CLAIM CLOSURE - There are two ways that claims can be closed:

- Medical benefits terminate if not used for 60 consecutive months.
- Lump sum settlements, including compromise and release settlements, are allowed for indemnity and occasionally for medical payments.

Settlements for permanent total disability benefits that qualify under 39-71-741(1)(c) require department approval. The language in (1)(c) has been the subject of a court case (Barnard vs. Liberty Northwest) and is confusing:

"(c) permanent total disability benefits if the total of all lump-sum conversions in part that are awarded to a claimant do not exceed $20,000. The approval or award of a lump-sum permanent total disability payment in whole or in part by the department or court must be the exception. It may be given only if the worker has demonstrated financial need that:

(i) relates to:

(A) the necessities of life;

(B) an accumulation of debt incurred prior to the injury; or

(C) a self-employment venture that is considered feasible under criteria set forth by the department; or

(ii) arises subsequent to the date of injury or arises because of reduced income as a result of the injury; ...."

CLASSIFICATION - A term used in setting premiums and that refers to a similar business operation. Payroll classification also is used to identify the employee's occupation.

COMMON FUND - The "common fund doctrine" provides that an attorney who has certified a case as a common fund case and who has successfully represented a client in a case determined to be a common fund case can collect attorney fees from similarly situated injured workers who litigate the same issue and benefit from the initial litigation; these individuals are responsible for an apportioned amount that goes to the original attorney, similar to a class action lawsuit in which payments are apportioned to participants. The practice was disallowed by 2003 amendments to 39-71-611 and 39-71-612 but still is a factor for cases brought for injuries prior to 2003.

COURT CASES - The following court cases may be frequently referenced:

- ***Barnard*** - clarified lump sum settlements "in whole" for permanent total disability benefits does not have the $20,000 limit for "in part" conversions.
- ***Carillo*** - Basis for 4-factor analysis for "course and scope" to determine whether an injury on a break is compensable. Used in BeVan.
- ***Coles*** - Created the "Coles criteria" that became the basis for 39-71-609 outlining what must be done to terminate temporary total disability benefits.
- ***Courser*** - Basis for 4-factor analysis for "course and scope" cases. Used in Michalak.
- ***Flynn*** - common fund apportionment against the insurer that benefitted from Flynn's attorney successfully obtaining Social Security disability benefits, which lowered the insurer's costs -- except for the common fund payment.
- ***Hiett*** - having reached MMI, claimant entitled to primary medical services that sustain MMI.
- ***Rausch*** - Under 1991-97 statutes perm total disability beneficiaries were entitled to impairment rating, which were not limited just to perm partial beneficiaries. A 2005 ruling said 1987-89 statutes specified PTD ineligible for impairment ratings. Common fund case.
- ***Reesor*** - age-based denial of permanent partial benefits because of eligibility for Social Security or its equivalent is unconstitutional.
- ***Satterlee*** - termination of permanent total disability payments because of eligibility for Social Security benefits is questioned - decision still pending.
- ***Schmill (I & II)*** - equal protection violated by treating claimants with occupational disease differently than claimants with injuries. The former received apportioned indemnity benefits while the latter received whole indemnity benefits.
- ***Stavenjord*** - equal protection violated based on unequal awards for claimants with occupational disease and those with injuries.
- ***Wild*** - Case decided in 2003 that resulted in changes that created presumption that person holding independent contractor exemption certificate was, in fact, an independent contractor.

EXPERIENCE RATING - Also known as experience modification factor or mod factor is a multiplier of the manual rate that:

- usually uses the latest available 3 years of data;

- analyzes actual payroll and loss data of an employer; and
- compares the individual data to similarly grouped risks to obtain a plus or minus rating.

The benefits of experience rating is that an insurer can offer incentives to reduce losses. The negative is that there may be an incentive to classify in less-risky categories or not to report injuries.

FCE - FUNCTIONAL CAPACITIES EVALUATION - Used in 39-71-605(4): "A claimant is required, upon a written request of an insurer, to submit to a functional capacities evaluation conducted by a licensed physical or occupational therapist".

IME - INDEPENDENT MEDICAL EXAMINATION - Medical exams referenced in 39-71-605.

IMPAIRMENT RATING - Defined in 39-71-711:

" (1) An impairment rating:

(a) is a purely medical determination and must be determined by an impairment evaluator after a claimant has reached maximum healing;

(b) must be based on the current edition of the Guides to Evaluation of Permanent Impairment published by the American medical association;

(c) must be expressed as a percentage of the whole person; and

(d) must be established by objective medical findings.

