

CHAPTER 5

ALTERNATIVE DISPUTE RESOLUTION (ADR)

All MCOs are required to have an Alternative Dispute Resolution (ADR) process. ADR is intended to handle medical disputes regarding quality assurance, utilization review, medical necessity and other treatment and provider issues. With the implementation of The Health Partnership Program (HPP), it is the first time providers are able to initiate a medical dispute involving a workers' compensation claim. All parties initiating a medical dispute should contact the MCO directly. Parties involved in the dispute include:

- Employer
- Injured Worker
- Provider (except at the IC level of dispute)
- BWC
- MCO (except at the IC level of dispute)

ADR affords due process regarding conflicts in medical treatment issues but **does not** include fee schedule grievances, dismissed C-9's (4123-6-16.2) and reactivation issues. Disputed issues may include:

- Authorization of medical treatment and diagnostic testing
- Request for consultation
- Feasibility of Voc Services/Closure of rehabilitation files
- Authorization of medical equipment, supplies and services
- Nursing services
- Medical necessity of treatment or appropriateness of treatment based on nationally accepted and evidence based treatment guidelines.

GOALS OF ADR

- Facilitate resolution of disputes through negotiation by introduction of objective third party at MCO and BWC level.
- Support and complement medical case management continuum
- Ensure fairness and due process to parties
- Avoid litigation
- Preserve relationships of parties
- Strive for satisfaction of parties
- Improve communications
- Promote lasting outcomes
- Achieve goals of HPP

Appeal Process

1. Appeal to C-9 Decision

Injured workers (IW) and their representatives (AOR), employers and their representatives (TPA), or providers may initiate the ADR process by contacting the

injured worker's MCO on-line or in writing using The Ohio BWC [C-11](#) (*Appeal to the MCO Medical Treatment/Service Decision*) Form.

Although the C-11 will result in improved communications between providers and MCOs and streamline the dispute resolution process, MCOs will continue honoring any claim party generated document, containing the data elements on the C-11, used for initiating ADR. A written request to initiate the medical dispute resolution process must contain, at a minimum, the following elements:

- Injured worker name.
- Injured worker claim number.
- Date of initial medical treatment reimbursement request (form C-9 or equivalent) in dispute.
- Specific issue(s) in dispute, including description, frequency/duration, beginning/ending dates, and type of treatment/service/body part.
- Name of party making written appeal request.
- Signature of party making written appeal request or their authorized representative.

Written appeal requests that do not contain the minimum elements set forth in this paragraph may be dismissed without prejudice by the MCO or bureau.

BWC will also accept signatures from any representative given signature authority.

Note: If an online C-86 motion with an electronic signature is being utilized as an appeal the MCO may accept and process this appeal, providing the form has a www.ohiobwc.com footer.

Timeline for appeal to C-9 decision:

- **17 calendar days** (14 + 3 days for mailing) of receipt of written notice of an initial MCO treatment reimbursement determination

Effective February 14, 2003, all untimely filed appeals should be accepted and processed through ADR. This decision is based upon a discussion with the Industrial Commission and a review of case law, including the Haylett ADR case. According to [OAC 4123-6-16](#) (A) and (C), parties have 14 days plus 3 days for mailing upon receipt of the initial decision and 7 days plus 3 days for mailing upon receipt of the MCOs decision to file an appeal. **These are guidelines not deadlines.** Neither the ADR Rule nor case law provides consequences if an MCO-level ADR appeal is filed untimely.

Note: Due to the Ohio Supreme Court decision in [State ex rel. Haylett v. Ohio Bur. of Workers' Comp.](#), 87 Ohio St. 3d 325 (1999), these timeframes cannot be strictly enforced and the MCOs must accept untimely appeals. The Court in [Haylett](#) was asked to decide whether the delegation of medical management to the MCOs **ADR level** and the ADR process as set up by the HPP were unconstitutional. The Supreme Court rejected both arguments, and ultimately found both the MCOs' medical management and the ADR process to be constitutional. In doing so, the Court placed great emphasis on the fact that the MCOs' treatment decisions were "*non-binding*,"

were not "*quasi-judicial*" in nature, and were subject to further review by BWC and the IC.

In the event that the IC receives an untimely filed appeal, to an MCO decision, the IC will issue an *ex parte* order returning the appeal (motion) to the CSS. The CSS will return the motion to the MCO to continue with the ADR process. Original MCO ADR 21-day and 7-day time frames will apply; however, if an MCO receives an efficiency for time frame violations these will be considered in the appeal process. Effective, Monday, March 17, 2003, the MCOs will become eligible for an efficiency for not processing untimely filed appeals.

