Medical Dispute Activity, Oregon, Fiscal Year 2000

Research & Analysis Section
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Introduction

Under Oregon workers' compensation law, injured workers, insurers, and medical providers may request resolution of medical disputes by the director of the Department of Consumer & Business Services. The parties may request review of disputes involving medical services and treatments, palliative care, fees, changes of attending physician, and requests for additional insurer medical exams (IMEs). Statutory authority to resolve medical disputes is given to the director under Oregon Revised Statutes (ORS) 656.245, 656.248, 656.260, 656.325, 656.327, and 656.704. Oregon Administrative Rules (OAR) Chapter 436, Divisions 9 and 10, provide the guidelines for administering the delivery of and payment for medical services and for resolving disputes.

The WCD Medical Review and Abuse Section was created in February 1990 to handle medical disputes. In 1992, during a WCD reorganization, the section was reorganized and renamed the Medical Review Unit (MRU). At that time, the WCD Benefits Section assumed responsibility for resolving two issues: changes of attending physician and requests for additional IMEs. Effective October 23, 1999, Senate Bill 728 transferred responsibility for disputes in which the compensability of the underlying medical condition is at issue to the Workers' Compensation Board Hearings Division.

This report presents information about medical dispute activity during fiscal year 2000. The data include disputes received and resolved, disputes involving managed care organizations, the time required to process requests, and appeals of the orders. Additional information is available from the department's Research & Analysis Section.

Highlights of the report

In FY 2000, the department received 989 medical dispute requests. Of these, 43 percent were medical service disputes, 21 percent were compensability disputes, 12 percent were treatment disputes, and 24 percent were other types of disputes.

In FY 2000, 831 medical disputes were resolved. Of these disputes, 49 percent were approved, 16 percent were disapproved, and 8 percent were partially approved. Six percent of the resolutions were stipulations. Eighteen percent of the disputes were dismissed or withdrawn.

Fourteen percent of the FY 2000 orders resolved disputes that involved managed care organizations.

In FY 2000, the average number of calendar days from the receipt of a dispute to its resolution was 109 days. There is great variability in the resolution time of different issues. MCO disputes averaged 156 days to resolve, while IME disputes averaged 21 days. Compensability issues took 147 days to resolve. Seventy-one percent of the treatment disputes that were not dismissed required the use of outside physician reviewers. Physician reviews added an average of 18 days to the processing time of reviewed orders.

Eleven percent of the FY 2000 orders were appealed to contest case hearings.

Legislative history

Most legislative sessions since 1987 have produced changes in the medical dispute resolution process. In 1987, House Bill 2900 allowed the director to establish a medical review panel to review, upon request of any of the parties, the medical treatment of an injured worker. This review process was seldom used. HB 2900 also limited IMEs to three per each claim opening, unless the director authorized more.

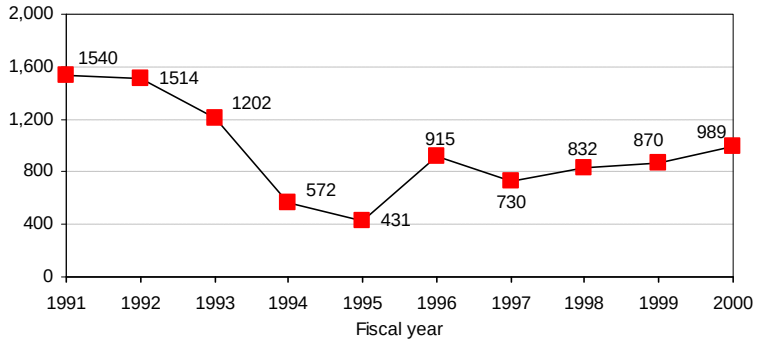
The administrative dispute resolution process became mandatory for medical disputes when Senate Bill 1197 took effect July 1, 1990. In part, the intent of SB 1197 was to reduce litigation by placing the responsibility for medical decisions on the department's medical personnel. SB 1197 also eliminated most palliative care after the worker becomes medically stationary; this eliminated many potential disputes.

Following the Court of Appeal's decision in Meyers v. Darigold in October 1993, the director lost jurisdiction over disputes involving proposed medical treatment. The resulting decline in the number of disputes can be seen in Figure 1. SB 369, effective June 7, 1995, restored this jurisdiction. SB 369 also allowed a worker (not just the worker's attending physician) to request approval for palliative care when the insurer denies the care. Also, SB 369 took jurisdiction for appeals of medical dispute orders, other than orders concerning additional IMEs, from the Workers'

Compensation Board Hearings Division. These disputes are now heard as "contested cases."

