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**Review Of The Dispute Certification Process**

By Kristin Driscoll Nervig

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Currently, there are active discussions on how the MN Department of Labor & Industry may be able to improve the certification process and expedite approval for medical care and treatment. The overall concern is that treatment may not be being provided to injured workers in a timely manner. Given the current discussions, it is important that insurers review current requirements and consider the impact of potential changes.

Under Minn. R. 5221.6050, Subp. 9A, an insurer must pre-approve the following before a health care provider can proceed: (1) chronic management modalities (Minn. R. [5221.6600](#)); (2) durable medical equipment under (Minn. R. [5221.6200](#); [5221.6205](#); [5221.6210](#); [5221.6300](#)); (3) any nonemergency inpatient hospitalization or surgery (patient spends at least one night); and (4) a departure from treatment parameters (Minn. R. [5221.6050](#) to [5221.6600](#)).

Currently, the request for approval must come *from the health care provider* and needs to include: the diagnosis and whether the proposed treatment is consistent with the applicable treatment parameter. If not consistent with the treatment parameters, they must provide the basis for departure from any applicable treatment parameter including the treatment plan, the nature and anticipated length of the proposed treatment; and the anticipated effect of treatment on the employee's condition.

Per Minn. R. 5221.6050, subp.9C, the Insurer must provide: a fax and telephone number for health care providers and upon receipt of the request *must* respond orally or in writing within seven working days of the receipt of the request. In response to the request the Insurer must: (1) approve the request; (2) deny authorization; (3) request additional

information; (4) request that the employee obtain a second opinion; or (5) request an examination by the employer's physician, eg. IME

If the Insurer does not provide a response within the seven working days, authorization is deemed to have been given. If the treatment is approved, it may not later be denied.

If the insurer denies authorization, the health care provider or employee may request the insurer review its denial. The review by the insurer *must* generally be done by a medical professional. A response to this denial review, when no examination of the employee is involved, must be communicated within seven working days of the request. If the Insurer continues to deny, after the review, a Medical Request can be filed.

If an IME is requested prior to approval or denial, the provider may proceed with the treatment unless it is nonemergency surgery or passive treatment per the Minnesota Rules. However, after 45 days following an insurer's request for an IME, the provider may elect to proceed, subject to a determination of compensability. In other words, an insurer has 45 days from the date an IME is requested to make a final determination.

One significant proposed change is to allow the Employee, QRC, and/or the Employee's attorney to request approval for the treatment. Again, once a request is made, the insurer would have seven working days to respond. The concern with this proposed revision is that insurers may need to respond to requests before receiving any medical documentation whatsoever from the health care provider. If no response is provided, there is some discussion as to whether the employee or employee's counsel could request an order from the court for immediate payment and/or approval.

Another proposed change would address the insurer's request for an IME prior to approving or denying treatment. Specifically, there are changes proposed that would include strict timelines as to when the IME be scheduled (within 5 days of indicating the need for an IME), when it must be performed (within 45 days of the request) and when the report must be submitted (within 14 days of the exam) to avoid any significant delay in approval or denial of the surgery.

Discussions at this time are very preliminary and it is unclear what, if any, changes may be made to the certification process. However, Brown & Carlson will be closely tracking any changes and will provide updates and recommendations as needed. In the interim, if there are any questions concerning the certification process, please reach out to myself or another of the other attorneys at Brown & Carlson.

Kristin D. Nervig  
763-253-0141  
[knervig@brownandcarlson.com](mailto:knervig@brownandcarlson.com)



Brown & Carlson, P.A.  
300 Highway 169 S.,#500  
Minneapolis, MN 55426-1113  
763-591-9950  
F: 763-591-9202