Exception: BWC ADR Department may waive the timeline upon request and approval for certain situations outside the MCO control i.e. clarification of BWC allowances, IW IME scheduling issues, etc. The MCO must e-mail the ADR Supervisor with the rationale for the timeline waiver. The BWC ADR Supervisor will notify the MCO if approved. The MCO will maintain a copy of the timeline waiver with the appeal information and submit with ADR packet to BWC if appealed to this level.

The waivers must accompany the following V-3 documentation:

- 1. The claim parties have been contacted regarding reason for delay**
- 2. The appellant must agree to the delay**

If these elements are missing, the waiver will not be honored.

The MCO must process any appeal it receives and, except as provided immediately below, does not have the jurisdiction to state that it has not received an appealable issue. The MCO shall respond to the appeal regardless of whether or not medical documentation was received with the appeal. An ADR appeal letter does **NOT** have to contain the word "appeal" in order for the MCO to accept the appeal letter.

Non-appealable Issues

Any services that the BWC sets to reimburse at \$0.00 should not be processed through ADR (e.g. Hot and Cold Packs).

ADR should not be initiated prior to a final (no pending appeals) administrative or judicial order allowing the claim. Once an allowance determination has been made at the SHO level (or higher) medical can be reimbursed, however, a final appeal cannot be heard until the SHO appeal period expires.

Once final determination has been made, as described above, the MCO should contact the appellant and receive a new appeal that is dated after the determination of the allowance of the claim.

A physician does not have to be BWC certified in order to appeal, however, they must be enrolled. Enrollment allows the physician to receive reimbursement.

2. Level 1 (MCO) Appeal

MCO Responsibilities

According to OAC 4123-6-16 (C), the MCO must have a medical dispute resolution process that includes one independent level of review. The independent level of review shall consist of a peer-to-peer review conducted by an individual or individuals licensed pursuant to the same section of the Ohio Revised Code as the health care provider of the treatment/service requested. The peer-to-peer review opinion must be legibly documented (preferably typed), signed and dated. The name must be printed under the physician signature. Peer reviewer selection shall be based on the services being requested (i.e. services must be within the scope of practice of the reviewer) rather than the provider type who submitted the C-9 or treatment request.

While MD's and DO's are both licensed under the Ohio State Medical Board and much of the medical and osteopathic school training is similar, rarely does medical school training provide instruction on the use of manipulation. Therefore, MCO's must use osteopathic trained physicians to provide reviews in ADR cases that pertain to osteopathic manipulation issues. This applies only to osteopathic manipulation. MD's and DO's may continue to opine on other requests that apply to both professions. Chiropractic treatment must be reviewed by a Chiropractic physician.

While performing ADR file reviews for chiropractic services, it is requested that *Mercy Guidelines for Chiropractic Quality Assurance and Practice Parameters* be utilized to support or justify the final decision. The reviewer may include and reference other nationally recognized treatment guidelines and/or evidence based documents.

All medical evidence must be legible, signed and printed by the reviewing provider. The MCO must send a copy of the peer-to-peer report to the claims assigned BWC Service Office to be imaged into the claim.

If a file review has been performed as part of the current workers' compensation claim for the IW, employer, employer's representatives, MCO, or BWC in the past 12 months, the same reviewer may not be used. **If 12 months has elapsed, the same reviewer may be utilized again in that claim.** If the same reviewer is utilized after a 12 month period, indicate the date of the last review on the ADR Information Guide.

If a peer-to-peer Independent Medical Examination (IME), is completed in lieu of a file review, reports must be sent **to the BWC and all claim parties.**

The MCO has 30 days to complete their level of ADR if the IW is referred for an ADR IME. Some examples of an ADR IME that is warranted include, but is not limited to, the following:

- Lack of medical documentation to justify the medical necessity or appropriateness of the treatment requested
- Old claims with little or no history and medical documentation
- Case complexity
- Quality of POR documentation
- C-9 Physician recommends ADR IME

- Records reveal other conditions may be impacting the IW's current complaints
- There is a need for clarification of issues as there are continued symptoms and IW has not had resolution of these symptoms despite ongoing treatment.
- Contraindications in care.

BWC will reimburse for the ADR IME whether ordered by the MCO or by the BWC. The IME must take place within the ADR process or recommended in the BWC ADR order in order for BWC to reimburse for the IME

ADR IME Reimbursement: MCO Policy Reference Guide Chapter 2-82

For file reviews and/or IME's refer to BWC DEP Evaluator Handbook for information regarding a list of potential conflicts of interest.