The 1999 legislative session produced two changes. HB 2525, effective August 1, 1999, moved the contested cases hearings officers from the department to the Oregon Employment Department. Effective October 23, 1999, SB 728 gave responsibility to the Hearings Division when the compensability of the underlying medical condition or the causal relationship between the accepted condition and the medical service is disputed.

Figure 1. Medical dispute resolution requests received, FY91-2000



Note: This figure does not include reconsiderations or general issues.

Medical disputes received

In fiscal year 2000, the department received 989 requests for medical dispute resolution (see Table 1). This was a 14 percent increase from the number in FY 1999. Sixty-five percent of the requests were from workers or their attorneys, 28 percent were from medical providers, and 7 percent were from insurers.

The most common medical dispute is over medical services. These disputes are about the services, other than palliative care, to which a worker is entitled. In FY 2000, 43 percent of the disputes fell into this category. This category was created in December 1996 when the coding system was revised to better match the medical service sections of the statute. (Compensable medical services are defined in ORS 656.245.) Many issues formerly defined as palliative care or fee disputes are now classified as medical service disputes. Palliative care disputes arise when a worker or the worker's attending physician requests that the insurer approve palliative care to enable the worker to continue current employment after the worker has become medically stationary. Claimants and providers bring these disputes to the department. Fee disputes are disputes between an insurer and medical provider regarding the amount of a medical fee. Most fee dispute resolution requests come from providers who are seeking reimbursement on a reduced bill. In FY 2000, these two types of disputes accounted for 14 percent of the disputes.

Treatment disputes are another common category of dispute. Treatment disputes are those in which a worker or an insurer claims that the medical provider's treatment is inappropriate, excessive, ineffectual, or in violation of the administrative rules. Twelve percent of the disputes received in FY 2000 were treatment disputes. Forty-four percent of the insurer requests involved treatment issues. As will be shown later, treatment disputes are the most contentious and difficult to resolve.

In October 1999, MRU created a new category for classifying disputes: MCO disputes. These disputes are disputes about managed care organization actions as defined in ORS 656.260(14). Prior to October 1999, most of these disputes were defined as treatment disputes. When this code was created, it was assigned to some existing disputes; therefore, some of these disputes appear in Table 1 as FY 1999 disputes. These disputes accounted for 5 percent of the FY 2000 disputes.

Change of physician disputes occur when a worker requests an additional change of attending physician beyond the two changes allowed by statute. Insurer medical exam disputes arise when an insurer requests that a worker undergo an additional medical exam beyond the three allowed in statute. These two categories accounted for 5 percent of the FY 2000 disputes.

The new disputes rising from SB 728 are the medical disputes heard by the Hearings Division. These are disputes for which the issue is the compensability of the underlying medical condition or the causal relationship between the accepted condition and the medical service. These disputes are resolved by a hearings order before any other disputed medical issues are resolved. This change took effect October 23, 1999. A number of these disputes had been received by the department

prior to the effective date of this change. These disputes were transferred to the Hearings Division for resolution. Their original request dates were retained; therefore, Table 1 shows some of these disputes in FY 1999. These disputes accounted for 21 percent of the FY 2000 disputes. Most of the requests were from claimants or their attorneys.

Table 1. Medical dispute activity, FY96-2000

	Disputed issues									Reconsid-erations of issues	General issues
	Fee dispute	Palliative care	Medical services	Treat-ment	MCO	Change of physician	Additional IME	Compen-sability	Total		
Received											
FY96	395	72	9	366	-	53	20	-	915	3	133
FY97	312	63	77	226	-	37	15	-	730	28	132
FY98	139	32	422	189	-	37	13	-	832	19	139
FY99	34	41	540	200	2	33	11	9	870	21	166
FY00	73	65	421	121	48	23	26	212	989	8	113
FY00 distribution	7.4%	6.6%	42.6%	12.2%	4.9%	2.3%	2.6%	21.4%	100%		
Resolved											
FY96	232	32	-	257	-	52	22	-	595	-	117
FY97	426	100	57	284	-	40	14	-	921	28	135
FY98	202	24	356	165	-	35	13	-	795	21	129
FY99	35	36	482	228	-	34	9	-	824	18	156
FY00	56	46	430	137	16	27	29	90	831	11	133
FY00 distribution	6.7%	5.5%	51.7%	16.5%	1.9%	3.2%	3.5%	10.8%	100%		

Notes: “Medical services” was defined as an issue in December 1996. Reconsiderations were defined as a type of issue in July 1996. “MCO” was defined as a separate category in October 1999. Compensability issues became a WCB responsibility in October 1999. Some existing disputes were transferred to WCB at that time.

