

January 3, 2013
EP-562

TO: ALL CHIEF OFFICERS
ALL ADMINISTRATIVE SITES

FROM: FIRE CHIEF DARYL L. OSBY

SUBJECT: **DISPUTE RESOLUTION AGREEMENT (DRA)**

DISPOSITION: RETAIN IN BRIEFING MANUAL UNTIL DECEMBER 31, 2013;
THEN DISCARD

Over the year's worker' compensation laws have changed that opened the door for labor groups and management to collectively negotiate an alternative process by "carving out" the state's solution to resolving disputes and replacing it with a more individualized process. Firefighters Local 1014, Fire Department management, CEO Staff and County Council have collaboratively developed a Dispute Resolution Agreement (DRA) that replaces the need to utilize State approved physicians to make medical determinations with a group of physicians, chosen by Labor and Management, known as Independent Medical Examiners (IME). The purpose of the DRA is to improve labor management relations and organizational effectiveness by providing an expedited process to resolve medical disputes, expedite benefit delivery, and reduce costs to the County by improving return to work outcomes. The DRA seeks to achieve this by utilizing an exclusive list of IME's for disputed workers' compensation issues surrounding covered employees. On August 7, 2012, the Los Angeles County Board of Supervisors approved the Labor-Management DRA and the Department will implement the agreement effective January 1, 2013.

Current Medical Dispute Process

Injured workers sometimes experience significant delays as a result of the time it takes to obtain State qualified medical examinations. Medical disputes can take over six months to resolve under the current workers' compensation statutory scheme. Such delays lead to frustration, loss of income, delay in implementing early return-to-work (ERTW) processes, and potentially litigation. Even when represented by an Attorney, injured workers' medical disputes can take an exceptionally long time to resolve because of the agreed medical examiner (AME) process.

Dispute Resolution Agreement

It is projected that the DRA will reduce the time it takes to resolve medical disputes from 200 to 75 days. The Fire Department, Local 1014 and CEO staff believes that developing a expedited dispute resolution process will improve the delivery of workers' compensation medical care and allow the full implementation of an ERTW process. An ERTW process is based upon the premise that organizational effectiveness is improved by transitioning

absent unproductive employees to present productive employees. A well managed focus on expanding the number of safe and productive temporary limited duty assignments will ultimately benefit the department by providing scarce resources to meet established mandates and reduce time-loss benefit expenses (Attachment A). It will also assist injured employees to regain functionality, maintain productivity, and improve their quality of life. The DRA as well as the ERTW process applies to all employees represented by Los Angeles County Firefighters Local 1014. In an effort to better serve and educate you on these programs additional information can be found at www.local1014.org.

Path Forward

A new organizational process has been developed as well as physician contracts in order to implement this new standard of care for our workers. To ensure the Agreement is upheld a Labor Management Committee (LMC) has been developed that includes three members of fire management and three from labor. The Committee has been instrumental throughout the development process and they are governing body empowered to monitor, evaluate, and address issues of interpretation in the implementation of this agreement. They are indebted to subject matter experts from County Council and the CEO's office, and are responsible to ensure the following objectives are upheld:

- Track and monitor the delivery of workers' compensation benefits to employees
- Evaluate the program's effectiveness
- Increase confidence in employees who file a workers' compensation claim

DRA Training

There will be several training programs scheduled by the Fire Department and Local 1014 throughout January and March of 2013. In the interim the subsequent attachments will outline the DRA program.

If you should have any questions or require additional assistance, please contact Battalion Chief George Cruz at (323) 881- 6159.

DRA Purpose

The County of Los Angeles (County) and the Los Angeles County Firefighters, Local 1014, AFL-CIO (Local 1014) jointly initiated an innovative Workers' Compensation Dispute Resolution Agreement (DRA). This DRA is intended to provide covered employees/retirees (employees) an expedited procedure to resolve medical disputes arising from workers' compensation claims. Nothing in the DRA diminishes the entitlement of an employee to compensation payments for total or partial permanent disability, Labor Code Section 4850, temporary disability, medical treatment, or other workers' compensation benefits required under the California Labor Code.

Local 1014 Represented Employees

See Attachment B

The DRA applies only to claims filed by:

- In-service employees
- Retirees who, while in-service, made a claim alleging injury or illness
- Retirees who, while in-service, made a report, consistent with Department policy, of an industrial incident that may lead to injury or illness
- Retirees, who were in-service employees on or after the effective date of this Agreement, and claim a new presumptive injury as defined by Labor Code § 3212 et seq.
- For claims filed by in-service employees and opened within sixty (60) calendar days prior to the effective date of this Agreement, this Agreement shall apply if a QME examination or AME examination has not been scheduled
- This Agreement does not cover post-retirement amendments to claims filed prior to the term of the Agreement
- This Agreement does not apply to any other retired employees
- Under current law, this Agreement does not apply to dependents, but may be changed to cover same to reflect a change in statutory or decisional law
- In the event that an employee is erroneously included or is erroneously excluded from the provisions of the Carve Out, the parties will mutually agree on the corrective action to either include the employee or exclude the employee as appropriate

What is a medical dispute?

Disputes that are being resolved pursuant to Labor Code Sections 4610 and 4062 would be governed under this Agreement. An IME shall be used for all medical disputes that arise in connection with a workers' compensation claim including causation, nature and extent of permanent disability, ability to work, utilization review decisions, and any other medical determination currently resolved by a qualified medical evaluator (QME) or agreed medical evaluator (AME).