All decisions must provide supporting rationale, referencing evidence based/nationally recognized treatment guidelines (e.g. Official Disability Guidelines, *Mercy Guidelines for Chiropractic Quality Assurance and Practice Parameter, etc.*), protocols, medical reports/documentation, diagnostics, and subjective findings to support the decision. This decision must be individualized to each injured worker's claim and condition. Denials cannot be based on lack of medical to support the request. The peer reviewer must document in his/her review all allowed and disallowed conditions in the claim.

Miller Criteria must be applied to all requests of workers' compensation medical services. Requests are evaluated using a three-prong test composed of the following:

- The requested medical services are reasonably related to the industrial injury;
- The requested services are reasonably necessary and appropriate for treatment of the industrial injury
- The costs of the services are medically reasonable.

MCO SHALL NOT ADDRESS CAUSALITY IN MCO ADR FILE REVIEWS -

Causality must be addressed in the claim determination process by BWC through BWC file review or BWC IME. Addressing causality in reviews by MCO ADR reviewers is not appropriate. To avoid confusion, the MCO must refrain from using terminology such as, causality, causal, and causal relationship in final reports.

MCO SHALL NOT ADDRESS MAXIMUM MEDICAL IMPROVEMENT.

Determination of maximum medical improvement and additional claim allowance are the responsibility of the BWC. The BWC addresses maximum medical improvement through either the 90 day examination or IME. This process may utilize BWC medical file review or BWC IME to obtain appropriate expert medical opinion. Therefore, **the MCO must** refrain from asking these questions when obtaining MCO ADR file reviews or MCO ordered IME's.

Level 1 Timeline:

- Day one of the dispute occurs the date the MCO receives signed written notice of appeal to a medical treatment decision from a provider or legal party to the claim.

- All documents received by the MCO related to the dispute, regardless of the mechanism of transmission, must be date stamped with the receipt date (as defined in Appendix G of the MCO contract) and the name of the MCO.
- Per Rule 4123-6-16, the MCO must complete and notify the parties to the dispute and their representatives (i.e., BWC, provider, injured workers, employers and their representatives) in writing of its decision within 21 (calendar) days. If an Independent Medical Exam (IME) is completed, the decision must be made within 30 calendar days. If the IW fails to appear for the IME, the MCO must proceed with a peer-to-peer file review compliant with the 30 day timeframe.
- All written decisions from the MCO must contain language for appeal including the time frame and the process for appeal of its decision by the parties to the dispute. This affords due process as mandated in Rule 4123-6-16(C).
- The MCO shall be clear in all communication to parties to the dispute. For example, abbreviations must never be used unless they are also spelled out. All CPT codes must be defined in all communication to parties to the dispute and on the ADR Information Guide.

Level 1 Outcome Reporting

Effective June 1, 2008 BWC ADR condensed the reporting of MCO Level appeals. Under the new reporting requirements the MCO's are only required to report an aggregate number of the disputes received for the month grouped by the outcome decision and appellant. The totals should be reported no later than 1 week after the end of the month. Under the new reporting procedures the MCO has access to the spreadsheet ***MCO Decision Table R-1*** located on BWC's portal under MCO Specific Documents housed in the ADR folder. The MCO should update the corresponding named sheet based on the respective month. The spreadsheet should not be altered as there are formulas that automatically calculate the totals. Please combine the totals if you have multiple locations that you report.

The following is a listing of the outcome decisions and the appellants:

Decisions:

- Deny
- Allow
- Negotiated (Amended)
- Withdraw

Appellants:

- AOR
- Employer (Employer and Employer Representative are now combined)
- IW
- Provider (Other Provider and POR are now combined)

If there is no appeal to the MCO ADR decision, the dispute is considered resolved at the MCO level.

3. Level 2 (BWC) Appeal

Appellant Requirements

IW's, Employers, their representatives or providers not satisfied with the MCO Level 1 decision within 10 days (7 + 3 days for mailing) may request in writing, signed and dated, that the dispute be referred to BWC for an independent review (Refer to Paragraph F of 4123-6-16 in this chapter for elements required with appeals). New and changed circumstances and/or additional medical document to support the requested treatment should be attached to the appeal to afford due process.

Appeal letters must be signed by the appellant or their representatives, or by the provider. BWC will accept a signature from the legal representative's paralegal as long as the paralegal signs the attorney's name with the paralegal's initials. BWC will also accept a signature from the provider's non professional staff member, with signature authority, as long as they sign the provider's name with the staff person initials.

BWC will also accept signatures from any representative given signature authority for the TPA.

Note: If an online C-86 motion with an electronic signature is being utilized as an appeal the MCO shall accept and process this appeal (form), providing the form has a www.ohiobwc.com footer.

