



COMPACT

for workers' compensation professionals



**RESOLUTION
AHEAD**

SPECIAL FOCUS ON ALTERNATIVE DISPUTE RESOLUTION

November 2011

Minnesota Department of Labor and Industry

Presented by:

***The Minnesota Department of Labor and Industry's
Alternative Dispute Resolution unit,
Workers' Compensation Division***

Special edition editors:

Amy Borgeson, Tom Germscheid and Philip B. Moosbrugger



Disclaimer

This publication provides an overview of the services provided by the Alternative Dispute Resolution unit of the Department of Labor and Industry. It is not intended to provide legal advice, comprehensively restate or interpret Minnesota workers' compensation law. If there is any conflict, Minnesota statutes and rules govern.

This information can be provided in alternative formats (Braille, large print or audio) by calling
(651) 284-5005; toll-free 1-800-342-5354; or TTY (651) 297-4198.

Executive summary



This special edition of *COMPACT* is designed to help you understand more about the various services provided by the Alternative Dispute Resolution (ADR) unit at the Minnesota Department of Labor and Industry (DLI). Understanding the evolution of DLI's program and viewing objective measurements of its success should provide insight about what is working at the department and where DLI plans to go to provide even better services to meet the needs of the stakeholders.

The ADR unit, part of DLI's Workers' Compensation Division, seeks early intervention and resolution of workers' compensation disputes through dispute certification, administrative conferences and mediation sessions. ADR staff members handle calls from the workers' compensation hotline and respond to questions from employers, insurers, injured workers and other stakeholders.

The Department of Labor and Industry has been involved in the dispute resolution process since the inception of workers' compensation almost 100 years ago and is uniquely positioned to engage the parties on the front end of a claim, which often results in cost-effective and efficient outcomes. Those efforts, combined with the parties' cooperation and participation, frequently stop small disputes from becoming bigger and more costly to all. In some cases, litigation may be avoided altogether; in other cases, although litigation has commenced and the issues are more complicated, the parties frequently can still resolve disputes, with the department's assistance.

In the past decade there has been an increasing demand in workers' compensation for alternative dispute resolution services. In addition to offering mediation, the department continually strives to identify and deliver a full complement of alternative dispute resolution services of the highest caliber possible, to meet the changing needs of the parties and the many types of disputes they are facing.

- In 2009, the department fielded 16,073 early dispute resolution inquiries via DLI's workers' compensation hotline from injured workers, health care providers, employers, insurers, qualified rehabilitation consultants (QRCs) and others. Currently, the hotline's average wait time is only 22 seconds.
- Of roughly 6,720 dispute certification inquiries during 2010, 2,170 issues were resolved and another 1,080 were not certified for other reasons (usually because it was ascertained the issue was not genuinely disputed). Mediators clarify issues, facilitate communication and, in many cases, are able to broker an agreement between the parties, heading off disputes that can escalate into heated litigation that benefits neither party.
- DLI's mediation services are widely used by parties involved in workers' compensation cases, resolving everything from seemingly small issues to global settlements of complex and multi-party litigated claims. DLI mediations nearly doubled between 1999 and 2010, from 290 in 1999 to 550 in 2010.
- DLI continues to explore ways to improve the efficiency of the dispute resolution system, such as: online dispute resolution and electronic filing capabilities; large group dispute resolution processes; arbitration for health care provider/insurer disputes; special processes for complex medical disputes; and integrated operational components.

For any stakeholder caught up in a workers' compensation dispute – be it a seemingly minor or very complicated situation – DLI's alternative dispute resolution services often offer a simple, cost-effective solution. It is a way for the involved parties to come to an agreement, eliminating the need for what is often costly and lengthy litigation.

The dispute resolution services in place at DLI have proven to be valuable; its mediator/arbitrators are experienced and dedicated. Nonetheless, the department keeps an eye on the future, seeking new and even more convenient ways of providing its alternative dispute resolution services to the people of Minnesota.

Meet the DLI mediators: a composite resume

The Minnesota Department of Labor and Industry (DLI) has a staff of 15 mediators*, which includes experienced workers' compensation trial attorneys drawn from both claimant and defense practices, as well as mediators with backgrounds in vocational rehabilitation, claims and nursing.

DLI mediators have from 10 years to more than 30 years experience conducting mediations in the private sector and for the department. Many have Rule 114 qualification status under the Minnesota Supreme Court rules and are on the Supreme Court's roster of qualified neutrals.

The mediators have diverse professional and cultural backgrounds that include:

- former workers' compensation judges;
- a former district court judge;
- directors of national mediation and arbitration companies;
- claims administrators;
- workers' compensation compliance analysts;
- nurses;
- community mediators (using facilitative and co-mediation techniques);
- bilingual communicators (English and Spanish); and
- vocational services providers, including direct service delivery and policy analysis.



DLI mediators use facilitative and customized mediation techniques. The parties to the mediation can choose the style of mediation that best suits their case and the mediator with the particular background best suited to address the issues in their case.

From addressing cases involving single-issue disputes to complex, multi-party litigation, the Department of Labor and Industry mediators are available to resolve each case through mediation.

*The term "mediator" is used throughout this publication to identify the professional staff in DLI's Alternative Dispute Resolution unit. The professional staff provides services other than mediation, including holding administrative conferences, issuing administrative decisions, certifying disputes and informally assisting callers to DLI's workers' compensation hotline.

Contents

Executive summary I

Meet the DLI mediators: A composite resume II

History and development of DLI's dispute resolution system 1

DLI's alternative dispute resolution services

 A. Early dispute resolution services provided by DLI..... 6

 B. Dispute certification an important process on road to resolution 8

 C. Administrative conferences pursuant to Minnesota Statutes § 176.106

 1) Administrative conferences: An essential dispute resolution component..... 10

 2) Rehabilitation: Alternative dispute resolution vital to resolving rehabilitation disputes 12

 3) Medical: Resolving disputes about medical benefits 14

 D. DLI mediation service helps parties work together toward compromise..... 17

Trends in disputes and DLI dispute resolution..... 21

Alternative dispute resolution: Past, present and future..... 26

Contact information: DLI Alternative Dispute Resolution 30

History and development of DLI's dispute resolution system

By Philip B. Moosbrugger, Ombudsman*

Those who deal with the administration of Minnesota's Workers' Compensation Act are well aware disputes often arise in the course of administering a workers' compensation claim. Disputes about benefit entitlement issues are an inevitable consequence of two factors. First, the facts and circumstances of each case are unique and are sometimes not entirely clear. Second, because the benefits at stake are substantial, claims handlers and injured workers each have a strong incentive to advance their arguments to their respective advantage.

