



FIVE-YEAR CLOSURE

Employment Relations Division
Workers' Compensation Section



MONTANA STATUTES AND RULES

39-71-704 (f) (i). Payment of medical, hospital, and related services -- fee schedules and hospital rates -- fee limitation

- Medical benefits terminate 60 months from DOI or OD (excludes PTD, prosthetics & repair)
- Worker may request reopening of medical benefits

39-71-717 (2). Reopening of terminated medical benefits -- medical review

Medical benefits may be reopened only if:

- IW's medical condition is a direct result of the compensable injury or occupational disease &
- IW requires medical treatment in order to continue to work or return to work
- Medical benefits closed by settlement or court order are not subject to reopen

Program Administrative Rules: 24.29.3101 through 24.29.3127



STANDARD OF PROOF

STANDARD OF PROOF	PERCENTAGE ON THE BALANCE SCALE
Substantial, credible evidence	More than mere speculation or possibility, but less than 51%(20% to 50%)
Preponderance of Evidence	51% reasonable certainty
Clear and convincing	75% reasonable certainty
Beyond a reasonable doubt	99% reasonable certainty



INDIVIDUAL VS JOINT PETITION

Two types of petitions to reopen closed medical benefits:

A. Regular Petition

- **Purpose:** Allows the injured worker opportunity to reopen closed medical benefits
- Injured worker or representative initiates, completes and submits the petition

B. Joint Petition

- **Purpose:** Facilitates a fast & easy way to reopen medical benefits where insurer & IW are in agreement
- Injured worker, representative or insurer may initiate, complete and submit petition

Department validates petition as eligible for medical review:

- **Must be an accepted claim** – cannot be in 608 or 615 status indefinitely
- **Timeframe:** 90 days prior to claim closing through 10-year anniversary of DOI
- Medical benefits closed by settlement or court order are not subject to reopen
- Denied claims are not eligible to be re-petitioned



PETITION IS FILED

14 Calendar days allowed for medical records

Sun	Mon	Tue	Wed	Thu	Fri
			1	2	3
3	4	5	6	7	8
9	10	11	12	13	14
15	16	17	18	19	20
21	22	23	24	25	26
27	28	29	30	31	



