

2002 Work Comp Seminar



Current Issues Surrounding Alternate Medical Care

11:15-11:45 a.m.

Presentation by:

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Friday, April 5, 2002

Alternate Medical Care

I. Reasons for filing an Alternate Medical Care Petition

A. Distance: travel more than 50 miles may be suspect if appropriate care is available locally

B. Treating doctor has exhausted all treatment options and no further care is offered

C. Dissatisfaction with the care offered: not limited to personality conflicts, accessibility, method and specialty

D. Employer's refusal to follow the treating doctor's directive for treatment: for example, the employer refuses to authorize and pay for surgery

E. Employer's refusal to honor the referral made by a treating doctor to another doctor

F. The employer's change of medical care during a course of treatment without reason

II. What information is needed for the petition

A. Whether claimant sustained an injury arising out of and in the course of employment

B. Location of injury

C. Whether the injury caused a need for treatment

D. The treatment offered by the employer is not reasonably suited to treat the injury without undue inconvenience

E. Claimant is dissatisfied with the care provided and has communicated the dissatisfaction to the employer and stated the reason for the dissatisfaction

F. The relief sought

G. Request for hearing in person or by telephone conference

H. Whether the employer disputes liability

I. Rule 876 Iowa Administrative Code 4.48 procedure

III. Employer's Answer

A. Should be on the form 100C with supplemental pleadings allowed

B. Employer must specify whether they admit or deny paragraph seven to dispute liability

C. Where liability is disputed dismissal is appropriate and the employer loses the right to maintain authorization as a defense

IV. Alternate Care Hearing Procedure

A. In Person v. Telephone hearing

B. Questions should follow the petition elements as shown above so that each element of the claim is supported by documentary evidence

C. The petition may establish certain elements of the case and such do not require extensive testimony

D. Evidence is limited to 10 pages per side and must be submitted to the workers' compensation commissioner's office prior to the hearing

E. Telephone numbers of witnesses and participating attorneys must be provided to the workers' compensation commissioner's office prior to the hearing

F. The hearings are generally scheduled for one hour with half the time for each party

V. Employer has an obligation to notify and injured employee of the ability to contest the employer's choice of care under Iowa Code Section 85.27

A. The failure to notify an employee of the right to petition may result in medical expenses awarded that were not authorized

B. Claimant's failure to file for alternate medical care before seeking unauthorized treatment may result in a denial of compensability of such expenses

VI. Alternate Medical Care proceedings are prospective in nature with respect to medical expenses

A. Old bills cannot be ordered paid through an alternate care proceeding

B. Prior authorized care may have some impact on the decision but it is not a compensable expense and must be adjudicated at the arbitration hearing

C. Arbitration adjudicates issues under Iowa Code section 85.27 which are not resolved in an alternate care proceeding provided they are appropriately pled and noted on the prehearing conference report

VII. Determine whether the employer is admitting or denying liability before obtaining unauthorized care

A. If claimant receives unauthorized care and fails to file a petition for alternate medical care such may be used as a defense by the employer to avoid paying for the unauthorized expenses

B. Claimant should either file an alternate medical care petition or establish the employer as denying compensability by alternate means prior to invoking the procedures for alternate medical care

C. Interrogatory answers may establish the employer as denying compensability

D. Requests for admissions may establish the employer as denying compensability

E. Letters could also be used to establish whether the employer is admitting or denying compensability and refusing to provide care under Iowa Code section 85.27

F. An answer to the original notice and petition under paragraph four will also provide grounds for establishing whether the employer is denying liability

G. Payment of weekly benefits, medical expenses or offering medical care is not evidence of admitting or denying liability

VIII. The alternate medical care order

A. The deputy decision may be a ruling from the bench and on the record

B. The decision may be in written form but must be issued within ten days after a receipt of the petition for telephone hearings and fourteen days after receipt of the petition for in person hearings

C. The decision is usually final agency action pursuant to a standing order of the Workers' Compensation Commissioner order of November 7, 2001 and subject to judicial review – 30 days for appeal to District Court

(TYPE OR PRINT)

14-0011 (7-98)

FORM 100C

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

Claimant _____

File Number _____

Street _____

City _____ State _____ Zip _____

**ORIGINAL NOTICE, PETITION, AND
ANSWER CONCERNING APPLICATION FOR
ALTERNATE MEDICAL CARE
(IOWA CODE SECTION 85.27)
(Rule 876 IAC 4.48)**

