Medical Dispute Activity, Oregon, Fiscal Year 2001

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 2001. 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 2001, the department received 1,068 medical dispute requests. Of the three largest medical dispute categories, 46 percent were medical service disputes, 17 percent were compensability disputes, 15 percent were fee disputes, and 23 percent were other types of disputes.

In FY 2001, 1,083 medical disputes were resolved. Of these disputes, 48 percent were approved, 15 percent were disapproved, and 6 percent were partially approved. Eight percent of the resolutions were stipulations. Nineteen percent of the disputes were dismissed or withdrawn.

Fourteen percent of the FY 2001 orders resolved disputes for injured workers enrolled in managed care organizations. Of these, 50 percent involved disputes with the MCO itself. The remainder of the disputes were not related to the MCO.

In FY 2001, the average number of calendar days from the receipt of a dispute to its resolution was 105 days. There is great variability in the resolution time of different issues. Treatment disputes averaged 121 days to resolve, while IME disputes averaged 26 days. Compensability issues took 222 days to resolve. MCO disputes averaged 124 days to resolve. Sixty-six percent of the treatment disputes that were not dismissed required the use of outside physician reviewers. Physician reviews added an average of 16 days to the processing time of reviewed orders.

In the first half of FY 2001, the MRU successfully implemented a new process to reduce the time required to review medical disputes. Comparing the first half of FY 2001 to the second half of FY 2001 showed an average reduction of 50 days from the receipt of a dispute by the MRU to its resolution.

Of the 969 orders issued in FY 2001, 7 percent were appealed to contested case hearings.

Legislative history

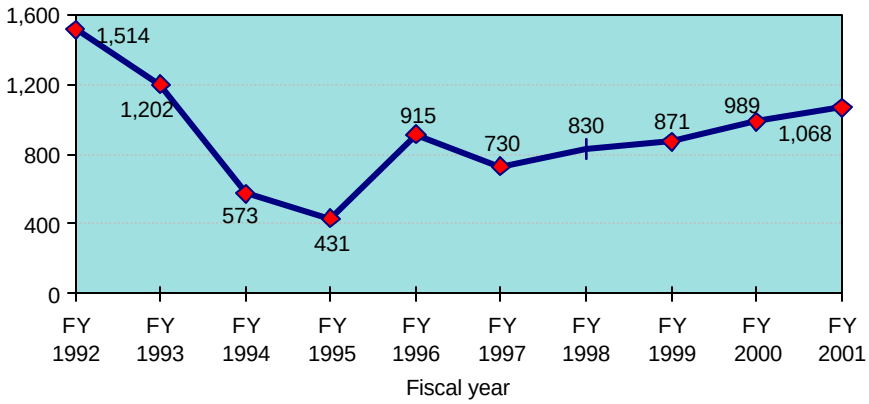
Most legislative sessions since 1987 have produced changes in the medical dispute resolution process. In 1987, House Bill 2900 allowed the director to establish a medical review panel to review, upon request of any of the parties, the medical treatment of an injured worker. This review process was seldom 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 case 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, FY 1992-2001



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

Medical disputes received

In fiscal year 2001, the department received 1,068 requests for medical dispute resolution (see Table 1). This was a 8 percent increase from the number in FY 2000, mostly in disputes involving provider fees and medical services. Fifty-nine percent of the requests were from workers or their attorneys, 36 percent were from medical providers, and 4 percent were from insurers. The percentage of requests from medical providers increased more than 8 percentage points from FY 2000. This increase is related to the increase in the number of fee disputes.

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 2001, 46 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 2001, these two types of disputes accounted for 19 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. Ten percent of the disputes received in FY 2001 were treatment disputes. Fifty-six 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 2001 disputes.

Table 1. Medical dispute activity, FY1997-2001

	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											
FY 1997	312	63	77	226	-	37	15	-	730	28	132
FY 1998	139	32	423	188	-	35	13	-	830	19	141
FY 1999	34	41	540	201	2	33	11	9	871	21	166
FY 2000	72	63	426	118	50	23	26	211	989	8	112
FY 2001	160	47	486	108	56	24	8	179	1,068	13	137
FY 2001 distrib.	15.0%	4.4%	45.5%	10.1%	5.2%	2.2%	0.7%	16.8%	100%		
Resolved											
FY 1997	426	100	57	284	-	40	14	-	921	28	134
FY 1998	202	24	357	165	-	33	13	-	794	20	129
FY 1999	35	36	482	227	-	34	9	-	823	19	154
FY 2000	56	46	430	138	16	28	29	95	838	11	130
FY 2001	131	69	495	123	73	24	7	161	1,083	14	133
FY 2001 distrib.	12.1%	6.4%	45.7%	11.4%	6.7%	2.2%	0.6%	14.9%	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.

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 3 percent of the FY 2001 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 17 percent of the FY 2001 disputes. Most of the requests were from claimants or their attorneys.

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 thirteen reconsideration requests in FY 2001.

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 2001, 137 of these general requests were received.

Dispute orders

During FY 2001, 1,083 disputes were resolved. Of these orders, 19 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-two percent of the compensability disputes were dismissed.

Excluding the compensability cases, 56 percent of the FY 2001 orders were orders of approval, 17 percent were disapproval orders, and 7 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.

