insurance****24.29.601 Definitions**

For the purposes of ARM Title 24, chapter 29, subchapter 6, the following definitions apply:

- (1) "Ability to pay" means sufficient financial strength and stability to:
 - (a) pay debts as they mature;
 - (b) pay benefits and all liabilities which are likely to be incurred under the Workers' Compensation Act, and the Occupational Disease Act for occupational diseases that occurred prior to July 1, 2005; and
 - (c) have sufficient cash or cash equivalents, security deposit, and excess insurance to pay benefits as they come due.
- (2) "Applicant" means an employer or employer group that makes an election to self-insure under compensation plan no. 1, regardless of whether the election is a new election or a renewal of a prior election.
- (3) "Audited financial statements" means a set of documents that includes the applicant's: income statement, balance sheet, statement of cash flow, notes to the financial statements, and a signed, dated independent certified public accountant's independent audit report.
- (4) "Benefits" means wage loss, legal, medical, rehabilitation, and all other benefits that are payable under the Workers' Compensation Act and the Occupational Disease Act (Title 39, chapter 72, MCA) for occupational diseases that occurred prior to July 1, 2005, including assessments or financial obligations.

- (5) "Claims summary" means a compilation of information relating to prior and existing claims made under the Workers' Compensation Act and the Occupational Disease Act for occupational diseases that occurred prior to July 1, 2005, by showing by policy year, the total number of medical and indemnity claims, total benefits paid, and the total amount reserved for future liabilities.
- (6) "Department" means the Montana Department of Labor and Industry.
- (7) "Employer" means an "employer" as defined in 39-71-117(1), MCA, except those state agencies that are excluded from the definition pursuant to 39-71-403, MCA.
- (8) "Employer group" means employers engaged in the same trades, businesses, occupations or professions who are members of an association which was formed for purposes other than becoming a self-insurer and has existed for a period of at least two years.
- (9) "Guaranty fund" means the Montana self-insurers guaranty fund, established pursuant to 39-71-2609, MCA.
- (10) "Occupational Disease Act" means Title 39, chapter 72, MCA, as it existed prior to July 1, 2005.
- (11) "Public employer" means a city, county, city and county, school district, irrigation district, all other districts established by law, and all public corporations and quasi-public corporations and public agencies therein.
- (12) "Reviewed financial statements" means a set of documents that includes the applicant's:
 - (a) income statement;
 - (b) balance sheet;
 - (c) statement of cash flow;
 - (d) notes to the financial statements; and
 - (e) a signed, dated statement from an independent certified public accountant expressing limited assurance that there are no material modifications that should be made to the statements, in order for them to be in conformity with generally accepted accounting principles.
- (13) "Workers' Compensation Act" means Title 39, chapter 71, MCA.

History: 39-71-203, MCA; IMP, 39-71-403, 39-71-2101 through 39-71-2108, MCA; NEW, 1996 MAR p. 1151, Eff. 5/1/96; AMD, 1996 MAR p. 2427, Eff. 5/1/96; AMD, 2000 MAR p. 2701, Eff. 10/6/00; AMD, 2012 MAR p. 1666, Eff. 8/24/12.

Rules 24.29.602 and 24.29.603 reserved

24.29.604 Montana Self-Insurers Guaranty Fund-Acceptance Required for Private Employers or Private Groups

- (1) The department's approval of requests from private applicants to self-insure is contingent upon the acceptance of membership in the guaranty fund in accordance with 39-71-2609, MCA. Public employers and groups of public employers are not eligible for membership in the guaranty fund, and the guaranty fund has no role in the approval of decisions regarding the eligibility of public employers or groups of employers to self-insure, or in the amount of security required.
- (2) The department will exchange information with the guaranty fund regarding financial statements, security deposit requirements, excess insurance

requirements and any other information pertinent to the department's review of the application.

- (3) The guaranty fund shall demonstrate its concurrence or nonoccurrence with department approval of a private plan no. 1 applicant by submitting in writing to the department, a formal acceptance or denial of the plan no. 1 applicant.
- (4) If the department does not approve an applicant to self-insure, or if the guaranty fund does not accept the applicant as a member, then the applicant may not be granted permission to self-insure under plan no. 1.

History: 39-71-203, MCA; IMP, 39-71-403, 39-71-2101, 39-71-2103 through 39-71-2106, 39-71-2608, MCA; NEW, 1996 MAR p. 1151, Eff. 5/1/96; AMD, 2012 MAR p. 1666, Eff. 8/24/12.

Rules 24.29.605 and 24.29.606 reserved

24.29.607 Public Employers Other Than State Agencies

- (1) The provisions of ARM Title 24, chapter 29, subchapter 6 apply to public employers and public employer groups, other than state agencies as defined in 39-71-403, MCA, except that the guaranty fund has no involvement in department decisions regarding public employers or public employer groups.

History: 39-71-203, MCA; IMP, 39-71-403, 39-71-2101 through 39-71-2108, 39-71-2603, 39-71-2609, MCA; NEW, 1996 MAR p. 1151, Eff. 5/1/96; AMD, 2012 MAR p. 1666, Eff. 8/24/12.

24.29.608 Election To Be Bound By Compensation Plan No. 1-Eligibility

- (1) Any employer or employer group, except state agencies specified in 39-71-403, MCA, may elect to apply to be bound as a self-insurer under plan no. 1, if in accordance with 39-71-2102, MCA, and ARM 24.29.609, the employer or employer group submits, on forms provided by the department, satisfactory proof of ability to pay the benefits which are reasonably likely to be incurred under the Workers' Compensation Act, and the Occupational Disease Act for occupational diseases that occurred before July 1, 2005, during the year or the portion of the year for which election under this plan is effective. Approval to be bound as a self-insurer under plan no. 1 will be granted by the department with the concurrence of the guaranty fund.

History: 39-71-203 MCA; IMP, 39-71-403, 39-71-2101 through 39-71-2103, MCA; NEW, 1996 MAR p. 1151, Eff. 5/1/96; AMD, 2012 MAR p. 1666, Eff. 8/24/12.

24.29.609 Ability to Pay—Evidence Required

- (1) Employers or employer groups electing to be self-insured shall demonstrate ability to pay benefits as required by the Workers' Compensation Act. The determination of the ability to pay is determined based on an analysis by the department, with the concurrence of the guaranty fund as provided by law. The employer or group shall provide the department with:
 - (a) audited financial statements;
 - (b) evidence of excess insurance, if required;
 - (c) a security deposit, if required;
 - (d) an agreement (or parental agreement) of assumption and guarantee of workers' compensation and occupational disease liabilities, on forms prescribed by the department, if required; and

- (e) other documentation as required by the department.
- (2) An employer electing to self-insure that does not have audited statements prepared as a normal business practice may, with the prior approval of the department, and the concurrence of the guaranty fund, substitute reviewed financial statements for audited financial statements if the employer furnishes an increased security deposit.
- (3) The department will analyze the information provided by the employer or employer group. The analysis will include review of excess insurance, security deposit and financial conditions, current and historical, related to their ability to pay compensation benefits.

History: 39-71-203, 39-71-2102, MCA; IMP, 39-71-403, 39-71-2102, MCA; NEW, 1996 MAR p. 1151, Eff. 5/1/96; AMD, 2018 MAR p. 2527, Eff. 1/1/19.

24.29.610 When Security Required

- (1) A security deposit must be deposited with the department by the applicant on order of the department, with the concurrence of the guaranty fund.
- (2) The security deposit requirement may be waived in whole or in part by the department, with the concurrence of the guaranty fund, for applicants who provide substantive evidence that the statutory amount of the security deposit is not needed. This evidence must reflect the applicant's ability to pay the benefits provided for in the Workers' Compensation Act, and the Occupational Disease Act for occupational diseases that occurred before July 1, 2005.
- (3) A self-insurer that does not have sufficient securities on deposit with the department, with which to pay benefits, shall be required to furnish additional security.

History: 39-71-203, MCA; IMP, 39-71-403, 39-71-2106, MCA; NEW, 1996 MAR p. 1151, Eff. 5/1/96; AMD, 2012 MAR p. 1666, Eff. 8/24/12.

24.29.611 Security Deposit—Criteria

- (1) When a security deposit is required under ARM 24.29.610, it may be a surety bond, government bond, letter of credit, or certificate of deposit acceptable to the department and the guaranty fund. When a security deposit is required, the following criteria apply:
- (a) The department shall accept a surety bond only from companies certified by the United States Department of Treasury as "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies," as published in the most recent Federal Register.
- (i) A surety bond issued by a company that has a Best's rating of "A" or better and a financial size rating of X or greater will be approved.
- (ii) A surety bond issued by a company that is rated by Best's, but does not meet the criteria specified in (1)(a)(i) will be considered for approval at the discretion of the department, with the concurrence of the guaranty fund.
- (iii) A surety bond issued by a company not rated by Best's will be considered for approval at the discretion of the department, with the concurrence of the guaranty fund.
- (b) The security deposit must name the department as obligee and must be held by the department as security for payment of all liabilities likely to

be incurred under the Workers' Compensation Act, or the Occupational Disease Act for occupational diseases that occurred before July 1, 2005. The department, with the concurrence of the guaranty fund, shall retain a security deposit until all liabilities have been paid. In the event liabilities have not been met by the self-insurer, the department shall proceed pursuant to 39-71-2108, MCA. If the self-insurer has placed multiple forms of security deposits, the department shall, at its discretion, convert the deposits needed to pay claims.

- (c) A security deposit in the form of a surety bond or letter of credit must include a statement that the grantor of the security deposit is required to give to the principal, the department and the guaranty fund, 60 days' notice of its intent to terminate future liability. The grantor of the security deposit is not relieved of liability for injuries occurring prior to the effective date of termination.
- (d) The security deposit must be issued on the forms prescribed by the department.
- (e) A security deposit in the form of a certificate of deposit must be issued by a financial institution located within the United States and must be fully insured by a federally chartered insurance corporation.
- (f) Letters of credit must be issued by a financial institution located within the United States with investment grade ratings issued by Moody's Investors Service, Standard & Poor's, or Fitch Ratings. If ratings from those rating entities are not available, the approval of the financial institution will be made at the discretion of the department, with the concurrence of the guaranty fund.

History: 39-71-203, 39-71-2106, MCA; IMP, 39-71-403, 39-71-2106, MCA; NEW, 1996 MAR p. 1151, Eff. 5/1/96; AMD, 2012 MAR p. 1666, Eff. 8/24/12.

Rules 24.29.612 through 24.29.615 reserved

24.29.616 Excess Insurance—When Required

- (1) Specific excess insurance is required of an employer or an employer group electing coverage under plan No. 1.
- (2) Aggregate excess insurance is required by the department, with the concurrence of the guaranty fund, for an employer or an employer group unless substantive evidence is provided that it is not warranted. This evidence must include diversification of risk, industry type, financial resources, self-insured retention levels, policy limits of the specific excess policy, safety program, loss experience and other appropriate factors as determined relevant by the department, with the concurrence of the guaranty fund.
- (3) The contract or policy of specific excess insurance and aggregate excess insurance must comply with the following:
 - (a) It is issued by a carrier admitted and licensed in Montana with a Best's Rating of A- or better and a financial size rating of VI or greater. Excess coverage issued by a carrier not rated by Best's will be considered for approval at the discretion of the department, with the concurrence of the guaranty fund.
 - (b) A self-insurer that anticipates that it may have material changes to the provisions or coverage of its excess insurance policy must notify the

department of that possibility at least 30 days before the effective date of the changes.

- (i) If there is a change in the provisions or coverage, the department has the authority to evaluate the changes related to the terms of the authorization to self-insure, and the department may, with the concurrence of the guaranty fund, make adjustments in the terms of that authorization accordingly.
 - (ii) In the event of a temporary extension of authority, the department may condition the renewal of self-insurance authority upon a suitable change in the amount of security required from the self-insurer.
- (c) It may be canceled or its renewal denied only upon written notice by registered or certified mail to the other party to the policy and to the department and the guaranty fund, not less than 60 days before termination by the party desiring to cancel or not renew the policy. A carrier is liable for payment of all claims that occur from the date of inception of the policy to the cancellation date of the policy.
- (d) Any contract or policy containing a commutation clause must provide that any commutation effected thereunder will not relieve the underwriter or underwriters of further liability in respect to claims and expenses unknown at the time of such commutation or in regard to any claim apparently closed at the time of initial commutation which is subsequently reopened by the department or a court. If the underwriter proposes to settle the liability as provided in the commutation clause of the policy for future compensation benefits payable for accidents or occupational diseases occurring during the term of the policy by the payment of a lump sum to the self-insurer, then not less than 60 days prior notice to such commutation must be given by the underwriter(s) or agent(s) by registered or certified mail to the department and the guaranty fund. If any commutation is effected, the department with the concurrence of the guaranty fund, shall have the right to direct such sum be placed in trust for payment of benefits of the injured employee(s) entitled to such future payments.
- (e) If a self-insurer becomes insolvent and, or, fails to make benefit payments, the excess carrier, after it has been determined the retention level has been reached on the excess insurance policy, shall make payments to the entity making payments on behalf of the insolvent self-insured in the same manner as payments would have been made by the excess carrier to the self-insured.
- (f) It must include an endorsement regarding late claim reporting penalty waiver.
- (g) All of the following will be applied toward the retention level in the excess insurance contract:
- (i) payments made by the self-insurer;
 - (ii) payments made on behalf of the self-insurer from the proceeds of any security deposit as ordered by the department; and
 - (iii) payments made on behalf of the insolvent self-insurer by the guaranty fund.
- (h) Copies of the certificates and policies of the excess insurance must be filed with the department for a determination that such certificates and policies fully comply with the provisions of the Workers' Compensation Act, the Occupational Disease Act, and ARM Title 24, chapter 29, subchapter 6.

History: 39-71-203, MCA; IMP, 39-71-403, 39-71-2101, 39-71-2103, MCA; NEW, 1996 MAR p. 1151, Eff. 5/1/96; AMD, 2012 MAR p. 1666, Eff. 8/24/12; AMD, 2018 MAR p. 2527, Eff. 1/1/19.

24.29.617 Initial Election—Individual Employers

- (1) An employer initially electing to be bound as a self-insurer shall provide the following:
 - (a) a completed application on forms provided by the department;
 - (b) audited financial statements for the last two years, or, an employer that does not have audited financial statements prepared as a normal business practice may, with the prior approval of the department and the concurrence of the guaranty fund, substitute reviewed financial statements if the employer furnishes an increased security deposit approved by the department with the concurrence of the guaranty fund;
 - (c) proof that it has been in business for a period of not less than three years; however, at the discretion of the department, with the concurrence of the guaranty fund:
 - (i) a new employer created from the reorganization of a self-insured employer may elect to self-insure even though it has not been in existence for a period of three years. Such election must be made on the effective date of creation of the new employer;
 - (ii) an employer in business less than three years may be considered if its liability is guaranteed by a parent corporation which has been in business for a period of not less than three years. The department, with the concurrence of the guaranty fund, may accept a guarantee from an employer in lieu of a parental guarantee;
 - (iii) an employer whose liability is guaranteed by a parent corporation or an employer shall provide a resolution and an agreement of assumption and guarantee of workers' compensation liabilities on forms prescribed by the department and submit two years of audited financial statements demonstrating the ability to pay compensation benefits;
 - (d) evidence that it has obtained an insurance policy of specific excess and if required, aggregate excess insurance with policy limits, nature of coverage, and retention amounts acceptable to the department, with the concurrence of the guaranty fund, as required in ARM 24.29.616;
 - (e) a claims summary of claims incurred in Montana from insurance companies who provided coverage for the preceding three years;
 - (f) evidence that its internal or contracted claims adjustment service is in compliance with ARM 24.29.804;
 - (g) evidence that it has a written safety and loss control program;
 - (h) a security deposit in an amount required by the department with the concurrence of the guaranty fund;
 - (i) certification that the self-insurance plan is not funded by a regulated or unregulated insurance company;
 - (j) evidence that internal policies and procedures are satisfactory to administer a self-insurance program; and
 - (k) evidence of permission to self-insure in other states, if applicable.

History: 39-71-203, MCA; IMP, 39-71-403, 39-71-2101 through 39-71-2103, MCA; NEW, 1996 MAR p. 1151, Eff. 5/1/96; AMD, 2012 MAR p. 1666, Eff. 8/24/12.

24.29.618 Initial Election—Employer Groups

- (1) An employer group applicant shall provide the following:
 - (a) a completed application on forms provided by the department;
 - (b) a list of individual employers making up the employer group;
 - (c) a signed copy of the by-laws adopted by the employer group, and all documents pertaining to formation, operation and contractual arrangements, including amendments and addenda;
 - (d) a copy of an agreement signed by each individual employer showing:
 - (i) each employer's agreement to accept joint and several liability for all workers' compensation and occupational disease liabilities incurred by the employer group;
 - (ii) provisions for addition of a new member to the self-insured employer group;
 - (iii) provisions for withdrawal and expulsion of a member from the self-insured employer group;
 - (iv) provision for power of attorney between the individual employers and the self-insured employer group;
 - (v) agreement to be bound by the by-laws and by the employer group's decisions; and
 - (vi) provisions for assessment for deficits;
 - (e) a copy of at least the most recent year's audited financial statements, or reviewed financial statements, if audited statements are not prepared as part of the employer's normal business practice, from each member of the employer group. The total premiums payable to the group from employers having reviewed financial statements shall not constitute more than 10 percent of the group's total premium. The department or the guaranty fund may require copies of additional years' audited or reviewed financial statements from the applicant. Upon request of the applicant, and when approved by the department and the guaranty fund, the submission of these financial statements may be to an independent certified public accountant (CPA). The department will advise the CPA of the nature and format of the information to be provided to the department. The applicant shall pay the cost of such a submission and review;
 - (f) evidence that each private employer in the group has been in business for a period of not less than three years;
 - (g) a claims summary from insurance carriers who provided coverage for claims incurred in Montana for each member of the employer group for the preceding three years;
 - (h) evidence of specific excess and if required, aggregate excess insurance with policy limits and retention amounts acceptable to the department and guaranty fund;
 - (i) a security deposit in an amount as required by the department, with the concurrence of the guaranty fund;
 - (j) evidence of its internal or contracted claims adjustment service in compliance with ARM 24.29.804;
 - (k) identification of the financial institution the employer group will use to deposit and withdraw funds for purposes of paying workers' compensation and occupational disease liabilities;

- (l) an explanation of how claims reserves will be established on each case and the method of review to assure accuracy and adequacy of the amount of the reserves;
- (m) the estimated annual premium to be paid by each member of the employer group;
- (n) a projection of annual administrative expenses;
- (o) evidence that the employer group has an effective written safety and loss control program;
- (p) evidence that internal policies and procedures are satisfactory to operate a group self-insurance program;
- (q) resolution by each member authorizing participation in the program;
- (r) resolution designating authorized signatures for participation in the program;
- (s) a feasibility study conducted by a certified actuary to include an actuarial forecasting of losses and recommended premium levels;
- (t) a business plan for the employer group;
- (u) pro forma financial statements for each of the first five years of the employer group's operation, to include any assumptions made; and
- (v) copies of any contracts including, but not limited to, contracts with an administrative service company, claims examiner, and fiscal agent.

History: 39-71-203, MCA; IMP, 39-71-403, 39-71-2101 through 39-71-2103, 39-71-2106, MCA; NEW, 1996 MAR p. 1151, Eff. 5/1/96; AMD, 2012 MAR p. 1666, Eff. 8/24/12.

Rules 24.29.619 and 24.29.620 reserved

24.29.621 New Members Of Employer Groups

- (1) An employer group which has been self-insured for at least one year may add employers with the approval of the department, and the concurrence of the guaranty fund. New members may only be added on January 1, April 1, July 1 and October 1. The employer group shall provide the following information about the new employer at least 90 days prior to the requested date of addition to the employer group:
 - (a) a completed application on forms provided by the department;
 - (b) resolution designating authorized signatures for participation in the program;
 - (c) a copy of a signed agreement showing:
 - (i) agreement to accept joint and several liability for all workers' compensation benefits and occupational disease obligations incurred by the employer group;
 - (ii) provision for power of attorney between the new applicant and the employer group; and
 - (iii) agreement to be bound by the by-laws and by the employer group's decisions;
 - (d) copies of additional years audited or reviewed financial statements may be required from each new applicant by the department or the guaranty fund. Upon request of the applicant, and when approved by the department and the guaranty fund, the submission of these financial statements may be to an independent certified public accountant. The department will advise the CPA of the nature and format of the information to be provided

to the department. The applicant shall pay the cost of such a submission and review;

- (e) the employer group may accept a new applicant who provides reviewed financial statements, provided the total premiums payable to the group from individual members having reviewed financial statements, including the new applicant, shall not exceed 25% of the employer group's total normal premium for the year the applicant joins the employer group;
- (f) a claims summary from insurance carriers who provided coverage for claims incurred in Montana during the preceding 3 years;
- (g) evidence that the applicant has been accepted for coverage by the employer group's excess insurance carrier; and
- (h) evidence that the private employer has been in business for a period of not less than 3 years; however, a new entity created from the reorganization of one or more self-insured entities may elect to self-insure individually or as a member of an employer group even though the new entity has not been in existence for a period of 3 years. Such election shall be made on the effective date of the new employer entity.

History: 39-71-203 MCA; IMP, 39-71-403, 39-71-2101 through 39-71-2103, 39-71-2106 MCA; NEW, 1996 MAR p. 1151, Eff. 5/1/96.

24.29.622 Permission to Self-Insure

- (1) When the department, with the concurrence of the guaranty fund, finds the applicant has met the requirements of these rules, the department will issue an order granting the applicant permission to self-insure for the period specified in the order or until the order is revoked, suspended, or the application is withdrawn.

History: 39-71-203 MCA; IMP, 39-71-403 and 39-71-2101 through 39-71-2103 MCA; NEW, 1996 MAR p. 1151, Eff. 5/1/96.

24.29.623 Renewal Required

- (1) An employer who has been self-insured may renew the election each ensuing year, by meeting all the requirements of these rules, except that the claims summary required in ARM 24.29.617(1)(e) must be a claims summary for the preceding year(s) for claims incurred as a self-insurer in Montana. Application for renewal must be made 60 days prior to the renewal date, or on such other date as determined by the department and the guaranty fund.
 - (a) In addition to the other information required in ARM 24.29.617, except as provided by (1) (b), the employer shall submit an independent actuarial analysis for the preceding year, completed by a qualified actuary as defined by the American Academy of Actuaries. The analysis must include, but is not limited to, a reserve analysis that includes all self-insured periods in Montana, through the most recent calendar year. Except as provided by (1) (c), the results of the analysis must be summarized at the low level, middle (or expected) level, and high level, with the corresponding confidence level expressly stated for each.
 - (b) The department may waive the requirement of (1) (a) with the concurrence of the guaranty fund.
 - (c) If the self-insurer believes a different actuarial methodology other than that of confidence level is better for its business needs, the self-insurer

in association with its independent actuary must present facts to the department that substantiate its position before it receives approval from the department, with the concurrence of the guaranty fund, to use that different methodology.

- (2) An employer group which has elected to be bound by plan no. 1 may renew the election for each ensuing year by meeting all the requirements of these rules, except ARM 24.29.618(1)(c), (1)(d), (1)(e), (1)(f), (1)(g), (1)(l), (1)(m), (1)(q), (1)(r), (1)(s), (1)(t), (1)(u), and (1)(v). Application for renewal must be made at least 60 days prior to the renewal date or on such other date as determined by the department and the guaranty fund. In addition to the information required in ARM 24.29.618, the employer group shall submit:
 - (a) a copy of the preceding years audited financial statements for the self-insured group;
 - (b) a claims summary for the preceding years for claims incurred as a self-insurer in Montana; and
 - (c) an independent actuarial analysis for the preceding year, completed by a qualified actuary, as defined by the American Academy of Actuaries. Except as provided by (2)(d), the results of the analysis must be summarized at the low level, middle (or expected) level, and high level, with the corresponding confidence level expressly stated for each. The analysis must include, but is not limited to:
 - (i) a reserve analysis that includes all self-insured periods in Montana, through the most recent calendar year; and
 - (ii) a premium/rate analysis that projects the total premium need and average rate for the upcoming year which is adequate to cover:
 - (A) all expected workers' compensation liability costs, whether past, present, or future, with respect to claims previously incurred or claims expected to be incurred in the upcoming year; and
 - (B) administrative expenses.
 - (d) If the self-insured group believes a different actuarial methodology other than that of confidence level is better for its business needs, the self-insured group in association with its independent actuary must present facts to the department that substantiate its position before it receives approval from the department, with the concurrence of the guaranty fund, to use that different methodology.
- (3) If a self-insurer does not renew its election, the employer(s) shall elect to be bound by compensation plan no. 1, plan no. 2, or plan no. 3 on the effective date of the termination of permission to self-insure.

History: 39-71-203, MCA; IMP, 39-71-403, 39-71-2104, MCA; NEW, 1996 MAR p. 1151, Eff. 5/1/96; AMD, 2012 MAR p. 1666, Eff. 8/24/12.

24.29.624 Revocation, Suspension, Termination and Withdrawal of Permission

- (1) The department may revoke its order granting permission to self-insure after determining that the self-insurer no longer meets the requirements of the statutes or ARM Title 24, chapter 29, subchapter 6. The self-insurer may appeal the department's revocation order in accordance with ARM 24.29.207. If a self-insurer's revocation to self-insure is revoked, the employer(s) shall elect to be bound by compensation plan no. 1, plan no. 2, or plan no. 3 on the effective date of the revocation of permission to self-insure.

- (2) Suspension or termination of membership in the Montana self-insurers guaranty fund or failure to pay the department's annual assessment may result in automatic and immediate termination of the department's permission to self-insure in accordance with 39-71-2609 and 39-71-2105, MCA.
- (3) An employer or employer group which is self-insured under plan no. 1 which intends to withdraw as a self-insurer or withdraw the self-insurance status of any subsidiaries, or members, shall notify the department and the guaranty fund, in writing, of its intent at least 60 days in advance of the change in status. Until all liabilities have been paid, the employer or employer group remains subject to these rules.

History: 39-71-203, MCA; IMP, 39-71-403, 39-71-2101 through 39-71-2108, and 39-71-2609, MCA; NEW, 1996 MAR p. 1151, Eff. 5/1/96.

Rules 24.29.625 and 24.29.626 reserved

24.29.627 Right to Review

- (1) If the application to self-insure is denied, the applicant may request an administrative review in accordance with ARM 24.29.206. If the applicant does not agree with the department's decision after completion of administrative review procedures, the applicant may request a contested case hearing.

History: 39-71-203, MCA; IMP, 39-71-403, 39-71-2101 through 39-71-2108 and 39-71-2905, MCA; NEW, 1996 MAR p. 1151, Eff. 5/1/96; AMD, 2000 MAR p. 2701, Eff. 10/6/00.

24.29.628 Notification of Changes in Self-Insurer Status Required

- (1) The self-insurer shall notify the department in writing:
 - (a) 60 days prior to implementing changes that may affect its self-insurance status including but not limited to:
 - (i) name, controlling ownership, legal status, change in proposed employer group membership, or permanent employment location;
 - (ii) permanent increase or decrease of more than 25% in the number of employees in Montana; or
 - (iii) changes in the policies, procedures or administration of its self-insurance program; and
 - (b) within 30 days subsequent to:
 - (i) adverse material change in financial status;
 - (ii) adverse material change in liabilities;
 - (iii) permanent reductions, shutdowns, suspensions, or closures of Montana operations; or
 - (iv) new or additional location of employment in Montana as a result of a significant change of operations.

History: 39-71-203 MCA; IMP, 39-71-403 and 39-71-2101 through 39-71-2108 MCA; NEW, 1996 MAR p. 1151, Eff. 5/1/96.

Rules 24.29.629 and 24.29.630 reserved

24.29.631 Self-Insured Employers and Groups – Transfer of Claim Liabilities

- (1) Any current or former self-insurer or group may transfer existing workers' compensation liabilities to another entity upon authorization from the department and concurrence of the guaranty fund. The self-insurer or group shall:
 - (a) make application for the transfer of the claims; and
 - (b) provide an actuarial analysis of the claims to be transferred.
- (2) The transfer application and approval process and guidelines will be consistent with the application and approval process for all new or proposed self-insured entities as provided by part 21 of the Workers' Compensation Act and ARM Title 24, chapter 29, subchapter 6.
- (3) The independent actuarial analysis of the employer's or group's claim liabilities must be made using the preceding year's data, including all years of self-insurance liabilities. The actuarial report must be completed by a qualified actuary as defined by the American Academy of Actuaries.
- (4) After the transfer of claims liabilities is complete, the new owner of the claims liabilities will have the same reporting requirements as all other prior self-insureds in Montana.

History: 39-71-203, MCA; IMP, 39-71-2115, MCA; NEW, 2012 MAR p. 1666, Eff. 8/24/12.

Subchapter 7**Employers Insurance Requirements****24.29.701 Introduction**

This rule has been repealed.

History: 39-71-203 MCA; IMP, 39-71-203 MCA; NEW, 1984 MAR p. 983, Eff. 7/2/84/; REP, 1996 MAR p. 1151, Eff. 5/1/96.

24.29.702 Election to be Bound by Compensation Plan No.1—Eligibility

This rule has been repealed.

History: 39-71-203 MCA; IMP, 39-71-403 and 39-71-2101 to 39-71-2109 MCA; NEW, 1984 MAR p. 983, Eff. 7/2/84; AMD, 1986 MAR p. 1903, Eff. 11/15/86; REP, 1996 MAR p. 1151, Eff. 5/1/96.

24.29.702A Solvency and Ability to Pay

This rule has been repealed.

History: 39-71-203 MCA; IMP, 39-71-403 and 39-71-2101 to 39-71-2109 MCA; NEW, 1984 MAR p. 983, Eff. 7/2/84; AMD, 1986 MAR p. 1903, Eff. 11/15/86; AMD, 1987 MAR p. 2385, Eff. 1/1/88; AMD, 1995 MAR p. 669, Eff. 5/1/95; REP, 1996 MAR p. 1151, Eff. 5/1/96.

24.29.702B When Security Required

This rule has been repealed.

History: 39-71-203 MCA; IMP, 39-71-403, 39-71-2106 and 39-71-2107 MCA; NEW, 1986 MAR p. 1903, Eff. 11/15/86; AMD, 1987 MAR p. 2385, Eff. 1/1/88; AMD, 1995 MAR p. 669, Eff. 5/1/95; REP, 1996 MAR p. 1151, Eff. 5/1/96.

24.29.702C Surety Bond Security Deposit—Amounts Required

This rule has been repealed.

History: 39-71-203 MCA; IMP, 39-71-403, 39-71-2106 and 39-71-2107 MCA; NEW, 1986 MAR p. 1903, Eff. 11/15/86; AMD, 1987 MAR p. 2385, Eff. 1/1/88; AMD, 1995 MAR p. 669, Eff. 5/1/95; REP, 1996 MAR p. 1151, Eff. 5/1/96.

24.29.702D Surety Bonds—Criteria

This rule has been repealed.

History: 39-71-203 MCA; IMP, 39-71-403, 39-71-2106 and 39-71-2107 MCA; NEW, 1986 MAR p. 1903, Eff. 11/15/86; AMD, 1987 MAR p. 2385, Eff. 1/1/88; REP, 1996 MAR p. 1151, Eff. 5/1/96.

24.29.702E Excess Insurance

This rule has been repealed.

History: 39-71-203 MCA; IMP, 39-71-403, 39-71-2101, 39-71-2102 and 39-71-2103 MCA; NEW, 1986 MAR p. 1903, Eff. 11/15/86; AMD, 1987 MAR p. 2385, Eff. 1/1/88; REP, 1996 MAR p. 1151, Eff. 5/1/96.

24.29.702F Initial Election—Individual Employers

This rule has been repealed.

History: 39-71-203 MCA; IMP, 39-71-403, 39-71-2101, 39-71-2102, and 39-71-2103 MCA; NEW, 1986 MAR p. 1903, Eff. 11/15/86; AMD, 1986 MAR p. 1903, Eff. 11/15/86; AMD, 1987 MAR p. 2385, Eff. 1/1/88; AMD, 1995 MAR p. 669, Eff. 5/1/95; REP, 1996 MAR p. 1151, Eff. 5/1/96.

24.29.702G Initial Election—Groups of Employers and New Members of Existing Groups

This rule has been repealed.

History: 39-71-203 MCA; IMP, 39-71-403, 39-71-2101, 39-71-2102, 39-71-2103 and 39-71-2106 MCA; NEW, 1986 MAR p. 1903, Eff. 11/15/86; AMD, 1987 MAR p. 2385, Eff. 1/1/88; AMD, 1993 MAR p. 2240, Eff. 10/1/93; REP, 1996 MAR p. 1151, Eff. 5/1/96.

24.29.702H Permission

This rule has been repealed.

History: 39-71-203 MCA; IMP, 39-71-403, 39-71-2101, 39-71-2102, and 39-71-2103 MCA; NEW, 1986 MAR p. 1903, Eff. 11/15/86; AMD, 1987 MAR p. 2385, Eff. 1/1/88; REP, 1996 MAR p. 1151, Eff. 5/1/96.

24.29.702I Renewal Required

This rule has been repealed.

History: 39-71-203 MCA; IMP, 39-71-403 and 39-71-2104 MCA; NEW, 1986 MAR p. 1903, Eff. 11/15/86; AMD, 1987 MAR p. 2385, Eff. 1/1/88; REP, 1996 MAR p. 1151, Eff. 5/1/96.

24.29.702J Renewal—Individual Employers

This rule has been repealed.

History: 39-71-203 MCA; IMP, 39-71-403 and 39-71-2104 MCA; NEW, 1986 MAR p. 1903, Eff. 11/15/86; AMD, 1995 MAR p. 669, Eff. 5/1/95; REP, 1996 MAR p. 1151, Eff. 5/1/96.

24.29.702K Renewal—Group Of Employers

This rule has been repealed.

History: 39-71-203 MCA; IMP, 39-71-403 and 39-71-2104 MCA; NEW, 1986 MAR p. 1903, Eff. 11/15/86; AMD, 1993 MAR p. 2240, Eff. 10/1/93; REP, 1996 MAR p. 1151, Eff. 5/1/96.

24.29.702L Suspension and Revocation of Permission

This rule has been repealed.

History: 39-71-203 MCA; IMP, 39-71-403 and 39-71-2104 MCA; NEW, 1986 MAR p. 1903, Eff. 11/15/86; AMD, 1987 MAR p. 2385, Eff. 1/1/88; REP, 1996 MAR p. 1151, Eff. 5/1/96.

24.29.702M Termination by Self-Insurer

This rule has been repealed.

History: 39-71-203 MCA; IMP, 39-71-403 and 39-71-2101 to 39-71-2109 MCA; NEW, 1984 MAR p. 983, Eff. 7/2/84; AMD, 1986 MAR p. 1903, Eff. 11/15/86; AMD, 1987 MAR p. 2385, Eff. 1/1/88; REP, 1996 MAR p. 1151, Eff. 5/1/96.

24.29.702N Review Process

This rule has been repealed.

History: 39-71-203 MCA; IMP, 39-71-403 and 39-71-2101 to 39-71-2109 MCA; NEW, 1984 MAR p. 983, Eff. 7/2/84; AMD, 1986 MAR p. 1903, Eff. 11/15/86; REP, 1996 MAR p. 1151, Eff. 5/1/96.

24.29.702O Notification of Changes

This rule has been repealed.

History: 39-71-203, MCA; IMP, 39-71-403 and 39-71-2101 to 39-71-2109, MCA; NEW, 1987 MAR p. 2385, Eff. 1/1/88; REP, 1996 MAR p. 1151, Eff. 5/1/96.

24.29.703 Election to be Bound by Compensation Plan No. 2 or 3

- (1) Any employer, except state agencies specified in 39-71-403, MCA, may elect coverage under plan No. 2 by owning an insurance policy that is in force, sold by a private insurance carrier authorized by the insurance commissioner's office to sell workers' compensation insurance in Montana.
- (2) Any employer may elect coverage under plan No. 3 by owning an insurance policy that is in force, sold by the state compensation insurance fund.
- (3) Insurance policies as required by (1) and (2) must include section 3A, on the Insurance Declaration page, evidencing Montana coverage.
- (4) In order to meet the requirements of this rule:
 - (a) the insurance policy must list Montana as a state under whose laws coverage is provided; or

(b) section 3A of the coverage declarations page must expressly list Montana as a state under whose laws coverage is provided.

History: 39-71-203, MCA; IMP, 39-71-2201, 39-71-2301, MCA; NEW, 1984 MAR p. 983, Eff. 7/2/84; AMD, 1998 MAR p. 2872, Eff. 11/1/98; AMD, 2018 MAR p. 2527, Eff. 1/1/19.

24.29.704 Who Must be Bound

(1) Each employer as defined in 39-71-117, MCA, who has an employee in service as defined in 39-71-118, MCA, for any length of time must be bound by the provisions of plans no. 1, 2, or 3, unless an employment is exempt under 39-71-401, MCA. The employer, with the concurrence of the employer's workers' compensation insurer, may elect to bind the employments that are exempt under 39-71-401 (2), MCA.

History: 39-71-203, MCA; IMP, 39-71-401, MCA; NEW, 1984 MAR p. 983, Eff. 7/2/84; AMD, 1995 MAR p. 1953, Eff. 10/1/95.

24.29.705 Corporate Officer Exemption

This rule has been repealed.

History: 39-71-203, MCA; IMP, 39-71-401, MCA; AMD, 1984 MAR p. 983, Eff. 7/2/84; TRANS, from ARM 24.29.3201, Eff. 7/2/84; AMD, 1986 MAR p. 49, Eff. 1/17/86; AMD, 1995 MAR p. 1953, Eff. 10/1/95; REP, 2000 MAR p. 2701, Eff. 10/6/00.

24.29.706 Election not to be Bound—Independent Contractor

This rule has been repealed.

History: 39-71-203 and 39-71-401 MCA; IMP, 39-71-401 MCA; NEW, 1984 MAR p. 983, Eff. 7/24/84; AMD, 1992 MAR p. 2759, Eff. 12/25/92; REP, 1996 MAR p. 1303, Eff. 5/10/96.

24.29.706A Application For Independent Contractor Exemption

(IS HEREBY TRANSFERRED TO ARM 24.35.111)

History: 39-71-203 and 39-71-401 MCA; IMP, 39-71-120, 39-71-401 and 39-71-409 MCA; NEW, 1996 MAR p. 1303, Eff. 5/10/96; TRANS, 1996 MAR p. 1863, Eff. 7/1/96.

24.29.706B Renewal of Independent Contractor Exemption

(IS HEREBY TRANSFERRED TO ARM 24.35.116)

History: 39-71-203 and 39-71-401 MCA; IMP, 39-71-120 and 39-71-401 MCA; NEW, 1996 MAR p. 1303, Eff. 5/10/96; TRANS, 1996 MAR p. 1863, Eff. 7/1/96.

24.29.706C Application Fee for Independent Contractor Exemption

(IS HEREBY TRANSFERRED TO ARM 24.35.121)

History: 39-9-103, 39-71-203 and 39-71-401 MCA; IMP, 39-9-206, 39-71-120 and 39-71-401 MCA; NEW, 1996 MAR p. 1303, Eff. 5/10/96; TRANS, 1996 MAR p. 1863, Eff. 7/1/96.

24.29.706D Suspension or Revocation of Independent Contractor Exemption

(IS HEREBY TRANSFERRED TO ARM 24.35.131)

History: 39-71-203 and 39-71-401 MCA; IMP, 39-71-120 and 39-71-401 MCA; NEW, 1996 MAR p. 1303, Eff. 5/10/96; TRANS, 1996 MAR p. 1863, Eff. 7/1/96.

24.29.706E Guidelines for Determining Whether an Independent Contractor Exemption is Needed

(IS HEREBY TRANSFERRED TO ARM 24.35.141)

History: 39-71-203 and 39-71-401 MCA; IMP, 39-71-120 and 39-71-401 MCA; NEW, 1996 MAR p. 1303, Eff. 5/10/96; TRANS, 1996 MAR p. 1863, Eff. 7/1/96.

24.29.707 Ineffective Election to be Bound, Resulting Division Action

This rule has been repealed.

History: 39-71-203, MCA; IMP, 39-71-408, 39-71-504 and 39-71-507, MCA; NEW, 1984 MAR p. 983, Eff. 7/2/84; REP, 1998 MAR p. 2872, Eff. 11/1/98.

24.29.708 Posting Insurance Status in Workplace

This rule has been repealed.

History: 39-71-203 and 39-71-401, MCA; IMP, 39-71-401, MCA; NEW, 1984 MAR p. 983, Eff. 7/2/84; REP, 1998 MAR p. 2872, Eff. 11/1/98.

24.29.709 Security Deposits for Plan Number Two Insurers – Reports

- (1) All insurers authorized by the Montana insurance commissioner's office to write workers' compensation must place a deposit with the department. The deposit amount is determined by calculating the sum of the medical and indemnity payments from the most recently closed calendar year and multiplying that total by 40 percent, subject to the minimums and maximums required by the department.
 - (a) Periodic review by the department of an insurer's future claims liabilities may result in an increase in deposit requirements pursuant to 39-71-2215, MCA.
 - (b) Upon proof from the insurer that its liabilities have been reduced, a reduction of the amount held on deposit by the department may be granted at the department's discretion. Requests for reduction in deposit may be submitted in writing to the department no more frequently than once every 12 months.
 - (c) The department may require 30 days advance written notice by the insurer of the insurer's intent to exchange one form of securities for another.
 - (d) Securities must remain on deposit until the department is satisfied all liabilities of the insurer arising under Title 39, chapter 71, MCA, have been met.
- (2) A plan number two insurer may deposit one or more of the following securities to meet its obligation to make a security deposit as required by 39-71-2215, MCA:
 - (a) a United States Treasury note;
 - (b) a certificate of deposit; or

- (c) an irrevocable letter of credit.
- (3) The security deposit must be issued in the form prescribed by the department and must include a statement that the grantor of the security deposit is required to give the department 60 days advance notice of its intent to terminate future liability. The grantor of the security deposit is not relieved of the liability for claims arising under Title 39, chapter 71, MCA, prior to the effective date of the termination. Notice must be sent to the department via certified or registered mail.
- (a) A security deposit in the form of a certificate of deposit must be issued by a financial institution located within the United States and must be fully insured by a federally chartered insurance corporation.
- (b) A security deposit in the form of an irrevocable letter of credit must be issued by a financial institution located within the United States that is acceptable to the department, based on its financial ratings.
- (4) The security deposit must name the department as obligee and must be held by the department.
- (a) A safekeeping or custodial arrangement with a bank or trust company located in the city of Helena, Montana, may be authorized if:
- (i) the department is satisfied such securities are held under the same conditions of security as if the securities had been deposited with the department; and
- (ii) the department is satisfied the hours of business do not hinder department access to or ability to sell and/or collect on the securities.
- (b) If the deposit of securities with the department will result in the need to handle the securities for exchange or remittance of coupons for collection of interest then the department, at its discretion, may require the securities be held in the safekeeping or custodial arrangement described above at the insurer's direct expense.
- (5) The insurer is required to submit the following reports:
- (a) a copy of the "Exhibit of Premium and Losses-Business in the State of Montana During the Year," from the insurer's annual statement of the preceding calendar year, as filed with the Montana insurance commissioner;
- (b) a total summary of experience claim losses including, but not limited to, compensation and medical benefits and reserves for future liability as of May 1 of each year; and
- (c) other reports and information as required by the department.
- (6) The reports required by (5) must be filed with the department:
- (a) upon the insurer's initial authorization by the Montana insurance commissioner's office to write workers' compensation insurance;
- (b) by May 1 of each following year; and
- (c) upon request of the department.

History: 39-71-203, MCA; IMP, 39-71-2215, MCA; NEW, 2012 MAR p. 1666, Eff. 8/24/12.

Rule 24.29.710 reserved

24.29.711 Status of Certain Personal Assistants for the Purpose of Workers' Compensation Laws

- (1) For the purposes of workers' compensation and occupational disease laws, a person with a disability who receives services of a personal assistant or an

immediately involved representative of the disabled person, such as a parent or guardian, is not the employer of the personal assistant despite the exercise of control over the selection, management and supervision of the personal assistant if:

- (a) the personal assistant is providing services to the disabled person pursuant to 53-6-145 , MCA, and rules adopted by the department of public health and human services implementing that statute; and
- (b) the personal assistant is the employee of another person or entity that has the right to exercise an employer's control over the personal assistant, including the right to discipline and terminate employment.

History: 53-6-145, MCA; IMP, 53-6-145, MCA; NEW, 1995 MAR p. 2145, Eff. 10/13/95.

Rule 24.29.712 reserved

24.29.713 Evidence of Insurance Coverage

- (1) The department may require an employer to submit a complete signed copy of a workers' compensation policy evidencing Montana workers' compensation coverage is or has been in place during all periods during which that coverage is or was required.

History: 39-71-203, MCA; IMP, 39-71-304, 39-71-401, 39-71-402, 39-71-2201, and 39-71-2336, MCA; NEW, 1998 MAR p. 2872, Eff. 11/1/98.

Rules 24.29.714 through 24.29.719 reserved

24.29.720 Payments that are not Wages—Employee Expenses

- (1) Effective January 1, 1993, payments made to an employee to reimburse the employee for ordinary and necessary expenses incurred in the course and scope of employment are not wages if all of the following are met:
 - (a) the amount of each employee's reimbursement is entered separately in the employer's records;
 - (b) the employee could reasonably be expected to incur the expenses while traveling on the business of the employer;
 - (c) the reimbursement is not based on a percentage of the employee's wages nor is it deducted from wages; and
 - (d) the reimbursement does not replace the customary wage for the occupation.
- (2) Reimbursement for expenses may be based on any of the following methods that apply:
 - (a) for actual expenses incurred by the employee, to the extent that they are supported by receipts;
 - (b) for meals and lodging, at a flat rate no greater than the amount allowed to employees of the state of Montana pursuant to 2-18-501 (1) (b) and (2) (b) , MCA for meals, and 2-18-501 (5) , MCA for lodging, unless, through documentation, the employer can substantiate a higher rate;
 - (c) for mileage, at a rate no greater than that allowed by the United States internal revenue service for that year, provided that the individual actually furnishes the vehicle;

- (d) for equipment other than vehicles, the reasonable rental value for that equipment, which for individuals involved in timber falling may not exceed \$22.50 per working day for chain saw and related timber falling expenses;
- (e) for heavy equipment, including but not limited to semi-tractors or bulldozers, the reasonable rental value may not exceed 75% of the employee's gross remuneration;
- (f) for drivers utilized or employed by a motor carrier with intrastate operating authority, meal and lodging expenses may be reimbursed by either of the methods provided in (2) (a) or (b) for each calendar day the driver is on travel status; or
- (g) for drivers utilized or employed by a motor carrier with interstate operating authority, meal and lodging expenses may be reimbursed by the methods provided in (2) (a) or (b) , or by a flat rate not to exceed \$30.00 for each calendar day the driver is on travel status.

History: 39-71-203, MCA; IMP, 39-71-123, MCA; NEW, 1992 MAR p. 2753, Eff. 12/25/92; AMD, 1995 MAR p. 1953, Eff. 1/1/96.

24.29.721 Value of Employer-Furnished Housing

- (1) For the purposes of this rule, the following definitions apply:
 - (a) "Agricultural employer" means an employer whose operations are assigned to an agricultural classification code for workers' compensation purposes. The term is intended to be consistent with the definition of agriculture provided by 15-1-101, MCA.
 - (b) "Bedroom" means a room in a dwelling that is primarily used for sleeping.
 - (c) "Dwelling" means a building equipped for human habitation.
 - (d) "Zero bedrooms" means a dwelling that is an efficiency, dormitory, or a bunkhouse.
- (2) For the purposes of calculating wages pursuant to 39-71-123, MCA, the monthly fair rental value, in U.S. dollars, for housing is established for each county in Montana as specified in the publication entitled "Montana Workers Compensation Housing, Rent or Lodging Monthly Rates."
 - (a) The publication is available online via the department's web site, <http://erd.dli.mt.gov>.
 - (b) A printed copy of the publication is available to the public at no cost, upon request to the department's Employment Relations Division.
- (3) In recognition of Montana's rural nature and expansive landscape, and the fact that housing supplied by an agricultural employer is likely to be remotely situated and distant from communities with an established rental housing market, housing furnished by an agricultural employer is discounted by 50 percent of the fair rental value for housing established in (2) of this rule, for the county in which the dwelling is located.
- (4) If an individual is not currently using the room for sleeping, it is not considered a bedroom for the purpose of this rule.
- (5) The provisions of this rule apply to housing furnished any worker.

History: 39-71-203, MCA; IMP, 39-71-123, MCA; NEW, 2018 MAR p. 640, Eff. 4/1/18.

Subchapter 8 Rules of Practice

24.29.801 Accident Reporting

- (1) Upon notice of an accident, injury, or occupational disease an employer shall, within six days of such notice, submit to the employer's workers' compensation insurer or to the department, a completed form known as the first report of occupational injury/occupational disease.

History: 39-71-203, 39-71-307, MCA; IMP, 39-71-307, 39-71-603, MCA; Eff. 12/31/72; AMD, Eff. 1/3/76; AMD, 1998 p. 2872, Eff. 11/1/98; AMD, 2013 MAR p. 841, Eff. 5/24/13.

24.29.802 Support Documents for Reporting

This rule has been repealed.

History: 39-71-203, MCA; IMP, 39-71-203, MCA; Eff. 12/31/72; AMD, Eff. 2/5/76; AMD, 1990 MAR p. 2183, Eff. 12/14/90; REP, 1998 MAR p. 2872, Eff. 11/1/98.

24.29.803 Compensation to be Paid

This rule has been repealed.

History: 39-71-203, MCA; IMP, 39-71-740, MCA; Eff. 12/31/72; REP, 1998 MAR p. 2872, Eff. 11/1/98.

24.29.804 Examiners and Third-Party Administrators in Montana

- (1) All workers' compensation and occupational disease claims filed pursuant to the Montana Workers' Compensation and Occupational Disease Acts must be adjusted by a person in Montana. For the purposes of this rule, a claim is deemed to be "adjusted by a person in Montana" if the person who can determine entitlement to benefits, authorize payment of all benefits due, manage the claim and has authority to settle the claim, maintains an office that is located in Montana and adjusts Montana claims from that office. The office may be in the examiner's personal residence located in Montana. The sole use of a mail box or mail drop located in Montana does not constitute maintaining an office in Montana.
- (2) An insurer must maintain the documents related to each claim filed with the insurer under the Montana Workers' Compensation and Occupational Disease Acts at the office of the person adjusting the claim in Montana until the claim is settled. The documents may either be original documents, or duplicates of the original documents, and must be maintained in a manner which allows the documents to be retrieved from that office and copied at the request of the claimant or the department. Settled claim files stored outside of the examiner's office must be made available by the insurer within 48 hours of a request for a file. Electronic or optically imaged documents are permitted by this rule.
- (3) For purposes of (2), a "settled claim" means a department-approved compromise of benefits between a claimant and an insurer. The term "settled claim" does not include a claim where there has only been a lump sum advance of benefits.
- (4) At least 14 days in advance of a change in a third-party administrator responsible for workers' compensation claim examination services, the insurer

must notify the department in writing, using the department's current Third-Party Administrator Change Form or by another format preapproved by the department. The written notification must be mailed, faxed, or e-mailed to the department's designated contact person.

- (5) The insurer may delegate the duty to notify the department to a third-party administrator or policy holder.
- (6) Failure to timely notify the department of a change in a third-party administrator may result in the imposition of an administrative penalty against the insurer, pursuant to 39-71-107, MCA.

History: 39-71-107, 39-71-203, MCA; IMP, 39-71-105, 39-71-107, MCA; Eff. 12/31/72; AMD, Eff. 2/5/76; AMD, 2000 MAR p. 2701, Eff. 10/6/00; AMD, 2013 MAR p. 841, Eff. 5/24/13.

24.29.805 Continuity of Compensation Payment

This rule has been repealed.

History: 39-71-203, MCA; IMP, 39-71-741, MCA; Eff. 12/31/72; AMD, Eff. 2/5/76; REP, 1998 MAR p. 2872, Eff. 11/1/98.

24.29.806 Medical Evaluations

This rule has been repealed.

History: 39-71-203, MCA; IMP, 39-71-203, MCA; Eff. 12/31/72; AMD, 39-71-203 MCA; IMP, 39-71-307 and 39-71-604 MCA; REP, 1990 MAR p. 2183, Eff. 12/14/90.

24.29.807 Protection of Persons

This rule has been repealed.

History: 39-71-203, MCA; IMP, 39-71-203, MCA; Eff. 12/31/72; AMD, Eff. 1/3/77; REP, 1998 MAR p. 2872, Eff. 11/1/98.

24.29.808 General Rules

This rule has been repealed.

History: 39-71-203, MCA; IMP, 39-71-203, 39-71-605 and 39-71-1001, MCA; Eff. 12/31/72; REP, 1998 MAR p. 2872, Eff. 11/1/98.

Rules 24.29.809 and 24.29.810 reserved

24.29.811 Purpose of Rules

- (1) The purpose of these rules is to establish standards for the voluntary certification of workers' compensation claims examiners handling workers' compensation claims in the State of Montana, providing for minimum qualifications, examination, two-year certification and renewal, continuing education requirements, and a waiver of examination requirements.

History: 39-71-203, 39-71-320, MCA; IMP, 39-71-105, 39-71-320, MCA; NEW, 2009 MAR p. 2019, Eff. 10/30/09.

Rule 24.29.812 reserved

24.29.813 Definitions

For purposes of this subchapter, the following definitions apply:

- (1) "Approved continuing education course" or "course" means any course, seminar, or program of instruction that has been approved by the department for presentation as part of the continuing education requirements for claims examiner certification and that relates to the state workers' compensation system or to interactions among injured workers, medical providers, and employers.
- (2) "Certificate of completion" means a document issued by the sponsoring organization to the claims examiner signifying satisfactory completion of a course and reflecting credit hours earned by the claims examiner.
- (3) "Claims examiner" means a claims examiner as defined under 39-71-116, MCA.
- (4) "Classroom setting" means a course format in which a body of students meets to study the same course materials under the direction of the same approved instructor.
- (5) "Credit hours" means the value assigned to a course by the department, upon review and approval of course materials and content outline.
- (6) "Instructor" means an individual who meets the requirements set forth in 24.29.844, is identified by a sponsoring organization in a course submission, participates in course presentations, activities and discussions, and who may monitor the attendance and conduct of course participants, or administer examinations.
- (7) "Proctor" means a person who monitors the attendance, conduct, and the examination process for course participants, but who does not participate in course presentations, activities or discussions, or complete any required examinations.
- (8) "Remote training" means a course format in which a body of students attend a training session using a web meeting tool and/or conference telephone service with a method approved by the department to ensure full participation of each student.
- (9) "Self-study" means those independent study methods taught outside the classroom setting through approved text, audiotape materials, videotape materials or another method of information exchange.
- (10) "Significant change" means a change in two or more of the following course elements:
 - (a) course goals or objectives;
 - (b) major course topic(s);
 - (c) course length;
 - (d) syllabus or course outline;
 - (e) teaching method; or
 - (f) examination method.
- (11) "Sponsoring organization" means any group(s) or organization(s) and their agent(s) that submit courses for department review and offer or provide approved courses for continuing education credit to allow claims examiner certification and are responsible for those course offerings.

History: 39-71-203, 39-71-320, MCA; IMP, 39-71-105, 39-71-320, MCA; NEW, 2009 MAR p. 2019, Eff. 10/30/09.

Rules 24.29.814 through 24.29.816 reserved

24.29.817 Applicability of Rules

- (1) These rules apply to certification of workers' compensation claims examiners on or after the effective date of these rules.
- (2) Initial certification remains in effect for two years.
- (3) A claims examiner's certification period will be renewed for two years upon application and verification that the claims examiner meets the continuing education requirements under the rules in effect on the date renewal is due.

History: 39-71-203, 39-71-320, MCA; IMP, 39-71-105, 39-71-320, MCA; NEW, 2009 MAR p. 2019, Eff. 10/30/09.

Rules 24.29.818 through 24.29.820 reserved

24.29.821 Certification of Claims Examiners

- (1) Claims examiners must be certified by the department upon the following:
 - (a) completion of the application form provided by the department;
 - (b) meeting the minimum qualifications for certification in (2);
 - (c) payment of the required fees; and
 - (d) satisfactory completion of either an examination or meeting the waiver requirements as provided in 24.29.827.
- (2) To meet the minimum qualifications, the applicant for certification shall be:
 - (a) at least 18 years of age; and
 - (b) have a high school diploma or equivalent certificate.
- (3) Certification will be for a two-year period. The certification date shall be the date of the successfully completed examination or the date the department issues a certification to an applicant that meets the examination waiver requirements.

History: 39-71-203, 39-71-320, MCA; IMP, 39-71-105, 39-71-320, MCA; NEW, 2009 MAR p. 2019, Eff. 10/30/09.

Rules 24.29.822 and 24.29.823 reserved

24.29.824 Examination for Claims Examiners

- (1) Each applicant for certification as a workers' compensation claims examiner shall, prior to the issuance of such certification, personally take and pass an examination given by the department or a department-approved agent as a test of qualifications and competency, except as provided by a waiver in 24.29.827.
- (2) Satisfactory completion of an examination demonstrates the individual's:
 - (a) familiarity with Montana's workers' compensation statutes;
 - (b) ability to navigate the administrative rules found in this chapter;
 - (c) knowledge of workers' compensation definitions and concepts including for example, course and scope, coverage, liability, subrogation, claims for benefits, compensation and medical benefits, settlements, subsequent injury fund, vocational rehabilitation, mediation, and due process.
- (3) Any person taking an examination may use a copy of Title 39, chapter 71, MCA, during the test procedure.
- (4) A passing score on an examination shall be 80 percent or greater.

- (a) An applicant for claims examiner certification may retake an examination as many times as necessary to pass the examination with a score of 80 percent or greater. The examination fee must be paid for each examination taken.
- (5) Any examination completed through dishonest or fraudulent means shall be considered invalid.

History: 39-71-203, 39-71-320, MCA; IMP, 39-71-105, 39-71-320, MCA; NEW, 2009 MAR p. 2019, Eff. 10/30/09.

Rules 24.29.825 and 24.29.826 reserved

24.29.827 Waiver of Examination

- (1) Claims examiners may be certified by the department upon providing satisfactory evidence of meeting the following waiver requirements:
- (a) evidence that the claims examiner has been actively engaged as a Montana claims examiner working on workers' compensation claims for five of the seven years immediately preceding the application for certification.
 - (b) the waiver may only be given if application and payment of the applicable fee is received within the first 12 months after the department has adopted the initial rules.

History: 39-71-203, 39-71-320, MCA; IMP, 39-71-105, 39-71-320, MCA; NEW, 2009 MAR p. 2019, Eff. 10/30/09.

Rules 24.29.828 through 24.29.830 reserved

24.29.831 Lapse in Certification

- (1) If a certification has lapsed past the renewal date, but application for renewal is received within 12 months from the renewal date, the claims examiner must pay the application fee and provide evidence of sufficient continuing education credits received during the lapsed period.
- (2) If a certification has lapsed greater than 12 months from the renewal date, the claims examiner must submit an application for certification; pay the fee; and successfully pass examination. The continuing education credit requirement for renewal starts over with the new certification period.

History: 39-71-203, 39-71-320, MCA; IMP, 39-71-105, 39-71-320, MCA; NEW, 2009 MAR p. 2019, Eff. 10/30/09.

Rules 24.29.832 and 24.29.833 reserved

24.29.834 Continuing Education Requirements for Renewal

- (1) Certification shall be renewed upon:
- (a) payment of the applicable fee;
 - (b) completion of the renewal form provided by the department at any time during the certification period, but no later than the expiration of the renewal date;
 - (c) verification of completion of 24 hours of approved continuing education courses during the current certification period, to include at least:

- (i) four hours of training on workers' compensation statutes, administrative rules, and case law since the last certification; and
 - (ii) one hour of training on appropriate and ethical communication; and
 - (iii) other approved continuing education courses which may include but are not limited to mediation/negotiation; medical terminology; human anatomy; interpreting medical records; injured worker's rights and responsibilities; insurers' rights and responsibilities; prevention of injuries; stay-at-work/return-to-work training; and medical fee schedule reimbursements.
- (2) The department may accept workers' compensation continuing education courses approved by the Office of Public Instruction, the state bar of Montana or the Montana Insurance Commissioner for the adjuster license requirements which meet the course criteria specified in these rules toward the 24 hours of approved courses required for the claims examiner certification renewal.
- (3) No more than six hours of approved continuing education courses may be carried over to the next certification period. The request for approved continuing education courses to be carried over must be submitted with the renewal application for which the courses were taken.

History: 39-71-203, 39-71-320, MCA; IMP, 39-71-105, 39-71-320, MCA; NEW, 2009 MAR p. 2019, Eff. 10/30/09.

Rules 24.29.835 and 24.29.836 reserved

24.29.837 Review and Approval of Continuing Education Courses by Department

- (1) Any sponsoring organization that requests continuing education credits be approved by the department for training must complete and submit a request on a form provided by the department.
- (2) The department shall review the course submission and determine the number of credit hours to be awarded for completion of the course.
- (3) "Hour" as used in this subchapter, means 50 minutes of instruction.
- (4) Courses subject to an award of continuing education credits may include but are not limited to:
 - (a) classroom setting or seminars;
 - (b) self-study, electronic media;
 - (c) correspondence course;
 - (d) computer-based training; or
 - (e) remote training.

History: 39-71-203, 39-71-320, MCA; IMP, 39-71-105, 39-71-320, MCA; NEW, 2009 MAR p. 2019, Eff. 10/30/09.

Rules 24.29.838 through 24.29.840 reserved

24.29.841 Course Submissions

- (1) The following standards, by which acceptability of submitted courses are evaluated, must all be certified by the sponsoring organization:
 - (a) the practical and academic experience of each faculty member is sufficient to teach the subject assigned;

- (b) the course enhances the ability of a claims examiner to provide claims handling services to the public effectively;
 - (c) the subject matter relates to professional ethics, where practicable.
- (2) Submissions for approval of courses must include at least the following information:
- (a) the name of the sponsoring organization;
 - (b) the title of the course;
 - (c) the proposed date(s) of offering or the dates the course was held;
 - (d) course goals and objectives;
 - (e) major course topic(s);
 - (f) course length;
 - (g) a list of other states, if any that have approved the course and the credits granted the course in those states;
 - (h) a syllabus or course outline;
 - (i) a summary of each course outline element;
 - (j) method of instruction, such as classroom, self-study, videotape, audiotape, teleconference, etc.
 - (k) method of administering examinations, if any;
 - (l) method of attendance verification;
 - (m) method of student record maintenance;
 - (n) instructors, if any;
 - (o) a designated contact person;
 - (p) a written explanation of examination security measures and examination administration methods; and
 - (q) written notification of additional dates of course offering to the department three days in advance of presentation of any course.
- (3) Requests for advance approval of courses must be received by the department no less than 30 days prior to the anticipated starting date of the course.
- (4) Requests for approval of courses already held must be received prior to December 31 of the calendar year in which the activity was presented.
- (5) Approved accredited university or college courses will be allowed 15 continuing education credits for each semester credit and ten continuing education credits for each quarter credit.
- (6) Charges for courses must be clearly disclosed to students before enrollment:
- (a) if a course is canceled for any reason, all charges are refundable in full, unless the refund policy is clearly defined in the enrollment application;
 - (b) in instances requiring refunds under (6) (a), the charges must be refunded within 45 days of cancellation;
 - (c) in the event that a continuing education provider postpones a course for any reason, the provider must give the students a choice of attending a course at a later date or having their charges refunded in full. The provider must refund the charges within 45 days of the postponement unless the student notifies the provider that the student has chosen to attend a later course;
 - (d) a sponsoring organization may have a refund policy addressing a student's cancellation or failure to complete a course, as long as that policy is made clear to potential students.
- (7) A sponsoring organization must provide proof of course completion to each course participant who successfully completes the approved course of study within one month of course completion or prior to the end of the calendar year during which the participant completed the course. The department may grant

the sponsoring organizations up to two months to provide such proof of course completion, if the sponsoring organization notifies the course participants in writing, in advance of the course.

- (8) Sponsoring organizations who add qualified course instructors after a course is approved must submit the names of those instructors to the department at least three days prior to the course offering.
- (9) Course approval is for a period of two years following the course approval date.
- (10) Sponsoring organizations must resubmit courses for new review and certification whenever significant changes in course content are made.
- (11) The minimum number of credits that the department may award is one credit.
- (12) No course may be advertised as having been approved for credit by the department until the sponsoring organization receives written approval from the department.

History: 39-71-203, 39-71-320, MCA; IMP, 39-71-105, 39-71-320, MCA; NEW, 2009 MAR p. 2019, Eff. 10/30/09.

Rules 24.29.842 and 24.29.843 reserved

24.29.844 Qualifications for Instructors

- (1) Instructors must meet the following qualifications for the department to approve the course:
 - (a) a high school diploma or equivalent certificate;
 - (b) experience in at least one of the following:
 - (i) three or more years of managerial, supervisory, technical, or teaching experience as a subject matter expert;
 - (ii) appropriate national designations; or
 - (iii) approval on an exception basis by the department.
- (2) An instructor may be disqualified if that person has:
 - (a) intentionally falsified documents filed with the department; or
 - (b) intentionally misrepresented course approval, credit hour assignment, curriculum, or course content to students or prospective students.
- (3) Certified claims examiners teaching or lecturing approved courses will be credited with two times the number of approved credit hours of courses they instruct.
- (4) Proctors will not earn continuing education credit for their services.

History: 39-71-203, 39-71-320, MCA; IMP, 39-71-105, 39-71-320, MCA; NEW, 2009 MAR p. 2019, Eff. 10/30/09.

Rules 24.29.845 and 24.29.846 reserved

24.29.847 Fees for Certification, Examination, Renewal, and Course Submission

- (1) The fees for processing an initial two-year certification shall be \$100 per applicant payable at the time of the application.
- (2) Each examination fee will not exceed \$75 payable prior to the examination.
- (3) The certification renewal fee shall be \$75 per applicant payable at the time of renewal. If there is a lapse in certification, the fee for renewal will be \$100 payable at the time of the application.
- (4) The fee for course submissions shall be \$75 per application.

History: 39-71-203, 39-71-320, MCA; IMP, 39-71-105, 39-71-320, MCA; NEW, 2009 MAR p. 2019, Eff. 10/30/09.

Rules 24.29.848 through 24.29.850 reserved

24.29.851 Maintenance of Certification Documentation

(1) The department may maintain the records required by 39-71-320, MCA, in an electronic format.

History: 39-71-203, 39-71-320, MCA; IMP, 39-71-105, 39-71-320, MCA; NEW, 2009 MAR p. 2019, Eff. 10/30/09.

Subchapter 9

Administrative Assessment

24.29.901 Definitions

This rule has been repealed.

History: 39-71-203, MCA; IMP, 39-71-201, MCA; NEW, 1997 MAR p. 1364, Eff. 8/5/97; REP, 1999 MAR p. 2877, Eff. 12/17/99.

24.29.902 Definitions

For the purpose of this subchapter, the following definitions apply, unless the context of the rule clearly indicates otherwise:

- (1) "Administration fund assessment" means the Workers' Compensation Administration Fund assessment provided for by 39-71-201, MCA.
- (2) "Advisory organization" means the workers' compensation advisory organization designated by the insurance commissioner as defined by 33-16-1023, MCA. The current advisory organization is the national council on compensation insurance.
- (3) "Insurer" has the same meaning as provided by 39-71-116, MCA. The term does not include the Uninsured Employers' Fund as provided for by 39-71-503, MCA, or the subsequent injury fund as provided for by 39-71-901, MCA.
- (4) "New fund claims" means claims administered by the plan No. 3 insurer, where the claims arise from an injury or occupational disease that occurred on or after July 1, 1990.
- (5) "Old fund claims" means claims administered by the plan No. 3 insurer, where the claims arose from an injury or occupational disease that occurred before July 1, 1990.
- (6) "Other income" means any revenue account that has an offsetting cash deposit or withdrawal which includes, but is not limited to, revenue accounts such as long term bond income, short term investment pool (STIP) participant earnings, or STIP security lending items, but expressly does not include any surcharge or assessment amounts.
- (7) "Payment" means the tender of funds to the department for a monetary obligation due directly from an insurer. In the context of this subchapter, the term is used when an insurer is directly liable for the underlying obligation.
- (8) "Remittance" means the tender of funds to the department, where the funds are collected by an insurer from a policyholder. In the context of this subchapter, the term is used to refer to an insurer's tender to the department of surcharges

collected by an insurer from its policyholders, where the underlying obligation rests on a policyholder, not the insurer.