Historical overview

The need for an efficient and fair dispute resolution system is readily apparent. In fact, the unsuitability of the dispute resolution forum prior to the enactment of the Workmen's Compensation Act (which was a suit at common law) was one of the factors that spawned the enactment of workers' compensation laws in the first place.¹ As the United States moved from a predominantly agricultural nation to an industrialized nation, workplace injuries increased, resulting in a broad consensus that an alternative system for compensating victims of workplace injuries was needed.



Before the passage of workers' compensation laws, an injured worker had to sue his or her employer in district (or county) court. This was an expensive undertaking and the injured worker faced many hurdles in obtaining compensation, including needing to establish negligence and having to overcome the defense of contributory negligence. Meanwhile, employers feared the possibility of a large verdict that could bankrupt a small-business enterprise. In 1913, Minnesota joined the dozens of other states that enacted workers' compensation laws in the early decades of the 20th century as a response to these issues.

With the Workmen's Compensation Act, employees gave up the right to sue their employers for workplace injuries, in return for the certainty of compensation without having to prove negligence or fault on the part of the employer. This agreement or "compact" between labor and industry formed the basis for the workers' compensation system (and is also the basis for the name of this publication).

Disputes about benefit entitlement under the new law were initially still litigated in the civil court system. Although the process was undoubtedly simplified somewhat by the fact that common law claims and defenses no longer had to be litigated, it was soon recognized that a more efficient dispute resolution system was needed. Minnesota's Department of Labor and Industries, as it was then known, took the leading role in informal resolution of benefit disputes as soon as the new Workmen's Compensation Act was enacted.

In 1920, when the Workmen's Compensation Act had reached the ripe old age of seven years, the department published a bulletin proclaiming, "the feature of the work upon which the department wishes to lay the greatest stress is the informal adjustment of differences."² In other words, the agency was taking a leading role in

*Author's note: Special thanks to Amy Borgeson, *Alternative Dispute Resolution*, for historical research.

¹Originally, the law was called the "Workmen's Compensation Act." In 1975, the term "workmen's" was changed to "workers'." For simplicity, "workers'" is used here, except when referring to the original act itself.

alternative dispute resolution as many as 90 years ago. This remains one of the department's major focuses to this day. A link to the original page describing early dispute resolution functions in 1920 is provided below.

The Industrial Commission (consisting of three commissioners) was created in 1921 to replace a single commissioner to head the Department of Labor and Industries. Workers' compensation disputes would no longer be heard in civil courts. Instead, the Industrial Commission would hear all disputes of workers' compensation matters. An appeal could be taken from the commission's decision to the Minnesota Supreme Court. In 1925, the agency was renamed the Department of Labor and Industry (DLI), still under the direction of the Industrial Commission.

The Industrial Commission was abolished in 1967 and DLI was once again headed by a single commissioner. The administrative trial court function of the former Industrial Commission was taken over by a new entity within the Workmen's Compensation Division (WCD – a division within DLI) known as the Workmen's Compensation Commission (WCC) and consisting of the former Industrial Commission members.

In 1969, the position of compensation judge was created within WCD³. Four years later, the WCC became exclusively an appellate court, hearing appeals from the determinations of the compensation judges⁴; its appellate decisions could still be appealed to the Minnesota Supreme Court. In 1976, WCC became known as the Workers' Compensation Court of Appeals (WCCA).

The 1970s and 1980s were a time of great innovation in dispute resolution services. To make dispute resolution timelier and less costly, the concept of the administrative conference was developed in 1979 to resolve disputes arising out of the process of vocational rehabilitation. During the next four years, discontinuance conferences (then known as “.242 conferences”) and medical conferences were added to the administrative conference process at DLI.

The philosophy underlying the administrative conference was that there were commonly “small” disputes of certain types that took an inordinate share of litigation time and expense, and these issues could be more efficiently dealt with in a less formal conference setting. Furthermore, these types of disputes required immediate attention. Rehabilitation and medical issues are “time-critical” in the sense it is harmful to the medical or vocational rehabilitation of an injured worker to wait for a trial to resolve a dispute about a proposed medical treatment or a proposed change in an employee's rehabilitation plan. Time is of the essence in many such matters and a quick decision is needed to keep the employee's recovery from foundering.

Originally, administrative conferences were handled by rehabilitation and medical specialists and settlement judges within WCD; now they are handled by mediator/arbitrators at DLI or, in the case of discontinuance conferences and certain other matters, compensation judges at the Office of Administrative Hearings (OAH).⁵

Compensation judges continued to be housed at DLI until 1981, when they were moved to OAH. That same year, WCCA became an independent agency and continues to function as the workers' compensation intermediate appellate court today. Appeals from WCCA decisions are taken to the Minnesota Supreme Court.

DLI initiated a mediation program within its Workers' Compensation Division in 1983, which has expanded significantly and remains an important dispute resolution service. In 1986, the settlement judge position was created within the division to preside over one-hour settlement conferences before the scheduled hearing date in

²Sullivan, Oscar M. (1929). Department of Labor and Industries Bulletin No. 17: Compilation of Court Decisions, Attorney General's Opinions and Department of Labor Advice Relative to the Workmen's Compensation Act from Date When Act Was Effective to July 1920., p. 204, www.dli.mn.gov/WC/Pdf/0810c_adr_exhibit.pdf.

³Minnesota Laws of 1969, c. 276, § 2.

⁴Minnesota Laws of 1973, c. 388, § 3, et. seq.

⁵OAH is an independent state agency, separate from DLI, formed in 1976 to adjudicate administrative disputes and proceedings.