If there is no appeal to the MCO ADR decision, the dispute is considered resolved at the MCO level.

MCO ADR Packet Submission Requirements:

Within 7 days of receipt of a written appeal to the MCO ADR decision, the ADR packet, including relevant records from both medical case management and ADR must be forwarded to the BWC ADR Unit via fax (614) 621-2542.

The MCO is responsible for reviewing the BWC Medical Repository and determining if there are new and changed circumstances which impact the initial treatment decision or the previous peer review. Examples of new and changed circumstances which may impact treatment include, but are not limited to, additional allowances, change in compensation, additional medical evidence and overturned decisions at the IC. If upon consideration of additional evidence, the MCO reverses their decision to the satisfaction of all parties, the MCO may issue a new determination and dismiss the dispute without prejudice.

If the MCO does not believe the new and changed will change the determination, the MCO will obtain an addendum from the peer reviewer or IME physician with the new and changed circumstances noted. The peer reviewer will complete an addendum and send a letter to all parties. The Info Guide will explain the identification of new and changed and the need for addendum and notifications.

Level 2 ADR Packet must be included in this order:

1. Unaltered BWC ADR Information guide
2. Timeframe efficiency waiver email (if applicable)
3. BWC level 2 appeal
4. Level 1 MCO decision letter
5. Peer-to-peer review and/or IME report
6. Level 1 (MCO) appeal
7. Initial decision letter (if MCO does not use the C-9)
8. Initial review
9. Initial request or C-9

Disputes with multiple C-9's can be combined into one packet (max of 3 C-9's). This option can only be utilized when:

- Appeal dates are the same
- Appellant is the same
- Services requested are same/similar
- No overlapping dates of service

When applicable, the MCO must obtain beginning and ending dates for the following, but not limited to, all P.T., O.T., chiropractic treatment and injections.

If unable to obtain the dates from the provider, MCOs may use the date that the MCO decision was made as the beginning date then assign the ending date. For services such as but not limited to a one-time consult it is NOT necessary to obtain the beginning and ending date.

1. BWC Level 2 Requirements

BWC Responsibilities:

According to OAC 4123-6-16, BWC must perform an objective review of all unresolved medical disputes received from MCO's and render a final BWC order.

BWC ADR Department has 14 days from the time the dispute is received to issue a BWC order.

However, BWC may determine that the IW be scheduled for an IME.

This determination shall toll the bureau's time frame for completing the dispute, and in such cases the bureau shall enter a final bureau order within seven days after receipt of the independent medical examination report. This order shall be mailed to all parties and may be appealed to the industrial commission pursuant to section 4123.511 of the Revised Code. Neither the provider nor the MCO is a party entitled to file an appeal under section 4123.511 of the Revised Code.

BWC Review Process:

- Industrial Rehab. Nurse (IRN) reviewer ensures Quality Assurance of MCO Level 1 process to include appropriate peer-to-peer/IME, causality and maximum medical improvement are not addressed, Miller Criteria has been applied, review is individualized and evidence based decision is in accordance with nationally recognized treatment guidelines and BWC policy.
- IRN verifies MCO's accurate application of current ADR process including: monitoring of time frames, validation of accuracy/availability of all pertinent medical documentation utilized in final decision, contacts appropriate parties for clarification of existing documentation as needed, determines if additional medical documentation is deemed necessary and facilitates process prior to BWC level decision.
- IRN verifies requested services are medically appropriate and beneficial in relation to individualized plan of care and current allowances based upon review of available medical opinions and claim documentation.
- IRN identifies medical indicators which may potentially impede outcomes and/or identifies recovery plateaus. When appropriate, utilizes BWC IME policy for determination of appropriateness of current and future treatment.
- IRN collaborates with BWC Customer Care Team (e.g. CSS, MSS, etc.) as needed.
- BWC ADR ensures confidentiality of all documentation by complying with BWC Sensitive Data Policy when interacting with external sources.
- IRN completes dispute summary and publishes BWC Order per policy and ensures all received documentation is imaged into file.

The injured worker, provider, employer, their representatives and the MCO will receive a published copy of the BWC order.

If a disagreement still exists after BWC's second level of review, the IW, employer or their representatives may file an appeal to the IC.

It should be noted that, the IC will hear the medical dispute only if parties have exhausted both levels of ADR.

By law, MCOs and providers are not parties to the claim; therefore, they cannot appeal any BWC order, including those regarding medical issues.