- (9) “SAW/RTW” means stay-at-work/return-to-work assistance as defined in 39-71-1011, MCA.
- (10) “Safety fund assessment” means the assessment for the occupational safety and health administration fund as defined in 50-71-128, MCA.
- (11) “SIF” means the subsequent injury fund as defined by 39-71-901, MCA.

History: 39-71-203, 50-71-114, MCA; IMP, 39-71-201, 39-71-915, 39-71-1011, 39-71-2352, 50-71-128, MCA; NEW, 1999 MAR p. 2877, Eff. 12/17/99; AMD, 2004 MAR p. 645, Eff. 3/26/04; AMD, 2018 MAR p. 2527, Eff. 1/1/19.

Rule 24.29.903 reserved

24.29.904 Administrative Assessment Methodology in General

This rule has been repealed.

History: 39-71-203, MCA; IMP, 39-71-201, MCA; NEW, 1997 MAR p. 1364, Eff. 8/5/97; REP, 1999 MAR p. 2877, Eff. 12/17/99.

24.29.905 Administrative Assessment Methodology in General

This rule has been repealed.

History: 39-71-203, MCA; IMP, 39-71-201, MCA; NEW, 1999 MAR p. 2877, Eff. 12/17/99; REP, 2004 MAR p. 645, Eff. 3/26/04.

Rule 24.29.906 reserved

24.29.907 Billing and Payment of the Administration Fund Assessment

- (1) In calculating the administration fund assessment the department shall:
- (a) deduct any outstanding credits a plan No. 1 insurer may have to arrive at the final amount due from that insurer;
 - (b) deduct any outstanding credits the plan No. 3 insurer may have for old fund claims to arrive at the final amount due with respect to old fund claims; or
 - (c) deduct the aggregate of any outstanding credits that plan No. 2 insurers and that the plan No. 3 insurer (with respect to plan No. 3 new fund claims) may have to arrive at the final amount due via the administration fund assessment premium surcharge.

History: 39-71-203, MCA; IMP, 39-71-201 and 39-71-408, MCA; NEW, 2004 MAR p. 645, Eff. 3/26/04.

24.29.908 Penalties, Administrative Fines and Interest

- (1) Any assessment payment, surcharge remittance, summary report, or quarterly expenditure report received by the department more than five days past the due date is considered to be late.

History: 39-71-203, MCA; IMP, 39-71-201, 39-71-306, and 39-71-915, MCA; NEW, 2004 MAR p. 645, Eff. 3/26/04; AMD, 2012 MAR p. 1666, Eff. 8/24/12.

24.29.909 Recalculation of Administrative Assessments Made in Fiscal Years 1992 - 1995

This rule has been repealed.

History: 39-71-203, MCA; IMP, 39-71-201, MCA; NEW, 1997 MAR p. 1364, Eff. 8/5/97; REP, 1999 MAR p. 2877, Eff. 12/17/99.

Rules 24.29.910 and 24.29.911 reserved**24.29.912 Administrative Assessment Methodology for Fiscal Year 1992**

This rule has been repealed.

History: 39-71-203, MCA; IMP, 39-71-201, MCA; NEW, 1997 MAR p. 1364, Eff. 8/5/97; REP, 1999 MAR p. 2877, Eff. 12/17/99.

24.29.913 Administrative Assessment Methodology for Fiscal Year 1993

This rule has been repealed.

History: 39-71-203, MCA; IMP, 39-71-201, MCA; NEW, 1997 MAR p. 1364, Eff. 8/5/97; REP, 1999 MAR p. 2877, Eff. 12/17/99.

24.29.914 Administrative Assessment Methodology for Fiscal Year 1994

This rule has been repealed.

History: 39-71-203, MCA; IMP, 39-71-201, MCA; NEW, 1997 MAR p. 1364, Eff. 8/5/97; REP, 1999 MAR p. 2877, Eff. 12/17/99.

24.29.915 Administrative Assessment Methodology for Fiscal Year 1995

This rule has been repealed.

History: 39-71-203, MCA; IMP, 39-71-201, MCA; NEW, 1997 MAR p. 1364, Eff. 8/5/97; REP, 1999 MAR p. 2877, Eff. 12/17/99.

24.29.916 Administrative Assessment Methodology for Fiscal Year 1996

This rule has been repealed.

History: 39-71-203, MCA; IMP, 39-71-201, MCA; NEW, 1997 MAR p. 1364, Eff. 8/5/97; REP, 1999 MAR p. 2877, Eff. 12/17/99.

24.29.917 Administrative Assessment Methodology for Fiscal Year 1997

This rule has been repealed.

History: 39-71-203, MCA; IMP, 39-71-201, MCA; NEW, 1997 MAR p. 1364, Eff. 8/5/97; REP, 1999 MAR p. 2877, Eff. 12/17/99.

24.29.918 Assessment Methodology for Fiscal Years 1998 and 1999

This rule has been repealed.

History: 39-71-203, MCA; IMP, 39-71-201, MCA; NEW, 1997 MAR p. 1364, Eff. 8/5/97; REP, 1999 MAR p. 2877, Eff. 12/17/99.

Rules 24.29.919 and 24.29.920 reserved

24.29.921 Recalculation of Administration Fund Assessments Made in Fiscal Years 1992 - 1995

This rule has been repealed.

History: 39-71-203, MCA; IMP, 39-71-201, MCA; NEW, 1999 MAR p. 2877, Eff. 12/17/99; REP, 2004 MAR p. 645, Eff. 3/26/04.

24.29.922 Administration Fund Assessment Methodology for Fiscal Year 1992

This rule has been repealed.

History: 39-71-203, MCA; IMP, 39-71-201, MCA; NEW, 1999 MAR p. 2877, Eff. 12/17/99; REP, 2004 MAR p. 645, Eff. 3/26/04.

24.29.923 Administration Fund Assessment Methodology for Fiscal Year 1993

This rule has been repealed.

History: 39-71-203, MCA; IMP, 39-71-201, MCA; NEW, 1999 MAR p. 2877, Eff. 12/17/99; REP, 2004 MAR p. 645, Eff. 3/26/04.

24.29.924 Administration Fund Assessment Methodology for Fiscal Year 1994

This rule has been repealed.

History: 39-71-203, MCA; IMP, 39-71-201, MCA; NEW, 1999 MAR p. 2877, Eff. 12/17/99; REP, 2004 MAR p. 645, Eff. 3/26/04.

24.29.925 Administration Fund Assessment Methodology for Fiscal Year 1995

This rule has been repealed.

History: 39-71-203, MCA; IMP, 39-71-201, MCA; NEW, 1999 MAR p. 2877, Eff. 12/17/99; REP, 2004 MAR p. 645, Eff. 3/26/04.

24.29.926 Administration Fund Assessment Methodology for Fiscal Year 1996

This rule has been repealed.

History: 39-71-203, MCA; IMP, 39-71-201, MCA; NEW, 1999 MAR p. 2877, Eff. 12/17/99; REP, 2004 MAR p. 645, Eff. 3/26/04.

24.29.927 Administration Fund Assessment Methodology for Fiscal Year 1997

This rule has been repealed.

History: 39-71-203, MCA; IMP, 39-71-201, MCA; NEW, 1999 MAR p. 2877, Eff. 12/17/99; REP, 2004 MAR p. 645, Eff. 3/26/04.

24.29.928 Assessment Methodology for Fiscal Years 1998 and 1999

This rule has been repealed.

History: 39-71-203, MCA; IMP, 39-71-201, MCA; NEW, 1999 MAR p. 2877, Eff. 12/17/99; REP, 2004 MAR p. 645, Eff. 3/26/04.

24.29.929 Assessments other than the Administration Fund Assessment

The department may combine the assessments for the administration fund, SIF, SAW/RTW, and safety fund into one bill.

History: 39-71-203, 50-71-114, MCA; IMP, 39-71-201, 39-71-915, 39-71-1011, 50-71-128, MCA; NEW, 1999 MAR p. 2877, Eff. 12/17/99; AMD, 2004 MAR p. 645, Eff. 3/26/04; AMD, 2018 MAR p. 2527, Eff. 1/1/19.

Rules 24.29.930 through 24.29.940 reserved

24.29.941 Assessments other than Administrative Assessment

This rule has been repealed.

History: 39-71-203, MCA; IMP, 39-71-902 and 39-71-1004, MCA; NEW, 1997 MAR p. 1364, Eff. 8/5/97; REP, 1999 MAR p. 2877, Eff. 12/17/99.

Rules 24.29.942 through 24.29.950 reserved

24.29.951 Definitions

This rule has been repealed.

History: 39-71-203, MCA; IMP, 39-71-201, 39-71-915, 39-71-1004 and 39-71-2352, MCA; NEW, 2000 MAR p. 844, Eff. 3/30/00; REP, 2004 MAR p. 645, Eff. 3/26/04.

Rules 24.29.952 and 24.29.953 reserved

24.29.954 Calculation of Amount of Administration Fund Assessment

- (1) The administration fund assessment is calculated on the total amount of paid losses as described at 39-71-201, MCA.
- (2) Compensation benefits paid include periodic and lump-sum payments for:
 - (a) permanent total disability;
 - (b) permanent partial disability;
 - (c) temporary total disability;
 - (d) temporary partial disability;
 - (e) loss of hearing, whether under the Workers' Compensation or Occupational Disease Act for occupational diseases that occurred prior to July 1, 2005;
 - (f) rehabilitation benefits (biweekly compensation paid to claimants);
 - (g) death benefits;
 - (h) disfigurement payments;
 - (i) SIF cases, to the extent paid by the insurer and not reimbursed by the SIF;
 - (j) settlement amounts paid pursuant to 39-71-741, MCA, except to the extent any portion of the settlement is reported as being medical benefits paid;
 - (k) benefits paid pursuant to 39-71-608, MCA; and
 - (l) settlement amounts paid pursuant to 39-72-405, MCA.
- (3) Medical benefits paid include payments for:
 - (a) medical and dental treatment;
 - (b) prescription drugs;
 - (c) prosthetics and orthotics;
 - (d) other durable medical goods;
 - (e) hospital care;

- (f) domiciliary care;
 - (g) diagnostic examinations for the purpose of determining what treatment is necessary;
 - (h) medical benefits paid pursuant to 39-71-615, MCA; and
 - (i) hearing loss treatment, whether under the Workers' Compensation or Occupational Disease Act for occupational diseases that occurred prior to July 1, 2005.
- (4) With respect to medical benefits, the amount actually paid by the insurer, rather than the amount billed by the provider, is the basis for computation of benefits paid.
- (5) Benefits paid include any amount paid by the insurer or the employer, regardless of any deductible paid by the employer or reimbursements to the insurer from reinsurance or excess insurance other than by the claimant. Co-payments actually made by the claimant are not considered to be "benefits paid" for the purposes of this rule.
- (6) Each insurer must report in the format required by the department, the compensation paid and the medical benefits paid in the preceding year no later than March 1 of each year.
- (a) The plan No. 3 insurer must report the amount of compensation benefits and medical benefits paid on old fund claims separately from those amounts expended on new fund claims.
- (7) The administration fund assessment is payable directly to the department by the following entities:
- (a) all plan No. 1 insurers;
 - (b) a plan No. 2 insurer that has paid compensation or medical benefits in the prior year, and has reported no premium earned in that prior year, must pay directly to the department an administration fund assessment pursuant to 39-71-201, MCA; and
 - (c) the plan No. 3 insurer for old fund claims.
- (8) The minimum amount of the administration fund assessment for an insurer is calculated as outlined in 39-71-201, MCA.
- (9) Miscellaneous expense costs are not included in the calculation of the administration fund assessment. Miscellaneous expense costs are all workers' compensation or occupational disease costs incurred by an insurer other than compensation or medical benefits paid. These costs include, but are not limited to:
- (a) rehabilitation services provided by a licensed rehabilitation provider or the department of public health and human services;
 - (b) rehabilitation expenses, such as books and tuition, or auxiliary rehabilitation benefits, such as relocation expenses;
 - (c) administrative costs for the processing of claims, such as the costs of investigating or adjusting the claim;
 - (d) independent medical examinations requested by the insurer, where the purpose of the examination(s) is not for the diagnosis or treatment of the claimant's condition;
 - (e) matching payments to a catastrophically injured worker's family; and
 - (f) various other miscellaneous costs that do not constitute a compensation benefit or medical benefit provided to the claimant or beneficiary.

- (10) In the event an insurer submits an amended report identifying compensation paid and medical benefits paid after the time specified in (6), the department will compare the amended report with the initial report and:
- (a) if the amended report results in a change in the amount of administration fund assessment owed by the insurers identified in (7) of \$100.00 or more, the department will bill each affected insurer for the additional amount owed;
 - (b) if the amended report indicates the insurers identified in (7) have overpaid their administration fund assessment by more than \$100.00, the department may credit the overpayment to each affected insurer's following year's assessment period; or
 - (c) if the amended report results in a change in the amount of the administration fund assessment surcharge, the department will adjust the following year's administration fund assessment surcharge to reflect that change.
- (11) The department may inspect the insurer's records to determine whether the insurer is properly reporting compensation paid and medical benefits paid.
- (12) In determining the amount to be collected through the administration fund assessment, after considering the adjustments made in ARM 24.29.956, the department shall compare the amount actually collected for the administration fund in a given fiscal year to the actual amounts expended from the workers' compensation administration fund for that fiscal year.
- (a) As described in 39-71-201, MCA, the "amount collected for a given fiscal year" includes monies intended to cover that fiscal year's assessment, which include:
 - (i) payment or remittance received by July 1 of the prior fiscal year;
 - (ii) payment, remittance, or other income received during the current fiscal year; and
 - (iii) payment or remittance received in the following fiscal year which arrives after the due date but prior to the calculation of the following year's assessment.
 - (b) The comparison must be done after the due date for the final premium surcharge payments applicable to that fiscal year to be received by the department.
 - (c) Any amount that is greater than the actual expenditures for the given fiscal year must be allocated to each plan on a proportionate basis toward the following year's calculation of the administration assessment.
 - (d) Any monies received after the following year's assessment surcharge has been calculated will be credited for the year in which those monies were received.
 - (e) In making the adjustments for the assessment calculations for FY05, the department shall compare the collections and expenditures for both FY02 and FY03 and make the appropriate adjustments. Beginning with the assessment calculations for FY06, the department will look back to the most recent completed fiscal year.

History: 39-71-203, MCA; IMP, 39-71-201, 39-71-203, 39-71-209, MCA; NEW, 2000 MAR p. 844, Eff. 3/30/00; AMD, 2004 MAR p. 1023, Eff. 3/26/04; AMD, 2012 MAR p. 1666, Eff. 8/24/12.

24.29.955 Billing for and Payment of the Administrative Assessment

This rule has been repealed.

History: 39-71-203, MCA; IMP, 39-71-201 and 39-71-408, MCA; NEW, 2000 MAR p. 844, Eff. 3/30/00; REP, 2004 MAR p. 645, Eff. 3/26/04.

24.29.956 Computation and Collection of the Administration Fund and Safety Fund Assessment Premium Surcharge Rate for Plan No. 2 and No. 3

- (1) The department will compute the premium surcharge to be paid by all employers insured by plan No. 2 insurers and by the plan No. 3 insurer in the manner provided by 39-71-201 and 50-71-128, MCA.
 - (a) In calculating the total administration fund and safety fund assessment premium surcharge rate, the department will use previous calendar year direct premium earned data reported to the department by plan No. 2 insurers and the plan No. 3 insurer.
 - (b) For the purpose of calculating the surcharge, late payments and remittances will not be considered if received after the new surcharge rate has been calculated. Instead, the payments and remittances will be considered for the purpose of surcharge calculation as if made for the fiscal year in which they were received.
- (2) The administration fund and safety fund assessment premium surcharge rate is effective for policies written or renewed on or after July 1 of each year. For policies written or renewed during the fiscal year, the current surcharge rate will apply to all payments made during the policy year regardless of any changes in the surcharge rate effective as of the next fiscal year.
- (3) Insurers may address over-collections or overpayments in the following manner:
 - (a) Any over-collection of the administration fund assessment premium surcharge from a policyholder by the insurer may be refunded by the insurer, or applied to premium or future surcharge payments due from the policyholder to the insurer. An accounting of the payment shall be provided by the insurer to the policyholder.
 - (b) If a surcharge remittance from an insurer to the department is later determined to include an overpayment, the insurer may deduct the amount overpaid from the next surcharge remittance due from the insurer to the department. The insurer shall maintain records documenting any surcharge amounts refunded to its policyholders.
- (4) Each plan No. 2 insurer and the plan No. 3 insurer is responsible for correctly calculating the amount of the authorized premium surcharge for the administration fund and safety fund assessment that the insurer is to collect from each of its insured employers using the rate established by the department. Because the insurer, not the department, calculates the amount of premium due from the employer, disputes between the insurer and the insured regarding the amount of the premium surcharge are not disputes over which the department has jurisdiction.
- (5) Each plan No. 2 insurer and the plan No. 3 insurer shall maintain reasonable records showing the total amount of premium surcharge billed for each policyholder and the total amount of premium surcharge actually collected from each policyholder. The department may inspect those records.

- (6) All uninsured employers may be assessed a penalty surcharge based on what would have been charged had the employer been enrolled by the plan No. 3 insurer.

History: 39-71-203, 50-71-114, MCA; IMP, 39-71-201, 39-71-203, 39-71-2352, 50-71-128, MCA; NEW, 2000 MAR p. 844, Eff. 3/30/00; AMD, 2004 MAR p. 645, Eff. 3/26/04; AMD, 2012 MAR p. 1666, Eff. 8/24/12; AMD, 2018 MAR p. 2527, Eff. 1/1/19.

Rules 24.29.957 through 24.29.960 reserved

24.29.961 The Subsequent Injury Fund Assessments for Years Beginning on or after

This rule has been repealed.

History: 39-71-203, MCA; IMP, 39-71-915, MCA; NEW, 2000 MAR p. 844, Eff. 3/30/00; REP, 2004 MAR p. 645, Eff. 3/26/04.

24.29.962 Computation of the Subsequent Injury Fund Assessment Surcharge

- (1) The SIF assessment premium surcharge is computed using the same general premium surcharge methodology as provided by ARM 24.29.956. As with the administration fund assessment premium surcharge, the department will compute a single surcharge rate for use by all plan No. 2 insurers and the plan No. 3 insurer for new and renewed policies.
- (2) The requirements for remittance of the SIF assessment premium surcharge are the same as for the administration fund assessment premium surcharge. Payment of the SIF assessment is due July 1 of each year.

History: 39-71-203, MCA; IMP, 39-71-915, MCA; NEW, 2004 p. 645, Eff. 3/26/04.

24.29.963 Calculating SIF Paid Previous Year Through Current Year

- (1) The total amount paid by SIF from April 1 of the previous year through March 31 of the current year includes commitments for payments by SIF on individual reimbursements or settlements.

History: 39-71-203, MCA; IMP, 39-71-915, MCA; NEW, 2018 MAR p. 2527, Eff. 1/1/19

Rules 24.29.964 through 24.29.965 reserved

24.29.966 Industrial Accident Rehabilitation Account

(See the Transfer and Repeal Table)

History: 39-71-203, MCA; IMP, 39-71-1004, MCA; NEW, 2000 MAR p. 844, Eff. 3/30/00; AMD, 2004 MAR p. 645, Eff. 3/26/04; REP, 2018 MAR p. 2527, Eff. 1/1/19.

Rules 24.29.967 through 24.29.970 reserved

24.29.971 Failure of Insurer To Timely Report Paid Losses–Department Estimate of Paid Losses–Recalculation of Assessment and Premium Surcharge–Penalty

- (1) In the event an insurer fails to timely and accurately report its paid losses for the previous year by the following March 1, the department may base the insurers' paid losses using the quarterly information submitted by the insurer pursuant to 39-71-306, MCA. If the insurer has not filed all of the quarterly reports as required by 39-71-306, MCA, the department may consult with the advisory organization or other sources regarding the appropriate amount to estimate as those paid losses. The department may also use that estimate as the basis for the SIF, SAW/RTW, and safety fund assessment as well.
- (2) The estimate will be used to calculate the administration fund assessments for those insurers who must pay their assessment directly to the department. For those insurers who are responsible to collect the administration fund assessment surcharge from its policyholders, the estimate will be used in the computation of the percentage rate of premium surcharge.
- (3) An annual paid loss report received after March 1, but received by or before March 31, may be considered pursuant to ARM 24.29.954 for assessment calculation purposes.
- (4) The department may, in its sole discretion, recalculate the assessment and surcharge rates if the insurer makes a late report as provided by (3).
- (5) Pursuant to 39-71-306, MCA, a penalty of up to \$1,000 may be assessed against the insurer for an annual report received after March 1.

History: 39-71-203, 39-71-306, 50-71-114, MCA; IMP, 39-71-201, 39-71-306, 39-71-915, 50-71-128, MCA; NEW, 2000 MAR p. 844, Eff. 3/30/00; AMD, 2004 MAR p. 645, Eff. 3/26/04; AMD, 2018 MAR p. 2527, Eff. 1/1/19.

Subchapters 10 and 11 Reserved

Subchapter 12

Rules on Lump Sum Conversions of Benefits

24.29.1201 Introduction

- (1) The department may approve a petition for a lump-sum settlement between an insurer and an injured worker or the worker's beneficiary, which converts permanent disability biweekly payments to a lump-sum payment, in accordance with the provisions of 39-71-741, MCA.
- (2) No department approval is required for a lump-sum payment of:
 - (a) accrued indemnity benefits;
 - (b) advance indemnity benefits; or
 - (c) an impairment award for a claim with a date of injury on or after July 1, 2005.
- (3) The department presumes that biweekly benefit payments are in the best interests of the worker. Department approval of a petition for lump-sum conversion may be given only if the worker demonstrates that the worker's ability to become financially self-sustaining is more probable with a whole or partial lump-sum payment than with the biweekly payments and the worker's other resources, as outlined by ARM 24.29.1202.

- (4) Conversion of biweekly permanent partial disability benefits to a lump sum must meet the requirements of (3) only when the claimant's date of injury was prior to July 1, 1991.
- (5) Conversion of biweekly permanent total disability benefits to a lump sum must meet the test of (3) for all dates of injury.
- (6) The workers' compensation court has jurisdiction over disputes between claimants and insurers regarding conversion of biweekly disability payments to a lump sum and disputes arising from the department's denial of approval of a petition for conversion. A dispute between an insurer and claimant is subject to mediation. A dispute arising from department denial of a petition for conversion is not subject to mandatory mediation.

History: 39-71-203, MCA, Chapter 471, Laws of 1985; IMP, 39-71-741, MCA; NEW, 1985 MAR p. 1564, Eff. 10/18/85; AMD, 1998 MAR p. 2872, Eff. 11/1/98; AMD, 2013 MAR p. 841, Eff. 5/24/13.

24.29.1202 Documentation Requirements

- (1) A petition to the department for lump-sum conversion of biweekly permanent total disability benefits for all dates of injury must include a description of the lump-sum proposal, including but not limited to:
 - (a) analysis of current financial conditions as described in (3);
 - (b) analysis of financial condition under the proposed lump-sum conversion, that includes a description of the use of the lump-sum and how this use will contribute to financially sustaining the worker over the same period biweekly payments would have been paid;
 - (c) analysis of financial condition that would be reasonably expected had the worker not been injured as described in (6); and
 - (d) an affidavit signed by the worker attesting to the validity of information provided in the written petition.
- (2) A petition to the department for conversion of biweekly permanent partial disability benefits to a lump-sum payment must include an analysis of current financial conditions as described in (3) only for a claim with a date of injury prior to July 1, 1991.
- (3) "Analysis of current financial condition" for purposes of (1) shall include a list of all the worker's income, assets, and liabilities, as well as other available resources, including but not limited to:
 - (a) periodic income (specify periods reported):
 - (i) social security disability income,
 - (ii) social security retirement income,
 - (iii) retirement or pension income,
 - (iv) other disability insurance,
 - (v) health insurance benefits,
 - (vi) mortgage insurance benefits,
 - (vii) spousal or other family income,
 - (viii) life insurance proceeds,
 - (ix) credit disability benefits,
 - (x) interest or dividend income,
 - (xi) workers' compensation benefits,
 - (xii) third party recovery (actual or potential);
 - (b) monetary assets:
 - (i) cash on hand,

- (ii) checking account,
 - (iii) savings account,
 - (iv) accounts and notes receivable,
 - (v) savings bonds,
 - (vi) stocks and bonds,
 - (vii) mutual funds,
 - (viii) cash value of life insurance,
 - (ix) cash value of annuities,
 - (x) cash value of retirement fund;
 - (c) fixed assets:
 - (i) home and property,
 - (ii) other real estate,
 - (iii) retirement fund,
 - (iv) motor vehicles,
 - (v) personal property;
 - (d) liabilities:
 - (i) all monthly living expenses,
 - (ii) existing delinquent or outstanding debts,
 - (iii) periodic payments on debts,
 - (iv) long-term liabilities,
 - (v) attorney fees and costs.
- (4) If a petition for lump-sum conversion of permanent total benefits involves the partial or total elimination of existing delinquent or outstanding debts, a debt management plan must be described and include:
- (a) plan of management, through applying the proposed lump-sum payment, of all existing delinquent or outstanding debts, both short- and long-term; and
 - (b) description of how the worker will be sustained financially through use of the lump-sum payment and other available resources, including cash available throughout the life of the debt management plan, to manage delinquent or outstanding debts.
- (5) If a permanent total benefit lump-sum proposal involves a business venture, a business plan must be described and include:
- (a) Information indicating the worker's capability in proposed business venture, including:
 - (i) relevant educational and work history,
 - (ii) knowledge of the proposed business,
 - (iii) if managerial, managerial capability,
 - (iv) role to be assumed in the proposed business.
 - (b) If the venture is a new business, information about the proposed business venture including, but not limited to:
 - (i) description of the proposed business venture,
 - (ii) estimate of the purchase price of the business,
 - (iii) work sheets showing: total source of dollars, start-up costs, projected expenses and net income forecast,
 - (iv) feasibility study of the market conditions in the intended market area, showing that the business is a feasible venture.
 - (c) If the venture is an existing business, information about the proposed business including, but not limited to:
 - (i) description of proposed business venture,

- (ii) legal agreement showing intent to sell the existing business, purchase price of the business, and any conditions placed upon such sale,
 - (iii) income tax statements and balance sheets for the two consecutive years prior to the agreement to sell the business,
 - (iv) work sheets showing total source of dollars, start-up costs, projected expenses and net income forecast,
 - (v) market analysis showing market conditions in the intended market area.
- (d) A statement of cash that will be available to the worker as income on a biweekly basis after start-up costs and other business expenses are considered throughout the life of the venture.
- (6) "Analysis of financial condition that would be reasonably expected had the worker not been injured" for purposes of (1) must include a description of the income the worker would have received and the basis upon which the estimate is derived. The analysis must include:
 - (a) evidence of education and work experience, including:
 - (i) work history, dates and descriptions of employment or unemployment, names and locations of employers;
 - (ii) highest level of formal education attained, degrees received, dates of attendance, names and locations of schools; and
 - (iii) special training, professional licenses, registrations, or certifications, certifications received; dates of attendance, names and locations of institutions providing training, licenses, registrations or certifications.
 - (b) evidence of probable job promotions and pay increases, including:
 - (i) supportive documentation from employers, union contracts, or other reasonable substantiation of probable job promotions,
 - (ii) wage history,
 - (iii) statement from employer at the date of the accident of last wage rate paid; and
 - (iv) supportive documentation estimating wage rates from the date of the accident up to age 65.
- (7) A request for lump-sum settlement of medical benefits must include the following information:
 - (a) copy of medical reports documenting maximum medical improvement, current diagnosis, and recommendations for future treatment, if any;
 - (b) specific dollar amount of the settlement allocated to medical benefits;
 - (c) statement from the claimant and insurer as to why it is in the best interest of the parties to settle medical benefits;
 - (d) statement signed by the claimant to acknowledge the claimant understands which specific medical benefits will terminate upon settlement;
 - (e) statement signed by the claimant to acknowledge the claimant is on notice and understands that the future medical benefits settled under the agreement may not be covered by secondary healthcare payers such as Medicare, Medicaid, or other health insurers; and
 - (f) submission of the following completed forms to the department:
 - (i) "Summary of Settlement of Medical Benefits" form with original signatures by the claimant and the insurer or the insurer's authorized representative; and
 - (ii) "Petition for Settlement Injury/Occupational Disease Medical Benefits Closed On An Accepted Claim" form with original signatures by the

claimant, a witness, and the insurer or the insurer's authorized representative.

- (8) The total value of the workers' compensation benefits may be discounted at the current rate established by the department when an insurer calculates a conversion to a lump-sum payment. Only for claims with dates of injury between April 15, 1985 and June 30, 1987, the lump-sum payment may be discounted by 7%, compounded annually.

History: 39-71-203, MCA; IMP, 39-71-741, MCA; NEW, 1985 MAR p. 1564, Eff. 10/18/85; AMD, 2013 MAR p. 841, Eff. 5/24/13.

24.29.1203 Methods the Department will apply to Evaluate Information Provided

- (1) The department shall deny a petition for a lump-sum conversion of permanent total disability unless the worker demonstrates that the worker's ability to become financially self-sustaining is more probable with a whole or partial lump-sum payment than with biweekly payments and the worker's other resources.
- (2) The department shall approve a petition for lump-sum conversion of permanent total disability benefits when:
- (a) The worker demonstrates that the worker's financial condition under the lump-sum proposal will not be greater than could have reasonably been expected had the worker not been injured and the lump sum is limited to the unpaid biweekly benefits; and
 - (b) The worker demonstrates that the lump-sum proposal will improve the worker's financial condition over what could have been reasonably expected had the worker not been injured and the lump sum is limited to the purchase price to the insurer of an annuity that would yield an amount equal to the biweekly benefits payable over the estimated duration of the compensation period.
- (3) For claims with date of injury between April 15, 1985 and June 30, 1987, all requirements of (2) must be met and the proposed lump-sum amount of unpaid biweekly benefits may be discounted at a rate of 7% per year, compounded annually.
- (4) If the claimant does not meet the requirements of 39-71-710, MCA, and the estimated duration of the compensation period is the remaining life expectancy of the worker, the insurer shall determine the remaining life expectancy in accordance with the most recent Life Table: Expectation of Life at Single Years of Age, by Race and Sex: United States, all races, both sexes column, in Vital Statistics of the United States, Volume II-Mortality, Part A, U.S. Department of Health and Human Services, Public Health Service, National Center for Health Statistics.
- (5) If the difference between the present discounted value of a permanent total disability lump-sum payment and the future value of the biweekly payments is the only justification provided for the lump-sum conversion, the department shall deny the petition.
- (6) The department shall deny or approve a lump-sum petition within 14 days of receipt. If additional information is required to enable a determination on a petition, the department shall request the information within the 14-day review period. If additional information is not received within the 14-day review period, the department shall deny the petition on the basis of lack of information.

History: 39-71-203, MCA; IMP, 39-71-710, 39-71-741, MCA; NEW, 1985 MAR p. 1564, Eff. 10/18/85; AMD, 1998 MAR p. 2872, Eff. 11/1/98; AMD, 2013 MAR p. 841, Eff. 5/24/13.

24.29.1204 Further Studies may be Required

This rule has been repealed.

History: 39-71-203, MCA; IMP, 39-71-741, MCA; NEW, 1985 MAR p. 1564, Eff. 10/18/85; AMD, 1998 MAR p. 2872, Eff. 11/1/98; REP, 2013 MAR p. 841, Eff. 5/24/13.

Subchapter 13 Reserved

Subchapter 14

General Medical Rules and Facility Service Rules

24.29.1401 Initial Liability

- (1) Initial liability for payment of medical claims is the responsibility of the injured worker.
- (2) After determination that the claim is covered under the Workers' Compensation or Occupational Disease acts, the liability for payment of the claim is the responsibility of the appropriate workers' compensation insurer.
- (3) Pursuant to 39-71-743, MCA, when a claim is covered under the Workers' Compensation or Occupational Disease acts, providers may not bill the injured worker for the difference between the initial amount billed and the amount reimbursed to the provider by the insurer as set by applicable statutes and rules, except for the co-pay provided by 39-71-704, MCA.
 - (a) For injured workers who are receiving benefits from the Uninsured Employers' Fund pursuant to 39-71-503, MCA, the provisions of this rule are subject to 39-71-510, MCA.
- (4) The injured worker is responsible for charges incurred for treatment of conditions which were not the result of the injury or for treatment when medical benefits have terminated according to 39-71-704, MCA.

History: 39-71-203, MCA; IMP, 39-71-510, 39-71-704, 39-71-743, MCA; Eff. 12/31/72; AMD, 1991 MAR p. 2622, Eff. 12/27/91; AMD, 2007 MAR p. 260, Eff. 2/23/07.

24.29.1401A Definitions

As used in subchapters 14 and 15, the following definitions apply:

- (1) "Acute care hospital" or "hospital" means a health care facility appropriately licensed by the Department of Public Health and Human Services that provides inpatient and outpatient medical services to injured workers experiencing acute illness or trauma. Acute care hospitals are sometimes referred to as regulated hospitals.
- (2) "Ambulatory Payment Classification (APC)" means the reimbursement system adopted by the department for outpatient services.
- (3) "Ambulatory surgery center (ASC)" means a health care facility that operates primarily for the purpose of furnishing outpatient surgical services to patients.
- (4) "Base rate" means the dollar value which is multiplied by the relative weight of the MS-DRG or APC to determine payment.
- (5) "Bundling" means the practice of grouping multiple services, procedures, and supplies into one charge item instead of billing each separately.

- (6) "CCR," formerly known as "RCC," means the cost-to-charge ratio computed by using the hospital's Medicare cost report and charges.
- (7) "CMS" means the Centers for Medicare and Medicaid Services.
- (8) "Correct Coding Initiative (CCI)" means the code edits adopted by the department that are used to correct contradictory billing information.
- (9) "Current Procedural Terminology (CPT)" codes means codes and descriptors of procedures owned, copyrighted, and published by the American Medical Association.
- (10) "Department" means the Montana Department of Labor and Industry.
- (11) "Designated Treating Physician" means a provider who is designated or formally approved by the insurer as the physician who will be coordinating the injured worker's care, according to the criteria in 39-71-1101, MCA.
- (12) "Documentation" means written information that is complete, clear, and legible, which describes the service provided and substantiates the charge for the service.
- (13) "Durable medical equipment (DME)" means durable medical appliances or devices used in the treatment or management of a condition or complaint, along with associated nondurable materials and supplies required for use in conjunction with the appliance or device. The term does not include an implantable object or device.
- (14) "Evidence-based" means use of the best evidence available in making decisions about the care of the individual patient, gained from the scientific method of medical decision-making and includes use of techniques from science, engineering, and statistics, such as randomized controlled trials (RCTs), meta-analysis of medical literature, integration of individual clinical expertise with the best available external clinical evidence from systematic research, and a risk-benefit analysis of treatment (including lack of treatment).
- (15) "Facility" or "health care facility" means all or a portion of an institution, building, or agency, private or public, excluding federal facilities, whether organized for profit or not, that is used, operated, or designed to provide health services, medical treatment, or nursing, rehabilitative, or preventive care to any individual. The term includes chemical dependency facilities, critical access hospitals, end-stage renal dialysis facilities, home health agencies, home infusion therapy agencies, hospices, hospitals, long-term care facilities, intermediate care facilities for the developmentally disabled, medical assistance facilities, mental health centers, outpatient centers for surgical services, rehabilitation facilities, residential care facilities, and residential treatment facilities. The above facilities are defined in 50-5-101, MCA. The term does not include outpatient centers for primary care, infirmaries, provider-based clinics, offices of private physicians, dentists or other physical or mental health care workers, including licensed addiction counselors.
- (16) "Functional status" means written information that is complete, clear, and legible, that identifies objective findings indicating the claimant's physical capabilities and provides information about the change in the status as a result of treatment.
- (17) "Healthcare Common Procedure Coding System (HCPCS)" means the identification system for health care matters developed by the federal government, and includes level one codes, known as CPT codes, and level two codes that were developed to use for supplies, procedures, or services that do

- not have a CPT code. These codes also include successor codes for CPT and HCPCS established by the American Medical Association and CMS.
- (18) "Implantable" means a system of objects or devices that is made either to replace and act as a missing biological structure, to repair or support a biological structure, or to manage chronic disease processes and that is surgically implanted, embedded, inserted, or otherwise applied. The term also includes any related equipment necessary to install, operate, program, and recharge the implantable.
 - (19) "Improvement status" means written information that is complete, clear, and legible, which identifies objective medical findings of the claimant's medical status with respect to the treatment plan.
 - (20) "Inpatient services" means services rendered to a person who has been admitted to a hospital for bed occupancy for purposes of receiving inpatient hospital services. Generally, a patient is considered an inpatient if formally admitted as inpatient with the expectation that the patient will remain at least overnight and occupy a bed even though it later develops that the patient can be discharged or transferred to another hospital and not actually use the hospital bed overnight. The physician or other practitioner responsible for a patient's care at the hospital is also responsible for deciding whether the patient should be admitted as an inpatient.
 - (21) "Insurer" has the same meaning as provided by 39-71-116, MCA.
 - (22) "Interested party" means:
 - (a) the "physician" or "provider" as defined by this rule;
 - (b) the "claimant" or "injured worker"; or
 - (c) the representative of the injured worker.
 - (23) "Maintenance care" has the same meaning as provided by 39-71-116, MCA.
 - (24) "Medical stability", "maximum medical improvement", "maximum healing", or "maximum medical healing" has the same meaning as provided by 39-71-116, MCA.
 - (25) "Medicare-Severity Diagnosis Related Group (MS-DRG or DRG)" means the inpatient diagnosis classifications of circumstances where patients demonstrate similar resource consumption, length of stay patterns, and medical severity status that are adopted by the department and are used for billing purposes.
 - (26) "Nonfacility" means any place not included in this rule's definition of "facility".
 - (27) "Objective medical findings" means medical evidence that is substantiated by clinical findings. Clinical findings include, but are not limited to, range of motion, atrophy, muscle strength, muscle spasm, and diagnostic evidence. Complaints of pain in the absence of clinical findings are not considered objective medical findings.
 - (28) "Outpatient" means a patient who is not admitted for inpatient or residential care.
 - (29) "Palliative care" has the same meaning as provided by 39-71-116, MCA.
 - (30) "Physician" means those persons identified by 33-22-111, MCA, practicing within the scope of the providers' license.
 - (31) "Primary medical services" has the same meaning as provided by 39-71-116, MCA.
 - (32) "Prior authorization" means that for those matters identified by ARM 24.29.1517 the provider receives (either verbally or in writing) authorization

from the insurer to perform a specific procedure or series of related procedures, prior to performing that procedure.

- (33) “Provider” means any health care provider, unless the context in another rule clearly indicates otherwise. “Provider” does not include pharmacists nor does it include a supplier of medical equipment who is not a health care provider.
- (34) “Relative Value Unit” or “RVU” represents a unit of measure for medical services, procedures, or supplies. RVU is used in the fee schedule formulas to calculate reimbursement fees and is expressed in numeric units. Those services that have greater costs or value have higher RVUs than those services with lower costs or value.
- (35) “Resource-Based Relative Value Scale” or “RBRVS” means the publication titled “Essential RBRVS,” published by OptumInsight, Inc.
- (36) “Secondary medical services” has the same meaning as provided by 39-71-116, MCA.
- (37) “Service or services” means treatment including procedures and supplies provided in a facility or nonfacility that is billable under these rules.
- (38) “Status indicator (SI)” codes mean CPT codes treated in the same fashion or category, such as packaged services, and apply to outpatient services only.
- (39) “Treating physician” means:
- (a) with respect to claims arising before July 1, 1993, the meaning provided by ARM 24.29.1511;
 - (b) with respect to claims arising on or after July 1, 1993, the meaning provided by 39-71-116, MCA.
- (40) “Treatment plan” means a written outline of how the provider intends to treat a specific condition or complaint. The treatment plan must include a diagnosis of the condition, the specific type(s) of treatment, procedure, or modalities that will be employed, a timetable for the implementation and duration of the treatment, and the goal(s) or expected outcome of the treatment. Treatment, as used in this definition, may consist of diagnostic procedures that are reasonably necessary to refine or confirm a diagnosis. The treating physician may indicate that treatment is to be performed by a provider in a different field or specialty, and defer to the professional judgment of that provider in the selection of the most appropriate method of treatment; however, the treating physician must identify the scope of the referral in the treatment plan and provide guidance to the provider concerning the nature of the injury or occupational disease.

History: 39-71-203, MCA; IMP, 39-71-116, 39-71-704, MCA; NEW, 1993 MAR p. 404, Eff. 4/1/93; AMD, 1993 MAR p. 2809, Eff. 12/1/93; AMD, 2002 MAR p. 1758, Eff. 7/1/02; AMD, 2007 MAR p. 1670, Eff. 10/26/07; TRANS from ARM 24.29.1504 and AMD, 2008 MAR p. 2490, Eff. 12/1/08; AMD, 2011 MAR p. 1137, Eff. 6/24/11; AMD, 2013 MAR p. 1185, Eff. 7/12/13; AMD, 2014 MAR p. 1513, Eff. 7/11/14; AMD, 2018 MAR p. 2531, Eff. 1/1/19

24.29.1402 Payment of Medical Claims

- (1) As required by 39-71-704, MCA, charges submitted by providers must be the usual and customary charge billed for nonworkers’ compensation patients. Payment of medical claims must be made in accordance with the schedule of facility and professional medical fees adopted by the department.
- (a) For services provided on or after July 1, 2011, payment of medical claims must also be made in accordance with the utilization and treatment guidelines adopted by the department in ARM 24.29.1591.

- (b) For services provided on or after July 1, 2013, the department may assess a penalty on insurers for neglect or failure to use the correct fee schedule. It is the insurer's responsibility to ensure that the correct fee schedule is used by a third-party agent.
- (i) If the insurer does not properly process the entire medical bill using the correct fee schedule within 60 days of the receipt, the department may assess a \$200.00 penalty for each occurrence. Each medical bill is an occurrence.
 - (ii) This fine may be increased \$100.00 per subsequent occurrence up to a maximum of \$1,000.00.
 - (iii) The department will not assess any penalty unless the provider submits adequate documentation that they attempted to resolve the bill with the insurer. If the insurer does not correct the error, the provider may forward the billing, explanation of benefits, if any, and documentation of contact and responses to the department.
 - (iv) The insurer has the burden of proof to notify the department either by e-mail, facsimile, or letter that the bill(s) in question have been processed using the correct Montana fee schedule.
 - (v) The amounts collected from the insurer must be deposited with the department to be used in the Workers' Compensation Administration Fund.
 - (vi) An insurer may contest a penalty assessed pursuant to 39-71-107(5)(b), MCA, in a hearing conducted according to department rules. A party may appeal the final agency order to the workers' compensation court. The court shall review the order pursuant to the requirements of 2-4-704, MCA.
- (2) The insurer shall make timely payments of all medical bills for which liability is accepted. For services provided on or after July 1, 2013, the department may assess a penalty on an insurer that without good cause neglects or fails to pay undisputed medical bills on an accepted liability claim within 60 days of receipt of the bill(s). The insurer must document receipt date of the bill(s) or the receipt date will be three days after the bill(s) was sent by the provider.
- (a) If the insurer does not pay the undisputed portions of a medical bill within 60 days of receipt, the department may assess a \$200.00 penalty for each occurrence. Each medical bill is an occurrence.
 - (b) This fine may be increased \$100.00 per subsequent occurrence up to a maximum of \$1,000.00.
 - (c) The department will not assess any penalty unless the provider submits adequate documentation that they attempted to resolve the bill with the insurer. If the insurer does not pay the undisputed bill(s), the provider may forward the billing, explanation of benefits, if any, and documentation of contact and responses to the department.
 - (d) The insurer has the burden of proof to notify the department either by e-mail, facsimile, or letter that the bill(s) in question have been paid.
 - (e) The amounts collected from the insurer must be deposited with the department to be used in the Workers' Compensation Administration Fund.
 - (f) An insurer may contest a penalty assessed pursuant to 39-71-107(5)(c), MCA, in a hearing conducted according to department rules. A party may appeal the final agency order to the workers' compensation court.

- (3) For services provided on or after July 1, 2013, the provider may charge 1 percent per month simple interest for unpaid balances on an undisputed medical bill on a claim pursuant to 39-71-704, MCA. The interest will start accruing on the 31st day after receipt of the bill by the insurer. The insurer must document receipt date of the bill or the receipt date will be three days after the bill was sent by the provider. If there is no payment within 30 days, the provider may bill the insurer 1 percent per month on the unpaid balance. For purposes of coding billed amounts, the Montana unique code MT005 is established by this rule and must be used by the provider to bill the interest amount.
- (4) For services provided on or after July 1, 2013, the insurer may charge a 1 percent per month simple interest for overpayment made to a provider pursuant to 39-71-704, MCA. The interest will start accruing on the 31st day after receipt by the provider of the reimbursement request. The provider must document the receipt date of the reimbursement request or the receipt date will be three days after the request was sent by the insurer. If there is no payment within 30 days of the provider's receipt of a reimbursement request or if the provider has not made alternative arrangements for repaying the overpayment within 30 days, the insurer may charge the provider 1 percent per month simple interest on the balance.
- (5) Payment of private room charges shall be made only if ordered by the treating physician.
- (6) Special nurses shall be paid only if ordered by the treating physician.
- (7) For claims arising before July 1, 1993, no fee or charge is payable by the injured worker for treatment of injuries sustained if liability is accepted by the insurer.
- (8) For claims arising on or after July 1, 1993, no fee or charge is payable by the injured worker for treatment of injuries sustained if liability is accepted by the insurer, other than:
 - (a) the co-payment provided by 39-71-704, MCA. The decision whether to require a co-payment rests with the insurer, not the medical provider. If the insurer does not require a co-payment by the worker, the provider may not charge or bill the worker any fee. The insurer must give enough advance notice to known medical providers that it will require co-payments from a worker so that the provider can make arrangements with the worker to collect the co-payment;
 - (b) the charges for a nonpreferred provider, after notice is given as provided in 39-71-1102, MCA;
 - (c) the charges for medical services obtained from other than a managed care organization, once an organization is designated by the insurer as provided in 39-71-1101, MCA; or
 - (d) the charges for medical services denied by the insurer on the basis that the services meet both of the following criteria:
 - (i) the medical services do not return the injured worker to employment; and
 - (ii) the medical services do not sustain medical stability.
- (9) For compensable services provided on or after July 1, 2013, if the injured worker pays for the initial medical service prior to acceptance of the claim by the insurer, the injured worker must be reimbursed the entire amount they paid out-of-pocket within 30 days of acceptance.
 - (a) If the insurer pays the provider, the provider must reimburse the injured worker.

- (b) Otherwise, the insurer must reimburse the injured worker.
- (10) For injured workers who are receiving benefits from the Uninsured Employers' Fund pursuant to 39-71-503, MCA, the provisions of this rule are subject to 39-71-510, MCA.

History: 39-71-203, MCA; IMP, 39-71-203, 39-71-510, 39-71-704, MCA; Eff. 12/31/72; AMD, 1991 MAR p. 2622, Eff. 12/27/91; AMD, 1993 MAR p. 2801, Eff. 12/1/93; AMD, 2007 MAR p. 260, Eff. 2/23/07; AMD, 2008 MAR p. 2490, Eff. 12/1/08; AMD, 2011 MAR p. 1137, Eff. 6/24/11; AMD, 2013 MAR p. 1185, Eff. 7/12/13.

24.29.1403 Selection of Physician

This rule has been repealed.

History: 39-71-203, MCA; IMP, 39-71-203, 39-71-704, MCA; Eff. 12/31/72; AMD, 1991 MAR p. 2622, Eff. 12/27/91; REP, 1993 MAR p. 404, Eff. 4/1/93.

24.29.1404 Disputed Medical Claims

- (1) After mediation, disputes between an insurer and a medical service provider arising over the amount of a fee for medical services are resolved by a hearing before the department upon written application of a party to the dispute or the injured worker. The following issues are considered to be disputes arising over the amount of a fee for medical services:
 - (a) amounts payable to medical providers, when benefits available directly to claimants are not an issue;
 - (b) access to medical records;
 - (c) timeliness of payments to medical providers; or
 - (d) requirements for documentation submitted by a provider to an insurer pursuant to ARM 24.29.1513 as a condition of the payment of medical fees.
- (2) All other disputes arising over medical claims, including travel expense reimbursement to injured workers, shall be brought before a department mediator as provided in part 24 of the Workers' Compensation Act.
- (3) Facility records must be furnished to the insurer upon request. Facilities must obtain the necessary release by their administrative procedures.
- (4) The rule of privileged communication is waived by the injured worker seeking benefits under the Workers' Compensation or Occupational Disease acts.

History: 39-71-203, MCA; IMP, 39-71-203, 39-71-704, MCA; Eff. 12/31/72; AMD, 1991 MAR p. 2622, Eff. 12/27/91; AMD, 2007 MAR p. 260, Eff. 2/23/07; AMD, 2007 MAR p. 1670, Eff. 10/26/07; AMD, 2008 MAR p. 2490, Eff. 12/1/08.

24.29.1405 Physicians' Reports

This rule has been repealed.

History: 39-71-203, MCA; IMP, 39-71-203, 39-71-704, MCA; Eff. 12/31/72; AMD, 1991 MAR p. 2622, Eff. 12/27/91; REP, 1993 MAR p. 404, Eff. 4/1/93.

24.29.1406 Facility Bills

- (1) Facility bills must be submitted on a UBO4 when the injured worker is discharged from the facility or every 30 days.

- (2) The providers and payers shall use, when possible, electronic billing for the billing and reimbursement process in order to facilitate rapid transmission of data, lessen the opportunity for errors, and lessen system costs.
- (3) It is the responsibility of the facility to use the proper service codes on any bills submitted for payment. The failure of a provider to do so, however, does not relieve the insurer's obligation to pay the bill, but it may justify delays in payment until proper coding of the services provided is received by the insurer.
- (4) Except as provided in (3), insurers must make timely payments of facility bills. In cases where there is no dispute over liability for the condition, the insurer must, within 30 days of receipt of a facility's charges, pay the charges according to the rates established by these rules.
- (5) Insurer-initiated medical necessity review, bill audits, and other administrative review procedures may only be conducted on a post-payment basis.

History: 39-71-203, MCA; IMP, 39-71-105, 39-71-107, 39-71-203, 39-71-704, MCA; Eff. 12/31/72; AMD, 2008 MAR p. 2490, Eff. 12/1/08; AMD, 2011 MAR p. 1137, Eff. 6/24/11; AMD, 2013 MAR p. 1185, Eff 7/12/13.

24.29.1407 Prosthetic Appliances

- (1) Claims for furnishing replacement or repair of prosthetic appliances shall be paid to orthotics or prosthetics, who have been certified by the American Board for Certification in Orthotics or Prosthetics, and whose services are performed in a certified facility.
- (2) For services provided on or after July 1, 2011, claims must be paid in accordance with the utilization and treatment guidelines adopted by the department in ARM 24.29.1591.

History: 39-71-203, MCA; IMP, 39-71-704, MCA; Eff. 12/31/72; AMD, 2011 MAR p. 1137, Eff. 6/24/11.

24.29.1408 Suspension Allowed

- (1) An insurer may suspend compensation payments under 39-71-607, MCA, for not more than 30 days pending the receipt of medical information, if:
 - (a) the insurer submits to the department a detailed written statement indicating that the insurer is having difficulty in receiving medical information relating to a claimant's condition; and
 - (b) the department approves a suspension of compensation payments for not more than 30 days pending the receipt of medical information; and
 - (c) after the department approves the suspension of payments, the insurer notifies the claimant in writing that biweekly payments are being suspended pending the receipt of medical information. A copy of the notification shall be furnished to the department.

History: 39-71-607, MCA; IMP, 39-71-607, MCA; NEW, Eff. 1/3/76.

24.29.1409 Travel Expense Reimbursement

- (1) For claims arising before July 1, 1989, reimbursement for travel expenses shall be determined as follows:
 - (a) Personal automobile and private airplane mileage expenses shall be reimbursed at the current rates specified for state employees. Prior authorization from the insurer is required for the use of a private airplane.

- Total reimbursable automobile miles shall be determined according to the most direct highway route between the injured worker's residence and the provider.
- (b) Expenses for eligible meals shall be reimbursed at the meal rates established for state employees.
 - (c) Actual out-of-pocket receipted lodging expenses incurred by injured workers shall be reimbursed up to the maximum amounts established for state employees. Lodging in those areas specifically designated as high cost cities shall be reimbursed at actual cost. Any claim for receipted or high cost lodging reimbursement must be accompanied by an original receipt from a licensed lodging facility. If the injured worker stays in a nonreceiptable facility, or fails to obtain a receipt, the reimbursement is the amount set for state employees for nonreceipted lodging.
 - (d) Miscellaneous transportation expenses, such as taxi fares or parking fees, are reimbursable and must be supported by paid receipts.
 - (e) Requests for travel reimbursement must be made within a reasonable time following the date(s) the travel was incurred.
- (2) For claims arising during the period July 1, 1989, through June 30, 1993, reimbursement for travel expenses shall be determined as follows:
- (a) Personal automobile and private airplane mileage expenses shall be reimbursed at the current rates specified for state employees. Prior authorization from the insurer is required for the use of a private airplane. Total reimbursable automobile miles shall be determined according to the most direct highway route between the injured worker's residence and the provider. When the travel coincides in whole or in part with the injured worker's regular travel to or from the worker's employment, the coincident mileage may be subtracted from the reimbursable mileage. For each calendar month, the first 50 miles of automobile mileage is not reimbursable.
 - (b) Expenses for eligible meals shall be reimbursed at the meal rates established for state employees.
 - (c) Actual out-of-pocket receipted lodging expenses incurred by injured workers shall be reimbursed up to the maximum amounts established for state employees. Lodging in those areas specifically designated as high cost cities shall be reimbursed at actual cost. Any claim for receipted or high cost lodging reimbursement must be accompanied by an original receipt from a licensed lodging facility. If the injured worker stays in a nonreceiptable facility, or fails to obtain a receipt, the reimbursement is the amount set for state employees for nonreceipted lodging.
 - (d) Miscellaneous transportation expenses, such as taxi fares or parking fees, are reimbursable and must be supported by paid receipts.
 - (e) Claims for reimbursement of travel expenses must be submitted within 90 days of the date the expenses are incurred, on a form furnished by the insurer. Claims for reimbursement that are not submitted within 90 days may be denied by the insurer.
- (3) For claims arising from July 1, 1993, through June 30, 2001, travel expenses are not reimbursed unless the travel is at the request of the insurer. Travel is "at the request of the insurer" when the insurer directs the claimant to: change treating physician; attend an independent medical examination; use a preferred

provider; or be treated by a managed care organization. If travel expenses are to be reimbursed, then reimbursement shall be determined as follows:

- (a) Personal automobile and private airplane mileage expenses shall be reimbursed at the current rates specified for state employees. Prior authorization from the insurer is required for the use of a private airplane. Total reimbursable automobile miles shall be determined according to the most direct highway route between the injured worker's residence and the provider. For each calendar month, the first 50 miles of automobile mileage is not reimbursable. In addition, travel within the community in which the worker resides shall not be reimbursed.
 - (b) Expenses for eligible meals shall be reimbursed at the meal rates established for state employees.
 - (c) Actual out-of-pocket receipted lodging expenses incurred by injured workers shall be reimbursed up to the maximum amounts established for state employees. Lodging in those areas specifically designated as high cost cities shall be reimbursed at actual cost. Any claim for receipted or high cost lodging reimbursement must be accompanied by an original receipt from a licensed lodging facility. If the injured worker stays in a nonreceiptable facility, or fails to obtain a receipt, the reimbursement is the amount set for state employees for nonreceipted lodging.
 - (d) Miscellaneous transportation expenses, such as taxi fares or parking fees, are reimbursable and must be supported by paid receipts.
 - (e) Claims for reimbursement of travel expenses must be submitted within 90 days of the date the expenses are incurred, on a form furnished by the insurer. Claims for reimbursement that are not submitted within 90 days may be denied by the insurer.
- (4) For claims arising on or after July 1, 2001, payment of travel expense is subject to the following:
- (a) Claims for reimbursement of travel expenses must be submitted within 90 days of the date the expenses are incurred, on a form furnished by the insurer. Claims for travel expense reimbursement that are not submitted within 90 days may be denied by the insurer. The insurer must notify the injured worker in writing that the request for travel expense reimbursement must be submitted within 90 days from the date the expense was incurred in order to be reimbursed. If the insurer fails to notify the claimant of the claimant's entitlement to travel expenses and 90 days have passed since the expense was incurred, the insurer must pay the travel.
 - (b) The type of travel selected must be the least costly form of travel unless the travel is not suitable for the claimant's medical condition, as certified by the claimant's physician.
 - (c) Reimbursement of travel is excluded under the following conditions:
 - (i) The first 100 miles of automobile travel are excluded each month unless the insurer requested the travel pursuant to 39-71-605 , MCA.
 - (ii) Travel to a medical provider within the claimant's community is excluded.
 - (iii) Travel outside the claimant's community is excluded if comparable treatment is available within the community, unless the insurer requests the claimant to travel to another community.
 - (iv) Travel is excluded when it is incurred while traveling to unauthorized or disallowed treatment or procedures.

- (d) For purposes of this rule, "community" means the area within a 15 mile radius of the claimant's residence as determined by the most direct automobile route between the claimant's residence and the provider.
- (e) The insurer is not liable for injuries that result from an accident that occurs during travel for treatment of the claim as provided in 39-71-704 , MCA.
- (f) Reimbursement for travel expenses shall be determined as follows:
 - (i) Personal automobile and private airplane mileage expenses shall be reimbursed at the current rates specified for state employees. Prior authorization from the insurer is required for the use of a private airplane. Total reimbursable automobile miles shall be determined according to the most direct highway route between the claimant's residence and the provider.
 - (ii) Expenses for eligible meals shall be reimbursed at the meal rates established for state employees.
 - (iii) Actual out-of-pocket receipted lodging expenses incurred by the claimant shall be reimbursed up to the maximum amounts established for state employees. Lodging in those areas specifically designated as high cost cities shall be reimbursed at actual cost. Any claim for receipted or high cost lodging reimbursement must be accompanied by an original receipt from a licensed lodging facility. If the claimant stays in a nonreceiptable facility, or fails to obtain a receipt, the reimbursement is the amount set for state employees for nonreceipted lodging.
 - (iv) Miscellaneous transportation expenses, such as taxi fares or parking fees, are reimbursable and must be supported by paid receipts.
- (5) Preauthorized expenses incurred for direct commercial transportation by air or ground, including rental vehicles, shall be reimbursed when no other less costly form of travel is available to the claimant, or when less costly forms of travel are not suitable to the claimant's medical condition, as certified by the claimant's physician.
 - (a) If a claimant chooses to use commercial transportation when a less costly form of travel suitable to the claimant's medical condition is available, as certified by the claimant's physician, reimbursement shall be made according to the rates associated with the least costly form of travel.
- (6) For occupational disease claims arising prior to July 1, 2005, if liability has not been accepted on the claim and the department schedules a medical examination as provided in 39-72-602 , MCA, the insurer shall reimburse the claimant for the travel expenses incurred for the examination pursuant to this rule.
- (7) The department shall make available to interested parties the specific information referenced in this rule concerning rates for transportation, meals, and lodging; meal time ranges; and designations of high cost cities. The department shall inform interested parties in a timely manner of all applicable updates to this information.

History: 39-71-203, 39-72-203, 39-72-402, MCA; IMP, 39-71-704, 39-72-602, 39-72-608, MCA; NEW, 1990 MAR p. 1564, Eff. 8/17/90; AMD, 1993 MAR p. 2804, Eff. 12/1/93; AMD, 2006 MAR p. 210, Eff. 1/27/06.

Rules 24.29.1410 through 24.29.1414 reserved

24.29.1415 Impairment Rating Dispute Procedure

- (1) This section applies to dates of injury beginning July 1, 1987, through June 30, 1991. An evaluator must be a qualified physician licensed to practice in the state of Montana under Title 37, chapter 3, MCA, and board certified in an area of specialty appropriate to the injury of the claimant, except that if the claimant's treating physician is a chiropractor, the evaluator may be a chiropractor who is certified as an impairment evaluator under Title 37, chapter 12, MCA. The claimant's treating physician may not be one of the evaluators to whom the claimant is directed by the department.
- (2) The department shall arrange evaluations as close to the claimant's residence as reasonably possible.
- (3) The department shall give written notice to the parties of the time and place of the examination. If the claimant fails to give 48 hours notice of the claimant's inability to attend the examination, the claimant is liable for payment of the evaluator's charges.
- (4) The department may request a party to submit all pertinent medical documents including any previous impairment evaluations to the selected evaluator.
- (5) Any party wanting to provide information to an evaluator or inquire about the status of an evaluation shall do so only through the department.
- (6) The impairment evaluators shall operate according to the following procedures:
 - (a) The evaluator shall submit a report of the evaluator's findings to the department, claimant, and insurer within 15 days of the date of the examination.
 - (b) If another evaluation is requested within 15 days after the first evaluator mailed the first report, the department shall select a second evaluator who shall render an impairment evaluation of the claimant.
 - (c) The second evaluator shall submit a report of the second evaluator's findings to the department, claimant, and insurer, within 15 days of the date of the examination.
 - (d) The department shall submit both reports to the third evaluator, who shall then submit a final report to the department, claimant, and insurer within 30 days of the date of the examination or, if no examination is conducted, within 30 days of receipt of the first and second evaluation reports from the department. The final report must certify that the other two evaluators have been consulted.
 - (e) If neither party disputes the rating in the final report, the insurer shall begin paying the impairment award, if any, within 45 days of the third evaluator's mailing of the report.
 - (f) Either party may dispute the final impairment rating by filing a petition with the workers' compensation court within 15 days of the third evaluator's mailing of the report.

History: 39-71-203, MCA; IMP, 39-71-711, MCA; NEW, 1987 MAR p. 1985, Eff. 10/30/87; AMD, 1990 MAR p. 1004, Eff. 6/1/90; AMD, 1991 MAR p. 2622, Eff. 12/27/91; AMD, 2007 MAR p. 260, Eff. 2/23/07.

24.29.1416 Applicability of Date Of Injury, Date of Service

- (1) The amounts of the following types of payments are determined according to the specific department rates in effect on the date the medical service or services are provided, regardless of the date of injury:

- (a) medical fees;
 - (b) facility charges;
 - (c) prescription drugs; and
 - (d) DME.
- (2) When services, procedures, or supplies are bundled for purposes of billing and the bundling covers more than one day, the date of discharge must be used as the date the services are provided for purposes of this rule.

History: 39-71-203, MCA; IMP, 39-71-704, 39-71-727, MCA; NEW, 1991 MAR p. 2622, Eff. 12/27/91; AMD, 1994 MAR p. 679, Eff. 4/1/94; AMD, 2007 MAR p. 1192, Eff. 8/24/07; AMD, 2008 MAR p. 2490, Eff. 12/1/08.

Rules 24.29.1417 through 24.29.1419 reserved

24.29.1420 Relative Value Fee Schedule

This rule has been repealed.

History: 39-71-203 and 39-71-704, MCA, as amended by section 3 of Ch. 422 of Laws of 1985; IMP, 39-71-704, MCA; NEW, 1986 MAR p. 454, Eff. 4/1/86; REP, 1993 MAR p. 404, Eff. 4/1/93.

Rules 24.29.1421 through 24.29.1424 reserved

24.29.1425 Rates for Hospital Services Provided Prior to July 1, 1997

(See the Transfer and Repeal Table)

History: 39-71-203, MCA; IMP, 39-71-704, MCA; NEW, 1987 MAR p. 2388, Eff. 1/1/88; AMD, 1991 MAR p. 2622, Eff. 12/27/91; AMD, 1998 MAR p. 759, Eff. 4/1/98; REP, 2018 MAR p. 2527, Eff. 1/1/19.

24.29.1426 Hospital Service Rules for Services Provided from April 1, 1998, through December 31, 2007

(See the Transfer and Repeal Table)

History: 39-71-203, MCA; IMP, 39-71-704, MCA; NEW, 1998 MAR p. 759, Eff. 4/1/98; AMD, 2007 MAR p. 1670, Eff. 10/26/07; REP, 2018 MAR p. 2527, Eff. 1/1/19.

24.29.1427 Hospital Service Rules for Services Provided from January 1, 2008, Through November 30, 2008

(See the Transfer and Repeal Table)

History: 39-71-203, MCA; IMP, 39-71-704, MCA; NEW, 2007 MAR p. 1670, Eff. 10/26/07; AMD, 2008 MAR p. 2490, Eff. 12/1/08; REP, 2018 MAR p. 2527, Eff. 1/1/19.

24.29.1428 Hospital Rates for July 1, 1997, through June 30, 1998

(See the Transfer and Repeal Table)

History: 39-71-203, MCA; IMP, 39-71-704, MCA; NEW, 1998 MAR p. 759, Eff. 4/1/98; REP, 2018 MAR p. 2527, Eff. 1/1/19.

Rule 24.29.1429 reserved

24.29.1430 Hospital Rates from July 1, 1998, through June 30, 2001

(See the Transfer and Repeal Table)

History: 39-71-203, MCA; IMP, 39-71-704, MCA; NEW, 1998 MAR p. 759, Eff. 4/1/98; AMD, 2007 MAR p. 260, Eff. 2/23/07; AMD, 2008 MAR p. 2490, Eff. 12/1/08; REP, 2018 MAR p. 2527, Eff. 1/1/19.

24.29.1431 Hospital Rates from July 1, 2001, through November 30, 2008

(See the Transfer and Repeal Table)

History: 39-71-203, MCA; IMP, 39-71-704, MCA; NEW, 2007 MAR p. 260, Eff. 2/23/07; AMD, 2008 MAR p. 2490, Eff. 12/1/08; REP, 2018 MAR p. 2527, Eff. 1/1/19.

24.29.1432 Facility Service Rules and Rates for Services Provided from December 1, 2008 through June 30, 2013

- (1) The department adopts the fee schedules provided by this rule to determine the reimbursement amounts for medical services provided at a facility when a person is discharged on or after December 1, 2008. An insurer is obligated to pay the fee provided by the fee schedules for a service, even if the billed charges are less, unless the facility and insurer have a managed care organization (MCO) or preferred provider organization (PPO) arrangement that provides for a different payment amount. The fee schedules, available online via the Internet at <http://erd.dli.mt.gov/workers-comp-claims-assistance/medical-regulations/montana-facility-fee-schedule/7-erd/workers-comp-regulations/267-montana-facility-fee-schedule.html>, are comprised of the following elements:
 - (a) The Montana Hospital Inpatient Services MS-DRG Reimbursement Fee Schedule, based on CMS version 26;
 - (b) The Montana Hospital Outpatient and ASC Fee Schedule Organized by APC;
 - (c) The Montana Hospital Outpatient and ASC Fee Schedule Organized by CPT/HCPCS;
 - (d) The Montana Ambulance Fee Schedule;
 - (e) The Montana CCI Code Edits Listing;
 - (f) The Montana RCC and other Montana RCC-based Calculations;
 - (g) The Montana Status Indicator (SI) Codes; and
 - (h) The base rates and conversion formulas established by the department.
- (2) The application of the base rate depends on the date the medical services are provided.
- (3) Critical access hospitals and medical assistance facilities are reimbursed at 100 percent of that facility's usual and customary charges.
- (4) Any services provided by a type of facility not explicitly addressed by this rule must be paid at 75 percent of its usual and customary charges.
- (5) Any inpatient rehabilitation services, including services provided at a long term inpatient rehabilitation facility must be paid at 75 percent of that facility's usual and customary charges. All CMS rehabilitation MS-DRGs are excluded from the Montana MS-DRG payment system and instead are paid at 75 percent of the facility's usual and customary charges regardless of the place of service.
- (6) DME, prosthetics, and orthotics, excluding implantables, will be paid at 75 percent of a facility's usual and customary charges.
- (7) Facility billing must be submitted on a CMS Uniform Billing (UB-04) form or CMS 1500 form, including the 837-I and 837-P form when submitting electronically.