VS. Employer _____

Street _____

City _____ State _____ Zip _____

Insurance Carrier _____

Claimant's
Soc. Sec. No. _____

Street _____

Injury Date _____

City _____ State _____ Zip _____

Body Part(s) Injured _____

ORIGINAL NOTICE

To the Above-Named Employer:

You are notified that an action has been commenced before the Iowa Workers' Compensation Commissioner seeking relief as set forth in the petition below. **DUE TO THE TIME CONSTRAINTS, IT IS NOT NECESSARY TO FILE AN ANSWER.** If no answer is filed, a response will be required at a hearing. If it is disputed that the employer is liable on this claim, this case will be dismissed without prejudice.

NOTE: You should promptly advise your workers' compensation insurance carrier and attorney that you have received this notice.

PETITION (To Be Completed By Claimant)

In support of this claim for alternate medical care, claimant states:

1. Claimant sustained injury arising out of and in the course of employment with the employer on (Date) _____
2. The injury occurred at (City) _____, (County) _____, and (State) _____.
3. The injury has caused need for medical treatment.
4. The treatment offered by employer is not reasonably suited to treat the injury without undue inconvenience to claimant.
5. Claimant is dissatisfied with the care provided and has communicated that dissatisfaction to employer.
Reason for dissatisfaction and relief sought:
6. **A hearing is requested**
 - by telephone conference call; or.
 - in person

to be held in Des Moines, Iowa (If neither party requests an in-person hearing, a telephone hearing will be scheduled.)
7. Employer does not dispute liability on this claim.
8. The provisions of Rule 876 IAC 4.48 are invoked.

I, (Claimant's Signature) _____, Date Signed _____

certify, under penalty of perjury and pursuant to the laws of the State of Iowa, that the preceding petition is true and correct.

Claimant's Phone No.
(Include Area Code) _____

(If Represented by Attorney)

Attorney _____

Street _____

City _____ State _____ Zip _____

Phone (Include Area Code) _____

Signature of Attorney.

THE INFORMATION PROVIDED WILL BE OPEN FOR PUBLIC INSPECTION UNDER IOWA CODE §22.11

Claimant _____ vs. _____ Employer _____ File No. _____

PROOF OF SERVICE

On the _____ day of _____, 19_____, I mailed a copy of the foregoing original notice and petition by certified mail, return receipt requested, to the employer's last known address which is: _____

I CERTIFY under penalty of perjury and pursuant to the laws of the State of Iowa that the preceding is true and correct.

Date _____ Signature _____

ANSWER (Employer/Insurance Carrier must answer on this form)

1. **A hearing is requested.**
 - by telephone conference call; or
 - in person
 - to be held in Des Moines, Iowa, (If neither party requests an in-person hearing, a telephone hearing will be scheduled.)
2. (Check if applicable) Employer denies paragraph 7 of the Petition and disputes liability of this claim.

On behalf of the employer and insurance carrier and based upon my own knowledge of the circumstances, I certify under penalty of perjury and pursuant to the laws of the State of Iowa that the preceding answer is true and correct. Date: _____

Employer _____

Street _____

City _____ State _____ Zip _____

Phone (Include Area Code) _____

Insurer _____

Street _____

City _____ State _____ Zip _____

Phone (Include Area Code) _____

Signature of Person Answering

Name: _____

Title: _____

(If Represented by Attorney)

Attorney _____

Street _____

City _____ State _____ Zip _____

Phone (Include Area Code) _____

INSTRUCTIONS - BOTH PARTIES MUST USE THIS FORM

To Claimant:

1. Alternate medical care is the only issue that can be considered under this procedure.
2. Deliver a completed copy of this form to the employer by certified mail, return receipt requested or by personal service as in civil actions, rule 876 IAC 4.7.
3. Complete the proof of service portion on the original of this form and deliver this entire form with the physician's report to the Division of Workers' Compensation at 1000 East Grand Avenue, Des Moines, Iowa 50319-0209.

To Employer/Insurance Carrier:

1. If you file an answer, serve a copy to the claimant or claimant's attorney pursuant to rule 876 IAC 4.13.
2. Type or print the name and title of the person answering below the signature line.

Generally:

1. This procedure is not available if employer disputes liability on the claim generally. If liability is disputed, this case will be dismissed without prejudice. Disputed cases should be commenced under rule 876 IAC 4.1



