

Michigan Office of Administrative Hearings and Rules

611 W. Ottawa Street

Lansing, MI 48909

Phone: 517-335-8658 Fax: 517-335-9512

**AGENCY REPORT TO THE
JOINT COMMITTEE ON ADMINISTRATIVE RULES (JCAR)**

1. Agency Information

Agency name:

Labor and Economic Opportunity

Division/Bureau/Office:

Workers' Compensation Agency

Name of person completing this form:

Dave Campbell

Phone number of person completing this form:

517-284-8891

E-mail of person completing this form:

campbelld5@michigan.gov

Name of Department Regulatory Affairs Officer reviewing this form:

Thomas Shaver

2. Rule Set Information

MOAHR assigned rule set number:

2020-31 LE

Title of proposed rule set:

Workers' Disability Compensation General Rules

3. Purpose for the proposed rules and background:

The general purpose of these rules is to provide consumers with procedures and guidance for addressing workers' compensation claims, contested hearings, and workers' compensation insurance policies, in order to carry out the provisions of the Worker's Disability Compensation Act. The entire rule set will be updated for accuracy and procedural consistency. The rules will be revised to make necessary updates in order to facilitate the acceptance of electronic claims, insurance filings, and other reporting data, including use of secure and valid electronic signatures. Rules regulating attorney fees will be updated to reflect statutory changes in rate calculation and in response to case law. In addition, new rules will be added to this rule set to establish procedures for submitting and processing requests for review of redemption orders; provide procedures to implement requests under MCL 418.161(n); address issues raised by case law regarding overpayment reimbursement; require increased use of forms advising injured workers of rights and procedures. Rules regarding vocational rehabilitation will be updated to facilitate/provide for job search as required by statutory amendments and caselaw. Overall, language will be updated regarding the service of papers, vocational rehabilitation services, as well as general technical updates throughout.

4. Summary of proposed rules:

The general purpose of these rules is to provide consumers with procedures and guidance for addressing workers' compensation claims, contested hearings, and workers' compensation insurance policies, in order to carry out the provisions of the Worker's Disability Compensation Act. The entire rule set will be updated for accuracy and procedural consistency. The rules will be revised to make necessary updates in order to facilitate the acceptance of electronic claims, insurance filings, and other reporting data, including use of secure and valid electronic signatures. Rules regulating attorney fees will be updated to reflect statutory changes in rate calculation and in response to case law. In addition, new rules will be added to this rule set to establish procedures for submitting and processing requests for review of redemption orders; provide procedures to implement requests under MCL 418.161(n); address issues raised by case law regarding overpayment reimbursement; require increased use of forms advising injured workers of rights and procedures. Rules regarding vocational rehabilitation will be updated to facilitate/provide for job search as required by statutory amendments and caselaw. Overall, language will be updated regarding the service of papers, vocational rehabilitation services, as well as general technical updates throughout.

5. List names of newspapers in which the notice of public hearing was published and publication dates:

Ann Arbor News Daily Edition June 13, 2021
Detroit Legal News June 17, 2021
The Mining Journal June 21, 2021

6. Date of publication of rules and notice of public hearing in Michigan Register:

7/1/2021

7. Date, time, and location of public hearing:

7/7/2021 12:30 PM at Room L-150, Cadillac Place Bldg. , 3026 W Grand Blvd, Detroit, MI

8. Provide the link the agency used to post the regulatory impact statement and cost-benefit analysis on its website:

<https://ARS.apps.lara.state.mi.us/Transaction/RFRTransaction?TransactionID=159>

9. List of the name and title of agency representative(s) attending public hearing:

Jack Nolish, WDCA Director
Deb Outwater, WDCA Executive Secretary
David Campbell, WDCA Agency Division Director
Kris Kloc, WDCA Medical Claims Analyst

10. Persons submitting comments of support:

Agency Report to JCAR-Page 3

Jayson Chizick for Worker’s Compensation Section of the Michigan State Bar Association.