- (8) Hospitals and ASCs must, on an annual basis, submit to the department data reporting Medicare, Medicaid, commercial, unrecovered, and workers' compensation claims reimbursement in a standard form supplied by the department. The department may in its discretion conduct audits of any facility's financial records to confirm the accuracy of submitted information.
- (9) Individual medical providers who furnish professional services in a hospital, ASC, or other facility setting must bill insurers separately and must be reimbursed using the nonfacility fee schedule. Those reimbursements are excluded from any calculation of outlier payments.
- (10) Facility pharmacy reimbursements are made as follows:
 - (a) If a facility pharmacy dispenses prescription drugs to an individual during the course of treatment in the facility, reimbursement is part of the MS-DRG or APC reimbursement.
 - (b) If a patient's medications are not included in the MS-DRG or APC service bundle, the reimbursement will be 75 percent of the facility's usual and customary charges.
- (11) The following applies to inpatient services provided at an acute care hospital:
 - (a) The department may establish the base rate annually.
 - (i) Effective December 1, 2008, the base rate is \$7,735.
 - (b) Payments for inpatient acute care hospital services must be calculated using the base rate multiplied by the Montana MS-DRG weight. For example, if the MS-DRG weight is 0.5, the amount payable is \$3,867.50, which is the base rate of \$7,735 multiplied by 0.5.
 - (c) If a service falls outside of the scope of the MS-DRG and is not otherwise listed on a Montana fee schedule, reimbursement for that service must be 75 percent of that facility's usual and customary charges.
 - (d) The threshold for outlier payments is three times the Montana MS-DRG payment amount. If the outlier threshold is met, the outlier payment must be the MS-DRG reimbursement amount plus an amount that is determined by multiplying the charges above the threshold by the sum of 15 percent and the individual hospital's Montana operating RCC.
 - (i) For example, if the hospital submits total charges of \$100,000, the MS-DRG reimbursement amount is \$25,000, and the RCC is 0.50, then the resultant calculation for reimbursement is as follows: The DRG reimbursement amount (\$25,000) is multiplied by 3 to set the threshold trigger (\$75,000). The threshold trigger (\$75,000) is subtracted from the total charges (\$100,000) resulting in the amount above the trigger (\$25,000). The amount above the trigger (\$25,000) is then multiplied by .65 (which is the RCC of .5 plus .15) to obtain the outlier payment (\$16,250). The total payment to the hospital in this example would be the DRG reimbursement amount (\$25,000) plus the outlier payment (\$16,250) = \$41,250.
 - (ii) The department may establish the inpatient outlier amount annually.
 - (e) Where an implantable exceeds \$10,000 in cost, hospitals may seek additional reimbursement beyond the normal MS-DRG payment. Any implantable that costs less than \$10,000 is bundled in the implantable charge included in the MS-DRG payment.
 - (i) Any reimbursement for implantables pursuant to this subsection must be documented by a copy of the invoice for the implantable.

Insurers are subject to privacy laws concerning disclosure of health or proprietary information.

- (ii) Reimbursement is set at a total amount that is determined by adding the actual amount paid for the implantable on the invoice, plus the handling and freight cost for the implantable, plus 15 percent of the actual amount paid for the implantable. Handling and freight charges must be included in the implantable reimbursement and are not to be reimbursed separately.
 - (iii) When a hospital seeks additional reimbursement pursuant to this subsection, the implantable charge is excluded from any calculation for an outlier payment.
 - (iv) Because the decision regarding an implantable is a complex medical analysis, this rule defers to the judgment of the individual physician and facility to determine the appropriate implantable. A payer may not reduce the reimbursement when the medical decision is to use a higher cost implantable.
- (f) All facility services provided during an uninterrupted patient encounter leading to an inpatient admission must be included in the inpatient stay, except air and ground ambulance services which are paid separately pursuant to the Montana Ambulance Fee schedule.
- (g) The following applies to facility transfers when a patient is transferred for continuation of medical treatment between two acute care hospitals:
- (i) A hospital transferring a patient is paid as follows: The MS-DRG reimbursement amount is divided by the geometric mean number of days duration listed for the MS-DRG; the resultant per diem amount is then multiplied by two for the first day of stay at the transferring hospital; the per diem amount is multiplied by one for each subsequent geometric mean day of stay at the transferring hospital; and the amounts for each day of stay at the transferring hospital are totaled. If the result is greater than the MS-DRG reimbursement amount, the transferring hospital is paid the MS-DRG reimbursement amount. Associated outliers and add-ons are then added to the payment.
 - (ii) A hospital receiving a patient is paid the full MS-DRG payment plus any appropriate outliers and add-ons.
 - (iii) Facility transfers do not include costs related to transportation of a patient to initially obtain medical care. Such reimbursements are covered by ARM 24.29.1409.
- (12) The following applies to outpatient services provided at an acute care hospital or an ASC:
- (a) The department may establish the base rate for outpatient service at acute care hospitals annually.
 - (i) Effective December 1, 2008, the base rate for hospital outpatient services is \$105.
 - (b) The department may establish the base rate for ASCs annually.
 - (i) Effective December 1, 2008, the base rate for ASCs is \$79, which is 75 percent of the hospital base rate.
 - (c) Payments for outpatient services in a hospital or an ASC are based on the Montana APC system. A single outpatient visit may result in more than one APC for that claim. The payment must be calculated by multiplying the base rate times the APC weight. If the APC weight is not listed or if the

APC weight is listed as null, reimbursement for that service must be paid at 75 percent of the facility's usual and customary charges. Examples of such services include but are not limited to laboratory tests, radiology, and therapies. If a service falls outside of the scope of the APC and is not otherwise listed on a Montana fee schedule, reimbursement for that service must be 75 percent of that facility's usual and customary charges.

- (d) CCI code edits must be used to determine bundling and unbundling of charges. No other clinical editing is allowed to determine bundling and unbundling of charges.
- (e) Outpatient medical services include observation in an outpatient status.
- (f) Where an outpatient implantable exceeds \$500 in cost, hospitals or ASCs may seek additional reimbursement beyond the normal APC payment. In such an instance, the provider may bill CPT code L 8699, and the status indicator code "N" may not be used by a payer to determine the amount of the payment. Any implantable that costs less than \$500 is bundled in the APC payment.
 - (i) Any reimbursement for implantables pursuant to this subsection must be documented by a copy of the invoice for the implantable. Insurers are subject to privacy laws concerning disclosure of health or proprietary information.
 - (ii) Reimbursement is set at a total amount that is determined by adding the actual amount paid for the implantable on the invoice, plus the handling and freight cost for the implantable, plus 15 percent of the actual amount paid for the implantable. Handling and freight charges must be included in the implantable reimbursement and are not to be reimbursed separately.
- (g) The following applies to patient transfers from an ASC to an acute care hospital:
 - (i) An ASC transferring a patient is paid the APC reimbursement.
 - (ii) The acute care hospital is paid the MS-DRG or the APC reimbursement, whichever is applicable.
 - (iii) Facility transfers do not include costs related to transportation of a patient to initially obtain medical care. Such reimbursements are covered by ARM 24.29.1409.

History: 39-71-203, MCA; IMP, 39-71-203, 39-71-704, MCA; NEW, 2008 MAR p. 2490, Eff. 12/1/08; AMD, 2013 MAR p. 1185, Eff. 7/12/13.

24.29.1433 Facility Service Rules and Rates for Services Provided on or after July 1, 2013

- (1) The department adopts the fee schedules provided by this rule to determine the reimbursement for medical services provided by a facility when a person is discharged on or after July 1, 2013. An insurer is obligated to pay the fee provided by the fee schedules for a service, even if the billed charge is less, unless the facility and insurer have a managed care organization (MCO) or preferred provider organization (PPO) arrangement that provides for a different payment amount. The fee schedules are available online at the Employment Relations Division web site and are updated as soon as is reasonably feasible relative to the effective dates of the medical codes as described below. The fee

schedules are comprised of the elements listed in 39-71-704, MCA, and the following:

- (a) The Montana Status Indicator (SI) Codes;
- (b) The Montana unique code, MT003, described in (11)(e) and (12)(f); and
- (c) The base rates and conversion formulas established by the department:
 - (i) The “Montana Workers’ Compensation Facility Fee Schedule Instruction Set for 2013,” for services provided from July 1, 2013 through June 30, 2014;
 - (ii) The “Montana Workers’ Compensation Facility Fee Schedule Instruction Set Effective July 1, 2014,” for services provided from July 1, 2014, through June 30, 2015;
 - (iii) The “Montana Workers’ Compensation Facility Fee Schedule Instruction Set Effective July 1, 2015,” for services provided from July 1, 2015, through June 30, 2016;
 - (iv) The “Montana Workers’ Compensation Facility Fee Schedule Instruction Set Effective July 1, 2016,” for services provided from July 1, 2016, through June 30, 2017;
 - (v) The “Montana Workers’ Compensation Facility Fee Schedule Instruction Set Effective July 1, 2017,” for services provided from July 1, 2017, through June 30, 2018;
 - (vi) he “Montana Workers’ Compensation Facility Fee Schedule Instruction Set Effective July 1, 2018,” for services provided from July 1, 2018, through June 30, 2019; and
 - (vii) The “Montana Workers’ Compensation Facility Fee Schedule Instruction Set Effective July 1, 2019.”
- (2) The application of the base rate depends on the date the medical services are provided.
- (3) Critical access hospitals (CAH) are reimbursed at 100 percent of that facility’s usual and customary charges. CAH is a designation for a facility only. The reimbursement rate for CAH set by this rule applies to facility charges.
 - (a) Regarding professional services provided at a physical therapy (PT), occupational therapy (OT), and speech therapy (ST) services provided on an outpatient basis must be billed on a UB04 and reimbursed 100 percent of usual and customary. PT, OT, and ST outpatient services may not be billed on the CMS 1500.
 - (b) All other professional services provided at a CAH must be billed on a CMS 1500 and reimbursed according to the professional fee schedule pursuant to ARM 24.29.1534.
- (4) Any services provided by a type of facility not explicitly addressed by this rule or any services using new codes not yet adopted by this rule must be paid at 75 percent of the facility’s usual and customary charges.
- (5) Any inpatient rehabilitation services, including services provided at a long- term inpatient rehabilitation facility must be paid at 75 percent of that facility’s usual and customary charges. All CMS rehabilitation MS-DRGs are excluded from the Montana MS-DRG payment system and instead are paid at 75 percent of the facility’s usual and customary charges regardless of the place of service.
- (6) DME, prosthetics, and orthotics, excluding implantables, will be paid according to the professional fee schedule pursuant to ARM 24.29.1534 or, if no reimbursement value, ARM 24.29.1523.

- (7) Facility billing must be submitted on a CMS Uniform Billing (UB04) form, including the 837-I form when submitting electronically.
- (8) Hospitals and ASCs must, on an annual basis, submit to the department data reporting Medicare, Medicaid, commercial, unrecovered, and workers' compensation claims reimbursement in a standard form supplied by the department. The department may in its discretion conduct audits of any facility's financial records to confirm the accuracy of submitted information.
- (9) Medical provider services furnished in an acute care hospital, ASC, or other facility setting, whether those professional services are furnished as an employee or as an independent professional, must be billed separately using the CMS 1500 and must be reimbursed using the professional fee schedule pursuant to ARM 24.29.1534, except as provided in (a).
 - (a) PT, OT, and ST services provided on an outpatient basis must be billed on a UB04 and reimbursed according to the facility fee schedule. These reimbursements are excluded from any calculation of outlier payments. PT, OT, and ST outpatient services may not be billed on the CMS 1500.
- (10) Facility pharmacy reimbursements are made as follows:
 - (a) If a facility pharmacy dispenses prescription drugs to an individual during the course of treatment in the facility, reimbursement is part of the MS-DRG or APC reimbursement.
 - (b) If a patient's medications are not included in the MS-DRG or APC service bundle, the reimbursement will be according to ARM 24.29.1529.
- (11) The following applies to inpatient services provided at an acute care hospital:
 - (a) The department may establish the base rate annually.
 - (i) Effective July 1, 2013 through June 30, 2014, the base rate is \$7,944.
 - (ii) Effective July 1, 2014 through June 30, 2015, the base rate is \$7,984.
 - (iii) Effective July 1, 2015, through June 30, 2016, the base rate is \$8,076.
 - (iv) Effective July 1, 2016, through June 30, 2017, the base rate is \$8,120.
 - (v) Effective July 1, 2017, through June 30, 2018, the base rate is \$8,201.
 - (vi) Effective July 1, 2018, through June 30, 2019, the base rate is \$8,373.
 - (vii) Effective July 1, 2019, the base rate is \$8,599.
 - (b) Payments for inpatient acute care hospital services must be calculated using the base rate multiplied by the Montana MS-DRG weight. For example, if the MS-DRG weight is 0.5, the amount payable is \$4,299.50, which is the base rate of \$8,599 multiplied by 0.5.
 - (c) If a service falls outside of the scope of the MS-DRG and is not otherwise listed on a Montana fee schedule, including new codes not yet adopted, reimbursement for that service must be 75 percent of that facility's usual and customary charges.
 - (d) The threshold for outlier payments is three times the Montana MS-DRG payment amount. If the outlier threshold is met, the outlier payment must be the MS-DRG reimbursement amount plus an amount that is determined by multiplying the charges above the threshold by the sum of 15 percent and the individual hospital's Montana CCR.
 - (i) For example, if the hospital submits total charges of \$100,000, the MS-DRG reimbursement amount is \$25,000, and the CCR is 0.50, then the resultant calculation for reimbursement is as follows: The DRG reimbursement amount (\$25,000) is multiplied by 3 to set the threshold trigger (\$75,000). The threshold trigger (\$75,000) is subtracted from the total charges (\$100,000) resulting in the amount

above the trigger (\$25,000). The amount above the trigger (\$25,000) is then multiplied by .65 (which is the CCR of .5 plus .15) to obtain the outlier payment (\$16,250). The total payment to the hospital in this example would be the DRG reimbursement amount (\$25,000) plus the outlier payment (\$16,250) = \$41,250.

(ii) The department may establish the inpatient outlier amount annually.

(e) Where an implantable exceeds \$10,000 in cost, hospitals may seek additional reimbursement beyond the normal MS-DRG payment. Hospitals may seek additional reimbursement by using Montana unique code MT003. Any implantable that costs less than \$10,000 is bundled in the implantable charge included in the MS-DRG payment.

(i) Any reimbursement for implantables pursuant to this subsection must be documented by a copy of the invoice for the implantable (or purchase order if it lists the number of items, the wholesale price, and the shipping costs) and the operative report. Insurers are subject to privacy laws concerning disclosure of health or proprietary information.

(ii) Reimbursement is set at a total amount that is determined by adding the actual amount paid for the implantable on the invoice or purchase order for the implantable, plus 15 percent of the actual amount paid for the implantable, plus the handling and freight cost for the implantable. Handling and freight charges must be included in the implantable reimbursement and are not to be reimbursed separately.

(iii) When a hospital seeks additional reimbursement pursuant to this subsection, the implantable charge is excluded from any calculation for an outlier payment.

(iv) Because the decision regarding an implantable is a complex medical analysis, this rule defers to the judgment of the individual physician and facility to determine the appropriate implantable. A payer may not reduce the reimbursement when the medical decision is to use a higher cost implantable.

(f) All facility services provided during an uninterrupted patient encounter leading to an inpatient admission must be included in the inpatient stay, except air and ground ambulance services which are paid separately pursuant to the Montana Ambulance Fee schedule. Air ambulances whose charter and certification is through the federal Department of Transportation will be paid at 100 percent of their usual and customary charges pursuant to federal law.

(g) The following applies to facility transfers when a patient is transferred for continuation of medical treatment between two acute care hospitals:

(i) A hospital receiving a patient is paid the full MS-DRG payment plus any appropriate outliers and add-ons.

(ii) Facility transfers do not include costs related to transportation of a patient to initially obtain medical care. Such reimbursements are covered by ARM 24.29.1409.

(12) The following applies to outpatient services provided at an acute care hospital or an ASC:

(a) The annual department-set base rate for outpatient service at acute care hospitals is:

(i) \$107, from July 1, 2013, through June 30, 2014;

(ii) \$109, from July 1, 2014, through June 30, 2015;

- (iii) \$111, from July 1, 2015, through June 30, 2016;
 - (iv) \$111, from July 1, 2016, through June 30, 2017;
 - (v) \$114, from July 1, 2017, through June 30, 2018;
 - (vi) \$116, from July 1, 2018, through June 30, 2019; and
 - (vii) \$119, on or after July 1, 2019.
- (b) The annual department-set base rate for ASCs, which is 75 percent of the hospital outpatient base rate, is:
- (i) \$80, from July 1, 2013, through June, 30, 2014;
 - (ii) \$82, from July 1, 2014, through June 30, 2015;
 - (iii) \$83, from July 1, 2015, through June 30, 2016;
 - (iv) \$83, from July 1, 2016, through June 30, 2017;
 - (v) \$86, from July 1, 2017, through June 30, 2018;
 - (vi) \$87, from July 1, 2018, through June 30, 2019; and
 - (vii) \$89, on or after July 1, 2019.
- (c) Payments for outpatient services in a hospital or an ASC are based on the Montana APC system. A single outpatient visit may result in more than one APC for that claim. The payment must be calculated by multiplying the base rate times the APC weight. If an APC code is available, the services must be billed using the APC code. If the APC weight is not listed or if the APC weight is listed as null, reimbursement for that service must be paid at 75 percent of the facility's usual and customary charges. Examples of such services include but are not limited to laboratory tests and radiology. If a service falls outside of the scope of the APC and is not otherwise listed on a Montana fee schedule, reimbursement for that service must be 75 percent of that facility's usual and customary charges.
- (d) CCI and MUE code edits must be used to determine bundling and unbundling of charges.
- (e) Outpatient medical services include observation in an outpatient status.
- (f) Where an outpatient implantable exceeds \$500 in cost, hospitals or ASCs may seek additional reimbursement beyond the normal APC payment. In such an instance, the provider may bill using Montana unique code MT003. Any implantable that costs less than \$500 is bundled in the APC payment.
- (i) Any reimbursement for implantables pursuant to this subsection must be documented by a copy of the invoice for the implantable (or purchase order if it lists the number of items, the wholesale price, and the shipping cost) and the operative report. Insurers are subject to privacy laws concerning disclosure of health or proprietary information.
 - (ii) Reimbursement is set at a total amount that is determined by adding the actual amount paid for the implantable on the invoice or purchase order for the implantable, plus 15 percent of the actual amount paid for the implantable, plus the handling and freight cost for the implantable. Handling and freight charges must be included in the implantable reimbursement and are not to be reimbursed separately.
- (g) The following applies to patient transfers from an ASC to an acute care hospital:
- (i) An ASC transferring a patient is paid the APC reimbursement.
 - (ii) The acute care hospital is paid the MS-DRG or the APC reimbursement, whichever is applicable.

- (iii) Facility transfers do not include costs related to transportation of a patient to initially obtain medical care. Such reimbursements are covered by ARM 24.29.1409.

History: 39-71-203, MCA; IMP, 39-71-704, MCA; NEW, 2013 MAR p. 1185, Eff. 7/12/13; AMD, 2014 MAR p. 1513, Eff. 7/11/14; AMD, 2015 MAR p. 818, Eff. 6/26/15; AMD, 2016 MAR p. 1055, Eff. 6/18/16; AMD, 2017 MAR p. 784, Eff. 6/10/17; AMD, 2018 MAR p. 1036, Eff. 5/26/18; AMD, 2019 MAR p. 848, Eff. 6/22/19.

Subchapter 15

Nonfacility Service Rules and Utilization Rules

24.29.1501 Purpose

- (1) The purpose in developing utilization rules is to assure that appropriate quality and cost effective medical services are available to individuals injured on the job. Health care programs outside the workers' compensation arena such as the federal Medicare and Medicaid programs, as well as private health insurers, have had medical cost containment measures in place for some time. While reimbursement for medical services will continue to be based on fee schedules, the need for cost containment measures similar to those implemented in the nonworkers' compensation area has been recognized.
- (2) The purpose of evidence-based utilization and treatment guidelines is to assist injured workers in receiving prompt and appropriate care, assist injured workers in stay-at-work/return-to-work options, assist clinicians in making decisions for specific conditions, and help insurers make reimbursement determinations. Although the primary purpose of the guidelines is advisory and educational, the guidelines are enforceable for payment purposes. The department recognizes that acceptable medical practice may include deviations from these guidelines, as individual cases dictate. Therefore, these guidelines are not relevant as evidence of a provider's legal standard of professional care.

History: 39-71-203, MCA; IMP, 39-71-704, MCA; NEW, 1993 MAR p. 404, Eff. 4/1/93; AMD, 2011 MAR p. 1137, Eff. 6/24/11.

Rules 24.29.1502 and 24.29.1503 reserved

24.29.1504 Definitions

This rule has been transferred.

History: 39-71-203, MCA; IMP, 39-71-704, MCA; NEW, 1993 MAR p. 404, Eff. 4/1/93; AMD, 1993 MAR p. 2809, Eff. 12/1/93; AMD, 2002 MAR p. 1758, Eff. 7/1/02; AMD, 2007 MAR p. 1670, Eff. 10/26/07; TRANS, to ARM 24.29.1401A, and AMD, 2008 MAR p. 2490, Eff. 12/1/08.

Rules 24.29.1505 through 24.29.1509 reserved

24.29.1510 Selection of Physician for Claims Arising From July 1, 1993 through June 30, 2013

- (1) For claims arising on or after July 1, 1993, "treating physician" has the meaning provided by 39-71-116, MCA.

- (2) The worker has a duty to select a treating physician. Initial treatment in an emergency room or urgent care facility is not selection of a treating physician. The selection of a treating physician must be made as soon as practicable. A worker may not avoid selection of a treating physician by repeatedly seeking care in an emergency room or urgent care facility. The worker should select a treating physician with due consideration for the type of injury or occupational disease suffered, as well as practical considerations such as the proximity and the availability of the physician to the worker.
- (3) Selection of the treating physician, referrals made by the treating physician, and changes of treating physician must all be made in accordance with the provisions of 39-71-1101, MCA. Treatment from a physician's assistant or an advanced practice nurse, when the treatment is under the direction of the treating physician, does not constitute a change of physician and does not require prior authorization pursuant to ARM 24.29.1517.
- (4) Subject to 39-71-1101, MCA, ARM 24.29.1517, and any other applicable rule or statute, nothing in this rule prohibits the claimant from receiving treatment from more than one physician if required by the claimant's injury or occupational disease.

History: 39-71-203, MCA; IMP, 39-71-704, MCA; NEW, 1993 MAR p. 2809, Eff. 12/1/93; AMD, 2007 MAR p. 260, Eff. 2/23/07; AMD, 2013 MAR p. 1185, Eff. 7/12/13.

24.29.1511 Selection of Physician for Claims Arising Before July 1, 1993

(See the Transfer and Repeal Table)

History: 39-71-203, MCA; IMP, 39-71-704, MCA; NEW, 1993 MAR p. 404, Eff. 4/1/93; AMD, 1993 MAR p. 2809, Eff. 12/1/93; REP, 2018 MAR p. 2527, Eff. 1/1/19.

24.29.1512 Selection of Physician for Claims Arising on or After July 1, 2013

- (1) For claims arising on or after July 1, 2013, "treating physician" has the meaning provided by 39-71-116, MCA.
- (2) The worker may select a treating physician. Initial treatment in an emergency room or urgent care facility is not selection of a treating physician. The selection of a treating physician should be made as soon as practicable. A worker may not avoid selection of a treating physician by repeatedly seeking care in an emergency room or urgent care facility. The worker should select a treating physician with due consideration for the type of injury or occupational disease suffered, as well as practical considerations such as the proximity and the availability of the physician to the worker.
- (3) Any time after an insurer accepts liability for an injury or occupational disease, the insurer may recognize a treating physician selected by the injured worker. The treating physician is compensated at 100 percent of the fee schedule.
- (4) After acceptance of liability, the insurer may formally approve the treating physician selected by the injured worker as a designated treating physician or may choose a different physician to be the designated treating physician. The designated treating physician is compensated at 110 percent of the fee schedule.
 - (a) The designated treating physician is responsible for coordination of all medical care, pursuant to 39-71-1101(2), MCA. The designated treating physician must agree to accept these responsibilities.

- (b) The insurer must provide formal notification of the designated treating physician by e-mail, facsimile, or letter to:
 - (i) the injured worker;
 - (ii) the current treating physician; and
 - (iii) the designated treating physician. The effective date of the designation of treating physician is the date the insurer sends the notice of designation unless the physician declines within ten working days.
 - (c) A health care provider who is referred by the designated treating physician is compensated at 90 percent of the fee schedule. These providers are not responsible for coordinating care or providing determinations as required by the designated treating physician.
- (5) Treatment from a physician's assistant or an advanced practice nurse, when the treatment is under the direction of the treating physician, does not constitute a change of physician and does not require prior authorization pursuant to ARM 24.29.1517.
 - (6) Subject to 39-71-1101, MCA, ARM 24.29.1517, and any other applicable rule or statute, nothing in this rule prohibits the claimant from receiving treatment from more than one physician if required by the claimant's injury or occupational disease.

History: 39-71-203, MCA; IMP, 39-71-704, MCA; NEW, 2013 MAR p. 1185, Eff. 7/12/13.

24.29.1513 Documentation Requirements

- (1) When a treating physician, emergency room or similar urgent care facility sees the claimant for the first time (related to the claim), the provider must furnish to the insurer the initial report, the Medical Status Form (MSF), and the treatment bill (CMS 1500) within seven business days of the visit.
- (2) As soon as possible, upon completion of the initial diagnostic process, the treating physician must prepare a treatment plan and promptly furnish a copy to the insurer. Subsequent changes in the treatment plan must be documented and a copy of the amended treatment plan must be promptly furnished to the insurer.
- (3) To be eligible for payment for subsequent visits, the provider must furnish to the insurer:
 - (a) the treatment bill (CMS 1500);
 - (b) improvement status with respect to the treatment plan; and
 - (c) applicable treatment notes with the bill.
- (4) Certain treatment plans may require services be obtained from a vendor that is outside the tradition of being a professional health care provider. Under that circumstance, the treating physician has the obligation to include the medical necessity for the service in the treatment plan and furnish functional improvement status as appropriate. The vendor, however, is responsible for furnishing documentation.
 - (a) The following are examples of services that are contemplated as falling within the meaning of this subsection:
 - (i) health club membership; and
 - (ii) home health care services.
- (5) Documentation is considered to be a service to the injured worker and no charge is allowed for the documentation required by this rule.

- (6) The treating physician must report immediately to the insurer the date total disability ends or the date the injured worker is released to return to work.

History: 39-71-203, MCA; IMP, 39-71-704, MCA; NEW, 1993 MAR p. 404, Eff. 4/1/93; AMD, 1994 MAR p. 680, Eff. 4/1/94; AMD, 2013 MAR p. 1185, Eff. 7/12/13.

Rule 24.29.1514 reserved

24.29.1515 Functional Improvement Status

- (1) Functional improvement status must identify objective medical findings of the claimant's medical status, and note the effect of the medical services (positive, neutral, or negative), with respect to the goals of the treatment plan. The functional improvement status can be sufficiently documented on the Medical Status Form. The Montana Utilization and Treatment Guidelines outline the standards for functional improvement.
- (2) If there are any significant changes in the treatment plan, that fact must be noted and described.

History: 39-71-203, MCA; IMP, 39-71-704, MCA; NEW, 1993 MAR p. 404, Eff. 4/1/93; AMD, 2013 MAR p. 1185, Eff. 7/12/13.

Rule 24.29.1516 reserved

24.29.1517 Prior Authorization for Certain Services

- (1) This rule applies to:
 - (a) services provided on or before June 30, 2011; and
 - (b) body parts not covered by the Montana Guidelines, as described in ARM 24.29.1593.
- (2) When prior authorization is required, the provider must request the authorization a reasonable amount of time in advance of the time the procedure is scheduled to be performed. The request must contain enough information to allow the insurer to make an informed decision regarding authorization. The insurer may not unreasonably withhold its authorization. An insurer's denial must contain an explanation of the reasons for its denial. Reasonableness will be judged in light of the circumstances surrounding the medical procedure and the claim.
- (3) If a provider makes a written request for prior authorization at least 14 days prior to the date the service is scheduled to be performed, authorization is presumed to be given by the insurer if there is no written denial sent by the insurer to the provider within 14 days of the date the written request was mailed. If the written denial is made within three days of the expiration of the 14 day response period, the insurer must also notify the provider of the denial by telephone or facsimile ("fax").
- (4) If a provider makes a verbal request for prior authorization, the burden of proof for showing that authorization was granted by the insurer rests with the provider. The provider should promptly send to the insurer a written confirmation of any verbal authorization made by the insurer. Such written confirmation should refer not only to the name of the claimant, the claim number, and the procedure authorized, but also the name of the person giving the authorization and the date the authorization was given.
- (5) Prior authorization is required when:

- (a) the provider to whom the referral is made is a consulting specialist; or
- (b) there is a request for change of treating physician; or
- (c) the claimant has not been treated for the injury (or occupational disease) within the past six months; or
- (d) the claimant has been identified as having reached maximum medical improvement; or
- (e) any of the following is proposed:
 - (i) nonemergency surgery;
 - (ii) an MRI or CT, if the same body part has been imaged within the last 12 months;
 - (iii) psychological counseling, other than provided by the treating physician;
 - (iv) membership in a health club;
 - (v) any pain clinic program;
 - (vi) pain medication is being prescribed for a period of six months or longer;
 - (vii) medical equipment and supplies if over \$300.00;
 - (viii) a permanent change from one provider's specialty practice to the specialty practice of a different provider, for treatment of the same injury. The occasional and temporary change of provider due to illness, vacation, or emergency, does not require prior authorization; or
 - (ix) for any other procedure that by rule specifically requires prior authorization.
- (6) For any service identified in (4) (e), additional authorization is required if the duration or extent of the service is later modified because of a change in the treatment plan.
- (7) Prior authorization is not required for emergency procedures.
- (8) If medical services related to the injury or occupational disease are denied pursuant to this rule because a provider failed to try to obtain prior authorization, an injured worker cannot be billed for those denied medical services pursuant to 39-71-743, MCA.
- (9) When an insurer denies liability for an injury or occupational disease, and the insurer then later assumes liability for a particular condition, the insurer may not deny payment for the medical services provided for that condition during the period of denial based solely on failure to obtain prior authorization.

History: 39-71-203, MCA; IMP, 39-71-704, 39-71-743, MCA; NEW, 1993 MAR p. 404, Eff. 4/1/93; AMD, 2002 MAR p. 1758, Eff. 7/1/02; AMD, 2007 MAR p. 260, Eff. 2/23/07; AMD, 2011 MAR p. 1137, Eff. 6/24/11.

Rule 24.29.1518 reserved

24.29.1519 Second Opinions for Services Provided on or Before June 30, 2011

(See the Transfer and Repeal Table)

History: 39-71-203, MCA; IMP, 39-71-704, MCA; NEW, 1993 MAR p. 404, Eff. 4/1/93; AMD, 2011 MAR p. 1137, Eff. 6/24/11; REP, 2018 MAR p. 2527, Eff. 1/1/19.

Rule 24.29.1520 reserved

24.29.1521 Medical Equipment and Supplies for Dates of Service Before January 1, 2008

(See the Transfer and Repeal Table)

History: 39-71-203, MCA; IMP, 39-71-704, MCA; NEW, 1993 MAR p. 404, Eff. 4/1/93; AMD, 2007 MAR p. 260, Eff. 2/23/07; AMD, 2007 MAR p. 1670, Eff. 10/26/07; REP, 2018 MAR p. 2527, Eff. 1/1/19.

24.29.1522 Medical Equipment and Supplies Provided by a Nonfacility for Dates of Service on or After January 1, 2008 Through June 30, 2013

- (1) This rule applies to DME provided by a nonfacility on or after January 1, 2008.
- (2) Except for prescription medicines as provided by ARM 24.29.1529, reimbursement for DME dispensed through a medical provider is calculated by using the RVU listed in the RBRVS times the conversion factor established in ARM 24.29.1538 in effect on the date of service. If a RVU is not listed or if the RVU is listed as null, reimbursement is limited to a total amount that is determined by adding the cost of the item plus the freight cost plus the lesser of either \$30.00 or 30 percent of the cost of the item. An invoice documenting the cost of the equipment or supply must be sent to the insurer upon the insurer's request.
 - (a) Copies of the instructions are available on the department web site at <http://erd.dli.mt.gov/workers-comp-claims-assistance/medical-regulations/montana-facility-fee-schedule/7-erd/workers-comp-regulations/267-montana-facility-fee-schedule.html> or may be obtained at no charge from the Montana Department of Labor and Industry, P.O. Box 8011, Helena, Montana 59604-8011.
- (3) If a provider adds value to DME (such as by complex assembly, modification, or special fabrication), then the provider may charge a reasonable fee for those services. Merely unpacking an item is not a "value-added" service. While extensive fitting of devices may be billed for, simple fitting (such as adjusting the height of crutches) is not billable.
- (4) This rule does not apply to:
 - (a) health care facilities;
 - (b) pharmacies; or
 - (c) equipment supply houses that are not also health care providers.

History: 39-71-203, MCA; IMP, 39-71-704, MCA; NEW, 2007 MAR p. 1670, Eff. 10/26/07; AMD, 2008 MAR p. 2490, Eff. 12/1/08; AMD, 2013 MAR p. 1185, Eff. 7/12/13.

24.29.1523 Medical Equipment and Supplies for Dates of Service on or after July 1, 2013

- (1) For both facility and professional services, reimbursement for DME dispensed through a medical provider is determined by the professional fee schedule in effect on the date of service, except for prescription medicines as provided by ARM 24.29.1529. On March 31 of each year, or as soon thereafter as is reasonably feasible, the professional fee schedule with updated HCPCS will be posted on the web site. If a RVU is not listed or if the RVU is listed as null, reimbursement is limited to a total amount that is determined by adding the cost of the item plus the lesser of either \$30.00 or 30 percent of the

cost of the item plus the freight cost. An invoice documenting the cost of the equipment or supply must be sent to the insurer upon the insurer's request.

- (a) Copies of the instructions are available on the department web site or may be obtained at no charge from the Montana Department of Labor and Industry, P.O. Box 8011, Helena, Montana 59604-8011.
- (2) If a provider adds value to DME (such as by complex assembly, modification, or special fabrication), then the provider may charge a reasonable fee for those services. Merely unpacking an item is not a "value-added" service. While extensive fitting of devices may be billed for, simple fitting (such as adjusting the height of crutches) is not billable.

History: 39-71-203, MCA; IMP, 39-71-704, MCA; NEW, 2013 MAR p. 1185, Eff. 7/12/13.

Rules 24.29.1524 and 24.29.1525 reserved

24.29.1526 Disallowed Procedures

- (1) Only reasonable and necessary medical expenses are payable. Procedures that are not generally accepted by the medical community may be determined not to be "reasonable" or "necessary". Providers are encouraged to seek prior approval from the insurer for experimental or controversial procedures.
- (2) Disputes arising over payment of medical services may be appealed pursuant to 39-71-704, MCA and, when applicable ARM 24.29.1404.
- (3) Medical services which are not payable include, but are not limited to, the following:
 - (a) disc nucleoplasty;
 - (b) extreme lateral interbody fusion (XLIA);
 - (c) freeze/framer;
 - (d) frequency specific micro current;
 - (e) HEALOS/leopard cage;
 - (f) inter X therapy;
 - (g) kinesis myofascial integration;
 - (h) lidoderm patch;
 - (i) percutaneous disc nucleoplasty; and
 - (j) medical marijuana.

History: 39-71-203, MCA; IMP, 39-71-704, MCA; NEW, 1993 MAR p. 404, Eff. 4/1/93; AMD, 2003 MAR p. 2870, Eff. 12/25/03; AMD, 2011 MAR p. 1137, Eff. 6/24/11.

Rules 24.29.1527 and 24.29.1528 reserved

24.29.1529 Prescription Drugs Fee Schedule

- (1) In addition to the limitations on the payments for and dispensing of prescription drugs as set out by 39-71-727, MCA, the following apply:
 - (a) The reimbursement rate for prescription drugs is based upon the rate in effect on the date the drug is dispensed.
 - (b) Reimbursement rates to retail pharmacies for brand-name drugs are limited to the lesser of:
 - (i) the price charged for the prescription drug at the time of dispensing; or

- (ii) the average wholesale price (AWP), minus 10 percent, at the time of dispensing, plus a dispensing fee, not to exceed \$3.00 per prescription drug.
 - (c) Reimbursement rates to retail pharmacies for generic-name drugs are limited to the lesser of:
 - (i) the price charged for the prescription drug at the time of dispensing; or
 - (ii) the AWP, minus 25 percent, at the time of dispensing, plus a dispensing fee, not to exceed \$3.00 per prescription drug.
 - (d) For the purposes of this rule, average wholesale prices must be updated monthly.
- (2) If, prior to liability for a claim being accepted by the insurer, an injured worker has personally paid for prescription drugs, prescribed for a condition for which liability is subsequently accepted, the injured worker is entitled to a refund of the price paid by the injured worker for the prescription drug.
- (a) The insurer, when accepting liability for a condition for which a prescription drug has been prescribed, must, upon receiving a proper receipt, reimburse the injured worker the retail price paid.
 - (b) After the injured worker has been reimbursed by the insurer, the pharmacy must, upon request by the insurer, reimburse the insurer for the difference in the amount paid by the injured worker and the amount provided by the fee schedule.

History: 39-71-203, MCA; IMP, 39-71-727, 39-71-743, MCA; NEW, 2007 MAR p. 1192, Eff. 8/24/07; AMD, 2007 MAR. p. 1676, Eff. 10/26/07; AMD, 2007 MAR p. 2011, Eff. 12/7/07.

Rule 24.29.1530 reserved

24.29.1531 Use of Fee Schedules for Services Provided from April 1, 1993 through June 30, 2002

(See the Transfer and Repeal Table)

History: 39-71-203, MCA; IMP, 39-71-704, MCA; NEW, 1993 MAR p. 404, Eff. 4/1/93; AMD, 1993 MAR p. 1659, Eff. 8/1/93; AMD, 2002 MAR p. 1758, Eff. 7/1/02; REP, 2018 MAR p. 2527, Eff. 1/1/19.

24.29.1532 Use of Fee Schedules for Services Provided from July 1, 2002, through December 31, 2007

(See the Transfer and Repeal Table)

History: 39-71-203, MCA; IMP, 39-71-704, MCA; NEW, 2002 MAR p. 1758, Eff. 7/1/02; AMD, 2007 MAR p. 1670, Eff. 10/26/07; REP, 2018 MAR p. 2527, Eff. 1/1/19.

24.29.1533 Nonfacility Fee Schedule for Services Provided From January 1, 2008 through June 30, 2013

- (1) The department adopts the fee schedule provided by this rule to determine the reimbursement amounts for medical services provided by an individual provider at a nonfacility or facility furnished on or after January 1, 2008. An insurer is not obligated to pay more than the fee provided by the fee schedule for a service provided within the state of Montana. The fee schedule is comprised of the following elements:

- (a) the HCPCS codes, including CPT codes, which are incorporated by reference. Unless a special code or description is otherwise provided by rule, pursuant to 39-71-704, MCA, the edition of the CPT publication in effect at the time the medical service is furnished must be used to determine the proper procedure code;
- (b) the RVU given in the RBRVS incorporated by reference. Unless a special code or description is otherwise provided by rule, pursuant to 39-71-704, MCA, the edition of the RBRVS in effect at the time the medical service is furnished must be used to determine the proper procedure code. For example, the 2010 version of the RBRVS applies to services provided from January 1, 2010, through December 31, 2010;
- (i) Because this rule was previously adopted before the 2008 and 2009 versions of the RBRVS were issued, the 2009 version of the RBRVS does not apply to services in any year. The 2008 version of the RBRVS applies to services provided from January 1, 2009, through December 31, 2009 and the 2007 edition of the RBRVS applies to services provided from January 1, 2008, through December 31, 2008;
- (c) the publication "Montana Workers' Compensation Nonfacility Fee Schedule Instruction Set for Services Provided on or after January 1, 2010", November 2009 edition, incorporated by reference;
- (i) The "Montana Workers' Compensation Nonfacility Fee Schedule Instruction Set for 2009", applies to services provided from January 1, 2009, through December 31, 2009.
- (ii) The "Montana Workers' Compensation Nonfacility Fee Schedule Instruction Set for 2008", September 2007 edition, applies to services provided from January 1, 2008, through December 31, 2008;
- (d) the conversion factors established by the department in ARM 24.29.1538;
- (e) modifiers, as found in the instructions; and
- (f) the Montana unique code, MT001, described in greater detail in (7).
- (2) The conversion factors, the CPT codes, and the RVU used depends on the date the medical service, procedure, or supply is provided. The reimbursement amount is generally determined by finding the proper CPT code in the RBRVS then multiplying the RVU for that code by the conversion factor. For example, if the conversion factor is \$5.00, and a procedure code has a unit value of 3.0, the most that the insurer is required to pay the provider for that procedure is \$15.00.
- (3) Instructions for the fee schedule are available on the department's web site, along with already calculated reimbursement amounts by CPT code. All the definitions, guidelines, RVUs, procedure codes, modifiers, and other explanations provided in the instructions affecting the determination of individual fees apply. A copy of the instructions is available on the department web site at <http://erd.dli.mt.gov/workers-comp-claims-assistance/medical-regulations/montana-facility-fee-schedule/7-erd/workers-comp-regulations/267-montana-facility-fee-schedule.html> or may be obtained at no charge from the Montana Department of Labor and Industry, P.O. Box 8011, Helena, Montana 59604-8011.
- (4) The maximum fee that an insurer is required to pay for a particular procedure is listed on the department web site and was computed using the RVU in the total facility or nonfacility column of the RBRVS times the conversion factor, except as otherwise provided for in these rules.

- (5) Each provider is to limit services to those which can be performed within the limits and restrictions of the provider's professional licensure. For nonlicensed providers, the insurer is not required to reimburse above the related CPT codes for appropriate services.
- (6) RVUs have not been established in the RBRVS for CPT codes 99455 and 99456. The RVU established by the department for:
 - (a) code 99455 is 2.5 RVU; and
 - (b) code 99456 is 2.8 RVU.
- (7) When billing the services listed below, the Montana unique code, MT001, must be used and a separate written report is required describing the services provided. The reimbursement rate for this code is 0.5 RVUs per 15 minutes. These requirements apply to the following services:
 - (a) face-to-face conferences with payor representative(s) to update the status of a patient upon request of the payor;
 - (b) a report associated with nonphysician conferences required by the payor; or
 - (c) completion of a job description or job analysis form requested by the payor.
- (8) Where a procedure is not covered by these rules, the insurer must pay a reasonable fee, not to exceed the usual and customary fee charged by the provider to nonworkers' compensation patients unless the procedure is not allowed by these rules.
- (9) Where a service is listed as "by report", the fee charged may not exceed the usual and customary fee charged by the provider to nonworkers' compensation patients.
- (10) It is the responsibility of the provider to use the proper procedure, service, and supply codes on any bills submitted for payment. The failure of a provider to do so, however, does not relieve the insurer's obligation to pay the bill, but it may justify delays in payment until proper coding of the services provided is received by the insurer.
- (11) Copies of the RBRVS are available from the publisher. Ordering information may be obtained from the department at the address listed in (3).

History: 39-71-203, MCA; IMP, 39-71-704, MCA; NEW, 2007 MAR p. 1670, Eff. 10/26/07; AMD, 2009 MAR p. 8, Eff. 1/16/09; AMD, 2009 MAR p. 2482, Eff. 12/25/09; AMD, 2013 MAR p. 1185, Eff. 7/12/13.

24.29.1534 Professional Fee Schedule for Services Provided on or After July 1, 2013

- (1) The department adopts the professional fee schedule provided by this rule to determine the reimbursement amounts for medical services provided by a professional provider at a nonfacility or facility furnished on or after July 1, 2013. An insurer must pay the fee schedule or the billed charge, whichever is less, for a service provided within the state of Montana. The fee schedules are available online at the Employment Relations Division web site and are updated as soon as is reasonably feasible relative to the effective dates of the medical codes as described below. The fee schedules are comprised of the elements listed in 39-71-704, MCA, and the following:
 - (a) the instruction set for the fee schedule as adopted in this subsection. All the definitions, guidelines, RVUs, procedure codes, modifiers, and other explanations provided in the instruction set affecting the determination of individual fees apply. A copy of the instruction set may also be obtained

at no charge from the Montana Department of Labor and Industry, P.O. Box 8011, Helena, Montana 59604-8011;

- (i) The “Montana Workers’ Compensation Professional Fee Schedule Instruction Set for 2013” applies to services provided from July 1, 2013 through June 30, 2014;
 - (ii) The “Montana Workers’ Compensation Professional Fee Schedule Instruction Set Effective July 1, 2014” applies to services provided from July 1, 2014 through June 30, 2015;
 - (iii) The “Montana Workers’ Compensation Professional Fee Schedule Instruction Set Effective July 1, 2015” applies to services provided from July 1, 2015, through June 30, 2016;
 - (iv) The “Montana Workers’ Compensation Professional Fee Schedule Instruction Set Effective July 1, 2016” applies to services provided from July 1, 2016, through June 30, 2017;
 - (v) The “Montana Workers’ Compensation Professional Fee Schedule Instruction Set Effective July 1, 2017” applies to services provided from July 1, 2017, through June 30, 2018;
 - (vi) The “Montana Workers’ Compensation Professional Fee Schedule Instruction Set Effective July 1, 2018” applies to services provided from July 1, 2018, through June 30, 2019; and
 - (vii) The “Montana Workers’ Compensation Professional Fee Schedule Instruction Set Effective July 1, 2019” applies to services provided on or after July 1, 2019.
- (b) the conversion factors established by the department in ARM 24.29.1538;
 - (c) modifiers, listed on the ERD web site;
 - (d) the Montana unique code, MT001, described in (7);
 - (e) the Montana unique code, MT003, adopted and described in ARM 24.29.1433; and
 - (f) the Montana unique code, MT009, for referral to a CRC for on-site job evaluation with the injured worker to assist in returning him/her to work either to his/her time of injury job or a new job/position.
- (2) The conversion factors, the CPT codes, and the RVUs used depend on the date the medical service, procedure, or supply is provided. The reimbursement amount is generally determined by finding the proper CPT code in the RBRVS then multiplying the RVU for that code by the conversion factor. For example, if the conversion factor is \$5.00, and a procedure code has a unit value of 3.0, the most that the insurer is required to pay the provider for that procedure is \$15.00.
 - (3) Where a procedure is not covered by these rules or uses a new code, the insurer must pay 75 percent of the usual and customary fee charged by the provider to nonworkers’ compensation patients unless the procedure is not allowed by these rules.
 - (4) The maximum fee that an insurer is required to pay for a particular procedure is listed on the department web site and was computed using the RVU in the total facility or nonfacility column of the RBRVS times the conversion factor, except as otherwise provided for in these rules.
 - (5) Professionals, including those who furnish services in a hospital, CAH, ASC, or other facility setting must bill insurers using the CMS 1500, with the exception of PT, OT, and ST services provided on an outpatient basis and billed on a UB04.

- (6) Each provider is to limit services to those which can be performed within the provider's scope of license. For nonlicensed providers, the insurer is not required to reimburse above the related CPT codes for appropriate services.
- (7) When billing the services listed below, the Montana unique code, MT001, must be used and a separate written report is required describing the services provided. The reimbursement rate for this code is 0.54 RVUs per 15 minutes with time documented by the provider. These requirements apply to the following services:
 - (a) face-to-face conferences with payor representative(s) to update the status of a patient upon request of the payor; or
 - (b) a report associated with nonphysician conferences required by the payor; or
 - (c) completion of a job description or job analysis form requested by the payor; or
 - (d) written questions that require a written response from the provider, excluding the Medical Status Form.
- (8) Where a service is listed as "by report", the fee charged may not exceed the usual and customary fee charged by the provider to nonworkers' compensation patients.
- (9) It is the responsibility of the provider to use the proper procedure, service, and supply codes on any bills submitted for payment. The failure of a provider to do so, however, does not relieve the insurer's obligation to pay the bill, but it may justify delays in payment until proper coding of the services provided is received by the insurer.
- (10) Copies of the RBRVS are available from the publisher. Ordering information may be obtained from the department.

History: 39-71-203, MCA; IMP, 39-71-704, MCA; NEW, 2013 MAR p. 1185, Eff. 7/12/13; AMD, 2014 MAR p. 1513, Eff. 7/11/14; AMD, 2015 MAR p. 818, Eff. 6/26/15; AMD, 2016 MAR p. 1055, Eff. 6/18/16; AMD, 2017 MAR p. 784, Eff. 6/10/17; AMD, 2018 MAR p. 1036, Eff. 5/26/18; AMD, 2019 MAR p. 848, Eff. 6/22/19.

Rule 24.29.1535 reserved

24.29.1536 Conversion Factors–Methodology for Services Provided from April 1, 1993, Through December 31, 2007

(See the Transfer and Repeal Table)

History: 39-71-203, MCA; IMP, 39-71-704, MCA; NEW, 1993 MAR p. 404, Eff. 4/1/93; AMD, 1994 MAR p. 680, Eff. 4/1/94; AMD, 2002 MAR p. 1758, Eff. 7/1/02; AMD, 2007 MAR p. 1670, Eff. 10/26/07; REP, 2018 MAR p. 2527, Eff. 1/1/19.

24.29.1537 Special Monitoring and Adjustment of Physical Medicine Fees During the Period July 1, 2002 through December 31, 2003

(See the Transfer and Repeal Table)

History: 39-71-203, MCA; IMP, 39-71-704, MCA; NEW, 2002 MAR p. 1758, Eff. 7/1/02; REP, 2018 MAR p. 2527, Eff. 1/1/19.

24.29.1538 Conversion Factors for Services Provided on or After January 1, 2008

- (1) This rule applies to services, supplies, and equipment provided on or after January 1, 2008.

- (2) The conversion factors established by the department for goods and services, other than anesthesia services are:
- (a) \$63.45 from January 1, 2008, through December 31, 2008;
 - (b) \$65.28 from January 1, 2009, through June 30, 2013;
 - (c) \$60.52 from July 1, 2013, through June 30, 2014;
 - (d) \$59.72 from July 1, 2014, through June 30, 2015;
 - (e) \$61.49 from July 1, 2015, through June 30, 2016;
 - (f) \$62.91 from July 1, 2016, through June 30, 2017;
 - (g) \$62.92 from July 1, 2017, through June 30, 2018;
 - (h) \$63.50 from July 1, 2018, through June 30, 2019; and
 - (i) \$64.04 on or after July 1, 2019.
- (3) The conversion factors established by the department for anesthesia services are:
- (a) \$57.20 from January 1, 2008, through December 31, 2008;
 - (b) \$61.98 from January 1, 2009, through December 31, 2009;
 - (c) \$60.97 from January 1, 2010, through June 30, 2013;
 - (d) \$61.40 from July 1, 2013, through June 30, 2014;
 - (e) \$62.98 from July 1, 2014, through June 30, 2015;
 - (f) \$65.63 from July 1, 2015, through June 30, 2016;
 - (g) \$63.86 from July 1, 2016, through June 30, 2017;
 - (h) \$65.98 from July 1, 2017, through June 30, 2018;
 - (i) \$66.97 from July 1, 2018, through June 30, 2019; and
 - (j) \$69.58 on or after July 1, 2019.
- (4) Up to the top five insurers or third-party administrators, ranked by premiums written in Montana providing group health insurance coverage through a group health plan as defined in 33-22-140, MCA, and who use the RBRVS to determine fees for covered services, must annually provide to the department their current standard conversion factors by July 1.
- (5) The conversion factor amounts for professional services are calculated using the average rates for medical services paid by up to the top five insurers or third-party administrators providing group health insurance via a group health plan in Montana, based upon the amount of premium for that category of insurance reported to the office of the Montana insurance commissioner. The term "group health plan" has the same meaning as provided by 33-22-140, MCA. To be included in the conversion factor determination, the insurer or third-party administrator must occupy at least one percent of the market share for group health insurance policies as reported annually to the insurance commissioner.
- (a) The department annually surveys up to the top five insurers to collect information on the rates (the RBRVS conversion factors) paid during the current year for professional health care services furnished in Montana.
 - (b) The department's conversion factors for the following year are set at no more than 110 percent of the surveyed average.

History: 39-71-203, MCA; IMP, 39-71-704, MCA; NEW, 2007 MAR p. 1670, Eff. 10/26/07; AMD, 2009 MAR p. 8, Eff. 1/16/09; AMD, 2009 MAR p. 2482, Eff. 12/25/09; AMD, 2013 MAR p. 1185, Eff. 7/12/13; AMD, 2014 MAR p. 1513, Eff. 7/11/14; AMD, 2015 MAR p. 818, Eff. 6/26/15; AMD, 2016 MAR p. 1055, Eff. 6/18/16; AMD, 2017 MAR p. 784, Eff. 6/10/17; AMD, 2018 MAR p. 1036, Eff. 5/26/18; AMD, 2019 MAR p. 848, Eff. 6/22/19.

Rules 24.29.1539 and 24.29.1540 reserved

24.29.1541 Acupuncture Fees for Services Provided from April 1, 1993, through December 31, 2007

(See the Transfer and Repeal Table)

History: 39-71-203, MCA; IMP, 39-71-704, MCA; NEW, 1993 MAR p. 404, Eff. 4/1/93; AMD, 1994 MAR p. 680, Eff. 4/1/94; AMD, 2007 MAR p. 1670, Eff. 10/26/07; REP, 2018 MAR p. 2527, Eff. 1/1/19.

Rules 24.29.1542 through 24.29.1550 reserved**24.29.1551 Dental Specialty Area Fees for Services Provided from April 1, 1993, through December 31, 2007**

(See the Transfer and Repeal Table)

History: 39-71-203, MCA; IMP, 39-71-704, MCA; NEW, 1993 MAR p. 404, Eff. 4/1/93; AMD, 1994 MAR p. 680, Eff. 4/1/94; AMD, 2007 MAR p. 1670, Eff. 10/26/07; REP, 2018 MAR p. 2527, Eff. 1/1/19.

Rules 24.29.1552 through 24.29.1560 reserved**24.29.1561 Physician Fees – Medicine for Services Provided from April 1, 1993, through December 31, 2007**

(See the Transfer and Repeal Table)

History: 39-71-203, MCA; IMP, 39-71-704, MCA; NEW, 1993 MAR p. 404, Eff. 4/1/93; AMD, 1993 MAR p. 1659, Eff. 8/1/93; AMD, 1994 MAR p. 680, Eff. 4/1/94; AMD, 2007 MAR p. 1670, Eff. 10/26/07; REP, 2018 MAR p. 2527, Eff. 1/1/19.

Rules 24.29.1562 through 24.29.1565 reserved**24.29.1566 Physician Fees – Anesthesia Specialty Area for Services Provided from April 1, 1993, through December 31, 2007**

(See the Transfer and Repeal Table)

History: 39-71-203, MCA; IMP, 39-71-704, MCA; NEW, 1993 MAR p. 404, Eff. 4/1/93; AMD, 1994 MAR p. 680, Eff. 4/1/94; AMD, 2007 MAR p. 1670, Eff. 10/26/07; REP, 2018 MAR p. 2527, Eff. 1/1/19.

Rules 24.29.1567 through 24.29.1570 reserved**24.29.1571 Chiropractic Fees for Services Provided from April 1, 1993 through June 30, 2002**

(See the Transfer and Repeal Table)

History: 39-71-203, MCA; IMP, 39-71-704, MCA; NEW, 1993 MAR p. 404, Eff. 4/1/93; AMD, 1993 MAR p. 1659, Eff. 8/1/93; AMD, 1994 MAR p. 680, Eff. 4/1/94; AMD, 2002 MAR p. 1758, Eff. 7/1/02; REP, 2018 MAR p. 2527, Eff. 1/1/19.

24.29.1572 Chiropractic Fees for Services Provided from July 1, 2002, through December 31, 2007

(See the Transfer and Repeal Table)

History: 39-71-203, MCA; IMP, 39-71-704, MCA; NEW, 2002 MAR p. 1758, Eff. 7/1/02; AMD, 2007 MAR p. 1670, Eff. 10/26/07; REP, 2018 MAR p. 2527, Eff. 1/1/19.

24.29.1573 Prior Authorization and Billing Limitations for Chiropractic Services Provided from July 1, 2002, through December 31, 2007

(See the Transfer and Repeal Table)

History: 39-71-203, MCA; IMP, 39-71-704, MCA; NEW, 2002 MAR p. 1758, Eff. 7/1/02; AMD, 2007 MAR p. 1670, Eff. 10/26/07; REP, 2018 MAR p. 2527, Eff. 1/1/19.

24.29.1574 Chiropractic Fee Schedule for Services Provided from January 1, 2008, through June 30, 2011

(See the Transfer and Repeal Table)

History: 39-71-203, MCA; IMP, 39-71-704, MCA; NEW, 2007 MAR p. 1670, Eff. 10/26/07; AMD, 2011 MAR p. 1137, Eff. 6/24/11; REP, 2018 MAR p. 2527, Eff. 1/1/19.

24.29.1575 Chiropractic–Prior Authorization and Billing Limitations for Services Provided from January 1, 2008, through June 30, 2011

(See the Transfer and Repeal Table)

History: 39-71-203, MCA; IMP, 39-71-704, MCA; NEW, 2007 MAR p. 1670, Eff. 10/26/07; AMD, 2011 MAR p. 1137, Eff. 6/24/11; REP, 2018 MAR p. 2527, Eff. 1/1/19.

Rules 24.29.1576 through 24.29.1580 reserved**24.29.1581 Provider Fees–Occupational and Physical Therapy Specialty Area for Services Provided from April 1, 1993 through June 30, 2002**

(See the Transfer and Repeal Table)

History: 39-71-203, MCA; IMP, 39-71-704, MCA; NEW, 1993 MAR p. 404, Eff. 4/1/93; AMD, 1994 MAR p. 680, Eff. 4/1/94; AMD, 2002 MAR p. 1758, Eff. 7/1/02; REP, 2018 MAR p. 2527, Eff. 1/1/19.

24.29.1582 Provider Fees–Occupational and Physical Therapy Specialty Area for Services Provided from July 1, 2002 through September 30, 2003

(See the Transfer and Repeal Table)

History: 39-71-203, MCA; IMP, 39-71-704, MCA; NEW, 2002 MAR p. 1758, Eff. 7/1/02; AMD, 2007 MAR p. 260, Eff. 2/23/07; AMD, 2007 MAR p. 1670, Eff. 10/26/07; REP, 2018 MAR p. 2527, Eff. 1/1/19.

24.29.1583 Prior Authorization and Billing Limitations for Services Provided by Occupational Therapists and Physical Therapists From July 1, 2002, through December 31, 2007

(See the Transfer and Repeal Table)

History: 39-71-203, MCA; IMP, 39-71-704, MCA; NEW, 2002 MAR p. 1758, Eff. 7/1/02; AMD, 2007 MAR p. 1670, Eff. 10/26/07; REP, 2018 MAR p. 2527, Eff. 1/1/19.

24.29.1584 Provider Fees—Occupational and Physical Therapy Specialty Area for Services Provided from October 1, 2003, through December 31, 2007

(See the Transfer and Repeal Table)

History: 39-71-203, MCA; IMP, 39-71-704, MCA; NEW, 2007 MAR p. 260, Eff. 2/23/07; AMD, 2007 MAR p. 1670, Eff. 10/26/07; REP, 2018 MAR p. 2527, Eff. 1/1/19.

24.29.1585 Occupational and Physical Therapy Fee Schedule for Services Provided from January 1, 2008, through June 30, 2011

(See the Transfer and Repeal Table)

History: 39-71-203, MCA; IMP, 39-71-704, MCA; NEW, 2007 MAR p. 1670, Eff. 10/26/07; AMD, 2011 p. 1137, Eff. 6/24/11; REP, 2018 MAR p. 2527, Eff. 1/1/19.

24.29.1586 Occupational and Physical Therapists—Prior Authorization and Billing Limitations for Services Provided from January 1, 2008, through June 30, 2011

(See the Transfer and Repeal Table)

History: 39-71-203, MCA; IMP, 39-71-704, MCA; NEW, 2007 MAR p. 1670, Eff. 10/26/07; AMD, 2011 MAR p. 1137, Eff. 6/24/11; REP, 2018 MAR p. 2527, Eff. 1/1/19

Rules 24.29.1587 through 24.29.1590 reserved**24.29.1591 Utilization and Treatment Guidelines**

(See the Transfer and Repeal Table)

History: 39-71-203, 39-71-704, MCA; IMP, 39-71-704, MCA; NEW, 2011 MAR p. 1137, Eff. 6/24/11; AMD, 2014 MAR p. 1513, Eff. 7/11/14; AMD, 2015 MAR p. 818, Eff. 6/26/15; AMD, 2016 MAR p. 2420, Eff. 12/24/16; AMD, 2017 MAR p. 2185, Eff. 11/25/17; TRANS to ARM 24.29.1611 and AMD, 2018 MAR p. 2531, Eff. 1/1/19

Rule 24.29.1592 reserved**24.29.1593 Prior Authorization**

(See the Transfer and Repeal Table)

History: 39-71-203, 39-71-704, MCA; IMP, 39-71-704, MCA; NEW, 2011 MAR p. 1137, Eff. 6/24/11; TRANS to ARM 24.29.1621, 2018 MAR p. 2531, Eff. 1/1/19.

Rule 24.29.1594 reserved**24.29.1595 Independent Medical Review Process**

(See the Transfer and Repeal Table)

History: 39-71-203, 39-71-704, MCA; IMP, 39-71-224, 39-71-704, 39-71-2401, MCA; NEW, 2011 MAR p. 1137, Eff. 6/24/11; TRANS to ARM 24.29.1641 and AMD, 2018 MAR p. 2531, Eff. 1/1/19.

24.29.1596 Applicability of Utilization and Treatment Rules

(See the Transfer and Repeal Table)

History: 39-71-203, 39-71-704, MCA; IMP, 39-71-704, MCA; NEW, 2011 p. MAR 1137, Eff. 6/24/11; TRANS to ARM 24.29.1604 and AMD, 2018 MAR p. 2531, Eff. 1/1/19.

Rules 24.29.1597 and 24.29.1598 reserved

24.29.1599 Applicability of Utilization and Treatment Guidelines for Managed Care Organizations or Preferred Provider Organizations

(See the Transfer and Repeal Table)

History: 39-71-203, 39-71-704, MCA; IMP, 39-71-704, MCA; NEW, 2011 MAR p. 1137, Eff. 6/24/11; TRANS to ARM 24.29.1609, 2018 MAR p. 2531, Eff. 1/1/19

Subchapter 16

Utilization and Treatment Guidelines

24.29.1601 Definitions

As used in this subchapter, the following definitions apply:

- (1) "Claim" means an injury or occupational disease where:
 - (a) liability has been accepted by the insurer; or
 - (b) payment has been made by the insurer pursuant to:
 - (i) 39-71-608, MCA;
 - (ii) 39-71-615, MCA; or
 - (iii) any other reservation of rights.
- (2) "Department" means the Department of Labor and Industry, Employment Relations Division.
- (3) "Evidence-based" means use of the best evidence available in making decisions about the care of the individual patient, gained from the scientific method of medical decision-making and includes use of techniques from science, engineering, and statistics, such as randomized controlled trials (RCTs), meta-analysis of medical literature, integration of individual clinical expertise with the best available external clinical evidence from systematic research, and a risk-benefit analysis of treatment (including lack of treatment).
- (4) "Formulary" means the list of drugs for which prior authorization is generally not needed, as adopted and automatically updated pursuant to ARM 24.29.1616.
- (5) "Formulary rules" means:
 - (a) ARM 24.29.1601;
 - (b) ARM 24.29.1607;
 - (c) ARM 24.29.1616;
 - (d) ARM 24.29.1624;
 - (e) ARM 24.29.1631;
 - (f) ARM 24.29.1645; and
 - (g) ARM 24.29.1648.
- (6) "Insurer" means compensation plan No. 1, plan No. 2, and plan No. 3.
- (7) "Legacy claim" means a workers' compensation or occupational disease claim with an occurrence date before April 1, 2019.
- (8) "Medical director" means a person who is an employee of, or contractor to, the department, and who is responsible for the independent medical review

- of requests for treatment(s) or procedure(s), when those requests are denied, and whose responsibility will also include other areas to be determined by the department. A person serving as a medical director must be a physician licensed by the state of Montana under Title 37, chapter 3, MCA.
- (9) "Montana Guidelines" are the Montana utilization and treatment guidelines adopted by the department in ARM 24.29.1611.
 - (10) "ODG drug formulary" means the ODG Workers' Compensation Drug Formulary published by MCG Health, LLC.
 - (11) "PBM" mean the pharmacy benefits manager used by an insurer to help the insurer implement the formulary's use in the insurer's claims handling processes.
 - (12) "Primary medical services" has the same meaning as provided by 39-71-116, MCA.
 - (13) "Prior authorization" means the interested party receives prior authorization (either verbally or in writing) from the insurer:
 - (a) to perform treatment for those cases identified by ARM 24.29.1621; or
 - (b) to obtain medications for those cases identified in the formulary rules as requiring prior authorization.
 - (14) "Rebuttable presumption" means that the Montana Guidelines, as adopted in ARM 24.29.1611, are presumed to be compensable medical treatment for an injured worker. The presumption can be rebutted by a preponderance of credible medical evidenced-based material and medical reasons to justify that the medical treatment(s) or procedure(s) that require prior authorization are reasonable and necessary care for the injured worker.
 - (15) "Refill" means the dispensing of additional medications after the initial number of doses authorized by a written prescription have been dispensed, where the prescription expressly indicates that a certain number of refills are allowed without the need for another written prescription.
 - (16) "Supportive services" means those treatments, therapies, and related services that are designed to safely, effectively, and compassionately assist an injured worker transition from an existing medication regimen.
 - (17) "Treating physician" has the same meaning as provided by ARM 24.29.1401A.
 - (18) "Treatment" has the same meaning as provided by ARM 24.29.1401A.
 - (19) "Treatment plan" means a written outline of how the provider intends to treat a specific condition or complaint. A treatment plan includes a transition plan provided for in ARM 24.29.1631. A treatment plan must be made in accordance with the Montana Guidelines adopted in ARM 24.29.1611 and made in accordance with any insurer authorized treatments or procedures.

History: 39-71-203, 39-71-704, MCA; IMP, 39-71-704, MCA; NEW, 2018 MAR p. 2531, Eff. 1/1/19.

24.29.1604 Applicability of Utilization and Treatment Rules

- (1) The following rules are subject to the applicability provisions of this rule:
 - (a) ARM 24.29.1611;
 - (b) ARM 24.29.1621;
 - (c) ARM 24.29.1641; and
 - (d) ARM 24.29.1609.
- (2) The rules identified in (1) apply to:

- (a) injuries that occurred on or before June 30, 2007, for any treatment rendered on or after July 1, 2011, except that the provisions of (3) apply; and
 - (b) injuries that occurred on or after July 1, 2007, for any treatment rendered on or after July 1, 2011.
- (3) The presumption of compensability in the Montana utilization and treatment guidelines adopted by ARM 24.29.1611 does not apply to injuries occurring on or before June 30, 2007. However, treatment for these injuries made in accordance with the guidelines constitutes reasonable primary or secondary medical treatment, pursuant to 39-71-704, MCA, for any condition or diagnosis identified in the guidelines. Therefore, prior authorization is not required for treatment within the guidelines for these injuries unless prior authorization would otherwise be required under these rules.
- (4) As used in this subchapter, the term “injuries” includes occupational diseases which were diagnosed as an occupational disease, or should have been diagnosed as an occupational disease, during the time period specified.

History: 39-71-203, 39-71-704, MCA; IMP, 39-71-704, MCA; NEW, 2011 p. MAR 1137, Eff. 6/24/11; TRANS from ARM 24.29.1596 and AMD, 2018 MAR p. 2531, Eff. 1/1/19.

24.29.1607 Applicability of Formulary Rules to Out-Patient Services

- (1) The provisions of these formulary rules apply to all claims arising on or after April 1, 2019, but only with respect to outpatient services.
- (2) For claims arising before April 1, 2019, which are referred to as “legacy claims,” the rules in this subchapter will apply to prescriptions written on or after April 1, 2020, or 90 days after the insurer gives notice as provided in ARM 24.29.1631, whichever is later.
- (3) The provisions of this subchapter, including the formulary adopted and automatically updated as provided in ARM 24.29.1616 apply as they are in effect on the date the prescription is written.
- (4) Nothing in this subchapter excuses an insurer from providing medications that constitute primary medical services required to be furnished by 39-71-704, MCA.
- (5) Nothing in this subchapter requires an insurer to use the services of a PBM.

History: 39-71-203, 39-71-704, MCA; IMP, 39-71-704, MCA; NEW, 2018 MAR p. 2531, Eff. 1/1/19.

