Medical Dispute Activity, Oregon, Fiscal Year 2003

Research & Analysis Section
Department of Consumer & Business Services September 2004

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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, 656.247, 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 Medical Review Unit, formed during a 1992 WCD reorganization, is the unit responsible for handling the majority of medical disputes. Except for compensability disputes involving managed care organizations, effective October 23, 1999, Senate Bill 728 gave 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 2003. 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 2003, the department received 1,183 medical dispute requests. Of these, 40 percent were medical service disputes, 21 percent were compensability disputes, 13 percent were fee disputes, 13 percent were treatment disputes, and 13 percent were other types of disputes.

In FY 2003, 1,068 medical disputes were resolved. Of these disputes, 49 percent were approved, 17 percent were disapproved, 9 percent of the resolutions were stipulations, and 5 percent were partially approved. Seventeen percent of the disputes were dismissed or withdrawn.

In FY 2003, 16 percent of the orders resolved disputes for injured workers enrolled in managed care organizations. Of these, 69 percent involved disputes with the MCO itself.

In FY 2003, the overall average number of calendar days from the receipt of a dispute to its resolution was 104 days. Treatment disputes averaged 113 days to resolve, while IME disputes averaged 52 days. MCO disputes averaged 122 days to resolve. Compensability issues, resolved by the WCB Hearings Division, averaged 226 days.

Fifty-one percent of the treatment disputes that were not dismissed required the use of outside physician reviewers. Physician reviews added an average of 39 days to the processing time of reviewed orders.

Of the 905 orders issued in FY 2003, eight 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 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 a broader range of care after being declared medically stationary, including; palliative and curative care, prescription medication and prosthetic devices, and services to monitor and care for the medication and devices. 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 WCB Hearings Division for resolving disputes about the compensability of the underlying medical condition or the causal relationship between the accepted condition and the medical service.

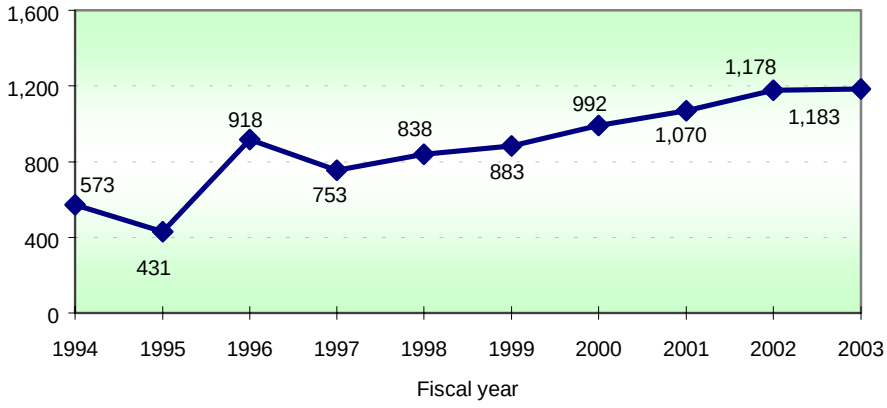
The 2001 legislative session produced SB 485, effective January 1, 2002, which reduced the time in which insurers must accept or deny a claim from 90 to 60 days and amended the law regarding payment for medical services provided prior to the claim's initial acceptance or denial.

Medical disputes received

In fiscal year 2003, the department received 1,183 requests for medical dispute resolution, a slight increase from the number received in FY 2002 (see Table 1). Most of the disputes involved medical services, compensability, and provider fees. Sixty-five percent of the requests were from workers or their attorneys, 30 percent were from medical providers, and four percent were from insurers. The percentage of requests from workers or their attorneys increased more than 16 percent from FY 2002. This increase is related to the increase in the number of medical service 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 2003, 40 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. In FY 2003, palliative care accounted for less than two percent of the disputes.

Figure 1. Medical dispute resolution requests received, FY 1994 - 2003



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

Fee disputes are disputes between an insurer and medical provider regarding the amount of a medical fee. Most requests for fee-dispute resolutions come from providers who are seeking reimbursement on a reduced bill. In FY 2003, these fee disputes accounted for 13 percent of the disputes.

Treatment disputes are another common category. 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. Thirteen percent of the disputes received in FY 2003 were treatment disputes. Fifty-three 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, the Medical Review Unit created a new category for classifying disputes: MCO disputes. These are disputes about actions of managed care organization as defined in ORS 656.260(14). Prior to October 1999, most of these disputes were defined as treatment disputes. When this category 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 nine percent of the FY 2003 disputes.

Disputes regarding change of physician occur when a worker requests an additional change of attending physician beyond the two changes allowed by statute. Disputes about insurer medical exams arise when an insurer requests that a worker undergo an additional medical exam beyond the three allowed in statute. These two categories accounted for two percent of the FY 2003 disputes.

