

DRAFT VERSION OF ADMINISTRATIVE RULES

Reopening of terminated medical benefits (39-71-717, MCA)
[a/k/a "5 year claim closure"]

NEW RULE I INTRODUCTION – APPLICABILITY – VOLUNTARY PAYMENTS

(1) [This subchapter] addresses the reopening of medical benefits terminated by operation of law for certain claims that occurred on or after July 1, 2011.

(2) [This subchapter] does not apply to any claims:

(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; 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 [this subchapter] 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 on-line at the department's website. Those 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 [this subchapter] 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.

AUTH: 39-71-203, MCA

IMP: 39-71-105, 39-71-107, 39-71-704, and 39-71-717, MCA

NEW RULE II DEFINITIONS Terms that are defined in 39-71-116, MCA, are used in [this subchapter] as they are defined by statute. As used in this [subchapter] 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 which is supplied by a worker or an insurer which is 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, as specified in the medical director's report.

(4) "Denied" means that after the medical review has been performed, medical benefits are not reopened.

(5) "Dismissed" means the petition has been evaluated by the department and was found to be ineligible to be considered for medical review.

(6) "Department" means the department of labor and industry.

(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-2-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 [this subchapter]. 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's assistant, certified; or
- (f) advanced practice registered nurse.

(15) "Received " means a petition which has been delivered to the department, but has not yet been accepted and filed by the department.

(16) "Reopened" means medical benefits which had terminated by operation of law, and which are now to be furnished by the insurer, in the type, quantity, or duration recommended by the medical report.

(17) "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 benefit should be furnished.

(18) "Returned" means the petition has been evaluated by the department and has been found to be incomplete.

(19) "Submission", as used in 39-71-717(8), MCA, means the same as being filed with the department.

(20) "Submit", as used in 39-71-717(6), MCA, means to deliver medical records or additional information to the department.

(21) "Year" means 12 calendar months.

(22) "Work" means supplying labor or services for remuneration, although not necessarily in employment by another.

(23) "Worker" means the individual who suffered the workplace injury or occupational disease upon which basis a claim for benefits was made to the insurer.

AUTH: 39-71-203, MCA

IMP: 39-71-116 and 39-71-717, MCA

NEW RULE III 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 10 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 which 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 the status conditions:

(a) the petition is approved, with a recommendation in the report as to the nature and extent of the medical benefits that should be provided by the insurer; or

(b) the petition is denied, with a recommendation in the report that no further medical benefits should be provided by the insurer.

(6) 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.

AUTH: 39-71-203, MCA

IMP: 39-71-717, MCA

NEW RULE IV 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 on-line at the department's website, 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.

AUTH: 39-71-203, MCA

IMP: 39-71-717, MCA

NEW RULE V 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 that 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. The medical records and additional information must be delivered to the department in the manner and to an address as specified by the instructions. The instructions will describe ways to deliver medical records and information 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.

AUTH: 39-71-203, MCA

IMP: 39-71-717, MCA

NEW RULE VI JOINT PETITION FOR REOPENING (1) If the worker and the insurer agree on the nature and duration of the medical benefits to be reopened, the worker and the injured worker may file a joint petition for reopening. A joint petition for reopening must be made on the department joint petition form. Joint petition forms are available from the department in the manner described in [NEW RULE IV].

(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 is 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 approve the petition.

(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.

AUTH: 39-71-203, MCA

IMP: 39-71-717, MCA

RULE VII 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 by not later than the deadline for submission of medical records and additional information.

(2) The medical director may consult with non-physician 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 [NEW RULE VIII] 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 Workers' Compensation Court after following the mediation requirements provided by law.

AUTH: 39-71-203, MCA

IMP: 39-71-717, MCA

NEW RULE VIII 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 non-physician 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) The worker has the burden of proof to demonstrate the nature and duration of the medical benefits that should be reopened. Medical benefits will not be reopened unless the worker shows, based on a preponderance of evidence, that the criteria of subsection (2) have been satisfied.

(4) 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 subsection (2). The panel member's report must state the reason(s) and rationale for the recommendation.