24.29.1609 Applicability of Utilization and Treatment Guidelines for Managed Care Organizations or Preferred Provider Organizations

- (1) Managed care organizations or preferred provider organizations providing any treatment for primary and secondary medical services to an injured worker shall use the Montana Guidelines. This rule does not alter or change how managed care organizations or preferred provider organizations are paid pursuant to 39-71-704, MCA.
- (2) The provisions of this rule apply to medical services provided, or proposed to be provided, on or after July 1, 2011.

History: 39-71-203, 39-71-704, MCA; IMP, 39-71-704, MCA; NEW, 2011 MAR p. 1137, Eff. 6/24/11; TRANS from ARM 24.29.1599, 2018 MAR p. 2531, Eff. 1/1/19.

24.29.1611 Utilization and Treatment Guidelines

- (1) The department adopts the utilization and treatment guidelines provided by this rule to set forth the level and type of care for primary and secondary medical services. As provided by 39-71-704, MCA, there is a rebuttable presumption that the Montana Guidelines establish compensable medical treatment for primary and secondary medical services for the injured worker. The applicable utilization and treatment guidelines are available electronically at the web site: <http://www.mtguidelines.com>; or a printed copy may be obtained for the cost of reproduction from the Employment Relations Division, Department of Labor and Industry, P.O. Box 8011, Helena, MT 59601-8011. The Montana Guidelines incorporated by reference apply as follows:
 - (a) for medical services provided from July 1, 2011 through June 30, 2014: "Montana Utilization and Treatment Guidelines, 1st edition, 2011";
 - (b) for medical services provided July 1, 2014 through June 30, 2015: "Montana Utilization and Treatment Guidelines, 2nd edition, 2014";
 - (c) for medical services provided July 1, 2015 through December 31, 2016: "Montana Utilization and Treatment Guidelines, 3rd edition, 2015";
 - (d) for medical services provided January 1, 2017 through December 31, 2017: "Montana Utilization and Treatment Guidelines, 4th edition, 2016";
 - (e) for medical services provided January 1, 2018 through June 30, 2019: "Montana Utilization and Treatment Guidelines, 5th edition, 2017"; and
 - (f) for medical services provided on or after July 1, 2019: "Montana Utilization and Treatment Guidelines, 6th edition, 2019."
- (2) The Montana Guidelines consist of the following ten chapters and General Guideline Principles which are included at the beginning of each chapter:
 - (a) Low Back Pain;
 - (b) Shoulder Injury;
 - (c) Thoracic Outlet Syndrome;
 - (d) Lower Extremity;
 - (e) Chronic Pain Disorder;
 - (f) Cervical Spine Injury;
 - (g) Complex Regional Pain Syndrome;
 - (h) Traumatic Brain Injury;
 - (i) Eye Injury; and
 - (j) Cumulative Trauma Conditions.
- (3) The utilization and treatment guidelines adopted in (1) are to be read in conjunction with the Centers for Disease Control publications:
 - (a) CDC Guideline for Prescribing Opioids for Chronic Pain – United States, 2016"; and
 - (b) 2018 edition of "Implementing the CDC Guideline for Prescribing Opioids for Chronic Pain."
- (4) When providing treatment for primary and secondary medical services to an injured worker, all health care providers shall use the Montana Guidelines adopted by reference in (1).
 - (a) In cases where treatment(s) or procedure(s) are recommended by the Montana Guidelines, and treatment is provided in accordance with the guidelines, prior authorization is unnecessary unless the Montana Guidelines specify otherwise.
 - (b) The department recognizes that medical treatment may include deviations from the Montana Guidelines as individual cases dictate. The provider

or interested party shall follow the procedure for prior authorization under ARM 24.29.1621 for cases in which treatments or procedures are requested that are:

- (i) not specifically addressed or recommended by the Montana Guidelines for a body part that is covered by a guideline;
 - (ii) after maximum medical improvement; or
 - (iii) beyond the duration and frequency limits set out in the guidelines.
- (c) An insurer is not responsible or liable for treatment(s) or procedure(s) as set out in (3)(b) unless:
- (i) prior authorization is obtained from the insurer pursuant to 39-71-704, MCA, and in accordance with ARM 24.29.1621; or
 - (ii) the treatment(s) or procedure(s) were provided in a medical emergency.
- (d) For those body parts not included in one of the guideline chapters, providers must apply and follow the general guideline principles that are found at the beginning of each chapter, and an insurer is liable for reasonable medical treatment.
- (5) All insurers shall routinely and regularly review claims to ensure that care is consistent with the Montana Guidelines adopted by reference in (1) and (7).
- (6) The provisions of this rule apply to medical services provided on or after July 1, 2011.
- (7) Effective April 1, 2019, the formulary adopted in ARM 24.29.1616 is considered to be a part of the Montana Guidelines.

History: 39-71-203, 39-71-704, MCA; IMP, 39-71-704, MCA; NEW, 2011 MAR p. 1137, Eff. 6/24/11; AMD, 2014 MAR p. 1513, Eff. 7/11/14; AMD, 2015 MAR p. 818, Eff. 6/26/15; AMD, 2016 MAR p. 2420, Eff. 12/24/16; AMD, 2017 MAR p. 2185, Eff. 11/25/17; TRANS from ARM 24.29.1591 and AMD, 2018 MAR p. 2531, Eff. 1/1/19; AMD, 2019 MAR p. 846, Eff. 6/22/19.

24.29.1616 Incorporation by Reference And Updates to the Formulary

- (1) The department will annually undertake formal rulemaking to select a formulary. The formulary may be any one of the following:
- (a) a formulary published by a commercial vendor;
 - (b) a formulary published by another state for use in workers' compensation and occupational disease claims; or
 - (c) a formulary specially developed by the department.
- (2) The department adopts and incorporates by reference the October 2018 edition of the ODG Drug Formulary as its formulary.
- (3) Pursuant to 2-4-307, MCA, the automatic monthly updates of the annually adopted edition of the formulary are incorporated by reference without additional rulemaking, and are applicable as of the date the update is posted on the department's web site.
- (4) The formulary is available from:
- (a) the department's web site, at <http://erd.dli.mt.gov/work-comp-claims/medical-regulations>, at no charge;
 - (b) the department at Employment Relations Division, Medical Regulations, P.O. Box 8011, Helena, MT 59624-8011, at the costs of reproduction and postage for a printed .pdf version; and
 - (c) the vendor, via electronic access, at a subscription rate charged by the vendor, which may include supplemental information or materials that are not incorporated by reference. The vendor may be contacted via the internet

at www.mcg.com/odg, and at ODG by MCG Health, 3006 Bee Caves Road, Suite A250, Austin, TX 78746.

- (5) Archived versions of the formulary will be maintained by the department for five years from the date of the adoption of the formulary.

History: 39-71-203, 39-71-704, MCA; IMP, 39-71-704, MCA; NEW, 2018 MAR p. 2531, Eff. 1/1/19.

24.29.1621 Prior Authorization

- (1) Prior authorization must be obtained in cases where treatment(s) or procedure(s) are requested that:
 - (a) are not specifically addressed or recommended by the Montana Guidelines for a body part that is covered by a guideline;
 - (b) are after maximum medical improvement;
 - (c) are beyond the duration and frequency limits set out in the guidelines; or
 - (d) the guidelines require prior authorization before proceeding with the treatment.
- (2) For those body parts not covered by a guideline, the rule for prior authorization set out at ARM 24.29.1517 applies.
- (3) When the guidelines explicitly require prior authorization for a treatment or modality, documentation need only include the clinical indications outlined in the guidelines to support that the treatment or modality is appropriate for the injured worker.
- (4) When prior authorization is required because an interested party wishes to rebut the presumption of the guidelines, the interested party must submit to the insurer documentation to support the request and justification that the medical treatment(s) or procedure(s) are reasonable and necessary care for the injured worker. Documentation must consist of a preponderance of credible medical evidenced-based material and medical reasons to rebut the Montana Guidelines. Documentation submitted to rebut the guidelines may include any information from the following list. However, nothing in this list is intended to imply that any given information is sufficient to rebut the guidelines. Rather, whether the presumption of the guidelines is rebutted can only be determined on a case-by-case basis. Submitted information may include:
 - (a) an explanation or documentation of how the patient's medical condition is different from the medical indications used in the Montana Guidelines that may have resulted in a negative recommendation or exclusion;
 - (b) an explanation or documentation of objective findings and functional improvements that would be the expected result of the treatment(s) or procedure(s), either from past experience or from an explanation about the mechanism of injury and the effect of the treatment(s) or procedure(s), and where improvement can be measured;
 - (c) an explanation or documentation of objective signs of functional restoration for treatment conducted thus far;
 - (d) an explanation or documentation of measurable goals and progress points expected from additional treatment;
 - (e) a statement of how the request will benefit both a short-term and long-term treatment plan; or
 - (f) any additional evidence-based utilization and treatment guidelines or studies that support the interested party's case.

- (5) All prior authorization requests, whether in written, e-mail, or facsimile (fax) form, must be made at least 14 days prior to the date the service is scheduled to be performed.
 - (a) Authorization is presumed to be given by the insurer if there is no written denial sent by the insurer to the interested party within 14 days of the date the written prior authorization request was made.
 - (b) An insurer may notify the interested party of authorization by written confirmation, e-mail, or facsimile (fax).
 - (c) Nothing in this rule precludes verbal communication. However, all deadlines in this rule must be satisfied in written form.
- (6) If the insurer denies the prior authorization request, the denial must be in writing and must contain an explanation of why the justification is not sufficient.
 - (a) The denial must not be based solely on the fact that the medical treatment(s) or procedure(s) are not specifically addressed or recommended by the Montana Guidelines.
 - (b) If the written denial is five or fewer days before the expiration of the 14-day response period, the insurer must also notify the interested party of the denial by e-mail or facsimile (fax).
- (7) When an insurer denies liability for an injury or occupational disease, and the insurer then later assumes liability for a particular condition, the insurer may not deny payment for the medical services provided for that condition during the period of denial based solely on failure to obtain prior authorization.
- (8) The provisions of this rule apply to medical services provided, or proposed to be provided, on or after July 1, 2011.

History: 39-71-203, 39-71-704, MCA; IMP, 39-71-704, MCA; NEW, 2011 MAR p. 1137, Eff. 6/24/11; TRANS from ARM 24.29.1593, 2018 MAR p. 2531, Eff. 1/1/19.

24.29.1624 Integration of Formulary With Montana Utilization and Treatment Guidelines – When Prior Authorization Is Required

- (1) The formulary is considered to be a part of the Montana Guidelines established by the department.
- (2) A medical provider is expected to write a prescription for medication in accordance with the Montana Guidelines, as adopted by ARM 24.29.1611, and in accordance with the formulary adopted by ARM 24.29.1616.
- (3) Because the formulary is part of the Montana Guidelines, medical providers are required to prescribe in accordance with the provisions of the formulary unless the provider can sufficiently articulate sound medical reasoning to vary from the formulary.
- (4) Insurers shall pay for medications that are prescribed in a manner consistent with the formulary, subject to the medical provider furnishing documentation as required by ARM 24.29.1621. Payments for medications are subject to the provisions of 39-71-727, MCA.
- (5) Pursuant to the formulary, prior authorization for an injury appropriate medication is not required as follows:
 - (a) the medication is listed as “Y” on the formulary; or
 - (b) the medication is listed as “N” on the formulary, and the prescription is:
 - (i) written within seven days of the occurrence of the workplace injury; and
 - (ii) limited to a maximum of a seven-day supply of the medication.

- (6) Pursuant to the formulary, prior authorization for a medication is required as follows:
 - (a) except as provided by (5)(b), the medication is listed as "N" on the formulary;
 - (b) the medication is not listed on the formulary;
 - (c) the medication is experimental or investigational; or
 - (d) the medication is a compound, even if all the components of the compound are listed as "Y" medications on the formulary.
- (7) The prior authorization process described in ARM 24.29.1621 applies to formulary matters, except that:
 - (a) the insurer shall respond within three business days of the receipt of a request for prior authorization being made to the insurer or the insurer's designee, by either approving or denying the request; and
 - (b) if the insurer fails to respond within three business days to a request for prior authorization, the prescription is deemed to be approved. An approval for a prescription medication made due to the lack of a timely response by the insurer does not apply to any refill that may be ordered.
- (8) An insurer may delegate prior authorization decisions pertaining to the formulary to a PBM or other agent with which it contracts. An insurer has the legal responsibility for the decisions made by the PBM on behalf of the insurer.
- (9) The delegation by an insurer of prior authorization decisions pertaining to the formulary to a PBM or other agent does not, in and of itself, violate the requirement of 39-71-107, MCA, that all claims be examined by a claims examiner in Montana.

History: 39-71-203, 39-71-704, MCA; IMP, 39-71-107, 39-71-704, MCA; NEW, 2018 MAR p. 2531, Eff. 1/1/19.

24.29.1631 Special Provisions for Transition of Legacy Claims – When Applicable

- (1) The insurer shall notify in writing the injured worker and the treating physician (who, for the purposes of this rule, also includes any other prescribing medical provider) that a claim constitutes a legacy claim in which the insurer will enforce the applicability of these formulary rules.
- (2) The notification required by (1) must include at least the following information:
 - (a) the name of the injured worker;
 - (b) the name of the treating physician or other prescribing medical provider;
 - (c) the name of each medication that is affected by the notice;
 - (d) the name and contact information of the claims examiner responsible for the injured worker's claim; and
 - (e) the date upon which the insurer will enforce the applicability of these formulary rules.
- (3) This rule applies to a legacy claim on the latter of:
 - (a) April 1, 2020; or
 - (b) 90 days after the insurer provides notice as provided by (1).
- (4) By not later than the applicability date of this rule pursuant to (3), the treating physician shall determine whether a transition plan is needed for an injured worker who is receiving:
 - (a) one or more drugs for which prior authorization is otherwise required; or
 - (b) drugs at a dosage level greater than recommended by the Montana Guidelines.

- (5) The treating physician must state in writing whether the injured worker:
 - (a) should transition to “Y” status drugs or to medication dosages which are consistent with the recommendations of the Montana Guidelines; or
 - (b) should not undergo a transition from the existing medications because a transition is not medically appropriate.
- (6) The treating physician must provide the basis for the medical provider’s decision as required by ARM 24.29.1621. The explanation, and development of a transition plan as appropriate, constitutes a “by report” service (CPT code 99080).
- (7) If the treating physician fails to provide the determination required in (5), by the date this rule becomes applicable to the claim pursuant to (3), these formulary rules will apply to prescriptions written for the injured worker.
- (8) If the treating physician determines a transition from one or more drugs for which prior authorization required to a “Y” status drug is appropriate, or that a reduction in dosage is appropriate, the treating physician shall include in the worker’s treatment plan a specific plan, including a projected time table or schedule, for transitioning the injured worker to care that is consistent with the Montana Guidelines.
- (9) The treatment plan may, when determined by the treating physician to be medically necessary, include the provision of supportive services to the injured worker during the transition.
- (10) Supportive services may be delivered in an out-patient or an in-patient setting, as appropriate, based upon the treating provider’s transition plan. Supportive services that are reasonable and medically necessary constitute part of the primary medical services to which an injured worker with a legacy claim is entitled.
- (11) Nothing in this rule prohibits the treating physician from proposing a treatment plan for transition prior to an insurer’s authorization as provided in (1)

History: 39-71-203, 39-71-704, MCA; IMP, 39-71-704, MCA; NEW, 2018 MAR p. 2531, Eff. 1/1/19.

24.29.1641 Independent Medical Review Process

- (1) An interested party who has requested and been denied authorization by the insurer for treatment, or an insurer, may request an independent medical review by the medical director designated by the department prior to mediation under 39-71-2401, MCA. If the independent medical review process is requested prior to mediation, the mediation process shall not proceed until completion of the independent medical review process.
- (2) The interested party or insurer must submit its request for review to the department and must notify the other party of its request for review. Upon notice of a request for review, the insurer must submit a copy of the request for prior authorization, the denial, and any other relevant medical information to the department. The interested party and the insurer may also submit additional information to the department, if the information falls within the categories outlined in ARM 24.29.1621. Any new information submitted to the department must also be submitted to the other party.
- (3) The medical director will review the medical records of the injured worker and other information relevant to the denial and issue a recommendation. For purposes of this rule, the medical director is the specific individual designated

- by the department to serve as the medical director with respect to a given set of disputed treatments or procedures. The medical director may seek consultation from other providers with specialties as would typically manage the medical condition at issue. If a consultation is sought and received, that provider's recommendation is also subject to the provisions of this rule.
- (4) The medical director shall, within five days of receipt of the request for review, issue a written recommendation to the interested party and the insurer by mail, facsimile, or e-mail, or issue a notice that additional information or time is required to tender a recommendation along with an approximate date the recommendation will be issued, not to exceed 14 days from the date of receipt of the review request. If the medical director does not issue a recommendation within 14 days, the request for review is deemed denied and the parties may proceed to mediation.
 - (5) The medical director's review and recommendation is an informal alternative dispute resolution process without administrative or judicial authority and is not binding on the parties.
 - (a) The medical director's files and records are closed to all persons but the parties.
 - (b) The medical director may not be called to testify in any proceeding concerning the issues discussed in the independent medical review process.
 - (c) The medical director's recommendation and any information contained in the recommendation that is solely from the medical director are not admissible as evidence in any action subsequently brought in any court of law.
 - (d) The medical director's recommendation, including information contained in the recommendation, may be considered in mediation conducted under 39-71-2401, MCA.
 - (6) The insurer shall, within five days of receipt of the recommendation, notify the interested party if the previously denied treatment(s) or procedure(s) is authorized based on the medical director's recommendation.
 - (7) If the insurer does not authorize treatment after issuance of the medical director's recommendation, the interested party may file for mediation with the department pursuant to 39-71-2401, MCA.
 - (8) The provisions of this rule apply to medical services provided, or proposed to be provided, on or after July 1, 2011.
 - (9) An expedited case review for medications is provided by ARM 24.29.1645.

History: 39-71-203, 39-71-704, MCA; IMP, 39-71-224, 39-71-704, 39-71-2401, MCA; NEW, 2011 MAR p. 1137, Eff. 6/24/11; TRANS from ARM 24.29.1595 and AMD, 2018 MAR p. 2531, Eff. 1/1/19.

24.29.1645 Expedited Case Review for Prescription Medications by DLI Medical Director

- (1) Expedited case review is available only when insurer declines to authorize further dispensing of an already prescribed medication and halting the supply of that medication appears likely to result in a medical emergency.
- (2) A medical emergency occurs when all three of the following circumstances are present:
 - (a) the medical condition has a sudden onset;

- (b) the medical condition manifests itself by acute symptoms of sufficient severity, including severe pain; and
- (c) in the absence of immediate medical attention, the medical condition could reasonably be expected to result in:
 - (i) placing the injured worker's health or bodily functions in serious jeopardy; or
 - (ii) a serious dysfunction of any body organ or part of the injured worker.
- (3) An expedited case review may be requested concurrently with a demand for mediation on the dispute concerning the medication.
- (4) An expedited case review may only be requested within 14 days of the insurer's denial of, or refusal to authorize further dispensing of an already prescribed medication.
- (5) A request for an expedited case review must be supported by such written information as the treating physician considers pertinent to the treating physician's opinion that a medical emergency is likely to occur as a result of the denial of the medication.
- (6) The expedited medical review will be conducted within three business days of receipt by the department of a written request for an expedited medical review. The findings of the expedited medical review must be in writing and be based on the information provided by the treating physician, along with the reasoning given by the insurer or its agent for the denial.
- (7) The findings of the medical director regarding whether or not a medical emergency is likely to occur as the result of not providing the further dispensing of medication as prescribed by the treating physician may be offered in evidence in mediation or the Workers' Compensation Court.
- (8) If the findings of the medical director are that no medical emergency is likely to occur as a result of the insurer's denial, then the medical director shall further consider the matter of the denial under the independent medical review procedures provided for by ARM 24.29.1641.

History: 39-71-203, 39-71-704, MCA; IMP, 39-71-704, MCA; NEW, 2018 MAR p. 2531, Eff. 1/1/19.

24.29.1648 Dispute Resolution for Formulary

- (1) Disputes between the treating physician and the insurer regarding the formulary are subject to the same process available for other disputes regarding the Montana Guidelines, except as provided in ARM 24.29.1645.
- (2) A dispute between the injured worker and the insurer regarding the use or application of the formulary constitutes a dispute concerning benefits, and may be resolved as provided by 39-71-2905, MCA.

History: 39-71-203, 39-71-704, MCA; IMP, 39-71-704, 39-71-2905, MCA; NEW, 2018 MAR p. 2531, Eff. 1/1/19.

Subchapter 17 Rehabilitation

24.29.1701 Rehabilitation Provider Designation

Prior to or upon termination of temporary total disability benefits to a disabled worker, a rehabilitation provider must be designated by the insurer or the division will require them to do so. If maximum healing has been reached by a disabled

worker and the insurer has not designated a rehabilitation provider, the insurer will pay total rehabilitation benefits to the disabled worker and the 26-week period will not start until the rehabilitation provider is designated.

History: Sec. 39-71-203, MCA; IMP, Sec. 39-71-1014, 39-71-1015, and 39-71-1023, MCA; NEW, 1987 MAR p. 1988, Eff. 10/30/87.

24.29.1702 Rehabilitation Panels for Claims between July 1, 1987 and June 30, 1991

(See the Transfer and Repeal Table)

History: 39-71-203, MCA; IMP, 39-71-1015, 39-71-1016, 39-71-1017, 39-71-1018, 39-71-1019, MCA; NEW, 1987 MAR p. 1988, Eff. 10/30/87; AMD, 2013 MAR p. 841, Eff. 5/24/13; REP, 2018 MAR p. 2527, Eff. 1/1/19.

Rules 24.29.1703 and 24.29.1704 reserved

24.29.1705 Local Job Pool Area Definition

A worker's local job pool area will be based on the local job service office area in which the worker resides.

History: Sec. 39-71-203, MCA; IMP, Sec. 39-71-1011 and 39-71-1012, MCA; NEW, 1987 MAR p. 1988, Eff. 10/30/87.

Rules 24.29.1706 through 24.29.1709 reserved

24.29.1710 Auxiliary Rehabilitation Benefits

- (1) A claimant may request auxiliary rehabilitation benefits and must obtain the insurer's authorization prior to incurring such expenses.
- (2) Travel and relocation expenses may be paid to a worker on the same schedule as reimbursed to state employees in the course of state business.
- (3) Mileage and per diem expenses may be paid for up to five round trips in searching for new employment.
- (4) Relocation expenses include actual expenses of moving by a commercial mover, or actual charges for rental of a truck or trailer by a commercial rental company and receipted fuel expenses.
- (5) Auxiliary rehabilitation benefits do not include the expenses of long term commuting.
- (6) The division may order the insurer to pay such other reasonable and necessary auxiliary rehabilitation benefits as it deems appropriate.

History: 39-71-203, MCA; IMP, 39-71-1025, MCA; NEW, 1987 MAR p. 1988, Eff. 10/30/87.

Rules 24.29.1711 through 24.29.1720 reserved

24.29.1721 Payment of Rehabilitation Expenses from the Industrial Accident Rehabilitation Account for Claims Arising before July 1, 1991

(See the Transfer and Repeal Table)

History: 39-71-203, MCA; IMP, Title 39, chap. 71, part 10, MCA (1987) (1989) and (1991); NEW, 1998 MAR p. 2872, Eff. 11/1/98; AMD, 2013 MAR p. 841, Eff. 5/24/13; REP, 2018 MAR p. 2527, Eff. 1/1/19.

24.29.1722 Payment Of Rehabilitation Expenses from the Industrial Accident Rehabilitation Account for Claims Arising on or After July 1, 1991 and before July 1, 1997

(See the Transfer and Repeal Table)

History: 39-71-203, MCA; IMP, Title 39, chap. 71, part 10, MCA; NEW, 1998 MAR p. 2872, Eff. 11/1/98; REP, 2018 MAR p. 2527, Eff. 1/1/19.

Rules 24.29.1723 and 24.29.1724 reserved**24.29.1725 Information to be Included in the Rehabilitation Plan**

- (1) The rehabilitation plan must include the following information:
 - (a) plan objectives that summarize the type and duration of the training agreed to by the parties. It should include where the claimant will receive the training and identify any prerequisites and/or contingencies;
 - (b) the beginning and completion dates of the rehabilitation plan;
 - (c) a projection of expenditures to be made pursuant to the plan. The plan should include an estimate of the amount of tuition, fees, books, and other reasonable retraining expenses needed to successfully complete the plan. The plan should also include the date the funds are needed and to whom the funds should be paid;
 - (d) a description of the claimant's responsibilities under the plan. The plan should identify the responsibilities the claimant has agreed to undertake for successful completion of the plan. For example, the claimant agrees to attend classes and maintain a 2.0 grade point average, or the claimant agrees to timely register for classes, etc.;
 - (e) a description of the insurer's responsibilities under the plan. The plan should identify the responsibilities the insurer has agreed to undertake for successful completion of the plan. For example, the insurer will pay rehabilitation benefits for a period of 70 weeks to begin on a specific date, etc.;
 - (f) a description of the vocational rehabilitation provider's responsibilities. The plan should identify and list what actions or understandings the provider has agreed to undertake for successful completion of the plan. For example, the provider will continue to monitor the claimant's progress and provide further vocational rehabilitation services necessary to successfully complete the plan, etc.; and
 - (g) the signatures of both the claimant and the authorized insurer's representative.

History: 39-71-203, MCA; IMP, Title 39, chap. 71, part 10, MCA; NEW, 1998 MAR p. 2872, Eff. 11/1/98.

Rule 24.29.1726 reserved

24.29.1727 Department's Notice of Authorization or Denial of Use of Trust Funds

(See the Transfer and Repeal Table)

History: 39-71-203, MCA; IMP, Title 39, chap. 71, part 10, MCA; NEW, 1998 MAR p. 2872, Eff. 11/1/98; REP, 2018 MAR p. 2527, Eff. 1/1/19.

Rules 24.29.1728 through 24.29.1730 reserved

24.29.1731 Allowable Rehabilitation Expenses

(See the Transfer and Repeal Table)

History: 39-71-203, MCA; IMP, Title 39, chapter 71, part 10, MCA; NEW, 1998 MAR p. 2872, Eff. 11/1/98; REP, 2018 MAR p. 2527, Eff. 1/1/19.

Rule 24.29.1732 reserved

24.29.1733 Disallowed Rehabilitation Expenses

(See the Transfer and Repeal Table)

History: 39-71-203, MCA; IMP, Title 39, chapter 71, part 10, MCA; NEW, 1998 MAR p. 2872, Eff. 11/1/98; AMD, 2000 MAR p. 2701, Eff. 10/6/00; REP, 2018 MAR p. 2527, Eff. 1/1/19.

Rule 24.29.1734 reserved

24.29.1735 Documentation Required

(See the Transfer and Repeal Table)

History: 39-71-203, MCA; IMP, Title 39, chapter 71, part 10, MCA; NEW, 1998 MAR p. 2872, Eff. 11/1/98; REP, 2018 MAR p. 2527, Eff. 1/1/19.

Rule 24.29.1736 reserved

24.29.1737 Insurer Responsibility to Provide Information to the Department

(See the Transfer and Repeal Table)

History: 39-71-203, MCA; IMP, Title 39, chap. 71, part 10, MCA; NEW, 1998 MAR p. 2872, Eff. 11/1/98; REP, 2018 MAR p. 2527, Eff. 1/1/19.

Rules 24.29.1738 through 24.29.1740 reserved

24.29.1741 Payment of Rehabilitation Expenses for Claims Arising on or after July 1, 1997

- (1) For claims arising on or after July 1, 1997, a disabled worker is entitled to receive payment for reasonable tuition, fees, books, and other reasonable and necessary retraining expenses, excluding travel and living expenses paid pursuant to the provisions of 39-71-1025 , MCA.

- (2) The insurer and claimant must agree to payment of tuition, fees, books and other reasonable and necessary retraining expenses. The expenses must be specified in the rehabilitation plan agreed upon between the insurer and claimant. The expenses must be paid directly by the insurer.
- (3) The insurer must pay for tuition required for the agreed upon rehabilitation plan. The insurer must pay for fees, books, supplies and equipment which are a prerequisite for the retraining and required by the provider of the training. Unless otherwise agreed upon by the insurer and the claimant, the insurer is not responsible for fees, books, supplies and/or equipment which are optional, not required to complete the retraining plan. For example, the purchase of student health insurance at a Montana university is an optional fee not required for enrollment, unless the claimant does not have health care insurance. If the claimant does not have health care insurance, the purchase of student health insurance is required. The payment of parking fees is required for enrollment at Montana universities.
 - (a) Supplies include, but are not limited to, pens, paper, notebooks, etc. and are limited to \$25 for each term of training. For example, a term of training is a semester, quarter, etc.
 - (b) Equipment includes, but is not limited to, calculators, computer hardware and/or software, ergonomic furniture, tools, etc. The insurer may choose to rent or lease rather than purchase the equipment, if the insurer determines it is more cost effective to do so.
- (4) The insurer is not liable for tuition, fees, books or equipment costs incurred if the claimant fails to complete registration requirements or fails to properly withdraw from the agreed upon training program. The insurer is entitled to any refund of tuition or fees that may be paid by the retraining entity upon the early withdrawal of the claimant from the training program. In addition, the insurer is entitled to possession of books, tools or other equipment previously paid for by the insurer upon the pre-graduation withdrawal of the claimant from the agreed upon training program.

History: 39-71-203, MCA; IMP, Title 39, chap. 71, part 10, MCA; NEW, 1998 MAR p. 2872, Eff. 11/1/98.

Rules 24.29.1742 through 24.29.1760 reserved

24.29.1761 Disputes over Rehabilitation Expenses

- (1) Disputes between claimants and insurers over the entitlement to or payment of rehabilitation expenses must first be mediated and then may proceed to the workers' compensation court.

History: 39-71-203, MCA; IMP, Title 39, chap. 71, part 10, MCA; NEW, 1998 MAR p. 2872, Eff. 11/1/98.

Subchapter 18

Stay at Work/Return to Work

24.29.1801 Definitions

As used in this subchapter, the following definitions apply:

- (1) "Injured worker" means an individual who has filed a claim for a workers' compensation injury or occupational disease and who does not meet the definition of a disabled worker.
- (2) "Insurer" means an employer bound by compensation plan No. 1, an insurance company transacting business under compensation plan No. 2, or the state fund under compensation plan No. 3, as defined in 39-71-116, MCA.
- (3) "Medical status form" means the department reporting form completed by an injured worker's treating physician or designee, which documents an injured worker's medically necessary work restrictions and work abilities.
- (4) "Outcome report form" means the department reporting form completed by an insurer or vocational rehabilitation counselor, which documents the results for the injured worker of SAW/RTW assistance.
- (5) "Request" means a request for SAW/RTW assistance by letter, e-mail, or telephone call to the department or insurer. A request must include, at a minimum, the name of the injured worker, the requestor's name and requestor's telephone number. A note in a medical record does not constitute a request.
- (6) "SAW/RTW" means stay at work/return to work.
- (7) "Time-of-injury employer" means the employer under whose employment a worker was injured or developed an occupational disease.
- (8) "Transitional employment" means work for the injured worker with the time-of-injury employer offered by the employer for a temporary period of time, and may include a reduction in hours, workplace modifications, and alternative job duties.
- (9) "Vocational rehabilitation counselor" means a rehabilitation provider who possesses current certification from the Commission on Rehabilitation Counselor Certification, as defined in 39-71-1011, MCA.

History: 39-71-203, 39-71-1051, MCA; IMP, 39-71-105, 39-71-116, 39-71-1011, 39-71-1036, MCA; NEW, 2012 MAR p. 1357, Eff. 7/13/12; AMD, 2018 MAR p. 2527, Eff. 1/1/19.

Rule 24.29.1802 reserved

24.29.1803 Applicability

- (1) SAW/RTW assistance, pursuant to this subchapter, is applicable to workers who experience a work-related injury or occupational disease on or after July 1, 2012.

History: 39-71-203, 39-71-1051, MCA; IMP, 39-71-105, 39-71-1011, 39-71-1031, 39-71-1041, 39-71-1042, 39-71-1043, 39-71-1049, MCA; NEW, 2012 MAR p. 1357, Eff. 7/13/12.

Rules 24.29.1804 through 24.29.1806 reserved

24.29.1807 Responsibilities of the Insurer

- (1) Each insurer shall adopt a SAW/RTW policy and submit a current, complete copy of the policy to the department. The insurer shall provide the department with all SAW/RTW policy updates a minimum of ten business days in advance of implementation of policy change.
- (2) The insurer shall designate a single point of contact with authority to coordinate all department requests for SAW/RTW assistance for injured workers and shall provide the department with written notice of the contact person's name or

position title, telephone number, email address, and mailing address. When contact information changes, the insurer shall update the department a minimum of ten business days in advance of the change.

- (3) When a request for SAW/RTW assistance is made directly to the insurer prior to the insurer's acceptance of liability for a claim, the insurer may elect to provide SAW/RTW assistance to the injured worker or it may refer the injured worker to the department for assistance.
- (4) When a request for SAW/RTW assistance is made directly to the insurer and the insurer declines to provide SAW/RTW assistance the insurer shall notify the injured worker and the department in writing within three business days of a request for assistance.
- (5) After the department has initiated SAW/RTW assistance to an injured worker, the insurer shall notify the department in writing within three business days of the insurer's acceptance or denial of liability for an injured worker's claim.
- (6) For notice purposes, the department's contact information is:
 - (a) via email, dllsawrtw@mt.gov;
 - (b) via fax machine, (406) 444-4140;
 - (c) via U.S. mail, SAW/RTW Assistance Program, P.O. Box 8011, Helena, MT 59604-8011; or
 - (d) via the street address is Employment Relations Division, Beck Building, 1805 Prospect Avenue, Helena, Montana.
- (7) Notice sent by U.S. mail must be postmarked within the three business days required by this rule.
- (8) The insurer shall report the outcome of SAW/RTW assistance to the department, using the department outcome reporting form, within 30 business days of the earliest of:
 - (a) the return to work start date;
 - (b) the termination of SAW/RTW services; or
 - (c) the injured worker's attainment of maximum medical improvement.

History: 39-71-203, 39-71-1051, MCA; IMP, 39-71-105, 39-71-1014, 39-71-1031, 39-71-1042, MCA; NEW, 2012 MAR p. 1357, Eff. 7/13/12.

Rules 24.29.1808 through 24.29.1810 reserved

24.29.1811 Duties of the Department

- (1) An injured worker is eligible for SAW/RTW assistance upon receipt by the department of a request for assistance from the injured worker, employer or health care provider.
- (2) When the department is unable to identify the insurer within three business days of receiving a request for SAW/RTW assistance, the department shall provide assistance to the injured worker. When the department identifies the at-risk insurer after the department has initiated assistance, the department shall continue to provide SAW/RTW services to the injured worker when the insurer declines to provide SAW/RTW assistance or fails to respond to department notice of the initiation of services. The department shall provide services until it:
 - (a) terminates SAW/RTW services to the injured worker upon notice of insurer denial of liability for the claim;

- (b) terminates SAW/RTW services to the injured worker upon exhaustion of the maximum allowed provider fees, as provided in ARM 24.29.1815; or
 - (c) transfers responsibility for the delivery of SAW/RTW assistance to the insurer upon notice of the insurer's acceptance of liability for the claim.
- (3) When the department provides SAW/RTW assistance, the department shall assign a vocational rehabilitation counselor to each eligible injured worker to provide services which may include, but are not limited to, the following:
- (a) personal contact with injured worker to assess the worker's commitment and ability to stay at or return to work;
 - (b) identification of barriers to the injured worker staying at or returning to work;
 - (c) review of the injured worker's medical status form to ensure worker's understanding of work abilities and restrictions;
 - (d) personal contact with injured worker's employer to establish employer's ability to provide transitional employment that meets injured worker's abilities, as outlined by the medical status form;
 - (e) facilitation of communication between injured worker and employer regarding offer and acceptance of transitional employment;
 - (f) communication with injured worker's treating physician or designee regarding the assessment and approval of transitional employment when approval is not explicitly provided by medical status form;
 - (g) verification that duties assigned by employer to injured worker during transitional employment conform with abilities outlined by the medical status form;
 - (h) identification of concerns of the injured worker and employer and problem-solving throughout the process of establishing transitional employment; and
 - (i) monitoring injured worker's readiness and ability to return to time of injury job and providing appropriate interventions as needed.
- (4) The department shall provide written notice to the injured worker, employer and insurer, if identified, when a vocational rehabilitation counselor is assigned by the department to provide SAW/RTW services to an injured worker. The notice shall be mailed within three business days of the assignment of a vocational rehabilitation counselor.
- (5) The department shall provide written notice to the injured worker, employer and insurer of the completion of department-provided SAW/RTW assistance within three business days of the completion of services.

History: 39-71-203, 39-71-1051, MCA; IMP, 39-71-105, 39-71-1031, 39-71-1041, 39-71-1042, 39-71-1043, MCA; NEW, 2012 MAR p. 1357, Eff. 7/13/12.

Rules 24.29.1812 through 24.29.1814 reserved

24.29.1815 Payment Schedule for Department-Provided SAW/RTW Assistance

- (1) The department shall pay vocational rehabilitation counselors for SAW/RTW services in accordance with the following fee schedule:
- (a) a maximum of \$90 per hour for services provided, billed in 1/10 hour increments;
 - (b) travel time of four (4) hours or less at one-half the hourly rate;
 - (c) travel time over four (4) hours at two-thirds the hourly rate; and
 - (d) mileage, lodging and meals at the State of Montana per diem rate established pursuant to Title 2, chapter 18, part 5, MCA.

- (2) The department shall pay a maximum of \$2,000.00 per claim to a certified vocational rehabilitation counselor for SAW/RTW services, not including mileage, lodging and meals.
- (3) When the department provides the assistance, the department may pay up to \$2,000.00 to assist an employer in modifying the workplace or purchasing equipment required for the employer to provide transitional employment. Any such equipment or workplace modifications become the property of the employer. To apply for financial assistance, the employer must submit a written application to the department that includes, at a minimum, the following:
 - (a) a written recommendation from the department-designated vocational rehabilitation counselor, which specifically describes the required workplace modification or equipment;
 - (b) the estimated cost of the recommended workplace modification; and
 - (c) the estimated cost of the recommended equipment.
- (4) The department may deny an employer's application for financial assistance when the department determines the application is incomplete or the request for assistance is unreasonable. The department will notify the employer as to whether the application is accepted or rejected, and the reasons for the action.

History: 39-71-203, 39-71-1049, 39-71-1051, MCA; IMP, 39-71-105, 39-71-1042, 39-71-1049, MCA; NEW, 2012 MAR p. 1357, Eff. 7/13/12.

Rules 24.29.1816 through 24.29.1820 reserved

24.29.1821 Vocational Rehabilitation Counselor for Department-Provided SAW/RTW Assistance

- (1) When the department provides SAW/RTW assistance, the department shall assign a vocational rehabilitation counselor to provide services to each eligible injured worker.
- (2) The department shall select an appropriate vocational rehabilitation counselor for each injured worker, using the following criteria:
 - (a) geographical proximity to the injured worker's residence;
 - (b) ability to accept and promptly provide services to an injured worker; and
 - (c) specialized expertise and pertinent experience with the type of injury or challenges to returning to work faced by the injured worker.
- (3) The vocational rehabilitation counselor shall notify the department of the services provided, the progress toward transitional employment, and assistance outcomes, as directed by the department.

History: 39-71-203, 39-71-1051, MCA; IMP, 39-71-105, 39-71-1043, MCA; NEW, 2012 MAR p. 1357, Eff. 7/13/12; AMD, 2018 MAR p. 2527, Eff. 1/1/19.

Subchapter 19 Reserved

Subchapter 20 Chiropractic Service Rules

24.29.2001 Treatment and Reporting

This rule has been repealed.

History: 39-71-203, MCA; IMP, 39-71-203, 39-71-604 and 39-71-704, MCA; Eff. 12/31/72; AMD, 1990 MAR p. 2183, Eff. 12/14/90; REP, 1993 MAR p. 404, Eff. 4/1/93.

24.29.2002 Standards for Diagnosis for Services Provided on or before June 30, 2011

- (1) In keeping with the accepted standards for diagnosis, use of the chiropractic term "subluxation" on reports to the division is valid only in objective findings or descriptions. "Subluxation" is not a diagnosis in itself. It can be used within a diagnosis to clarify the description of a condition.
- (2) Initial diagnosis represents a conclusion reached as the result of the initial examination and prior to initiation of treatment.
- (3) Therapeutic or working diagnosis represents the conclusions upon which the treating chiropractor bases his treatment and therapy.
- (4) Final diagnosis represents the final conclusion of the attending chiropractor. It is based on a total assessment of all factors consistent with academic training, scientific knowledge and clinical experience.
- (5) This rule applies to services provided on or before June 30, 2011.

History: 39-71-203, MCA; IMP, 39-71-203, 39-71-704, MCA; Eff. 12/31/72; AMD, 2011 MAR p. 1137, Eff. 6/24/11.

24.29.2003 Workers' Compensation Does Pay for Certain Services Provided on or before June 30, 2011

- (1) For "therapeutics" defined as: any treatment considered necessary to return the patient to a preclinical status or establish a stationary status.
- (2) Rehabilitation procedures necessary for reeducation or functional restoration of a disabled body system or part.
- (3) This rule applies to services provided on or before June 30, 2011.

History: 39-71-203, MCA; IMP, 39-71-203, 39-71-704, MCA; Eff. 12/31/72; AMD, 2011 MAR p. 1137, Eff. 6/24/11.

24.29.2004 Workers' Compensation Does Not Pay

This rule has been repealed.

History: 39-71-203, MCA; IMP, 39-71-203 and 39-71-704, MCA; Eff. 12/31/72; REP, 2002 MAR p. 1758, Eff.7/1/02.

Subchapters 21 through 22 Reserved

Subchapter 23

Managed Care Organizations

24.29.2301 Purpose

- (1) The purpose of these rules concerning managed care is to provide a process to certify managed care organizations (MCO) in a manner consistent with the purposes and provisions of the Workers' Compensation Act. MCOs are to serve the medical needs of injured workers in an efficient and cost-effective manner.
- (2) A MCO may be formed by a single health care provider, a hospital, a consortium of medical service providers, or other groups or entities that provide the services required by these rules. In order to expand the areas served by a MCO, the use of satellite office locations providing medical services to injured workers is encouraged.
- (3) Although these rules do not regulate preferred provider organizations (PPOs), insurers are encouraged to use PPOs in addition to or in conjunction with the use of MCOs.
- (4) The certification procedure contained in these rules consists of a two-step process of a preliminary application and a final application. The department anticipates that preliminary applications may have to be revised or modified, and emphasizes that applicants are engaged in a process of certification. Certification of a MCO by the department, however, does not obligate insurers to contract with any MCO.

History: Sec. 39-71-203, 39-71-1103 and 39-71-1105 MCA; IMP, Sec. 39-71-1103 and 39-71-1105 MCA; NEW, 1994 MAR p. 420, Eff. 3/1/94.

Rule 24.29.2302 reserved

24.29.2303 Definitions

The following definitions apply to this subchapter:

- (1) "Applicant" means an individual, partnership, corporation or other legal entity seeking original certification as a MCO.
- (2) "Certification" means authorization from the department to provide managed care services pursuant to the provisions of the Workers' Compensation Act.
- (3) "Community" means the area within a 30 mile radius of the injured worker's residence, if there is a MCO (which has contracted with the injured workers' insurer) within that area.
- (4) "Department" means the department of labor and industry.
- (5) "Dispute" means a written complaint about how the MCO provides services to the injured worker or about a decision the MCO has made that affects the injured worker. A complaint that is not written is not a dispute within the meaning of these rules.
- (6) "Injured worker" means a person who has suffered an occupational injury or disease for which an insurer:
 - (a) has accepted liability pursuant to the terms of the Workers' Compensation or Occupational Disease Acts; or
 - (b) is making compensation payments to the worker pursuant to 39-71-608, MCA, or any other reservation of rights, and the insurer agrees to pay for all of the services provided by the MCO to that injured person.

- (7) "Member" means an individual health care provider, (including, but not limited to a physician, osteopath, chiropractor, dentist, physician assistant, podiatrist, optometrist, physical therapist or occupational therapist) other than a personal doctor, who regularly provides services for or on behalf of a MCO, whether as an employee of the MCO or pursuant to contract. Ancillary personnel providing service, but who do not have direct responsibility for management of an injured worker's care are not included in this definition.
- (8) "Miles" means air miles ("as the crow flies") from the point referenced, without regard to the availability of a convenient or direct roadway.
- (9) "MCO" means a managed care organization that is certified under these rules.
- (10) "Personal doctor" means a person who:
 - (a) is qualified to be a treating physician;
 - (b) has a documented history of providing treatment to the injured worker prior to the injury, for any condition;
 - (c) maintains the injured worker's medical records; and
 - (d) is one of the following types of practitioners:
 - (i) family practitioner;
 - (ii) general practitioner;
 - (iii) internal medicine practitioner; or
 - (iv) chiropractor.
- (11) "Plan" means the written statement that details how a managed care organization will deliver medical and other services to claimants and insurers, unless the context clearly indicates otherwise.
- (12) "Primary medical services" has the same meaning as provided by section 39-71-116 , MCA.
- (13) "Secondary medical services" has the same meaning as provided by section 39-71-116 , MCA.
- (14) "Service contract" means an agreement between an insurer and a MCO whereby the insurer may direct claimants to the MCO for medical and other services.
- (15) "Treating physician" has the same meaning as provided by section 39-71-116 , MCA.

History: Sec. 39-71-203, 39-71-1103 and 39-71-1105 MCA; IMP, Sec. 39-71-1103 and 39-71-1105 MCA; NEW, 1994 MAR p. 420, Eff. 3/1/94.

Rules 24.29.2304 through 24.29.2310 reserved

24.29.2311 Selection of Managed Care Organization and Treating Physician within a Managed Care Organization

- (1) An injured worker has the right to choose a MCO if the insurer has contracted with more than one MCO in the worker's community, from a list of certified MCOs provided by the insurer. The injured worker has 7 days to select a MCO from the date the insurer gives the worker written notice that the worker must choose a MCO. If the injured worker does not select a MCO within that time, the insurer may select a MCO for the injured worker.
- (2) The MCO will designate a treating physician for the injured worker in accordance with the plan, taking into consideration the nature of the injury and the injured worker's preference of treating physician. Within 7 days after the injured worker's initial visit to a medical provider within a MCO as directed by the

insurer, the worker may select a personal doctor as the worker's treating physician, provided the personal doctor agrees to comply with all the rules, terms, and conditions regarding services performed by the MCO. The injured worker will be responsible for co-payments if the injured worker is treated by a personal doctor pursuant to this rule.

- (3) If the injured worker indicates the desire to be treated by a personal doctor, the insurer has the responsibility of contacting the personal doctor to see if the doctor will comply with the MCO rules, terms, and conditions. The insurer has the responsibility to monitor the personal doctor's compliance with the rules, terms and conditions of the MCO. The insurer may contract with the MCO to perform some or all of these functions.
- (4) Once an injured worker has entered a MCO and a treating physician has been designated or a personal doctor has been selected pursuant to this rule as the treating physician, the injured worker may not change either the MCO or treating physician without approval from the insurer.

History: Sec. 39-71-203, 39-71-1103 and 39-71-1105 MCA; IMP, Sec. 39-71-1103 and 39-71-1105 MCA; NEW, 1994 MAR p. 420, Eff. 3/1/94.

Rules 24.29.2312 through 24.29.2320 reserved

24.29.2321 Preliminary Application

- (1) In order to be eligible to be certified as a MCO, the applicant must submit a preliminary application to the department. The preliminary application must be approved by the department before a final application for certification can be made.
- (2) A preliminary application consists of the following elements:
 - (a) a statement describing the time, place and manner in which services will be provided to claimants (see 24.29.2323) ;
 - (b) a map showing the areas served by the MCO (see 24.29.2326) ;
 - (c) information describing the organizational structure of the MCO (see 24.29.2329) ;
 - (d) the plan for providing managed care (see 24.29.2331) ; and
 - (e) information concerning the ability of the MCO to meet its financial obligations (see 24.29.2336) .
- (3) An applicant must furnish with the preliminary application the name, address and telephone number of a knowledgeable contact person who is familiar with the contents of the preliminary application.
- (4) A preliminary application must be accompanied by a non-refundable application fee of \$1,500.00. No fee will be required for final applications.
- (5) An applicant must furnish an original and three copies of the preliminary application to the department. In lieu of the copies, an applicant may submit the information in an electronic form or on computer readable media that meets the requirements of the department. Applicants should contact the department to determine the format for supplying that information in electronic form or media. The map of the service areas need not be reproduced in electronic form.
- (6) Any portion of the preliminary application that the applicant believes in good faith to be a trade secret, protected by the Uniform Trade Secrets Act (Title 30, chapter 14, part 4, MCA) , must be clearly identified as such by the applicant.

Any portion of the preliminary application which is not specifically identified as a trade secret is subject to public inspection and disclosure. In the event that a person seeks disclosure of information that is identified as a trade secret, the department will determine whether the individual right to privacy is outweighed by the public right to know, and whether an appropriate protective order can be fashioned to permit disclosure in a way that does not injure the property rights of the applicant.

History: Sec. 39-71-203, 39-71-1103 and 39-71-1105 MCA; IMP, Sec. 39-71-224, 39-71-1103 and 39-71-1105 MCA; NEW, 1994 MAR p. 420, Eff. 3/1/94.

Rule 24.29.2322 reserved

24.29.2323 Time, Place and Manner of Providing Services

- (1) An applicant must state in the preliminary application how it intends to serve the medical and medical rehabilitative needs of claimants and identify the times, places and manners in which those services will be provided.
- (2) The statement required by this rule must be written to clearly inform claimants and interested parties of the following:
 - (a) the nature of the primary medical services that is available from the MCO;
 - (b) the specific location(s) where primary medical services are available and the hours and days on which those services are available;
 - (c) what other services (if any) is provided by the MCO to claimants, and where those services will be available;
 - (d) how persons may obtain further information about the MCO, including a telephone number for obtaining such information; and
 - (e) any other general information which the MCO believes would be useful in describing the operations of the MCO and the services offered.

History: Sec. 39-71-203, 39-71-1103 and 39-71-1105 MCA; IMP, Sec. 39-71-1103 and 39-71-1105 MCA; NEW, 1994 MAR p. 420, Eff. 3/1/94.

Rules 24.29.2324 and 24.29.2325 reserved

24.29.2326 Areas Served by the Managed Care Organization

- (1) For the purposes of this rule, the term "claimant" means only those persons whose workers' compensation insurer has a service contract with the MCO in question.
- (2) A claimant may be served by any MCO that offers primary medical services by an appropriate treating physician within 30 miles of the claimant's residence. If no MCO exists within 30 miles of the claimant's residence, then the claimant may be directed to any MCO that is within 100 miles of the place of residence. If no MCO exists within 100 miles of the place of residence of the claimant, then the claimant may be directed to the nearest MCO. If the claimant requires specialty medical services that are not available within the stated mileage restrictions, the managed care plan may refer the claimant to a provider outside of the stated mileage restrictions.
- (3) The MCO must file with the department a map, of a scale not smaller than that used by the official Montana highway map, showing circles of a 30 mile radius

and a 100 mile radius from each town where the primary medical services are offered by the managed care plan.

History: 39-71-203, 39-71-1103 and 39-71-1105, MCA; IMP, 39-71-1103 and 39-71-1105, MCA; NEW, 1994 MAR p. 420, Eff. 3/1/94.

Rules 24.29.2327 and 24.29.2328 reserved

24.29.2329 Structure of Organization

- (1) An applicant must submit information in the preliminary application that describes the organizational structure of the MCO and discloses information about individuals and entities that have an ownership or management interest in the MCO.
- (2) An applicant must provide the following information:
 - (a) the complete name of the MCO;
 - (b) all fictitious business names which the MCO will use;
 - (c) the type of organizational entity (e.g. corporation, partnership, joint venture, limited liability company) used by the MCO, supported by documentation from the Montana secretary of state showing that the entity is qualified to do business in Montana and is in good standing;
 - (d) the street and mailing address of the principal Montana office of the MCO;
 - (e) an organization chart that depicts the primary departments or functions of the MCO;
 - (f) the names and occupations of all directors and officers, by whatever title, of the MCO; and
 - (g) a signed statement from the day-to-day administrator of the MCO certifying that the MCO is not formed, owned or operated by a workers' compensation insurer or self-insured employer, other than a health care provider.
- (3) An applicant must disclose the existence of any of the following relationships and provide such information concerning the relationship(s) as the department may reasonably request:
 - (a) common ownership by or with any other business entity;
 - (b) common management with any other business entity;
 - (c) management or ownership by any person or entity that was or currently is associated with a MCO or MCO applicant; or
 - (d) the name of any entity, other than individual health care providers, with whom the MCO has a joint venture or other agreement to perform any of the functions of the plan, and a description of the specific functions to be performed by each entity.

History: 39-71-203, 39-71-1103 and 39-71-1105, MCA; IMP, 39-71-1103 and 39-71-1105, MCA; NEW, 1994 MAR p. 420, Eff. 3/1/94; AMD, 1998 MAR p. 2872, Eff. 11/1/98.

Rule 24.29.2330 reserved

24.29.2331 Contents of the Managed Care Plan

The managed care plan must include the following elements. A MCO is free to add additional elements, features or services beyond those described in this rule.

- (1) A description of the number and specialties of persons who are eligible to be treating physicians. The following list is a minimum of the number and specialties which must be part of the plan:
 - (a) a minimum of five medical doctors or osteopaths, providing at least three of the following areas of practice:
 - (i) orthopedic;
 - (ii) surgery;
 - (iii) neurology or neurosurgery;
 - (iv) osteopathic treatment of musculoskeletal injury;
 - (v) family practice or internal medicine; and
 - (vi) occupational medicine or physical medicine;
 - (b) one chiropractor; and
 - (c) one dentist.
- (2) A description of how the MCO will provide physical therapy services. As provided by 39-71-1105, MCA, each MCO is encouraged to utilize the services of independent physical therapists.
- (3) A description of the number and specialties of other health care providers (including, but not limited to podiatrists, physician assistants, nurse practitioners, occupational therapists, and optometrists) who will be furnishing services to injured workers.
- (4) A description of how and where the following services are to be provided:
 - (a) in-patient surgery;
 - (b) out-patient surgery;
 - (c) radiology services, including magnetic resonance (MR) and computerized tomography (CT) imaging;
 - (d) psychological or psychiatric counseling;
 - (e) diagnostic pathology and laboratory services;
 - (f) hospital; and
 - (g) urgent care.
- (5) A description of how the MCO will designate the treating physician. The description must include an explanation of how the MCO will decide which physician will be designated as the treating physician, and how the injured worker's preference of treating physician will be taken into account.
- (6) A description of under what circumstances injured workers will be referred to physicians or other providers that are not members of the MCO.
- (7) A description of what secondary medical services, if any, will be available.
- (8) An explanation of how injured workers, once referred to MCO, will be advised of the availability of services provided by the MCO. The injured worker must be able to receive information on a 24 hour basis regarding the availability of necessary medical services provided within the MCO and information on how an injured worker can obtain emergency services or other urgently needed care. The information may be provided through recorded telephone messages after normal working hours.
- (9) An explanation of how services will be provided in a timely manner.
- (10) A description of how the MCO will monitor, evaluate, and coordinate the delivery by its members of quality, cost-effective medical treatment and other health services needed in the care of injured workers. The plan must adhere to any

treatment standards developed by the medical advisory committees and adopted by rule by the department.

- (11) A description of the program that will be used to promote an early return to work for the injured worker. The program must provide for a cooperative effort between the worker, employer, rehabilitation provider(s) , and the MCO.
- (12) A description of how continuity of care will be ensured.
- (13) A description of the MCO's program of peer review for services provided by its members. The peer review program must include a review of medical necessity and appropriateness of services being rendered by the health care provider in order to improve the quality of patient care and the cost-effectiveness of treatment.
- (14) A description of the MCO's program for utilization review for services provided by its members. The program must include the collection, review, and analysis of group data to improve overall quality of care and efficient use of resources. The plan must adhere to any utilization standards developed by the medical advisory committees and adopted by rule by the department.
- (15) A description of the financial incentives that will be implemented to reduce service costs and utilization without sacrificing the quality of services.
- (16) A description of the quality assurance program to be implemented by the MCO. Such a program must include information which will allow the MCO to determine injured worker satisfaction with the level of service and care provided by the MCO. The department may forward complaints received directly from injured workers to the MCO and require the MCO to respond to the department in writing regarding issues raised in the complaints.
- (17) A description of the procedure for resolving disputes, including a process to resolve disputes raised by injured workers, members, and insurers. At a minimum, the dispute resolution process must:
 - (a) be fair and unbiased;
 - (b) provide injured workers with a reasonably convenient method of presenting disputes to the MCO; and
 - (c) provide a written response from the MCO addressing the dispute within 15 working days of when the dispute became known.
- (18) Provision for a person or persons who will act as communication liaison with the department and insurers with which the MCO contracts. The responsibilities of the liaison shall include, but are not limited to:
 - (a) coordinating correspondence and compliance with reporting requirements with the department;
 - (b) unless otherwise provided by a contract with an insurer, coordinating and channeling medical bills to insurers;
 - (c) unless otherwise provided by a contract with an insurer, providing centralized receipt and distribution of all reimbursements from insurers back to the MCO members; and
 - (d) serving as a member of the quality assurance committee.

History: Sec. 39-71-203, 39-71-1103 and 39-71-1105 MCA; IMP, Sec. 39-71-1103 and 39-71-1105 MCA; NEW, 1994 MAR p. 420, Eff. 3/1/94.

Rules 24.29.2332 through 24.29.2335 reserved

24.29.2336 Financial Ability of Organization

- (1) An applicant must provide evidence that it is able to meet the financial obligations that will arise from the plan and other contractual obligations of the MCO to provide services. Such evidence may include, but is not limited to, a showing that the applicant is adequately capitalized, evidence of sufficient insurance and sureties, a business plan or evidence that the debts of the applicant are individually guaranteed by a number of persons with appropriate net worth.

History: Sec. 39-71-203, 39-71-1103 and 39-71-1105 MCA; IMP, Sec. 39-71-1103 and 39-71-1105 MCA; NEW, 1994 MAR p. 420, Eff. 3/1/94.

Rules 24.29.2337 and 24.29.2338 reserved**24.29.2339 Approval of Preliminary Application**

- (1) The department will review all preliminary applications for completeness. The department may request that an applicant provide additional information. If the applicant declines to provide the additional information requested by the department, the department will process the application and either approve or deny the preliminary application based upon the information supplied by the applicant.
- (2) The department will approve preliminary applications which meet the criteria established by these rules and relevant statutes. Once all preliminary application certification requirements have been met, within 60 days of receipt of all required information from the MCO, the department will notify the applicant of the approval or denial of their preliminary application. An applicant that is aggrieved by a decision of the department may request administrative review of the decision or request a contested case hearing.
- (3) If the department approves the preliminary application, the applicant may then prepare and submit a final application.

History: Sec. 39-71-203, 39-71-1103 and 39-71-1105 MCA; IMP, Sec. 39-71-1103 and 39-71-1105 MCA; NEW, 1994 MAR p. 420, Eff. 3/1/94.

Rule 24.29.2340 reserved**24.29.2341 Final Application**

- (1) An applicant that has received approval of the preliminary application is eligible to submit a final application for certification as a MCO.
- (2) A final application consists of the following elements:
 - (a) the approved preliminary application on file with the department;
 - (b) the name, title, address and telephone number of a contact person who will act as liaison between the department and the MCO;
 - (c) the name, title, address, and duties of the person who will be the day-to-day administrator of the MCO;
 - (d) the name, address, medical specialty, and duties, of the medical director, if any, of the MCO;
 - (e) a list of the name of each individual required by 24.29.2331(1) , (2) , and (3) , who will provide services under the plan;

- (f) the name and professional address of each individual who is eligible to be designated as a treating physician;
 - (g) the name, of each individual, if any, who will coordinate medical services; and
 - (h) a signed statement from the medical director or day to-day administrator of the MCO certifying that all persons who are required to hold a current professional license or certification to render services under the plan are properly licensed or certified by the state of Montana.
- (3) Any portion of the final application (other than portions previously identified in the preliminary application) that the applicant believes in good faith to be a trade secret, protected by the Uniform Trade Secrets Act (Title 30, chapter 14, part 4, MCA) , must be clearly identified as such by the applicant. Any portion of the final application which is not specifically identified as a trade secret is subject to public inspection and disclosure. In the event that a person seeks disclosure of information that is identified as a trade secret, the department will determine whether the individual right to privacy is outweighed by the public right to know, and whether an appropriate protective order can be fashioned to permit disclosure in a way that does not injure the property rights of the applicant.

History: Sec. 39-71-203, 39-71-1103 and 39-71-1105 MCA; IMP, Sec. 39-71-224, 39-71-1103 and 39-71-1105 MCA; NEW, 1994 MAR p. 420, Eff. 3/1/94.

Rules 24.29.2342 through 24.29.2345 reserved

24.29.2346 Original Certification

- (1) The department will review all final applications for completeness. The department may request an applicant provide additional information. If the applicant declines to provide the additional information requested by the department, the department will process the application and either approve or deny the final application based upon the information supplied by the applicant.
- (2) Within 30 days of receipt of a complete final application which contains all required information from the MCO, the department will approve final applications which meet the criteria established by these rules and relevant statutes. An applicant that is aggrieved by a decision of the department may request administrative review of the decision or request a contested case hearing.
- (3) Upon approval of a final application for certification, the department will certify the applicant as a MCO. The original certification will be effective for a specified period of not less than one year or more than two years from the date the certification is issued, unless suspended or revoked by the department. The exact period of certification will be determined by the department on a case-by-case basis, in order to stagger the renewal dates of MCO certifications. The certification will specify when annual reports (see 24.29.2351) must be filed with the department.

History: Sec. 39-71-203, 39-71-1103 and 39-71-1105 MCA; IMP, Sec. 39-71-1103 and 39-71-1105 MCA; NEW, 1994 MAR p. 420, Eff. 3/1/94.

Rules 24.29.2347 through 24.29.2350 reserved

24.29.2351 Reporting Requirements

- (1) The department finds that one of the purposes of MCOs is to control medical costs in workers' compensation cases. The department further finds that the contracts between an insurer and a MCO may contain trade secrets or proprietary information which the MCO would not voluntarily disclose to the public or competitors. The department also finds that the threat of public disclosure of trade secrets or proprietary information may tend to limit the number of MCOs that will become certified under these rules. However, in order for the department to carry out its regulatory duties, which include ensuring that a MCO is not formed, owned, or operated by an insurer, the department must obtain and review the contracts between insurers and MCOs. Because of the foregoing, the department finds that the insurer-MCO contracts required to be filed with the department pursuant to this rule carry with them a justifiable expectation of privacy, and thus the department will not make public any such contracts which contain trade secrets or proprietary information unless there is clear and convincing evidence to show that public disclosure would not constitute an unreasonable invasion of privacy. Insurers and MCOs are strongly encouraged to clearly identify which portions of their contracts contain trade secrets or proprietary information and which portions do not contain that material. The fact of the existence of a contract between an insurer and a MCO is a matter of public record.
- (2) A MCO must provide to the department an executed copy of the following contracts within 10 days of signing:
 - (a) service contracts; and
 - (b) modifications to service contracts.
- (3) A MCO must provide to the department an executed copy of contracts between the MCO and any entity, other than individual members of the plan and personal doctors, to perform some of the functions of the plan within 30 days of signing.
- (4) A MCO must report to the department any changes in the following information within 30 days of the change:
 - (a) the addition or termination of members of the MCO;
 - (b) any change in the licensure of members or staff of the MCO;
 - (c) changes in the administrative staff of the MCO including, but not limited to, the liaison with the department and the day-to-day administrator of the MCO;
 - (d) changes in service locations; and
 - (e) the expiration, termination or cancellation of any service contract.
- (5) The MCO must annually report to the department the following:
 - (a) a summary of the results of the programs implemented to promote early return to work, including the numbers of employers and injured workers involved in the cooperative effort;
 - (b) a summary of peer review activities describing the number of cases reviewed and the number of cases where alternative treatment strategies were recommended;
 - (c) a summary of utilization review activities describing the number of cases reviewed and the number of cases where different utilization strategies were recommended; and
 - (d) a summary of disputes which were processed through the dispute resolution procedures established by the plan. The summary must generally identify:
 - (i) how many disputes were raised;

- (ii) the issues involved;
 - (iii) the relative numbers of injured workers, members, insurers or others that were involved in the disputes; and
 - (iv) how many of the disputes were resolved within the procedure established by the plan.
- (6) The MCO must report to insurers any data regarding medical services related to workers' compensation claims which are required by the insurer to determine compensability in accordance with the Montana Workers' Compensation and Occupational Disease Acts, or to comply with reporting requirements of the department.
- (7) The department may require additional information from the MCO to determine if the MCO is complying with the provisions of the plan.

History: Sec. 39-71-203, 39-71-1103 and 39-71-1105 MCA; IMP, Sec. 39-71-224, 39-71-1103 and 39-71-1105 MCA; NEW, 1994 MAR p. 420, Eff. 3/1/94.

Rules 24.29.2352 through 24.29.2355 reserved

24.29.2356 Department May Inspect or Audit

- (1) All records of the MCO must be maintained within the geographic boundaries of the state of Montana.
- (2) The department may monitor and conduct periodic audits and special examinations of the MCO as necessary to ensure compliance with the plan certification and performance requirements.
- (3) All records of the MCO relevant to determining compliance with the plan shall be disclosed within a reasonable time, not to exceed 10 days, after request by the department. Records must be legible and cannot be kept in a coded or semi coded manner unless a legend is provided for the codes.

History: Sec. 39-71-203, 39-71-1103 and 39-71-1105 MCA; IMP, Sec. 39-71-1103 and 39-71-1105 MCA; NEW, 1994 MAR p. 420, Eff. 3/1/94.

Rules 24.29.2357 through 24.29.2360 reserved

24.29.2361 Application to Renew Certification, Notice of Intent not to Renew Certification

- (1) At least 60 days, but not more than 120 days, before the MCO certification expires, a MCO must either apply to renew the certification or provide written notice to the department and any insurer with which it has a contract that the MCO will not be renewing its certification.
- (2) In order to be eligible to renew its certification, the MCO must be current with all reports and information required to be filed with the department.
- (3) Each approved MCO, in order to renew certification, must submit an application for renewal containing the following information:
 - (a) a signed statement from the day-to-day administrator of the MCO certifying that the MCO is not formed, owned or operated by a workers' compensation insurer or self-insured employer, other than a health care provider;
 - (b) the name, title, address and telephone number of the person who will act as the liaison between the department and the MCO;

- (c) the name, title, address and telephone number of the person who is the day-to-day administrator of the MCO;
- (d) the name, address and medical specialty, of the medical director, if any, of the MCO;
- (e) a list of the current members, including names, specialty, addresses, and telephone numbers, together with a signed statement from the medical director or day-to-day administrator of the MCO certifying that each individual on the list is properly licensed to perform those services;
- (f) a list of the insurers with which the MCO has contracts and the expiration dates of the contracts; and
- (g) a summary of any sanctions or punitive actions taken by the MCO against members.

History: Sec. 39-71-203, 39-71-1103 and 39-71-1105 MCA; IMP, Sec. 39-71-1103 and 39-71-1105 MCA; NEW, 1994 MAR p. 420, Eff. 3/1/94.

Rules 24.29.2362 through 24.29.2365 reserved

24.29.2366 Renewal Certification

- (1) The department will review all renewal applications for completeness. The department may request that a MCO provide additional information. If the MCO declines to provide the additional information requested by the department, the department will process the application and either approve or deny the renewal application based upon the information supplied by the MCO.
- (2) Within 60 days of receipt of a complete renewal application, the department will approve renewal applications which meet the criteria established by these rules and relevant statutes. The failure to have timely filed all required reports and information is grounds for the department denying a renewal application. A MCO that is aggrieved by a decision of the department may request administrative review of the decision or request a contested case hearing.
- (3) Upon approval of a renewal application, the department will certify the MCO for an additional two years. The certification is subject to being suspended or revoked by the department for cause. The renewal certification will specify when annual reporting (see 24.29.2351) must be filed with the department.
- (4) The department may briefly extend a MCO's certification while the renewal process is pending.

History: Sec. 39-71-203, 39-71-1103 and 39-71-1105 MCA; IMP, Sec. 39-71-1103 and 39-71-1105 MCA; NEW, 1994 MAR p. 420, Eff. 3/1/94.

