ADVISORY NO. 449
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TOPIC: LAWTON MOTION FOR REHEARING OVERRULED

The Texas Supreme Court overruled the motion for rehearing in *State Office of Risk Management v. Lawton* last Friday. The Decision will become final upon the issuance of the court's mandate.

In *Lawton* the court held that the 60-day period for challenging compensability of an injury does not apply to a dispute over the extent of injury. In reaching this holding, the Court wrote, "Section 409.021(c)'s sixty-day deadline applies only to compensability. Rule 124.3(e), . . . must be construed accordingly".

It is now clear that carriers no longer need to file PLN-11s in order to protect themselves from the argument that they waived their right to contest the extent of injury by failing to file a dispute within the first 60 days of the injury.

Some claimant's advocates have begun to argue that a carrier who fails to file a PLN-11 within 45-days from the date it receives a complete medical bill waives its right to contest the extent of injury under Rules 124.3(e) and 133.240(a). While the Appeals Panel has not yet addressed this argument, we do not believe that the statute or Division rules create the consequence of waiver under such circumstances. Nevertheless, carriers who are concerned about this argument may want to continue the practice of filing PLN-11s that contain injury-limiting language to protect them from a waiver argument.

In our September Advisory on the *Lawton* case (Advisory 447) we wrote the following, which we still believe to be applicable.

Appeal Cases in the Pipeline

If you have a claim in which the Division has issued a decision and order or an Appeals Panel decision that finds waiver of extent of injury, and if your deadline to file an appeal to the Appeals Panel or a suit for judicial review has not passed, examine those cases immediately to determine whether such an appeal should be taken. We fully expect that the Appeals Panel and district courts of this state will follow the Supreme Court's guidance in this area. You should give your self the chance to take advantage of this ruling on cases that have been recently decided.

When are PLN-11s Still Required?

File a PLN-11 disputing extent of injury strictly in compliance with Rules 124.3(e) and 133.240(a).

Rule 124.3(e) states that a carrier should file a dispute of extent of injury (on a PLN-11) when the carrier receives a medical bill that involves treatment(s) or service(s) that the carrier believes is not related to the compensable injury. Such disputes should be filed no later than the earlier of the date that the carrier disputes the bill, or the due date for the carrier to pay or deny the medical bill. This deadline is the 45th day after the date the carrier receives a complete medical bill.

Thus, if you receive a complete medical bill that involves treatment or services that you believe are not related to the compensable injury, you must file a PLN-11 disputing the extent of injury prior to your dispute of the bill or the "pay or denial" deadline.

We believe that a carrier's failure to meet this deadline may result in an administrative violation. A fair reading of *Lawton* suggests to us, however, that missing this 45-day deadline will not result in a waiver of your right to contest the extent of the injury.

Are "60-day PLN-11s" Still Required?

To avoid a Division decision finding waiver of extent of injury, we previously recommended that carriers consider filing a PLN-11 within 60 days of receipt of first notice of the injury. That advice was found in FO&L Advisories 398 and 428. We no longer believe that the preemptive filing of a PLN-11 within the first 60 days of the claim is necessary to preserve extent of injury defenses.

Are "60-day PLN-11s" Still Permitted?

Some carriers have concluded that the 60-day PLN-11 practice affords them a business advantage through the early identification and communication of the accepted compensable injury. These carriers believe that an internal deadline to identify the accepted injury – at the diagnosis level – creates a good claims handling practice. These carriers report that their efforts to communicate the nature and extent of the accepted injury to the claimant and treating health care provider reduce the need for other communications on the file and reduce the number of medical disputes arising in their files.

Other carriers have advised us that the benefits found in filing the 60-day PLN-11 are outweighed by the administrative cost of that process. This is particularly true, they report, when the 60-day PLN-11 process is followed on medical only claims.

After *Lawton*, a carrier is still permitted to identify the nature and extent of a compensable injury and to communicate the carrier's acceptance of that condition to the treating doctor and the claimant. Where carriers choose to engage in this practice, we have recommended that they do so by way of a simple letter to the provider and/or claimant, rather than on a PLN-11 form. Such a letter can simply state the carrier's acceptance of the compensable injury in language such as the following:

> The carrier has accepted that the claimant's compensable injury extends to and includes: _____ [list diagnosis(es) and not symptoms or body parts].

We do not recommend that carriers include a description of any disputed conditions in these letters. Such extent of injury disputes should be relegated to the situations where you are still required by Rule 124.3(e) to file a PLN-11 (see discussion above).

In addition, some carriers may want to continue to file PLN 11s to limit the scope of the injury in order to protect themselves from the 45-day waiver argument that is being raised by some claimant's advocates.

If you have questions about the effect of the *Lawton* decision on your claims process generally, or any individual claim, please feel free to contact our office to discuss.