REVISED
ADVISORY NO. 311
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TOPIC: TWCC PUBLISHES REVISED RME, DESIGNATED DOCTOR, MED DISPUTES AND PRESCRIPTION DRUG RULES

On December 13, 2001, TWCC adopted important new rules having to do with required medical exams, designated doctor examinations, medical dispute resolution and prescription medicines. All of these rules will be effective as to requests date stamped by the Commission after January 1, 2002. The old rules will continue in effect for requests filed with TWCC and date stamped before that date.

These rules outline a very specific procedure for filing RME requests. The procedure must be followed exactly. Please review Rule 126.5(d) carefully. Failure to comply with the requirements invalidates the RME report and you may not rely upon it. Rule 126.7(b)(2)(A). Note that the RME appointment must now occur within thirty days of the TWCC order and after 10 days notice to the claimant – a 20-day timeframe! Rule 126.6(b). All RMEs for the purpose of establishing that the employee is at maximum medical improvement must be preceded by a designated doctor exam. That is a big fundamental change. However, if you disagree with the designated doctor's report, you have an absolute right to an RME. These rules do not limit or constrain your right to obtain an RME on other questions such as disability, extent of injury, etc.

The designated doctor provisions have substantially changed. Rules 130.5, 130.6. One may now request a designated doctor at any time. It is no longer necessary to have a prior certification of MMI or impairment. One may request a new designated doctor exam every sixty days. The designated doctor must identify the reasons that the designated doctor refuses to assess MMI and must estimate the date the employee will reach MMI. If the designated doctor believes MMI was reached on a date other than the date selected by the treating doctor, the designated doctor must provide an explanation with clinical documentation to support that opinion. With the medical records that carriers must send, carriers may submit an analysis of the claimant's medical condition, functional abilities, and RTW opportunities, Rule 130.5(d)(3), but may not otherwise contact the designated doctor. Rule 130.5(d)(4).

The 90-day rule has now been abolished for all ratings that were not final prior to **January 1, 2002**. The 90-day rule may have been abolished with respect to certifications prior to that date pending the final determination of the appeal in *Fulton v. Associated Indemnity Corporation*. TWCC is continuing to enforce the 90-day rule pending Supreme Court review of the Court of Appeals' decision.

The Medical Dispute Resolution Rules have been changed to incorporate the Independent Review Organization (IRO) determination of all medical necessity disputes. Rules 133.305, 133.306-133.308. All medical disputes will now be initiated by delivering a request to the carrier. **The carrier must review the dispute, complete missing information, attach documents, and file the dispute with TWCC by fax within three days. Rule 133.307(e)**. TWCC will identify the dispute as a fee dispute or a medical necessity dispute. Fee disputes will be forwarded to the carrier for a response within fourteen days. All medical necessity disputes identified by TWCC will be forwarded to an Independent Review Organization and the parties will be notified by the IRO. The parties must file documentation direct with the IRO within seven days of receiving the notice. Rule 133.308(j). IRO fees for preauthorization issues must be paid by the carrier at the time of the filing of the documentation – HB 2600 requires that the carriers pay the cost whether carriers win or lose. For retrospective disputes, the requestor shall pay the fees in advance. The Commission will determine the prevailing party and will then order reimbursement in the event the healthcare provider prevails. All appeals of medical fee or medical necessity issues (other than spinal surgery) will be filed at SOAH.

TWCC-63 (Requests for Spinal Surgeries) filed prior to January 1, 2002 will be governed under the old rule. For requests filed after that date, IROs will be appointed and appeals from determinations by IROs will be referred to Contested Case Hearings.

After January 1, 2002, Chapter 134 Rules provide that insurance carriers contesting the medical necessity of pharmacy prescriptions must contact the prescribing doctor and request a statement of medical necessity. The pharmacist must be notified of this request. The prescribing doctor shall respond within fourteen days and after that date, the carrier may reduce or deny based upon medical necessity, explaining the action to the pharmacist, the employee and the prescribing doctor by EOB. If clinically appropriate, doctors are now required to prescribe generic drugs as opposed to brand-name drugs, and over the counter medicines in lieu of prescription drugs.

These rules will be covered in detail during our Seminars scheduled for January 30 and 31, 2002. Copies of the rules are separately attached for all clients receiving this advisory by email. We are unable to fax these rules because of the length of the document. For fax recipients, we have posted all of these newly amended rules to our web site under our Resource Center.