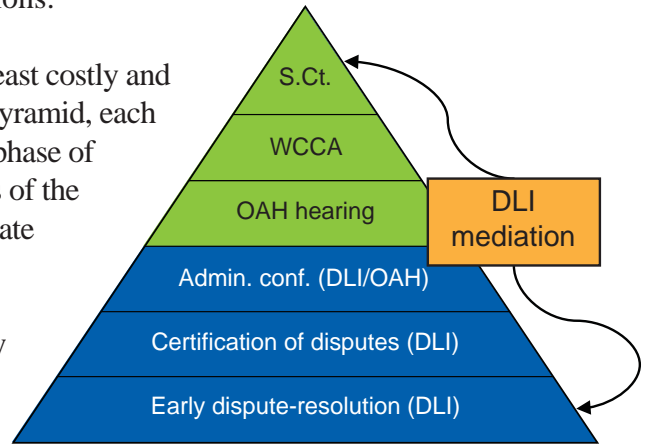
litigated cases, to try to facilitate settlement of the matter before trial. In 1993, these judges also handled all discontinuance conferences (also known as “.239 conferences”). In 1998, the WCD settlement judges were transferred to OAH.⁶ OAH added its own workers’ compensation mediation program in 2008.

Present system

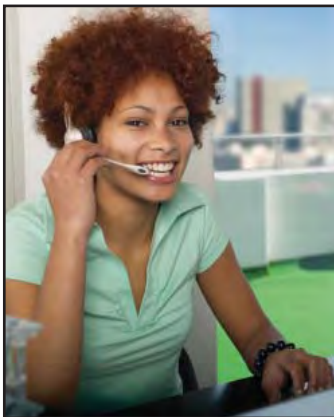
Today, dispute resolution in the workers’ compensation system takes several different forms, ranging from formal litigation to informal alternative dispute resolution options.

In the graphic at right, the bottom of the pyramid represents the least costly and intensive phase of dispute resolution. As a case proceeds up the pyramid, each successive level represents a more costly and resource-intensive phase of dispute resolution.⁷ Most disputes are resolved in the lower levels of the pyramid; only a relatively small number of cases reach the appellate levels of litigation at the top of the pyramid.

Notice DLI’s mediation services are available to the parties at any stage of a dispute, regardless of whether a case is in litigation.



Minnesota’s system of workers’ compensation benefits is created and defined by statute and rule, and all such benefits should be administered uniformly, regardless of who the employer is. On the other hand, Minnesota’s privatized system of workers’ compensation insurance means there are more than 100 insurers and other claim-handling entities administering payments of these benefits to injured employees. Therefore, DLI has the responsibility to ensure benefits are administered fairly, equitably and promptly. It does this through its regulatory function (establishing rules and ensuring compliance) and by providing a variety of dispute resolution services. In that regard, Minnesota Statutes § 176.261 specifically requires the agency to make efforts to settle disputes “quickly and cooperatively ... whether or not a formal claim has been filed with the department.”



Early dispute resolution

The first level of the dispute resolution pyramid above represents the department’s efforts to informally resolve disputes before they become litigated issues. DLI’s early dispute resolution services are provided by the 15 mediators who staff the department’s hotline⁸, fielding calls from injured workers, health care providers, employers, insurers, qualified rehabilitation consultants (QRCs) and others who are having difficulty or need assistance or information regarding some aspect of workers’ compensation. The mediator staff provides information about the workers’ compensation system, facilitates communication between the parties and intervenes to resolve situations that might otherwise grow into larger disputes. In 2009, the department fielded 16,073 such inquiries.⁹

Dispute certification

The next level of the dispute pyramid deals with certification of disputes. DLI’s dispute certification process was established in 1996 in response to the newly enacted provisions of Minn. Stat. § 176.081, subd. 1 (c), requiring the department to certify a dispute exists before an employee’s attorney can charge a fee on most litigated medical or rehabilitation issues. In response to a request for certification, mediators contact parties (claim handlers, employers, employees, health care providers, QRCs and attorneys) to ascertain whether a dispute genuinely exists

⁶Minnesota Laws of 1998, c. 366, §§ 80 and 81.

⁷In the graphic, alternative dispute resolution services are shown in blue; formal litigation is represented by green and DLI mediation is orange.

⁸The department’s workers’ compensation assistance line is directly accessed during business hours at (651) 284-5032 or 1-800-342-5354.

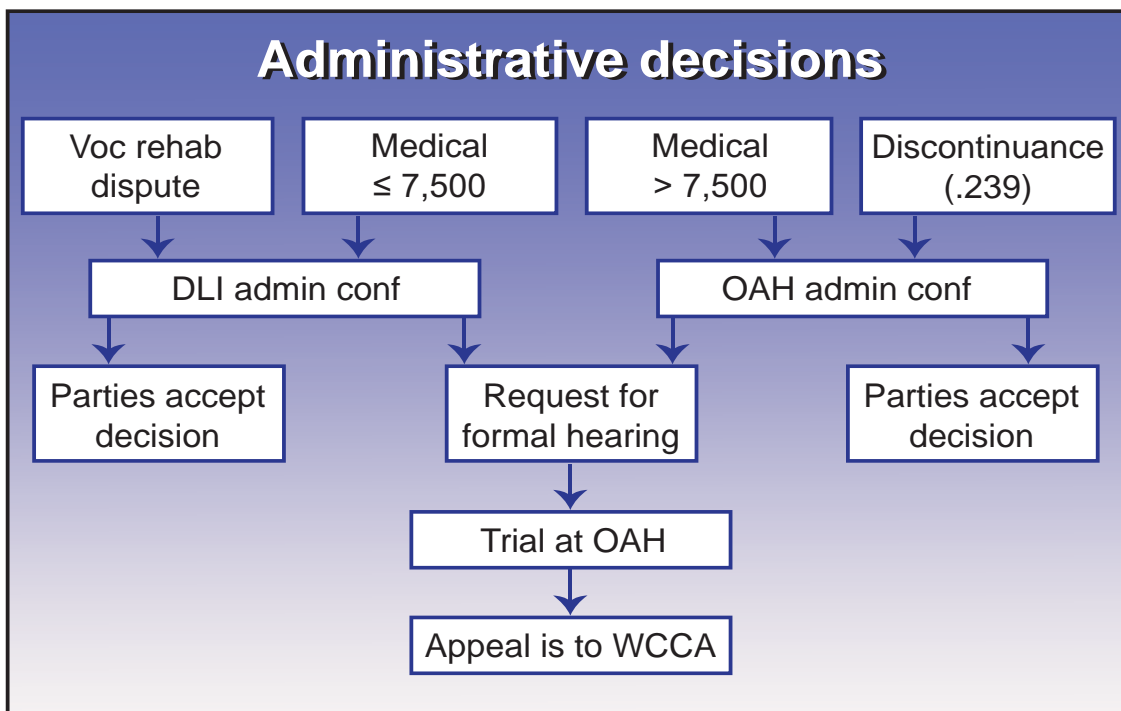
⁹Minnesota Department of Labor and Industry; Workers’ Compensation Division data for 2009.

and whether the matter can be resolved at that point. If a dispute exists and cannot be resolved, the matter is certified and the employee's attorney can charge for fees if the employee prevails in the dispute thereafter. This program has proven very effective at keeping disputed matters from moving further up the pyramid, which ordinarily involves more litigation expense and delay in resolving issues. Of roughly 6,720 dispute certification inquiries during 2010, 2,170 issues were resolved and another 1,080 were not certified for other reasons¹⁰ (usually because it was ascertained the issue was not genuinely disputed).