Michigan Self-Insurers Ass’n and Michigan Ass’n for Justice Ad Hoc Stakeholder advisory group.

- Don Hannon, Associate Member Michigan Self-Insurer’s Association
- Dawn Droblich, Executive Secretary, Michigan Self-Insurers’ Association
- Richard Warsh, Past President, Michigan Association for Justice
- Robert MacDonald, Past President, Michigan Association for Justice

Alicia W. Birach: Foster, Swift, Collins & Smith.

Dyke VanKoevering: General Counsel, Insurance Alliance of Michigan.

11. Persons submitting comments of opposition:

No Comments of Opposition

12. Identify any changes made to the proposed rules based on comments received during the public comment period:

	Name & Organization	Comments made at public hearing	Written Comments	Agency Rationale for change	Rule number & citation changed
1	Dawn Droblich, Michigan Self-Insurers’ Association		Rule 1(b) should be made more clear that the Director or a Magistrate retains the authority to require a party or witness to appear in person. There are circumstances where an appearance in person especially at trial enhances a magistrate’s ability to assess credibility and allows an opposing party to more effectively cross-examine a witness.	Wording changed to clarify options available to director and magistrate in terms of determining type of appearance.	§408.31(1)(b) Rule 1(1)(b)

Agency Report to JCAR-Page 4

2	Dyke VanKoevering, Insurance Alliance of Michigan		We would suggest clarifying that these outcomes are listed in priority order, and not merely alternatives of equal measure.	Wording change to better reflect industry standard vocational rehabilitation counseling practices.	§408.31(1)(i) Rule 1(1)(i)
3	Dawn Drobnich, Michigan Self- Insurers' Association		Rule 1(m)'s definition of 'vocational evaluation' needs to be more clear that it applies in the context of Section 319	Clarification to better distinguish rehabilitation for purposes of job training from medical rehabilitation	§408.31(1)(m) Rule 1(1)(m)
4	Dyke VanKoevering, Insurance Alliance of Michigan		Subrules (3) and (5) require certain employer or employee actions to take place either "immediately," or "promptly." Is there an intended difference between the two timelines? Should one term or the other be used more uniformly?	Wording changes to clarify delivery of information between injured worker and employer.	§408.31a(3) Rule 1a(3)
5	Dawn Drobnich, Michigan Self- Insurers' Association		Rule 1a(4) requires an injured worker to make a claim on a specific form. This conflicts with the statute that provides that a claim can be made orally or in writing. MCL 418.381(1)	Wording change to reflect that use of WC-117 is not the only means of worker injury reporting. Changes to clarify employer response	§408.31a(4) Rule 1a(4)
6	Dyke		Subrule (5)	Original rule	§408.31a(5)

Agency Report to JCAR-Page 5

	<p>VanKoevering, Insurance Alliance of Michigan</p>	<p>requires that the employer or carrier deliver to the employee documentation describing the employer or carrier's obligation to furnish reasonable and necessary medical care no later than "28 days following an injury." We would recommend the language be amended to state the deadline as "28 days following a report of injury" as until the injury is reported, the employer or carrier will not have knowledge of the event and delayed reporting may place the employer or carrier in a difficult timeline. Subrule (5)(a) states that insurers are not required to make payment to a physician "until the reports and itemized charges have been furnished to it." On the other</p>	<p>language found to be inconsistent and confusing. Changes made to clarify.</p>	<p>Rule 1a(5) §408.31a(5)(a) Rule 1a5(a) §408.33(2)(c) Rule 3(2)(c)</p>
--	--	---	--	--

Agency Report to JCAR-Page 6

			hand, R408.33(2)(c) states that “[m]edical (sic) bills become due and payable on the day the carrier receives the bill.” Is there potential conflict here that should be clarified?	
7	Dawn Droblich, Michigan Self-Insurers’ Association		The business community objects to this proposal for various reasons including for its belief that it conflicts with the current statute.	Wording change to clarify the start of time when payment must be made. Removal of some of the penalty language to better comply with statute.
<p>§408.33(2)(a) & (c) Rule 3(2)(a) & (c)</p>				

