

WSR 23-05-074
PERMANENT RULES
DEPARTMENT OF
LABOR AND INDUSTRIES

[Filed February 14, 2023, 8:36 a.m., effective March 17, 2023]

Effective Date of Rule: Thirty-one days after filing.

Purpose: The 2022 legislative session amended RCW 51.28.040 Application for change in compensation, by passing SHB 1902. As a result of the legislation, WAC 296-20-097 Reopenings, needed amending to be consistent with the change in the statute.

Based on the legislation passed in 2022 adjusting the number of days prior to receipt of a reopening application for workers' compensation claim, the department or self-insured employer can consider setting the effective date from 60 days up to 120 days when the provider does not complete and file the application within 60 days of medical services, **and** the worker submits the application within 30 days of medical services without medical completion. The worker must prove the application was received by the department or self-insurer. Allowing the date to be set beyond 60 days up to 120 days may result in additional time-loss or medical benefits.

Citation of Rules Affected by this Order: Amending WAC 296-20-097.

Statutory Authority for Adoption: RCW 51.04.020, 51.04.030.

Adopted under notice filed as WSR 22-24-087 on December 6, 2022.

Changes Other than Editing from Proposed to Adopted Version: One minor change was made to the title of the form referenced in the rule from "Application to Reopen Claim for Aggravation of Condition" to "Application to Reopen Claim Due to Worsening of Condition."

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 1, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: February 14, 2023.

Joel Sacks
Director

OTS-4146.2

AMENDATORY SECTION (Amending WSR 08-24-047, filed 11/25/08, effective 12/26/08)

WAC 296-20-097 Reopenings. When a claim has been closed by the department or self-insurer by written order and notice for ((sixty))

60 days, submission of a formal "application to reopen claim ((for ag-
gravation)) due to worsening of condition" form # F242-079-000 is
((necessary)) preferred. The department or self-insurer is responsible
for customary charges for examinations, diagnostic studies, and deter-
mining whether or not time-loss is payable regardless of the final ac-
tion taken on the reopening application. Reopening applications should
be submitted immediately. When reopening is granted, the department or
self-insurer can pay time loss and treatment benefits only for a peri-
od not to exceed ~~((sixty))~~ 60 days prior to date the application is
received by the department or self-insurer. The 60 days may be exten-
ded up to 120 days consistent with RCW 51.28.040. Necessary treatment
should not be deferred pending a department or self-insurer adjudica-
tion decision. However, should reopening be denied treatment costs be-
come the financial responsibility of the worker.

[Statutory Authority: RCW 51.04.020, 51.04.030, and Title 51 RCW. WSR
08-24-047, § 296-20-097, filed 11/25/08, effective 12/26/08. Statutory
Authority: RCW 51.32.190 and 51.32.210. WSR 90-22-054, § 296-20-097,
filed 11/5/90, effective 12/6/90. Statutory Authority: RCW
51.04.020(4), 51.04.030, and 51.16.120(3). WSR 81-24-041 (Order
81-28), § 296-20-097, filed 11/30/81, effective 1/1/82; WSR 81-01-100
(Order 80-29), § 296-20-097, filed 12/23/80, effective 3/1/81; Order
71-6, § 296-20-097, filed 6/1/71; Order 70-12, § 296-20-095 (codified
as WAC 296-20-097), filed 12/1/70, effective 1/1/71. Formerly WAC
296-20-090.]