Administrative conference

The third level of the dispute pyramid is the administrative conference level. At DLI, there are administrative conferences for rehabilitation disputes and medical disputes where the amount in dispute is \$7,500 or less; OAH conducts administrative conferences for discontinuance disputes and medical disputes of greater than \$7,500. Other medical and rehabilitation disputes are sometimes referred to OAH for an administrative conference when it makes sense to do so (such as when there is an OAH hearing on a related issue at nearly the same time as DLI would schedule its proceeding).

Administrative conferences at DLI are one-hour informal conferences at which the mediator attempts to resolve a medical or rehabilitation issue. To have a conference scheduled, a party files a request for assistance. At the conference, the parties are first given an opportunity to relate their position about the dispute and offer any supporting documentation. The mediator will then make an attempt to move the parties to a voluntary resolution of the issue. If an agreement is not possible, a Decision and Order is issued. In this event, the mediator is actually acting as an arbitrator, conducting what is essentially a nonbinding arbitration. In keeping with the informal nature of these proceedings, no recording or transcript is kept.



Regardless of whether the conference was at DLI with a mediator or at OAH with a compensation judge, if a party disagrees with the decision, a formal hearing before a compensation judge at OAH may be requested within 30 days after issuance of the decision. The formal hearing will be a “de novo” evidentiary hearing, meaning the original findings in the Decision and Order are not binding on any party.

¹⁰DLI Research and Statistics. *Minnesota Workers' Compensation System Report, 2009*; Minnesota Department of Labor and Industry (June 2011), www.dli.mn.gov/RS/PDF/wcfact09.pdf.

The purpose of the administrative conference process is to give all parties ready access to a simple, speedy and inexpensive dispute resolution forum. The process is designed to allow the parties to participate without an attorney, though parties often have an attorney present to help them in representing their interests. This process is far faster than formal litigation: for medical disputes initiated in 2007, the median time from filing a request for assistance to receiving a Decision and Order for administrative conferences at DLI was 65 days.¹¹

Mediation

DLI's mediation service rounds out the agency's alternative dispute resolution offerings. As mentioned earlier, DLI's mediation program dates back to 1983. Since then, the program has grown and today DLI's mediation services are widely used by parties involved in workers' compensation cases, from small issues to global settlements of complex and multi-party litigated claims. DLI's experienced staff of mediators includes former workers' compensation trial attorneys (both claimant and defense) and former judges (workers' compensation and district court), as well as people with nursing, vocational rehabilitation and claims adjusting backgrounds. DLI mediations have nearly doubled between 1999 to 2010, from 290 to 550.¹²

Mediation is a powerful dispute resolution tool. The dynamics involved when a neutral third-party mediator assists the parties in evaluating and framing their settlement position results in a very high success rate. Most DLI mediations result in successful settlements. The agreement can be memorialized by a mediation award, drafted by the mediator within days of the mediation session (or even at the mediation session, if the parties require it) or the parties may elect to memorialize their agreement by submitting a stipulation to OAH at a later date.

As in the case of its administrative conference process, DLI aims to make its mediation service easy to use and accessible to all parties. To make it easy for parties to participate, mediation sessions can be arranged within days or even hours of a request. Sessions can be conducted in person at DLI's St. Paul, Minn. office, at other metro or outstate locations, by telephone or videoconference.



Conclusion

Since the inception of the Workmen's Compensation Act in 1913, alternative dispute resolution services have been a primary focus of DLI. Now, and as it was 90 years ago, it remains true that "the feature upon which the department wishes to lay its greatest stress is the informal adjustment of differences."¹³ The reason for this effort is "... much [can] be saved in litigation expense and ill feeling" by the department's efforts to bring disputes to an informal resolution at the earliest possible time. DLI is continually refining and improving its alternative dispute resolution services to meet the present-day statutory mandate¹⁴ that "the department must make efforts to settle problems of employees and employers ... quickly and cooperatively."

¹¹DLI Research and Statistics. *Minnesota Workers' Compensation Dispute Issue Tracking Study, Report I*; Minnesota Department of Labor and Industry (May 2009), www.dli.mn.gov/RS/WcDispTrack.asp.

¹²*Minnesota Workers' Compensation System Report, 2009*; (supra).

¹³Sullivan, Oscar M. (1920). Department of Labor and Industries Bulletin No. 17: (supra), p. 204.

¹⁴See Minnesota Statutes § 176.261.

Early dispute resolution services provided by DLI

By Debra Heisick, Mediator/arbitrator, Alternative Dispute Resolution



Statutory mandate

The Department of Labor and Industry (DLI) is statutorily required to provide assistance to all parties in resolving workers' compensation disputes.

As provided in Minnesota Statutes § 176.261, an employee of the DLI

commissioner may act for and advise a party to a proceeding:

When requested by an employer or an employee or an employee's dependent, the commissioner of the Department of Labor and Industry may designate one or more of the division employees to advise that party of rights under this chapter, and as far as possible to assist in adjusting differences between the parties ...

The department must make efforts to settle problems of employees and employers by contacting third parties, including attorneys, insurers and health care providers, on behalf of employers and employees and using the department's persuasion to settle issues quickly and cooperatively. The obligation to make efforts to settle problems exists whether or not a formal claim has been filed with the department.

DLI has consistently worked to assist parties in resolving disputes. There are numerous ways these services are provided – to hotline callers, to walk-in visitors and in response to letters.