Agency Report to JCAR-Page 7

8	<p>Dyke VanKoevering,</p> <p>Insurance Alliance of Michigan</p>		<p>Subrule (1)(h)(iv) provides that electronic service between the parties sent “after 5:00 p.m. Lansing, Michigan time is deemed to be served on the next day that is not a Saturday, Sunday, or state holiday.” Subrule (6) provides that documents received by the agency “on or before 11:59 p.m. Lansing, Michigan time are considered filed on the same business day.” Is there a potential conflict here that should be clarified.</p>	<p>Wording changes to provide consistency in determining electronic filing date.</p>	<p>§408.36(1)(h) 1(v)</p> <p>Rule 6</p>

Agency Report to JCAR-Page 8

9	<p>Dyke VanKoevering,</p> <p>Insurance Alliance of Michigan</p>		<p>Subrule (9) provides that the “[f]ailure (sic) to comply with these rules may result in dismissal of the request for review.” Section 418.837(3) of the code, however, provides that “[u]nless (sic) review is ordered or requested within 15 days after the date the order of the worker's compensation magistrate is mailed, or distributed electronically, to the parties, the order shall be final.” ---We would request the language be clarified to eliminate possible conflict.</p>	<p>No change made since the sections not found to be in conflict.</p>	<p>§408.39(9) Rule 9(9)</p>
10	<p>Dawn Drobnich,</p> <p>Michigan Self- Insurers’ Association</p>		<p>The noticed drafts of the rule published by the Agency were not as clear as they could be about what was necessary to file a petition to stop.</p>	<p>Clarifies requirements for filing of petition to stop payment of benefits.</p>	<p>§408.40a(2) Rule 10a(2)</p>

Agency Report to JCAR-Page 9

11	Dawn Droblich, Michigan Self-Insurers' Association		Rule 10a(6) would limit recoupment to overpayments to instances where an employee fraudulently concealed earnings or to where a coordination of benefit error occurred. There may be other circumstances where recoupment of overpayment is warranted.	Language clarified to provide clarification of magistrate authority in deciding claims for overpayment of benefits.	§408.40a(6) Rule 10a(6)
12	Alicia W. Birach, Foster, Swift, Collins & Smith		Conflict in rule with statute language	Corrected scrivener's' error that was creating confusion.	§408.41(b) Rule 11 (b)
13	Alicia W. Birach, Foster, Swift, Collins & Smith		Conflict in rule with statute language	Corrected scrivener's' error that was creating confusion.	§408.41(c) Rule 11(c)

Agency Report to JCAR-Page 10

14	Dawn Droblich, Michigan Self-Insurers' Association		The proposed Rule 15a(3)-(4) appears to trigger a formal vocational evaluation and rehabilitation of a worker, even when neither the employer or employee find it helpful or necessary, or possibly where liability is disputed.	Wording changed to provide more flexibility in the use of vocational evaluation and services.	§408.45a(3) & §408.45a(4) Rule 15a(3) & 15a(4)
15	Dawn Droblich, Michigan Self-Insurers' Association		Consistent with the proposed revisions to Rule 15a, we recommend changes to Rule 15b that reflect a broader range of possible issues that may arise related to vocational rehabilitation n resulting in hearings before the Director.	Clarification of when vocational assessment when be ordered and scheduled.	§408.45b Rule 15b
16	Dyke VanKoevering, Insurance Alliance of Michigan		To the extent that a business entity may request a determination by the Director whether one or more individuals “are in covered employment,”	Expansion of notice requirements to clearly provide opportunity for impacted parties to be aware of proceedings and due process provided for all concerned.	§408.49 Rule 19

Agency Report to JCAR-Page 11

17	Jayson Chizick, Michigan State Bar Association	Commenting in support of the proposed rule set.		General comment of support for 2020-31 LE	2020-31-LE
----	--	---	--	---	------------

13.Date report completed:

8/17/2021