(2) A claimant or insurer, or both, may obtain an impairment rating from an evaluator if the injury falls within the scope of the evaluator's practice and if the evaluator is one of the following:

(a) a physician or an osteopath licensed under Title 37, chapter 3, with admitting privileges to practice in one or more hospitals, if any, in the area where the physician or osteopath is located;

(b) a chiropractor licensed under Title 37, chapter 12;

(c) a physician assistant licensed under Title 37, chapter 20, if there is not a physician as provided for in subsection (2)(a) in the area where the physician assistant is located;

(d) a dentist licensed under Title 37, chapter 4;

(e) an advanced practice registered nurse licensed under Title 37, chapter 8; or

(f) for a claimant residing out of state or upon approval of the insurer, an evaluator referred to in subsections (2)(a) through (2)(e) who is licensed or certified in another state.

(3) If the claimant and insurer cannot agree upon the rating, the mediation procedure in Title 39, chapter 71, part 24, must be followed.

(4) Disputes over impairment ratings are subject to the provisions of 39-71-605.

INJURY - Defined in 39-71-119, MCA, as:

"(1) 'Injury' or 'injured' means:

(a) internal or external physical harm to the body that is established by objective medical findings;

(b) damage to prosthetic devices or appliances, except for damage to eyeglasses, contact lenses, dentures, or hearing aids; or

(c) death.

(2) An injury is caused by an accident. An accident is:

(a) an unexpected traumatic incident or unusual strain;

(b) identifiable by time and place of occurrence;

(c) identifiable by member or part of the body affected; and

(d) caused by a specific event on a single day or during a single work shift.

(3) 'Injury' or 'injured' does not mean a physical or mental condition arising from"

(a) emotional or mental stress; or

(b) a nonphysical stimulus or activity.

(4) 'Injury' or 'injured' does not include a disease that is not caused by an accident.

(5) (a) A cardiovascular, pulmonary, respiratory, or other disease, cerebrovascular accident, or myocardial infarction suffered by a worker is an injury only if the accident is the primary cause of the physical condition in relation to other factors contributing to the physical condition.

(b) 'Primary cause', as used in subsection (5)(a), means a cause that, with a reasonable degree of medical certainty, is responsible for more than 50% of the physical condition.

MANUAL RATING - Insureds are grouped according to business operation or classification. The estimated losses of the group are added to obtain an average cost, reflecting normal conditions. Experience rating then adjusts the manual rate to reflect differences.

MMI - MAXIMUM MEDICAL IMPROVEMENT - referred to variously as "medical stability", "maximum healing", or maximum medical healing", which defined in 39-71-116(18) as: "a point in the healing process when further material improvement would not be reasonably expected from the primary medical treatment.

MOD FACTOR - See Experience Rating.

OBJECTIVE MEDICAL FINDINGS OR OPINION - Defined in 39-71-116(19) as: "medical evidence, including range of motion, atrophy, muscle strength, muscle spasm, or other diagnostic evidence, substantiated by clinical findings".

OD - OCCUPATIONAL DISEASE - defined in 39-71-116(20) as: "...harm, damage, or death arising out of or contracted in the course and scope of employment caused by events occurring on more than a single day or work shift.

(b) The term does not include a physical or mental condition arising from emotional or mental stress or from a nonphysical stimulus or activity." Prior to enactment of SB 481 in the 2005 session, a separate chapter governed occupational disease (formerly Title 39, chapter 72).

PLAN 1 - SELF-INSURERS' WORKERS COMPENSATION PLAN - Described in 39-71-2101, MCA, as an employer who "upon furnishing satisfactory proof to the department and the Montana self-insurers guaranty fund of solvency and financial ability to pay the compensation and benefits provided for in this chapter and to discharge all liabilities that are reasonably likely to be incurred during the fiscal year for which the election is effective. The employer may, by order of the department and with the concurrence of the guaranty fund, make the payments directly to employees as they become entitled to receive payments under the terms and conditions of this chapter.

(2) Employers who comply with the provisions of this chapter and who are participating in collectively bargained, jointly administered Taft-Hartley trust funds are eligible to provide self-insured workers' compensation benefits for their employees".

A Plan 1 employer is required to have either excess or reinsurance coverage. Most obtain the excess insurance policy, which may contain its own terms and conditions, in contrast to a reinsurance policy that follows the form of the underlying policy. Reportedly, an excess policy allows the employer to manage exposure better than with a reinsurance policy, unless the reinsurance policy is provided by a captive insurer.

PLAN 2 - WORKERS' COMPENSATION PRIVATE INSURERS - These are private insurance companies that transact workers' compensation business. One of the three "insurers" defined in 39-71-116. "A captive reciprocal insurer established by or on behalf of an employer or a group of employers is considered is considered to be a compensation plan No. 2 insurer", according to 39-71-2201, MCA.

PLAN 3 - MONTANA STATE COMPENSATION FUND - Defined in 39-71-2312 as the "state compensation insurance fund provided for in 39-71-2313...", which in turn notes that the State Fund "is a nonprofit, independent public corporation established for the purpose of allowing an option for employers to insure their liability for workers' compensation and occupational disease coverage under this chapter.