The disputes arising 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 casual relationship between the accepted condition and the medical service, except for disputes involving MCOs, which are resolved by the Medical Review Unit. The compensability disputes heard by the Hearings Division 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 2003 disputes. Ninety-five percent 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 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 10 reconsideration requests in FY 2003.

Table 1. Medical dispute activity, FY 1999-2003

	Disputed issues										Reconsid-erations of issues	General issues
	Fee dispute	Interim benefits	Palliative care	Medical services	Treat-ment	MCO	Change of physician	Additional IME	Compen-sability	Total		
Received												
FY 1999	34	-	41	540	212	3	33	11	9	883	9	167
FY 2000	72	-	64	426	120	51	23	26	210	992	5	113
FY 2001	160	-	47	483	110	58	24	8	180	1,070	8	138
FY 2002	269	1	37	432	124	111	12	10	182	1,178	4	140
FY 2003	157	3	19	474	152	108	16	11	243	1,183	10	114
FY 2003 %	13.3%	0.3%	1.6%	40.1%	12.9%	9.13%	1.4%	0.9%	20.5%	100%		
Resolved												
FY 1999	35	-	36	482	228	1	34	9	-	825	17	156
FY 2000	56	-	46	430	138	16	28	29	95	840	11	133
FY 2001	131	-	69	495	122	73	24	7	187	1,108	14	133
FY 2002	299	1	31	439	100	98	12	9	166	1,155	6	152
FY 2003	154	-	27	446	128	119	17	12	165	1,068	14	115
FY 2002 %	14.4%	0.0%	2.5%	41.8%	12.0%	11.1%	1.6%	1.1%	15.5%	100%		

Notes: "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.
"Interim benefits" was defined as a separate category in October 2002.

General issues may be requests that require some investigation to clarify an issue, requests for information of a general nature, or requests by injured workers or their attorneys for the director to take action that prove to be premature. They do not require a director's order to resolve. Rather, letters are sent in response to these requests. In FY 2003, 114 of these general requests were received.

Dispute orders

During FY 2003, 1,068 disputes were resolved by order. Of these orders, 17 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 percent of the compensability disputes were dismissed.

Excluding the compensability cases, 58 percent of the FY 2003 orders were orders of approval, 20 percent were disapproval orders, 6 percent were partial approvals, 1 percent were transfers, and less than 1 percent were stipulations. 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. Transfer orders are MRU orders that transfer responsibility of issues to the Hearings Division. Stipulations are written agreements between the parties that are reached through mediation or alternative dispute resolution. They were the most common outcome of compensability disputes.

Most of the compensability cases were dismissed or resolved with stipulations. Twenty-six cases were resolved with orders. In 12 cases, the decision was that the underlying medical condition was compensable or that the accepted condition caused the need for the medical treatment. In 13 cases, the condition was found non-compensable or the accepted condition was determined not to be the cause of the need for treatment. One case was transferred from MRU to the Hearings Division.

In the following discussion, dismissed cases are excluded. Of the disputed medical services, 74 percent were approved, 17 percent were disapproved, and 10 percent were settled with a partial acceptance, a stipulation, or a transfer. Of the disputed treatments, 58 percent were approved, and 31 percent were disapproved. Of the palliative care requests, 28 percent were approved, and 61 percent were disapproved.

Medical providers were usually successful when they requested dispute resolution. Excluding the dismissals, 83 percent of the medical services for which providers requested approval were granted. Payment of disputed bills was approved in 86 percent of the fee disputes.

The department reconsidered 14 orders. Four upheld the earlier order, 3 modified the earlier order, 3 disapproved the earlier order, and 4 denied the earlier order.

Table 2. Medical dispute orders by issue, FY 2003

	Fee dispute	Interim benefits	Palliative care	Medical services	Treat-ment	MCO	Change of physician	Additional IME	Compen-sability	Total Orders	Total Percent
Approved	126	-	5	275	56	39	12	5	-	518	48.5%
Allowed	-	-	-	-	-	-	-	-	-	0	0.0%
Disapproved	12	-	11	62	30	55	2	6	-	178	16.7%
Partial Approval	10	-	2	28	6	11	-	-	-	57	5.3%
Stipulation	-	-	-	2	1	1	-	-	90	94	8.8%
Transfer	-	-	-	7	3	-	-	-	1	11	1.0%
Causally related	-	-	-	-	-	-	-	-	12	12	1.1%
Causally unrelated	-	-	-	-	-	-	-	-	13	13	1.2%
Dismissed	6	-	9	72	32	13	3	1	49	185	17.3%
Total	154	-	27	446	128	119	17	12	165	1,068	100%
Percent of orders	14.4%	0.0%	2.5%	41.8%	12.0%	11.1%	1.6%	1.1%	15.5%	100%	

Notes: In this table "-" indicates combinations of issues and orders that are not used.
"Allowed" is an order type used only for issues with a change of physician.
When an additional IME is allowed, it is counted under "Approved."
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.