Rules 24.29.2367 through 24.29.2370 reserved

24.29.2371 Application to Modify Plan

- (1) Any voluntary action by the MCO which will reduce the level of service by the MCO to injured workers or result in significant changes to one or more of the plan elements in ARM 24.29.2331 cannot be taken without the approval of the department. MCOs may add members without the approval of the department.
 - (a) The MCO must submit an explanation of the changes or modifications to the plan and the impact of the change on service to injured workers, the financial stability of the MCO, or any other significant impact.

- (b) Within 30 days of receipt of the proposed change, the department will advise the MCO whether the proposed change is acceptable. A MCO that is aggrieved of a decision of the department may request administrative review of the decision or request a contested case hearing.
- (2) The MCO must notify the department within 10 days of any event or circumstance which will impair the MCO's ability to fulfill the requirements of the plan.
 - (a) The MCO must explain what has happened and the effect of the change.
 - (b) The MCO must describe how it will respond to the change.
 - (c) The department will advise the MCO whether the action proposed by the MCO is adequate to maintain certification of the MCO.

History: Sec. 39-71-203, 39-71-1103 and 39-71-1105 MCA; IMP, Sec. 39-71-1103 and 39-71-1105 MCA; NEW, 1994 MAR p. 420, Eff. 3/1/94.

Rule 24.29.2372 reserved

24.29.2373 Addition and Termination of Members

- (1) The MCO shall certify to the department that each additional member meets all the licensing requirements necessary to practice in Montana.
- (2) The MCO, upon termination of an individual member, shall:
 - (a) make alternate arrangements to provide continuing medical services for any injured worker affected by the termination; and
 - (b) promptly replace any terminated member, when necessary, to maintain an adequate number of medical providers in each type of health care service as provided in the managed care plan.

History: Sec. 39-71-203, 39-71-1103 and 39-71-1105 MCA; IMP, Sec. 39-71-1103 and 39-71-1105 MCA; NEW, 1994 MAR p. 420, Eff. 3/1/94.

Rules 24.29.2374 and 24.29.2375 reserved

24.29.2376 Revocation or Suspension of Certification

- (1) For the purposes of this rule:
 - (a) "Suspension" means a temporary limitation that prohibits a MCO from either:
 - (i) entering into new service contracts; or
 - (ii) accepting additional injured workers to be treated under existing service contracts.
 - (b) "Revocation" means an involuntary termination of a MCO's certification to provide services under these rules.
- (2) The certification of a MCO issued by the department may be suspended or revoked by the department if:
 - (a) services to injured workers are not being provided in accordance with the provisions of the certified plan;
 - (b) the plan for providing medical services fails to meet the requirements of these rules;
 - (c) the MCO fails to comply with applicable rules and statutes;
 - (d) the MCO submits false or misleading information to the department, insurers, claimants or others;

- (e) the MCO knowingly utilizes the services of a health care provider whose license has been revoked or suspended by the licensing board;
 - (f) the MCO is or was formed by an insurer, or self-insured employer other than a health care provider or medical services provider; or
 - (g) the MCO fails to timely file reports.
- (3) The department will give 20 days' written notice to the MCO, and insurers with which the MCO has contracted, of the department's intent to suspend or revoke the certification of the MCO. The notice will specify the grounds for revocation or suspension. If the MCO does not either come into compliance or request a contested case hearing, within 20 days of the notice being sent, the department will suspend or revoke the MCO's certification.
 - (4) A suspension may be set aside prior to the end of the suspension period if the department is satisfied the MCO has remedied the condition which led to the suspension.
 - (5) If the certification of a MCO is revoked and the MCO wishes to again apply for certification, it must go through the entire application process (including payment of the application fee) before it can be certified.

History: Sec. 39-71-203, 39-71-1103 and 39-71-1105 MCA; IMP, Sec. 39-71-1103 and 39-71-1105 MCA; NEW, 1994 MAR p. 420, Eff. 3/1/94.

Rules 24.29.2377 and 24.29.2378 reserved

24.29.2379 Dispute Resolution

- (1) Except as otherwise provided by law, disputes which arise between an injured worker and the MCO or an insurer and the MCO, must first be handled according to the dispute resolution process contained in the plan.
- (2) If a dispute is not resolved using the process contained in the plan, the parties may request that the department attempt to informally resolve the dispute. To the extent feasible, the department will attempt to assist the parties in reaching a resolution of the dispute.
- (3) If a dispute is not resolved by way of the dispute resolution process contained in the plan, the parties may avail themselves of the remedies provided by law or contract.

History: Sec. 39-71-203, 39-71-1103 and 39-71-1105 MCA; IMP, Sec. 39-71-1103 and 39-71-1105 MCA; NEW, 1994 MAR p. 420, Eff. 3/1/94.

Subchapters 24 through 25 Reserved

Subchapter 26

Subsequent Injury Fund Rules

24.29.2601 Notification When Compensation to be Continued Beyond 104 Weeks

This rule has been repealed.

History: 39-71-904, MCA; IMP, 39-71-904, MCA; Eff. 12/31/72; REP, 2010 MAR p. 2967, Eff. 12/24/10.

24.29.2602 Introduction

- (1) The department administers the subsequent injury fund (SIF), as provided by 39-71-901, et seq., MCA.
- (2) A person with a permanent impairment that is a substantial obstacle to employment may seek certification by the department. Only an individual may be certified by the department, not a specific body part or condition.
- (3) The department shall use the SIF to reimburse eligible expenses incurred by an insurer for:
 - (a) Causally related medical payments made on behalf of a certified individual 104 weeks after the occurrence of a subsequent injury or onset of an occupational disease; and
 - (b) Indemnity payments made to a certified individual after the insurer has paid a total of 104 weeks of indemnity payments.
- (4) The SIF may not reimburse administrative expenses incurred by an insurer to process a claim.
- (5) The department must receive timely and appropriate notice from the insurer pursuant to ARM 24.29.2614 before the department may reimburse an insurer.
- (6) The department may require an insurer of a certified individual to submit reports of periodic medical examinations of the certified individual.

History: 39-71-203, 39-71-904, MCA; IMP, 39-71-901, 39-71-905, 39-71-907, 39-71-908, MCA; NEW, 2010 MAR p. 2967, Eff. 12/24/10.

Rules 24.29.603 and 24.29.604 reserved

24.29.2605 Definitions

For the purposes of this subchapter, the following definitions apply:

- (1) "Applicant" means a person with a disability who applies to the department for SIF certification.
- (2) "Certified" and "certification" mean the department has determined an individual has a permanent physical or mental impairment that constitutes a substantial obstacle to employment, based upon review of the SIF application, the medical evidence of impairment form, and rehabilitation evaluation, if applicable.
- (3) "Department" means the Department of Labor and Industry.
- (4) "Indemnity benefits" means any payment made by an insurer directly to the worker or the worker's beneficiaries, other than a medical benefit. The term includes payments made pursuant to a reservation of rights. The term does not include expense reimbursements for items such as meals, travel, or lodging.
- (5) "Maximum medical improvement" means the same as provided by 39-71-116, MCA.
- (6) "Permanent impairment" means a significant deviation, loss, or loss of use of any body structure or function in an individual, with respect to a health condition, disorder, or disease that has reached maximum medical improvement.
- (7) "Reemployment" means placement with the time-of-injury employer in a new or modified position, with or without accommodations made for the certified worker's permanent impairment.
- (8) "Referring agent" means a person or agency that assists an individual in preparing an SIF application.

- (9) "SIF" means the subsequent injury fund, which is administered by the department.
- (10) "Treating physician" means the same as provided by 39-71-116, MCA.

History: 39-71-203, 39-71-904, MCA; IMP, 39-71-116, 39-71-901, 39-71-905, MCA; NEW, 2010 MAR p. 2967, Eff. 12/24/10.

Rule 24.29.2606 reserved

24.29.2607 Certification Process

- (1) A person with a permanent impairment that is a substantial obstacle to employment may apply for SIF certification. Application for SIF certification is voluntary on the part of the applicant.
- (2) Application for certification requires the following documentation:
 - (a) a completed SIF application form signed by the applicant, which includes:
 - (i) information regarding applicant's education, training, and job skills;
 - (ii) the applicant's employment history for the past ten years;
 - (iii) the applicant's assessment of the impact of applicant's permanent impairment on future employment; and
 - (iv) a description of any modifications to employment reasonably necessary to accommodate work restrictions; and
 - (b) a completed SIF medical evidence of permanent impairment form signed by a treating physician, which includes:
 - (i) an assessment of applicant's permanent impairment;
 - (ii) an assessment of the impact of applicant's permanent impairment on applicant's employability, including a description of permanent work-related restrictions and limitations;
 - (iii) copy of a treating physician's notes documenting applicant's permanent impairment and obstacles to employment, including any work restrictions, if available; and
 - (iv) evidence the applicant has achieved maximum medical improvement.
- (3) The department shall review the application, the medical evidence of permanent impairment form, and other supporting documentation. The department shall evaluate whether the applicant qualifies for certification, in accordance with the requirements set forth by ARM 24.29.2610.
- (4) The department encourages persons with a permanent impairment that is a substantial obstacle to obtaining employment or reemployment to apply for certification when a treating physician has not completed the medical evidence form. The department shall notify the applicant in writing when a medical evidence of form or other supporting information is needed to complete the certification process.
- (5) The applicant may submit a signed release to the department that authorizes the department to contact, notify, and confer with a referring agent, a designated representative, or applicant's medical provider.
- (6) When the department approves an application, the department shall notify the applicant and referring agent, if applicable, and provide the applicant with an SIF certification card.
- (7) The department shall retain an incomplete application for a period of one year. When an application remains incomplete one year after submission, the department shall deny the application.

- (8) When the department denies an application, the department shall inform the applicant and referring agent, if applicable, in writing of the reasons for denial.
- (9) Upon the written petition of the applicant, the department shall reconsider the denial of an application, pursuant to the administrative review process outlined by ARM 24.29.206. The applicant shall submit the petition for administrative review and any additional information for department consideration within six months following a denial.
- (10) After an administrative review that affirms the denial of an application, the applicant may submit a written request to the department for a contested case hearing, pursuant to ARM 24.29.207.

History: 39-71-203, 39-71-904, MCA; IMP, 39-71-905, MCA; NEW, 2010 MAR p. 2967, Eff. 12/24/10.

Rules 24.29.2608 and 24.29.2609 reserved

24.29.2610 Certification Requirements

- (1) The department shall grant SIF certification to an individual when all of the following requirements are met:
 - (a) The applicant has documented the existence of a permanent physical or mental impairment that adversely impacts the applicant's employability, in accordance with ARM 24.29.2607. The applicant's permanent impairment may result from a congenital condition, trauma, or disease. The permanent impairment does not have to be caused by a work-related injury or occupational disease;
 - (b) The medical evidence of applicant's permanent impairment is not more than six months old at the time of application;
 - (c) The medical evidence of permanent impairment relates directly to the condition identified on the application form;
 - (d) A treating physician has provided written documentation that the applicant is permanently impaired; and
 - (e) A treating physician has provided written documentation of employment restrictions or limitations due to the applicant's permanent impairment that demonstrates the impairment presents a substantial obstacle to employment or reemployment.

History: 39-71-203, 39-71-904, MCA; IMP, 39-71-905, MCA; NEW, 2010 MAR p. 2967, Eff. 12/24/10.

Rules 24.29.2611 through 24.29.2613 reserved

24.29.2614 Reimbursement Process

- (1) The department shall determine the right of an insurer to SIF reimbursement of medical and indemnity payments to an SIF-certified individual in accordance with the criteria outlined by this rule.
- (2) An insurer shall send the following to the department to document 104 weeks of payments for medical and indemnity after SIF has been notified of the insurer's intent to seek reimbursement:
 - (a) for medical benefit reimbursements:
 - (i) a cover letter;

- (ii) medical notes from first and last visit from the treating physician; and
 - (iii) a spreadsheet documenting all medical benefits, including prescriptions, paid by the insurer for the first 104 weeks.
- (b) for indemnity benefit reimbursements:
 - (i) a cover letter; and
 - (ii) a spreadsheet documenting all indemnity benefits paid.
- (3) After an insurer's right to SIF reimbursement has been established, the department recommends the insurer request SIF reimbursement in writing at six-month intervals.
 - (a) The department shall not reimburse the insurer for medical benefits paid to or on behalf of an SIF-certified individual during the first 104 weeks following the date of injury.
 - (b) The department shall not reimburse an insurer for indemnity benefits until after the insurer has paid a total of 104 weeks of indemnity benefits to the SIF-certified individual.
- (4) Each reimbursement request must state the amount of reimbursement claimed for medical and indemnity payments and include the following documentation for the six-month reimbursement period:
 - (a) computer printout or comparable listing that identifies the type of indemnity payment to the SIF-certified individual (temporary partial disability, temporary total disability, permanent partial disability, or permanent total disability) and includes:
 - (i) dates checks were issued;
 - (ii) dates of indemnity;
 - (iii) total weeks of indemnity; and
 - (iv) the total amount paid.
 - (b) computer printout or comparable listing of all medical bills paid, including:
 - (i) dates checks were issued;
 - (ii) provider names;
 - (iii) dates of service;
 - (iv) billed amount;
 - (v) paid amount;
 - (vi) NDC# or drug type and dosage;
 - (vii) date of fill; and
 - (viii) amount paid; and
 - (c) copies of all medical bills with the corresponding explanations of benefits and directly related medical records.
- (5) The insurer shall notify the SIF representative and the department at the outset of settlement negotiations involving an injured individual who is SIF-certified. The insurer shall waive the right to SIF contribution by failing to notify the department at the outset of settlement negotiations.
- (6) The insurer shall submit any negotiated settlement agreement to the SIF representative and the department for approval prior to final settlement.
 - (a) Attorney fees must be itemized separately from medical and/or indemnity benefits.
- (7) Disputes arising over payment or reimbursement between the department and the insurer may be resolved by the contested case hearing process, pursuant to ARM 24.29.207, at the written request of the either party.

History: 39-71-203, 39-71-904, MCA; IMP, 39-71-907, 39-71-908, 39-71-909, 39-71-912, 39-71-920, MCA; NEW, 2010 MAR p. 2967, Eff. 12/24/10; AMD, 2018 MAR p. 2527, Eff. 1/1/19.

Subchapter 27
Silicosis Benefits

24.29.2701 Payment of Silicosis Benefits

- (1) The Department of Labor and Industry will pay silicosis benefits to persons entitled to receive those benefits pursuant to Title 39, chapter 73, MCA. Such persons include the victim of silicosis, the surviving spouse of such a victim, or an appropriate representative of the victim or surviving spouse.
- (2) The monthly amount paid as silicosis benefits is established by the Legislature, and is subject to a funding level appropriated by the Legislature for payment of monthly silicosis benefits.
- (3) After the death of a recipient of benefits, any payment issued by the department for which there is no entitlement to benefits must be reimbursed to the department for deposit in the fund.

History: 39-73-102, MCA; IMP, 39-73-104, 39-73-107, 39-73-108, 39-73-109, 39-73-111, MCA, and Chap. 142, L. of 1999; NEW, 2000 MAR p. 862, Eff. 3/30/00; AMD, 2010 MAR p. 2967, Eff. 12/24/10.

Subchapter 28
Uninsured Employers' Fund

24.29.2801 Uninsured Employers' Fund Distribution

This rule has been repealed.

History: 39-71-203, MCA; IMP, 39-71-503, MCA; NEW, 1987 MAR p. 1991, Eff. 10/30/87; REP, 1995 MAR p. 933, Eff. 7/1/95.

Rule 24.29.2802 reserved

24.29.2803 Definitions

This rule has been repealed.

History: 39-71-203, MCA; IMP, 39-71-503, 39-71-504, MCA; NEW, 1995 MAR p. 933, Eff. 7/1/95; AMD, 1998 MAR p. 2872, Eff. 11/1/98; REP, 2002 MAR p. 1766, Eff. 6/28/02.

Rules 24.29.2804 through 24.29.2810 reserved

24.29.2811 Monthly Payments—UEF

- (1) The UEF pays benefits on a monthly basis.

History: 39-71-203, MCA; IMP, 39-71-503, MCA; NEW, 1995 MAR p. 933, Eff. 7/1/95; AMD, 2002 MAR p. 1766, Eff. 6/28/02.

Rules 24.29.2812 and 24.29.2813 reserved

24.29.2814 Determining the Amount of the Administrative Costs Balance—UEF

This rule has been repealed.

History: 39-71-203, MCA; IMP, 39-71-503, MCA; NEW, 1995 MAR p. 933, Eff. 7/1/95; EMERG; REP, 2002 MAR p. 1766, Eff. 6/28/02.

Rules 24.29.2815 and 24.29.2816 reserved**24.29.2817 Determining Whether There is a Positive Fund Balance—UEF**

This rule has been repealed.

History: 39-71-203, MCA; IMP, 39-71-503, MCA; NEW, 1995 MAR p. 933, Eff. 7/1/95; REP, 2002 MAR p. 1766, Eff. 6/28/02.

Rules 24.29.2818 through 24.29.2820 reserved**24.29.2821 Monthly Calculations of Fund Balances and Transfers—UIEF**

This rule has been repealed.

History: 39-71-203, MCA; IMP, 39-71-532, MCA; NEW, 1995 MAR p. 933, Eff. 7/1/95; REP, 1998 MAR p. 2872, Eff. 11/1/98.

Rules 24.29.2822 and 24.29.2823 reserved**24.29.2824 Determining the Amount of the Administrative Costs Balance—UIEF**

This rule has been repealed.

History: 39-71-203, MCA; IMP, 39-71-532, MCA; NEW, 1995 MAR p. 933, Eff. 7/1/95; REP, 1998 MAR p. 2872, Eff. 11/1/98.

Rules 24.29.2825 and 24.29.2826 reserved**24.29.2827 Determining Whether There is a Positive Fund Balance—UIEF**

This rule has been repealed.

History: 39-71-203, MCA; IMP, 39-71-532, MCA; NEW, 1995 MAR p. 933, Eff. 7/1/95; REP, 1998 MAR p. 2872, Eff. 11/1/98.

Rule 24.29.2828 reserved**24.29.2829 No Benefits Paid from the UIEF to Claimants**

This rule has been repealed.

History: 39-71-203, MCA; IMP, 39-71-532, MCA; NEW, 1995 MAR p. 933, Eff. 7/1/95; REP, 1998 MAR p. 2872, Eff. 11/1/98.

Rule 24.29.2830 reserved

24.29.2831 Collection of Penalties and other Payments from Uninsured Employers

- (1) The department collects penalties from uninsured employers in the manner specified by 39-71-504 , MCA. The department will assess a penalty on every uninsured employer of which it becomes aware, unless the department determines that the uninsured period is de minimis.
- (2) The amount of the penalty assessed is \$200.00, or twice the amount of the premium that the uninsured employer should have paid on the past three-year payroll while the employer was uninsured, whichever is greater.
- (3) To the extent that the state compensation insurance fund (plan no. 3) has a multiple pricing of premium structure in effect during any period in which the employer was uninsured, the penalty may be calculated using the highest tier (or pricing level) that could have been charged by the state fund during that period.
 - (a) For good cause shown, the penalty will be calculated using the rate the state fund would have actually charged the employer during the uninsured period. The employer has the burden of proof of establishing what rate or rates would have been charged by the state fund during the uninsured period.
 - (b) The employer has the burden of proof of establishing good cause for use of the lower rate as provided in (3) (a) .
 - (i) The employer's alleged financial inability to pay the cost of workers' compensation insurance premium during the uninsured period does not constitute "good cause" for the purposes of this rule.
 - (ii) The employer's alleged financial inability to pay the penalty imposed by this rule does not constitute "good cause" for the purposes of this rule.
- (4) Amounts collected from an employer to reimburse the UEF for benefits paid to a claimant must be deposited with the UEF. Any amount collected from an employer for future liability on a particular claim becomes an earmarked fund when there is an assignment agreement between the claimant and the UEF.

History: 39-71-203, MCA; IMP, 39-71-504, MCA; NEW, 1995 MAR p. 933, Eff. 7/1/95; AMD, 1995 MAR p. 1668, Eff. 9/1/95; AMD, 2006 MAR p. 2040, Eff. 8/25/06.

Rules 24.29.2832 and 24.29.2833 reserved

24.29.2834 Collection of Penalties and other Payments from Underinsured Employers

This rule has been repealed.

History: 39-71-203, MCA; IMP, 39-71-532, MCA; NEW, 1995 MAR p. 933, Eff. 7/1/95; REP, 1998 MAR p. 2872, Eff. 11/1/98.

Rules 24.29.2835 and 24.29.2836 reserved

24.29.2837 Calculation of Penalty on Underinsured Employers

This rule has been repealed.

History: 39-71-203, MCA; IMP, 39-71-532, MCA; NEW, 1995 MAR p. 933, Eff. 7/1/95; AMD, 1995 MAR p. 1668, Eff. 9/1/95; REP, 1998 MAR p. 2872, Eff. 11/1/98.

Rule 24.29.2838 reserved

24.29.2839 Compromise of Penalties Assessed

- (1) The UEF, in its sole discretion, may enter into a compromise settlement with an uninsured employer of the amount assessed pursuant to ARM 24.29.2831, upon such terms and conditions that the UEF deems expedient and appropriate.

History: 39-71-203, MCA; IMP, 39-71-506, MCA; NEW, 1995 MAR p. 1668, Eff. 9/1/95; AMD, 1998 MAR p. 2872, Eff. 11/1/98.

Rule 24.29.2840 reserved

24.29.2841 Claims for Benefits

- (1) Prior to July 1, 1987, 39-71-503, MCA required the UEF to keep "proper reserves and surpluses." During the period January 13, 1981, to June 30, 1987, the UEF was insolvent. Based on the legal principle in workers' compensation that the statutes in effect at the time of an injury determine a claimant's entitlement to benefits, the UEF did not accept liability for any injuries that occurred during the period of insolvency.
- (2) Effective July 1, 1987, 39-71-503, MCA was amended to remove the requirement that the UEF keep proper reserves and surpluses. Any claimant incurring an industrial injury or occupational disease in the course of employment with an uninsured employer on or after July 1, 1987, is eligible to apply for benefits by completing forms provided by the department. Upon receipt by the UEF of properly executed forms from a claimant, the department will initiate an investigation to determine whether the claimant meets eligibility requirements for benefits from the UEF. If the claimant is found to be eligible, the department will send a written notice to the employer advising of the employers' responsibilities under the law.

History: 39-71-203, MCA; IMP, 39-71-503, MCA; NEW, 1995 MAR p. 933, Eff. 7/1/95.

Rule 24.29.2842 reserved

24.29.2843 Payment of Accrued Benefits

- (1) Although the purpose of the UEF is to pay claims as though the claimant's employer was properly insured, because the UEF does not have a stable source of funding, it is not always financially possible to pay every claim in full. Accordingly, the department has been granted the authority to make such payments as it deems appropriate, depending on available funds.
- (2) Subject to ARM 24.29.2849, the UEF will pay compensation benefits for losses incurred prior to the time the claimant applied for benefits in a lump sum, during the month in which the UEF accepts liability for the claim. The lump sum payment for accrued compensation benefits will be paid from the positive fund balance, and treated as part of the month's claim for current benefits. If as a result of the inclusion of the accrued compensation benefits there is a proportionate reduction in benefits, there is no entitlement to retroactive reimbursement.

- (3) The UEF will pay medical expenses incurred prior to the time the claimant applied for benefits in a lump sum, during the month in which the UEF accepts liability for the claim. The lump sum payment for accrued medical expenses will be paid from the positive fund balance, and treated as part of the month's claim for current benefits. If as a result of the inclusion of the accrued medical expenses there is a proportionate reduction in medical benefits, there is no entitlement to retroactive reimbursement.
- (4) The UEF pays current benefits in the manner described in ARM 24.29.2846.

History: 39-71-203, MCA; IMP, 39-71-503, 39-71-504, 39-71-510, MCA; NEW, 1995 MAR p. 933, Eff. 7/1/95.

Rules 24.29.2844 and 24.29.2845 reserved

24.29.2846 Priority of Payment of Current Benefits

- (1) In keeping with the provision contained in 39-71-503 , MCA, that disability benefits are to be paid before medical benefits, the department will pay compensation benefits before paying any other benefits.
- (2) In the event that the amount of compensation claims for a month exceed the positive fund balance, compensation benefits will be paid on a proportionate basis to the point where there is no longer a positive fund balance. As provided by 39-71-510 , MCA, any such reduction does not entitle a claimant to retroactive reimbursements of compensation benefits in the future.
- (3) If, after paying all compensation benefits for the month, a positive fund balance still exists, other benefits, such as payments to medical or rehabilitation providers, will be paid. In the event that the amount of other benefit claims for a month exceeds the positive fund balance, those benefits will be paid on a proportionate basis to the point where there is no longer a positive fund balance. As provided by 39-71-510 , MCA, any such reduction does not entitle a claimant (or the provider to whom such benefits are paid) to retroactive reimbursements of benefits in the future.
- (4) Earmarked funds may be used to pay that claimant's benefits at full value, regardless of whether there is a positive fund balance for the month.

History: 39-71-203, MCA; IMP, 39-71-503, 39-71-504, 39-71-510, MCA; NEW, 1995 MAR p. 933, Eff. 7/1/95.

Rules 24.29.2847 and 24.29.2848 reserved

24.29.2849 Payment of Claims Where Liability is Disputed

- (1) This rule is intended to balance the rights of a claimant to back-due benefits where the claim was disputed with the rights of other claimants whose claims have been accepted. In order to pay benefits to claimants who prevail in disputed compensability cases without establishing reserves for the payment of disputed and litigated claims, and without unduly prejudicing the rights of other claimants, the UEF will pay back-due benefits awarded as the result of litigation according to this rule. The UEF may also settle disputed liability issues by making payments in the manner provided by this rule, or by means of a non-acceptance of liability settlement.

- (2) Where the UEF is subject to a final order from a court of competent jurisdiction requiring it to pay benefits, the UEF will pay back-due compensation benefits on a month-at-a-time basis, in addition to any current compensation benefits due the claimant. The back-due compensation payments will be made in the order of the oldest payments first, until the arrearages are eliminated. Thus, the first payment to claimant will be the amount owed for the current month, plus the amount that would have been paid for the first month of the claim. If a compensation payment would have been subject to a proportionate reduction during the month it would have been due (had liability been accepted), then it will be paid at the reduced rate applicable to the period during which it would have been paid had liability not been disputed. The monthly back-due compensation amount will be added to the current month's compensation claims and paid from the positive fund balance. The monthly back-due compensation amount is not subject to any proportionate reduction that might be applied to the current month's compensation benefits.
- (3) Where the UEF is subject to a final order from a court of competent jurisdiction requiring it to pay benefits, the UEF will pay other back-due benefits (such as medical benefits) on a month-at-a-time basis, in addition to any current "other benefits" due the claimant. Because of the requirement that compensation benefits be paid before other benefits are paid, there may be times when back-due "other payments" are not paid during a given month. The back-due other payments will be made in the order of the oldest payments first, until the arrearages are eliminated. If an "other benefit" payment would have been subject to a proportionate reduction during the month it would have been due (had liability been accepted), then it will be paid at the reduced rate applicable to the period during which it would have been paid had liability not been disputed. The monthly back-due "other" amount will be added to the current months "other benefits" claims and paid from the positive fund balance. The monthly back-due "other benefits" amount is not subject to any proportionate reduction that might be applied to the current month's payments.
- (4) In order to calculate the proportionate reduction that a payment would have been subject to, had liability not been disputed, the UEF will recompute the total claims made during the month the benefit should have been paid by adding the claims due during that month and the amount that would have been paid, had liability not been disputed. The UEF will not seek reimbursement for benefits already paid, if the recalculation shows that there should have been a proportionate reduction in benefits.
- (5) Where the UEF is subject to a final order from a court of competent jurisdiction requiring it to pay a penalty for unreasonable conduct in handling a claim, the UEF will pay the penalty as a current benefit.
- (6) The UEF may, in its sound discretion, resolve disputes concerning payment of benefits by agreeing to pay back-due benefits in a manner consistent with this rule. Such resolutions may involve claims where initial compensability has been accepted or where initial compensability has been denied.
- (7) The UEF may, in its sound discretion, resolve disputes concerning disputed initial liability by agreeing to make a payment in compromise settlement of the claim. In such instance, the entire amount of the payment must be treated as part of that month's current claim for compensation benefits, and is subject to a proportionate reduction if the positive fund balance is insufficient to pay compensation benefits in full.

(8) The UEF pays current benefits in the manner described in ARM 24.29.2846.

History: 39-71-203, MCA; IMP, 39-71-503, 39-71-504, 39-71-510, MCA; NEW, 1995 MAR p. 933, Eff. 7/1/95.

24.29.2851 Limitation on Expenditures for Medical Benefits Payable by the UEF—Applicability

- (1) Pursuant to 39-71-503 and 39-71-510 , MCA, the maximum aggregate expenditure for medical benefits per claim payable by the UEF is \$100,000. The \$100,000 limitation is based on the amount actually paid by the UEF, after applying the fee schedules adopted pursuant to 39-71-704 and 39-71-727 , MCA, to the medical services.
- (2) The limitation applies to primary medical services and to those secondary medical services approved by the UEF.
- (3) To the extent practicable, the UEF will reimburse providers for services provided at the earliest date or time before reimbursing for services provided at a later date or time. In the event of a catastrophic injury, however, it may not be feasible to identify the exact timing of the provision of services, and multiple providers may be simultaneously rendering services to the injured worker. The UEF reserves the right to make reasonable judgments regarding which services will be reimbursed first.
- (4) The term “medical benefits”, as used in this rule, includes:
 - (a) provider fees, whether for charges for direct services or for facility-related fees;
 - (b) prescription medications;
 - (c) allowed medical supplies; and
 - (d) durable medical equipment.
- (5) This rule applies to claims arising on or after July 1, 2007.

History: 39-71-203, MCA; IMP, 39-71-503, 39-71-510, 39-71-704, 39-71-727, MCA; NEW, 2007 MAR p. 1446, Eff. 9/21/07.

24.29.2853 Rights of Third-Party Providers after the UEF Reaches \$100,000 Medical Benefit Expenditure Limitation—Applicability

- (1) Providers of medical services, referred to in 39-71-508 , MCA, as “third-party providers”, who are directly affected by the UEF’s invocation of the \$100,000 aggregate expenditure limit for medical benefits have a right to bring a legal action against the uninsured employer for unpaid charges for medical services furnished to the injured worker as follows:
 - (a) The UEF’s payment of the amount allowed by the fee schedule constitutes payment in full for the charges for a given medical service. After the UEF has reimbursed all services that fall within its aggregate expenditure limit, a medical provider may pursue the uninsured employer for the full amount of reasonable and customary charges incurred for services rendered that were not reimbursed. The UEF will notify a provider to which services a given reimbursement applies.
 - (b) The uninsured employer has liability only for medical services directly related to those conditions arising out of the industrial injury or occupational disease which the UEF accepted as a claim.
- (2) Pursuant to 39-71-508 and 39-71-743 , MCA, the injured worker is not liable to the provider of medical services for the difference between the amount

payable to the provider pursuant to the fee schedules and the charges billed by the provider or for the services provided that are not reimbursed after the \$100,000 expenditure limit is reached.

- (3) This rule applies to claims arising on or after July 1, 2007.

History: 39-71-203, MCA; IMP, 39-71-503, 39-71-508, 39-71-510, 39-71-704, 39-71-727, 39-71-743, MCA; NEW, 2007 MAR p. 1446, Eff. 9/21/07.

24.29.2855 Rights of Third-Party Providers upon the UEF's Proportionate Reduction in Benefit Payments—Applicability

- (1) In addition to the provisions of ARM 24.29.2853, providers of medical services who are subject to a proportionate reduction in reimbursement payments from the UEF pursuant to 39-71-510, MCA, have a right to bring legal action against the uninsured employer for unpaid charges for medical services furnished to the injured worker as follows:
- (a) If the UEF does not pay the fee schedule amount due to a proportionate reduction, a medical provider may pursue the uninsured employer for the unpaid portion of the fee schedule amount. The UEF will notify a provider to which services a proportionate reduction was applied.
 - (b) The uninsured employer has liability for primary medical services and secondary medical services approved by the UEF which are directly related to those conditions arising out of the industrial injury or occupational disease which the UEF accepted as a claim up to the \$100,000 expenditure limit.
- (2) Pursuant to 39-71-508 and 39-71-743, MCA, the injured worker is not liable to the provider of medical services for the difference between the amount paid by the UEF and the fee schedule.
- (3) This rule applies to claims arising on or after July 1, 2007.

History: 39-71-203, MCA; IMP, 39-71-503, 39-71-508, 39-71-510, 39-71-704, 39-71-727, 39-71-743, MCA; NEW, 2007 MAR p. 1446, Eff. 9/21/07.

Subchapters 29 through 30 Reserved

Subchapter 31

Reopening of Closed Medical Benefits

24.29.3101 Introduction - Applicability - Voluntary Payments

- (1) Subchapter 31 addresses the reopening of medical benefits terminated by operation of law for certain claims that occurred on or after July 1, 2011.
- (2) Subchapter 31 does not apply to claims to which any of the following circumstances apply:
- (a) arising before July 1, 2011;
 - (b) in which the medical benefits have expressly been settled by means of a department or Workers' Compensation Court approved settlement or judgment;
 - (c) in which the insurer did not fully accept liability for the underlying accident or occupational disease; or
 - (d) arising on or after July 1, 2011, where the injury results in:
 - (i) permanent total disability; or
 - (ii) the fitting of a prosthesis which may need to be repaired or replaced.

- (3) The department will apply the provisions of subchapter 31 to claims accepted by the uninsured employers' fund.
- (4) Informational instructions regarding the process for a party to petition to reopen medical benefits terminated by operation of law are available from the Department of Labor and Industry, Employment Relations Division, P.O. Box 8011, Helena, MT 59604-8011, and online at the department's web site. These instructions provide supplemental information about the reopening process and an explanation of how to submit a petition for reopening to the department.
- (5) Nothing in subchapter 31 prohibits an insurer from making voluntary payments for medical benefits that have terminated by operation of law. An insurer that makes a voluntary payment for a medical benefit that has been terminated by operation of law must advise the worker in writing that the payment for a medical benefit is made on a voluntary basis and does not create a legal obligation for the insurer to make payment for any other medical benefits.

History: 39-71-203, MCA; IMP, 39-71-105, 39-71-107, 39-71-704, 39-71-717, MCA; NEW, 2016 MAR p. 204, Eff. 2/6/16.

24.29.3103 Definitions

Terms defined in 39-71-116, MCA, are used in subchapter 31 as they are defined by statute. As used in subchapter 31, the following definitions apply unless the context clearly indicates otherwise:

- (1) "Accepted" means the petition has been evaluated by the department and was found to be eligible to be considered for medical review.
- (2) "Additional information" means information other than a medical record, supplied by a worker or an insurer, and tendered as being relevant to the reopening of medical benefits.
- (3) "Approved" means that after the medical review has been performed, medical benefits are reopened for not more than two years before being subject to a biennial review.
- (4) "Denied" means that after the medical review has been performed, medical benefits are not reopened.
- (5) "Department" means the Department of Labor and Industry.
- (6) "Dismissed" means the petition has been evaluated by the department and was found to be ineligible to be considered for medical review.
- (7) "Filed" means the status of a petition once it has been accepted by the department for medical review.
- (8) "Joint petition" means a petition for reopening that has been signed by both the worker and the insurer, with agreed-to terms concerning the reopening of medical benefits.
- (9) "Medical records" means documents related to the medical condition of the worker, and includes but is not limited to, notes, reports, and letters prepared by health care providers. The term does not include medical billing materials.
- (10) "Medical review panel" means the department's medical director and two additional physicians selected from a pool of available physicians, who can review a petition for the reopening of medical benefits, as provided for in 39-71-717, MCA.
- (11) "Periodic review" means the every-two-years consideration by the medical review panel or the medical director as to whether the recommendations previously made should be continued or changed.

- (12) "Petition" means the department-provided form upon which a party requests that medical benefits which have been terminated by the operation of 39-71-704, MCA, be reopened.
- (13) "Physician" means a health care provider who takes part in a medical review panel under subchapter 31. A physician must be licensed in Montana in one or more of the following categories:
 - (a) medical doctor;
 - (b) osteopath;
 - (c) dentist;
 - (d) chiropractor;
 - (e) physician assistant; or
 - (f) advanced practice registered nurse.
- (14) "Received" means a petition which has been delivered to the department, but has not yet been accepted and filed by the department.
- (15) "Reopened" means medical benefits which had terminated by operation of law, and which are now to be furnished by the insurer as recommended by the medical report.
- (16) "Report" means the written recommendations of the medical director or medical review panel concerning whether or not medical benefits should be reopened, and if reopened, to what extent those benefits should be furnished.
- (17) "Returned" means the petition has been evaluated by the department and has been found to be incomplete.
- (18) "Submission," as used in 39-71-717(8), MCA, means the same as being filed with the department.
- (19) "Submit," as used in 39-71-717(6), MCA, means to deliver medical records or additional information to the department.
- (20) "Work" means supplying labor or services for remuneration, although not necessarily in employment by another.
- (21) "Worker" means the individual who suffered the workplace injury or occupational disease upon which basis a claim for benefits was made to the insurer.
- (22) "Year" means 12 calendar months.

History: 39-71-203, MCA; IMP, 39-71-116, 39-71-717, MCA; NEW, 2016 MAR p. 204, Eff. 2/6/16; AMD, 2018 MAR p. 2527, Eff. 1/1/19.

24.29.3107 Timelines and Explanation of Status Classifications of a Petition

- (1) The time in which a petition can be delivered to the department and considered filed is the period 90 days prior to the termination of medical benefits through the ten-year anniversary of the date of the injury.
- (2) A petition which has been delivered to the department undergoes a preliminary evaluation to determine which of following three initial status conditions is appropriate:
 - (a) the petition is accepted if it is eligible for medical review;
 - (b) the petition is dismissed if it is ineligible for medical review because:
 - (i) the petition concerns a claim that is not subject to the medical benefits reopening process; or
 - (ii) the petition concerns a claim for which a previous petition has been accepted; or
 - (c) the petition is returned if it is eligible for medical review, but the petition form is incomplete.

- (3) Upon a petition being accepted, it is considered filed with the department. A petition that is dismissed or returned is considered not to have been filed with the department.
- (4) The 60-day period for medical review to occur and the medical director to issue a report begins on the date the petition is considered filed.
- (5) Once filed, the parties have 14 days to submit medical records and additional information to be considered during the medical review. Once the medical review is completed and the report is issued by the medical director, the petition will have one of the two following status conditions:
 - (a) the petition is approved, with a recommendation in the report that medical benefits should be provided by the insurer for not more than two years before being subject to a biennial review; or
 - (b) the petition is denied, with a recommendation in the report that no further medical benefits should be provided by the insurer.
- (6) There is a rebuttable presumption that the petition relates to a claim which the insurer acknowledges is compensable. An insurer may dispute that presumption in writing by delivering to the department and the petitioner notice of the dispute regarding compensability within 14 days of the department's acceptance of the petition.
 - (a) Upon receiving the insurer's notice disputing compensability of the claim, the acceptance of the petition is suspended until:
 - (i) the compensability dispute is resolved by agreement of the parties;
 - (ii) the compensability dispute is resolved by the final judgment of the courts; or
 - (iii) the time in which to bring the compensability dispute to the Workers' Compensation Court expires, without a party bringing that dispute to the Workers' Compensation Court for adjudication.
 - (b) A petition that has had its acceptance status suspended is considered to be timely made for the purposes of the filing time limits provided by 39-71-717, MCA. While the acceptance status is suspended, the timelines for medical review and submission of documents do not begin to run. If the claim is deemed compensable, the department will notify the parties of the beginning of the 60-day review period, and that there are 14 days in which to submit medical records and additional information. If the claim is deemed not compensable, the status of the petition will be changed to dismissed.
- (7) A petitioner disagreeing with the department's classification of a petition as either dismissed or returned may bring the dispute to the Workers' Compensation Court after following the mediation requirements provided by law.

History: 39-71-203, MCA; IMP, 39-71-717, MCA; NEW, 2016 MAR p. 204, Eff. 2/6/16; AMD, 2018 MAR p. 2527, Eff. 1/1/19.

24.29.3111 Petition for Reopening

- (1) A party wishing to reopen medical benefits terminated by operation of law must submit a petition for reopening to the department on the form provided by the department. Petition forms are available online at the department's web site, or upon request from the department's Employment Relations Division, P.O. Box 8011, Helena, MT 59604-8011.
- (2) A petition cannot be accepted unless all of the fields in the form, other than those identified as being "optional," have been filled out.

History: 39-71-203, MCA; IMP, 39-71-717, MCA; NEW, 2016 MAR p. 204, Eff. 2/6/16.

24.29.3114 Submission of Medical Records and Additional Information - Effect of Failure to Submit Medical Records or Additional Information

- (1) Section 39-71-717(8), MCA, requires the department to issue the report of the medical director within 60 days of when the petition is considered filed. Due to this 60-day requirement, the parties have 14 days from the date the petition is considered filed in which to deliver to the department the medical records and any additional information the party wants considered in the medical review.
 - (a) The medical records and additional information must be delivered to the department in the manner and to an address as specified by the instructions.
 - (b) Any medical records or other information submitted by a party which have not previously been provided to the other party, must be sent to that other party at the same time the records or other information are delivered to the department.
- (2) Medical records or additional information that are not timely delivered to the department will not be considered during the medical review. The medical review will be conducted considering only the materials that have been timely received by the department.
- (3) When the petition is considered filed, the department will direct the insurer to deliver to the department the medical records contained in the insurer's claim file. In addition to sending the medical records in the claims file as required, the insurer is allowed to deliver to the department other medical records and any additional information the insurer wants considered in the medical review.
- (4) Once the petition is considered filed, the worker is allowed to deliver to the department medical records and any additional information the worker wants considered in the medical review.

History: 39-71-203, MCA; IMP, 39-71-717, MCA; NEW, 2016 MAR p. 204, Eff. 2/6/16.

24.29.3117 Joint Petition for Reopening

- (1) If the worker and the insurer agree to reopen medical benefits, the worker and the insurer may file a joint petition for reopening. A joint petition for reopening must be made on the department's joint petition form. Joint petition forms are available from the department in the manner described in ARM 24.29.3111.
- (2) All portions of the joint petition for reopening must be completed when it is delivered to the department, and the medical records and other information the parties believe are important to the issue of reopening must be provided at that time.
- (3) Because the parties agree on the need for reopening medical benefits, the department's medical director will summarily review and approve the petition, reopening medical benefits for not more than two years before being subject to a biennial review.
- (4) In recognition that following the filing of the worker's petition, the parties may come to a voluntary agreement as to the nature and scope of medical benefits **to be reopened, the department will treat the filing of a joint petition for reopening as a request for withdrawal of the worker's petition.**

History: 39-71-203, MCA; IMP, 39-71-717, MCA; NEW, 2016 MAR p. 204, Eff. 2/6/16; AMD, 2018 MAR p. 2527, Eff. 1/1/19.

24.29.3121 Review by Medical Director - Consent of Both Parties

- (1) The worker and the insurer may consent to have a petition for reopening reviewed only by the department's medical director, and not by the medical review panel. An agreement to have the petition reviewed only by the department's medical director cannot be revoked. To be effective, the consent of each party to a review by only the medical director must be received by the department not later than the deadline for submission of medical records and additional information.
- (2) The medical director may consult with nonphysician medical providers if the medical issues presented for review make it appropriate to do so.
- (3) The medical director shall apply the standard of review, burden of proof, and other evaluation factors described in ARM 24.29.3124 that apply to review by the medical review panel.
- (4) Following the medical director's review, the medical director shall issue a report and make recommendations with respect to the reopening of medical benefits.
- (5) A party disagreeing with the medical director's report and recommendations may bring the dispute to the Worker's Compensation Court after following the mediation requirements provided by law.

History: 39-71-203, MCA; IMP, 39-71-717, MCA; NEW, 2016 MAR p. 204, Eff. 2/6/16.

24.29.3124 Review by Medical Review Panel - Report and Recommendations

- (1) Unless both the worker and the insurer agree to have a petition for reopening reviewed solely by the department's medical director, the petition will be reviewed by a three-member panel of physicians. The members of the medical review panel may consult with nonphysician medical providers if the medical issues presented for review make it appropriate to do so.
- (2) The medical review panel may recommend that medical benefits be reopened only if:
 - (a) the worker's medical condition is a direct result of the compensable injury or occupational disease; and
 - (b) the worker needs additional medical benefits in order to:
 - (i) continue to work; or
 - (ii) return to work.
- (3) Each member of the medical review panel shall prepare a report as to the panel member's evaluation of the medical records submitted for review and any additional information that has been submitted. The panel member must determine whether the evidence submitted demonstrates that further medical benefits meet the criteria of (2). The panel member's report must state the reason(s) and rationale for the recommendation.
- (4) If a panel member concludes that additional medical benefits are necessary, the medical benefits should be provided for not more than two years before being subject to a biennial review. The analysis must include the reasons and rationale that explain:
 - (a) the extent of the duration of the benefits expected to be needed; and
 - (b) whether and how the recommendations are consistent with the department's current utilization and treatment guidelines.
- (5) Following the medical review panel members' individual reviews, the medical director shall issue a report and make recommendations on behalf of the panel with respect to the reopening of medical benefits that reflect the views of the majority of the panel members.
- (6) A party disagreeing with the medical director's report and recommendations may bring the dispute to the Workers' Compensation Court after following the mediation requirements provided by law.

History: 39-71-203, MCA; IMP, 39-71-717, MCA; NEW, 2016 MAR p. 586, Eff. 2/6/16; AMD, 2018 MAR p. 2527, Eff. 1/1/19.

24.29.3127 Periodic Review of Certain Reopened Medical Benefits

- (1) The department's medical director shall biennially review claims where medical benefits have been reopened and the recommended duration of the reopening is more than two years, in order to determine whether the previous recommendations should be changed.
- (2) The department shall request that the worker and the insurer deliver to the department medical records created since the prior medical review, as well as any additional information the party wants considered.
 - (a) The department's request shall specify a deadline by which those records and additional information must be received by the department.
 - (b) Any medical records or other information submitted by a party which have not previously been provided to the other party must be sent to that other party at the same time the records or other information are delivered to the department.
- (3) The biennial review will be based on the materials previously submitted by the parties at the time the original petition for reopening was considered, and the records and information sent pursuant to (2). If a party does not timely send updated medical records or additional information, the medical director shall base the review on the materials available.
- (4) The prior report and recommendation regarding medical benefits is presumed to be correct. A previous recommendation may be changed only if it is based on the updated medical records and information sent to the department.
- (5) Following the medical director's review, if the medical director believes there is reason to change the prior recommendation, the medical director shall:
 - (a) in cases where the original review was made by a medical review panel, convene a new medical review panel to review the updated medical records and information; or
 - (b) in cases where the original review was made solely by the medical director, issue a report and make recommendations as provided by (6).
- (6) Following completion of the periodic review, the medical director shall issue a report and make recommendations with respect to continuing the reopening of medical benefits.
- (7) A party disagreeing with the medical director's report and recommendations may bring the dispute to the Workers' Compensation Court after following the mediation requirements provided by law.

History: 39-71-203, MCA; IMP, 39-71-717, MCA; NEW, 2016 MAR p. 204, Eff. 2/6/16.

Subchapter 32

Officers of Private Corporations Election

24.29.3201 Election not to be Bound – Corporate Officer

History: Sec. 39-71-410 MCA; IMP, Sec. 39-71-410 MCA; NEW, Eff. 5/5/74; AMD, Eff. 11/3/75; AMD, Eff. 1/3/77; AMD, 1984 MAR p. 983, Eff. 7/2/84; TRANS, to ARM 24.29.705, Eff. 7/2/84.

Subchapters 33 through 34 Reserved

Subchapter 35**Coverage under State Compensation Insurance Fund****24.29.3501 Electing Coverage under Plan Three**

This rule has been repealed.

History: Sec. 39-71-2303 MCA; IMP, Sec. 39-71-2303 MCA; NEW, 1982 MAR p. 1397, Eff. 7/16/82; REP, 1995 MAR p. 1953, Eff. 10/1/95.

24.29.3502 Election of Optional Coverages

This rule has been repealed.

History: Sec. 39-71-2303 MCA; IMP, Sec. 39-71-2303 MCA; NEW, 1982 MAR p. 1397, Eff. 7/16/82; REP, 1995 MAR p. 1953, Eff. 10/1/95.

24.29.3503 Election of Corporate Officers not to be Bound

This rule has been repealed.

History: Sec. 39-71-2303 MCA; IMP, Sec. 39-71-2303 MCA; NEW, 1982 MAR p. 1397; Eff. 7/16/82; AMD, 1986 MAR p. 49, Eff. 1/17/86; REP, 1995 MAR p. 1953, Eff. 10/1/95.

24.29.3504 Policy and Declarations

This rule has been repealed.

History: Sec. 39-71-2303 MCA; IMP, Sec. 39-71-2303 MCA; NEW, 1982 MAR p. 1397, Eff. 7/16/82; REP, 1995 MAR p. 1953, Eff. 10/1/95.

24.29.3505 Termination of Coverage

This rule has been repealed.

History: Sec. 39-71-2303 MCA; IMP, Sec. 39-71-2303 MCA; NEW, 1982 MAR p. 1397, Eff. 7/16/82; REP, 1995 MAR p. 1953, Eff. 10/1/95.

Subchapter 36 Reserved**Subchapter 37****Trade Group Discounts****24.29.3701 Purpose**

This rule has been repealed.

History: 39-71-203, MCA; IMP, 39-71-433, MCA; NEW, 1994 MAR p. 681, Eff. 4/1/94; REP, 1998 MAR p. 2872, Eff. 11/1/98.

Rule 24.29.3702 reserved**24.29.3703 Definitions**

This rule has been repealed.

History: 39-71-203, MCA; IMP, 39-71-433, MCA; NEW, 1994 MAR p. 681, Eff. 4/1/94; REP, 1998 MAR p. 2872, Eff. 11/1/98.

24.29.3704 Plan of Operation

This rule has been repealed.

History: 39-71-203, MCA; IMP, 39-71-433, MCA; NEW, 1994 MAR p. 681, Eff. 4/1/94; REP, 1998 MAR p. 2872, Eff. 11/1/98.

24.29.3704 Plan of Operation

This rule has been repealed.

History: 39-71-203, MCA; IMP, 39-71-433, MCA; NEW, 1994 MAR p. 681, Eff. 4/1/94; REP, 1998 MAR p. 2872, Eff. 11/1/98.

Rules 24.29.3705 and 24.29.3706 reserved**24.29.3707 Organizational Structure**

This rule has been repealed.

History: 39-71-203, MCA; IMP, 39-71-433, MCA; NEW, 1994 MAR p. 681, Eff. 4/1/94; REP, 1998 MAR p. 2872, Eff. 11/1/98.

Rules 24.29.3708 through 24.29.3710 reserved**24.29.3711 Certification of a Group**

This rule has been repealed.

History: 39-71-203, MCA; IMP, 39-71-433, MCA; NEW, 1994 MAR p. 681, Eff. 4/1/94; REP, 1998 MAR p. 2872, Eff. 11/1/98.

Rules 24.29.3712 through 24.29.3720 reserved**24.29.3721 Annual Report**

This rule has been repealed.

History: 39-71-203, MCA; IMP, 39-71-433, MCA; NEW, 1994 MAR p. 681, Eff. 4/1/94; REP, 1998 MAR p. 2872, Eff. 11/1/98.

Rules 24.29.3722 through 24.29.3725 reserved**24.29.3726 Decertification of a Group**

This rule has been repealed.

History: 39-71-203, MCA; IMP, 39-71-433, MCA; NEW, 1994 MAR p. 681, Eff. 4/1/94; REP, 1998 MAR p. 2872, Eff. 11/1/98.

Rules 24.29.3727 through 24.29.3730 reserved**24.29.3731 Individual Applicants**

This rule has been repealed.

History: 39-71-203, MCA; IMP, 39-71-433, MCA; NEW, 1994 MAR p. 681, Eff. 4/1/94; REP, 1998 MAR p. 2872, Eff. 11/1/98.

Rules 24.29.3732 through 24.29.3740 reserved**24.29.3741 Disputes**

This rule has been repealed.

History: 39-71-203, MCA; IMP, 39-71-433, MCA; NEW, 1994 MAR p. 681, Eff. 4/1/94; REP, 1998 MAR p. 2872, Eff. 11/1/98.

Subchapter 38 Attorney Fees

24.29.3801 Attorney Fee Regulation

This rule has been repealed.

History: Sec. 39-71-203 MCA; IMP, Sec. 39-71-613 MCA; NEW, Eff. 11/4/76; AMD, 1985 MAR p. 606, Eff. 6/1/85; AMD, 1986 MAR p. 458, Eff. 4/1/86; AMD, 1987 MAR p. 323, Eff. 4/1/87; REP, 1988 MAR p. 2390, Eff. 11/11/88.

24.29.3802 Attorney Fee Regulation

- (1) This rule is promulgated under the authority of 39-71-203, 39-71-613, and 39-71-2905, MCA, to implement regulation of the fees charged to claimants by attorneys in workers' compensation cases as provided in 39-71-613, MCA.
- (2) An attorney representing a claimant on a workers' compensation claim shall submit to the department within 30 days of undertaking representation of the claimant, in accordance with 39-71-613, MCA, on forms supplied by the department, a contract of employment stating specifically the terms of the fee arrangement. An attorney substituting for another attorney previously representing a claimant must submit a new contract conforming to this rule within 30 days of undertaking representation of the claimant. The contract of employment shall be signed by the claimant and the attorney, and must be approved by the administrator of the division of workers' compensation or the administrator's designee. The administrator or the administrator's designee shall return the contract to the attorney along with a notification that the contract has been approved or disapproved.
- (3) Except as provided in (7), an attorney representing a claimant on a workers' compensation claim who plans to utilize a contingent percentage fee arrangement to establish the fee with the claimant, may not charge a fee above the following amounts:
 - (a) For cases that have been settled without an order of the workers' compensation judge or the supreme court, 20% of the amount of compensation payments claimant receives due to the efforts of the attorney.
 - (b) For cases that go to a hearing before the workers' compensation judge or the supreme court, 25% of the amount of additional compensation payments the claimant receives from an order of the workers' compensation judge or the supreme court due to the efforts of the attorney.
- (4) The fee schedule set forth in (3) does not preclude the use of other attorney fee arrangements, such as the use of a fee system based on time at a reasonable hourly rate not exceeding \$100.00 per hour, but the total fee charged may not exceed the schedule set forth in (3) except as provided in (7). When such fee arrangement is utilized, the contract of employment shall specifically set forth the fee arrangement, such as the amount charged per hour.
- (5) The following benefits shall not be considered as a basis for calculation of attorney fees:
 - (a) The amount of medical and hospital benefits received by the claimant unless the workers' compensation insurer has denied all liability, including medical and hospital benefits, or unless the insurer has denied the payment

- of certain medical and hospital costs and the attorney has been successful in obtaining such benefits for the claimant.
- (b) Benefits received by the claimant with the assistance of the attorney in filling out initial claim forms only.
 - (c) Any undisputed portion of impairment benefits received by the claimant based on an impairment rating.
 - (d) Benefits initiated or offered by the insurer when such initiation or offer is supported by documentation in the claimant's file and has not been the subject of a dispute with the claimant.
 - (e) Any other benefits not obtained due to the actual, reasonable and necessary efforts of the attorney.
- (6) Nothing prevents an attorney from charging a fee below the fee guidelines set forth in (3) and (4). An attorney may reduce the attorney's fee from what was originally established in the approved fee contract without the further approval of the department.
- (7) For good cause shown, the department may approve a variance providing for fees in excess of the guidelines of fees as set forth in (3) and (4).
- (a) To obtain approval of a variance, an attorney has the burden of providing clear and convincing evidence of entitlement to a greater fee by documenting the following factors in regard to the specific claimant and the specific case:
 - (i) The anticipated time and labor required to perform the legal service properly.
 - (ii) The novelty and difficulty of legal issues involved in the matter.
 - (iii) The fees customarily charged for similar legal services.
 - (iv) The possible total recovery if successful.
 - (v) The time limitations imposed by the client or circumstances of the case.
 - (vi) The nature and length of the attorney-client relationship.
 - (vii) The experience, skill and reputation of the attorney.
 - (viii) The ability of the client to pay for the legal services rendered.
 - (ix) The risk of no recovery.
 - (x) The market value of the lawyer's services at the time and place involved.
 - (b) If a variance requested under (7)(a) is not approved, an attorney may request that the administrator or the administrator's designee review the matter and issue an order of determination pursuant to procedures set forth in ARM 24.29.201, et seq.
- (8) Attorney compensation shall be determined by the approved fee arrangement and shall be paid out of the funds received in settlement or recovery or other funds available to the claimant. Upon the occurrence of a hearing before the workers' compensation court or the supreme court, the workers' compensation court shall have exclusive jurisdiction for the award of attorney's fees on the claim against the insurer or employer, which shall be credited to the fee due from the claimant.
- (9) In the event a dispute arises between any claimant and an attorney relative to attorney's fees in a workers' compensation claim, upon request of either the claimant or the attorney or upon notice of any party of a violation of 39-71-613, MCA, or this rule, the workers' compensation court shall review the matter and

issue an order resolving the dispute. The fee contract must clearly identify the rights granted by this section.

- (10) The department retains its authority to regulate the attorney fee amount in any workers' compensation case according to the factors set forth in 39-71-613, MCA, and (7)(a) of this rule even though the contract of employment fully complies with 39-71-613, MCA, and this rule.
- (11) Attorneys subject to this rule must report to the department as required by ARM 24.29.4332.
- (12) If an attorney violates a provision of 39-71-613, MCA, this rule, or an order fixing an attorney's fee, the attorney shall forfeit the right to any fee which the attorney may have collected or have been entitled to collect.

History: 39-71-203, MCA; IMP, 39-71-225, 39-71-613, 39-71-2905, MCA; NEW, 1988 MAR p. 2390, Eff. 11/11/88; AMD, 1995 MAR p. 675, Eff. 5/1/95; AMD, 2004 MAR p. 78, Eff. 1/16/04; AMD, 2013 MAR p. 841, Eff. 5/24/13.

Subchapter 39 Reserved

Subchapter 40

Plan Number Two Insurers Rules

24.29.4001 Security Deposits for Plan Number Two Insurers

This rule has been repealed.

History: 39-71-203, MCA; IMP, 39-71-2206, MCA; NEW, 1987 MAR p. 1992, Eff. 10/30/87; REP, 2000 MAR p. 2701, Eff. 10/6/00.

Subchapters 41 and 42 Reserved

Subchapter 43

Workers' Compensation Data Base System

24.29.4301 Purpose

- (1) In 1993, the legislature enacted 39-71-225, MCA, requiring the department to develop a workers' compensation data base to provide management information about Montana's workers' compensation system to the legislative and executive branches. The department has developed a data base system that is designed to be compatible with the principles identified in 39-71-225, MCA.
- (2) The department is participating in the International Association of Industrial Accident Boards and Commissions' (IAIABC) efforts to nationally standardize electronic reporting of workers' compensation data, known as electronic data interchange (EDI). The department uses or may eventually use IAIABC standards for reporting claim data, insurance coverage, medical, adjudication, and rehabilitation information.

History: 39-71-203, MCA; IMP, 39-71-225, MCA; NEW, 1994 MAR p. 2630, Eff. 10/1/94; AMD, 2000 MAR p. 2701, Eff. 10/6/00; AMD, 2003 MAR p. 2297, Eff. 10/17/03; AMD, 2006 MAR p. 546, Eff. 2/24/06.

Rule 24.29.4302 reserved

24.29.4303 Definitions

For the purpose of this subchapter, the following definitions apply, unless the context of the rule clearly indicates otherwise:

- (1) "Closed" or "closed claim" means a claim on which all medical and indemnity benefits have been paid, and there is no expectation of future liability.
- (2) "Data base system" means the electronic repository for workers' compensation data established by 39-71-225 , MCA.
- (3) "Electronic data interchange", or "EDI" means the intercompany exchange of standard business documents in a machine readable and standardized form.
- (4) "Indemnity benefits" means any payment made directly to the worker (or the worker's beneficiaries) , other than a medical benefit. The term includes payments made pursuant to a reservation of rights, or in settlement of a dispute over initial compensability of the claim. The term does not include expense reimbursements for items such as meals, travel or lodging.
- (5) "Indemnity claim" means a workers' compensation or occupational disease claim where indemnity benefits in addition to medical benefits are being paid or are likely to be paid in the future.
- (6) "IAIABC" means the International Association of Industrial Accident Boards and Commissions, which is an international trade association that seeks to advance the administration of workers' compensation systems through education, research and information sharing. The IAIABC establishes standards for reporting industrial accidents.
- (7) "Plan 1" or "Plan 1 self-insurer" means an employer that has been properly bound by the provisions of Title 39, chapter 71, part 21.
- (8) "Plan 2" or "Plan 2 private insurer" means an insurer that provides workers' compensation insurance pursuant to the provisions of Title 39, chapter 71, part 22.
- (9) "Plan 3" or "state fund" means the state compensation insurance fund, established by Title 39, chapter 71, part 23, MCA.
- (10) "Reporting parties" means any person, firm, corporation, or any other type of entity required by Title 39, chapter 71, part 2, MCA, to report information to the department.
- (11) "Third-party administrator" means an entity those contracts to administer all or part of an insurer's or employer's workers' compensation business, which can include adjusting a claim on behalf of the insurer or employer.
- (12) "Trading partner" means the entity which actually transmits the data to the department, excluding the intermediary channels that are used to get it to that final point, even if those channels include the legally responsible regulated party.
- (13) "UEF" means the Uninsured Employers' Fund, established by 39-71-503 , MCA.
- (14) "Workers' compensation subsequent report" means a report required to communicate payment information related to an indemnity claim, including both medical and indemnity benefits.

History: 39-71-203, MCA; IMP, 39-71-225, MCA; NEW, 1994 MAR p. 2630, Eff. 10/1/94; AMD, 2000 MAR p. 2701, Eff. 10/6/00; AMD, 2003 MAR p. 2297, Eff. 10/17/03; AMD, 2006 MAR p. 546, Eff. 2/24/06.

Rules 24.29.4304 through 24.29.4306 reserved

24.29.4307 Claim File Records Maintenance and Retention

- (1) All insurers shall maintain their respective claim files. Upon request by the department, insurers shall provide to the department, in whole or part according to the request, a copy of the claim file, other than documents protected by the attorney-client privilege or attorney work-product doctrine. The copies must be provided at no cost to the department. If information is maintained by computer, "hard copy" information must be available upon request. Insurers shall submit requested copies of file information within 30 days of the department's request.
- (2) All insurers shall retain complete copies of the claim file for the life of the claim or as long as liability or potential liability exists for the claim. The department is not responsible for maintaining a duplicate of any document pertaining to a claim.
- (3) Claim files must include, but need not be limited to, all of the following which exist in relation to the claim:
 - (a) first report of injury and occupational disease, Montana form ERD-991 or department-approved equivalent;
 - (b) medical bills, or an electronic data record thereof;
 - (c) benefit rate calculations, if applicable;
 - (d) correspondence relating to the claim;
 - (e) medical reports;
 - (f) vocational rehabilitation reports;
 - (g) payment record; and
 - (h) official orders, whether those orders are from the department or a court.
- (4) For the purposes of this rule, an insurer may maintain claim file documents either as an "original" or as a "duplicate", as those terms are used in the Montana Rules of Evidence. However, nothing in this rule affects the legal standards concerning the admissibility of an original versus a duplicate.

History: 39-71-203, MCA; IMP, 39-71-225, MCA; NEW, 1994 MAR p. 2630, Eff. 10/1/94; AMD, 2003 MAR p. 2297, Eff. 10/17/03.

Rules 24.29.4308 through 24.29.4310 reserved

24.29.4311 Forms Used for Reporting

- (1) Reporting parties who are not subject to the electronic reporting requirements of 39-71-225, MCA, must use hard copy (i.e., paper) forms approved by the department for reporting the information required by these rules. Reporting parties may request a supply of department-printed forms, print their own supply of the approved form, or print their own supply of an equivalent form approved by the department. The department will bill the party ordering department-printed forms for the cost of printing and mailing.

History: 39-71-203, MCA; IMP, 39-71-205, 39-71-208, 39-71-225, MCA; NEW, 1994 MAR p. 2630, Eff. 10/1/94; AMD, 2003 MAR p. 2297, Eff. 10/17/03.

Rules 24.29.4312 and 24.29.4313 reserved

24.29.4314 Electronic Reporting

- (1) Reporting parties who report electronically, whether voluntarily or when required by 39-71-225 , MCA, shall sign a written agreement with the department. The reporting parties may designate another entity, approved by the department, to serve as their reporting agent. The written agreement will provide the effective date to send and receive the electronic reports, the acceptable data to be sent and received, the method of transmission to be used, and other pertinent agreements between the parties.
- (2) Electronic reporting for workers' compensation claims and insurance coverage information must be reported using a department supported IAIABC product, using the IAIABC flat file format. The department will not accept electronic reports submitted in any other formats after the transition to the IAIABC product is complete.

History: 39-71-203, MCA; IMP, 39-71-225, MCA; NEW, 1994 MAR p. 2630, Eff. 10/1/94; AMD, 2003 MAR p. 2297, Eff. 10/17/03; AMD, 2006 MAR p. 546, Eff. 2/24/06.

24.29.4315 Insurer and Employer Reporting Requirements – Coverage and Cancellation Notification

- (1) An insurer's electronic notice of insurance coverage or cancellation must contain the taxpayer identification number of the employer.
- (2) An employer must provide its taxpayer identification number to its workers' compensation insurer.

History: 39-9-103, 39-71-203, 39-71-225, MCA; IMP, 39-9-201, 39-71-203, 39-71-225, 39-71-401, 39-71-504, 39-71-507, 39-71-2204, 39-71-2205, 39-71-2337, 39-71-2339, MCA; NEW, 2007 MAR p. 697, Eff. 5/25/07; AMD, 2007 MAR p. 1028, Eff. 7/27/07.

Rule 24.29.4316 reserved

24.29.4317 Reports Produced by the Department

- (1) In addition to providing the reports required by 39-71-225 , MCA, the department may prepare special reports.
 - (a) Special reports may be done at the request of the Governor's Office or the legislative branch. These reports, once generated, will be given to the requesting party and any further distribution will be the responsibility of that party.
 - (b) Executive branch agencies and other interested parties may request that a special report be prepared by the department. At the department's discretion, it may prepare special reports for the agency or interested party. The department's decision whether to honor the request will depend on a variety of factors, including, but not limited to the following considerations:
 - (i) the priority of reports already scheduled;
 - (ii) the ability to generate the requested report via the data base system;
 - (iii) the availability of resources to generate the requested report;
 - (iv) the availability and validity of relevant data in the data base system;
 - (v) the balancing of the individual right to privacy and the public's right to know, when the report seeks information that identifies or is identifiable with particular individuals or entities; and

- (vi) the recommendations of the department's data base system technical advisory committee, if any.
- (2) The department shall determine the cost of developing, printing and mailing of reports and charge an appropriate fee for copies of reports.

History: 39-71-203, MCA; IMP, 39-71-205, 39-71-209, 39-71-224, 39-71-225, MCA; NEW, 1994 MAR p. 2630, Eff. 10/1/94; AMD, 2003 MAR p. 2297, Eff. 10/17/03.

Rules 24.29.4318 through 24.29.4320 reserved

24.29.4321 Insurer Reporting Requirements—Injuries and Occupational Diseases

- (1) All insurers and the UEF are required to submit a first report of injury or occupational disease to the department within 30 days of the report to the insurer of the accident or of an occupational disease.
- (2) All insurers and the UEF are required to submit a first report of injury and occupational disease to the department within 14 days of notification by the department that a previously submitted report contains a data error.
- (3) All insurers are required to submit to the department a workers' compensation subsequent report for every indemnity claim within 14 days of the occurrence of any one of the following triggering events:
 - (a) each six-month anniversary of the injury or occupational disease, while the claim is open;
 - (b) notification by the department that a previously submitted report contains a data error; or
 - (c) a request by the department for a report.
- (4) Upon closure of a claim, the workers' compensation subsequent report may be filed either within 14 days of the time the claim is closed or at the next six month anniversary of the injury or occupational disease.
- (5) The department will identify transmission errors and notify the trading partner via the electronic acknowledgment record. The trading partner must correct the identified errors and resubmit the record within 14 days of receiving the acknowledgment record.
- (6) The department may impose penalties as specified in 39-71-307 , MCA, for failure to comply with these reporting requirements.