In addition to these disputes, there are also reconsiderations and general issues. Reconsiderations are cases in which the department reconsiders its own order. The parties may request the reconsideration of an order within 30 days if they believe the order contains errors or misapplications of the law or if they have new evidence that could not reasonably have been discovered or produced during the review. There were eight reconsideration requests in FY 2000.

General information requests are requests of a general nature. They are not considered disputes, and they do not require a director’s order to resolve. Rather, informational letters are sent in response to these requests. In FY 2000, 113 of these general requests were received.

Dispute orders

During FY 2000, 831 disputes were resolved. Of these orders, 18 percent were orders of dismissal (see Table 2). A dismissal may occur for a variety of reasons, such as the inappropriate, incomplete, or untimely submission of the request or because the request was withdrawn. Thirty-eight percent of the compensability disputes were dismissed.

Excluding the compensability cases, 55 percent of the FY 2000 orders were orders of approval, 18 percent were disapproval orders, and 9 percent were partial approvals. Approval orders are those that order payment to providers, approve palliative care, approve all of the medical provider’s treatment, or approve the additional change of attending physician or additional IME. Denial orders deny these items. Partial approval orders are orders that approve part, but not all, of the request for additional reimbursement, palliative care, or treatment.

Stipulations are written agreements between the parties that are reached through mediation. They were the most common outcome of compensability disputes. Transfer orders are MRU orders that transfer responsibility of issues to the Hearings Division.

For change of physician issues, there is one other possible outcome: “allowed.” This outcome allows the change of physician when the statutory limitation on the number of changes has not been exceeded. There were three orders of this type in FY 2000.

Most of the compensability cases were dismissed or resolved with stipulations. Nine cases were resolved with orders. In five cases, the decision was that the underlying medical condition was compensable or that the accepted condition caused the need for the medical treatment. In four cases, the condition was found non-compensable or the accepted condition was determined not to be the cause of the need for treatment.

Table 2. Medical dispute orders by issue, FY2000

	Fee dispute	Palliative care	Medical services	Treat-ment	MCO	Change of physician	Additional IME	Compen-sability	Total Orders	Total Percent
Approved	44	21	243	62	5	7	22	-	404	48.6%
Allowed	-	-	-	-	-	3	-	-	3	0.4%
Disapproved	4	13	81	24	5	8	1	-	136	16.4%
Partial approval	2	2	36	22	1	0	0	-	63	7.6%
Stipulation	0	1	3	1	0	0	0	47	52	6.3%
Transfer	0	0	12	3	0	-	-	-	15	1.8%
Causally related	-	-	-	-	-	-	-	5	5	0.6%
Causally unrelated	-	-	-	-	-	-	-	4	4	0.5%
Dismissed	6	9	55	25	5	9	6	34	149	17.9%
Total	56	46	430	137	16	27	29	90	831	100%
% of orders	6.7%	5.5%	51.7%	16.5%	1.9%	3.2%	3.5%	10.8%	100%	

Notes: In this table "-" indicates combinations of issues and orders that are not used. "Allowed" is an order type used only for change of physician issues. Transfer orders are used by MRU to transfer issues to WCB for compensability decisions. "Causally related" and "Causally unrelated" are used by WCB for hearing order outcomes.

Excluding the dismissed cases, 65 percent of the disputed medical services were approved, 22 percent were disapproved, and 10 percent were settled with a partial acceptance or a stipulation. Again excluding the dismissed cases, 55 percent of the disputed treatments were approved, and 21 percent were disapproved. Fifty-seven of the requests for palliative care were approved.

Medical providers were usually successful when they requested dispute resolution. Excluding the dismissals, 81 percent of the medical services for which providers requested approval were granted. Payment of disputed bills was approved in 88 percent of the fee disputes.

Insurers were successful in getting additional IMEs. In 22 of the 23 non-dismissed orders, the additional IME was approved. Insurers had more mixed results in the treatment disputes for which they requested resolution. There were 42 non-dismissed orders; the orders were approximately evenly split among approvals, partial approvals, and disapprovals.

When orders were reconsidered, the earlier orders were seldom changed. Of the 11 orders, seven upheld the earlier order, three modified the earlier order, and one reversed the earlier order.

Disputes involving managed care organizations

In FY 2000, 14 percent of the orders resolving disputed issues involved managed care organizations. MCOs must have internal dispute resolution processes, although they may choose to have the department resolve certain types of issues. Therefore, medical disputes come to the department either because the MCO does not have a resolution process for a particular type of issue or because the MCO's decision is being appealed. About 40 percent of the workers with accepted disabling claims are enrolled in MCOs. The small number of MCO disputes received by the department indicates that the MCOs resolved many medical disputes.