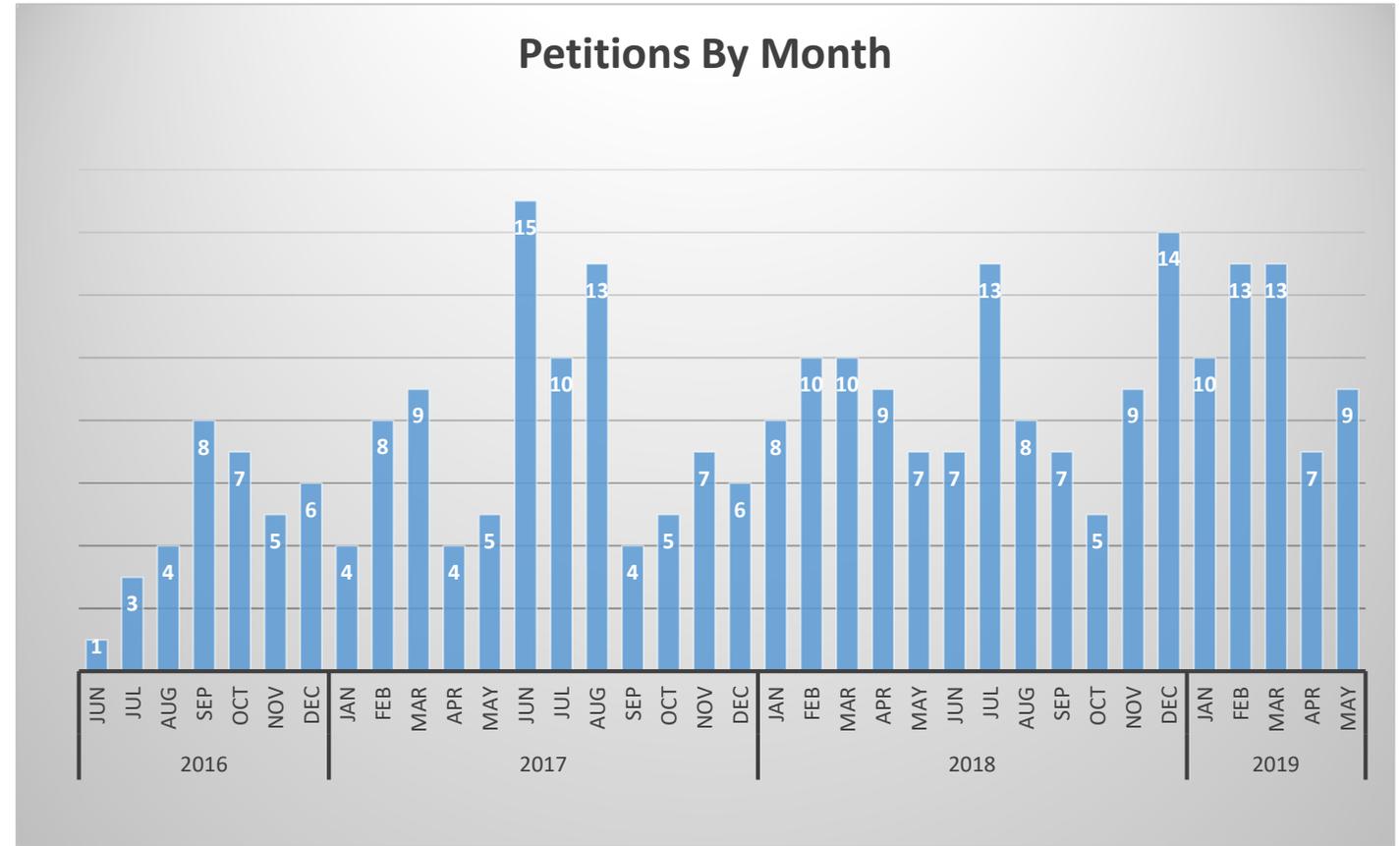
PETITIONS RECEIVED YTD

283 Petitions Received

230 Individual Petitions

- 95 Reopened
- 83 Denied
- 25 Dismissed
- 13 Pending
- 14 2-Yr Review

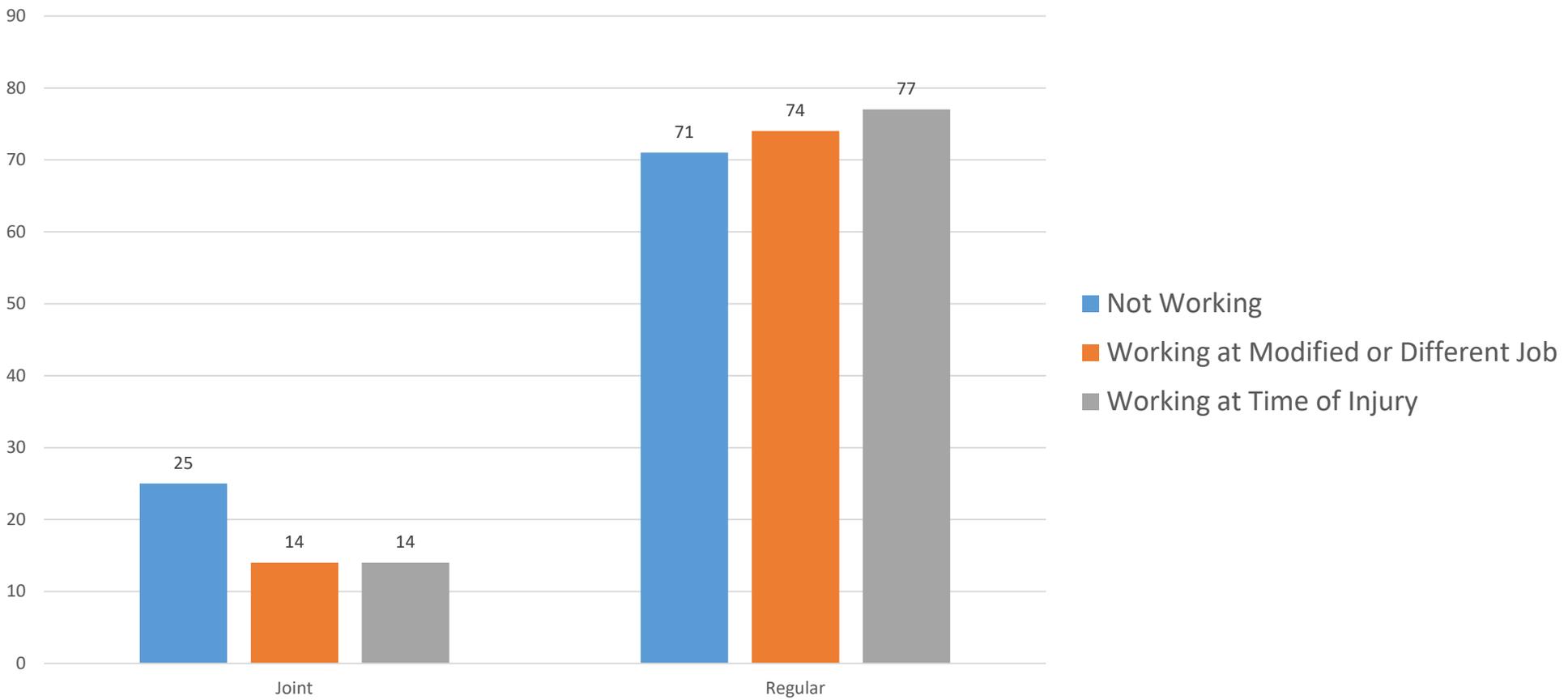
53 Joint Petitions





PETITIONS EXPERIENCE TO DATE

Petition Work Status

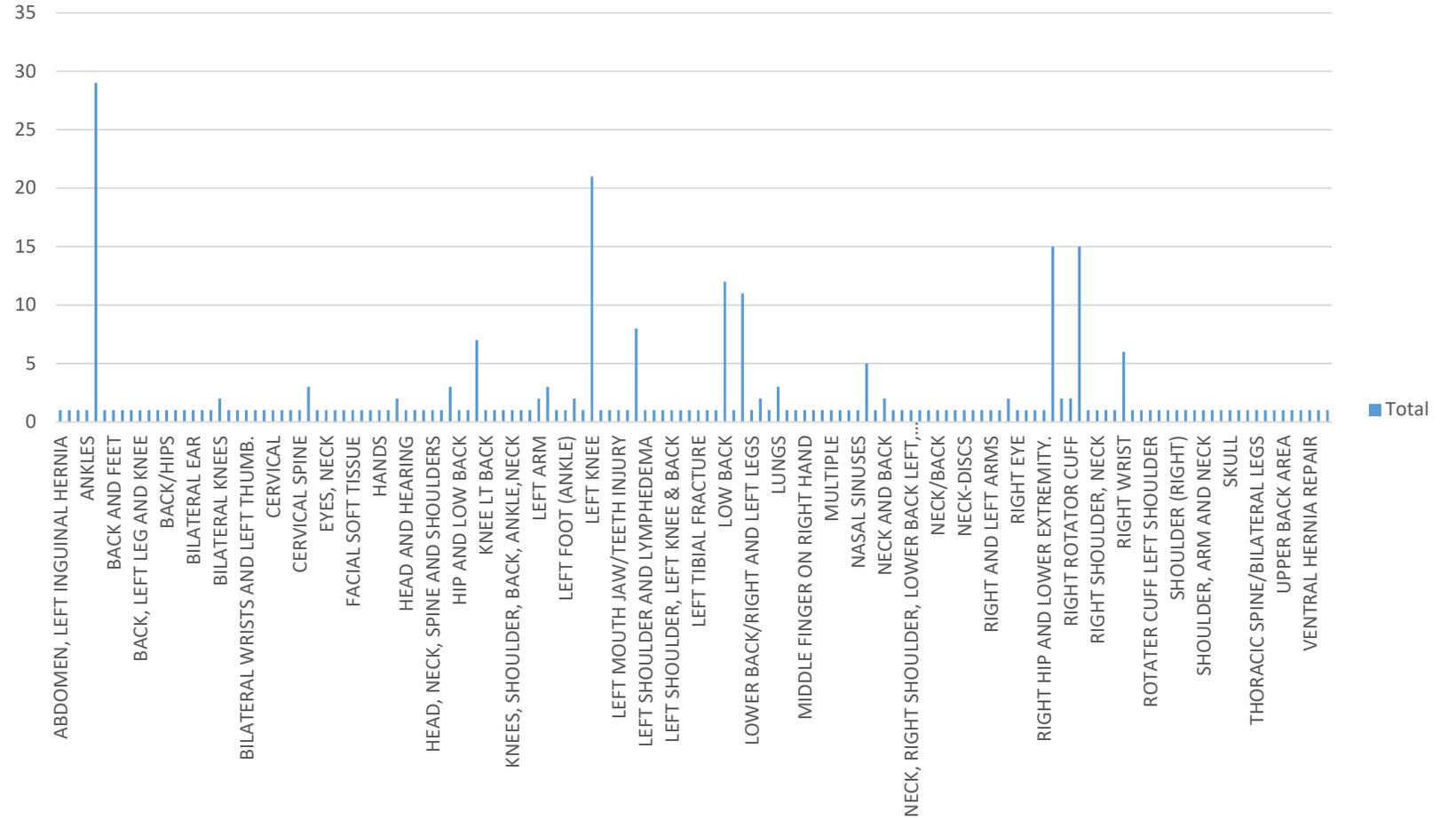




PETITIONS BY BODY PART

More than 1/3 of petitions received relate to:

- Back
- Knees
- Shoulders





RECORDS FOR JOINT PETITIONS

Reopening Of Terminated Medical Benefits -- Medical Review

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.

(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.



RECORDS FOR JOINT PETITIONS

- [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.



PROSTHETICS

24.29.1401A DEFINITIONS