Hotline callers

One of the most frequent ways direct help services are provided to users of the workers' compensation system is through DLI's hotline at (651) 284-5005, toll-free 1-800-342-5354; TTY (651) 297-4198.

- The hotline is answered 8 a.m. to 4:30 p.m., Monday through Friday.

- More than 15,000 callers are assisted each year – about 300 a week. Currently, the average wait time is only 22 seconds.
- Calls to the hotline are answered directly by DLI's mediators/arbitrators who have considerable experience in the workers' compensation system. They include: lawyers, former insurance adjusters, nurses and vocational rehabilitation specialists. A Spanish-speaking mediator/arbitrator is available and language-interpretation phone lines can be used.
- The goals of the mediators/arbitrators are to be neutral, yet helpful; to give advice about available options; and to explain rights and duties under the workers' compensation laws.
- The calls come from employees, employers, insurance industry representatives, attorneys, qualified rehabilitation consultants (QRCs), health care providers and other stakeholders with questions about workers' compensation.

... these services are provided to hotline callers, to walk-in visitors and in response to letters

Walk-ins

Anyone with a question about their workers' compensation case may visit the agency offices in St. Paul and Duluth, Minn., from 8 a.m. to 4:30 p.m., Monday through Friday.

The front-desk receptionist will provide a form to be filled-in; the completed form is given to the mediator/arbitrator assigned to service walk-in visitors that day. Providing a worker identification (WID) number or Social Security number will help the arbitrator locate the relevant materials from the visitor's file to provide the best assistance possible. The mediator/arbitrator will then meet with the individual in a private conference room to address the questions or concerns they have and provide solutions, if possible.

Letters and email messages

Letters and email messages can be sent to the Department of Labor and Industry commissioner's office or directly to the Alternative Dispute Resolution

unit. A response to written inquiries will usually be sent within seven days.

Sample questions and issues, and DLI's approach

Employer: "Do I have to buy workers' compensation insurance?"

There are numerous circumstances under which employers are exempt from purchasing workers' compensation insurance. See, for example, [Minnesota Statutes § 176.041](#).

When responding to this call, the mediator/arbitrator may:

- send the caller an email message containing the statutory reference and a link to the state of Minnesota's form LIC-04 to complete;
- teach the caller how to access further statutory information on the Office of the State Auditor's website or on the DLI website; and
- discuss the benefits of having workers' compensation insurance to help the caller decide whether such coverage would be more beneficial to them than exercising the exemption.

Employee: "I was injured on the job. How can I get my employer to file a first report? It has been months and my doctor wants a claim number to bill."

When responding to this call, the mediator/arbitrator may:

- call the employer to explain the reporting process, stressing that filing a First Report of Injury form does not mean any admission of liability has been made, and there is no harm to the employer's defenses, but there are penalties for not filing the form.

Through DLI's electronic data management systems, the mediator/arbitrator can access the carrier for the employer and provide the name, policy number and phone number to the employee. This information can be submitted to the health care provider and care may then be provided. The insurance company would be prompted to assign a claim number upon receipt of billing and claim information from the doctor, or the employee or mediator/arbitrator would provide information for a First Report of Injury form directly to the insurance representative.

Mediators/arbitrators field inquiries about:

- medical treatment parameters;

- the medical fee schedule;
- reimbursement for unpaid medical bills or medical bills paid by health insurance;
- attaining copies of medical files;
- how to file the First Report of Injury form and other assorted workers' compensation forms;
- whether a QRC may close a file;
- the compensation rate or yearly adjustments;
- computation of permanent partial disability; and
- everything else related to the system.

In all cases, DLI mediators/arbitrators try to clearly explain the issues, law and available options. They will make appropriate phone calls to prevent or resolve issues before small problems become full-blown disputes.

*The goal of the mediator/arbitrator
... is to be neutral, yet helpful*

Data privacy laws prevent DLI from revealing any information to a nonparty to a claim, without the expressed or written permission of the involved employee. That includes spouses, girlfriends, fiances, parents, future employers and others (see Minn. Stat. 13.43, 176.138, 176.231 and 176.39 for more information).

If a dispute cannot be prevented or resolved, the mediators/arbitrators offer other alternative dispute resolution services to the parties, including administrative conferences and mediation.

Goals

1. Serve all parties and stakeholders in the workers' compensation system fairly and impartially.
2. Listen respectfully and identify the issue(s).
3. Provide accurate and timely information about applicable laws and options.
4. Provide appropriate referrals to other information sources.
5. Encourage return calls, as needed.
6. Prevent and resolve disputes without the need for formal litigation.

Contact DLI

DLI mediators/arbitrators or their supervisors may be contacted directly; see the directory on page 30.

Dispute certification an important process on road to resolution

By Philip B. Moosbrugger, Ombudsman

Every year, the Department of Labor and Industry's (DLI's) dispute certification process helps resolve hundreds of medical and rehabilitation disputes in Minnesota workers' compensation claims. This service exists because of Minnesota Statutes § 176.081, Subd. 1 (c). This statute, enacted in 1995, requires the department to certify that a rehabilitation or medical issue is, in fact, disputed before an attorney may claim fees from the insurer regarding that disputed issue.

The law requiring certification of disputes was enacted in part to minimize unnecessary litigation resulting in *Heaton* and *Roraff* fees.

Roraff fees (and their corollary, *Heaton* fees) are legal fees paid to an employee's attorney by an insurer that unsuccessfully resisted payment of a medical benefit or a vocational rehabilitation benefit. The concept of these fees arose initially out of the case of *Roraff v. State Department of Transportation*, 32 W.C.D. 297, 288 N.W. 2d 15 (1980). In that case, the Minnesota Supreme Court determined that, in disputes where a contingent attorney's fee would be insufficient to allow the employee to hire an attorney (such as where the only issue in dispute involved medical treatment expense), an injured worker should be awarded attorney fees to allow him or her to hire counsel to help pursue the medical claim. Thus, an attorney's fee, payable by the insurer that unsuccessfully resisted payment of a medical expense, would be appropriate as a cost incident to obtaining medical treatment under Minnesota Statutes § 176.135.

Subsequently, in *Heaton v. J.E. Fryer & Co.*, 36 W.C.D. 316 (WCCA 1983), the court extended the same concept to disputed vocational rehabilitation expenses.