IME Contracted Agreement

An IME shall be used to resolve medical disputes that arise in connection with a workers' compensation claim including causation, nature and extent of permanent disability, ability to work, utilization review decisions, and any other medical determination currently resolved by a qualified medical evaluator (QME) or agreed medical evaluator (AME). The IME Process will be triggered when either party, third party administrator (TPA) or injured worker, provides in writing a "Notice of Dispute" (Attachment D).

Note: There can be no dispute regarding the providing of medical records to the IME. As to non-medical records, if one party objects to the provision of any non-medical record to the IME, the party will object within 10 business days

IME's are contracted to perform:

1. AOE - COE EXAMS (exams for the determination of industrial causation)
2. Evaluation for necessity of appropriate medical treatment
3. Assessment of employee's present ability to return to work, whether full duty or modified
4. Advise on condition of maximum medical improvement status
5. Determine nature and extent of permanent disability, including factors of apportionment and need for future medical care
6. Resolve utilization review disputes consistent with and utilizing standards set out in the California Labor Code and §§ 9792.20 et seq. of Title 8 of the California Code of Regulations (Medical Treatment Utilization Schedule)
7. Determine the need for spinal surgery pursuant to California Labor Code § 4062(b), if applicable
8. Written medical findings must be submitted within thirty (30) days of the evaluation
9. Failure to comply with timeframes subjects physician to non-payment for services
10. County shall pay physician within 45 days following receipt of invoices

DRA Process

If an employee chooses to seek out medical attention for an injury or illness that they believe is a result or arisen as a condition of employment then a WC claim can be filed.

1. *The WC process starts when an employee provides the employer a DWC 1:*
 - a. Employer calls Corvel (Medical Management Company) to report injury or illness
 - b. Employee seeks out medical attention
 - c. Employee provides completed medical slip to immediate supervisor and RTW regarding work status i.e. Temporary Totally Disabled, Modified Duty or Full duty)
 - d. Employee seeks out further or additional medical treatment
2. *How a claim is processed:*
 - a. Claim is faxed to RTW Section and Intercare by Corvel
 - b. Claim is assigned a number
 - c. Employee is contacted, during a 5 day work week, by RTW and Intercare within 24 hours of claim being received from Corvel
 - d. Employee is mailed an initial benefit packet

- i. Represented employees are mailed a Dispute Resolution Agreement notification with initial benefit packet (Attachment C)
 - e. Within 14 days a claim is either deemed accepted or delayed
3. *How a dispute is processed:*
 - a. An IME will be summoned when either the TPA or the employee provides a signed "Notice of a dispute (Attachment D)
 - b. A notice of dispute will be sent within 30 calendar days of receipt of a medical report or final UR decision that is disputed
 - i. Notice of dispute by either party must be served to employee, both attorneys, Local 1014, TPA and the Department.
4. *TPA required to schedule an appointment with an IME within 10 business days of receipt of a "notice of dispute"*
 - a. IME exams will be scheduled within 30 days of appointment request
 - b. IME will prepare written medical report within 30 days of exam
 - c. If diagnostic testing is necessary, testing shall be completed within 14 days of exam and the report shall be issued within 30 days of testing.
 - d. Appointment notices must be sent to employee, their representative, Local 1014 and the Department.
5. *There can be no dispute regarding the providing of medical records to the IME.*
 - a. Covered employees shall provide fully executed medical, financial and employment releases to the TPA
 - b. Covered employees shall provide all information required to make a timely decision on the claim within 10 business days, or the claim may be denied
6. *IME evaluations cannot be obtained outside of this Agreement*
 - a. Ex parte communication with IME is prohibited
 - b. Deposition of the applicant and/or the physician is allowed, and attorney fees shall be allowed pursuant to statute
 - c. Ex parte communication with the IME is prohibited. All communications with the IME shall be in writing and shall be served on the opposing party
Oral or written communication by the parties seeking report, compensability or disability status is acceptable
7. As to non-medical records, if one party objects to the provision of any non-medical record to the IME, the party will object within 10 business days
8. This agreement does not replace UR Provisions of California Law and the existing process of the County of Los Angeles

IME Selection

1. IMEs shall be selected from an IME panel in the order they are listed within each specialty
2. An IME will be selected in the specialty of the injury claimed
3. If an IME is not available in the specialty claimed, then an appointment will be set with an IME in Internal Medicine within the timeframes set in the Agreement
4. If the IME feels that an examination in another specialty is required, then an examination with a physician in that specialty of the IME's choice
5. All communication with IME shall be in writing and shall be served on the opposing party
6. Ex parte communication with IME is prohibited
7. TPA will oversee IME panel
8. IME cannot act as IW treating physician
9. Medical evaluations cannot be obtained outside this agreement for disputes covered by this agreement
10. IME recruitment will be ongoing
11. To insure high quality, IME's may be evaluated on report content and contract compliance

Utilization Review

This Agreement does not replace the Utilization Review (UR) provisions of California law and the existing process in the County of Los Angeles. Prior to the use of an IME for a medical dispute arising in connection with a utilization review decision, the employee, any representative of the employee, and the County shall facilitate the exchange of any and all information needed to resolve the dispute, up to and including peer-to-peer communication. Once the treating physician has responded to the UR denial or modification and, UR continues to object to the treatment recommendations, the employee may request an evaluation by an IME physician.

DLO:gc

Attachments

ALL PERSONNEL SHALL READ AND INITIAL
"A" "B" "C"