



Mississippi Workers' Compensation Commission

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August 13, 2015

NOTICE REGARDING UTILIZATION REVIEW RULES

At the request of the Mississippi Workers' Compensation Advisory Council, the Commission is hereby issuing this notice regarding certain specific provisions of the Utilization Review Rules contained in the 2013 Edition of the Mississippi Workers' Compensation Medical Fee Schedule (the "Fee Schedule"). For the sake of brevity, this notice presents only selected relevant portions of the Fee Schedule. For a better understanding of this notice and the definitions of the terms used herein, the Commission encourages all parties to review the Utilization Review Rules of the Fee Schedule in their entirety.

The Fee Schedule states the following on page 22 (emphasis added):

"Initial review determinations must be made within two (2) business days of *receipt of the necessary information* on a proposed non-emergency admission or service requiring a review determination."

The Fee Schedule also states the following on page 19:

"The provisions herein set forth regarding utilization review are in addition to the requirements of MCA §41-83-1 et seq. (Rev. 2005), as amended, and any regulations adopted pursuant thereto by the State Department of Health or the State Board of Medical Licensure."

The Mississippi State Department of Health provides the following additional language which is also applicable to our Fee Schedule pursuant to its incorporation by reference above. This additional language is contained in Rule 82.7.5.2 of the Department of Health's "Minimum Standards for Utilization Review Agents" (emphasis added):

"Each private review agent shall make certification determinations within two working days of *receipt of the necessary information* on a proposed admission or service requiring a review determination. *Collection of the necessary information* may necessitate a discussion with the attending physician or, based on the requirements of the health benefit plan, may involve *a completed second opinion review.*" 15 Mississippi Administrative Code, Pt. 16, Sub. Pt. 1, Ch. 82, Sub. Ch. 7, R. 82.7.5(2)

Thus, in the case of determinations made by a specialist conducting a second level clinical review as defined under the Utilization Review Rules of the Fee Schedule, the two (2) day period begins to run upon the payer's receipt of a "completed second opinion review" from that second level clinical reviewer. The Commission has consistently cited this Utilization Review Standard in response to all inquiring parties throughout the proposal of the 2013 Fee Schedule, its subsequent adoption, and its implementation.

Please also be aware that this notice specifically concerns second level clinical *review* as defined in the Fee Schedule (page 21). Second level clinical review as defined in the Fee Schedule is *not* an Employer Medical Evaluation (EME). In an EME conducted pursuant to the language of Miss. Code Ann. Section 71-3-15, the "*employee*" is "*examined*." In contrast, a second level clinical *review* as defined under the Fee Schedule does not include an in-person examination of the employee. An EME conducted "in lieu of" utilization review is governed by other provisions of the Utilization Review Rules of the Fee Schedule, Miss. Code Ann. Section 71-3-15, and Miss. Work. Comp. Com. General Rule 9. In cases where an EME is conducted *in lieu of* utilization review, the Fee Schedule requires that the payer must notify the provider and the injured worker of its election to obtain an EME within the same (2) day period applicable to initial review determinations that begins once the payer has received the necessary information (page 19). However, in that instance, "collection of the necessary information" will not include the opinion of a second level clinical reviewer because no second level clinical reviewer will be used. Rather, the EME is elected *in lieu of* any further utilization review.

All requirements of the Fee Schedule remain in place. This notice does not change, expand, diminish, or otherwise alter any aspect of the requirements of the Fee Schedule. Rather, it provides in one location for convenient review both the Fee Schedule language and the Mississippi State Department of Health standards which are applicable to workers' compensation cases on the issue of second level clinical review.

Lastly, please be advised that pursuant to the Fee Schedule (page 24), any unreasonable delay in utilization review is subject to penalties, expenses, and attorney's fees as set forth in Miss. Code Ann. Section 71-3-59. The Fee Schedule also specifically provides that nothing stated in the Utilization Review Rules prevents a claimant from seeking relief in the form of a request to compel medical treatment before an Administrative Judge.