Table 2. Medical dispute orders by issue, FY2001

	Fee dispute	Palliative care	Medical services	Treat-ment	MCO	Change of physician	Additional IME	Compen-sability	Total Orders	Total Percent
Approved	88	24	316	53	23	10	4	-	518	47.8%
Allowed	-	-	-	-	-	1	-	-	1	0.1%
Disapproved	28	20	60	17	27	5	2	-	159	14.7%
Partial Approval	5	0	41	11	4	0	0	-	61	5.6%
Stipulation	0	0	8	3	2	0	0	78	91	8.4%
Transfer	0	1	14	3	0	-	-	-	18	1.7%
Causally related	-	-	-	-	-	-	-	14	14	1.3%
Causally unrelated	-	-	-	-	-	-	-	17	17	1.6%
Dismissed	10	24	56	36	17	8	1	52	204	18.8%
Total	131	69	495	123	73	24	7	161	1,083	100%
% of orders	12.1%	6.4%	45.7%	11.4%	6.7%	2.2%	0.6%	14.9%	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.

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 was one order of this type in FY 2001.

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

Excluding the dismissed cases, 72 percent of the disputed medical services were approved, 14 percent were disapproved, and 11 percent were settled with a partial approval or a stipulation. Again excluding the dismissed cases, 61 percent of the disputed treatments were approved, and 20 percent were disapproved. Twenty-four of the requests for palliative care were approved.

Medical providers were usually successful when they requested dispute resolution. Excluding the dismissals, 78 percent of the medical services for which providers requested approval were granted. Payment of disputed bills was approved in 72 percent of the fee disputes.

In FY 2001, there was a significant drop in the number of orders stemming from requests by Insurers for additional IMEs. There were 6 non-dismissed orders in FY 2001 compared to 23 non-dismissed orders in FY 2000.

When orders were reconsidered, the earlier orders were seldom changed. Of the 7 orders, three upheld the earlier order, three modified the earlier order, and one reversed the earlier order.

Disputes involving managed care organizations

Fourteen percent of the FY 2001 orders resolved disputes for injured workers enrolled in managed care organizations. Of these, 50 percent involved disputes with the MCO itself. The remainder of the disputes were not related to the MCO. 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, 34 percent of the orders were approval orders and 33 percent were disapproval orders. This contrasts with the disputes that did not involve MCOs; in this group 64 percent were approval orders and 15 percent were disapproval orders.

Processing times

The average number of calendar days from the initial receipt of a dispute to its resolution was 105 days for FY 2001 orders (see Table 3). This compares to 112 days in FY 2000. Treatment disputes averaged 121 days for resolution. Compensability disputes took the longest to resolve, 222 days. Medical services disputes averaged 93 days. IME disputes were resolved the most quickly, averaging 26 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 16 days. Sixty-six percent of the treatment orders that were not dismissed (50 percent of all treatment orders) utilized outside physician review.

Table 3. Average processing days for orders, FY2001

Orders	Number	Average days	Number with a physician review	Percent with a physician review	Average days
Fee dispute	131	71	0	0.0%	0
Palliative care	69	105	4	5.8%	18
Medical services	495	93	7	1.4%	16
Treatment	123	121	62	50.4%	16
MCO	73	124	23	31.5%	18
Change of physician	24	43	0	0.0%	0
Additional IME	7	26	0	0.0%	0
Compensability	161	222	0	0.0%	0
All disputed issues	1,083	105	96	8.9%	16
Reconsiderations	14	42	0	0.0%	0
General requests	133	47	2	1.5%	20

Note: Processing time is calculated using calendar days, not work days.
Weighted average calculated for "All disputed issues."

From August through December 2000, the MRU completed a project to dramatically reduce the number of cases pending an order that were over 120 days old. Based on the success of this project, MRU re-engineered their review process to expedite the resolution of medical disputes.

Comparing the first half of FY 2001 to the second half of FY 2001 demonstrates that these changes resulted in a decrease in the average number days from the receipt of a medical dispute to its resolution (see Table 4). For all disputed issues, the average number of days to resolution decreased by 50 days. Treatment disputes were resolved an average of 83 days sooner. Disputes involving medical services were resolved an average of 42 days sooner.

Table 4. Comparison of average days to resolution, first half FY2001 v.s. second half FY2001

	Jul 2000 - Dec 2000		Jan 2001 - Jun 2001		Difference
	Number	Average days	Number	Average days	Average days
Fee dispute	56	92	75	55	-37
Palliative care	45	126	24	64	-62
Medical services	245	114	250	72	-42
Treatment	55	167	68	84	-83
MCO	43	148	30	90	-58
All MRU disputed issues	444	122	447	72	-50

Note: Processing time is calculated using calendar days, not work days.
Includes only those issues processed by the MRU.

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 969 orders issued in FY 2001, 7 percent were appealed. In FY 2000, 11 percent of the 727 orders were appealed. Because many of the FY 2001 appealed orders did not have resolutions at the time of this report, the outcomes of appealed FY 2000 orders are provided in Table 5. Nineteen percent of the treatment dispute orders and 10 percent of the medical service orders were appealed. Thirty-four percent of the appeals were dismissed or withdrawn. Most of the other resolutions were affirmations of the earlier order or stipulated agreements.

Table 5. Appeals of FY2000 orders

Orders	Fee dispute	Palliative care	Medical services	Treatment dispute	MCO	Change of physician	Total	
Orders	56	46	437	142	16	30	727	
Number appealed	2	6	44	27	1	0	80	
% appealed	3.6%	13.0%	10.1%	19.0%	6.3%	0.0%	11.0%	
Outcome of appeals								Percentage of resolutions
Affirmed	1	2	16	11	0	0	30	39.5%
Reversed	0	0	2	2	0	0	4	5.3%
Partial	0	0	0	0	0	0	0	0.0%
Stipulation	0	1	7	3	0	0	11	14.5%
Remand/other	0	0	3	2	0	0	5	6.6%
Dismissed/withdrawn	1	2	15	8	0	0	26	34.2%
								100%
Pending	0	1	1	1	1	0	4	
Total	2	6	44	27	1	0	80	

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.

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