Montana Department of
LABOR & INDUSTRY
Employment Relations Division

Steve Bullock, Governor
Pam Bucy, Commissioner

Workers' Compensation Claims
Assistance Bureau
Bill Wheeler, Bureau Chief

5 - Year Reopening Questions from Training

	Participant Questions	Department Responses
1	How will the Department know the truthfulness of the petition submitted by the injured worker?	The insurer will receive a copy of the petition, a notification letter and will have the opportunity to send additional information they think the Panel should have for decision making purposes.
2	How will the Department handle petitions where a portion of the claim has been settled (ie: back and knee injury and the knee injury portion has been settled)?	The Panel does not have the authority to reopen medical benefits previously settled on a full and final compromise basis. When the insurer is contacted by the department about a claim that is submitted for a medical panel review, the insurer should provide the settlement agreement that settles the medical benefits of the body part(s) to the department.
3	Is the whole claim reopened even the body part that has been settled?	See question #2.
4	Will the decision to reopen medical benefits apply to body parts and specific conditions? How with the Panel handle disputed body parts?	The Panel will not make decisions on disputed body parts through this process. Disputes would need to be handled through the normal process (IMR, Mediation or WC Court). The purpose of the panel is to determine if the claim should be reopened for medical benefits to keep the injured worker at work or return to work.
5	Will a copy of the petition be sent to the insurer?	Yes, a copy of the petition will be sent to the insurer along with the notification letter requesting medical records.
6	Will the Department instruct the injured worker to send medical notes to the department for the two year review?	One hundred and twenty days out from the two year review the department will send a notification to both the insurer and the injured worker requesting updated information to be considered at the two year review. For the insurer, that would include sending updated medical records. The injured worker is not required to send medical, but is encouraged to send any information they think may be applicable to the reopening.

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7	Does the insurer need to send a separate notification that medical benefits are closing?	The department is not aware of any statutory requirement requiring notification that medical benefits are closing prior to the 60 month termination of benefits. However, if the injured worker is still receiving benefits that would terminate, the department believes it would be a best practice by the insurer to notify the injured worker so they would have time to submit a petition prior to termination of benefits.
8	If an insurer has not treated an injured worker in 5 plus years can the insurer have time to investigate the claim?	The department assumes that insurers and adjusters will be appropriately managing accepted claims during the period of potential liability. By rule, the insurer has 14 days (calendar days) to provide medical records and any other information relevant to the claim reopening to the department. Any information received after the 14 day deadline will not be considered.
9	Why is there only 14 days for the first review of the petition to submit medical records and 45 days on the two year review?	The department is required by statute to issue a medical report concerning the petition within 60 days. In developing a business process to complete the entire process in that period of time the department determined it that it was only feasible to allocate 14 days to medical record retrieval. If a claim is reopened for a period of at least two years with a two year review, there is more flexibility provided to the department for notification and retrieval of documents. Therefore, the department will notify the parties 120 days out and provide 45 days for the submission of additional information.
10	Does the insurer need to send a copy of the medical records to the injured worker?	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 or to the department's contractor.
11	If the Department receives additional information from the injured worker, would that information be forwarded to the insurer?	No, see #10 above. In this case the injured worker would be required to copy that information to the insurer and vice versa.

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12	How long does the department or Maximus retain medical information related to the reopening process?	Medical records and medical review reports will be stored for a three-year period beyond the determination of Maximum Medical Improvement, Recommended Medical Treatment, Two-year reopening of benefits.
13	How will the department know when a petition is received?	The petition may be sent to the department electronically through email or to the department P.O. Box. By definition, received means a petition has been delivered to the department. When the department receives a petition, it will be date stamped and entered into the database for tracking of the petition.
14	Who pays for the panel?	The cost of the panel is part of the administrative function of the department for the regulation of workers' compensation in Montana. Therefore, it is paid by employers and it is included with all the other administrative costs. A self-insured employer will pay via assessment and all other employers will pay via surcharge on their premium bill to their insurance carrier.
15	Will benefits close once the injured worker has reached MMI after the reopening of medical benefits?	Statute (39-71-717) says that benefits reopened pursuant to this section to either return the injured worker to work or to stay at work, remain open for 2 years or until maximum medical improvement is achieved following surgery or the recommended medical treatment, whichever occurs first.
16	How are the panel members chosen?	The department has contracted with Maximus to find physicians for the medical panel. When the department accepts a petition to reopen, the department will send the petition to Maximus. Maximus is required to provide two physicians that are licensed to practice medicine in Montana and that have expertise and experience in the area of medicine that is relevant to the worker's condition. The department's Medical Director will be the third panel member.