For the non-compensability disputes involving MCOs, 41 percent of the orders were approval orders and 28 percent were disapproval orders. This contrasts with the disputes that did not involve MCOs; in this group, 59 percent were approval orders and 17 percent were disapproval orders.

Table 3. Medical dispute orders by issue, FY2000, for issues with MCO involvement

	Fee dispute	Palliative care	Medical services	Treat-ment	MCO	Change of physician	Additional IME	Compen-sability	Total Orders	Total Percent
Approved	4	7	19	14	5	0	0	-	49	40.8%
Allowed	-	-	-	-	-	0	-	-	0	0.0%
Disapproved	1	2	18	7	5	0	0	-	33	27.5%
Partial approval	0	0	10	5	1	0	0	-	16	13.3%
Stipulation	0	0	0	0	0	0	0	0	0	0.0%
Transfer	0	0	1	0	0	-	-	-	1	0.8%
Causally related	-	-	-	-	-	-	-	0	0	0.0%
Causally unrelated	-	-	-	-	-	-	-	0	0	0.0%
Dismissed	0	3	8	5	5	0	0	0	21	17.5%
Total	5	12	56	31	16	0	0	0	120	100%
% of orders	4.2%	10.0%	46.7%	25.8%	13.3%	0.0%	0.0%	0.0%	100%	

Processing times

The average number of calendar days from the initial receipt of a dispute to its resolution was 109 days for FY 2000 orders (see Table 4). This compares to 105 days in FY 1999. The increase in the average was due to the addition of the compensability cases. Compensability disputes averaged 147 days for resolution. MCO disputes took the longest to resolve, 156 days. Medical services disputes averaged 105 days. IME disputes were resolved the most quickly, averaging 21 days.

A portion of this processing time can be attributed to the involvement of outside physician reviewers. These reviewers or panels of reviewers may be appointed by the department to review the disputed treatments, medical services, or palliative care. The length of time between the date of the department's letter establishing the outside review and the date that the physician's report was received averaged 18 days. Seventy-one percent of the treatment orders that were not dismissed (61 percent of all treatment orders) utilized outside physician review.

Table 4. Average processing days for orders, FY2000

Orders	Number	Average days	Number with a physician review	Percent with a physician review	Average days
Fee dispute	56	71	0	0.0%	0
Palliative care	46	116	15	32.6%	18
Medical services	430	105	7	1.6%	14
Treatment	137	154	83	60.6%	21
MCO	16	156	9	56.3%	23
Change of physician	27	46	0	0.0%	0
Additional IME	29	21	0	0.0%	0
Compensability	90	147	0	0.0%	0
All disputed issues	831	109	114	13.7%	18
Reconsiderations	11	78	0	0.0%	0
General requests	132	65	1	0.8%	23

Note: Processing time is calculated using calendar days, not work days.

Appeals of orders

Orders from disputed issues other than IMEs and compensability can be appealed through the contested case hearings process. (IME orders and compensability orders are appealed to the Hearings Division.) Prior to August 1, 1999, these hearings officers were under the director's jurisdiction. They have become part of a centralized hearings panel in the Oregon Employment Department. The parties have 30 days to appeal a medical dispute order.

Of the orders issued in FY 2000, 11 percent were appealed. In FY 1999, 14 percent were appealed. Because many of the FY 2000 appealed orders did not have resolutions at the time of this report, the outcomes of appealed FY 1999 orders are provided in Table 5. Twenty-three percent of the treatment dispute orders and 11 percent of the medical service orders were appealed. Over half of the appeals were dismissed or withdrawn. Most of the other resolutions were affirmations of the earlier order.

Table 5. Appeals of FY99 orders

Orders	Fee dispute	Palliative care	Medical services	Treatment dispute	Change of physician	Total	
Orders	35	37	489	238	34	833	
Number appealed	1	3	56	55	0	115	
% appealed	2.9%	8.1%	11.5%	23.1%	0.0%	13.8%	
Outcome of appeals	**Fee dispute**	**Palliative care**	**Medical services**	**Treatment dispute**	**Change of physician**	**Total**	**Percentage of resolutions**
Affirmed	0	1	18	15	0	34	30.9%
Reversed	0	0	4	0	0	4	3.6%
Partial	0	0	2	1	0	3	2.7%
Stipulation	0	0	2	2	0	4	3.6%
Remand/other	0	0	2	7	0	9	8.2%
Dismissed/withdrawn	1	2	27	26	0	56	50.9%
Pending	0	0	1	4	0	5	
Total	1	3	56	55	0	115	

Notes: In this table, reconsidered issues are included with the original disputed issue. Few general orders are appealed, so they are not included. Appeals of IME orders and compensability orders are not appealed to contested case hearings.