

ADVISORY NO. 148

TOPIC: FORMS FOR NEW RULE - SECOND OPINION FOR SPINAL SURGERY

Effective November 1, 1994, Rule 133.206 concerning the spinal surgery second opinion process will go into effect, and will remain in effect until January 1, 1996. You may want to refer to the FO&L 1994 Video Seminar, the September 1994 issue of *FOLIO*, and the discussion of this new rule at the 1994 Flahive, Ogden & Latson Client Seminar for the specific content of this new 16-page rule.

A public meeting was held on October 28, 1994, in order to discuss the implementation of the new rule. The Medical Review Division of the Texas Workers' Compensation Commission emphasized several key points.

All recommendations for spinal surgery prior to November 1, 1994, will fall under the old forms, old rules and old procedures. All recommendations for spinal surgery made on November 1, 1994, and thereafter must be made on the new TWCC-63 Recommendation for Spinal Surgery form, Recommendation for Spinal Surgery made on or after November 1, 1994, and will be governed by Rule 133.206.

The spinal surgery process will be initiated when either the treating doctor or the spinal surgeon submits the TWCC-63 to the Division of Medical Review by mail or by fax. The Medical Review Division will then put a copy of the TWCC-63, together with a sublist of five second opinion doctors, in the box of your Austin Commission Representative. Your Austin Commission Representative will then sign for the receipt of the TWCC-63, together with a sublist from which you must choose the carrier's second opinion doctor, should you desire to exercise your right to a second opinion. The carrier must respond to the TWCC-63 within fourteen (14) days of the date that the Austin Commission Representative signed for the TWCC-63, or within fourteen (14) days of the day after the TWCC-63 is placed in the carrier's box, whichever is earlier. At the present time, the Commission will be counting the 14 days from the date that the Austin Representative signs for the receipt of the TWCC-63, until they can develop better monitoring procedures. If the carrier does not respond within 14 days through their Austin Commission Representative, then the right to a second opinion for spinal surgery is automatically waived. In addition, the carrier waives the right to a second opinion if the carrier chooses a doctor not on the sublist, or sets a second opinion appointment which is more than thirty days from the acknowledgement date of the receipt of the TWCC-63 by the Austin Commission Representative.

The Medical Review Division will not give the carrier a new sublist just because the carrier is not happy with the doctors that are on the sublist. The carrier must choose a second

opinion doctor from the sublist provided by the Medical Review Division. If a doctor on that sublist refuses to perform the second opinion examination, then the adjuster needs to call the Medical Review Division at (512) 440-3985, for assistance. The Medical Review Division will try to get that second opinion doctor to comply with the rule. If the second opinion doctor refuses to comply, then the Medical Review Division will provide the carrier with the name of an additional doctor from which to choose a second opinion for spinal surgery.

The treating doctor or surgeon recommending spinal surgery is responsible for sending all medical records to the second opinion doctor prior to the exam. The rule, however, does not prohibit the carrier from sending medical records to the second opinion doctor and does not prohibit carrier contact with the second opinion doctor either prior to or after the scheduled examination. The carrier is not prohibited from sending the second opinion report of its doctor to a subsequent second opinion doctor chosen by the employee or the Commission for review.

The Austin Commission Representative will be responsible for monitoring the following:

- 1) The acknowledgement date of the receipt of the TWCC-63 from the Medical Review Division.
- 2) The date the carrier requests a second opinion or waives second opinion is submitted to the Medical Review Division.
- 3) The date and time of the second opinion appointment, as well as the notification to the treating doctor or surgeon and employee of the date and time of the second opinion appointment.
- 4) The acknowledgement date of notification from the Medical Review Division concerning receipt of the second opinion narrative from either the carrier's or employee's second opinion doctor.
- 5) The acknowledgement date of notice of liability received from the Medical Review Division.

The adjuster needs to do the following:

- 1) Select a second opinion doctor from the sublist.
- 2) Fill out the TWCC-63 and file it with the Medical Review Division on a timely basis through the Austin Commission Representative.
- 3) Notify the employee and the treating doctor or surgeon of the second opinion doctor, together with the date, time and location of the appointment on the same day that the completed TWCC-63 form is sent back to the Austin Commission Representative.
- 4) Do not pay for any second opinion exam until after Medical Review Division receives the second opinion report (the 45-day payment period runs from the date the TWCC receives the report or the date the carrier receives the bill, whichever is later). TWCC will advise Austin Commission Representative of date of receipt of second opinion report.
- 5) Request a contested case hearing through the TWCC field office handling the claim within ten (10) days after receipt of notice from the Commission regarding carrier's liability for spinal surgery. Send a copy of the request for hearing and the file to Flahive, Ogden & Latson (CCH will be set within 20 days of receipt of request for hearing).

Attached to this advisory is a copy of the Flahive, Ogden & Latson fax transmittal page that will be utilized for notifying the carrier of receipt of a TWCC-63 form and sublist from the Medical Review Division. Also is a copy of the new TWCC-63 form. There is also a Flahive, Ogden & Latson - 45(a) form that has been devised by our office in order to assist you in requesting a contested case hearing (until the TWCC adopts their own form in this regard).

Questions concerning the sublist and procedures that will be required by Medical Review Division in implementing Rule 133.206 should be directed to the Medical Review Division at (512) 440-3985.