17	Do we need to use the joint petition if both parties agree to reopen the medical benefits?	If the parties wish to reopen the benefits closed under the statute a petition to reopen must be presented to the department, reviewed and approved. The Joint Petition was established to provide stakeholders for a streamlined process when both parties agree that medical benefits should be reopened. Nothing prohibits an insurer from making voluntary payments for medical benefits that have terminated by law.
18	Do we need to send all medical records?	Yes. The statute specifically says a copy of the worker's medical records contained in the insurer's claim file.
19	If we have a process in place for obtaining our medical records, does the adjustor need to be the one to send the medical records or may someone within the organization send the medical records?	The insurer can make the determination of who in the company will send the records. They just need to make sure the information is submitted timely.
20	Who will send the medical records to the panel?	The insurer is required to send the medical records.
21	Do we have to sort the medical records prior to sending them to Maximus?	No, Maximus will organize the records and make them available for review through the portal.
22	Will only Montana doctors be used?	Statute requires the physicians to be licensed in the State of Montana but does not require that the physicians be practicing in Montana.
23	Why do we not use the SSN on the petition?	The social security number is not required to move the petition through the process. Due to security concerns we are moving away from using the social security numbers whenever possible for identification purposes. The claim number should be used instead.
24	The statute speaks to RTW/SAW for criteria to reopen the medical benefits. What about volunteers?	The same criteria would be used for volunteers. Do the medical benefits allow the injured worker to RTW/SAW in the volunteer position?
25	Once the claim is closed does the insurer need to continue reporting under Section 111 for Medicare?	The department does not know how a claim closure affects the insurer's responsibilities under other programs such as Medicare.

26	Is there a form for the insurer to fill out on their view of reopening or not reopening benefits?	Not at this time. The insurer can always attach a letter or statement with any additional information along with the medical records as long as they also send a copy to the injured worker.
27	Can the insurer send a letter if there has been no contact or medical for the 5 plus years?	The insurer can always attach a letter or statement with any additional information along with the medical records as long as they also send a copy to the injured worker.
28	If the injured worker is treating without prior authorization from the insurer and the Panel reopens medical benefits, is the insurer liable for all medical related to the claim that occurred prior to the reopening?	The panel/medical director's decision to reopen the claim would be effective as of the date on the determination letter and not for services rendered while medical benefits are closed.
29	What if the injured worker has several open claims, can the insurer send medical records from the other claims that are not in the petition?	The Insurer is required to send any medical records on file with regard to that specific claim. They can also send any additional information that is applicable to the reopening petition but must send a copy of the additional information to the injured worker.
30	If there is an injury and there is a dispute over the last injurious exposure date, which insurer is responsible for the reopening of benefits provided in a petition?	If we are unable to determine which claim the injured worker is petitioning to reopen we would contact the injured worker and clarify before moving forward. If there is a dispute over the last injurious exposure, that dispute would ultimately need to be resolved through the normal dispute resolution process and outside the petition process.
31	What happens if the medical records are sent to the Department by the insurer?	The Insurer is required to send medical records directly to the department's contractor (currently Maximus). If medical records are sent to the department we will notify the Insurer and ask them to send the medical records to Maximus. We will also ask the Insurer for direction on what to do with the records we received. We can either shred them or return them to the Insurer. The Insurer has 14 days from the date they received the notification to send the medical records to Maximus.
32	What file types are accepted by Maximus?	According to Maximus, there are no restrictions on valid file types. The system will prevent potentially dangerous files from being uploaded.