ADR RULE 4123-6-16

Paragraph (C) rule addendums (effective January 1, 2003):

If the MCO receives a dispute where the requested treatment appears to be the same as or similar to a previous treatment request for which the MCO conducted a peer review pursuant to this rule, and the previous treatment request is pending before the bureau or industrial commission, the MCO may defer consideration of the new dispute until the previous treatment request is resolved.

Once the previous treatment request has been resolved, the MCO shall refer the new dispute to the bureau for a determination as to whether peer review is needed for the independent level of review in the new dispute and shall resume the dispute resolution process under this rule.

Paragraph (C) Criteria

- MCO has previously conducted a peer-to-peer review for services that are same or similar to the current C-9 received.
- The previous peer-to-peer review must be within 12 months of the date of the initial review.
- The previous treatment request must have been **ultimately denied** based on the peer-to-peer review.
- **If the previous decision, which is pending, is overturned at either the BWC or the IC Level (s), the previous peer review cannot be utilized and the dispute must be processed through ADR.**
 - **The new MCO appeal date will be 14 + 3 days after the mail date of the applicable BWC or IC order.**

Paragraph (C) Packet Timeline

- Whether the previous peer-to-peer review is or is not appropriate to be used under this rule, the MCO will revert back to the *initial* ADR timeframes.
- Once BWC or the Industrial Commission makes a determination in the previous dispute, the MCO must wait for the appeal period to exhaust before forwarding the packet to the BWC.
- The MCO will utilize the BWC or IC determination, “date mailed” as the paragraph C **pending** date on the ADR Information Guide. If there is not a “date mailed” then the MCO will use the “date typed.”
- The MCO shall count 14 days then add an additional 3 days for mailing = 17 days.
- The MCO must check on the 17th day from the BWC or IC determination “date mailed” to see whether an appeal has been filed.
- If no appeal has been filed, the previous dispute has been resolved and the packet in the new dispute shall be forwarded to BWC for review.

Para C ADR Packet Submission to BWC

1. The coversheet to BWC ADR must state, "Referred pursuant to rule 4123-6-16 (C)."
2. MCO must identify the following on the ADR Information Guide:
 - Any additional medical documentation since the last BWC order of the previous peer that is being utilized must accompany the cover sheet.
 - Previous peer review that is being used, date of review and date imaged
 - C-9(s) that is in dispute (include C-9 date, disputed issue and imaged date)
 - Date of the BWC order of the previous dispute and when the packet was imaged (if BWC dispute number is available, please include)
 - There must not be any pending appeals

Paragraph (D) rule addendums (effective January 1, 2003)

The bureau may determine that the employee be scheduled for an independent medical examination. This determination shall toll the bureau's time frame for completing the dispute, and in such cases the bureau shall enter a final bureau order within seven days after receipt of the independent medical examination report. This order shall be mailed to all parties and may be appealed to the industrial commission pursuant to section 4123.511 of the Revised Code. Neither the provider nor the MCO is a party entitled to file an appeal under section 4123.511 of the Revised Code.

Paragraph (E) rule addendums

If an MCO receives a medical treatment reimbursement request of relating to the delivery of medical services for a condition or part of the body that is not allowed in the claim, the MCO may deny the request for the reason that the condition or part of the body is not allowed in the claim. The provider may recommend an additional allowance on a recommendation for additional conditions form (Form C-9 or equivalent) with supporting medical evidence, or the claimant may file a motion requesting an additional allowance. The bureau shall review the recommendation or motion and shall consider the additional allowance. If a party has requested medical dispute resolution of the issue under this rule while the motion or issue on the allowance of the additional condition is pending before the bureau, the MCO may defer consideration of the dispute until the issue of the allowance of the additional condition is resolved, notwithstanding the time limits for resolution of the dispute as provided in paragraph (C) of this rule. Once the bureau has made a decision on the additional allowance, the MCO shall resume the dispute resolution process under this rule. If a dispute is filed where the claimant has not filed a motion for allowance of the condition or the bureau has not allowed the condition as recommended by the provider on the treatment plan form, the MCO may refer the matter directly to the bureau for an order under paragraph (D) of this rule.

Paragraph (E) Criteria

- The MCO receives a request for the delivery of medical services for a condition that is not allowed in the claim.