History: 39-71-203, MCA; IMP, 39-71-225, 39-71-307, MCA; NEW, 1994 MAR p. 2630, Eff. 10/1/94; AMD, 2000 MAR p. 2701, Eff. 10/6/00; AMD, 2003 MAR p. 2297, Eff. 10/17/03; AMD, 2006 MAR p. 546, Eff. 2/24/06.

24.29.4322 Transitional Rule for Injury and Occupation Disease Information Reporting Requirements

- (1) Reports must be filed on every indemnity claim that is not closed prior to January 1, 1995. The triggering event for reporting on those claims is the same as in ARM 24.29.4321.
- (2) First reports of injury do not have to be resubmitted for indemnity claims if the first report of injury was filed with the department before January 1, 1995. Subsequent reports that would have been due prior to January 1, 1995, do not need to be submitted.
- (3) Claims filed before January 1, 1995, that do not involve compensation benefits, the so-called "medical only" claims, are not subject to the subsequent report

reporting requirements unless and until compensation benefits are paid on the claim.

History: 39-71-203, MCA; IMP, 39-71-225, MCA; NEW, 1994 MAR p. 2630, Eff. 10/1/94.

Rules 24.29.4323 through 24.29.4328 reserved

24.29.4329 Verification and Additional Information

- (1) To ensure the accuracy of the information reported pursuant to ARM 24.29.4321, the department may periodically verify the data by comparing the source documents with the information reported. Documents protected by the attorney-client privilege or attorney work-product doctrine are not subject to verification. At least 14 days advance notice of the time and place of the verification will be given to the insurer and designated reporting office. The insurer is responsible for full cooperation with the department during the verification process.
- (2) All insurers are required to respond to requests by the department for information regarding claims or to resolve discrepancies in data collection within 14 days of the request from the department.
- (3) The department may request insurers provide periodic information for the purpose of producing a study of a specific workers' compensation subject. Insurers will be asked to participate in the collection of the necessary data and will be given sufficient time to respond to the request.

History: 39-71-203, MCA; IMP, 39-71-203, 39-71-225, 39-71-304, MCA; NEW, 1994 MAR p. 2630, Eff. 10/1/94; AMD, 2003 MAR p. 2297, Eff. 10/17/03.

Rules 24.29.4330 through 24.29.4331 reserved

24.29.4332 Claimant Legal Fees and Costs Reporting Requirements

- (1) All attorneys that represent claimants shall report, on a per-claim basis, the amount of legal fees and costs received for each claim where:
 - (a) the attorney has an approved fee agreement; and
 - (b) the attorney actually receives a fee from the claimant or on behalf of a claimant.
- (2) An initial legal fee report must be reported to the department within 14 days of the date the attorney actually receives the first fee payment for each claim. If an attorney represents a claimant on multiple claims, the fees and costs for all claims need only be reported on one of the claims.
- (3) Subsequent legal fee reports must be reported within 14 days of each six-month anniversary of the injury or occupational disease for as long as there exists the potential for fee payments.
- (4) Once the potential for fee payments no longer exists, a final legal fee report must be filed at any time prior to or within 14 days of the next six-month anniversary of the injury or occupational disease.
- (5) The claimant attorney must also submit a legal fee report upon:
 - (a) notification by the department that a previously submitted report contains an error; or
 - (b) a request by the department for a report.

- (6) A claimant attorney must report to the department, in the form prescribed by the department, the following information:
- (a) the total amount of legal fees paid to date by the claimant or on behalf of a claimant; and
 - (b) the total amount of attorney costs paid or reimbursed to date by the claimant. For purposes of this rule, attorney costs include but are not limited to:
 - (i) deposition costs;
 - (ii) witness fees and mileage;
 - (iii) expert witness fees;
 - (iv) documented photocopy expenses;
 - (v) documented long-distance telephone expenses; and
 - (vi) documented postage expenses.

History: 39-71-203, MCA; IMP, 39-71-225, MCA; NEW, 1995 MAR p. 675, Eff. 5/1/95; AMD, 2006 MAR p. 546, Eff. 2/24/06.

Rules 24.29.4333 through 24.29.4334 reserved

24.29.4335 Insurer Legal Fees Reporting Requirements

- (1) All insurers shall report, on a per-claim basis, the amount of the insurer's legal fees and costs, including fees paid to expert witnesses that have been paid to date by the insurer, associated with each indemnity claim. That information must be reported on the subsequent report required by ARM 24.29.4321.
- (2) If an insurer uses in-house counsel, and the insurer does not allocate the cost of in-house counsel directly to specific claims, the insurer shall report as required by ARM 24.29.4336.

History: 39-71-203, MCA; IMP, 39-71-225, MCA; NEW, 1995 MAR p. 675, Eff. 5/1/95; AMD, 2006 MAR p. 546, Eff. 2/24/06.

24.29.4336 In-House Counsel Cost Allocation

- (1) Insurers that use the services of in-house counsel for assistance in handling Montana indemnity claims shall report the cost of that legal assistance. If the insurer does not separately track and report in-house legal costs on a per-claim basis, the insurer shall report the cost allocation information required by this rule.
- (2) The purpose of this cost allocation rule is to obtain a figure that reasonably reflects the per-claim cost of having in-house counsel. The insurer shall report annually upon request by the department:
 - (a) the dollar amount that represents the following information about the cost of in-house legal staff:
 - (i) total compensation (salary and cost of benefits and employer contributions) of all attorneys who provide counsel on indemnity claims;
 - (ii) total compensation of support staff (such as secretaries, paralegals, and assistants) working for those attorneys; and
 - (iii) overhead costs attributable to the legal staff, such as a proportionate share of rent or building expense and administrative costs, such as payroll and accounting; and

- (b) a percentage figure that reasonably approximates the percentage of time spent by the attorneys providing advice, counsel or representation on indemnity claims.

History: 39-71-203, MCA; IMP, 39-71-225, MCA; NEW, 1995 MAR p. 856, Eff. 5/1/95.

Rules 24.29.4337 through 24.29.4338 reserved

24.29.4339 Verification of Consultant and Legal Fee Reporting

- (1) For the sole purpose of verifying the accuracy of the data reported, the department may periodically verify a consultant's billing documents used in the preparation and reporting of the information required by ARM 24.29.4332 and 24.29.4335.
- (2) For the sole purpose of verifying the accuracy of the data reported, the department may periodically verify the amount of an attorney's billing reported pursuant to ARM 24.29.4332 and 24.29.4335. Documents protected by the attorney-client privilege or attorney work-product doctrine are not subject to verification.
- (3) At least 14 days advance notice of the time and place of the verification will be given to the reporting party. A reporting party is responsible for full cooperation with the department.

History: 39-71-203, MCA; IMP, 39-71-225, 39-71-304, MCA; NEW, 1995 MAR p. 675, Eff. 5/1/95.

Chapter 35**Independent Contractors****Subchapter 1****Independent Contractor Exemption Certificate**

- 24.35.101 Definitions
- Rules 24.35.102 through 24.35.110 reserved
- 24.35.111 Application for Independent Contractor Exemption Certificate
- 24.35.112 Independent Contractor Exemption Certificate Application Affidavit
- 24.35.113 Independent Contractor Exemption Certificate Waiver
- Rules 24.35.114 through 24.35.115 reserved
- 24.35.116 Renewal of Independent Contractor Exemption (REPEALED)
- 24.35.117 ICEC Renewal, Affidavit, and Waiver
- Rules 24.35.118 through 24.35.120 reserved
- 24.35.121 Application and Renewal Fee for Independent Contractor Exemption Certificate
- Rules 24.35.122 through 24.35.130 reserved
- 24.35.131 Suspension or Revocation of Independent Contractor Exemption Certificate
- Rule 24.35.132 reserved
- 24.35.133 Notice of Suspension or Revocation of Independent Contractor Exemption Certificate
- Rules 24.35.134 through 24.35.140 reserved
- 24.35.141 Guidelines for Determining Whether an Independent Contractor Exemption Certificate Is Needed (REPEALED)

Subchapter 2**Central Unit for Status Determinations**

- 24.35.201 Definitions (REPEALED)
- 24.35.202 Decisions Regarding Employment Status
- 24.35.203 Determinations Where Exemption Certificate Mandatory
- Rule 24.35.204 reserved
- 24.35.205 Binding Nature of ICCU Decisions Regarding Employment Status
- 24.35.206 Mediation and Appeal of Decisions Regarding Employment Status
- 24.35.207 Transfer of File (REPEALED)
- Rules 24.35.208 and 24.35.209 reserved
- 24.35.210 Hearing on Employment Status Issue (REPEALED)
- Rule 24.35.211 reserved
- 24.35.212 Appeal Referee's Findings of Fact, Conclusions of Law, and Decision on Employment Status(REPEALED)
- 24.35.213 Appeal of Findings, Conclusions and Decision on Employment Status (REPEALED)

Subchapter 3**Definitions Related to Independent Contractors**

- 24.35.301 Definition of Independent Contractor (REPEALED)
- 24.35.302 Independent Contractor—Evidence of Control
- 24.35.303 Independent Contractor—Guidelines Regarding Independently
Established Business

Chapter 35**Independent Contractors****Subchapter 1****Independent Contractor Exemption Certificate****24.35.101 Definitions**

For the purposes of ARM Title 24, chapter 35, the following definitions apply:

- (1) “Department” means the Montana Department of Labor and Industry.
- (2) “Employment status” means the employment relationship between an individual and a hiring agent.
- (3) “Fixed business location” means a principle place of business for any trade, occupation, profession, or business that is designated by the owner as the physical location where customers are directed for any physical contacts with the business and is the actual location where the majority of the business work is regularly performed. More than a place to store inventory or product samples, a fixed business location is where a person engages in work intended for commerce.
- (4) “Hiring agent” means the entity that hires an individual to perform services. A hiring agent may be an “employer” as defined in 39-3-201, MCA; 39-51-202, MCA; 39-71-117, MCA; or other legal entity as defined by an “employing unit” in 39-51-201, MCA.
- (5) “Incomplete application” means an application submitted for an exemption as an independent contractor that fails to qualify for a minimum of 15 points due to insufficient, missing, unverifiable, or incorrect information; or due to failure to submit an essential component, such as a signed and notarized waiver or required fee.
- (6) “Independent Contractor Central Unit” or “ICCU” means the unit located within the department which is responsible for making employment status decisions for the entire department and other agencies that elect to participate in the ICCU. The ICCU evaluates ICEC applications and investigates working relationships identified in complaints and referrals.
- (7) “Independent Contractor Exemption Certificate” or “ICEC” means a certificate issued by the department that signifies a person meets the criteria for an exemption from the provisions of the Workers’ Compensation Act for a specific trade, occupation, profession, or business.
- (8) “Individual” means a person who renders service in the course of a trade, occupation, profession, or business.
- (9) “Initial application” means a person’s first-time application for exemption as an independent contractor for a particular trade(s), occupation(s), profession(s), or business(es).
- (10) “Party” means a person or entity designated by the department as plaintiff or respondent in an ICCU decision-making proceeding. The department, the claimant, employer(s), hiring agent(s), ICEC holders, insurer(s), or agencies of state government may be a party to an ICCU decision-making proceeding or appeal of an ICCU decision to the Workers’ Compensation Court.
- (11) “Renewal application” means an application for renewal of an existing ICEC held by that person.
- (12) “Revoked” and “revocation” mean that an ICEC is no longer in force or effect.

- (13) “Similarly situated individuals” means people who render services for an employer under circumstances substantially the same as those under which the subject individual’s services were performed.
- (14) “Suspended” and “suspension” mean that a person’s ICEC is not applicable to a particular job or to a series of jobs for a particular hiring agent.

History: 39-51-301, 39-51-302, 39-71-203, 39-71-417, MCA; IMP, 39-51-201, 39-51-204, 39-71-105, 39-71-409, 39-71-417, 39-71-418, MCA; NEW, 2010 MAR p. 1608, Eff. 7/16/10; AMD, 2018 MAR p. 720, Eff. 4/14/18.

Rules 24.35.102 through 24.35.110 reserved

24.35.111 Application for Independent Contractor Exemption Certificate

- (1) The applicant for an ICEC shall submit:
- (a) a completed ICEC application on a department-approved form bearing the applicant’s original notarized signature, as required by ARM 24.35.112.
 - (b) a fee, as required by ARM 24.35.121; and
 - (c) an executed, notarized waiver conforming to the requirements of ARM 24.35.113.
- (2) The department shall approve or deny an ICEC application within 30 days of receipt and notify the applicant in writing.
- (3) The department shall retain an incomplete or denied application for a period of six months from the date of receipt and allow the applicant the opportunity to supplement supporting documentation or submit missing components. Upon the written request of applicant, the department shall re-evaluate an application, taking into consideration the supplemental information submitted by applicant. Incomplete applications that have not been approved within six months of receipt by the department will remain denied.

History: 39-71-417, MCA; IMP, 39-71-417, MCA; NEW, 1996 MAR p. 1303, Eff. 5/10/96; TRANS, 1996 MAR p. 1863, Eff. 7/1/96; AMD, 1998 MAR p. 2880, Eff. 11/1/98; AMD, 2003 MAR p. 2550, Eff. 11/14/03; AMD, 2005 MAR p. 1511, Eff. 8/12/05; AMD, 2010 MAR p. 1608, Eff. 7/16/10; AMD, 2018 MAR p. 720, Eff. 4/14/18.

24.35.112 Independent Contractor Exemption Certificate Application Affidavit

- (1) On the form provided by the department, the applicant shall provide all information designated as required. The form must be notarized, and the applicant must state, under oath, the veracity of all information on and attached to the form.
- (2) The applicant shall also submit supporting documentation to prove applicant’s qualification for an ICEC. The department has the discretion to assess the reliability of the documentation and award points for each item of proof as outlined by this rule. Each item of documentation submitted may count toward points in more than one category. No more than two items of proof may be submitted under each category. To qualify for an ICEC, an applicant’s documentation must be awarded a minimum of 15 points by the department for each independently established trade, occupation, profession, or business listed on the ICEC application.
- (a) The department may award up to ten points for proof that the applicant has current workers’ compensation, unemployment insurance, and Department of Revenue accounts for employees in each independently established

trade, occupation, profession, or business. The department may award up to six points for proof of two insurance policies or accounts and may award up to three points for proof of one insurance policy or account.

- (b) The department may award up to six points for each of the following proofs for each independently established trade, occupation, profession, or business:
 - (i) contract or memo of understanding that demonstrates applicant's independent contractor status. If the applicant can end a contract at any time without incurring any liability for failing to complete the project that is the subject of the contract, the department cannot award points for the contract under this rule. Separate contracts with different hiring agents may qualify for a maximum of six points. Each contract must include:
 - (A) payment based on a completed project;
 - (B) beginning and ending dates of the contract;
 - (C) liability for failure to complete the project;
 - (D) identification of who provides the materials and supplies;
 - (E) signatures by both parties; and
 - (F) defined body of work, complete project, or end result;
 - (ii) signed and dated list of equipment and tools owned or controlled by the applicant with approximate values. The equipment or tool list may be documented by a rental or lease agreement, county documents verifying the business equipment tax paid, or other means;
 - (iii) commercial general liability insurance policy or bonding;
 - (iv) most recent business tax forms filed within the past three years;
 - (v) IRS Form 1099s (miscellaneous income) from multiple hiring agents or two quarterly self-employment tax payments (IRS form 1040ES) within past three years; or
 - (vi) trucking company lease agreement.
- (c) The department may award up to three points for each of the following proofs for each independently established trade, occupation, profession, or business:
 - (i) partnership or limited liability partnership agreement signed and dated by all partners that demonstrates:
 - (A) intent to form the partnership;
 - (B) contribution by all partners;
 - (C) a proprietary interest and right of control by the application; and
 - (D) the sharing of profit/loss;
 - (ii) current business license or building permit;
 - (iii) certificate of registration for the business entity issued by the Montana secretary of state;
 - (iv) articles of incorporation, annual report, articles of organization, or other documentation that verifies the applicant is an officer in a corporation, a manager in a manager-managed limited liability company, or a member of a member-managed limited liability company;
 - (v) proof of ownership, home occupation license, rental or lease agreement with a statement that the property may be used for business or commercial use, or proof of IRS filing for use of home as a business;
 - (vi) educational certification for unlicensed occupations relevant to the trade, occupation, or profession for which the applicant seeks the ICEC;

- (vii) current professional license relevant to the trade, occupation, or profession for which the applicant seeks the ICEC;
 - (viii) membership in a relevant professional association or affiliation;
 - (ix) current motor carrier (MC) authority number in applicant's personal or business name;
 - (x) business bank account; or
 - (xi) copies of advertising in a newspaper, phone book, web site on the internet, or other venue.
- (d) The department may award up to one-and-one-half points for each of the following proofs for each independently established trade, occupation, profession, or business:
- (i) federal employer identification number (EIN);
 - (ii) Dunn and Bradstreet number;
 - (iii) telephone or utility bill(s) in the business name;
 - (iv) credit card(s) or purchase account(s) in the business name;
 - (v) preprinted business invoices, business cards, or brochures;
 - (vi) proof of order(s) for printed hats, shirts, or other promotional items for the business;
 - (vii) proof of business advertising using a vehicle sign, yard sign, bulletin boards, or posted flyers;
 - (viii) invoices billed to the business name or a bid proposal or estimate, either of which must include the address and phone number of the recipient;
 - (ix) vehicle registration(s) in the business name; or
 - (x) international fuel tax account number (IFTA) in the applicant's personal or business name.
- (e) The applicant may submit any other supporting documentation. The department has discretion to assess the reliability of and determine the point value of any documentation not listed in this rule.

History: 39-3-202, 39-3-403, 39-51-301, 39-71-203, 39-71-417, MCA; IMP, 39-3-201, 39-3-402, 39-51-201, 39-51-204, 39-71-417, 39-71-418, 39-71-419, MCA; NEW, 2018 MAR p. 720, Eff. 4/14/18.

24.35.113 Independent Contractor Exemption Certificate Waiver

- (1) To execute a waiver, the applicant shall complete the department-approved waiver form. The waiver form must be signed by the applicant and notarized. The applicant shall represent on the waiver form that:
- (a) the applicant is engaged in each independently established trade, occupation, profession, or business that is specifically identified on the application form;
 - (b) the applicant is responsible for all taxes related to the applicant's work as an independent contractor;
 - (c) the applicant controls the details of how services are performed, both under contract and in fact, and the hiring agent retains only the control necessary to ensure the bargained for end result; and
 - (d) the applicant understands and agrees that if the ICEC is granted, the applicant is not eligible for and waives the right to workers' compensation or occupational disease benefits for an injury or occupational disease related to work performed as an independent contractor in each independently

established trade, occupation, profession, or business for which the ICEC is granted.

History: 39-3-202, 39-3-403, 39-51-301, 39-71-203, 39-71-417, MCA; IMP, 39-3-201, 39-3-402, 39-51-201, 39-51-204, 39-71-417, 39-71-418, 39-71-419, MCA; NEW, 2018 MAR p. 720, Eff. 4/14/18.

Rules 24.35.114 through 24.35.115 reserved

24.35.116 Renewal of Independent Contractor Exemption

This rule has been repealed.

History: 39-71-203 and 39-71-401, MCA; IMP, 39-71-120 and 39-71-401, MCA; NEW, 1996 MAR p. 1303, Eff. 5/10/96; TRANS, 1996 MAR p. 1863, Eff. 7/1/96; REP, 2005 MAR p. 1511, Eff. 8/12/05.

24.35.117 ICEC Renewal, Affidavit, and Waiver

- (1) Two months prior to the expiration date of an ICEC, the department shall mail an ICEC renewal application and waiver to the ICEC holder at the address on file with the department. The department shall prepare a renewal form for each ICEC holder that incorporates the most current information in the possession of the department regarding the ICEC holder's independent contractor status and lists the documentation on file with the department that supports independent contractor status.
- (2) To renew an ICEC, the ICEC holder shall submit the following:
 - (a) signed and notarized ICEC renewal application on the department-approved form that indicates any changes in independent contractor status;
 - (b) certification that previously submitted documentation remains valid;
 - (c) additional documentation supporting independent contractor status, as needed;
 - (d) a fee, as required by ARM 24.35.121; and
 - (e) an executed, notarized waiver on the department-approved form.
- (3) The department will verify documentation on file and evaluate all new documentation submitted by the ICEC holder. The department will assign point values to documentation, in accordance with ARM 24.35.112.
- (4) The department has discretion to assess the reliability of and determine the point value of any documentation not listed in ARM 24.35.112.
- (5) If the department is unable to verify any documentation needed to support independent contractor status, the department will notify the ICEC holder in writing within 30 days of receipt of the renewal application.
- (6) To qualify for an ICEC renewal, the ICEC holder's documentation must be awarded a minimum of 15 points by the department for each independently established trade, occupation, profession, or business listed on the ICEC renewal application.
- (7) An ICEC renewal issued by the department remains in effect for a two-year period unless the department revokes or suspends the ICEC or the ICEC holder requests in writing that the department cancel the ICEC.
- (8) An ICEC holder may update the information on file with the department at any time during a current independent contractor exemption certificate period by requesting in person, over the phone, by e-mail, or in writing the revision of business name(s), business structure, phone number(s), or mailing address.

- (9) An ICEC holder may add or change trade(s), occupation(s), profession(s), or business(es) to an ICEC, by executing an affidavit and waiver and submitting sufficient, relevant documentation to qualify for a minimum of 15 points, in accordance with the requirements of ARM 24.35.112. When an addition is made pursuant to this section (9), the expiration date of the ICEC is not changed.

History: 39-51-301, 39-51-302, 39-71-203, 39-71-409, 39-71-417, MCA; IMP, 39-51-201, 39-51-204, 39-71-105, 39-71-409, 39-71-417, 39-71-418, MCA; NEW, 2010 MAR p. 1608, Eff. 7/16/10; AMD, 2018 MAR p. 720, Eff. 4/14/18.

Rules 24.35.118 through 24.35.120 reserved

24.35.121 Application and Renewal Fee for Independent Contractor Exemption Certificate

- (1) A nonrefundable fee of \$125 must be submitted with each initial application, each application for reinstatement of a revoked ICEC, and each renewal application.
- (2) ICECs are issued for a two-year period.
- (3) The department may charge a \$10 fee for the reissuance of a current certificate.

History: 39-71-203, 39-71-401, MCA; IMP, 39-71-401, 39-71-417, 39-71-418, MCA; NEW, 1996 MAR p. 1303, Eff. 5/10/96; TRANS, 1996 MAR p. 1863, Eff. 7/1/96; AMD, 1998 MAR p. 2880, Eff. 11/1/98; AMD, 2003 MAR p. 2550, Eff. 11/14/03; AMD, 2005 MAR p. 967, Eff. 6/17/05; AMD, 2010 MAR p. 1608, Eff. 7/16/10; AMD, 2018 MAR p. 720, Eff. 4/14/18.

Rules 24.35.122 through 24.35.130 reserved

24.35.131 Suspension or Revocation of Independent Contractor Exemption Certificate

- (1) The department may revoke an ICEC when the department determines it is necessary to do so. The following are examples when the department may revoke an ICEC:
 - (a) the department is unable to locate the certificate holder or mail sent to the certificate holder at the address on file with the department is returned;
 - (b) the certificate holder fails to cooperate with the department, including without limitation:
 - (i) failure to provide information to the department upon request;
 - (ii) failure to complete a worker relationship questionnaire upon request; or
 - (iii) failure to notify the department of changes in contact information;
 - (c) when revocation is required by law, for example for non-payment of child support pursuant to Title 40, chapter 5, part 7, MCA; or
 - (d) any reason the department determines sufficiently egregious to warrant revocation of the ICEC.
- (2) A person with a suspended ICEC as applied to a particular hiring agent may apply for reinstatement of the ICEC by submitting proof to the department of the ICEC holder's independent contractor status in relation to the identified hiring agent. The department shall investigate prior to reinstatement of an ICEC to ascertain that independent contractor status is established in fact.

- (3) A person whose ICEC has been cancelled by the ICEC holder or revoked by the department may apply for a new ICEC pursuant to ARM 24.35.111.

History: 39-51-301, 39-51-302, 39-71-203, 39-71-417, MCA; IMP, 39-51-201, 39-51-204, 39-71-417, 39-71-418, MCA; NEW, 1996 MAR p. 1303, Eff. 5/10/96; TRANS, 1996 MAR p. 1863, Eff. 7/1/96; AMD, 2005 MAR p. 1511, Eff. 8/12/05; AMD, 2010 MAR p. 1608, Eff. 7/16/10; AMD, 2018 MAR p. 720, Eff. 4/14/18.

Rule 24.35.132 reserved

24.35.133 Notice of Suspension or Revocation of Independent Contractor Exemption Certificate

- (1) When the department suspends or revokes an ICEC, the certificate holder's waiver of workers' compensation benefits is no longer effective upon departmental notice to the hiring agent(s).
- (2) A hiring agent is considered to have been given notice of the suspension of an ICEC on the date a written notice is personally delivered to the hiring agent, or three days after the department mails a written notice to the hiring agent, whichever is earlier.
- (3) Regarding a revocation, if the department has contact information for a given hiring agent, that hiring agent is considered to have been given notice of the revocation of an ICEC on the date a written notice is personally delivered to the hiring agent, or three days after the department mails a written notice to the hiring agent, whichever is earlier.
 - (a) Hiring agents unknown to the department or potential future hiring agents are deemed to have notice that an ICEC is revoked at the earlier of when:
 - (i) the department posts notice of the revoked ICEC at its web site; or
 - (ii) the hiring agent has actual knowledge of the department's revocation of the ICEC.
- (4) The web site address for the department's independent contractor information is www.mtcontractor.com. The telephone number for verifying the status of an ICEC is (406) 444-9029.

History: 39-71-203, 39-71-417, 39-71-418, MCA; IMP, 39-71-418, MCA; NEW, 2005 MAR p. 1511, Eff. 8/12/05; AMD, 2010 MAR p. 1608, Eff. 7/16/10.

Rules 24.35.134 through 24.35.140 reserved

24.35.141 Guidelines for Determining Whether an Independent Contractor Exemption Certificate Is Needed

(See the Transfer and Repeal Table)

History: 39-71-203, 39-71-417, MCA; IMP, 39-71-417, MCA; NEW, 1996 MAR p. 1303, Eff. 5/10/96; TRANS, 1996 MAR p. 1863, Eff. 7/1/96; AMD, 1998 MAR p. 2880, Eff. 11/1/98; AMD, 2005 MAR p. 1511, Eff. 8/12/05; AMD, 2010 MAR p. 1608, Eff. 7/16/10; REP, 2018 MAR p. 720, Eff. 4/14/18.

Subchapter 2**Central Unit for Status Determinations****24.35.201 Definitions**

This rule has been repealed.

History: 39-3-202, 39-3-403, 39-51-301, 39-51-302, 39-71-203, MCA; IMP, 39-3-208, 39-3-209, 39-3-210, 39-51-201, 39-51-203, 39-71-120, 39-71-415, MCA; NEW, 1996 MAR p. 1676, Eff. 7/1/96; AMD, 2003 MAR p. 2550, Eff. 11/14/03; REP, 2010 MAR p. 1608, Eff. 7/16/10.

24.35.202 Decisions Regarding Employment Status

- (1) Subject to ARM 24.35.203, when the ICCU or another unit of the department evaluates an individual's employment status, the department shall apply a two-part test to determine whether an individual is an independent contractor or an employee. The department shall evaluate:
 - (a) whether the individual is and shall continue to be free from control or direction over the performance of the services, both under contract and in fact; and
 - (b) whether the individual is engaged in an independently established trade, occupation, profession, or business.
- (2) To determine whether a hiring agent exerts control over an individual, the department shall evaluate:
 - (a) direct evidence of right or exercise of control;
 - (b) method of payment;
 - (c) furnishing of equipment; and
 - (d) right to fire.
- (3) To determine the employment status of an individual, the department may:
 - (a) review written contracts between the individual and the hiring agent;
 - (b) interview and obtain statements from the individual, co-workers, and the hiring agent;
 - (c) obtain statements from third parties;
 - (d) examine the books and records of the hiring agent;
 - (e) review filing status on income tax returns;
 - (f) perform onsite visits; and
 - (g) make any other investigation necessary to determine employment status.
- (4) Decisions regarding employment status must comply with the criteria for an independent contractor found at 39-71-417, MCA, as well as with existing law on partnership, joint ventures, and other employment entities.
- (5) Initial determinations regarding employment status may be issued by any unit of the department or by the Department of Revenue. Initial determinations of employment status by the department are binding on the parties unless a party disputes the determination, pursuant to ARM 24.11.2407 or 24.16.7527.
- (6) ICCU "decisions" regarding employment must be called "decisions" and are separate and distinct from both initial determinations of the department and "orders" defined at ARM 24.29.205.
- (7) ICCU decisions regarding employment status are binding on the department and on any other agency which elects to be included as a member of the department's ICCU, subject to the limitations contained in ARM 24.35.205(3). This does not include any agency which is merely appearing before the ICCU

as a party in an employment status case (for example the state compensation insurance fund), and has not elected to be included as a member of the ICCU.

- (8) The department may apply its decisions regarding employment status to similarly situated individuals.

History: 39-3-202, 39-3-403, 39-51-301, 39-51-302, 39-71-203, 39-71-417, MCA; IMP, 39-3-208, 39-3-209, 39-3-210, 39-51-201, 39-51-203, 39-71-415, 39-71-417, 39-71-418, MCA; NEW, 1996 MAR p. 1676, Eff. 7/1/96; AMD, 2005 MAR p. 1511, Eff. 8/12/05; AMD, 2010 MAR p. 1608, Eff. 7/16/10; AMD, 2018 MAR p. 720, Eff. 4/14/18.

24.35.203 Determinations Where Exemption Certificate Mandatory

- (1) When a worker is required by 39-71-417, MCA, to have an independent contractor exemption certificate and does not, the worker is conclusively determined to be an employee for purposes of wage and hour, unemployment insurance, workers' compensation, and income tax.
- (2) When a worker holds an independent contractor exemption certificate and is working under that certificate as required by 39-71-417, MCA, the worker is conclusively determined to be an independent contractor for purposes of wage and hour, unemployment insurance, workers' compensation, and income tax.
- (3) When worker status is conclusively determined pursuant to this rule, the ICCU may issue a decision based solely on information sufficient to determine that conclusive outcome.
- (4) Notwithstanding the foregoing, the ICCU may, at its discretion, perform an investigation pursuant to ARM 24.35.202 or when a decision is needed for a program other than wage and hour, unemployment insurance, workers' compensation, or income tax. A decision may also be issued for the purposes of suspending or revoking the certificate pursuant to ARM 24.35.131 or issuing penalties, or for other purposes as the ICCU deems necessary.

History: 39-3-202, 39-3-403, 39-51-301, 39-71-203, 39-71-417, MCA; IMP, 39-3-201, 39-3-402, 39-51-201, 39-51-204, 39-71-417, 39-71-418, 39-71-419, MCA; NEW, 2018 MAR p. 720, Eff. 4/14/18.

Rule 24.35.204 reserved

24.35.205 Binding Nature of ICCU Decisions Regarding Employment Status

- (1) Unless appealed following mediation pursuant to 39-71-415, MCA, written decisions issued by the ICCU are binding on all parties with respect to employment status issues under the jurisdiction of the department and the jurisdiction of any other agency which elects to be included as a member of the ICCU. These decisions may affect a party's liability in matters related to unemployment insurance, the Uninsured Employer's Fund, wage and hour issues, human rights, and state income tax withholding.
- (2) Neither the department nor any other agency which elects to be included as a member of the ICCU may appeal the ICCU's employment status decision.
- (3) When a party appeals the ICCU's employment status decision, the decision is not binding on any party until all appeal rights are exhausted.

History: 39-3-202, 39-3-403, 39-51-301, 39-51-302, 39-71-203, 39-71-417, MCA; IMP, 39-3-212, 39-51-1109, 39-71-415, 39-71-417, MCA; NEW, 1996 MAR p. 1676, Eff. 7/1/96; AMD, 2003 MAR p. 2550, Eff. 11/14/03; AMD, 2005 MAR p. 1511, Eff. 8/12/05; AMD, 2010 MAR p. 1608, Eff. 7/16/10; AMD, 2018 MAR p. 720, Eff. 4/14/18.

24.35.206 Mediation and Appeal of Decisions Regarding Employment Status

- (1) After issuance of a decision, a dissatisfied party requesting mediation shall file a written request for mediation with the ICCU within 15 days of the mailing of the ICCU's decision. The request for mediation is effective upon receipt by the department, not upon mailing. It is the obligation of the requesting party to ensure timely receipt of the request for mediation by the ICCU.
- (2) A request for mediation may be filed in the following ways:
 - (a) by mail to P.O. Box 8011; Helena, MT 59604;
 - (b) by electronic mail to erdappeal@mt.gov; or
 - (c) by facsimile to (406) 444-4140.
- (3) Upon receiving a request for mediation, the ICCU shall provide the mediator a copy of its decision and any other documents it deems relevant.

History: 39-3-202, 39-3-403, 39-51-301, 39-51-302, 39-71-203, 39-71-417, MCA; IMP, 2-4-201, 39-3-216, 39-51-1109, 39-71-415, 39-71-417, 39-71-418, MCA; NEW, 1996 MAR p. 1676, Eff. 7/1/96; AMD, 2003 MAR p. 2550, Eff. 11/14/03; AMD, 2005 MAR p. 1511, Eff. 8/12/05; AMD, 2010 MAR p. 1608, Eff. 7/16/10; AMD, 2018 MAR p. 720, Eff. 4/14/18.

24.35.207 Transfer of File

(See the Transfer and Repeal Table)

History: 39-3-202, 39-3-403, 39-51-301, 39-51-302, 39-71-203, 39-71-417, MCA; IMP, 2-4-201, 39-3-216, 39-51-1109, 39-71-415, 39-71-417, 39-71-418, MCA; NEW, 1996 MAR p. 1676, Eff. 7/1/96; AMD, 2003 MAR p. 2550, Eff. 11/14/03; AMD, 2005 MAR p. 1511, Eff. 8/12/05; AMD, 2010 MAR p. 1608, Eff. 7/16/10; REP, 2018 MAR p. 720, Eff. 4/14/18.

Rules 24.35.208 and 24.35.209 reserved**24.35.210 Hearing on Employment Status Issue**

This rule has been repealed.

History: 39-3-202, 39-3-403, 39-51-301, 39-51-302 and 39-71-203, MCA; IMP, 2-4-201, 2-4-611, 39-3-216, 39-51-1109 and 39-71-415, MCA; NEW, 1996 MAR p. 1676, Eff. 7/1/96; REP, 2003 MAR p. 2550, Eff. 11/14/03.

Rule 24.35.211 reserved**24.35.212 Appeal Referee's Findings of Fact, Conclusions of Law, and Decision on Employment Status**

This rule has been repealed.

History: 39-3-202, 39-3-403, 39-51-301, 39-51-302 and 39-71-203, MCA; IMP, 2-4-611, 2-4-623, 39-3-216, 39-51-1109 and 39-71-415, MCA; NEW, 1996 MAR p. 1676, Eff. 7/1/96; REP, 2003 MAR p. 2550, Eff. 11/14/03.

24.35.213 Appeal of Findings, Conclusions and Decision on Employment Status

This rule has been repealed.

History: 39-3-202, 39-3-403, 39-51-301, 39-51-302 and 39-71-203, MCA; IMP, 2-4-611, 2-4-623, 39-3-216, 39-51-1109, 39-71-415, 39-71-504, 39-71-532 and 39-71-2401, MCA; NEW, 1996 MAR p. 1676, Eff. 7/1/96; REP, 2003 MAR p. 2550, Eff. 11/14/03.

Subchapter 3**Definitions Related to Independent Contractors****24.35.301 Definition of Independent Contractor**

This rule has been repealed.

History: 39-3-202, 39-3-403, 39-51-301, 39-51-302 and 39-71-203, MCA; IMP, 39-3-201, 39-51-201, 39-51-204, 39-71-120 and 39-71-401, MCA; NEW, 1996 MAR p. 1676, Eff. 7/1/96; AMD, 2003 MAR p. 2550, Eff. 11/14/03; REP, 2005 MAR p. 1511, Eff. 8/12/05.

24.35.302 Independent Contractor—Evidence of Control

- (1) An individual is an employee and not an independent contractor if the hiring agent controls or retains the right to control the way the individual renders services. The following factors serve as general guidelines when the department evaluates whether control exists:
 - (a) the individual is required to follow written or oral instructions concerning when, where, or how work is to be done. Although some individuals, because of skill or expertise, work without receiving instructions, they may still be employees if the employer has the right to give instructions on work performance;
 - (b) the success or continuation of a business depends in great part upon the services performed by the individual;
 - (c) the hiring agent directs the hiring, supervising, or payment of the individual's assistants;
 - (d) the relationship between the individual and the hiring agent is on a frequent, recurring basis, even if irregular or part time;
 - (e) the individual is required to perform services at certain established times;
 - (f) the work is performed on the business premises or jobsite of the hiring agent. This factor is especially important if the work could be performed elsewhere;
 - (g) the hiring agent requires, or has the right to require, the individual to perform services in a certain manner, or in a certain order or sequence;
 - (h) the hiring agent requires the individual to submit oral or written reports;
 - (i) the individual is paid based on the time spent doing the work rather than a payment for a completed project or end result;
 - (j) the individual is paid or reimbursed for travel or other business-related expenses;
 - (k) the hiring agent furnishes the facilities, tools, materials, or other equipment to the individual;
 - (l) the individual may be discharged at the will of the hiring agent, including the right to discharge for the failure to follow specified rules or methods. A union contract or statute which restricts the right of discharge does not indicate a lack of control;
 - (m) training is provided to the individual by the hiring agent;
 - (n) the individual does not realize a profit or suffer a loss as a result of the services performed;
 - (o) the individual is prohibited or restricted from working for others or is required to devote primary attention to the hiring agent;
 - (p) the individual has signed an overly broad noncompetition clause in a contract with a hiring agent; or

- (q) other factors that indicate control of the individual by the hiring agent.
- (2) The above factors are weighed and evaluated depending on the circumstance of each case. A combination of these factors may indicate control or the right to control. Service performed by an individual for pay is considered to be employment until it is shown to the satisfaction of the department that the individual is an independent contractor.

History: 39-3-202, 39-3-403, 39-51-301, 39-51-302, 39-71-203, 39-71-417, MCA; IMP, 39-3-201, 39-51-201, 39-51-203, 39-51-204, 39-71-417, 39-71-418, MCA; NEW, 1996 MAR p. 1676, Eff. 7/1/96; AMD, 2005 MAR p. 1511, Eff. 8/12/05; AMD, 2010 MAR p. 1608, Eff. 7/16/10.

24.35.303 Independent Contractor—Guidelines Regarding Independently Established Business

- (1) To be an independent contractor, an individual must be engaged in an independently established trade, occupation, profession, or business. The following factors serve as general guidelines when the department evaluates whether an independently established business exists:
- (a) the individual has a place of business separate from the hiring agent's place of business;
 - (b) the individual supplies substantially all of the tools, equipment, supplies, or materials necessary to perform the services;
 - (c) the individual pays all expenses associated with performing the services, and are not reimbursed by the hiring agent;
 - (d) the individual has two or more effective contracts to perform services for several different hiring agents;
 - (e) the individual is paid based on a billing statement or invoice at completion of the services;
 - (f) the individual performs the services under a written contract that requires complete or partial payment after a certain amount of work is performed, and the contract terminates after a definite time period;
 - (g) the individual advertises services in telephone books, newspapers, or other media;
 - (h) the individual files federal or state business tax forms;
 - (i) the individual has the required customary licenses, registrations, or permits to maintain a business;
 - (j) the individual may realize a profit or suffer a loss from performing the services for the hiring agent. This factor may be shown if the individual:
 - (i) hires or pays assistants to perform the services;
 - (ii) performs the services at facilities owned or leased by the individual;
 - (iii) has continuing or recurring liabilities associated with performing the services; or
 - (iv) agrees to perform specific jobs for prices agreed upon in advance and pays expenses associated with the performance of the services;
 - (k) the individual has an independent contractor exemption certificate;
 - (l) the individual may not end the relationship at will without incurring liability. An independent contractor agrees to complete a specific job, is responsible for its completion, and may be subject to liability for failing to complete the job in accordance with agreed upon specification;
 - (m) the individual is not prohibited or restricted from working for others; or
 - (n) another factor that indicates the existence of an independently established trade, occupation, profession, or business.

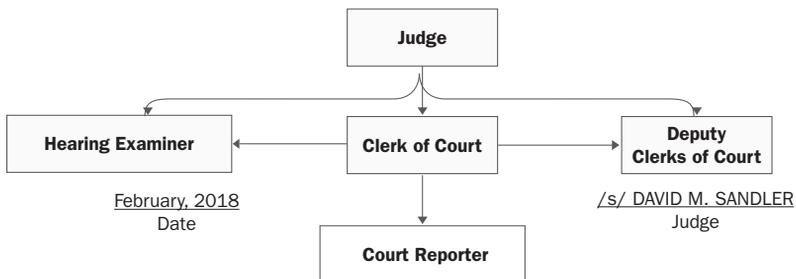
- (2) The department shall evaluate and weigh the above factors for each case. A combination of these factors may indicate that the individual is customarily engaged in an independently established trade, occupation, profession, or business. Service performed by an individual for pay is considered to be employment until it is shown to the satisfaction of the department that the individual is an independent contractor.

History: 39-3-202, 39-3-403, 39-51-301, 39-51-302, 39-71-203, 39-71-417, MCA; IMP, 39-3-201, 39-51-201, 39-51-203, 39-51-204, 39-71-417, 39-71-418, MCA; NEW, 1996 MAR p. 1676, Eff. 7/1/96; AMD, 2003 MAR p. 2550, Eff. 11/14/03; AMD, 2005 MAR p. 1511, Eff. 8/12/05; AMD, 2010 MAR p. 1608, Eff. 7/16/10.

- 24.5.334..... Settlement Conference or Mediation
- 24.5.335..... Bench Rulings
- 24.5.336..... Trial Briefs and Proposed Findings of Fact and Conclusions of Law
- 24.5.337..... Motion for Reconsideration
- Rules 24.5.338 and 24.5.339 reserved
- 24.5.340..... Masters and Examiners – Procedure–Recommendations for Bench Orders
- Rule 24.5.341 reserved
- 24.5.342..... Taxation of Costs
- 24.5.343..... Attorney Fees
- 24.5.344..... Petition for New Trial and/or Request for Amendment to Findings of Fact and Conclusions of Law
- 24.5.345..... Writ of Execution
- 24.5.346..... Stay of Judgment Pending Appeal
- Rule 24.5.347 reserved
- 24.5.348..... Certification of Decisions, Appeals to Supreme Court
- 24.5.349..... Rules Compliance
- 24.5.350..... Appeals to Workers’ Compensation Court Under Title 39, Chapters 71 and 72, MCA
- 24.5.351..... Declaratory Rulings
- 24.5.352..... Reference to Montana Rules of Civil Procedure
- 24.5.353..... Withdrawal of Attorney
- Rules 24.5.354 through 24.5.358 reserved
- 24.5.359..... Notice of Representation (REPEALED)
- 24.5.360..... Review

Chapter 5**Office of the Workers' Compensation Judge****Subchapter 1****Organizational Rule****24.5.101 Organizational Rule**

- (1) Organization of the Office of the Workers' Compensation Judge (Workers' Compensation Court). The 44th Legislature enacted HB 100, which established the Workers' Compensation Court, on July 1, 1975. To carry out the legislative intent, the Workers' Compensation Court is organized and functions along the lines of the district court.
- (2) Functions of Workers' Compensation Court. The Workers' Compensation Court has exclusive jurisdiction over the adjudication of disputes arising under Title 39, chapter 71 and chapter 72, MCA.
- (3) Information or Submissions. Persons may direct general inquiries regarding the Workers' Compensation Court to the judge or the clerk of court. Persons may direct inquiries or submissions regarding specific cases to the clerk of court, and shall include with any such inquiry or submission the number the court has assigned to the file, if any.
- (4) Personnel Roster. Persons may contact the workers' compensation judge and clerk of court anytime by e-mail at dliwccfilings@mt.gov, or Monday through Friday, 8 a.m. to 5 p.m., excluding state holidays, as follows:
 - (a) in person at 1625 11th Avenue, Helena, Montana;
 - (b) by mail at P.O. Box 537, Helena, Montana 59624-0537;
 - (c) by phone at (406) 444-7794;
 - (d) by TTY at (406) 444-0532;
 - (e) by Montana Relay at 711;
 - (f) or by fax at (406) 444-7798.
- (5) Chart of Workers' Compensation Court Organization. A descriptive chart of the Workers' Compensation Court is attached as follows and is incorporated in this rule.



History: 2-4-201, MCA; IMP, 2-4-201, MCA; NEW, Eff. 7/1/75; ARM Pub. 6/30/79; AMD, Eff. 9/30/87; TRANS, from Admin., 1989 MAR p. 2177, Eff. 12/22/89; AMD, 1990 MAR p. 847, Eff. 5/1/90; AMD, Eff. 1/14/94; AMD, 1998 MAR p. 1281, Eff. 5/15/98; AMD, Eff. 3/31/02; AMD, Eff. 3/15/18.

Subchapter 2 Reserved**Subchapter 3
Procedural Rules****24.5.301 Petition for Trial**

- (1) The petitioner shall make any request for trial before the Workers' Compensation Court in petition form. Upon request, the court provides a form that the petitioner may use as a petition. The petitioner shall ensure that the petition complies with ARM 24.5.306 and includes the following information:
 - (a) in the case of an injury, the date and a description of the accident, or, in the case of an occupational disease, the date the petitioner became aware of the occupational disease and a description of the condition and its occupational origin;
 - (b) the county where the accident occurred or the occupational disease arose;
 - (c) a short, plain statement of the petitioner's contentions;
 - (d) for accidents occurring before July 1, 1987, a statement to the effect that the parties have made an effort to resolve the dispute but have been unable to do so;
 - (e) for accidents occurring on or after July 1, 1987, and for occupational disease claims, a statement that the parties have complied with the mediation provisions set forth in 39-71-2411, MCA;
 - (f) a statement that the petitioner has freely exchanged all available pertinent medical records with the respondent pursuant to ARM 24.5.317 and shall continue to do so;
 - (g) a list of the petitioner's potential witnesses and a summary of the subject matter on which the petitioner expects each witness to testify; and
 - (h) a list of written documents relating to the claim which the petitioner may introduce as evidence.
- (2) The petitioner may plead in the alternative.
- (3) The petitioner shall join and plead any claim for attorney fees, costs, and/or penalty with respect to the benefits or other relief the petitioner seeks in the petition or amended petition. If the petitioner fails to join and plead a claim for attorney fees, costs, and/or penalty with respect to the benefits or other relief the petitioner seeks in the petition or amended petition, the petitioner waives this claim and may not pursue any future claim with respect to these attorney fees, costs, and/or penalty.
- (4) The petitioner may only name an employer in the caption of the petition, as well as subsequent pleadings, motions, briefs, and other documents, if the petitioner seeks relief against the employer. However, whether named or not, an employer shall fulfill its duty to cooperate and assist its insurer, including any duty to assist in responding to discovery.
- (5) The petitioner shall file the petition in accordance with ARM 24.5.303 and ARM 24.5.320. However, if the court receives the hard copy original of the petition after the petition deadline, it schedules the matter on the next trial docket.
- (6) The petitioner shall serve the petition in accordance with ARM 24.5.303.
- (7) The court may return the petition unfiled if the petitioner fails to comply with (1) and (4) of this rule.

History: 2-4-201, MCA; IMP, 2-4-201, 39-71-2901, 39-71-2905, MCA; NEW, 1983 MAR p. 1715, Eff. 11/26/83; TRANS, from ARM 2.52.301, 1989 MAR p. 2177, Eff. 12/22/89; AMD, 1990 MAR p. 847, Eff. 5/1/90; AMD, 1994 MAR p. 27, Eff. 1/14/94; AMD, 1998 MAR p. 1281, Eff. 5/15/98; AMD, 2000 MAR p. 1513, Eff. 6/16/00; AMD, 2003 MAR p. 650, Eff. 4/11/03; AMD, 2014 MAR p. 2829, Eff. 3/1/15; AMD, 2018 MAR p. 305, Eff. 3/15/18.

24.5.302 Response to Petition

- (1) Within the time set forth in ARM 24.5.320, the respondent shall serve upon the petitioner and all other parties, and file with the court, a response to the petition. The respondent shall ensure that the response complies with ARM 24.5.306 and includes the following information:
 - (a) a short, plain statement of the respondent's contentions;
 - (b) a statement of those facts which respondent believes to be uncontested;
 - (c) a statement that the respondent has freely exchanged all available pertinent medical records with the petitioner pursuant to ARM 24.5.317 and shall continue to do so;
 - (d) a list of the respondent's potential witnesses and a summary of the subject matter on which the respondent expects each witness to testify; and
 - (e) a list of written documents relating to the claim that the respondent may introduce as evidence.

History: 2-4-201, MCA; IMP, 2-4-201, 39-71-2901, MCA; NEW, 1990 MAR p. 847, Eff. 5/1/90; AMD, 1994 MAR p. 27, Eff. 1/14/94; AMD, 2014 MAR p. 2829, Eff. 3/1/15; AMD, 2018 MAR p. 305, Eff. 3/15/18.

24.5.303 Service and Filing

- (1) The court adheres to the following service rules:
 - (a) The court requires a party to make service in certain circumstances.
 - (i) Generally, the court makes service upon opposing parties and others, as designated in the petitioner's or third-party petitioner's instructions, by mail from Helena, Montana, with first-class postage prepaid. The petitioner or third-party petitioner shall provide the following for each party the petitioner or third-party petitioner wishes the court to serve, including the petitioner or third-party petitioner:
 - (A) a copy of the petition or third-party petition; and
 - (B) a correct name and address.
 - (ii) However, the party filing the petition or third-party petition shall make personal service upon the respondent or third-party respondent in accordance with the provisions of the Montana Rules of Civil Procedure regarding service of summons and complaint if the respondent or third-party respondent is an entity other than a Montana state agency, insurer doing business in Montana, self-insurer, insurance guarantee fund, or insurer qualified to do business in Montana at the time of an alleged injury or occupational disease and its successors and predecessors.
 - (b) The court requires that different materials be served depending on the identity of the server and whether the matter involves a third-party respondent.
 - (i) When the Workers' Compensation Court makes service, it serves copies of the petition, amended petition, or third-party petition.

- (ii) When the party filing the petition or third-party petition makes service, the party shall serve a summons and the petition or third-party petition.
- (iii) If the matter involves a third-party respondent, the court or third-party petitioner shall include all pleadings the parties have filed and orders the court has issued in the case to date with service.
- (c) The court requires a certificate of service as follows:
 - (i) Each party shall provide the court with a certificate of service as described in M. R. Civ. P 5 when filing a pleading after the original petition, a written motion, or any other document described in M. R. Civ. P 5.
 - (ii) The court deems service complete on the date as shown on the certificate of service.
- (2) The court adheres to the following filing rules:
 - (a) The court does not charge a filing fee.
 - (b) A party may accomplish filing with the court as follows:
 - (i) by mail to P.O. Box 537, Helena, MT 59624-0537;
 - (ii) by hand delivery to 1625 11th Avenue, Helena, MT;
 - (iii) by fax to (406) 444-7798; or
 - (iv) by e-mail attachment to dliwccfilings@mt.gov.
 - (c) The court deems filing complete upon receipt by the court. However, a party filing by fax or e-mail attachment shall ensure that the court receives a hard copy original within the time set forth in ARM 24.5.320.

History: 2-4-201, 39-71-2901, 39-71-2903, 39-71-2905, MCA; IMP, 2-4-201, 39-71-2901, 39-71-2903, 39-71-2905, MCA; NEW, 1983 MAR p. 1715, Eff. 11/26/83; TRANS, from ARM 2.52.303, 1989 MAR p. 2177, Eff. 12/22/89; AMD, 1990 MAR p. 847, Eff. 5/1/90; AMD, 1992 MAR p. 922, Eff. 5/1/92; AMD, 1994 MAR p. 27, Eff. 1/14/94; AMD, 1998 MAR p. 1281, Eff. 5/15/98; AMD, 2000 MAR p. 1513, Eff. 6/16/00; AMD, 2002 MAR p. 93, Eff. 1/18/02; AMD, 2014 MAR p. 2829, Eff. 3/1/15; AMD, 2018 MAR p. 305, Eff. 3/15/18.

24.5.304 Alternative Pleading

This rule has been repealed.

History: Sec. 2-4-201, MCA; IMP, Sec. 2-4-201, 39-71-2901, MCA; NEW, 1983 MAR p. 1715, Eff. 11/26/83; PREV. Rule #, ARM 2.52.204; TRANS, from Admin., 1989 MAR p. 2177, Eff. 12/22/89; REP, 1994 MAR p. 27, Eff. 1/14/94.

24.5.305 Nature of Rules

- (1) These rules are procedural in nature and will be applied uniformly to all cases regardless of the date of injury unless specifically otherwise provided.

History: Sec. 2-4-201, MCA; IMP, Sec. 2-4-201, 39-71-2901, MCA; NEW, 1990 MAR p. 847, Eff. 5/1/90.

24.5.306 Brevity In Pleadings and Form of Paper Presented for Filing

- (1) The court encourages brevity in pleadings and other documents. The court may return documents that in the court's opinion, are rambling or verbose with instructions to correct deficiencies.
- (2) The parties shall file all documents in the form set forth below.
 - (a) The parties shall use standard quality opaque, unglazed, recycled, unnumbered, unlined, 8 1/2 x 11-inch paper.

- (b) The parties shall legibly handwrite or typewrite all text.
 - (i) For typewritten or machine-printed text, the parties shall use a font size of no smaller than 12 points.
 - (ii) The court requests that the parties use a sans-serif font, preferably the Arial font. The court does not reject documents produced with a legible typeface as nonconforming.
- (c) The parties shall single-space text, double-space between paragraphs, print on one side of the paper, and use a top margin of 1 1/2 inches and margins of 1 inch on all remaining sides.
- (d) The parties shall place the title of the document and the page number as a footer at the bottom of the second and all subsequent pages.
- (e) The parties shall leave lines 1 through 7 of the right one-half of page 1 blank for the use of the clerk.
- (f) The parties shall two-hole punch the top of any document over 5 pages in length.
- (g) The parties shall include the number the court has assigned to the file, if any.
- (h) An attorney representing a party, or a party appearing without an attorney, shall place the name of the attorney or party appearing without an attorney, together with an address, phone number, fax number, and e-mail address, if available, in the upper left-hand corner of the first page.
 - (i) At least one attorney of record shall sign every pleading, motion, or other paper of a represented party in the attorney's individual name. A party who is not represented by an attorney shall sign the pleading, motion, or other paper. Except when a rule or statute specifically provides otherwise, a party need not verify the party's pleadings or include an affidavit with them. The court deems an attorney or party to have made the same representations by signing a document whether the attorney or party files by mail, hand delivery, fax, or e-mail attachment. The court deems an attorney's or party's signature on a pleading, motion, or other paper a certification that the party has read the pleading, motion, or other paper; that to the best of the party's knowledge, information, and belief formed after reasonable inquiry it is well grounded in fact and is warranted by existing law or good faith argument for the extension, modification, or reversal of existing law; and that the party has not interposed it for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation. If an attorney or party signs a pleading, motion, or other paper in violation of this rule, the court, upon motion or upon its own initiative, imposes upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the pleading, motion, or other paper, including a reasonable attorney fee. The court strikes unsigned pleadings, motions, or other papers unless, upon notification, the attorney or party promptly rectifies the omission.

History: 2-4-201, 39-71-2901, MCA; IMP, 2-4-201, 39-71-2901, 39-71-2905, 39-71-2914, MCA; NEW, 1994 MAR p. 27, Eff. 1/14/94; AMD, 2014 MAR p. 2829, Eff. 3/1/15; AMD, 2018 MAR p. 305, Eff. 3/15/18.

24.5.307 Third-Party Practice

- (1) The respondent may file a third-party petition with the court naming anyone not already a party to the action who may be liable to any named party for any or all of the claims asserted in the petition.
 - (a) The third-party petitioner shall ensure that the third-party petition includes a short, plain statement of the third-party petitioner's contentions with regard to the third-party respondent's liability and may incorporate allegations of the petition and/or the response to the petition.
 - (b) The third-party petitioner shall file the third-party petition in accordance with ARM 24.5.303 and ARM 24.5.320.
 - (c) The third-party petitioner shall serve the third-party petition in accordance with ARM 24.5.303.
- (2) After filing a response to a petition, the respondent may only attempt to join a third party into a pending case through noticed motion in accordance with ARM 24.5.308 and ARM 24.5.320.
- (3) Within the time set forth in ARM 24.5.320, the third-party respondent shall serve upon all parties, and file with the court, a response that complies with ARM 24.5.302.

History: 2-4-201, 39-71-2401, 39-71-2901, 39-71-2903, 39-71-2905, MCA; IMP, 2-4-201, 39-71-2901, MCA; NEW, 2000 MAR p. 1513, Eff. 6/16/00; AMD, 2002 MAR p. 93, Eff. 1/18/02; AMD, 2014 MAR p. 2829, Eff. 3/1/15; AMD, 2018 MAR p. 305, Eff. 3/15/18.

24.5.307A Joinder and Service of Alleged Uninsured Employers

This rule has been repealed.

History: 2-4-201, 39-71-2401, 39-71-2901, 39-71-2903, 39-71-2905, MCA; IMP, 2-4-201, 39-71-2901, MCA; NEW, 2000 MAR p. 1513, Eff. 6/16/00; AMD, 2002 MAR p. 93, Eff. 1/18/02; REP, 2014 MAR p. 2829, Eff. 3/1/15.

24.5.308 Joining Third Parties

- (1) The joinder of parties is governed where appropriate by the considerations set forth in M. R. Civ. P. 14, 19, 20, and 21.
- (2) Unless otherwise permitted by order of the court, a motion to join a third party must be served within the time set forth in ARM 24.5.320. The motion must be filed and served on all parties and the proposed third party. Any party and the proposed third party shall have the time set forth in ARM 24.5.320 to serve objections to the motion. The court may, for good cause shown, grant joinder on such terms and conditions as are necessary to protect the interests of the existing parties, including the interest in a speedy remedy.
- (3) If the joinder of a third party results in the trial being vacated and good cause is shown, the court may order the insurance company alleged to be at risk at the time of the accident to pay benefits pending the trial. Such insurer may seek indemnity from the responsible insurer if it is later determined that it is not liable.
- (4) Within the time set forth in ARM 24.5.320, the joined party shall serve upon all parties, and file with the court, a response which complies with ARM 24.5.302.

History: 2-4-201, 39-71-2401, 39-71-2901, 39-71-2903, 39-71-2905, MCA; IMP, 2-4-201, 39-71-2901, MCA; NEW, 1983 MAR p. 1715, Eff. 11/26/83; TRANS, from ARM 2.52.308, 1989 MAR p. 2177, Eff. 12/22/89; AMD, 1990 MAR p. 847, Eff. 5/1/90; AMD, 1992 MAR p. 922, Eff.

5/1/92; AMD, 1994 MAR p. 27, Eff. 1/14/94; AMD, 2000 MAR p. 1513, Eff. 6/16/00; AMD, 2014 MAR p. 2829, Eff. 3/1/15.

24.5.309 Intervention

- (1) A party may intervene in a pending proceeding as set forth in M. R. Civ. P. 24(a) and (b).
- (2) If the court vacates the trial because of a party's intervention and the petitioner demonstrates good cause, the court may order the insurance company alleged to be at risk at the time of the accident to pay benefits pending the trial. This insurer may seek indemnity from the responsible insurer if the court later determines that it is not liable.

History: 2-4-201, MCA; IMP, 2-4-201, 39-71-2901, MCA; NEW, 1983 MAR p. 1715, Eff. 11/26/83; TRANS, from ARM 2.52.309, 1989 MAR p. 2177, Eff. 12/22/89; AMD, 1990 MAR p. 847, Eff. 5/1/90; AMD, 1994 MAR p. 27, Eff. 1/14/94; AMD, 2014 MAR p. 2829, Eff. 3/1/15; AMD, 2018 MAR p. 305, Eff. 3/15/18.

24.5.310 Time and Place of Trial Generally

- (1) The court has divided the state into six geographic areas. Generally, the court holds trials in the places designated in (3) except for trials in the Butte venue, which the court holds in Helena unless the parties request otherwise. Upon agreement of the parties and consent of the court, or upon order of the court, the court may hold a trial at any time and any place. The court attempts to accommodate parties' requests for special trial settings; however, the court reserves the discretion to determine the time and place of all trials.
- (2) The court commences trials on Monday of the week set for trial. The court convenes in each area four times per year unless the court finds good cause to cancel a trial term. Court is in session or recess at the convenience of the court. The court regularly prepares a schedule that sets deadlines, the dates for pretrial conferences and trials, and the location of the pretrial conferences or trials in each area.
- (3) The court has named each of the six areas designated for trial schedule purposes for the principal city in the counties making up the area as follows:
 - (a) Kalispell area:
 - (i) Flathead and Lincoln.
 - (b) Missoula area:
 - (i) Lake, Mineral, Missoula, Ravalli, and Sanders.
 - (c) Butte area:
 - (i) Beaverhead, Deer Lodge, Granite, Jefferson, Madison, Powell, Silver Bow, Gallatin, Park, Sweet Grass, and Wheatland.
 - (d) Billings area:
 - (i) Big Horn, Carbon, Golden Valley, Musselshell, Petroleum, Stillwater, Treasure, Yellowstone, Carter, Custer, Dawson, Fallon, McCone, Powder River, Prairie, Richland, Rosebud, Wibaux, Daniels, Garfield, Phillips, Roosevelt, Sheridan, and Valley.
 - (e) Great Falls area:
 - (i) Blaine, Cascade, Chouteau, Fergus, Glacier, Hill, Judith Basin, Liberty, Pondera, Teton, and Toole.
 - (f) Helena area:
 - (i) Broadwater, Lewis and Clark, and Meagher.

- (4) Upon receipt of a petition regarding a dispute meeting the requirements of these rules, the court issues a scheduling order fixing deadlines for discovery, the filing of pretrial motions, preparation of a pretrial order and other pretrial matters; setting the date of the final pretrial conference; and setting a trial at a time that allows 75 days' notice. The court may, for good cause, hold a trial over to the next regular trial date or specially set the trial for a different time and/or place.

History: 2-4-201, MCA; IMP, 2-4-201, 39-71-2901, MCA; NEW, 1983 MAR p. 1715, Eff. 11/26/83; AMD, 1987 MAR p. 1618, Eff. 9/25/87; TRANS, from ARM 2.52.310, 1989 MAR p. 2177, Eff. 12/22/89; AMD, 1990 MAR p. 847, Eff. 5/1/90; AMD, 1994 MAR p. 27, Eff. 1/14/94; AMD, 2003 MAR p. 650, Eff. 4/11/03; AMD, 2014 MAR p. 2829, Eff. 3/1/15; AMD, 2018 MAR p. 305, Eff. 3/15/18.

24.5.311 Emergency Trials

- (1) The petitioner shall indicate any request for emergency trial in the title of the petition, and explain the facts constituting the emergency in the petition. The court may hold a trial upon less than 75 days' notice if the petitioner demonstrates good cause. The court designates these trials "emergency trials." The petitioner shall set forth facts constituting the emergency in sufficient detail for the court to determine whether an emergency exists. The petitioner shall also set forth a statement indicating the petitioner is ready to proceed to trial. If the petitioner does not demonstrate good cause for the emergency setting in the petition, the court sets the trial on its regular trial calendar. The court may find that an emergency exists if the petitioner demonstrates:
- (a) the potential for irreversible or serious harm resulting from inability to obtain medical care or medications;
 - (b) undue financial hardship constituting an inability to obtain the necessities of life such as food, shelter, clothing, or transportation; or
 - (c) other facts establishing an emergency.
- (2) The court, on its own motion, may set a trial as an emergency trial. When the court orders an emergency trial, the court provides reasonable notice of the time and place for a pretrial conference and for the trial.
- (3) If the court makes a preliminary determination that good cause exists for an emergency trial setting, the court issues a notice to the opposing party, indicating that:
- (a) the petitioner filed a request for emergency trial;
 - (b) the court made a preliminary determination that the petitioner set forth good cause; and
 - (c) the opposing party may file a written objection, containing a concise statement setting forth the basis for the objection, within the time set forth in ARM 24.5.320.
- (4) The court schedules a hearing as soon as practicable after either the opposing party files a written objection or the time set forth in ARM 24.5.320 for objection to the request for emergency trial setting runs, whichever occurs first. The court may hold the hearing in person or by phone. The court conducts the hearing to determine the validity of any objections to the emergency trial setting and to confirm the parties are prepared to proceed to trial. The court issues an order granting or denying the request for an emergency trial setting within 5 business days, or as soon as practicable, after the conclusion of the hearing.

The court includes a scheduling order fixing the deadlines referenced in ARM 24.5.310(4) within either the emergency or regular trial setting.

History: 2-4-201, MCA; IMP, 2-4-201, 39-71-2901, MCA; NEW, 1983 MAR p. 1715, Eff. 11/26/83; TRANS, from ARM 2.52.311, 1989 MAR p. 2177, Eff. 12/22/89; AMD, 1994 MAR p. 27, Eff. 1/14/94; AMD, 2014 MAR p. 2829, Eff. 3/1/15; AMD, 2018 MAR p. 305, Eff. 3/15/18.

24.5.312 Setting Time and Place of Trial by Stipulation or in Best Interests of the Court

This rule has been repealed.

History: Sec. 2-4-201, MCA; IMP, Sec. 2-4-201, 39-71-2901, MCA; NEW, 1983 MAR p. 1715, Eff. 11/26/83; PREV. Rule #, ARM 2.52.210; TRANS, from Admin., 1989 MAR p. 2177, Eff. 12/22/89; REP, 2003 MAR p.650, Eff. 4/11/03.

24.5.313 Recusal

This rule has been repealed.

History: 2-4-201, MCA; IMP, 2-4-201, 39-71-2901, MCA; NEW, 1998 MAR p. 1281, Eff. 5/15/98; REP, 2014 MAR p. 2829, Eff. 3/1/15.

24.5.314 Adjudication of Interim Benefit Claims Under 39-71-610, MCA

- (1) Appeals of determinations by the Department of Labor and Industry regarding interim benefits under 39-71-610, MCA, may be presented to the court in letter form. The court initially addresses such appeals informally through telephone conference involving all parties.
- (2) If any party objects to informal resolution of a dispute under 39-71-610, MCA, the court holds a formal evidentiary hearing on an expedited basis. Such hearing may be conducted through telephone conference if all parties agree. If requested by any party, the court promptly holds an in-person hearing in Helena or, at the court's discretion, in some other venue at a date and time set by the court.

History: 2-4-201, 39-71-610, 39-71-2901, 39-71-2903, 39-71-2905, MCA; IMP, 2-4-201, 39-71-2901, MCA; NEW, 2000 MAR p. 1513, Eff. 6/16/00; AMD, 2014 MAR p. 2829, Eff. 3/1/15.

24.5.315 Pretrial Identification of Witnesses and Exhibits

- (1) At the time set by the court, the parties shall exchange and file with the court:
 - (a) a list of all lay witnesses, including those the parties identified in the petition for hearing or response to petition for hearing, along with a summary of the subject matter on which the parties expect each lay witness to testify;
 - (b) a list of all expert witnesses, including those the parties identified in the petition for hearing or response to petition for hearing, along with a summary of the subject matter on, and the nature of the facts and opinions to, which the parties expect each expert witness to testify; and
 - (c) a list of all proposed exhibits, identifying the exhibit by date, author, and number of pages.
- (2) If a party considers another party's disclosures inadequate, the party shall contact the other party within the time set by the court to request additional information. If the party remains dissatisfied with the information provided by

the other party, the dissatisfied party may move to compel further disclosure in accordance with ARM 24.5.316 and any deadline on these motions set by the court.

History: 2-4-201, MCA; IMP, 2-4-201, 39-71-2901, MCA; NEW, 2018 MAR p. 305, Eff. 3/15/18.