33	Can a claim number be added to the file name when sending medical claim file to Maximus?	Yes, but make sure to use the following format: LASTNAME firstname date of injury using MMDDYYYY with any additional information (i.e. claim number) after that. For example: JONESmary07152011MT201198765.
34	If the medical director changes, will that make a difference in subsequent reviews?	The criteria of the review is the same no matter who is currently in the medical director position.
35	Understanding that each party is to cc the other on information submitted to MD or panel, could the insurer receive a copy of a document index so that we are sure to receive the complete file?	The department does not have a document index. The injured worker and the Insurer will be notified when a petition is accepted. Sharing information with the other party is the responsibility of the injured worker and the Insurer. They will need to copy any additional medical or other information to the other party.
36	If a determination is made that the medical benefits are not reopened, does the injured worker/claimant attorney have a time frame to appeal? (2 years)	The timeframe is listed in 39-71-2907(2). It states, "A petition for a hearing before the workers' compensation judge must be filed within 2 years after benefits are denied".
37	Standard of Proof generally does not have a percentage. Will this be strictly upheld?	For training purposes we used percentages for training purposes to differentiate between the standards of proof. Ultimately it will be up to the WC Court to make a decision on how the standards of proof will apply.
38	Will there be a medical opinion from the medical director and/or panel specifically regarding RTW/SAW for the injured worker?	Determination regarding an Injured Worker's ability to RTW/SAW is a medical decision that would be made by the treating physician. The Panel will be making a decision to reopen benefits, or not, based on whether they conclude the benefits are necessary for the injured worker to either stay at work or return to work.
39	If no medical records are received will the review move forward?	Yes, the Panel will move forward with the petition based on the petition and any other information received within the 14 days.
40	What if medical records are submitted on day 14 and that is a weekend, will those records be used?	Records need to be received by the vendor (from the Insurer) or by the department (by the injured worker) within 14 days of the notice. Rules apply to both the Insurer and the Petitioner. If sent electronically medical records can be sent any day of the week.

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41	Should a chiropractor and a PA be on the panel as it doesn't follow 116?	A chiropractor and PA are listed as treating physicians in 39-71-116. For the purposes of the medical panel, the department defined physician to include a chiropractor and PA. See 24.29.3103 ARM.
42	Who determines who has a conflict of interest?	Maximus is responsible for vetting the medical review panel. The Medical Director is responsible for disclosing any potential conflict of interest if he has provided a service to the injured worker and is required to find a replacement Medical Director to review the petition. The department views it a conflict of interest if the physician has previously provided a medical service to the injured worker including independent medical exams (IMEs). An Independent Medical Review (IMR) for service requests under the Montana Utilization and Treatment Guidelines would not preclude the Medical Director from serving on a medical review panel.
43	An adjustor requested that the department fax a petition notification in addition to phone, email and mail, especially if an adjustor is out of the office.	It is the responsibility of an adjuster to ensure that claims matters are handled in a timely basis. We will endeavor to follow reasonable instructions regarding alternative notification, but that an adjuster's failure to timely respond to communications from the department does not extend the response period.
44	What if there is a disability dispute? Will the petition move forward if PTD is not awarded and then PTD is awarded at a later date?	If the petition is eligible for review it will move forward in the process.
45	How will the department handle reopening of closed medical benefits if the Panel doesn't reopen benefits and the Workers' Compensation Court Judge reverses that decision?	If the Workers' Compensation Court Judge reverses the decision the department will follow the Workers' Compensation Court Judge's orders.
46	Can the department cc the IW and/or counsel from Maximus once the records have been received?	No, that function is not available at this time.
47	Can the reviewers note in their determination that medical records were not received and the decision was based on petition information?	Yes, they could do that.

48	Will the department inform the injured worker that records need to be sent to the department?	When the department communicates with the injured worker, we plan to let them know that they can submit additional medical or other information and that it can be sent to either the PO Box or emailed to the department. The injured worker is not required to submit medical records and/or other information. The notification will be mailed when the petition has been filed.
49	Recommended housekeeping for legislature: recommend in section 8 of 39-71-717 that medical director be added.	Thank you for the recommendation. At this time the department does not plan to have any housekeeping legislation proposed for workers' compensation for the 2017 Session.
50	Will the medical panel and medical director reviews be available?	Yes, they will be provided upon request.
51	Will the Lockhart Lien apply to the payment of the medical reviewers?	No, the Lockhart Lien does not apply to the payment of the medical review panel. This is an administrative process like all of the functions the department oversees to administer the Workers' Compensation Act. The payment of the administrative functions of workers' compensation are paid directly by employers that have workers' compensation coverage for their employees.
52	Revise petition disclosure to apply to "relevant" medical records under Section 39-71-604(2).	Statute 39-71-717 (6) states that the department shall request from the Insurer a copy of the worker's medical records contained in the Insurer's claim file.
53	If the benefits are decided to be reopened by the Panel, will the insurer be ordered to pay benefits while they challenge the panel's decision?	The reopening of medical benefits is not a specific order of the department for the insurer to provide [pay] specific benefits. The insurer will need to continue to appropriately adjust the claim during the pendency of any dispute resolution process.