- If a party has requested medical dispute resolution of the issue under this rule while the motion or issue on the allowance of the additional condition is pending before the bureau, the MCO may defer consideration of the dispute until the issue of the allowance of the additional condition is resolved.
- The dispute remains in pended status until **all** appeals regarding the additional allowance are exhausted.
- If a dispute is filed where the claimant has not filed a motion for allowance of the condition or the bureau has not allowed the condition as recommended by the provider on the treatment plan form, the MCO may refer the matter directly to the bureau for an order under paragraph (D) of this rule.
- The amendment to this ADR rule is regarding denial of services not related to the allowed condition(s) in the claim.
- Paragraph E cannot be utilized for approved treatment/services.
- Once the MCO appeal is received, the MCO should forward the packet immediately.
- The dispute remains pended until all appeals regarding the additional allowance are exhausted. The MCO must notify all parties to the dispute of the pended status.
- If BWC or IC allows or disallows the additional condition, the issue of the request reverts back to the initial treatment determination level. The request is handled the same as the receipt of a new C-9 treatment request.
- If a clinician identifies the treating physician is treating a condition not allowed in the claim the medical director must perform the initial review (C-9 level) and identify the non allowed condition being treated.

Paragraph E Packet Timeline

- Once final adjudication of the additional condition is determined, the MCO must wait for the appeal period to exhaust before;
 - reverting back to the initial C-9 decision level
 - referring the packet to the BWC for a final order.
- The MCO shall use the date of the paragraph E notification letter as the paragraph E pended date on the ADR Info. Guide.
- The MCO will utilize the BWC or IC allowance determination, “date mailed” plus 14 days and add 3 days for mailing (17 days) as the paragraph E completion date on the ADR Information Guide. If there is not a “date mailed” the MCO will use the “date typed” plus the additional 17 days.
 - **The MCO must send the dispute packet to BWC within (3) three days from the paragraph E completion date on the ADR information guide.**
- The MCO must check on the 17th day from the BWC or IC determination “date mailed” to see whether an appeal has been filed.
- If no appeal has been filed, revert back to initial C-9 decision level or refer packet to the BWC for final order.
- The MCO refers the issue directly to Level II ADR (BWC) for an order if **an appeal** is filed after the MCO has made an initial determination on a request for treatment, and one of the two following conditions is present:

- the injured worker has not filed a motion for an additional allowance, or;
- the provider has recommended an additional allowance which BWC has not allowed.
- **The MCO must send the dispute packet to BWC within (3) three days of receiving the appeal.**

Paragraph E ADR Packet Submission to BWC

- The coversheet to BWC ADR must state, “Referred pursuant to rule 4123-6-16 (E).”
- BWC ADR Information guide
- Initial request or C-9
- Initial decision letter (if MCO does not use the C-9)
- MCO appeal
- MCO Medical Director review. Documentation must clearly show that Miller criteria were applied.

Senate Bill 7

For appeals received at the MCO on or after April 1, 2007, per Senate Bill 7 and new OAC 4123-6-16 (F), the ADR process shall NOT be used to resolve disputes concerning medical services rendered that have been **approved** through standard treatment guidelines, pathways, or presumptive authorization guidelines.

This means, all Employer/TPA appeals of approved authorizations will be exempt from the dispute resolution process if the requested services fall within presumptive authorization, nationally recognized treatment pathways and/or evidenced based guidelines.

Senate Bill 7 Criteria

MCO responsibilities:

- The specific guideline, treatment pathway and/or BWC presumptive auth. policy must be cited and imaged in the file to justify the approved services.
- If an appeal of an approved authorization is received from the Employer/TPA this dispute is sent directly to BWC ADR unit for processing. A peer-to-peer review is therefore not required.
- If a treatment request includes services that are approved and denied (amended decision), and the approved services meets Senate Bill 7 Criteria, this will be sent directly to the BWC ADR unit for processing. The denied services will be processed separately by the MCO through the ADR process per OAC 4123-6-16.

BWC responsibilities:

- Provides verification review to ensure the MCO followed Senate Bill 7 Criteria and, if so, a BWC ADR order is published.
- If BWC determines the MCO did not follow Senate Bill 7 Criteria, the appeal will be returned to the MCO and processed per OAC 4123-6-16. Original dispute timeframes remain in effect.

Paragraph (F) rule addendums (effective January 1, 2003):

A written request to initiate the medical dispute resolution process under paragraph (A) of this rule or to refer the dispute to the bureau for an independent review under paragraph (C) of this rule (written appeal request) must contain, at a minimum, the following elements (Form C-11 or equivalent):

- (1) Injured worker name*
- (2) Injured worker claim number*
- (3) Date of initial medical treatment reimbursement request (Form C-9 or equivalent) in dispute*
- (4) Specific issue(s) in dispute, including description, frequency/duration, beginning/ending dates, and type of treatment/service/body part*

Including the medical needed to process—RULE CHANGE

- (5) Name of party making written appeal request*
 - (6) Signature of party making written appeal request or their authorized representative*
- Only one medical treatment reimbursement request (Form C-9 or equivalent) may be addressed in a single written appeal request under paragraph (A) or paragraph (C) of this rule.*

Written appeal requests that do not contain the minimum elements set forth in this paragraph may be dismissed without prejudice by the MCO or bureau.