Disputes involving managed care organizations

Sixteen percent of the FY 2003 orders resolved disputes for injured workers enrolled in managed care organizations. Of these, 69 percent involved disputes directly with the MCO itself. The remainder of the disputes were not related directly to the MCO, i.e., disputes regarding issues such as medical services, treatment, etc. 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. In 2002, the most recent year with data, about 37 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 41 percent were disapproval orders. This contrasts with the disputes that did not involve MCOs; in this group, 63 percent were approval orders and 15 percent were disapproval orders.

Processing times

The overall average number of calendar days from the initial receipt of a dispute to its resolution was 104 days for FY 2003 orders (see Table 3). This compares to 82 days in FY 2002. There is great variability in the resolution time of different issues. Compensability disputes, resolved by the WCB Hearings Division, took the longest, 226 days. Excluding compensability disputes, leaving only those resolved by MRU, the disputes averaged 82 days. MCO disputes averaged 122 days to resolve. Treatment disputes averaged 113 days for resolution. Medical services disputes averaged 94 days. IME disputes were resolved most rapidly, averaging 52 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 39 days. Fifty-one percent of the treatment orders that were not dismissed (75 percent of all treatment orders) utilized outside physician review.

Appeals of orders

Orders from disputed and reconsidered issues, other than IMEs and compensability, can be appealed through the contested case hearings. The parties have 30 days in which to appeal an MRU order. (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.

Table 3. Average processing days for orders, FY 2003

Orders	Number	Average days	Number with a physician review	Percent with a physician review	Average days
Fee dispute	154	82	-	0.0%	
Interim benefits	-	-	-	0.0%	
Palliative care	27	107	7	25.9%	24
Medical services	446	94	3	0.7%	47
Treatment	128	113	65	50.8%	40
MCO	119	122	32	26.9%	40
Change of physician	17	70	-	0.0%	
Additional IME	12	52	-	0.0%	
MRU disputed issues	*903*	*82*	*107*	*11.8%*	*39*
Compensability	165	226	-	0.0%	
All disputed issues	*1,068*	*104*	*107*	*10.0%*	*39*
Reconsiderations	9	73	-	0.0%	-
General requests	124	65	-	0.0%	-

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

Of the 905 orders issued in FY 2003, eight percent were appealed through the contested case hearings (see Table 4). In FY 2002, nine percent of the 986 orders were appealed. Because many of the FY 2003 appealed orders did not have resolutions at the time of this report, the outcomes of appealed FY 2002 orders are provided in Table 5. Eighteen percent of the treatment dispute orders, 17 percent of MCO orders, 8 percent of fee dispute orders, and 6 percent of the medical service orders were appealed. Forty percent of the appealed orders were affirmed. Twenty-one percent of the appeals were dismissed or withdrawn. The remaining resolutions were stipulated agreements, reversals, partial affirmations of earlier orders, or remands to the Workers' Compensation Division for further action.

Table 4. Appeals of FY 2003 orders

Orders	Fee dispute	Palliative care	Medical services	Treatment dispute	MCO	Change of physician	Interim benefits	Total
Orders	154	27	452	132	122	18	-	905
Number appealed	3	2	27	22	17	2	-	73
Percent appealed	1.9%	7.4%	6.0%	16.7%	13.9%	11.1%	0.0%	8.1%

Notes: In this table, reconsidered issues are included with the original disputed issue.
General issues are resolved by letter and are therefore not appealed.
Appeals of IME orders and compensability orders are not appealed to contested case hearings.

Table 5. Appeals of FY 2002 orders, and outcomes

Orders	Fee dispute	Palliative care	Medical services	Treatment dispute	MCO	Change of physician	Interim benefits	Total	
Orders	299	31	442	102	99	12	1	986	
Number appealed	24	4	27	18	17	-	-	90	
% appealed	8.0%	12.9%	6.1%	17.6%	17.2%	0.0%	0.0%	9.1%	
Outcome of appeals									Percentage of resolutions
Affirmed	4	1	12	8	10	-	-	35	40.2%
Reversed	4	1	2	1	1	-	-	9	10.3%
Partial	-	-	1	2	2	-	-	5	5.7%
Stipulation	10	-	3	-	-	-	-	13	14.9%
Remand/other	2	-	3	1	1	-	-	7	8.0%
Dismissed/withdrawn	4	2	5	5	2	-	-	18	20.7%
									100%
Pending	-	-	-	1	1	-	-	2	
Other *	-	-	1	-	-	-	-	1	
Total	24	4	27	18	17	-	-	90	

Notes: In this table, reconsidered issues are included with the original disputed issue.
General issues are resolved by letter and are therefore not appealed.
Appeals of IME orders and compensability orders are not appealed to contested case hearings.
*One medical services case under consideration for appeal.

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