24.5.316 Motions

- (1) The court fixes the deadline for filing a motion to amend a pleading, to dismiss, to quash, for summary judgment, to compel, for a protective order, in limine, or for other relief in a scheduling or other order, unless the court specifies a different time in these rules.
- (2) The moving party shall make every motion in writing or on the record.
 - (a) The moving party shall state within the motion whether any other party opposes it. If the moving party is unable to contact any other party, the moving party shall certify that the moving party attempted to do so.
 - (b) If the moving party contacts all other parties and none oppose the motion, the moving party need not file any other documents beyond the motion. The court deems the motion ripe for decision and rules.
 - (c) If a party opposes the motion, or if the moving party is unable to contact any other party, the moving party shall file the motion with a supporting brief. The moving party may include supporting documents and affidavits with the briefs. A party opposing a motion shall file a response brief within the time set forth in ARM 24.5.320. The party may include appropriate documents and affidavits. Within the time set forth in ARM 24.5.320, the moving party may file a reply brief. The court may change these filing deadlines by order.
- (3) In addition to the requirements set forth in this rule, a party filing a motion for summary judgment under ARM 24.5.329, as well as a party opposing that motion, shall comply with the requirements of that rule.
- (4) The parties may present motions regarding discovery, procedure, and similar pretrial issues informally by phone conference. The court arranges the call and for the participation of all parties. The court may designate a hearing examiner to preside and decide the motion. The court may make an oral decision or direct the moving party to file the motion in writing and all parties to file briefs. The court confirms any oral decision thereafter by written decision.
- (5) Notwithstanding anything in this rule, the parties may file or present motions or objections related to evidentiary and other matters arising at trial.
- (6) A party seeking the court's leave for an extension of time shall make this request in writing. The requesting party shall state whether any other party opposes it. If the requesting party is unable to contact any other party, the requesting party shall certify that the requesting party attempted to do so. If the requesting party contacts all other parties and none oppose the request, the requesting party may make the request informally by e-mail message. If a party opposes the request, or if the requesting party is unable to contact any other party, the requesting party shall make the request by formal motion. If the court grants an ex parte extension, the requesting party shall immediately advise the party it was initially unable to contact of the new due date. The court does not grant extensions of more than 10 days from the original due date except under extraordinary circumstances. If the filing deadline has passed, the court grants extensions of time only if the requesting party demonstrates good cause.

- (7) Unless the court either orders oral argument or enlarges the time, the court deems the motion submitted at the expiration of any of the applicable time limits. If the court orders oral argument, the court deems the motion submitted at the close of argument unless the court orders additional briefs, in which case the court deems the motion submitted at the deadline for filing the final brief.
- (8) The court may summarily rule on the motion if any party is required, but fails, to file a brief. The court may deem the moving party's failure to file a brief with the motion an admission that the motion is without merit. The court may deem the opposing party's failure to timely file a response brief an admission that the motion is well-taken. The moving party may file a reply brief. The court does not summarily rule on the motion if the moving party fails to file a reply brief.

History: 2-4-201, MCA; IMP, 2-4-201, 39-71-2901, MCA; NEW, 1983 MAR p. 1715, Eff. 11/26/83; TRANS, from ARM 2.52.316, 1989 MAR p. 2177, Eff. 12/22/89; AMD, 1990 MAR p. 847, Eff. 5/1/90; AMD, 1992 MAR p. 921, Eff. 5/1/92; AMD, 1994 MAR p. 27, Eff. 1/14/94; AMD, 1996 MAR p. 557, Eff. 2/23/96; AMD, 2014 MAR p. 2829, Eff. 3/1/15; AMD, 2018 MAR p. 305, Eff. 3/15/18.

24.5.317 Medical Records

- (1) "Medical records" for purposes of this rule includes all medical notes, reports, test results, correspondence, and other written records or materials regularly maintained by any medical provider as a part of the provider's records or file. "Medical records" includes all reports, correspondence, and other documents authored by any medical provider.
- (2) Within the time set by the scheduling or other order of the court, the parties shall exchange all medical records in the parties' possession relevant to the claimant's work-related medical conditions, other than records of professional consultants who have not examined the claimant, will not be witnesses at trial, and whose records the party does not intend to offer into evidence. Failure to exchange any medical record by the exchange deadline precludes its use at trial except by stipulation of the parties or order of the court for good cause.
- (3) Any party who intends to object to the admissibility of a medical record shall make such objection in writing. All objections to medical records must identify each medical record to which an objection is made and the particular objection to the record. The party shall serve its objections upon the adverse party within such time fixed by the scheduling or other order of the court. Failure to object to a medical record in the manner and within the time specified by this rule is deemed a waiver of any objection to the record, and constitutes an admission by the party that the record is authentic and admissible under the Montana Rules of Evidence and the rules of the Workers' Compensation Court.
- (4) A party is not required to call as a witness the medical provider or the custodian of the medical record solely for the purpose of authenticating the medical record. If a party timely objects to the authenticity of a medical record, that party may call the medical provider or the custodian of the record as a witness either at trial or by deposition and may examine the witness regarding the authenticity of the medical record.

History: 2-4-201, MCA; IMP, 2-4-201, 39-71-2901, MCA; NEW, 1983 MAR p. 1715, Eff. 11/26/83; TRANS, from ARM 2.52.317, 1989 MAR p. 2177, Eff. 12/22/89; AMD, 1990 MAR p. 847, Eff. 5/1/90; AMD, 1994 MAR p. 27, Eff. 1/14/94; AMD, 2001 MAR p. 153A, Eff. 3/1/01; AMD, 2014 MAR p. 2829, Eff. 3/1/15.

24.5.318 Pretrial Conference, Pretrial Order, and Exhibits

- (1) The court holds a pretrial conference in every case it expects to proceed to trial.
 - (a) Generally, the pretrial conference takes place 2 weeks before trial.
 - (b) The parties shall present any disputes regarding the content of the pretrial order at the pretrial conference.
 - (c) The court appoints a hearing examiner to conduct the pretrial conference and delegates authority to the hearing examiner to rule on all matters discussed at the pretrial conference, including pretrial motions of the parties.
 - (d) The court may conduct a pretrial conference by phone.
- (2) The court requires a pretrial order as follows:
 - (a) At least one week prior to the pretrial conference, the parties shall confer to determine the contents of the pretrial order. The petitioner, or, in cases involving a pro sé petitioner, the respondent, shall include the following in the pretrial order:
 - (i) a statement of jurisdiction pursuant to the appropriate statutes;
 - (ii) a list of all pending motions;
 - (iii) any uncontested facts;
 - (iv) any stipulations between the parties;
 - (v) a joint statement of the issues to be determined by the court;
 - (vi) the parties' contentions, including contentions that the claimant argues provide a basis for a claim of unreasonableness on the part of the insurer;
 - (vii) a list of all exhibits to be offered by each party on an attached exhibit list;
 - (viii) a list of all witnesses, including the name, address, and occupation of each witness, and a summary of the subject matter on which the parties expect each witness to testify;
 - (ix) any unusual legal or evidentiary issues;
 - (x) the estimated length of trial;
 - (xi) a statement as to whether the parties intend to file trial briefs and/or proposed findings of fact and conclusions of law;
 - (xii) a statement as to whether the parties have taken or scheduled depositions; and
 - (xiii) the trial date, if known.
 - (b) By the dates specified by the court, the petitioner, or, in cases involving a pro sé petitioner, the respondent, shall submit the proposed and final pretrial orders in the form set forth in ARM 24.5.318(2)(a)(i) through (xiii). The court considers pretrial orders submitted by fax or e-mail attachment compliant with the submission deadlines.
 - (c) The parties shall sign the final pretrial order at trial. Upon the judge's signature, the court files the final pretrial order, which supersedes all other pleadings and governs the trial proceedings. The court allows amendments to the final pretrial order either by stipulation of the parties or for good cause.
- (3) The court adheres to the following exhibit rules:
 - (a) The parties shall prepare any exhibits as follows:
 - (i) Prior to the pretrial conference, the respondent shall provide to the petitioner sufficient copies for all parties of every exhibit that the

- respondent intends to offer for admission, including deposition exhibits. The respondent shall separate and number each exhibit, and number the pages within each exhibit (for example, Ex. 1-1). In the case of a pro sé petitioner, the pro sé petitioner shall provide the respondent with sufficient copies for all parties of every exhibit that the petitioner intends to offer for admission, including deposition exhibits. The pro sé petitioner shall separate and number each exhibit, and number the pages within each exhibit (for example, Ex. 1-1).
- (ii) The parties may not submit duplicate exhibits unless the duplicate exhibit is imperative to the understanding of the subject records or, in the case of medical records, one provider is relying on the records of another provider.
- (b) The parties shall prepare an exhibit list as follows:
- (i) For each exhibit, the petitioner, or, in cases involving a pro sé petitioner, the respondent, shall set forth the following in the exhibit list:
- (A) the exhibit number;
 - (B) a description of the exhibit;
 - (C) the number of pages in the exhibit;
 - (D) the offering party;
 - (E) whether any other party objects to the exhibit;
 - (F) the grounds upon which any objecting party bases the objection(s); and
 - (G) a blank column reserved for the court's decision on the admissibility of the exhibit.
- (ii) The petitioner, or in cases involving a pro sé petitioner, the respondent, shall revise all copies of the exhibit list as necessary to reflect changes or additions requested by the court or agreed to by the parties at the pretrial conference.
- (c) The parties shall prepare an exhibit book as follows:
- (i) The petitioner, or, in cases involving a pro sé petitioner, the respondent, shall prepare the exhibit book, including:
- (A) verifying that all parties' exhibits and their pages are numbered;
 - (B) combining and tabbing the exhibits;
 - (C) either binding the exhibits or placing them in a three-ring notebook; and
 - (D) including the exhibit list in the front of each exhibit book.
- (ii) By a date specified by the court, the petitioner, or, in cases involving a pro sé petitioner, the respondent, shall:
- (A) file the exhibit book by mail or hand delivery;
 - (B) provide conformed copies of the exhibit book to all parties at the time of filing;
 - (C) bring to trial a conformed exhibit book for any witness testifying live; and
 - (D) provide a conformed exhibit book to any witness testifying via videoconference.
- (iii) The court may refuse to accept exhibits that do not meet these criteria and/or may order resubmission of the exhibits in the correct format.

History: 2-4-201, MCA; IMP, 2-4-201, 39-71-2901, MCA; NEW, 1983 MAR p. 1715, Eff. 11/26/83; TRANS, from ARM 2.52.318, 1989 MAR p. 2177, Eff. 12/22/89; AMD, 1990 MAR p. 847, Eff. 5/1/90; AMD, 1994 MAR p. 27, Eff. 1/14/94; AMD, 1996 MAR p. 557, Eff. 2/23/96;

AMD, 2003 MAR p. 650, Eff. 4/11/03; AMD, 2014 MAR p. 2829, Eff. 3/1/15; AMD, 2018 MAR p. 305, Eff. 3/15/18.

24.5.319 Amended Pleadings

- (1) A party may only file an amended pleading within the time period set forth in the scheduling order or by leave of court. A party shall file any required response to an amended pleading within the time set forth in ARM 24.5.320.

History: 2-4-201, MCA; IMP, 2-4-201, 39-71-2901, MCA; NEW, 2014 MAR p. 2829, Eff. 3/1/15; AMD, 2018 MAR p. 305, Eff. 3/15/18.

24.5.320 Computation of Time

- (1) The court applies the following provisions with respect to the computation of time:
- (a) In computing the time for any response as provided for in these rules, the court includes weekends and holidays. If a party's deadline falls on a weekend or holiday, the party shall file by the next workday.
 - (b) Whenever a party has the right or is required to do some act within a prescribed period of time after the service by mail, or by electronic means if consented to in writing, of a notice or other paper upon the party, the court adds 3 days to the prescribed period.
 - (c) A party filing by fax or e-mail attachment shall ensure that the court receives a hard copy original within 5 days.
- (2) The court sets forth specific information regarding format and content requirements within the rule relating to each specific filing. Except as provided elsewhere within these rules, the court applies the following time limits:

Document Type	Reference Rule	Days to File
response to petition	24.5.302(1)	21 days after service of petition
third-party petition	24.5.307(1)(b)	21 days after service of petition
response to third-party petition	24.5.307(3)	10 days after service of third-party petition
motion to join third party	24.5.308(2)	30 days after service of petition
objection to joining third party	24.5.308(2)	10 days after service of motion to join third party
response to petition by third party	24.5.308(4)	10 days after service of order joining third party
objection to request for emergency trial setting	24.5.311(3)(c)	5 days after service of notice of request for emergency trial setting
response to motion	24.5.316(2)(c)	10 days after service of motion

response to motion for summary judgment	24.5.316(2)(c), (3)	10 days after service of motion, but no earlier than deadline for filing response to petition
reply to opposing party	24.5.316(2)(c)	5 days after service of response to motion
response to amended pleading	24.5.319(1)	10 days after service of amended pleading
witness to sign deposition	24.5.322(7)	30 days after submission to witness
cross-questions to deposition upon written questions	24.5.322(12)	10 days after service of notice and written questions
redirect questions to deposition upon written questions	24.5.322(12)	10 days after service of cross-questions
recross-questions to deposition upon written questions	24.5.322(12)	5 days after service of redirect questions
answers to interrogatories	24.5.323(2)	20 days after service of interrogatories
verification to interrogatories by unnatural person	24.5.323(4)	10 days after service of request
response to request for production	24.5.324(3)	20 days after service of request
request for relief from default judgment	24.5.327(5)	60 days after entry of judgment
request for hearing on motion for summary judgment	24.5.329(5)	5 days after deadline for reply to opposing party
objections to court's written findings of fact, conclusions of law, and judgment, and request for rehearing	24.5.335(1)(c)	20 days after entry of judgment
motion for reconsideration	24.5.337(2)	20 days after decision
application for taxation of costs	24.5.342(1)	10 days after entry of judgment allowing costs
objection to application for taxation of costs	24.5.342(7)(a)	10 days after service of application for taxation of costs

response to objection to application for taxation of costs	24.5.342(7)(b)	5 days after service of objection to application for taxation of costs
claim for attorney fees	24.5.343(2)(a)	20 days after expiration of appeal period or remittitur on appeal of court's final decision or 20 days after filing of court's decision
objection to claim for attorney fees	24.5.343(2)(b)	20 days after service of claim for attorney fees
request for attorney fee hearing	24.5.343(2)(c)	10 days after service of objection (if hearing requested by claimant's attorney) or at same time as filing of objection (if hearing requested by objecting party)
petition for new trial and/or request for amendment to findings of fact and conclusions of law	24.5.344(1)	20 days after service of order or judgment
opposition to petition for new trial and/or request for amendment to findings of fact and conclusions of law	24.5.344(2)	10 days after service of petition for new trial or request for amendment

History: 2-4-201, MCA; IMP, 2-4-201, 39-71-2901, MCA; NEW, 2014 MAR p. 2829, Eff. 3/1/15; AMD, 2018 MAR p. 305, Eff. 3/15/18

Rule 24.5.321 reserved

24.5.322 Depositions

- (1) A party may take the testimony of any person, including a party, by deposition upon oral examination after the court or appropriate party has served the petition. The petitioner shall obtain leave of court if the petitioner seeks to take a deposition prior to the expiration of 20 days from the date of service of the petition. If a party seeks to take a post-trial deposition, the party shall obtain leave of court. A party may compel the attendance of witnesses by subpoena as provided by ARM 24.5.331.
- (2) A party seeking to take the deposition of any person upon oral examination shall give reasonable notice in writing to every other party to the proceeding and:
 - (a) include in the notice the time and place for taking the deposition and the name and address of each person to be examined; and
 - (b) if intending to serve a subpoena duces tecum on the person to be examined, attach to or include in the notice the designation of the materials to be produced as set forth in the subpoena.

- (3) The court may lengthen or shorten the time for taking the deposition if a party demonstrates good cause.
- (4) The parties may examine and cross-examine witnesses in the same manner that the court permits at trial. The officer before whom the deposition is to be taken shall put the witness on oath and shall personally, or by someone acting under the officer's direction and in that person's presence, stenographically record the testimony of the witness. If requested by a party, the person who recorded the testimony shall transcribe it.
- (5) Unless they agree otherwise, the parties shall make all objections at the time of taking the deposition and on the record. The parties shall take evidence to which a party objects subject to the objections. The parties shall brief deposition objections. The court may deem the parties' failure to do so a withdrawal of the objections.
- (6) At any time during the deposition, on motion of a party or of the deponent, and upon a showing that the officer is conducting the examination in bad faith or in a manner as unreasonably to annoy, embarrass, or oppress a party or the deponent, the parties shall suspend the taking of the deposition for the time necessary for the objecting party or deponent to move the court for an order. The court may order the officer conducting the examination to cease taking the deposition, or may limit the scope and manner of the taking of the deposition. If the court ends the examination by order, the parties may resume the deposition only upon further order of the court. The court may order the offending party to pay to the other party the amount of the reasonable expenses that the adjournment and resumption of the deposition caused that party to incur, including reasonable attorney fees, and the court may adjudge the offending party or attorney guilty of contempt.
- (7) The witness shall examine any transcribed deposition either by reading it or having it read aloud. The witness shall enter any changes in form or substance that the witness desires to make upon the deposition. The witness shall then sign under oath, unless the parties and the witness waive the signing or the witness is ill, cannot be found, or refuses to sign. If the witness does not sign the deposition within the time set forth in ARM 24.5.320, the officer shall sign it and state on the record the reason, if any, that the witness has not signed the deposition. A party may then use the deposition as fully as though the witness had signed it.
- (8) The parties, by written stipulation, or by stipulation entered upon the record of a deposition, may provide that they may take depositions before any person, at any time or place, upon any notice, and in any manner. The parties may use these depositions like other depositions.
- (9) Any party may use the deposition of a witness or a party for any purpose, regardless of the availability of the witness or party to testify at trial, unless the court restricts the deposition's usage because it would serve the interests of justice.
- (10) If a party proposes to offer a transcribed deposition for the court's consideration, that party shall:
 - (a) submit it by e-mail attachment by the date specified by the court; and
 - (b) file the hard copy original at or before trial.
- (11) Any party participating in a deposition may make a simultaneous digital recording of the deposition. A party who intends to digitally record a deposition shall notify all parties. If a party proposes to offer the digitally recorded

deposition for the court's consideration, that party shall provide a copy to the court in DVD format, labeled with the name of the case and the name or names of all witnesses whose depositions are contained on the digitally recorded deposition. A party filing a digitally recorded deposition with the court shall also provide a transcript prepared by the court reporter who attended the deposition.

- (12) A party may take a deposition upon written questions. The party taking the deposition shall give reasonable notice to all other parties of the name and address of the person who is to answer the questions and the name or descriptive title and address of the officer before whom the deposition is to be taken. Within the time set forth in ARM 24.5.320 after service of the notice and written questions, a party may serve cross-questions upon all other parties. Thereafter, within the time set forth in ARM 24.5.320, a party may serve redirect questions upon all other parties. Within the time set forth in ARM 24.5.320 after the service of the redirect questions, a party may serve recross-questions upon all other parties.

History: 2-4-201, MCA; IMP, 2-4-201, 39-71-2901, MCA; NEW, 1983 MAR p. 1715, Eff. 11/26/83; TRANS, from ARM 2.52.322, 1989 MAR p. 2177, Eff. 12/22/89; AMD, 1990 MAR p. 847, Eff. 5/1/90; AMD, 1994 MAR p. 675, Eff. 4/1/94; AMD, 2014 MAR p. 2829, Eff. 3/1/15; AMD, 2018 MAR p. 305, Eff. 3/15/18.

24.5.323 Interrogatories

- (1) A party may serve written interrogatories upon an adverse party either with the petition or at any time after the service of a petition. If a party wishes to serve interrogatories with the petition, the party shall furnish sufficient copies to the court for service with the petition.
- (2) The party upon whom the interrogatories have been served shall serve a copy of the answers on the party submitting the interrogatories within the time set forth in ARM 24.5.320, unless the court lengthens or shortens the time. Answers must not be due in less than 30 days from the service of the petition.
- (3) If the interrogatories are propounded upon the claimant or any other party who is a natural person, then the party shall sign the answers under oath. If the party is the insurer or other entity which is not a natural person, then the party's attorney or other representative of the party may sign the answers and such answers need not be verified. Whether or not verified, the signature of the person signing the answers constitutes a certification that the answers are complete and truthful to the best of the signor's knowledge.
- (4) If the answers to interrogatories are made on behalf of an insurer or some other party which is not a natural person, the party propounding the interrogatories may, after receiving the answers, request that the answers be verified, under oath, by the person employed by the insurer or party, other than an attorney for the insurer or party, having the most knowledge of the subject matters mentioned in the interrogatories. The request must be made in writing but need not be filed with the court. Within the time set forth in ARM 24.5.320, the insurer or other party shall provide the requested verification.
- (5) Proof of service of interrogatories and answers thereto must be filed with the court simultaneously with the service of discovery on the other party. Interrogatories and answers thereto must not be filed except by leave of court. When a motion is filed making reference to an interrogatory answer, the party filing the motion shall also submit the interrogatory and interrogatory answer to which reference is made. Answers to interrogatories may be used at trial to

- the extent allowed by the Montana Rules of Evidence and the Montana Rules of Civil Procedure.
- (6) No party shall serve on any other party more than 20 interrogatories in the aggregate, inclusive of subparts. Subparts of any interrogatories must relate directly to the subject matter of the interrogatory. Any party desiring to serve additional interrogatories must file a written motion setting forth the proposed additional interrogatories and the reasons establishing the necessity for their use.
 - (7) Each interrogatory must be answered separately and fully in writing under oath unless it is objected to, in which event the reasons for objection must be stated in lieu of an answer. Objections may be made because of annoyance, expense, embarrassment, oppression, irrelevance, or other good cause. Objections must be signed by the party making them. The party answering the interrogatories shall set forth a verbatim recopy of each of the interrogatories, followed by the answer or objection thereto.
 - (8) The court will, except in extraordinary circumstances, sustain objections to numerous and complex interrogatories which are not limited to the important facts of the case and which are concerned with numerous minor details.
 - (9) An interrogatory is not objectionable merely because it is phrased in the form of a request for admission.

History: 2-4-201, MCA; IMP, 2-4-201, 39-71-2901, MCA; NEW, 1983 MAR p. 1715, Eff. 11/26/83; TRANS, from ARM 2.52.323, 1989 MAR p. 2177, Eff. 12/22/89; AMD, 1990 MAR p. 847, Eff. 5/1/90; AMD, 1992 MAR p. 921, Eff. 5/1/92; AMD, 1994 MAR p. 675, Eff. 4/1/94; AMD, 1998 MAR p. 1281, Eff. 5/15/98; AMD, 2014 MAR p. 2829, Eff. 3/1/15.

24.5.324 Request for Production

- (1) A party may serve a request for production upon an adverse party either with the petition or at any time after the service of a petition. If a party wishes to serve a request for production with the petition, the party shall furnish sufficient copies to the court for service with the petition. The request may be:
 - (a) to produce and permit the party making the request, or the party's agent, to inspect and copy any designated documents or records, or to copy, test, or sample any tangible things, which may be relevant and which are in the possession, custody, or control of the party upon whom the request is served; or
 - (b) to permit entry upon designated land or other property in the possession or control of the party upon whom the request is served for the purpose of inspection and measuring, surveying, photographing, testing, or sampling the property or any designated object or operation thereon, within the limits of relevancy.
- (2) Proof of service of requests for production and responses thereto must be filed with the court simultaneously with the service of discovery on the other party. Requests for production and answers thereto must not be filed except by leave of court. When a motion is filed making reference to a request for production, the party filing the motion shall also submit the request for production, the response thereto, and the documents produced pursuant to the response. Requests for production and responses thereto may be used at trial to the extent allowed by the Montana Rules of Evidence and the Montana Rules of Civil Procedure.

- (3) The party upon whom a request for production is served shall serve a written response within the time set forth in ARM 24.5.320 unless the court lengthens or shortens the time. A response must not be due in less than 30 days from the service of the petition. The response must state, with respect to each item or category, that inspection and related activities will be permitted as requested, unless the request is objected to, in which event the reasons for objection must be stated. For a partial objection, the part subject to objection must be specified.
- (4) If the request is for production of the file of a party and objection is made to such production on the grounds of privilege or work product, the objecting party shall produce all documents other than those specific documents which are subject to objection. Where the objection is only to part of a document, the document must be produced with the portions subject to objection redacted. The objecting party shall also provide in its response a list of documents which are subject to objections, specifically identifying:
 - (a) the type of document;
 - (b) the number of pages of the document;
 - (c) the general subject matter of the document;
 - (d) the date of the document;
 - (e) where the document is a communication, the author of the document, the address of the author, and the relationship of the author and the addressee;
 - (f) whether the objection extends to the entire document or only to portions of the document; and
 - (g) the specific privilege, including work product, which is being claimed as to each document.
- (5) Where the objecting party asserts that this minimal information would encroach upon the attorney-client privilege or the work product doctrine, the party must state how disclosure of the information would violate the privilege or doctrine.
- (6) The court rules upon objections based on claims of attorney-client privilege or work product only upon the filing of a motion to compel, at which time the following procedure applies:
 - (a) along with the response brief, the objecting party shall furnish the court with a copy of the original response to the request for production and the original or a copy of all documents which are identified in the motion to compel;
 - (b) where only parts of the document are subject to an objection, the objecting party shall identify those parts; and
 - (c) the court will review the documents in camera and sustain or overrule each objection.
- (7) If the request is intended to obtain the production of documents which are not in the adverse party's possession but are within the adverse party's custody or control, unless otherwise ordered by the court, the adverse party may, in lieu of providing the documents, provide an authorization or a release as necessary to obtain such documents from all persons or entities physically possessing the documents.

History: 2-4-201, MCA; IMP, 2-4-201, 39-71-2901, MCA; NEW, 1983 MAR p. 1715, Eff. 11/26/83; TRANS, from ARM 2.52.324, 1989 MAR p. 2177, Eff. 12/22/89; AMD, 1990 MAR p. 847, Eff. 5/1/90; AMD, 1994 MAR p. 675, Eff. 4/1/94; AMD, 1996 MAR p. 557, Eff. 2/23/96; AMD, 2014 MAR p. 2829, Eff. 3/1/15.

24.5.325 Limiting Discovery

- (1) Upon motion by a party or by the person from whom discovery is sought, and for good cause, the court may make any order that justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following:
 - (a) that the party seeking discovery may not have it;
 - (b) that the party seeking discovery may only have it on specified terms and conditions, including a designation of the time or place;
 - (c) that the party seeking discovery may only have it by a method of discovery other than that selected by the party seeking discovery;
 - (d) that the party seeking discovery may not inquire into certain matters, or that the party seeking discovery may have it limited to certain matters;
 - (e) that the party seeking discovery shall conduct it with no one present except persons designated by the court;
 - (f) that a party may only open a deposition the court has sealed by order by further order of the court;
 - (g) that a person from whom discovery is sought need not disclose a trade secret or other confidential research, development, or commercial information, or that the person need only disclose it in a designated way;
 - (h) that the parties shall file specified documents simultaneously or shall enclose information in sealed envelopes to be opened as directed by the court.
- (2) If the court denies the motion for a protective order in whole or in part, the court may, on terms and conditions as are just, order that any party or person provide or permit discovery.

History: 2-4-201, MCA; IMP, 2-4-201, 39-71-2901, MCA; NEW, 1983 MAR p. 1715, Eff. 11/26/83; TRANS, from ARM 2.52.325, 1989 MAR p. 2177, Eff. 12/22/89; AMD, 1994 MAR p. 675, Eff. 4/1/94; AMD, 2014 MAR p. 2829, Eff. 3/1/15; AMD, 2018 MAR p. 305, Eff. 3/15/18.

24.5.326 Failure to Make Discovery – Sanctions

- (1) If a party fails to respond to discovery pursuant to these rules, or makes evasive or incomplete responses to discovery, or objects to discovery, the party seeking discovery may move for an order compelling responses. With respect to a motion to compel discovery, the court may, at the request of a party or upon its own motion, impose such sanctions as it deems appropriate. Such sanctions include but are not limited to awarding the prevailing party attorney fees and reasonable expenses incurred in obtaining the order or in opposing the motion. The court imposes sanctions against the non-prevailing party unless the party's position with regard to the motion to compel was substantially justified or other circumstances make sanctions unjust. If the party fails to make discovery following issuance of an order compelling responses, the court may order such sanctions as it deems just under the circumstances. Prior to any imposition of sanctions, the court provides the party who may be sanctioned with the opportunity for a hearing.

History: 2-4-201, MCA; IMP, 2-4-201, 39-71-2901, MCA; NEW, 1983 MAR p. 1715, Eff. 11/26/83; TRANS, from ARM 2.52.326, 1989 MAR p. 2177, Eff. 12/22/89; AMD, 1994 MAR p. 27, Eff. 1/14/94; AMD, 1998 MAR p. 1281, Eff. 5/15/98; AMD, 2014 MAR p. 2829, Eff. 3/1/15.

24.5.327 Default

- (1) If a party required to file a responsive pleading under these rules fails to file a responsive pleading within the time specified, or otherwise fails to defend, the court at the request of the petitioner or upon its own motion issues an order providing that the party shall file a responsive pleading within the time ordered by the court. If the party fails to respond to the court's order within the time specified, the court orders the party to appear before the court at a specified date, time, and place to show cause why the court should not find the party in default and grant relief in accordance with the petition. The court serves the order by mail if upon an insurer, otherwise by certified mail or through personal service as directed by and at the discretion of the court.
- (2) If the party fails to file a responsive pleading within the time provided and fails to appear at the show cause hearing, the court enters a default judgment against the party.
- (3) If any party fails to comply with any order of the court, the court may, after notice and hearing, enter a default judgment against the party.
- (4) If, to enable the court to enter judgment or to carry it into effect, the court deems it necessary to inquire into amounts of benefits or other matters, the court conducts a hearing into those matters.
- (5) A party shall base any request for relief from default judgment upon good cause, such as mistake, inadvertence, surprise, or excusable neglect, and file it within the time set forth in ARM 24.5.320.

History: 2-4-201, 39-71-2901, 39-71-2903, 39-71-2905, MCA; IMP, 2-4-201, 39-71-2901, MCA; NEW, 2000 MAR p. 1513, Eff. 6/16/00; AMD, 2014 MAR p. 2829, Eff. 3/1/15; AMD, 2018 MAR p. 305, Eff. 3/15/18.

Rule 24.5.328 reserved

24.5.329 Summary Judgment

- (1) Pursuant to any deadlines set by the court under ARM 24.5.316(1), a party may move for a summary judgment in the party's favor upon all or any part of a claim or defense.
- (a) The court may decline to consider individual summary judgment motions if it concludes that it may resolve the issues as expeditiously by trial as by motion. The court may decline to consider a summary judgment motion that does not comply with ARM 24.5.329 or other applicable rules.
- (b) If upon the filing of a motion for summary judgment, the party against whom the motion is directed believes that summary judgment is inappropriate for the reasons set forth in (1)(a) above, that party shall immediately notify the court and arrange for a phone conference between the court and counsel. The court determines after the conference whether further briefing and proceedings are appropriate.
- (2) Subject to the other provisions of this rule, the court renders summary judgment forthwith if the pleadings, depositions, answers to interrogatories, and responses to requests for production, together with the affidavits, if any, show that no genuine issue exists as to any material fact and that the moving party is entitled to a judgment as a matter of law.
- (3) A party filing a motion under this rule shall set forth in its brief a statement of uncontroverted facts. The party shall set forth the specific facts upon which

- it relies in serial fashion and not in narrative form, and refer to a specific pleading, affidavit, or other document where it found each fact. The party shall authenticate all attached exhibits. If the movant and the party opposing the motion agree that no genuine issue of any material fact exists, they may jointly file a statement of stipulated facts with the court.
- (4) A party opposing a motion filed under this rule shall set forth in its brief any specific issues of material fact that it believes preclude summary judgment in favor of the moving party. The party shall set forth the specific facts upon which it relies in serial fashion and not in narrative form, and refer to a specific pleading, affidavit, or other document where it found each fact. The court deems all properly supported facts asserted by the movant to be uncontroverted for the purposes of the summary judgment motion unless specifically and properly controverted by the opposing party. If the party opposing the motion includes additional facts in its brief, it shall set forth those facts in serial fashion and not in narrative form, and refer to a specific pleading, affidavit, or other document where it found each fact. The party shall authenticate all attached exhibits.
 - (5) If either party desires a hearing on the motion, the party shall make the request in writing within the time set forth in ARM 24.5.320. The court may thereupon set a time and place for hearing. If no party requests a hearing, the parties waive any right to a hearing given by these rules. The court may order a hearing on its own motion.
 - (6) If on motion under this rule the court does not render judgment upon the whole case or for all the relief requested and deems a trial necessary, the court may on its own motion ascertain what material facts exist without substantial controversy and what material facts are in good faith controverted. The court then makes an order specifying the facts that appear without substantial controversy and directs further proceedings in the action as are just. Upon the trial of the action, the court deems the facts so specified established and conducts the trial accordingly.
 - (7) A party shall make any supporting or opposing affidavits on personal knowledge, set forth facts as would be admissible in evidence, and show affirmatively that the affiant is competent to testify to these matters. The party shall attach to or serve with an affidavit sworn or certified copies of all papers or parts of papers to which the affidavit refers. The court may permit a party to supplement or oppose affidavits by depositions, answers to discovery, or further affidavits. If a party makes a motion for summary judgment and supports it as provided in this rule, an opposing party may not rest upon the mere allegations or denials of the opposing party's pleading, but shall, by affidavits or as otherwise provided in this rule, set forth specific facts showing that a genuine issue exists for trial. If the opposing party does not so respond, the court may enter summary judgment against the opposing party.
 - (8) If it appears from the affidavits of a party opposing the motion that the party cannot for reasons stated present by affidavit facts essential to justify the party's opposition, the court may refuse the application for judgment or may order a continuance to permit the party to obtain affidavits, take depositions, or have discovery, or the court may make another order as is just.
 - (9) If it appears to the satisfaction of the court that a party has presented any affidavits pursuant to this rule in bad faith or solely for the purpose of delay, the court orders the party employing them to pay to the other party the amount of

the reasonable expenses that the filing of the affidavits caused the other party to incur, including reasonable attorney fees, and the court may adjudge the offending party or attorney guilty of contempt.

History: 2-4-201, MCA; IMP, 2-4-201, 39-71-2901, MCA; NEW, 1996 MAR p. 557, Eff. 2/23/96; AMD, 2014 MAR p. 2829, Eff. 3/1/15; AMD, 2018 MAR p. 305, Eff. 3/15/18.

24.5.330 Requests To Vacate, Put In Abeyance, or Reset Trial

- (1) A party seeking the court's leave to vacate, put in abeyance, or reset a trial shall make the request in writing. The requesting party shall state whether any other party opposes it. If the requesting party is unable to contact any other party, the requesting party shall certify that the requesting party attempted to do so. If the requesting party contacts all other parties and none oppose the request, the requesting party may make the request informally by e-mail message. If a party opposes the request, or if the requesting party is unable to contact any other party, the requesting party shall make the request by formal motion and demonstrate good cause.

History: 2-4-201, MCA; IMP, 2-4-201, 39-71-2901, MCA; NEW, 1983 MAR p. 1715, Eff. 11/26/83; TRANS, from ARM 2.52.330, 1989 MAR p. 2177, Eff. 12/22/89; AMD, 1990 MAR p. 847, Eff. 5/1/90; AMD, 1998 MAR p. 1281, Eff. 5/15/98; AMD, 2014 MAR p. 2829, Eff. 3/1/15; AMD, 2018 MAR p. 305, Eff. 3/15/18.

24.5.331 Subpoena

Every subpoena must comply with M. R. Civ. P. 45.

History: 2-4-201, MCA; IMP, 2-4-201, 39-71-2901, MCA; NEW, 1983 MAR p. 1715, Eff. 11/26/83; TRANS, from ARM 2.52.331, 1989 MAR p. 2177, Eff. 12/22/89; AMD, 1990 MAR p. 847, Eff. 5/1/90; AMD, 1994 MAR p. 675, Eff. 4/1/94; AMD, 2000 MAR p. 1513, Eff. 6/16/00; AMD, 2002 MAR p. 93, Eff. 1/18/02; AMD, 2014 MAR p. 2829, Eff. 3/1/15.

24.5.332 Conduct of Trial

- (1) Trials will be held in courtrooms when available or any other designated place.
- (2) The court conducts trials in the same manner as a trial without a jury. Trials must proceed in the following order unless the court, for good cause and special reasons, otherwise directs.
 - (a) The party on whom rests the burden of the issues may briefly state the party's case and the evidence by which the party expects to sustain it.
 - (b) The adverse party may then briefly state the adverse party's defense and the evidence the adverse party expects to offer in support of it, or may wait and do this at the beginning of the adverse party's case-in-chief.
 - (c) The party on whom rests the burden of the issues shall produce the party's evidence; the adverse party shall then follow with the adverse party's evidence.
 - (d) The parties shall then be confined to rebuttal evidence, unless the court, for good reasons and in the furtherance of justice, permits either party to offer further evidence in support of its case-in-chief.

History: 2-4-201, MCA; IMP, 2-4-201, 39-71-2901, MCA; NEW, 1983 MAR p. 1715, Eff. 11/26/83; TRANS, from ARM 2.52.332, 1989 MAR p. 2177, Eff. 12/22/89; AMD, 2014 MAR p. 2829, Eff. 3/1/15.

24.5.333 Informal Disposition

- (1) In the discretion of the court, informal disposition may be made of a dispute or controversy by stipulation, agreed settlement, consent order, or default.

History: Sec. 2-4-201, MCA; IMP, Sec. 2-4-201, 39-71-2901, MCA; NEW, 1983 MAR p. 1715, Eff. 11/26/83; PREV. Rule #, ARM 2.52.219; TRANS, from Admin., 1989 MAR p. 2177, Eff. 12/22/89.

24.5.334 Settlement Conference or Mediation

- (1) In its discretion, the court may, either on its own motion or upon request of a party, order a settlement conference or mediation at any time before it issues a decision in any case pending before the court. The court may appoint a settlement master or mediator. If the parties use an outside settlement master or mediator, the parties shall equally share the expense of hiring this person unless they agree otherwise.
- (2) The person with ultimate settlement authority for each party shall attend the settlement conference or mediation in person. Upon order of the court or agreement of the parties, the person with ultimate settlement authority may participate by phone.
- (3) No party may disclose any statements or communications any participant or attendee, including the settlement master or mediator, made in connection with the settlement conference or mediation to anyone. No party may use any statements or communications any participant or attendee, including the settlement master or mediator, made during the settlement conference or mediation with regard to any aspect of the litigation. No party may subpoena or otherwise require the settlement master or mediator to testify in any future proceedings. No party may examine any participant or attendee concerning any statements or communications that person or any other participant or attendee, including the settlement master or mediator, made or allegedly made in connection with the settlement conference or mediation. However, the settlement master or mediator may disclose whether settlement was reached and the terms of the settlement.

History: 2-4-201, MCA; IMP, 2-4-201, 39-71-2901, MCA; NEW, 1983 MAR p. 1715, Eff. 11/26/83; TRANS, from ARM 2.52.334, 1989 MAR p. 2177, Eff. 12/22/89; AMD, 1994 MAR p. 27, Eff. 1/14/94; AMD, 2014 MAR p. 2829, Eff. 3/1/15; AMD, 2018 MAR p. 305, Eff. 3/15/18.

24.5.335 Bench Rulings

- (1) The court may, in its sole discretion, issue a bench ruling following the close of the testimony in a case. If the court issues a bench ruling, the court utilizes the following procedure:
 - (a) The judge announces the decision to the parties in open court, outlining the factual and legal reasoning therefor.
 - (b) The judge may direct one of the parties, usually the prevailing party, to reduce the decision to writing by preparing written findings of fact, conclusions of law, and judgment.
 - (c) Following entry of the court's written findings of fact, conclusions of law, and judgment, the parties shall have the time set forth in ARM 24.5.320 in which to file objections to the court's decision and to request a rehearing pursuant to ARM 24.5.344.

History: 2-4-201, MCA; IMP, 2-4-201, 39-71-2901, MCA; NEW, 1983 MAR p. 1715, Eff. 11/26/83; TRANS, from ARM 2.52.335, 1989 MAR p. 2177, Eff. 12/22/89; AMD, 2014 MAR p. 2829, Eff. 3/1/15.

24.5.336 Trial Briefs and Proposed Findings of Fact and Conclusions of Law

- (1) The court may require any or all parties to file trial briefs or proposed findings of fact and conclusions of law.
- (2) Any party may file either a trial brief or proposed findings of fact and conclusions of law, or both, by the date set by the judge or hearing examiner.
- (3) The court considers a trial brief or proposed findings of fact and conclusions of law filed by fax or e-mail attachment compliant with the filing deadline as long as a party ensures that the court receives the hard copy original at or before trial. Any party filing a brief or proposed findings and conclusions by fax or e-mail attachment shall further ensure that the other parties receive it the same day the party files it with the court.

History: 2-4-201, MCA; IMP, 2-4-201, 39-71-2901, MCA; NEW, 1983 MAR p. 1715, Eff. 11/26/83; TRANS, from ARM 2.52.336, 1989 MAR p. 2177, Eff. 12/22/89; AMD, 1992 MAR p. 922, Eff. 5/1/92; AMD, 1996 MAR p. 557, Eff. 2/23/96; AMD, 2014 MAR p. 2829, Eff. 3/1/15; AMD, 2018 MAR p. 305, Eff. 3/15/18.

24.5.337 Motion for Reconsideration

- (1) A party may move for reconsideration of any decision of the Workers' Compensation Court only upon the following three grounds:
 - (a) that the court overlooked some fact material to the decision;
 - (b) that the court overlooked some issue presented by the party that would have proven decisive to the case; or
 - (c) that the court's decision conflicts with a statute or controlling decision not addressed by the court.
- (2) A party shall file any motion for reconsideration of a decision within the time set forth in ARM 24.5.320. The court reviews the motion before any other party responds. The court denies those motions it determines have no merit and orders the other party or parties to respond to those motions it determines may have merit. If the court orders a response, it deems the motion submitted for decision upon receipt of the response or the expiration of the time for the response unless the court requests oral argument. The court does not consider reply briefs from moving parties.
- (3) Within 20 days of its issuance of any decision, the court may, on its own motion, reconsider the decision.
- (4) If a party seeks reconsideration of an appealable decision, the court does not deem the original decision final until and unless the court denies the motion.
- (5) No party may file a brief in support of or opposition to a motion for reconsideration that exceeds 5 pages.

History: 2-4-201, MCA; IMP, 2-4-201, 39-71-2901, MCA; NEW, 1998 MAR p. 2167, Eff. 8/14/98; AMD, 2014 MAR p. 2829, Eff. 3/1/15; AMD, 2018 MAR p. 305, Eff. 3/15/18.

Rules 24.5.338 and 24.5.339 reserved

24.5.340 Masters and Examiners – Procedure–Recommendations for Bench Orders

- (1) The court shall appoint masters or examiners when, in the judgment of the court, justice will be served.
- (2) The court appoints masters pursuant to M. R. Civ. P 53. Masters utilize the procedures set forth in M. R. Civ. P 53 insofar as they relate to a trial without a jury.
- (3) The court appoints examiners pursuant to 2-4-611, MCA. Examiners serve pursuant to 2-4-611, MCA. However, the time delays inherent in the procedures set forth in 2-4-621 and 2-4-622, MCA, are not appropriate in Workers' Compensation Court proceedings within the meaning of 39-71-2903, MCA. In lieu thereof, the court utilizes the following procedure in cases where it appoints a hearing examiner.
 - (a) Following submission of the case, the hearing examiner submits proposed findings of fact and conclusions of law to the judge. The court does not serve the proposed decision of the hearing examiner upon the parties until after the judge has ruled thereon. The judge decides whether to adopt the proposed findings of fact and conclusions of law of the hearing examiner based solely upon the record and pleadings made before the hearing examiner. The court does not reject or revise findings of fact made by a hearing examiner unless the court first determines from a review of the complete record, and states with particularity in the order, that the findings of fact were not based upon competent substantial evidence or that the proceedings on which the findings were based did not comply with essential requirements of law. The court may, upon its own motion, reconsider or alter conclusions of law and interpretations of statutes or rules written by a hearing examiner. Subject to the provisions of this subsection, the court enters its order and judgment adopting the decision of the hearing examiner.
 - (b) Any party aggrieved by a decision of a hearing examiner adopted pursuant to this rule may obtain review thereof by filing a motion pursuant to ARM 24.5.344. Upon the filing of such a motion by any party, the court, in its discretion, liberally grants the opportunity for oral argument as to whether it should: amend the decision; hear additional evidence; or grant a new trial.
- (4) An examiner may, during or at the conclusion of a trial or a pretrial conference, advise the parties that an interlocutory order for payment of benefits or other relief to a party appears to be justified and promptly submit such an order for approval by the judge.

History: 2-4-201, MCA; IMP, 2-4-201, 39-71-2901, MCA; NEW, 1983 MAR p. 1715, Eff. 11/26/83; TRANS, from ARM 2.52.340, 1989 MAR p. 2117, Eff. 12/22/89; AMD, 1994 MAR p. 675, Eff. 4/1/94; AMD, 2014 MAR p. 2829, Eff. 3/1/15.

Rule 24.5.341 reserved

24.5.342 Taxation of Costs

- (1) Unless otherwise ordered by the court, within the time set forth in ARM 24.5.320, a prevailing claimant shall serve an application for taxation of costs on any party against whom costs are to be assessed. The claimant shall file the application with the court.

- (2) The attorney for the claimant, or the claimant personally if appearing pro sé, shall sign the application for taxation of costs. The signature on the application is a certification by the person signing the application of the accuracy of the costs claimed and that the costs incurred were reasonable and necessary to the case.
- (3) The court allows reasonable costs. The court judges the reasonableness of a given item of cost claimed in light of the facts and circumstances of the case and the issues upon which the claimant prevailed.
- (4) The following are examples of costs that are generally found to be reasonable:
 - (a) deposition costs (reporter's fee and transcription cost), if the deposition is filed with the court;
 - (b) witness fees and mileage, as allowed by statute, for non-party fact witnesses;
 - (c) expert witness fees, including reasonable preparation time, for testimony either at deposition or at trial, but not at both;
 - (d) travel and lodging expenses of counsel for attending depositions;
 - (e) fees and expenses necessary for the perpetuation or presentation of evidence offered at trial, such as recording, videotaping, or photographing exhibits;
 - (f) documented photocopy expenses;
 - (g) documented long-distance telephone expenses; and
 - (h) documented postage expenses.
- (5) The following are examples of costs that are generally found not to be reasonable:
 - (a) trial transcripts ordered by the parties prior to any appeal;
 - (b) secretarial time; and
 - (c) items of ordinary office overhead not typically billed to clients.
- (6) Items of cost not specifically listed in this rule may be awarded by the court, in accordance with the principles in (3).
- (7) If an insurer objects to any item of costs claimed:
 - (a) Within the time set forth in ARM 24.5.320, the insurer shall serve on the prevailing claimant written objections to specific items of costs. The insurer shall file the objections with the court.
 - (b) Within the time set forth in ARM 24.5.320, the prevailing claimant shall serve on the insurer a response. The claimant shall file the response with the court. No reply brief is allowed.

History: 2-4-201, MCA; IMP, 2-4-201, 39-71-2901, MCA; NEW, 1996 MAR p. 557, Eff. 2/23/96; AMD, 2014 MAR p. 2829, Eff. 3/1/15.

24.5.343 Attorney Fees

- (1) In those cases where the claimant is awarded attorney fees pursuant to 39-71-611 or 39-71-612, MCA, the court will indicate in its findings of fact and conclusions of law the basis for the award of reasonable attorney fees, but the court will not determine the amount of the award until after the appeal period for its final decision has passed or after affirmation of its final decision on appeal, unless pursuant to ARM 24.5.348(2), the final decision is not certified as final.
- (2) The court determines and awards reasonable attorney fees in the following manner.

- (a) Within the time set forth in ARM 24.5.320, following the expiration of the appeal period or remittitur on appeal of the court's final decision, or within the time set forth in ARM 24.5.320, after the filing of the court's decision which pursuant to ARM 24.5.348(2) holds that the decision is not certified as final, the claimant's attorney shall file with the court a claim for attorney fees which contains the following:
 - (i) a verified copy of the attorney fee agreement with the claimant;
 - (ii) documentation regarding the time spent by the attorney in representing the client; and
 - (iii) the attorney's claim concerning the attorney's hourly fee.
- (b) Within the time set forth in ARM 24.5.320, following the service of a claim for attorney fees, any party to the dispute may file an objection to the fees' reasonableness, specifically identifying the objectionable portions of the claim and stating the reasons for the objection. General allegations to the effect that the award is unreasonable are not sufficient.
- (c) If a party objects to the reasonableness of the attorney fee claim, any party may request an evidentiary hearing, stating the specific reasons a hearing is necessary. The request for hearing must be made at the same time an objection is filed if by the objecting party, or within the time set forth in ARM 24.5.320, of the filing of the objection if requested by the claimant's attorney.
- (d) The court determines if it requires an evidentiary hearing. If the court deems a hearing necessary, the court schedules the hearing at its earliest convenience. The court issues its decision following the hearing. The court sets evidentiary hearings in Helena unless a party demonstrates good cause to the contrary. If the court determines that no hearing is necessary, the court determines attorney fees based on the claim and objections. No additional pleadings are allowed unless requested by the court.
- (e) The court's determination of reasonable attorney fees is a final decision for purposes of appeal.

History: 2-4-201, MCA; IMP, 2-4-201, 39-71-2901, MCA; NEW, 1985 MAR p. 107, Eff. 2/1/85; AMD, 1986 MAR p. 774, Eff. 5/16/86; TRANS, from ARM 2.52.343, 1989 MAR p. 2177, Eff. 12/22/89; AMD, 1990 MAR p. 847, Eff. 5/1/90; AMD, 1992 MAR p. 922, Eff. 5/1/92; AMD, 1994 MAR p. 27, Eff. 1/14/94; AMD, 1996 MAR p. 557, Eff. 2/23/96; AMD, 2014 MAR p. 2829, Eff. 3/1/15.

24.5.344 Petition for New Trial and/or Request for Amendment to Findings of Fact and Conclusions of Law

- (1) After a trial, the court issues an order or findings of fact, conclusions of law, and judgment setting forth the court's determination of the disputed issues. A party to the dispute may petition for a new trial or request amendment to the court's findings of fact and conclusions of law within the time set forth in ARM 24.5.320, after the court serves the written order or judgment.
- (2) If a party files a petition for a new trial or requests amendment, the party requesting the new trial or amendment shall set forth specifically and in full detail the relief requested. An opposing party shall respond within the time set forth in ARM 24.5.320, from the date of service pursuant to ARM 24.5.303.
- (3) If a party files a petition for a new trial or requests amendment, the original order or judgment issued by the court is not considered the final decision of the court pending the denial or granting of the new trial or amendment.

- (4) If the court grants a new trial, the matter is scheduled for trial pursuant to ARM 24.5.310. As determined by the court, the matter may be decided based on the testimony taken at the initial trial and at the new trial, or by a de novo trial. After the new trial, the court issues an order or findings of fact, conclusions of law, and judgment setting forth the court's determination of the disputed issues.

History: 2-4-201, MCA; IMP, 2-4-201, 39-71-2901, MCA; NEW, 1983 MAR p. 1715, Eff. 11/26/83; AMD, 1985 MAR p. 107, Eff. 2/1/85; AMD, 1986 MAR p. 774, Eff. 5/16/86; TRANS, from ARM 2.52.344, 1989 MAR p. 2177, Eff. 12/22/89; AMD, 1990 MAR p. 847, Eff. 5/1/90; AMD, 1992 MAR p. 922, Eff. 5/1/92; AMD, 1994 MAR p. 27, Eff. 1/14/94; AMD, 2014 MAR p. 2829, Eff. 3/1/15.

24.5.345 Writ of Execution

- (1) The procedure on execution, in proceedings supplementary to and in aid of a judgment, and in proceedings on and in aid of and supplementary to execution, must be in accordance with the statutes of the state of Montana that are applicable to executions in civil cases in district court, as set forth in Title 25, chapter 13, MCA, except that the court does not issue a writ of execution until after the time has expired for requesting a rehearing or amendment of the court's decision.
- (2) In aid of the judgment or execution, the judgment creditor or a successor in interest when that interest appears of record, may examine any person, including the judgment debtor, in the manner provided in these rules for taking depositions.

History: 2-4-201, MCA; IMP, 2-4-201, 39-71-2901, MCA; NEW, 1992 MAR p. 922, Eff. 5/1/92; AMD, 2014 MAR p. 2829, Eff. 3/1/15.

24.5.346 Stay of Judgment Pending Appeal

- (1) The party appealing a judgment of the court may request a stay of execution of the judgment or order pending resolution of the appeal. The court automatically deems a request for new trial and/or request for amendment to findings of fact and conclusions of law stayed until it rules upon the request. If the parties stipulate that no bond is required, or if it is shown to the satisfaction of the court that adequate security exists for payment of the judgment, the court may waive the bond requirement.
- (2) Except as provided for herein, the procedures for requesting a stay and for posting a supersedeas bond are the same as the procedures in M. R. App. P. 22(1) and ARM 24.5.316.

History: 2-4-201, MCA; IMP, 2-4-201, 39-71-2901, MCA; NEW, 1992 MAR p. 922, Eff. 5/1/92; AMD, 1994 MAR p. 675, Eff. 4/1/95; AMD, 2014 MAR p. 2829, Eff. 3/1/15.

Rule 24.5.347 reserved

24.5.348 Certification of Decisions, Appeals to Supreme Court

- (1) A party shall make any appeal from the Workers' Compensation Court as in the case of an appeal from a district court as provided in M. R. Civ. P. 72.
- (2) or purposes of appeal, the court's final certification is considered a notice of entry of judgment.

- (3) A party appealing from the Workers' Compensation Court shall comply with the Montana Rules of Appellate Procedure.
- (4) The court certifies its decisions as final without determining the amount of reasonable costs and attorney fees, except that:
 - (a) Prior to the court's issuance of the decision and certification, a party to the dispute may file a motion requesting that the court not certify the decision as final. A party filing this motion shall demonstrate good cause.
 - (b) The court in its discretion may grant the motion, in which case the court does not certify the judgment for purposes of appeal until it determines the amount of the attorney fees and costs.
 - (c) A party may petition for new trial or request amendment to the court's findings of fact and conclusions of law in accordance with ARM 24.5.344, regardless of whether the court has certified the decision as final for purposes of appeal.

History: 2-4-201, MCA; IMP, 2-4-201, 39-71-2901, 39-71-2904, MCA; NEW, 1983 MAR p. 1715, Eff. 11/26/83; AMD, 1987 MAR p. 1618, Eff. 9/25/87; TRANS, from ARM 2.52.348, 1989 MAR p. 2177, Eff. 12/22/89; AMD, 1990 MAR p. 847, Eff. 5/1/90; AMD, 1992 MAR p. 922, Eff. 5/1/92; AMD, 1996 MAR p. 557, Eff. 2/23/96; AMD, 1998 MAR p. 1281, Eff. 5/15/98; AMD, 2014 MAR p. 2829, Eff. 3/1/15; AMD, 2018 MAR p. 305, Eff. 3/15/18.

24.5.349 Rules Compliance

- (1) If a party neglects or refuses to comply with the provisions of these rules, the court may dismiss a matter with or without prejudice, grant an appropriate order for a party, or take other appropriate action. However, the court may, in its discretion and in the interests of justice, waive irregularities and noncompliance with any of the provisions of these rules.

History: 2-4-201, MCA; IMP, 2-4-201, 39-71-2901, MCA; NEW, 1983 MAR p. 1715, Eff. 11/26/83; TRANS, from ARM 2.52.349, 1989 MAR p. 2177, Eff. 12/22/89; AMD, 2014 MAR p. 2829, Eff. 3/1/15.

24.5.350 Appeals to Workers' Compensation Court Under Title 39, Chapters 71 and 72, MCA

- (1) An appeal from a final decision of the Department of Labor and Industry under Title 39, chapters 71 and 72, MCA, other than an appeal of a department order regarding payment of benefits pursuant to 39-71-610, MCA, must be made by filing a notice of appeal with the court. The notice of appeal must be served by mail on all other parties and the legal services division of the Department of Labor and Industry and must include:
 - (a) the relief to which the appellant believes the appellant is entitled; and
 - (b) the grounds upon which the appellant contends the appellant is entitled to that relief.
- (2) The filing of the notice does not stay the department decision. However, upon application of a party, the court may order a stay upon terms which the court considers proper.
- (3) Any party or the court may request a transcript of the proceeding. Upon receiving such request, the department has 30 days in which to prepare and file the transcript unless the court lengthens or shortens the time. In the alternative, the parties may agree by written stipulation to other arrangements

for transcribing the hearing. The appealing party shall be responsible for the cost of preparing the transcript unless otherwise ordered by the court.

- (4) Any party to an appeal may request oral argument on the matters raised in the appeal. A request for oral argument must be made by the time specified for the last brief. Failure to timely request oral argument is deemed to be a waiver of the right to an oral argument.
- (5) A motion for leave to present additional evidence must be filed no later than the time set for the last brief or, if oral argument is timely requested, then no later than the day before the argument. If it is shown to the satisfaction of the court that the additional evidence is material and that good reasons exist for the offering party's failure to present it in the department proceeding, the court may remand the matter to the department and order that the additional evidence be taken before the department upon conditions determined by the court. The department may modify its findings and decision by reason of the additional evidence and shall file that evidence and any modifications, new findings, or decisions with the reviewing court.
- (6) The court shall base its decision on the record.
- (7) ARM 24.5.344, relating to new trials, applies to decisions under this rule. However, the decision of the court may or may not be in the form of findings of fact and conclusions of law.

History: 2-4-201, MCA; IMP, 2-4-201, 39-71-2901, MCA; NEW, 1983 MAR p. 1715, Eff. 11/26/83; TRANS, from ARM 2.52.350, 1989 MAR p. 2177, Eff. 12/22/89; AMD, 1990 MAR p. 847, Eff. 5/1/90; AMD, 1994 MAR p. 675, Eff. 4/1/94; AMD, 1996 MAR p. 557, Eff. 2/23/96; AMD, 1998 MAR p. 1281, Eff. 5/15/98; AMD, 2000 MAR p. 1513, Eff. 6/16/00; AMD, 2014 MAR p. 2829, Eff. 3/1/15.

24.5.351 Declaratory Rulings

- (1) Where the court has jurisdiction it can issue declaratory rulings.
- (2) Proceedings for a declaratory ruling are the same as in all other disputes.

History: 2-4-201, MCA; IMP, 2-4-201, 39-71-2901, MCA; NEW, 1983 MAR p. 1715, Eff. 11/26/83; TRANS, from ARM 2.52.351, 1989 MAR p. 2177, Eff. 12/22/89; AMD, 1994 MAR p. 675, Eff. 4/1/94; AMD, 2014 MAR p. 2829, Eff. 3/1/15.

24.5.352 Reference to Montana Rules of Civil Procedure

- (1) If no express provision is made in these rules regarding a matter of procedure, the court is guided, where appropriate, by considerations and procedures set forth in the Montana Rules of Civil Procedure.

History: 2-4-201, 39-71-2901, 39-71-2903, 39-71-2905, MCA; IMP, 2-4-201, 39-71-2901, MCA; NEW, 2000 MAR p. 1513, Eff. 6/16/00; AMD, 2014 MAR p. 2829, Eff. 3/1/15.

24.5.353 Withdrawal of Attorney

- (1) If an attorney representing a party is removed, withdraws, or ceases to act as such, the parties shall follow the procedures set forth in M. U. Dist. Ct. R. 10 and 37-61-405, MCA.

History: 2-4-201, MCA; IMP, 2-4-201, 39-71-2901, MCA; NEW, 2018 MAR p. 305, Eff. 3/15/18.

Rules 24.5.354 through 24.5.358 reserved

24.5.359 Notice of Representation

This rule has been repealed.

History: Sec. 2-4-201, MCA; IMP, Sec. 2-4-201, 39-71-2901, MCA; NEW, 1983 MAR p. 1715, Eff. 11/26/83, TRANS, from Admin., 1989 MAR p. 2177, Eff. 12/22/89, REP, 1990 MAR p. 847, Eff. 5/1/90.

24.5.360 Review

(1) The court will annually review and when necessary revise the rules of the court.

History: Sec. 2-4-201, MCA; IMP, Sec. 2-4-201, 39-71-2901, MCA; NEW, 1983 MAR p. 1715, Eff. 11/26/83; PREV. Rule #, ARM 2.52.231; TRANS, from Admin., 1989 MAR p. 2177, Eff. 12/22/89.

TAB 3

TAB 3

Chapter 9**Contractor Registration****Part 1****General Provisions**

- 39-9-101. Purpose.
 39-9-102. Definitions.
 39-9-103. Rulemaking authority.

Part 2**Registration**

- 39-9-201. Registration required – application.
 39-9-202. Repealed.
 39-9-203. Repealed.
 39-9-204. Certificate of registration – issuance – duration .
 39-9-205. When partnership or joint venture considered registered.
 39-9-206. Fees – education program.
 39-9-207. Registration – limiting liability.
 39-9-208. through 39-9-210 reserved.
 39-9-211. Exemptions.
 39-9-212. Home inspector registration – penalty - rulemaking.
 39-9-213. Requirement – prohibitions.

Part 3**Business Practices**

- 39-9-301. Business practices – penalty.
 39-9-302. Repealed.
 39-9-303. Department to compile and update registration lists – availability - fee.
 39-9-304. Provisions exclusive – certain local authority not limited or abridged.

Part 4**Infractions -- Penalties**

- 39-9-401. Violation – infraction – penalty – disposition.
 39-9-402. Repealed.
 39-9-403. Repealed.
 39-9-404. Repealed.
 39-9-405. Repealed.
 39-9-406. Repealed.
 39-9-407. Repealed.
 39-9-408. Repealed.
 39-9-409. Repealed.
 39-9-410. Repealed.

Chapter 9**Contractor Registration****Part 1****General Provisions****Part Cross-References**

Independent contractor certification, 39-71-417.

39-9-101. Purpose.

It is the purpose of this chapter to ensure that all construction contractors and home inspectors are competing fairly and in compliance with state laws.

History: En. Sec. 1, Ch. 500, L. 1995; amd. Sec. 1, Ch. 548, L. 1997; amd. Sec. 2, Ch. 294, L. 2019.

39-9-102. Definitions.

As used in this chapter, the following definitions apply:

- (1) "Construction contractor" means a person, firm, or corporation that:
 - (a) in the pursuit of an independent business, offers to undertake, undertakes, or submits a bid to construct, alter, repair, add to, subtract from, improve, move, wreck, or demolish for another a building, highway, road, railroad, excavation, or other structure, project, development, or improvement attached to real estate, including the installation of carpeting or other floor covering, the erection of scaffolding or other structures or works, or the installation or repair of roofing or siding; or
 - (b) in order to do work similar to that described in subsection (1)(a) upon the construction contractor's property, employs members of more than one trade on a single job or under a single building permit, except as otherwise provided.
- (2) "Department" means the department of labor and industry.
- (3) (a) "Home inspection" means a physical examination of a residential dwelling to identify major defects in various attributes of or attachments to the dwelling, including mechanical, electrical, and plumbing systems in addition to structural and other essential components. Home inspections are performed for compensation and employ visual observation and the testing of user controls but not mathematical or specialized engineering sciences.
 - (b) The term does not mean a physical examination of a residential dwelling when the owner or a representative of the owner requests the examination by an individual who is licensed, certified, or registered in this state and who is acting within the scope of practice of the individual's profession or occupation.
- (4) "Home inspection report" means a written document prepared by a home inspector for a client and issued to the client in exchange for compensation after a home inspection has been completed. The report must clearly identify and describe:
 - (a) the inspected systems, structures, and other relevant components of the dwelling;
 - (b) any major visible defects in the inspected systems, structures, and other relevant components of the dwelling; and

- (c) any recommendations for further evaluation of the property by other appropriate persons.
- (5) "Home inspector" means a person who performs a home inspection for compensation.

History: En. Sec. 2, Ch. 500, L. 1995; amd. Sec. 2, Ch. 548, L. 1997; amd. Sec. 3, Ch. 294, L. 2019.

39-9-103. Rulemaking authority.

The department may adopt rules to implement this chapter.

History: En. Sec. 25, Ch. 500, L. 1995.

Part 2
Registration

39-9-201. Registration required – application.

- (1) Each construction contractor shall register with the department.
- (2) An applicant for registration as a construction contractor shall submit an application on a form to be provided by the department that must include the following information:
 - (a) the applicant's social security number;
 - (b) proof of compliance with workers' compensation laws;
 - (c) the I.R.S. employer identification number, if any; and
 - (d) the name and address of:
 - (i) each partner if the applicant is a firm or partnership;
 - (ii) the owner if the applicant is an individual proprietorship;
 - (iii) the corporate officers and registered agent if the applicant is a corporation; or
 - (iv) the manager of a manager-managed limited liability company or the members of a member-managed limited liability company and the registered agent if the applicant is a limited liability company.

History: En. Sec. 3, Ch. 500, L. 1995; amd. Sec. 3, Ch. 548, L. 1997; amd. Sec. 1, Ch. 133, L. 2005.

39-9-202. Repealed.

Sec. 14, Ch. 548, L. 1997.

History: En. Sec. 4, Ch. 500, L. 1995.

39-9-203. Repealed.

Sec. 14, Ch. 548, L. 1997.

History: En. Sec. 5, Ch. 500, L. 1995.

39-9-204. Certificate of registration – issuance – duration .

- (1) The department shall issue to the applicant a certificate of registration upon compliance with the registration requirements of this chapter.

- (2) The department shall place the expiration date on the certificate. The certificate is valid for 2 years.

History: En. Sec. 6, Ch. 500, L. 1995; amd. Sec. 4, Ch. 548, L. 1997.

39-9-205. When partnership or joint venture considered registered.

A partnership or joint venture is considered registered under this chapter if one of the general partners or venturers whose name under which the partnership or venture does business is registered.

History: En. Sec. 7, Ch. 500, L. 1995.

39-9-206. Fees – education program.

- (1) The department shall charge fees to construction contractors and home inspectors for:
 - (a) issuance, renewal, and reinstatement of certificates of registration; and
 - (b) change of name, address, or business structure.
- (2) The department shall set the fees by administrative rule. The fees must cover the full cost of issuing certificates, filing papers and notices, and administering and enforcing this chapter. The costs include reproduction, travel, per diem, and administrative and legal support costs.
- (3) The fees charged in subsection (1)(a) may not exceed:
 - (a) for a construction contractor:
 - (i) \$70 for the initial registration certificate; or
 - (ii) \$70 for the renewal or reinstatement of a registration certificate; or
 - (b) for a home inspector, an amount determined in rule for the initial registration certificate or for the renewal or reinstatement of a registration certificate.
- (4) The fees collected under this section must be deposited in a state special revenue account to the credit of the department for the administration and enforcement of this chapter and independent contractor certification provided for in Title 39, chapter 71, part 4.
- (5) The department shall establish, cooperatively with representatives of the building industry and the home inspection industry, an industry and consumer information program, funded with 15% of the fees, to educate the building industry and home inspectors about the registration requirements and to educate the public regarding the hiring of building construction contractors and home inspectors.
- (6) The fee for a joint application for a certificate of registration and an independent contractor exemption certificate may not exceed the total fee charged for a certificate of registration and an independent contractor exemption certificate that are obtained separately. The fee paid for the independent contractor exemption certificate may be used by the department to offset the cost of administering independent contractor certification provided for in Title 39, chapter 71, part 4.

History: En. Sec. 8, Ch. 500, L. 1995; amd. Sec. 5, Ch. 548, L. 1997; amd. Sec. 2, Ch. 133, L. 2005; amd. Sec. 4, Ch. 294, L. 2019.

39-9-207. Registration – limiting liability.

A person who, pursuant to an oral or written contract, engages a construction contractor or a home inspector who is registered under this chapter on the date of the contract is not liable as an employer for workers' compensation coverage under 39-71-405, for unemployment insurance coverage, or for wages and fringe benefits for:

- (1) the registered construction contractor or home inspector;
- (2) the employees of the registered construction contractor or home inspector; or
- (3) any subsequent subcontractor or the employees of any subsequent subcontractor engaged to fulfill a part of or all of the obligations of the oral or written contract of the registered construction contractor or home inspector listed in subsection (1).

History: En. Sec. 9, Ch. 500, L. 1995; amd. Sec. 6, Ch. 548, L. 1997; amd. Sec. 5, Ch. 294, L. 2019.

39-9-208. through 39-9-210 reserved.

39-9-211. Exemptions.