The MCO or BWC may dismiss an appeal received that does not contain the minimum elements listed above.

Appeal Dismissal Criteria

- The MCO will make three attempts to contact the appellant to receive the missing elements before dismissing the dispute. These contact attempts must be documented in the claim record. If this documentation is lacking, the MCO will receive an efficiency.
- The appellant will be afforded one business day to provide the missing element(s).
- The MCO's timeframe is not extended to accommodate this one day requirement.

Appeal Withdraw Criteria

An appellant may withdraw the appeal and indicate that they do not want it processed. The withdrawal information will include the following documentation and process:

- Signed and dated appellant withdraw letter
- Proof of IW notification when applicable
- Withdraw must be sent to BWC ADR Unit via fax (614) 621-2542

Legal Considerations

Zamora

In **State ex rel. Zamora v. Industrial Comm. of Ohio**, 45 Ohio State 3rd. 17 (1989), the Ohio Supreme Court held that it would be "inconsistent" for the IC to reject a medical report at one level and later rely on it at another. Therefore, under Zamora, once a decision which relies on, or cites as support, a specific medical report(s) [e.g. a peer review, ADR IME, etc.] has been overturned in a final BWC or IC order, the medical report(s) relied on by the overturned decision cannot be cited to or used by the MCO to support a later decision.

Reno Decision

BWC often sees treatment reimbursement denials based on an ADR physician's review that indicates "*no lasting benefit*" or "*no lasting therapeutic benefit*" as the reason for denial. BWC statutes and rules do not require that a standard of "*lasting benefit*" be met in order for treatment to be reimbursed. Instead, in determining whether reimbursement for treatment should be authorized or denied, physician reviewers must use, as a standard, the criteria listed in the Miller Decision (below).

MILLER DECISION

One of the most significant requirements affecting medical decision making has been imposed by the case of **State, ex rel. Miller v. Indus. Comm.**, 71 Ohio St. 3d 229 (1994).

The *Miller* case mandates that a three-part test be applied when considering requests for authorization of workers' compensation medical services. Requests are evaluated using a three-part test composed of the following (all of which must be met to allow treatment authorizations):

- The requested medical services are reasonably related to the industrial injury;
- The requested services are reasonably necessary and appropriate for treatment of the industrial injury;
- The costs of the services are medically reasonable.

Peer reviewers may NOT use the terms "possibly", "partially" or "maybe" when addressing Miller. "Possibly," "partially" or "maybe" are equivocal terms and such statements are not sufficient to support an MCO, BWC or IC decision. While a definitive "yes" or "no" is stronger evidence and is preferred, a "probable" or "not probable" opinion from a reviewer also constitutes medical evidence which may be relied upon to

support a determination. "Probable" when used as equating to "more likely than not" or "greater than 50%" meets the "preponderance of the evidence" standard.

In the *Miller* case, the Ohio Supreme Court expressly stated that these requests cannot be denied because the conditions to be treated are not allowed in the claim. The Supreme Court's decision does not mean, however, that all requests for medical services must be authorized.

Note: The Miller criteria does not sanction approval of psychological treatment requests when there is not a psychological condition allowed in the claim. For psychological reviews, the reviewer should state they addressed Miller but it does not pertain to psychological treatment requests, as stated above.

Ramifications

Clearly, the application of the *Miller* case must be done on a claim-by-claim basis, which has two (2) distinct ramifications:

- When making decisions on requests for medical services, all medical evidence gathered as part of this process must clearly demonstrate through medical documentation that *Miller* was applied. Those decisions not thoroughly documented are potentially more likely to be challenged, especially at an Industrial Commission (IC) hearing or in court.
- Policies pertaining to medical services cannot stipulate that certain conditions either be present or absent as part of determining an injured worker's eligibility for those services. Instead, eligibility must be evaluated solely upon meeting the three-prong test required by *Miller*.

ADR Setoffs /Efficiencies

ADR Reporting Score - The MCO's ADR Reporting Score (based on a combination of the ADR Process Timing, ADR Turnaround Timing, and ADR File Completeness percentages) shall be determined on a monthly basis, as follows:

- ADR Process Timing is based on the percentage of ADR disputes received by the Bureau that were completed by the MCO within the time frames required by Paragraph (C) of Rule 4123-6-16 of the Ohio Administrative Code, relative to the total number of ADR files submitted to the Bureau by the MCO. ADR Process Timing shall account for fifty percent (50.00%) of the MCO's total ADR Reporting Score.
- ADR Turnaround Timing is based on the percentage of ADR disputes that are submitted to the Bureau within seven (7.00) calendar days of receipt of the BWC Level Appeal, as required by OAC 4123-6-16, relative to the total number of ADR files submitted to the Bureau by the MCO. ADR Turnaround Timing shall

account for twenty five percent (25.00%) of the MCO's total ADR Reporting Score.

