

BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY
OF THE STATE OF MONTANA

In the matter of the amendment of)
ARM 24.29.3114, 24.29.3117, and)
24.29.3127 pertaining to workers')
compensation petitions for reopening)

NOTICE OF PUBLIC HEARING ON
PROPOSED AMENDMENT

TO: All Concerned Persons

1. On September 9, 2021, at 9:00 a.m., the Department of Labor and Industry (department) will hold a public hearing via remote conferencing to consider the proposed amendment of the above-stated rules. There will be no in-person hearing. Interested parties may access the remote conferencing platform in the following ways:

- a. Join Zoom Meeting, <https://mt-gov.zoom.us/j/89600508521>, Meeting ID: 896 0050 8521, Passcode: 858389; or
- b. Dial by telephone, +1 406 444 9999 or +1 646 558 8656, Meeting ID: 896 0050 8521, Passcode: 858389.

The hearing will begin with a brief introduction by department staff to explain the use of the videoconference and telephonic platform. All participants will be muted except when it is their time to speak.

2. The department will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than 5:00 p.m., on September 2, 2021, to advise us of the nature of the accommodation that you need. Please contact Brandon Kirchgasser, P.O. Box 1728, Helena, Montana 59624-1728; telephone (406) 444-3359; facsimile (406) 444-4140; Montana TTD (406) 444-5549; or e-mail bkirchgasser@mt.gov.

3. The rules as proposed to be amended provide as follows, new matter underlined, deleted matter interlined:

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~~ 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) and (b) remain the same.

(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

REASON: Reasonable necessity exists to amend this rule as part of the department's ongoing efforts to shorten, clarify, and make rules more concise. Reason also exists as part of review efforts for the implementation of House Bill 199 from the 2021 legislative session.

24.29.3117 JOINT PETITION FOR REOPENING (1) remains the same.

~~(2) All portions of the joint petition for reopening must be completed when it is delivered to the department. However, and the medical records and other information the parties believe are important to the issue of reopening must do not need to be provided at that time.~~

~~(3) and (4) remain the same.~~

AUTH: 39-71-203, MCA

IMP: 39-71-717, MCA

REASON: Reasonable necessity exists to amend this rule to clarify that medical records and other information do not need to be submitted when parties jointly petition to reopen medical benefits.

24.29.3127 PERIODIC REVIEW OF CERTAIN REOPENED MEDICAL BENEFITS (1) through (3) remain the same.

~~(4) For parties which filed a joint petition for reopening and did not deliver medical records to the department:~~

~~(a) if they agree medical benefits should remain open until the next review, medical records are not required to be submitted for periodic review;~~

~~(b) if they do not agree medical benefits should remain open until the next review, they must notify the department within 14 days of notice of the review that they believe benefits should not continue. The medical director will then conduct a review as set forth in ARM 24.29.3114, except the date the petition is filed is the date of notification of dispute.~~

~~(4) through (5)(a) remain the same but are renumbered (5) through (6)(a).~~

~~(b) in cases where the original review was made solely by the medical director, issue a report and make recommendations as provided by (6) (7).~~

(6) and (7) remain the same but are renumbered (7) and (8).

AUTH: 39-71-203, MCA

IMP: 39-71-717, MCA

REASON: Reasonable necessity exists to amend the rule to include new (4) to establish a procedure for disputes during biennial review of previously agreed-to reopenings and pursuant to House Bill 199 from the 2021 legislative session. This procedure permits parties to dispute continued medical obligations where the bases for the joint petition no longer exist or have changed.

4. Concerned persons may present their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to Jason Swant, Employment Relations Division, P.O. Box 8011, Helena, Montana 59604-8011; facsimile (406) 444-4140; or e-mail jswant@mt.gov, and must be received no later than 5:00 p.m., September 10, 2021.

5. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request, which includes the name and e-mail or mailing address of the person to receive notices and specifies the particular subject matter or matters regarding which the person wishes to receive notices. Such written request may be mailed or delivered to the contact person in paragraph 4 above or may be made at any rules hearing held by the agency.

6. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor was contacted on June 21, 2021, by electronic mail and telephone.

7. Pursuant to 2-4-111, MCA, the department has determined that the rule changes proposed in this notice will not have a significant and direct impact upon small businesses.

8. Department staff has been designated to preside over and conduct this hearing.

/s/ QUINLAN L. O'CONNOR
Quinlan L. O'Connor
Alternate Rule Reviewer

/s/ LAURIE ESAU
Laurie Esau, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State July 27, 2021.