As related to construction contractors, this chapter does not apply:

- (1) to an authorized representative of the United States government, the state of Montana, or any incorporated municipality, county, alternative form of local government, irrigation district, reclamation district, or other municipal or political corporation or subdivision of this state;
- (2) to an officer of a court acting within the scope of office;
- (3) to a public utility operating under the regulations of the public service commission or to a rural cooperative utility operating under Title 35, chapter 18, in construction, maintenance, or development work incidental to its own business;
- (4) to the repair or operation incidental to the discovery or production of oil or gas or incidental to the drilling, testing, abandoning, or other operation of an oil or gas well or a surface or underground mine or mineral deposit;
- (5) to the sale or installation of finished products, materials, or articles of merchandise that are not actually fabricated into and do not become a permanent fixed part of a structure;
- (6) to the construction, alteration, improvement, or repair carried on within the limits and boundaries of a site or reservation under the exclusive legal jurisdiction of the federal government;
- (7) to a person who only furnished materials, supplies, or equipment without fabricating them into or consuming them in the performance of the work of the construction contractor;
- (8) to work or operation on one undertaking or project considered of a casual, minor, or inconsequential nature, by one or more contracts, the aggregate contract price of which, for labor and materials and all other items, is less than \$2,500 a job. The exemption prescribed in this subsection does not apply when the work or construction is only a part of a larger or major operation, whether undertaken by the same or a different construction contractor, or in which a division of the operation is made into contracts of amounts of less than \$2,500 a job for the purpose of evasion of this chapter or otherwise.

- (9) to a farmer or rancher while engaged in a farming, dairying, agriculture, viticulture, horticulture, or stock or poultry operation;
- (10) to an irrigation district or reclamation district;
- (11) to an operation related to clearing or other work upon land in rural districts for fire prevention purposes;
- (12) to an owner who contracts for work to be performed by a registered construction contractor, but this exemption does not apply to an owner who is otherwise covered by this chapter who constructs a residence on the owner's property with the intention and for the purpose of promptly selling the improved property;
- (13) to an owner working on the owner's property, whether occupied by the owner or not, but this exemption does not apply to an owner who is otherwise covered by this chapter who constructs an improvement on the owner's property with the intention and for the purpose of promptly selling the improved property, unless the owner has continuously occupied the property as the owner's primary residence for at least the last 12 months;
- (14) to owners of commercial properties who use their own employees to do maintenance, repair, and alteration work in or upon their own properties;
- (15) to an architect, civil or professional engineer, or professional land surveyor, licensed in Montana and acting solely in a professional capacity;
- (16) to an electrician or plumber, licensed in Montana, operating within the scope of the license;
- (17) to a contract security company, licensed under Title 37, chapter 60, operating within the scope of the license;
- (18) to a person who engages in the activities regulated as an employee of a registered construction contractor with wages as the sole compensation or as an employee with wages as the sole compensation;
- (19) to a person or entity licensed under Title 50, chapter 39, to sell, install, or service fire suppression or fire protection equipment;
- (20) to a water well contractor licensed under Title 37, chapter 43, performing the work of a water well contractor;
- (21) to an enrolled tribal member or an association, business, corporation, or other entity, at least 51% of which is owned by an enrolled tribal member or members and whose business is conducted solely within the exterior boundaries of an Indian reservation;
- (22) to a contractor engaged in the logging industry who builds forest access roads for the purpose of harvesting and transporting logs from forest to mill;
- (23) to a person working on the person's own residence, if the residence is owned by a person other than the resident; or
- (24) to an independent contractor who has no employees. However, an independent contractor may voluntarily elect to register under this chapter.

History: En. Sec. 10, Ch. 500, L. 1995; amd. Sec. 7, Ch. 548, L. 1997; amd. Sec. 6, Ch. 294, L. 2019.

39-9-212. (Effective January 1, 2020) **Home inspector registration – penalty - rulemaking.**

- (1) A home inspector, whether as an individual or a partnership, corporation, or manager-managed or member-managed limited liability company, shall register with the department on forms provided by the department and pay

- a registration fee for each home inspector covered by the registration. The registration fee must be set by the department by rule as provided in 39-9-206.
- (2) For a first-time registration, a home inspector shall document that each person working under the registration certificate as a home inspector:
 - (a) has successfully completed a minimum of 40 hours of comprehensive home inspection instruction approved by the department or a passing grade on the national home inspector examination offered by the examination board of professional home inspectors or another national examination as provided by the department by rule;
 - (b) is a member of a national home inspection association; and
 - (c) is covered by liability insurance, a minimum of \$100,000 coverage in errors and omissions insurance, and either workers' compensation coverage or, if the home inspector is self-employed with no other employees and does not have workers' compensation coverage, an independent contractor's exemption certificate.
 - (3) A home inspector renewing a registration shall provide documentation that each home inspector covered by the registration:
 - (a) has completed 40 hours of continuing education over the prior 2 years;
 - (b) is a member in a national home inspection association; and
 - (c) is covered by liability insurance, a minimum of \$100,000 in errors and omissions insurance, and either workers' compensation coverage or an independent contractor's exemption certificate if the home inspector is self-employed with no other employees.
 - (4) Failure to register and pay a registration fee may result in:
 - (a) a fine as determined by the department by rule; and
 - (b) removal of the home inspector's registration on the department's website used to list registered home inspectors. Upon payment of the registration fee, the department shall reinstate the listing and charge a fee for reinstatement as provided in 39-9-206.
 - (5)
 - (a) A fee or fine collected under this section must be deposited in a state special revenue account to the credit of the department for administration and enforcement of this chapter.
 - (b) A penalty under this section does not apply to a violation that is determined to be an inadvertent error.
 - (6) The department may adopt rules to implement this section.

History: En. Sec. 1, Ch. 294, L. 2019.

39-9-213. Requirement - prohibitions.

- (1) A home inspector shall issue a home inspection report to a client after completing a home inspection unless the client agrees in writing to release the home inspector from this obligation.
- (2) A home inspector may not:
 - (a) disclose information concerning the results of a home inspection without the written approval of the home inspector's client or the client's representative;
 - (b) accept compensation from more than one party with a financial interest in the residential dwelling without written approval from all parties with a financial interest in the residential dwelling;
 - (c) accept a commission or allowance, directly or indirectly, from another person or business entity associated with the client in connection with work for which the home inspector is responsible to the client;

(d) refuse or otherwise fail to disclose promptly to a client information about any business interest or relationship of the home inspector that may affect the client in connection with a home inspection.

History: En. Sec. 4, Ch. 276, L. 1999; Sec. 30-14-1004, MCA 2017; redes. 39-9-213 by Sec. 11, Ch. 294, L. 2019.

Part 3

Business Practices

39-9-301. Business practices – penalty.

- (1) Except as provided in 39-9-205, a person who has registered under one name as provided in this chapter may not engage in the business or act in the capacity of a construction contractor or a home inspector under any other name unless that name also is registered under this chapter.
- (2) Use of a falsified registration number in connection with a solicitation or identification as a construction contractor or a home inspector is prohibited.
- (3) A partner, associate, agent, salesperson, solicitor, officer, or employee of a construction contractor or a home inspector shall use a true name and address at all times while engaged in the business or capacity of a construction contractor or a home inspector or in activities related to a construction contractor or a home inspector.
- (4) (a) The finding of a violation of this section by the department at a hearing held in accordance with the Montana Administrative Procedure Act subjects the person who commits the violation to a penalty of not more than \$5,000, as determined by the department. The required hearing may be held by telephone or by videoconference. A penalty collected under this section must be deposited in the state special revenue account to the credit of the department for administration and enforcement of this chapter.
(b) Penalties under this section do not apply to a violation that is determined to be an inadvertent error

History: En. Sec. 11, Ch. 500, L. 1995; amd. Sec. 8, Ch. 548, L. 1997; amd. Sec. 7, Ch. 294, L. 2019.

39-9-302. Repealed.

Sec. 14, Ch. 548, L. 1997.

History: En. Sec. 12, Ch. 500, L. 1995.

39-9-303. Department to compile and update registration lists – availability – fee.

- (1) The department shall compile a list of all construction contractors and home inspectors registered under this chapter and update the list of construction contractors at least bimonthly and the list of home inspectors as provided by rule. The list is public information and must be available to the public upon request for a reasonable fee or posted on the department's website.
- (2) The department shall inform a person, firm, or corporation whether a construction contractor or a home inspector is registered. The department shall

provide the information without charge, except for a reasonable fee for any copies made.

History: En. Sec. 13, Ch. 500, L. 1995; amd. Sec. 9, Ch. 548, L. 1997; amd. Sec. 8, Ch. 294, L. 2019.

39-9-304. Provisions exclusive – certain local authority not limited or abridged.

The provisions of this chapter relating to the registration or licensing of a person, firm, or corporation, including the requirement of a bond with the state of Montana named as obligee and the collection of a fee, are exclusive for registered construction contractors. A political subdivision of the state may not require or issue any registrations, licenses, or bonds for the same or a similar purpose. However, this section does not limit or abridge the authority of a local government to levy and collect a general and nondiscriminatory license fee levied upon all businesses. This section does not limit the authority of a local government with respect to contractors not required to be registered under this chapter.

History: En. Sec. 14, Ch. 500, L. 1995; amd. Sec. 9, Ch. 294, L. 2019.

Part 4

Infractions – Penalties

39-9-401. Violation – infraction – penalty – disposition.

- (1) It is a violation of this chapter and an infraction for any construction contractor to:
 - (a) perform work as a construction contractor without being registered as required by this chapter;
 - (b) perform work as a construction contractor when the construction contractor's registration is suspended; or
 - (c) transfer a valid registration to an unregistered construction contractor or allow an unregistered construction contractor to work under a registration issued to another construction contractor.
- (2)
 - (a) A determination by the department of a violation of this section subjects the person who commits the violation to a penalty of up to \$500, as determined by the department. A person who has been determined to have violated this section may request that a hearing be held in accordance with the Montana Administrative Procedure Act. The hearing may be held by telephone or videoconference. An appeal of the hearing decision must be made in the same manner as prescribed in 39-51-2403.
 - (b) A penalty under this section does not apply to a violation that is determined to be an inadvertent error.
 - (c) A penalty collected under this section must be deposited in the uninsured employers' fund established in 39-71-503.

History: En. Sec. 15, Ch. 500, L. 1995; amd. Sec. 10, Ch. 548, L. 1997; amd. Sec. 1, Ch. 377, L. 1999; amd. Sec. 6, Ch. 442, L. 1999.

39-9-402. Repealed.

Sec. 14, Ch. 548, L. 1997.

History: En. Sec. 16, Ch. 500, L. 1995.

39-9-403. Repealed.

Sec. 14, Ch. 548, L. 1997.

History: En. Sec. 5, Ch. 417, L. 1971; R.C.M. 1947, 41-2305; amd. Sec. 8, Ch. 90, L. 1995.

39-9-404. Repealed.

Sec. 14, Ch. 548, L. 1997.

History: En. Sec. 18, Ch. 500, L. 1995.

39-9-405. Repealed.

Sec. 14, Ch. 548, L. 1997.

History: En. Sec. 19, Ch. 500, L. 1995.

39-9-406. Repealed.

Sec. 14, Ch. 548, L. 1997.

History: En. Sec. 20, Ch. 500, L. 1995.

39-9-407. Repealed.

Sec. 14, Ch. 548, L. 1997.

History: En. Sec. 21, Ch. 500, L. 1995.

39-9-408. Repealed.

Sec. 14, Ch. 548, L. 1997.

History: En. Sec. 22, Ch. 500, L. 1995.

39-9-409. Repealed.

Sec. 14, Ch. 548, L. 1997.

History: En. Sec. 23, Ch. 500, L. 1995.

39-9-410. Repealed.

Sec. 14, Ch. 548, L. 1997.

History: En. Sec. 24, Ch. 500, L. 1995.

Chapter 33**Contractor Registration****Subchapter 1****Registration Process**

- 24.33.101..... Contractor Registration Application Requirements (REPEALED)
- Rules 24.33.102 through 24.33.110 reserved
- 24.33.111..... Additional Application Information
- Rules 24.33.112 through 24.33.120 reserved
- 24.33.121..... Construction Contractor Registration Fees
- Rules 24.33.122 through 24.33.130 reserved
- 24.33.131..... Evidence of Compliance with Laws
- Rules 24.33.132 through 24.33.134 reserved
- 24.33.135..... Suspension of Construction Contractor Registration
- Rules 24.33.136 through 24.33.140 reserved
- 24.33.141..... Acceptable Forms of Security (REPEALED)
- 24.33.142..... Reporting Certificate Changes
- Rules 24.33.143 through 24.33.150 reserved
- 24.33.151..... Certificates of Registration

Chapter 33

Contractor Registration

Subchapter 1

Registration Process

24.33.101 Contractor Registration Application Requirements

(See the Transfer and Repeal Table)

History: 39-9-103, MCA; IMP, 39-9-102, 39-9-201, MCA; NEW, 2012 MAR p. 994, Eff. 5/11/12; REP, 2018 MAR p. 720, Eff. 4/14/18.

Rules 24.33.102 through 24.33.110 reserved

24.33.111 Additional Application Information

- (1) If an application is missing any required information, the applicant will have 30 days to submit the missing information. After 30 days, incomplete applications will be deemed denied.
- (2) Applicants will have six months from the date the program receives the application to submit the missing information for approval of their construction contractor registration.

History: 39-9-103, MCA; IMP, 39-9-201, MCA; NEW, 2012 MAR p. 994, Eff. 5/11/12.

Rules 24.33.112 through 24.33.120 reserved

24.33.121 Construction Contractor Registration Fees

- (1) The fee for the issuance, renewal, or reinstatement of a construction contractor certificate of registration is \$70.
 - (a) The fee is nonrefundable for applicants.
 - (b) An applicant will have a maximum of six months to submit the required information for approval. After six months, the applicant must resubmit the \$70 fee and a new application.
- (2) If a business structure changes to require an FEIN (or not require an FEIN), a new application and \$70 application fee must be submitted.

History: 39-9-103, MCA; IMP, 39-9-206, MCA; NEW, 1995 MAR p. 2146, Eff. 10/13/95; AMD, 1998 MAR p. 2877, Eff. 11/1/98; AMD, 2005 MAR p. 967, Eff. 6/17/05; AMD, 2012 MAR p. 994, Eff. 5/11/12; AMD, 2018 MAR p. 720, Eff. 4/14/18.

Rules 24.33.122 through 24.33.130 reserved

24.33.131 Evidence of Compliance with Laws

- (1) Compliance with workers' compensation laws must be demonstrated by:
 - (a) verification by the department by use of the National Council on Compensation Insurance (NCCI) national workers' compensation database that the entity applying for construction contractor registration has current workers' compensation coverage; or

- (b) a declarations page from the workers' compensation policy, provided all of the following conditions are met:
 - (i) the insurer is a company authorized to write workers' compensation coverage in Montana;
 - (ii) the name of the insured as shown on the declaration page is the name of the applicant entity;
 - (iii) the federal employer identification number as shown on the declaration page is consistent with the federal employer identification number of the applicant entity;
 - (iv) Montana is listed in section 3A on the insurance policy's declarations page as the state under which laws the policy affords coverage;
 - (v) a policy number appears on the declaration page; and
 - (vi) the declaration page is signed by an authorized agent of the insurer;
- (c) a certificate of insurance issued by the contractor's workers' compensation insurer (or self-insured group) stating that the contractor's employees are covered for liability under the Montana Workers' Compensation Act and Occupational Disease Act, provided the following conditions are met:
 - (i) the insurer is a company authorized to write workers' compensation coverage in Montana;
 - (ii) the name of the insured as shown on the certificate of insurance is the name of the applicant entity;
 - (iii) the insurer's agent is licensed to do business in Montana;
 - (iv) there is an original signature on the certificate of insurance of an agent or other person that is authorized to bind the insurer;
 - (v) the certificate of insurance specifies that the workers' compensation coverage is under the laws of Montana to the same named insured employer that is applying for construction contractor registration; and
 - (vi) the certificate of insurance must be validated within 20 days by the submission of a declaration page or policy from the registering entity; or
- (d) a written statement, made under oath, declaring the basis for each and every exemption to the coverage requirements of the Workers' Compensation Act that the applicant contends applies. If the applicant claims the independent contractor exemption, a copy of the applicant's exemption or an application for exemption must be attached to the registration application form.
 - (i) A current exemption certificate must be valid for at least six months from the date of the construction contractor application.

History: 39-9-103, MCA; IMP, 39-9-201, MCA; NEW, 1995 MAR p. 2146, Eff. 10/13/95; AMD, 1998 MAR p. 2877, Eff. 11/1/98; AMD, 2012 MAR p. 994, Eff. 5/11/12; AMD, 2018 MAR p. 720, Eff. 4/14/18.

Rules 24.33.132 through 24.33.134 reserved

24.33.135 Suspension of Construction Contractor Registration

- (1) A contractor registration may be suspended in circumstances which the department deems necessary. These circumstances include, without limitation, the following:
 - (a) false statements regarding any aspect of the construction contractor registration application;

- (b) suspension is required by law, for example, based on non-payment of child support pursuant to Title 40, chapter 5, part 7, MCA;
 - (c) failure to report a change in status as required by ARM 24.33.142; and
 - (d) failure to maintain workers' compensation coverage, if required.
- (2) In addition to suspension, the department may assess penalties pursuant to the provisions of 39-9-301 and 39-9-401, MCA.

History: 39-9-103, MCA; IMP, 39-9-204, 39-9-301, 39-9-401, MCA; NEW, 2018 MAR p. 720, Eff. 4/14/18.

Rules 24.33.136 through 24.33.140 reserved

24.33.141 Acceptable Forms of Security

This rule has been repealed.

History: 39-3-702 and 39-9-103, MCA; IMP, 39-3-703 and 39-9-203, MCA; NEW, 1995 MAR p. 2146, Eff. 10/13/95; REP, 1998 MAR p. 2877, Eff. 11/1/98.

24.33.142 Reporting Certificate Changes

- (1) Certificate holders must report all changes to a certificate in writing to the department within ten days of the change. Such reportable changes include, but are not limited to:
- (a) address;
 - (b) name;
 - (c) FEIN;
 - (d) change in status of certificate as stated pursuant to ARM 24.33.151(1);
 - (e) phone number;
 - (f) addition to ownership;
 - (g) workers' compensation insurance carrier change or cancellation;
 - (h) business name; or
 - (i) any change in principal(s) of the business.
- (2) If a change is not reported to the department within ten days, the certificate may be suspended.

History: 39-9-103, MCA; IMP, 39-9-201, 39-9-206, 39-9-301, 39-9-303, MCA; NEW, 2012 MAR p. 1148, Eff. 5/11/12; AMD, 2018 MAR p. 720, Eff. 4/14/18.

Rules 24.33.143 through 24.33.150 reserved

24.33.151 Certificates of Registration

- (1) Issued certificates will display one of the following statuses:
- (a) "BID ONLY" means the contractor is registered only to bid construction work in Montana and cannot perform actual work until the contractor upgrades the certificate to one of the following statuses.
 - (b) "EMPLOYEES ONLY" means the contractor carries workers' compensation coverage on employees and is registered to have employees.
 - (c) "LEASED EMPLOYEES" means the contractor uses employees of a professional employer organization, as defined at 39-8-102, MCA. These employees are presumably covered with workers' compensation and unemployment insurance through the leasing company.

- (d) "NO EMPLOYEES, MAY HIRE EXEMPT WORKERS ONLY" means the contractor does not carry workers' compensation coverage on any employees.
- (2) Along with a certificate, each certificate holder will receive a construction contractor registration wallet card and a vehicle decal. The department shall review requests for more than one decal or card on an individual basis.
- (3) To increase public visibility of the construction contractor registration program, the department may provide one participant gift per year to each registered contractor (i.e., baseball caps, flashlights, etc., as determined by the department).

History: 39-9-103, MCA; IMP, 39-9-204, MCA; NEW, 2012 MAR p. 994, Eff. 5/11/12; AMD, 2018 MAR p. 720, Eff. 4/14/18.

TAB 4

TAB 4

Title 39**Labor****Chapter 8****Professional Employer Organizations and Groups Licensing****Part 1****General Provisions**

- 39-8-101. Short title - purpose.
 39-8-102. Definitions.

Part 2**Licensing**

- 39-8-201. License required – exemption – rulemaking authority.
 39-8-202. Initial license application – application fee – standards – provisional license.
 39-8-203. Denial of license application or renewal – hearing.
 39-8-204. License renewal.
 39-8-205. Renewal fees.
 39-8-206. License suspension, revocation, or nonrenewal.
 39-8-207. Requirements of licensee.

Part 3**Disciplinary Provisions**

- 39-8-301. Deceptive practices prohibited.
 39-8-302. Disciplinary action against licensee – penalties.
 39-8-303. Practice without license – investigation of complaint – injunction.
 39-8-304. Violation of injunction – penalty.
 39-8-305. Investigations – audits – reviews.

Part 4**Confidentiality – Applicability of Other Law**

- 39-8-401. Disclosure of information.
 39-8-402. Other law.
 39-8-403. Workers' compensation insurer requirements.

Title 39**Labor****Chapter 8****Professional Employer Organizations and Groups Licensing****Part 1****General Provisions****Part Cross-References**

Requirement of employers to pay unemployment and workers' compensation taxes, 39-51-1103.

39-8-101. Short title - purpose.

- (1) This chapter may be cited as the "Montana Professional Employer Organizations and Groups Licensing Act".
- (2) The legislature recognizes that there is a public need for professional employer services and finds it necessary in the interest of public health, safety, and welfare to establish standards for the operation, regulation, and licensing of professional employer organizations and groups in this state.

History: En. Sec. 1, Ch. 344, L. 1995.

39-8-102. Definitions.

As used in this chapter, unless the context indicates otherwise, the following definitions apply:

- (1) "Applicant" means a person that seeks to be licensed under this chapter.
- (2) "Client" means a person that obtains all or part of the person's workforce from another person through a professional employer arrangement.
- (3) "Controlling person" means an individual who possesses the right to direct the management or policies of a professional employer organization or group through ownership of voting securities, by contract or otherwise.
- (4) "Department" means the department of labor and industry.
- (5) "Employee leasing arrangement" means an arrangement by contract or otherwise under which a professional employer organization hires its own employees and assigns the employees to work for another person to staff and manage, or to assist in staffing and managing, a facility, function, project, or enterprise on an ongoing basis.
- (6) "Financial statements" means accounting information, consisting of balance sheets and income statements, that identifies the financial position of applicants or licensees through their operations.
- (7) "Licensee" means a person licensed as a professional employer organization or group under this chapter.
- (8) "Person" means an individual, association, company, firm, partnership, corporation, or limited liability company.
- (9) (a) "Professional employer arrangement" means an arrangement by contract or otherwise under which:

- (i) a professional employer organization or group assigns employees to perform services for a client;
 - (ii) the arrangement is or is intended to be ongoing rather than temporary in nature; and
 - (iii) the employer responsibilities are shared by the professional employer organization or group and the client.
- (b) The term does not include:
- (i) services performed by a temporary service contractor;
 - (ii) arrangements under which a person shares employees with a commonly owned company within the meaning of section 414(b) and (c) of the Internal Revenue Code of 1986, as amended, if:
 - (A) that person's principal business activity is not entering into professional employer arrangements; and
 - (B) that person does not represent to the public that the person is a professional employer organization or group;
 - (iii) arrangements existing for employment of an independent contractor working under an independent contractor exemption certificate provided for in 39-71-417; and
 - (iv) arrangements by a health care facility, as defined in 50-5-101, to provide its own employees to perform services at and on behalf of another health care facility or at and on behalf of a private office of physicians, dentists, or other physical or mental health care workers licensed and regulated under Title 37.
- (10) "Professional employer group" or "group" means at least two but not more than five professional employer organizations, each of which is majority-owned by the same person.
- (11) (a) "Professional employer organization" means:
- (i) a person that provides services of employees pursuant to one or more professional employer arrangements or to one or more employee leasing arrangements; or
 - (ii) a person that represents to the public that the person provides services pursuant to a professional employer arrangement.
- (b) The term does not include a health care facility, as defined in 50-5-101, that provides its own employees to perform services at and on behalf of another health care facility or at and on behalf of a private office of physicians, dentists, or other physical or mental health care workers licensed and regulated under Title 37.
- (12) "Temporary service contractor" means a person conducting a business that hires the person's own employees and assigns them to clients to fulfill a work assignment with a finite ending date to support or supplement the client's workforce in situations resulting from employee absences, skill shortages, seasonal workloads, and special assignments and projects.

History: En. Sec. 2, Ch. 344, L. 1995; amd. Sec. 1, Ch. 149, L. 2003; amd. Sec. 1, Ch. 260, L. 2005; amd. Sec. 4, Ch. 448, L. 2005.

Part 2**Licensing****39-8-201. License required – exemption – rulemaking authority.**

- (1) On or after July 1, 1995, a person who acts as a professional employer organization or group by entering into a professional employer arrangement or an employee leasing arrangement with a client in this state without a license or who violates the provisions of this chapter may be subject to the penalties provided in 39-8-302.
- (2) The provisions of this chapter do not apply to a labor organization, the state or its political subdivisions, the United States, or any programs or agencies of those entities.
- (3) A license issued under this chapter remains the property of the department and may not be transferred.
- (4) The department may adopt rules to implement the provisions of this chapter.

History: En. Sec. 3, Ch. 344, L. 1995.

39-8-202. Initial license application – application fee – standards – provisional license.

- (1) An applicant for initial licensure as a professional employer organization or group shall file with the department a completed application on a form provided by the department.
- (2) The application must be accompanied by a nonrefundable application fee and any material or information required by the department that demonstrates compliance with the requirements of this chapter. The application fee is:
 - (a) \$750 for a resident or nonresident unrestricted license; and
 - (b) \$500 for a restricted license.
- (3) As a condition of licensure under this chapter, an applicant who is not a resident or who is domiciled outside the state must first be licensed as a professional employer organization or group in the state in which the applicant is a resident or is domiciled if licensing is required by that state.
- (4) An applicant for licensure as a professional employer organization or group must meet one of the following applicable standards:
 - (a) An individual must be 18 years of age or older.
 - (b) A partnership or a limited partnership shall provide the names and home addresses of all partners, indicate whether each partner is a general or a limited partner, and include a copy of the partnership agreement or an affidavit signed by all partners acknowledging that a written partnership agreement does not exist.
 - (c) A corporation shall state the names and home addresses of all officers, directors, and shareholders who own a 5% or greater interest in the corporation. A domestic or foreign corporation must have filed any required documents with the secretary of state and shall remain in good standing to conduct business pursuant to this chapter.
 - (d) A limited liability company shall state the names and home addresses of those individuals who own a 5% or greater interest in the limited liability company. A domestic or foreign limited liability company must have filed any required documents with the secretary of state and shall remain in good standing to conduct business pursuant to this chapter.

- (e) A group:
 - (i) must be authorized to act on behalf of the group;
 - (ii) shall include for each professional employer organization within the group the information required in subsection (4); and
 - (iii) shall guarantee, on a form provided by the department and executed by each professional employer organization within the group, payment of all financial obligations with respect to wages, payroll-related taxes, insurance premiums, and employee benefits of each other member within the group.
 - (5) (a) An applicant shall also provide:
 - (i) the trade name or names under which the applicant conducts business, the business's taxpayer or employer identification number, the address of the business's principal place of business in the state, and the addresses of any other offices within the state through which the applicant intends to conduct business as a professional employer organization or group. If the applicant's principal place of business is located in another state, the address must be provided.
 - (ii) a list by jurisdiction of each name under which the applicant has operated in the preceding 5 years, including any alternative names, names of predecessors, and names of related business entities with common majority ownership, and detailed information on the background of each controlling person to the extent required by the department; and
 - (iii) other information requested by the department to show that the applicant and each controlling person are of good moral character, have business integrity, and are financially responsible. "Good moral character" means a personal history of honesty, trustworthiness, and fairness; a good reputation for fair dealings; and respect for the rights of others and for the laws of this state and nation.
 - (b) (i) As a prerequisite to the issuance of a license, the department shall require the applicant and any controlling person to submit fingerprints for the purpose of fingerprint checks by the Montana department of justice and the federal bureau of investigation.
 - (ii) The applicant and any controlling person shall sign a release of information to the department and are responsible to the department of justice for the payment of all fees associated with the criminal background check.
 - (iii) Upon completion of the criminal background check, the department of justice shall forward all criminal justice information, as defined in 44-5-103, concerning the applicant or any controlling person that involves the conviction of a criminal offense in any jurisdiction to the department, as authorized in 44-5-303.
 - (iv) At the conclusion of any background check required by this section, the department must receive the criminal background check report but may not receive the fingerprint card of the applicant or of any controlling person. Upon receipt of the criminal background check report, the department of justice shall promptly destroy the fingerprint card of the applicant and of any controlling person.
- (c) If an applicant or any controlling person has a history of criminal convictions, then pursuant to 37-1-203, the applicant or controlling person has the opportunity to demonstrate to the department that the applicant or

- controlling person is sufficiently rehabilitated to warrant the public trust, and if the department determines that the applicant or controlling person is not, the license may be denied.
- (6) (a) Except for an applicant who is granted a restricted license under subsection (9), an applicant shall maintain a tangible accounting net worth of not less than \$50,000, evidenced by:
- (i) providing financial statements that have been independently audited by a certified public accountant in accordance with generally accepted accounting principles; or
 - (ii) providing independently compiled financial statements and a \$100,000 security deposit in a form that is acceptable to the department.
- (b) If, after licensure, an applicant defaults in paying wages or payroll-related taxes or in meeting any liability arising pursuant to Title 39, chapter 71, or this chapter, the security deposit may be used to meet those obligations. The security deposit may not be used in determining the net worth of an applicant.
- (c) (i) Documents submitted to establish net worth must reflect net worth as of a date not more than 6 months prior to the date on which the application is submitted.
- (ii) Financial statements submitted must be attested by the president, chief financial officer, and at least one controlling person of the professional employer organization or group.
 - (iii) If an applicant is unable to meet the \$50,000 net worth requirement, the applicant shall provide to the department a surety bond, a letter of credit, or marketable securities acceptable to the department in an amount of not less than \$50,000 to cover the deficiency. If, after licensure, an applicant defaults in paying wages or payroll-related taxes or in meeting any liability arising pursuant to Title 39, chapter 71, or this chapter, the surety bond, letter of credit, or marketable securities provided to the department may be used to meet those obligations.
- (7) The applicant shall maintain a positive working capital, as evidenced by financial statements.
- (8) The department may provide by rule for the acceptance, in lieu of the requirements of subsections (6) and (7), of an affidavit provided by a bonded, independent, and qualified assurance organization that has been approved by the department certifying the qualifications of a professional employer organization or group seeking licensure under this chapter.
- (9) The department may issue a restricted license for limited operation within this state to a professional employer organization or group that is a resident of or domiciled in another state if:
- (a) the applicant's state of residence or domicile provides for licensing of professional employer organizations or groups and the applicant is licensed and in good standing in that state and that state grants a similar privilege for restricted licensing to professional employer organizations or groups that are residents of or domiciled in this state and that are licensed under this chapter;
 - (b) the applicant does not maintain an office, a sales force, or a sales representative in this state and does not solicit clients who are residents of or domiciled in this state; and

- (c) the applicant does not have more than 100 leased employees working in this state.
- (10) An applicant for a license shall appoint a recognized and approved entity as its registered agent to receive service of legal process issued against it in this state if a registered agent has not already been appointed.
- (11) The department may issue a provisional license to an applicant that allows the applicant to operate in this state while the applicant's application is being processed by the department. The department may not charge a fee for a provisional license. The department may adopt rules to implement the provisions of this subsection.
- (12) A license issued under 39-8-204 or this section may not be transferred.

History: En. Sec. 4, Ch. 344, L. 1995; amd. Sec. 2, Ch. 260, L. 2005; amd. Sec. 41, Ch. 416, L. 2005; amd. Sec. 1, Ch. 15, L. 2007; amd. Sec. 4, Ch. 112, L. 2009.

39-8-203. Denial of license application or renewal – hearing.

- (1) The department shall deny a license application or an application to renew a license if:
- (a) the application is not fully completed or properly executed;
 - (b) documents required to supplement the application are not included in the application packet or are inadequate;
 - (c) the nonrefundable application or license fee is not submitted or is incorrectly submitted with the application packet;
 - (d) the applicant or any person named in the application misrepresents material in the application;
 - (e) the applicant is determined by the department to lack good moral character, business integrity, or financial responsibility; or
 - (f) the department determines that the applicant has failed to meet or maintain any requirement of this chapter.
- (2) Conviction of a crime within the last 7 years does not automatically bar an applicant from obtaining a license or bar a licensee from renewing a license. The department shall consider the type of crime committed, the crime's relevancy to the employee leasing industry, the length of time since the conviction, and any other factor considered relevant by the department.
- (3) The department or its agent shall furnish the applicant with a written statement of the reason or reasons for denying the license or license renewal application.
- (4) An applicant or licensee may request a hearing before the department within 30 days after receiving the written denial statement. The hearing and appeal must follow the procedures provided in Title 2, chapter 4, parts 6 and 7.
- (5) During the hearing and appeal process, a licensee may continue to operate unless the circumstances warrant the ordering of immediate cessation of operations. If the renewal application is rejected, the licensee shall cease operations within this state 30 days after receiving written notification. A licensee who does not comply with the department's order to cease is subject to the penalties provided in 39-8-302.
- (6) The department may institute and maintain in the name of the state, through the attorney general or the county attorney of the county in which the violation of an order to cease occurs, an action for an injunction, order, or other civil remedy in district court to enforce its order.

- (7) An applicant or licensee is ineligible to reapply for a license for 1 year following final department action denying the issuance of or renewal of a license. The 1-year restriction does not apply to an administrative denial or nonrenewal if the denial or nonrenewal was caused:
- (a) by an inadvertent error or omission on the application;
 - (b) by experience that was insufficiently documented to the department at the time of the previous application;
 - (c) by a failure to submit the required fees; or
 - (d) when the applicant or licensee was determined to be ineligible because an individual no longer associated with the professional employer organization or group was determined to lack good moral character, business integrity, or financial responsibility.

History: En. Sec. 5, Ch. 344, L. 1995.

39-8-204. License renewal.

- (1) A license issued under this chapter is valid for 1 year from the date of issuance unless suspended or revoked.
- (2) An applicant for license renewal is subject to the requirements of 39-8-202(3) through (11).
- (3) At least 30 days prior to the expiration of the license, the licensee shall submit an application for renewal of a license on a form prescribed by the department and accompanied by the license fee, as provided in 39-8-205.
- (4) A late renewal application may not be processed prior to the expiration of the licensee's current license. A person engaged in an unlicensed activity is subject to the penalty established in 39-8-302.
- (5) Denial of a renewal license is subject to review under the provisions of 39-8-203.

History: En. Sec. 6, Ch. 344, L. 1995; amd. Sec. 3, Ch. 260, L. 2005.

39-8-205. Renewal fees.

- (1) The fee for the renewal of a resident or nonresident unrestricted license is \$750.
- (2) The fee for the renewal of a restricted license is \$500.
- (3) The application fee required in 39-8-202 does not apply to the renewal of an unrestricted license.
- (4) Fees collected must be used by the department to implement this chapter.

History: En. Sec. 7, Ch. 344, L. 1995; amd. Sec. 2, Ch. 15, L. 2007.

39-8-206. License suspension, revocation, or nonrenewal.

- (1) In addition to the penalty provided in 39-8-302, the department may suspend for up to 1 year, may permanently revoke, or may refuse to renew a license issued under this chapter if, after notice to the licensee, the department finds that any of the following exists:
 - (a) a cause for which issuance of the license could have been refused had it been known to the department at the time of issuance;
 - (b) a violation of an order of the department or noncompliance with any provision of this chapter;

- (c) procurement of or attempting to procure a license through misrepresentation or fraud;
 - (d) failure to provide a written response to a written inquiry from the department or its agent within 30 days after receiving an inquiry; or
 - (e) failure to meet or maintain any other requirement of this chapter.
- (2) If a license is suspended, revoked, or not renewed, the department shall:
- (a) immediately notify by certified mail the licensee and the licensee's workers' compensation carrier; and
 - (b) require the licensee to:
 - (i) notify each client by certified mail, return receipt requested, of the suspension, revocation, or nonrenewal using language furnished by the department;
 - (ii) notify each client in writing that the client shares joint and several liability, retroactive to the date of the client's entering into a contract with the licensee, for any wages, workers' compensation premiums, payroll-related taxes, and any benefits left unpaid by the professional employer organization or group; and
 - (iii) provide the department with evidence of client notification.
- (3) Upon notification, the licensee may appeal the decision of the department pursuant to the procedure provided in 39-8-203.

History: En. Sec. 8, Ch. 344, L. 1995; amd. Sec. 4, Ch. 260, L. 2005.

39-8-207. Requirements of licensee.

- (1) A professional employer organization or group shall, by written contract with the client, establish the responsibilities and duties of each party. The contract must disclose to the client:
- (a) the services provided, the administrative fee, and the respective rights and obligations of the parties;
 - (b) a statement providing that the professional employer organization or group:
 - (i) reserves a right of direction and control over employees assigned to the client's location. The client may retain sufficient direction and control over employees necessary to conduct business and without which the client would be unable to conduct business, discharge fiduciary responsibilities, or comply with state licensing laws.
 - (ii) assumes responsibility for the payment of wages of employees, workers' compensation premiums, payroll-related taxes, and employee benefits from its own accounts without regard to payments by the client; and
 - (iii) retains authority to hire, terminate, discipline, and reassign employees. The client has the right to accept or cancel the assignment of an employee.
 - (c) a statement that, with respect to a worker supplied to a client by a professional employer organization or group, the client shares joint and several liability for any wages, workers' compensation premiums, and payroll-related taxes and for any benefits left unpaid by the professional employer organization or group and that, in the event that the licensee's license is suspended or revoked, this liability is retroactive to the client's entering into a contract with the licensee; and

- (d) a statement that the client is responsible for compliance with the Montana Safety Culture Act, Title 39, chapter 71, part 15.
- (2) The professional employer organization or group shall:
- (a) give written notice of the general nature of the relationship between the professional employer organization or group and the client to each employee assigned to perform services at the client's place of work. The disclosure must provide that the professional employer organization:
 - (i) reserves a right of direction and control over employees assigned to the client's location. The client may retain sufficient direction and control over employees necessary to conduct business and without which the client would be unable to conduct business, discharge fiduciary responsibilities, or comply with state licensing laws.
 - (ii) retains authority to hire, terminate, discipline, and reassign employees. The client has the right to accept or cancel the assignment of an employee.
 - (b) submit to the department, within 90 days of the end of each calendar quarter, information certified by an independent certified public accountant demonstrating that all payroll-related taxes for the quarter have been paid. Upon a showing of reasonable cause, one 30-day extension may be granted for each quarter. The department, by rule, may waive the requirements of this subsection (2)(b) if the licensee provides to the department an affidavit from an organization of the type specified in 39-8-202(8).
 - (c) maintain and make available for the department or its agent all records relating to the licensee's business conduct. Records must be maintained for 5 years after terminating a professional employer arrangement or employee leasing arrangement.
 - (d) notify the department in writing within 20 days of a change of business address or a change in partners, directors, officers, members, or controlling persons designated in the license;
 - (e) notify the department in writing within 20 days after a client either commences or terminates a professional employer arrangement or an employee leasing arrangement with that professional employer organization or group; and
 - (f) post the license issued in a conspicuous place in the principal place of business and display, in clear public view in each licensee's office, a notice stating that the professional employer organization or group is licensed and regulated by the department.
- (3) (a) When a professional employer organization or group uses a professional employer arrangement with the client, both the professional employer organization or group and the client are the immediate employers of the workers subject to the arrangement for the purposes of the workers' compensation laws of this state.
- (b) When a professional employer organization or group uses an employee leasing arrangement with the client, the professional employer organization or group is the immediate employer of the workers subject to the arrangement for the purposes of the workers' compensation laws of this state.
- (4) A professional employer organization or group shall:
- (a) pay wages and collect, report, and pay payroll-related taxes from its own accounts;

- (b) pay unemployment taxes, pursuant to 39-51-1103, and provide, maintain, and secure all records and documents required of employers under the unemployment insurance laws of this state. For unemployment reporting purposes, each professional employer organization is the employing unit, as defined in 39-51-201, and shall keep separate records and submit quarterly wage lists for each of its clients.
 - (c) provide workers' compensation coverage for all employees and provide, maintain, and secure all records and documents required of employers under the workers' compensation laws of this state. A license may not be issued to a professional employer organization or group until the department receives proof of Montana workers' compensation coverage for the professional employer organization or group.
- (5) A professional employer organization or group is an employer for sponsoring and maintaining employee benefit and welfare plans. The plans, if limited to employees of the professional employer organization or group, are not multiple employer welfare arrangements. This section does not preclude the client from providing benefits to employees coemployed by a professional organization or group.
- (6) A professional employer organization or group shall disclose to the department, to each client, and to its employees information on any health or life fringe benefit program provided for its employees. The information must include:
- (a) the type of benefits;
 - (b) the identity of each insurer providing each type of coverage;
 - (c) the amount of benefits for each type of coverage and to whom or on whose behalf the benefits will be paid;
 - (d) the policy limits on each insurance policy; and
 - (e) whether coverage is fully insured, partially insured, or fully self-funded.
- (7) Disclosure required by this section may be made by any written means reasonably calculated to adequately inform the employees, including a summary plan description that meets the requirements of the Employee Retirement Income Security Act of 1974, 29 U.S.C. 1001, et seq., as amended.
- (8) (a) Subject to any contrary provisions of the contract between the client and the professional employer organization or group, the professional employer arrangement that exists between the parties must be interpreted for purposes of insurance, bonding, and employer liability pursuant to subsection (8)(b).
- (b) The professional employer organization or group:
- (i) is entitled, along with the client, to the exclusivity of the remedy under both the workers' compensation and employers' liability provisions of a workers' compensation policy or plan of either party; and
 - (ii) is not liable for the acts, errors, or omissions of a client or of an employee acting under the direction and control of a client, subject to the provisions of this chapter. Subject to the provisions of this chapter, a client is not liable for the acts, errors, or omissions of a professional employer organization or group or of any employee of a professional employer organization or group acting under the direction and control of the professional employer organization or group.
- (9) A professional employer organization or group that applies for workers' compensation coverage shall also maintain and furnish to the insurer sufficient

information to permit the calculation of an experience modification factor for each client employer, including but not limited to:

- (a) the client employer's corporate or business name;
 - (b) the client employer's taxpayer or employer identification number;
 - (c) the client employer's risk identification number;
 - (d) a listing of all employees assigned to each client employer and the applicable classification code and payroll; and
 - (e) the client employer's first report of injury identifying the client employer and any other information necessary to permit the calculation of an experience modification factor for each client employer.
- (10) An employee assigned to a client by a professional employer organization or group is considered the employee of the client for purposes of general liability insurance, motor vehicle insurance, fidelity bonds, surety bonds, and liquor liability insurance carried by the client. An employee assigned to a client by a professional employer organization or group is not an employee of the professional employer organization or group for purposes of general liability insurance, motor vehicle insurance, fidelity bonds, surety bonds, or liquor liability insurance carried by the professional employer organization or group unless the employee is included by reference in an employment arrangement contract, insurance contract, or bond.
- (11) The sale of professional employer services pursuant to this chapter does not constitute the sale of insurance under Title 33 unless the professional employer organization or group:
- (a) undertakes to indemnify another or pay or provide a specified or determinable amount of benefit based on determinable contingencies unless done through a licensed insurer or an employee welfare benefit plan as defined in 29 U.S.C. 1002(1);
 - (b) solicits, negotiates, effects, procures, delivers, renews, continues, or binds an insurance policy unless done through a licensed insurance producer; or
 - (c) is not exempt under 33-17-103(4).
- (12) A sole proprietor or a working member of a partnership working under a professional employer arrangement may not receive unemployment insurance benefits unless the individual would otherwise be entitled to benefits if the professional employer arrangement did not exist.
- (13) If the professional employer organization or group or the client complies with the provisions of 39-71-401 with respect to a worker under the professional employer arrangement, the professional employer organization or group and the client, with respect to those workers, are not uninsured employers, as defined in 39-71-501, and are not subject to the provisions of 39-71-508 or 39-71-515.

History: En. Sec. 9, Ch. 344, L. 1995; amd. Sec. 161, Ch. 42, L. 1997; amd. Sec. 62, Ch. 472, L. 1999; amd. Sec. 5, Ch. 260, L. 2005; amd. Sec. 3, Ch. 15, L. 2007.

Part 3

Disciplinary Provisions

39-8-301. Deceptive practices prohibited.

A professional employer organization or group may not:

- (1) make, issue, circulate, or cause to be made, issued, or circulated an estimate, illustration, circular, statement, advertisement, sales presentation, omission, or

- comparison that misrepresents the benefits, advantages, conditions, or terms of a professional employer arrangement or that is otherwise untrue, deceptive, or misleading;
- (2) enter into an agreement to commit or by concerted action commit an act of boycott, coercion, or intimidation that results in unreasonable restraint of or monopoly in the business of professional employer services;
 - (3) file with the department or other public official or make, publish, disseminate, circulate, or deliver to a person a false statement of financial condition with the intent to deceive;
 - (4) knowingly:
 - (a) make a false entry of a material fact in a book, report, or statement of a person; or
 - (b) omit a material fact pertaining to the business of the person from a book, report, or statement of that person;
 - (5) permit the use or filing of a name, trade name, fictitious name, or business identity that is the same as or similar to or that may be confused with the name, trade name, fictitious name, or business identity of an existing licensee, governmental agency, or nonprofit organization; or
 - (6) commit any other practice determined by department rule to be deceptive.

History: En. Sec. 10, Ch. 344, L. 1995.

39-8-302. Disciplinary action against licensee – penalties.

- (1) The department may deny a license application or may suspend, revoke, or refuse to renew an existing license for a person who:
 - (a) obtains or renews a license through bribery, fraud, or willful misrepresentation;
 - (b) engages in fraud, deceit, misrepresentation, or misconduct in:
 - (i) obtaining or providing workers' compensation or health coverage;
 - (ii) the classification of employees;
 - (iii) the reporting of employee wages for purposes of any payroll-related taxes or workers' compensation benefits; or
 - (iv) the operation of a professional employer organization or group;
 - (c) conducts business without a valid license;
 - (d) fails to maintain evidence of workers' compensation insurance coverage;
 - (e) transfers or attempts to transfer a license issued pursuant to this chapter; or
 - (f) violates the provisions of this chapter or a rule issued pursuant to this chapter.
- (2) A person who fails to comply with the provisions of this chapter is guilty of a misdemeanor and, upon conviction, is subject to a fine of up to \$1,000, imprisonment for not more than 1 year, or both.

History: En. Sec. 11, Ch. 344, L. 1995; amd. Sec. 6, Ch. 260, L. 2005.

39-8-303. Practice without license – investigation of complaint – injunction.

- (1) The department shall investigate complaints concerning practice by an unlicensed person of activities for which a license is required under this chapter.

- (2) The department may file an action to enjoin a person from practicing without a license as a professional employer organization or group.

History: En. Sec. 12, Ch. 344, L. 1995.

39-8-304. Violation of injunction – penalty.

A person who violates an injunction issued under 39-8-303 shall pay a civil penalty, as determined by the court, of not more than \$5,000. Fifty percent of the penalty must be deposited in the general fund of the county in which the injunction is issued, and 50% must be deposited in the state general fund.

History: En. Sec. 13, Ch. 344, L. 1995.

39-8-305. Investigations – audits – reviews.

- (1) The department or its agent may perform an investigation, audit, or review necessary to determine whether a person has violated any provision of this chapter or any rule promulgated by the department to implement this chapter.
- (2) Except as provided in subsection (3), material compiled by the department or its agent in an investigation, audit, or review pursuant to this section is a public record and may be disclosed.
- (3) Financial information, client lists, and lists of workers that are assigned by a professional employer organization or group and that are obtained by the department or its agent during an investigation, audit, or review are confidential and may not be published or be open to public inspection, except to public employees in the performance of their public duties.

History: En. Sec. 14, Ch. 344, L. 1995.

Part 4

Confidentiality – Applicability of Other Law

39-8-401. Disclosure of information.

- (1) The department may not disclose to any person the records, statements, or documents received from an applicant, client, or professional employer organization or group, except:
- (a) information necessary for public employees in the performance of their public duties; or
 - (b) in response to an order received by a court of competent jurisdiction upon a finding that the disclosure of the record, statement, or document is necessary because the merits of disclosure clearly exceed the demand for individual privacy.
- (2) The department may publish or make available to the public reasonable statistical data or reports regarding professional employer organizations or groups if the data or reports protect the identity of an applicant, client, or professional employer organization or group.

History: En. Sec. 15, Ch. 344, L. 1995.

39-8-402. Other law.

- (1) This chapter does not exempt a client of a professional employer organization or group or an employee assigned to a client by a professional employer organization or group from other local, state, or federal license or registration requirements.
- (2) An employee who is licensed, registered, or certified under law and who is assigned to a client location is an employee of the client for purposes of the license, registration, or certification.
- (3) Except as provided in a professional employer arrangement, a professional employer organization or group is not liable for the general debts, obligations, profit losses, business goodwill, or other damages of a client with which it has entered into a professional employer arrangement.

History: En. Sec. 16, Ch. 344, L. 1995.

39-8-403. Workers' compensation insurer requirements.

- (1) An insurer that provides workers' compensation insurance to a professional employer organization shall base classifications and rates applicable to the payroll of a worker who is subject to either a professional employer arrangement or an employee leasing arrangement as though the worker has been a direct employee of the client employer. If an experience modification has been established for the client employer, that experience modification must be audited using the factors in subsection (3) and must be applied by the insurer to the premium for the client employer's workers.
- (2) The insurer of a professional employer organization shall report to the workers' compensation advisory or rating organization of which the insurer is required to be a member under Title 33, chapter 16, part 10, all data by client, including payroll by classification and liabilities for each client during the term of the policy.
- (3) An insurer shall audit policies issued to a professional employer organization within 90 days of the policy effective date and may conduct quarterly audits thereafter. The purpose of the audit is to determine whether all classifications, experience modification factors, and estimated payroll used with respect to the development of the premium charged are appropriate.
- (4) All operations of a client, whether or not all or a portion of the client's operations are subject to a professional employer arrangement or employee leasing arrangement, must be insured by the same insurer.

History: En. Sec. 17, Ch. 344, L. 1995.

Chapter 38**Professional Employer Organizations****Subchapter 1****Licensure**

- 24.38.101..... New Applications - Denials
- 24.38.105..... Renewal Applications - Denials
- 24.38.111..... Suspension, Revocation, Nonrenewal - Appeal - Immediate
Cessation of Operations

Chapter 38**Professional Employer Organizations****Subchapter 1****Licensure****24.38.101 New Applications - Denials**

- (1) To be eligible to receive a license, a professional employer organization or group (PEO) must submit all application materials required by 39-8-202 and 39-8-207, MCA.
- (2) Upon receipt of an incomplete application from a newly applying PEO, the department will inform the applicant in writing that the PEO has 90 days from the date that the original application was received to submit a completed application.
 - (a) If a complete application is not received within the 90-day deadline, the application will be denied.
 - (b) An extension of the application process may be requested in writing by a controlling person and will be evaluated on a case-by-case basis.

History: 39-8-201, MCA; IMP, 39-8-202, 39-8-203, 39-8-207, MCA; NEW, 2014 MAR p. 684, Eff. 4/11/14.

24.38.105 Renewal Applications - Denials

- (1) The department will send a renewal application approximately 90 days prior to the renewal date. A completed renewal application must be received by the department 30 days prior to the expiration date of the license.
 - (a) If a completed renewal application is not received 30 days prior to the expiration date, the existing license will automatically expire and a subsequently received renewal application will not be renewed.
 - (b) Upon the expiration and nonrenewal of a license under (a), the applicant is subject to the provisions of 39-8-206(2)(b), MCA.
 - (c) Any application materials received under (a) will be treated as a new application and will be subject to the provisions of 39-8-203(7), MCA.
 - (d) Upon the nonrenewal of a renewal application, the department shall send a letter to all client companies of the PEO notifying the client companies the PEO renewal application has been denied.

History: 39-8-201, MCA; IMP, 39-8-202, 39-8-203, 39-8-204, 39-8-206, MCA; NEW, 2014 MAR p. 684, Eff. 4/11/14.

24.38.111 Suspension, Revocation, Nonrenewal - Appeal - Immediate Cessation of Operations

- (1) Upon the suspension or revocation of a regular or provisional license, or upon the denial of a renewal application, the department shall notify all client companies by mail that the PEO's license has been suspended, revoked, or not renewed.
- (2) The PEO may appeal the suspension, revocation, or nonrenewal by submitting a written request within 30 days of receiving the notice of suspension, revocation,

or denial. The appeal must be submitted to the department's Office of Administrative Hearings.

- (3) When the suspension or revocation of a provisional or regular license is appealed, the department may order an immediate cessation of operations if:
- (a) the PEO does not maintain a valid workers' compensation policy; or
 - (b) other circumstances determined by the department warrant immediate cessation of operations.

History: 39-8-201, MCA; IMP, 39-8-203, 39-8-204, 39-8-206, MCA; NEW, 2014 MAR p. 684, Eff. 4/11/14.

TAB 5

TAB 5

Chapter 73**Silicosis Benefits****Part 1****General Provisions**

- 39-73-101. Definitions.
- 39-73-102. Administration – duties of department.
- 39-73-103. Conformity with acts of federal government.
- 39-73-104. Eligibility requirements for benefits.
- 39-73-105. Application for payment.
- 39-73-106. Investigation of applications.
- 39-73-107. Amount of payments.
- 39-73-108. Payment of benefits when person entitled is in institution.
- 39-73-109. Payment of benefits to surviving spouse.
- 39-73-110. Assistance not assignable or subject to legal process.
- 39-73-111. Representative payee – appointment – duties.

Chapter 73

Silicosis Benefits

Part 1

General Provisions

Part Cross-References

39-73-101. Definitions.

- (1) "Examining board" means a well-qualified physician or physicians, as designated by the department of labor and industry.
- (2) The term "gainful occupation" may not be construed to mean occasional or intermittent light employment where the ability to do manual labor is not essential but means any person having an income from any other source exceeding \$350 a month.
- (3) "Payments" means money payments to persons having silicosis.
- (4) "Silicosis" means a fibrotic condition of the lungs due to the inhalation of silica dust.

History: (1)thru (3)En. Sec. 1, Part 9, Ch. 82, L. 1937, as added by Sec. 1, Ch. 5, L. 1941; amd. Sec. 1, Ch. 225, L. 1961; amd. Sec. 1, Ch. 360, L. 1971; amd. Sec. 38, Ch. 182, L. 1975; Sec. 71-1001, R.C.M. 1947; (4)En. Sec. 3, Part 9, Ch. 82, L. 1937, as added by Sec. 1, Ch. 5, L. 1941; amd. Sec. 1, Ch. 68, L. 1945; amd. Sec. 1, Ch. 216, L. 1947; amd. Sec. 1, Ch. 192, L. 1949; amd. Sec. 1, Ch. 42, L. 1953; amd. Sec. 1, Ch. 252, L. 1955; amd. Sec. 1, Ch. 3, L. 1961; amd. Sec. 3, Ch. 225, L. 1961; amd. Sec. 1, Ch. 267, L. 1965; amd. Sec. 1, Ch. 125, L. 1967; amd. Sec. 1, Ch. 260, L. 1969; amd. Sec. 1, Ch. 105, L. 1971; amd. Sec. 2, Ch. 360, L. 1971; amd. Sec. 1, Ch. 504, L. 1973; Sec. 71-1003, R.C.M. 1947; R.C.M. 1947, 71-1001, 71-1003(part); amd. Sec. 64, Ch. 613, L. 1989; amd. Sec. 1, Ch. 474, L. 2005; amd. Sec. 1, Ch. 232, L. 2007.

39-73-102. Administration – duties of department.

The department of labor and industry shall administer this chapter. The department shall:

- (1) formulate a plan and adopt rules for the operation of this chapter;
- (2) cooperate with the federal government in all matters of immediate concern pertaining to silicosis;
- (3) designate the procedure to be followed in securing a competent medical examination for the purposes of determining silicosis in each individual applicant;
- (4) designate suitable physicians or physician, well qualified to examine applicants for aid under this chapter;
- (5) pay the actual transportation expenses of any applicant from the applicant's place of residence in the state to the place of examination and return, from funds appropriated to the department for that purpose;
- (6) develop and cooperate with other agencies in developing measures for the prevention of silicosis.

History: En. Sec. 2, Part 9, Ch. 82, L. 1937, as added by Sec. 1, Ch. 5, L. 1941; amd. Sec. 2, Ch. 225, L. 1961; amd. Sec. 39, Ch. 182, L. 1975; R.C.M. 1947, 71-1002; amd. Sec. 2, Ch. 370, L. 1989; amd. Sec. 64, Ch. 613, L. 1989; amd. Sec. 1553, Ch. 56, L. 2009.

Cross-References

Administrative rulemaking procedure, Title 2, ch. 4, parts 1 through 3.

39-73-103. Conformity with acts of federal government.

If the government of the United States makes grants to states in aid of and allowing payments to persons having silicosis, the department of labor and industry is authorized to administer the grants-in-aid and payments in addition to grants made by this chapter. The total payments to any individual under this chapter may not exceed \$350 a month, exclusive of any grants made by congress.

History: En. Sec. 8, Part 9, Ch. 82, L. 1937, as added by Sec. 1, Ch. 5, L. 1941; amd. Sec. 3, Ch. 216, L. 1947; amd. Sec. 3, Ch. 192, L. 1949; amd. Sec. 2, Ch. 204, L. 1953; amd. Sec. 3, Ch. 252, L. 1955; amd. Sec. 2, Ch. 3, L. 1961; amd. Sec. 8, Ch. 225, L. 1961; amd. Sec. 3, Ch. 267, L. 1965; amd. Sec. 3, Ch. 125, L. 1967; amd. Sec. 3, Ch. 260, L. 1969; amd. Sec. 3, Ch. 105, L. 1971; amd. Sec. 3, Ch. 504, L. 1973; R.C.M. 1947, 71-1008; amd. Sec. 1, Ch. 559, L. 1981; amd. Sec. 64, Ch. 613, L. 1989; amd. Sec. 20, Ch. 214, L. 2001; amd. Sec. 2, Ch. 474, L. 2005; amd. Sec. 2, Ch. 232, L. 2007.

39-73-104. Eligibility requirements for benefits.

Payment must be made under this chapter to any person who:

- (1) has silicosis, as defined in 39-73-101, that results in the person's total disability so as to render it impossible for the person to follow continuously any substantially gainful occupation;
- (2) has resided in and been an inhabitant of the state of Montana for 10 years or more immediately preceding the date of the application;
- (3) is not receiving, with respect to any month for which the person would receive a payment under this chapter, compensation under 39-71-715 equal to the sum of \$350.

History: En. Sec. 3, Part 9, Ch. 82, L. 1937, as added by Sec. 1, Ch. 5, L. 1941; amd. Sec. 1, Ch. 68, L. 1945; amd. Sec. 1, Ch. 216, L. 1947; amd. Sec. 1, Ch. 192, L. 1949; amd. Sec. 1, Ch. 42, L. 1953; amd. Sec. 1, Ch. 252, L. 1955; amd. Sec. 1, Ch. 3, L. 1961; amd. Sec. 3, Ch. 225, L. 1961; amd. Sec. 1, Ch. 267, L. 1965; amd. Sec. 1, Ch. 125, L. 1967; amd. Sec. 1, Ch. 260, L. 1969; amd. Sec. 1, Ch. 105, L. 1971; amd. Sec. 2, Ch. 360, L. 1971; amd. Sec. 1, Ch. 504, L. 1973; R.C.M. 1947, 71-1003(part); amd. Sec. 2, Ch. 559, L. 1981; amd. Sec. 33, Ch. 416, L. 2005; amd. Sec. 3, Ch. 474, L. 2005; amd. Sec. 3, Ch. 232, L. 2007; amd. Sec. 58, Ch. 2, L. 2009; amd. Sec. 25, Ch. 112, L. 2009.

39-73-105. Application for payment.

Application for payment under this chapter must be made by the person seeking the payment to the department of labor and industry. The application must be in writing or reduced to writing in the manner and upon the form prescribed by the department. The application form may be filled in and written by a person authorized by the department. If the applicant is unable to sign the applicant's name on the application, a witnessed mark may be used.

History: En. Sec. 5, Part 9, Ch. 82, L. 1937, as added by Sec. 1, Ch. 5, L. 1941; amd. Sec. 5, Ch. 225, L. 1961; amd. Sec. 40, Ch. 182, L. 1975; R.C.M. 1947, 71-1005; amd. Sec. 64, Ch. 613, L. 1989; amd. Sec. 1554, Ch. 56, L. 2009.

39-73-106. Investigation of applications.

- (1) Whenever the department of labor and industry under this chapter receives an application for a payment, an investigation and record shall be promptly made of the validity of the claim. The object of such investigation shall be to ascertain whether or not the applicant is entitled to a payment under the provisions of this chapter and such other information as may be required by the rules of the department. The investigation of such applicant shall be conducted by representatives of the department. The physicians or physician designated by the department, as herein provided, shall constitute an examining board for such clinical, pathological, x-ray, and roentgen examinations as in the opinion of the examining board may be necessary to determine whether or not the applicant has silicosis, as herein defined. A certified report of such examination from the examining board of physicians or physician must be attached to the investigation report.
- (2) Upon the completion of such investigation, the department shall determine whether or not the applicant is entitled to a payment under this chapter. The department shall then notify the applicant of its decision.

History: (1)En. Sec. 6, Part 9, Ch. 82, L. 1937, as added by Sec. 1, Ch. 5, L. 1941; amd. Sec. 6, Ch. 225, L. 1961; amd. Sec. 41, Ch. 182, L. 1975; Sec. 71-1006, R.C.M. 1947; (2)En. Sec. 7, Part 9, Ch. 82, L. 1937, as added by Sec. 1, Ch. 5, L. 1941; amd. Sec. 7, Ch. 225, L. 1961; amd. Sec. 42, Ch. 182, L. 1975; Sec. 71-1007, R.C.M. 1947; R.C.M. 1947, 71-1006, 71-1007; amd. Sec. 64, Ch. 613, L. 1989.

39-73-107. Amount of payments.

Subject to the provisions of this chapter and the deductions provided in this chapter, any person who has silicosis and who has, subject to the regulations and standards of the department of labor and industry, been determined by the department to be entitled to payment under this chapter for silicosis must be granted a payment by the department of \$350 a month, subject to any additional appropriations. If the person is receiving payments under 39-71-715 that are less in the aggregate than \$350, then the person is entitled to a payment under this chapter of the difference between the amount received under 39-71-715 and \$350 a month. The legislature shall authorize additional appropriations that may be necessary to make the increased monthly payments provided in this section.

History: Ap. p. Sec. 3, Part 9, Ch. 82, L. 1937, as added by Sec. 1, Ch. 5, L. 1941; amd. Sec. 1, Ch. 68, L. 1945; amd. Sec. 1, Ch. 216, L. 1947; amd. Sec. 1, Ch. 192, L. 1949; amd. Sec. 1, Ch. 42, L. 1953; amd. Sec. 1, Ch. 252, L. 1955; amd. Sec. 1, Ch. 3, L. 1961; amd. Sec. 3, Ch. 225, L. 1961; amd. Sec. 1, Ch. 267, L. 1965; amd. Sec. 1, Ch. 125, L. 1967; amd. Sec. 1, Ch. 260, L. 1969; amd. Sec. 1, Ch. 105, L. 1971; amd. Sec. 2, Ch. 360, L. 1971; amd. Sec. 1, Ch. 504, L. 1973; Sec. 71-1003, R.C.M. 1947; Ap. p. Sec. 4, Part 9, Ch. 82, L. 1937, as added by Sec. 1, Ch. 5, L. 1941; amd. Sec. 2, Ch. 216, L. 1947; amd. Sec. 2, Ch. 192, L. 1949; amd. Sec. 1, Ch. 204, L. 1953; amd. Sec. 2, Ch. 252, L. 1955; amd. Sec. 1, Ch. 248, L. 1959; amd. Sec. 4, Ch. 225, L. 1961; amd. Sec. 2, Ch. 267, L. 1965; amd. Sec. 2, Ch. 125, L. 1967; amd. Sec. 2, Ch. 260, L. 1969; amd. Sec. 2, Ch. 105, L. 1971; amd. Sec. 2, Ch. 504, L. 1973; Sec. 71-1004, R.C.M. 1947; R.C.M. 1947, 71-1003(part), 71-1004; amd. Sec. 3, Ch. 559, L. 1981; amd. Sec. 64, Ch. 613, L. 1989; amd. Sec. 21, Ch. 214, L. 2001; amd. Sec. 34, Ch. 416, L. 2005; amd. Sec. 4, Ch. 474, L. 2005; amd. Sec. 4, Ch. 232, L. 2007.

39-73-108. Payment of benefits when person entitled is in institution.

If a person who is entitled to benefits under this chapter is an inmate in any Montana state institution, benefits may not be paid to the person but must be paid to the person's beneficiary, if any, as defined in 39-71-116.

History: En. Sec. 3, Part 9, Ch. 82, L. 1937, as added by Sec. 1, Ch. 5, L. 1941; amd. Sec. 1, Ch. 68, L. 1945; amd. Sec. 1, Ch. 216, L. 1947; amd. Sec. 1, Ch. 192, L. 1949; amd. Sec. 1, Ch. 42, L. 1953; amd. Sec. 1, Ch. 252, L. 1955; amd. Sec. 1, Ch. 3, L. 1961; amd. Sec. 3, Ch. 225, L. 1961; amd. Sec. 1, Ch. 267, L. 1965; amd. Sec. 1, Ch. 125, L. 1967; amd. Sec. 1, Ch. 260, L. 1969; amd. Sec. 1, Ch. 105, L. 1971; amd. Sec. 2, Ch. 360, L. 1971; amd. Sec. 1, Ch. 504, L. 1973; R.C.M. 1947, 71-1003(c); amd. Sec. 9, Ch. 480, L. 1991; amd. Sec. 1555, Ch. 56, L. 2009.

39-73-109. Payment of benefits to surviving spouse.

- (1) Upon the death of a person receiving payments for silicosis under 39-73-104 or 39-73-108, the surviving spouse, as long as the spouse remains unmarried, is entitled to receive the payments granted to the deceased spouse.
- (2) A person who otherwise is qualified to receive payments under subsection (1) but whose spouse died prior to March 14, 1974, is eligible to begin receiving \$350 a month.

History: (1)En. 71-1010 by Sec. 1, Ch. 203, L. 1974; Sec. 71-1010, R.C.M. 1947; (2)En. 71-1010.1 by Sec. 1, Ch. 500, L. 1975; Sec. 71-1010.1, R.C.M. 1947; R.C.M. 1947, 71-1010, 71-1010.1; amd. Sec. 91, Ch. 397, L. 1979; amd. Sec. 22, Ch. 214, L. 2001; amd. Sec. 5, Ch. 474, L. 2005; amd. Sec. 5, Ch. 232, L. 2007.

39-73-110. Assistance not assignable or subject to legal process.

Except as otherwise provided in this chapter, assistance granted under this chapter is not transferable or assignable, at law or in equity, and none of the money paid or payable under this chapter is subject to execution, levy, attachment, garnishment, or other legal process, or to the operation of any bankruptcy or insolvency law.

History: En. Sec. 18, Part 1, Ch. 82, L. 1937; amd. Sec. 26, Ch. 121, L. 1974; R.C.M. 1947, 71-229.

39-73-111. Representative payee – appointment – duties.

- (1) The department of labor and industry may appoint a representative payee to apply for and receive payment of silicosis benefits on behalf of a person eligible for the payments or the person's beneficiary if the department determines that the appointment is in the best interests of the person or the person's beneficiary. The representative payee may be a person, a corporation, a government agency, or an institution, including a nursing home or extended care facility providing care for the person or the person's beneficiary.
- (2) To determine the best interests of the eligible person or the person's beneficiary for appointment of a representative payee, the department may consider:
 - (a) a court determination of incompetence;
 - (b) medical evidence;
 - (c) relevant information from any person, corporation, government agency, or institution; and
 - (d) other relevant information.

- (3) The department shall:
 - (a) determine the circumstances in which a representative payee may be appointed;
 - (b) establish procedures for the appointment; and
 - (c) establish the representative payee's responsibilities.
- (4) The representative payee shall:
 - (a) act as a trustee to the person eligible for silicosis payments or the person's beneficiary in handling payments received; and
 - (b) maintain and expend the funds for the benefit and best interests of the eligible person or the person's beneficiary.
- (5) The department's obligation under this chapter is fully discharged upon payment of benefits to the representative payee.

History: En. Sec. 1, Ch. 69, L. 1989; amd. Sec. 64, Ch. 613, L. 1989; amd. Sec. 1556, Ch. 56, L. 2009.