(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.

(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.

24.29.1407 PROSTHETIC APPLIANCES

(1) Claims for furnishing replacement or repair of prosthetic appliances shall be paid to orthotists or prosthetists, 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](#).



PROSTHETICS

Mellinger vs. Montana State Fund 2018

The Legislature has not defined “prosthesis” or “prosthetic device” in the WCA and there is no universally accepted definition in the medical field. There are narrow definitions, under which only devices that replace a missing body part, such as artificial limbs and joints, qualify. 5 And there are broad definitions, under which devices that “replace or augment a missing or impaired part of the body” qualify, including devices such as hearing aids.⁶ While this Court adopted a narrow definition in *Wiard*, and while the Department of Labor & Industry has also adopted a narrow definition of “prosthesis,” ⁷ the WCA provides that an “injury” includes “damage to prosthetic devices or appliances, except for damage to eyeglasses, contact lenses, dentures, or hearing aids,” ⁸ thereby indicating that the Legislature intended a broader definition in the WCA.



PROSTHETICS

Definition of prosthesis

An artificial substitute to replace a missing body part (i.e. artificial organ or body part, such as an arm, hand, joint, heart valve, teeth, etc.) or a device to augment performance of a natural function (i.e. hearing aid, etc.) (adapted from Venes, 2017).



QUESTIONS?

General Questions

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