As time went on, however, the concern arose that some medical and rehabilitation issues were being litigated unnecessarily. Minnesota Statutes § 176.081, Subd. 1 (c) was amended in 1995 to require the department to certify that a medical or rehabilitation matter was truly disputed and DLI could not resolve the dispute, before an attorney could claim a fee. No certification is required if there is other litigation pending about the case. In those situations, the plaintiff attorney can proceed with the filing of a medical or rehabilitation request and does not need to seek certification of the dispute to later claim fees.



The department has made dispute certification an important part of its alternative dispute resolution activity since 1995. In practice, plaintiff attorneys routinely submit requests for certification before they prepare a medical request or rehabilitation request. The certification request is typically faxed to the department and acted on within a matter of days. A mediator/arbitrator reviews the request and places a call to the claims adjuster responsible for the case involved. The adjuster is given a reasonable time to respond; if there is no response within that time frame, the matter is certified.

Helpful hints:
**When submitting a
 request for certification**



- ✓ Attach evidence of the date the medical bill was submitted to the insurer.
- ✓ Include the claim number and the name, phone number and extension of the current adjuster wherever possible.
- ✓ Send a courtesy copy of the Request for Certification of Dispute form to the adjuster. Although this is technically not required, it is very helpful and expedites meaningful communications with the claims adjuster.

If the mediator reaches the claims adjuster right away or hears from the adjuster in a timely fashion, the mediator first ascertains whether the particular issue involved is actually disputed; if there is a dispute, the mediator attempts to resolve it with the parties. Again, if the matter cannot be resolved, the dispute is certified, if appropriate.

There are several circumstances when an issue will not be certified as being disputed. Obviously, if there is an agreement on the part of the insurer to allow the benefit being requested there will be no certification of the dispute. Dispute certification will also be denied, as a general rule, when the insurer has not been given ample opportunity to consider the request.

For example, the medical payment rules allow the insurer 30 days to consider payment of a medical bill. If the bill has not yet been submitted to the insurer for payment, it is premature to certify the matter as being disputed until the insurer has had time to consider payment of the bill. By the same token, when an insurer has received a medical bill but has appropriately requested additional information from a health care provider to process the bill, the insurer has 30 days following receipt of that additional information to pay or deny the bill; certification of a dispute is premature until that time has elapsed.

The dispute certification process ensures claim handlers are given a reasonable opportunity to make a determination whether they will agree to a requested benefit or contest it. At the same time, the process requires claim handlers to take a position about a requested benefit so the employee can take appropriate steps to pursue a timely determination about whether the benefit will be available.

Most important, this process has proven very effective at keeping hundreds of disputes from escalating into a costly litigation each year. Mediators clarify issues, facilitate communication and, in many cases, are able to broker an agreement between the parties, heading off disputes that can escalate into heated litigation that benefits neither party.

Dispute certification activity at DLI doubled from 1999 to 2010. Last year, the department processed 6,720 dispute certification requests, resolving 2,170 of them.¹ An additional 1,080 disputes were not certified, either because the matter was not originally disputed or for some other reason it was not ripe for dispute certification. Thus, a total of 3,250 issues did not require a medical or rehabilitation administrative conference, saving the system considerable litigation time and expense.

¹DLI Research and Statistics. *Minnesota Workers' Compensation System Report, 2009*; Minnesota Department of Labor and Industry (June 2011).

Administrative conferences: An essential dispute resolution component

By Amy Borgeson, Mediator/arbitrator, Alternative Dispute Resolution

Many medical and rehabilitation disputes are prevented or resolved by the Department of Labor and Industry's (DLI's) early intervention efforts through phone calls, certifications and mediations.

Despite these efforts, some disputes inevitably require a more structured proceeding. In these instances, parties may file either a medical request or rehabilitation request.¹

The filing of such requests triggers the scheduling of an administrative conference, pursuant to Minnesota Statutes § 176.106. This is sometimes called a .106 conference.

Conferences are to be scheduled within 60 days after receipt of the request. If no agreement is reached, a decision must be issued within 30 days, but a decision is often issued sooner as a result of the department's performance enhancement measures.

A DLI study of its dispute resolution process found the following.

- The median time from the first medical request to the scheduled conference date fell by a third between 2003 and 2007, from 66 days to 44 days. The median time from the medical request to the Decision and Order fell from 92 days for 2003 disputes to 65 days for 2007 disputes.
- The median time from the first rehabilitation request to the scheduled conference date fell from 63 days to 49 days between 2003 and 2007. The median time from the rehabilitation request to the Decision and Order fell from 71 days for 2003 disputes to 62 days for 2007 disputes.

DLI administrative conferences about medical and rehabilitation issues are informal meetings conducted by mediators at the department with rehabilitation, medical and/or legal expertise. Frank discussion is encouraged; formal testimony is not allowed; parties are not sworn; and no verbatim record is prepared. This informal structure is deliberately designed to promote the goal of speedy resolution of issues.

A complete resolution occurs at DLI either when an agreement is reached at the conference or when a Decision and Order is issued and neither party requests a formal hearing at the Office of Administrative Hearings (OAH). Throughout the years, administrative conferences have been extremely successful in accomplishing that goal.

Many medical and rehabilitation disputes are completely resolved at DLI and never reach the level of the Office of Administrative Hearings.² The previously mentioned DLI dispute tracking study found that about

¹Medical issues are currently heard at the Department of Labor and Industry if the disputed amounts are \$7,500 or less, but otherwise are scheduled at the Office of Administrative Hearings.

²*Minnesota Workers' Compensation Dispute Issue Tracking Study, Reports 1 (May 2009) and 2 (September 2010)*; Minnesota Department of Labor and Industry, Research and Statistics unit, www.dli.mn.gov/RS/WcDispTrack.asp. For rehabilitation issues, the number of sample cases was too small to analyze disputes with Office of Administrative Hearings conference decisions.



half of the DLI Decision and Orders examined resolved the matter with finality because neither party requested a formal hearing.

- For medical disputes, the “appeal” rate from DLI Decision and Orders (via request for formal de novo hearing at OAH) was 52 percent for disputes filed in 2003 and 56 percent for those filed in 2007. For vocational rehabilitation disputes, the “appeal” rate from DLI Decision and Orders was 43 percent for 2003 and 48 percent for 2007.³

Administrative conferences were introduced into the workers’ compensation system in 1983 by the Legislature. Subsequently, conferences have evolved to reflect legislative changes and the changing needs of the parties.