(5) If a panel member concludes that additional medical benefits are necessary, the panel member shall identify the nature and duration of the medical benefits that should be provided. The analysis must include the reasons and rationale that explain:

(a) the nature or type of medical benefits recommended to be furnished, whether identified by specific procedure or by general description;

(b) the duration (whether by time or number of treatments) of the benefits expected to be needed; and

(c) whether and how the recommendations are consistent with the department's current utilization and treatment guidelines.

(6) 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.

(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.

AUTH: 39-71-203, MCA

IMP: 39-71-717, MCA

NEW RULE IX 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 in the medical review. The department's request shall specify a deadline by which those records and additional information must be received by 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 subsection (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 that there appears to be reason for changing 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 subsection (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.

AUTH: 39-71-203, MCA

IMP: 39-71-717, MCA

DRAFT VERSION ONLY – NOT FINAL TEXT

Petition To Reopen Closed Medical Benefits

Date Stamp

For Department Use Only

Injured Worker filing petition

1. Injured Worker's Name:

Address:

Telephone Number:

Email (optional):

Date of Birth:

2. Your Worker's Compensation Claim Number: (optional)

Date of Injury:

Body Part:

3. Attorney's Name (if applicable):

Address:

Phone:

Email (optional):

4. Choose your preferred review process

Medical Director only

Panel Review(including medical director)

5. What is your current work status?

Working at my time of injury job

Working at modified or different job

Not Working

6. Has there been a settlement approved for medical benefits?

Yes

No

7. Describe the medical benefits to be reopened*

8. Describe how the reopening of medical benefits will keep you at work or return you to work*

By signing all health care information in the possession of the insurer or medical provider, whether generated by the health care provider or any other source, may be released to the Montana Department of Labor and Industry (DLI) and/or its agents for the purpose of evaluating my petition for reopening of workers' compensation medical benefits pursuant to § 39-71-717, Mont. Code Ann. This release is subject to revocation at any time. The revocation is effective from the time it is received in writing to DLI. Authorization is effective only as long as the claimant is claiming workers compensation medical benefits.

Injured Worker's Signature:

Date:

Instructions for filling out this form are on the back

*Attach additional pages and supporting medical documents as needed.

Injured Worker Petition 07/01/2016/vs9

INSTRUCTIONS

The purpose of this form is:

1. Allow the injured worker the opportunity to reopen medical benefits which could allow him/her to stay at work or return to work.
2. Obtain the necessary information for the Department to review the request and when appropriate approve the petition

Field 1: Fill in the injured worker's name, current mailing address, telephone number or contact telephone number and date of birth are required. If there is neither a telephone number nor a contact number indicate by using "NONE". Email address is optional.

Field 2: The date of injury and the body part injured is required field. The Worker's Compensation Claim Number is optional.

Field 3: If the injured worker has an attorney representing him/her, the attorney's name, address, phone number are required. Email is optional.

Field 4: The injured worker must indicate his/her preferred form of review by checking the appropriate box and is required.

Field 5: The injured worker must indicate his/her work status by checking the appropriate box and is required

Field 6: Check the appropriate answer to the question regarding medical settlements only and is required.

Field 7: Describe the medical benefits that are being requested in the petition. Include any limitations or restrictions that could affect the outcome of the petition. You are encouraged to include any supporting medical documentation, letters, etc. Add additional pages to this petition if you need more space for your request. This information is required.

Field 8: Explain how the requested medical benefits will keep you at work or return you to work. This status is required.

Read the disclosure near the bottom of the page.

Signature Field:

The injured worker must sign and date the box on bottom of the page. The signature and date is required to reopen the medical benefits.

Send the petition and any supporting documentation to:

**DEPARTMENT OF LABOR AND INDUSTRY
PETITION TO REOPEN CLOSED MEDICAL BENEFITS
P O BOX 8011
HELENA, MONTANA 59604**

Joint Agreement and Petition to Reopen Closed Medical Benefits

Date Stamp

For Department Use Only

<p>1. Injured Worker's Name:</p> <p>Address:</p> <p>Telephone Number:</p> <p>Email (optional):</p> <p>Date of Birth:</p>	<p>3. Insurer:</p> <p>Contact:</p> <p>Address:</p> <p>Telephone Number:</p> <p>Email (optional):</p>
<p>2. What is your current work status?</p> <p><input checked="" type="radio"/> Working at my time of injury job</p> <p><input type="radio"/> Working at modified or different job</p> <p><input type="radio"/> Not Working</p>	<p>4. MT Agency Claim Number: (optional)</p> <p>Date of Injury:</p> <p>Body Part:</p> <p>5. Has there been a settlement approved for medical benefits?</p> <p>Yes <input checked="" type="radio"/> No <input type="radio"/></p>
<p>6. Describe medical benefits you are petitioning to be reopened, including limitations and restrictions.</p>	
<p>Please include appropriate medical records or letters to support your above position</p>	
<p>The Injured worker and the insurer jointly petition the Department of Labor and Industry to reopen the medical benefits in the workers' compensation or occupational disease claim identified as the MT Agency Claim Number above.</p> <p>The worker and the insurer jointly petition that the medical benefits described above be reopened, that those medical benefits will remain open for two years or until maximum medical improvement is achieved following surgery or the recommended medical treatment, whichever comes first, and that those medical benefits are subject to the limitation or restrictions described above.</p> <p>The worker and the insurer each agree that the medical benefits being requested in this petition are necessary and appropriate, and will allow the worker to return to work or continue to work.</p> <p>The worker and the insurer each understand that only those medical benefits identified in this Joint Petition, and no other medical benefits, are being reopened.</p> <p>The worker and the insurer each agree that this Joint Petition may be reviewed solely by the Department of Labor and Industry's Medical Director and will not be reviewed by a three-physician panel.</p> <p>By signing all health care information in the possession of the insurer or medical provider, whether generated by the health care provider or any other source, may be released to the Montana Department of Labor and Industry (DLI) and/or its agents for the purpose of evaluating my petition for reopening of workers' compensation medical benefits pursuant to § 39-71-717, Mont. Code Ann. This release is subject to revocation at any time. The revocation is effective from the time it is received in writing to DLI. Authorization is effective only as long as the claimant is claiming workers compensation medical benefits.</p>	
<p>Injured Worker's Signature:</p> <p>Date:</p>	<p>Insurer's Signature:</p> <p>Date:</p>
<p>Medical Benefits Reopened date box</p>	<p>Medical Benefits Will Be Reviewed date box</p>
<p>Reviewed by the Medical Director. <input checked="" type="radio"/> Approved <input type="radio"/> Denied</p> <p>Medical Director's Signature:</p> <p>Date:</p>	

INSTRUCTIONS

The purpose of this form is to:

1. Facilitate a fast and easy way for medical benefits to be reopened that both the injured worker and the insurer agree to and will help the injured worker stay at work or return the injured worker to work.
2. Obtain the necessary information for the Department to review the request and when appropriate approve the petition

Field 1: Fill in the injured worker's name, current mailing address, telephone number or contact telephone number and date of birth are required. If there is neither a telephone number nor a contact number indicate by using "NONE". Email address is optional.

Field 2: The injured worker must indicate his/her work status by checking the appropriate box and is required.

Field 3: The insurer's name, contact person (adjustor), mailing address and telephone number are required. The email address is optional.

Field 4: The date of Injury and body part injured are required fields. The Montana Agency Number is optional.

Field 5: Check the appropriate answer to the question regarding medical settlements only and is required.

Field 6: Describe the medical benefits that both parties are petitioning to be reopened. Include any limitations or restrictions that could affect the outcome of the joint petition. Also include how the medical services will allow the injured worker to stay at work or return them to work. This information is required.

Read the information presented in the middle of the petition carefully.

Signature Fields:

1. The injured worker must sign and date the box on the left hand side of the page. This signifies their agreement with the insurer for reopening the medical benefits. The signature and date is required to reopen the medical benefits listed.
2. The Insurer must sign and date the box on the right hand side of the page. This signifies their agreement with the injured worker for reopening the medical benefits. The signature and date is required to reopen the medical benefits listed.

The boxes below the dark line at the bottom of the page are for the Medical Director's use and are not to be filled out by either the injured worker or the insurer.

Send the petition and any supporting documentation to:

**DEPARTMENT OF LABOR AND INDUSTRY
PETITION TO REOPEN CLOSED MEDICAL BENEFITS
P O BOX 8011
HELENA, MONTANA 59604**