- ADR File Completeness is based on the percentage of ADR files submitted to the Bureau that were not returned to the MCO by the Bureau pursuant to Paragraph (D) of Rule 4123-6-16 of the Ohio Administrative Code (due to failure of the MCO to meet one or more of the criteria set forth on the ADR Efficiency Checklist) relative to the number of ADR files submitted to the Bureau by the MCO. ADR File Completeness shall account for twenty five percent (25.00%) of the MCO's total ADR Reporting Score.

The ADR Reporting Score calculation will be performed the month after the measurement period (e.g., performed in July for the June measurement period). If, after any written objections and/or supporting documentation submitted by the MCO have been considered, the MCO's monthly score is below the specified benchmark, the MCO will be placed at capacity for a period of thirty (30) days upon expiration or waiver by the MCO of the two week period provided for in Paragraph 2F(3) of this Agreement.

Section 2F(3) of the 2008 MCO Agreement states the "Bureau shall provide the MCO with written notice of its intent to place the MCO at capacity two weeks prior to placing the MCO at capacity pursuant to Paragraphs 2F(2)(m) through 2F(2)(s) or Paragraph 2F(2)(u) of this Agreement. The notice shall specify the reason or reasons the MCO is being placed at capacity. If the MCO disagrees with the Bureau's determination, the MCO may submit written objections during this two week period, including any supporting documentation as to why the MCO should not be placed at capacity. If the MCO agrees with the Bureau's determination, the MCO may waive the two week period and be placed at capacity immediately."

As stated in Section 2F(3), the MCO may only submit written objections if the MCO has been notified it will be placed at capacity. **BWC will continue the current practice of only processing requests for review of the ADR score if it is below the 85.00% benchmark. BWC will not process any requests for reviews if the MCO's score is at or above 85.00%.**

BWC's ADR Department will return incomplete dispute packets that impede BWC from completing the dispute at its level of ADR. The setoffs include Processing time (30 day), turn-around time when MCO schedules an ADR IME, (21 day), turn-around time (7 day) and file completeness.

NOTE: MCO jurisdiction continues until BWC's ADR Department receives a complete ADR packet.

Examples of setoffs include, but are not limited to:

- Failure to meet packet requirements as outlined in this Chapter
- Miller Criteria not adequately addressed
- Inappropriate application of 4123-6-16, Paragraph E
- Inappropriate application of 4123-6-16, Paragraph C

- Inappropriate submission of Senate Bill 7
- Inappropriate dismissal
- Medical Documentation on Medical Repository was not considered in the MCO peer review
- Peer-to-peer does not meet the minimum requirements
- Non-consideration of Zamora and/or Reno when applicable

NOTE: When a dispute packet is returned to the MCO due to an efficiency relating to the peer-to-peer file review or ADR IME, the MCO will not bill BWC for the addendum to correct the efficiency.

24 Hour E-Mail Notices

BWC will attempt to work with the MCO and allow one business day to submit any documents missing from the packet. If the MCO fails to respond to BWC within one business day the dispute packet will be returned.

MCO MEDICAL DIRECTOR'S ROLE IN ADR

1. Needs for the Process

- Reviewers who have an Understanding of the System
- Expert Reviewers who provide unbiased opinions
- Justified opinions with legally sufficient reports

2. MCO Medical Director and Associate Medical Director's Roles

- Recommendation (decision) to approve or deny authorization (initial or pre-ADR)
- For ADR process
 - Oversight/consultant of ADR process in MCO
 - Create and maintain ADR file review panel
 - Create and maintain ADR IME panel
 - Oversight/handle complaints to process
- Once a specific issue in ADR,
 - Oversight of process including recommendations based on ADR file reviews
 - May continue to provide recommendations/opinions on other medical management issues in the claim
 - **May not perform the ADR File Review (which means once the MCO has received an appeal to the initial MCO decision)**

3. Reports

- Address all issues that are at least pertinent to the reviewer's specialty
- Consider all allowed conditions
- Address the necessary issues contained in the Miller criteria
- Legally sufficient

Released 4/30/2009

- Conclusions justified with use of nationally accepted treatment guidelines or rationale explained
- Avoid giving opinions that claim needs updated for additional conditions
- Legible (preferably typed)
- Signed