Procedures are even more flexible, streamlined and effective today than when they were first introduced.

Additional flexibility exists because the DLI commissioner has the discretion to refer rehabilitation and medical matters to the Office of Administrative Hearings in lieu of holding an administrative conference at DLI.⁴ For instance, for reasons of judicial economy, the commissioner may refer a request to OAH if a claim petition is pending there, so matters may be consolidated by the judge and heard in one proceeding.

The administrative conference at DLI continues to be a valuable tool to quickly and completely resolve countless medical and rehabilitation disputes. An earlier and quicker resolution at DLI is less costly to the parties and to the system.

The specialists at DLI have extensive training and experience in preventing and resolving disputes. They have legal, medical and/or vocational expertise. They receive ongoing training to ensure their dispute prevention and resolution skills improve and evolve to meet the changing needs of the parties and the changing medical, legal and employment landscape in Minnesota.



³For OAH Decision and Orders in 2003, the medical disputes “appeal” rate was 46 percent. There were too few sample cases to compute the appeal rate from OAH Decision and Orders for 2007 medical disputes and for rehabilitation disputes in 2003 and 2007.

⁴More details of the history regarding administrative conferences and the rationale behind the amendments can be found at the Minnesota State Law Library in the following publications: Altman, Leslie. “Administrative Conference Procedures Under the New Workers’ Compensation Law.” *Workers’ Compensation: Practice before the Department of Labor and Industry*. Minnesota Institute of Legal Education CLE (January 1986); and Pranke, Richard. “The New Administrative Conference System: A Rational and Practical Approach.” *Workers’ Compensation MILE CLE materials*. Minnesota Institute of Legal Education CLE (August 1987).

Administrative conferences – rehabilitation: **Alternative dispute resolution vital to resolving rehabilitation disputes**

By Susan Lauer and Keith Maurer, Mediator/arbitrators, Alternative Dispute Resolution

Rehabilitation benefits are uniquely situated among the several types of benefits available under the Minnesota workers' compensation system, for a variety of reasons. First, the statutory purpose of rehabilitation – “to restore the injured employee so the employee may return to a job related to the employee's former employment or to a job in another work area which produces an economic status as close as possible to that the employee would have enjoyed without disability” – goes to the very essence of one of the fundamental goals of the workers' compensation system as a whole: a successful return to work.¹ In addition, the success of rehabilitation – or lack thereof – can have significant effects on the other benefits available under the statute. Finally, perhaps more than any other benefit, the success of rehabilitation services requires the attention and cooperation of all parties involved in a workers' compensation claim.

Given this unique status, it is imperative that parties have access to an effective, efficient and inexpensive forum for preventing and resolving rehabilitation disputes. The Alternative Dispute Resolution (ADR) unit of the Department of Labor and Industry (DLI) provides that forum.

Rehabilitation issues and the administrative conference

When issues exist about an employee's entitlement to rehabilitation services, the appropriateness of a proposed plan, retraining or any other dispute about rehabilitation, a party may request assistance to resolve the dispute by filing a rehabilitation request with DLI. After a rehabilitation request is received by the department, a DLI mediator/arbitrator typically contacts the parties by telephone and attempts to facilitate an informal resolution. The fact that many disputes are prevented and resolved at this informal stage is due to in large part to DLI's experienced mediator/arbitrator staff.

In the event a resolution is not reached through phone contact, the department promptly schedules an administrative conference pursuant to Minnesota Statutes § 176.106.

An administrative conference is a meeting during which a mediator/arbitrator listens to all parties' perspectives regarding the dispute and attempts to assist them in reaching an agreement. Agreements about the disputed rehabilitation matters are frequently reached at this stage of the process.

If no agreement is reached at the administrative conference, the mediator/arbitrator issues a Decision and Order, which is rendered promptly, providing the parties with an expedited and reasoned determination about the matters in dispute. While the mediator/arbitrator's decision frequently offers the parties a prompt and final resolution to the matter, any party who disagrees with a decision may request a formal hearing at the Office of Administrative Hearings.

The following “real-life” example demonstrates the effectiveness of the administrative conference in the context of rehabilitation disputes and highlights the importance of the subject matter and dispute resolution expertise of the DLI Alternative Dispute Resolution unit staff.

An injured employee sustained a serious injury while working at a relatively high weekly wage. He had multiple surgeries. While rehabilitation services were provided, the employee had not returned to suitable gainful employment within four years of the injury. The insurer filed a rehabilitation request to terminate rehabilitation, contending those services were not leading to employment. The rehabilitation plan was costly and had

¹See Minnesota Statutes § 176.102.

not resulted in placement. During the administrative conference, the mediator facilitated a discussion about the barriers to employment that resulted in a detailed agreement that resolved the outstanding issues.

The parties agreed to suspend the rehabilitation plan for two weeks and agreed to a rehabilitation plan amendment that would take effect, if necessary, when the two-week suspension period ended. The detailed specifics of the amendment included the following.

1. The qualified rehabilitation consultant (QRC) will meet with the employee once a month.
2. The registered rehabilitation vendor will meet with the employee every two weeks.
3. The registered rehabilitation vendor will provide job leads to the employee via phone or email.
4. The employee will follow up on the job leads within 24 hours.
5. The registered rehabilitation vendor will provide a list of employers to the employee weekly.
6. The employee will contact at least five of these employers a day about employment opportunities.
7. The employee will go to a Minnesota Department of Employment and Economic Development WorkForce Center to conduct a job search at least once a week.
8. The employee will review job postings on various computer sites daily.
9. The employee will provide job logs documenting all employer contacts to the vendor weekly. The job logs will include: all follow-up employer contacts based on job leads; all employer contacts based on the employer lists; all contacts with employers through the WorkForce Center; all employer contacts through the various websites; and any additional employer contacts initiated by the employee.

The specificity of the agreed-upon parameters clearly set forth behavioral expectations, maximizing the possibility of success. Indeed, information provided to the department shortly after the conference showed the employee obtained suitable gainful employment within 45 days of the administrative conference.

