

ADVISORY NO. 373
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TOPIC: TWCC ADOPTS NEW EXTENT OF INJURY PROCESS

TWCC adopted Rule 134.650 at its August public meeting.

The rule will cover both extent of injury and medical necessity. The medical necessity disputes will be limited to those disputes not covered by the preauthorization list.

Most of these disputes will be initiated by the treating physician. The doctor will file a request with TWCC and will supply a “factually substantiated rationale” as to why the physician believes that the carrier will deny reimbursement for the proposed services.

TWCC will “initiate the facilitation of communication” between the proposing doctor and the insurance carrier. Carrier participation in these discussions is voluntary. If the carrier agrees to pay for the proposed care, the matter will be dismissed. In the event that there is no agreement by the seventh day, the Commission will appoint a Prospective Review Medical Examination (PRME) doctor.

Upon notice to the parties, both the proposing doctor and the insurance carrier will forward “all medical records and other appropriate records” to the appointed doctor. The TWCC preamble expressly permits a carrier to “provide analysis such as those provided for designated doctor examination.” Because the PRME doctor will have presumptive weight, and in essence will be the sole judge of the facts of the injury under this process, it is very important for a carrier to present its best evidence in support of its denial of responsibility. FO&L will provide a PRME service identical to our designated doctor service to gather records, copy records, provide copies all interested parties, and analyze the cases in a manner most favorable to the carrier’s point of view, and diary to determine if the employee attended the exam. Obviously, at the time of the examination, the employee will be presenting his/her point of view as to why the services should be paid for by the carrier.

Otherwise, TWCC intends that the carrier have no contact with the PRME doctor. In the event of a dispute about an opinion, request for clarification may be submitted to TWCC. However, TWCC will review the issue internally and may or may not forward the request to the PRME doctor. The rule contemplates that these disputes will be resolved internally at TWCC and the opinion will be clarified through the Medical Director’s office.

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The carrier will be permitted to suspend benefits if the employee fails to attend the PRME appointment. At the time the claimant does attend, benefits will be resumed as of the date of attendance. Basically, TWCC will follow the same process as the designated doctor process.

Where the PRME doctor supports the carrier's position, TWCC will take no action. If the PRME doctor concludes that the treatment is a part of the compensable injury and is medically necessary, TWCC will enter an Interlocutory Order. The PRME doctor's opinion will be binding on both the medical issues and the factual issue of relatedness. The carrier must comply with the Interlocutory Order within seven (7) days after receipt. The carrier will be prohibited by the Interlocutory Order from denying reimbursement on the basis of medical necessity or relatedness.

Appeals on medical necessity will be filed at SOAH. SOAH has historically refused to accept a burden shifting by TWCC rule. One of the first issues to be resolved is whether SOAH will apply a presumption that the PRME doctor's opinion is correct. Disputes about compensability will proceed through the Benefit Contested Case Hearing process. TWCC intends to apply a presumption that the PRME doctor was correct and the opinion of the PRME doctor will be overturned only if the great weight of the other evidence supports it.