

SJR 30 Studies
Attorney Fee Payments in Medical
Disputes
Report to the LMAC

12/14/09

Ann Clayton

Consultant to ERD

781-402-0012

annclayton@aol.com

Attorney Fee Payments in Medical
Disputes: Background

- WC system “is intended to be primarily self-administering...and designed to minimize reliance upon lawyers and the courts to obtain benefits and interpret liabilities”. (MCA 39-71-105(4))
- When an attorney is needed, a method of payment must be identified; this is problematic in cases where only medical services are in dispute in those states where the attorney fee is paid by the injured worker

Attorney Fee Payments in Medical Disputes: Background

- If worker has no income, he/she cannot usually pay an attorney to take such a case
- MT Courts have decided in these situations that the attorney fee will come out of the amount awarded for medical payments (result is that medical providers pay)
- Most states have the employee pay the fees, the employer/insurer pay the fees, or they split them.

3

Attorney Fee Payments in Medical Disputes: Public Policy Issues

- Worker may not be able to find an attorney to represent them in these issues
- Current method in MT creates a disincentive for physicians to treat injured workers as their fees are reduced
- Current method in MT creates an incentive for employer/insurer to deny medical treatment
- Unique opportunity may currently exist to revise this policy with little cost impact for employers, reduce disincentives, and improve worker access to medical care all at once.

4

Attorney Fee Payments in Medical Disputes: Other State Comparison

| No Attorney Fees in Medical Disputes | Injured Worker Pays Attorney Fees | ER/Ins Pay Under Certain Circum. | Employer or Insurer Pays Attorney Fees | Er/Ins and Worker Split Fee | Physician Pays Attorney Fees |
|--------------------------------------|--|--|---|-----------------------------|------------------------------|
| AL, KY | AZ, CT DE, ID , IL, IA, MS, NE, NJ, NY, OH, PA, SD, WA | CT, DE, ID , NE, PA, SD , WA | AK , CO, MI, MN, NH, NJ, ND , OK, OR , VT, VA, WA , WV, WY | NJ, NM | MI, MT , PA |

Source: Consultant Survey of All States 10/2009; 30 states reporting

Attorney Fee Payments in Medical Disputes: Other State Comparison

- Oregon was only state able to report number of such disputes and annual costs for attorney fees.
 - They averaged only 1635 cases a year for the last five years (statute enacted in 2004)
 - They have a maximum fee in these cases of \$2000 (will increase to \$3000 on 1/1/10)
 - Current total attorney fees paid in these cases averages less than \$100,000 per year

Attorney Fee Payments in Medical Disputes: Consultant's Recommendations

- Direct payment of attorney fees in medical payment disputes by the employer/insurer if such medical payments are made after the filing of a petition of mediation
- Limit of attorney fees in these cases would be 20% of medical benefits in dispute up to a maximum of \$2000 but no less than \$500.
- Attorney fee limit increases to 25% of the medical benefits in dispute if paid after an award by the WC court up to a maximum of \$3000 but not less than \$500
- Current provision requiring payment of attorney fees by employer/insurer upon the WC Court's finding of unreasonable delay would apply to these cases without the above maximums.

7