(2) The State Fund is required to insure any employer in this state who requests coverage, and it may not refuse to provide coverage unless an employer or the employer's principals have defaulted on a State Fund obligation and the default remains unsatisfied".

PPD - PERMANENT PARTIAL DISABILITY - Defined in 39-71-116(24) as: ",,, a physical condition in which a worker, after reaching maximum medical healing:

(a) has a permanent impairment established by objective medical findings;

(b) is able to return to work in some capacity but the permanent impairment impairs the worker's ability to work; and

(c) has an actual wage loss as a result of the injury."

The PPD rate is determined under 39-71-703.

PTD - PERMANENT TOTAL DISABILITY - Defined in 39-71-116(25) as: "...a physical condition resulting from injury as defined in this chapter, after a worker reaches maximum medical healing, in which a worker does not have a reasonable prospect of physically performing regular employment. Regular employment means work on a recurring basis performed for remuneration in a trade, business, profession, or other occupation in this state. Lack of immediate job openings is not a factor to be considered in determining if a worker is permanently totally disabled".

RTW (ERTW) - RETURN TO WORK OR EARLY RETURN TO WORK - Effort to get an injured worker back on the job at full status or in a temporary position doing less physically demanding work.

STATE'S AVERAGE WEEKLY WAGE - Defined in 39-71-116(32) as: "...the mean weekly earnings of all

employees under covered employment, as defined and established annually by the department before July 1 and rounded to the nearest whole dollar number. Each of the following benefits has some relation to the state's average weekly wage:

- ***TTD*** (temporary total disability), calculated at 66 2/3% of the wage at injury, may not be above the state's average weekly wage. TTD does not adjust over time.
- ***TPD*** (temporary partial disability) is the difference between the injured worker's average weekly time-of-injury wage (up to a maximum of 40 hours) and wages earned in the alternative position, but no greater than the TTD rate.
- ***PTD*** (permanent total disability), calculated at 66 2/3% of the wage at injury, may not be above the state's average weekly wage. After 104 weeks, PTD adjusted each July 1 for cost of living.
- ***PPD*** (permanent partial disability), calculated at 66 2/3% of the wage at injury, may not exceed one-half of the state's average weekly wage. There is no adjustment over time.
- Death benefits, calculated at 66 2/3% of the wage at injury, may not be above the state's average weekly wage.

TPD - TEMPORARY PARTIAL DISABILITY - Defined in 39-71-116(33) as: "...a physical condition resulting from an injury, as defined in 39-71-119, in which a worker, prior to maximum healing:

(a) is temporarily unable to return to the position held at the time of injury because of a medically determined physical restriction;

(b) returns to work in a modified or alternative employment; and

(c) suffers a wage loss".

Compensation determined under 39-71-712.

TTD - TEMPORARY TOTAL DISABILITY - Defined in 39-71-116(35) as: "...a physical condition resulting from an injury, as defined in this chapter, that results in total loss of wages and exists until the injured worker reaches maximum medical healing".

T.T.D. Rate - determined under 39-71-701.

TREATING PHYSICIAN - Defined in 39-71-116(37) as: "...a person who is primarily responsible for the treatment of a worker's compensable injury and is:

(a) a physician licensed by the state of Montana under Title 37, chapter 3, and has admitting privileges to practice in one or more hospitals, if any, in the area where the physician is located;

(b) a chiropractor licensed by the state of Montana under Title 37, chapter 12;

(c) a physician assistant licensed by the state of Montana under Title 37, chapter 20, if there is not a treating physician, as provided for in subsection (37)(a), in the area where the physician assistant is located;

(d) an osteopath licensed by the state of Montana under Title 37, chapter 3;

(e) a dentist licensed by the state of Montana under Title 37, chapter 4;

(f) for a claimant residing out of state or upon approval of the insurer, a treating physician defined in subsections (37)(a) through (37)(e) who is licensed or certified in another state; or

(g) an advanced practice registered nurse licensed by the state of Montana under Title 37, chapter 8".

Benefit-at-a-Glance Comparison

Temporary Total Disability Benefit

Benefit rate:	66 2/3% of average weekly wage (at time of injury)
Maximum:	state's average weekly wage
Duration:	until maximum medical healing reached, released by treating physician, or worker returns to work

Temporary Partial Disability Benefit

Benefit rate:	66 2/3% of difference between worker's average weekly wage at time of injury and earnings after
Maximum:	state's average weekly wage
Duration:	no limit

Permanent Partial Disability Benefit

Benefit rate:	66 2/3% of average weekly wage (at time of injury) with education, age, wage loss, reduced labor activity, impairment rating added
Maximum:	1/2 state's average weekly wage
Duration:	maximum of 375 weeks (7+ years) - varies based on impairment

Permanent Total Disability Benefit

Benefit rate:	66 2/3% of average weekly wage (at time of injury)
Maximum:	state's average weekly wage
Duration:	until eligible to receive retirement benefits