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## **WORKERS' COMPENSATION UPDATE**

### ***THE PRME RULE***

***“Na-Na-Nahh-Na, Na-Na-Nahh-Na, Hey, Hey, Hey...Goodbye!”<sup>1</sup>***

In *Gregson v. Zurich American Ins. Co.*<sup>2</sup> the U.S. Court of Appeals for the Fifth Circuit concluded that a Claimant could pursue extra contractual claims (bad faith) against a workers' compensation insurance carrier without exhausting his administrative remedies (going through the medial dispute resolution process) where it was alleged that the carrier “denied coverage” for medications when it was contacted by a pharmacy. The Court reasoned that, under the applicable statutory and regulatory provisions, no medical dispute resolution process existed for this type of denial as it was not a preauthorization dispute (medications did not fall within the treatment requiring preauthorization) and, as the medications were not provided, no reimbursement had been denied. This was a very controversial decision in workers' compensation circles. In response to this decision the former Texas Workers' Compensation Commission (TWCC) adopted Rule 134.650 establishing the prospective review of medical treatment not requiring preauthorization process.

Rule 134.650 became effective on September 12, 2004. Under the rule, an injured worker or his doctor could request the prospective review of healthcare so long as it did not require preauthorization and the carrier intended to deny reimbursement for the care, either based on the medical necessity of the treatment or whether the treatment was related to a non-compensable body part. Under the rule, a doctor would be assigned to conduct a medical examination to determine whether the proposed care was medically necessary and whether it was related to the compensable injury. This examination was referred to as a Prospective Review Medical Examination (PRME). If the PRME doctor found that the proposed treatment was medically necessary and related to the compensable injury, the parties would have an opportunity to enter into an agreement regarding the proposed services. If an agreement could not be reached, the DWC was required to enter an interlocutory order requiring carrier to pay for the treatment for a 90 day period.

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<sup>1</sup> "Na Na Hey Hey Kiss Him Goodbye" was a song written and recorded by Gary DeCarlo, Dale Frashuer, and Paul Leka; attributed to a then fictitious band "Steam," it was released under the Mercury subsidiary label Fontana in 1969. [http://en.wikipedia.org/wiki/Na\\_Na\\_Hey\\_Hey\\_Kiss\\_Him\\_Goodbye](http://en.wikipedia.org/wiki/Na_Na_Hey_Hey_Kiss_Him_Goodbye)

<sup>2</sup> 322 F.3d 883 (5<sup>th</sup> Cir. 2003).

The 2005 legislative changes contained in House Bill 7 effected the applicability of Rule 134.650's PRME process. As a result of networks, the broadened role of the designated doctor and the treatment guidelines, the PRME process has become outdated. Under the new treatment guidelines (DWC Rule 137.100) treatment that is not covered by, or is outside of, the Official Disability Guideline (ODG) treatment guidelines is required to be preauthorized. TDI's preauthorization medical dispute resolution process is available if provider disagrees with a carrier's denial of preauthorization. This should satisfy the Courts' concern in the *Gregson* case.

The DWC, recognizing that the PRME process outlined in Rule 134.650 has become obsolete is in the process of repealing the rule. DWC continued to accept applications for the PRME process through June 18, 2007. Based on its statements, no more PRME request should be accepted after June 18, 2007. This should conclude the PRME process, which has been controversial since its inception.

As always, feel free to contact us with any questions.