Conclusion

Disputes about rehabilitation benefits occur; failure to resolve those disputes can delay other aspects of the claim proceeding successfully. Fortunately, parties can avail themselves of the services offered by DLI's Alternative Dispute Resolution unit, particularly the administrative conference, for prompt, efficient and effective resolution.

Administrative conferences: *Parties find value in the process*



Parties report the administrative conference forum is valuable in helping resolve issues.

Richard Pranke has a uniquely broad perspective on

Minnesota's workers' compensation dispute resolution system. He has represented both injured workers and employers as an attorney, has served as a judge at both the Office of Administrative Hearings and the Workers' Compensation Court of Appeals, and is former director of the ADR unit at DLI.

"I have always found the mediators and arbitrators to be beneficial to the administrative conference process when addressing rehabilitation issues," Pranke said. "Their expertise about the substantive issues, along with their eye toward dispute prevention and informal resolution, goes a long way in helping parties resolve rehabilitation issues."

Mark Fellman has represented injured workers for more than 30 years.

"The administrative conference at DLI provides a results-oriented forum for addressing rehabilitation issues," Fellman said. "At these conferences, the parties are always given the opportunity, and provided with assistance, to try to resolve their disputes. If a resolution is reached, a written detailed agreement will result. If that's not possible, the parties can count on a quick decision based upon the information and arguments provided by the parties."

Administrative conferences – medical: Resolving disputes about medical benefits

By Nell Nere, Mediator/arbitrator, Alternative Dispute Resolution, and Philip B. Moosbrugger, Ombudsman



The workers' compensation law requires the employer to “furnish any medical, psychological, chiropractic, podiatric, surgical and hospital treatment, including nursing, medicines, medical, chiropractic, podiatric and surgical supplies, crutches and apparatus, including artificial members ... chiropractic medicine and medical supplies, as may reasonably be required at the time of the injury and any time thereafter to cure and relieve from the effects of the injury.”¹ Accordingly, the medical care benefit is a common shared aspect of every workers' compensation claim, from the uncomplicated injury that receives a short course of medical attention to the catastrophic claim that requires decades of medical care.

With such broad applicability to claims and coverage for such a wide variety of services it is not at all surprising that

disputes about the medical care benefit arise. In fact, as medical costs climb throughout the health care system, medical disputes in workers' compensation cases have risen at a faster pace than any other type of dispute.²

In general, the disputes fall into three categories:

1. whether treatment is related to the work injury (causation disputes);
2. whether treatment is reasonable treatment for the work injury (excessiveness disputes); and
3. whether the bills were paid at the proper rate (underpayment disputes).

The Department of Labor and Industry (DLI) offers several services to resolve disputes about medical treatment, short of litigation. These alternative dispute resolution services offered by the department are designed to help the parties resolve disputes, including disputes about medical benefits, without the need for a formal hearing.

Dispute resolution assistance by phone

Parties with disputed medical issues or questions about medical benefits may call any of the mediators/arbitrators within DLI's Workers' Compensation Division to discuss a problem *before* filing a medical request. A mediator/arbitrator tries to provide callers with the information needed to resolve the issue on their own or to understand the basis for the action or position taken by the insurer. DLI also may assist the caller in resolving the matter. For example, DLI may contact a payer or bill reviewer when it appears the insurer has underpaid a charge because there was a misunderstanding about or misapplication of a payment rule; or DLI may contact the insurer to secure an agreement for a worker to obtain a second opinion about medical care.

**Learn more about phone assistance
in *Early dispute resolution services
provided by DLI*, page 6.**

Mediation services

Sometimes a disputed matter isn't resolved through informal dispute resolution activities. The involved parties may attempt to reach a compromise using the services of a mediator who will help facilitate the negotiation, rather than proceed with filing a medical request or an employee's claim petition. The Workers' Compensation Division offers free mediation services to assist in resolving workers' compensation disputes, including disputed medical benefits.

¹Minnesota Statutes § 176.135, Subd. 1.

²See Figure 1 in *Trends in disputes and DLI dispute resolution*, page 21.

Administrative conferences and formal hearings

Some situations require a determination by the Department of Labor and Industry mediator/arbitrator or a compensation judge. When this happens, a claimant with a dispute involving medical treatment completes and submits a medical request to DLI, with supporting bills and records. The responding party then files a medical response with the department, providing any supporting documents.

Find workers' compensation forms at:
www.dli.mn.gov/WC/Wcforms.asp

As the department reviews the positions of both parties, a DLI mediator/arbitrator determines whether there is actually a dispute that cannot be resolved by informal discussions. If the issues cannot be resolved, an administrative conference is scheduled. If the total amount in dispute is \$7,500 or less, the matter will be scheduled at the Department of Labor and Industry; disputes of more than \$7,500 are scheduled at the Office of Administrative Hearings.³

At an informal administrative conference, a mediator/arbitrator attempts to bring the parties to an agreement to resolve the dispute. If the dispute cannot be resolved, the information submitted at the administrative conference is carefully reviewed and considered by the mediator/arbitrator.

A written Decision and Order is issued based on the preponderance of the information submitted. If no party requests a formal hearing within 30 days after the Decision and Order is issued, it becomes binding. If either party timely requests a formal hearing (a recorded proceeding in which sworn testimony is taken and evidence submitted), it is scheduled at the Office of Administrative Hearings before an administrative law judge.

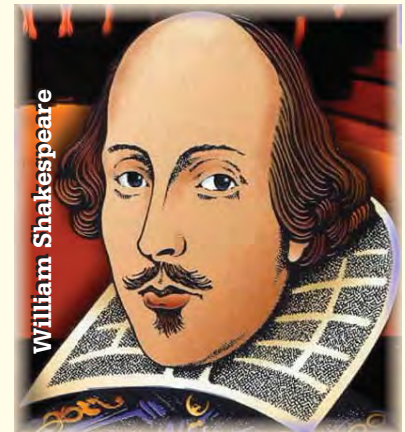


The administrative conference often provides a forum where the parties are able to work out an agreement that resolves the dispute. For example, during a recent administrative conference an employee was requesting a series of injections prescribed by his doctor for an injury and the insurer was refusing to approve the injections. After hearing the positions of the parties, the mediator/arbitrator facilitated an agreement between the parties whereby the insurer agreed to pay for *one* injection

To file or not to file ...

There are some situations where health care providers may want to contact the DLI Workers' Compensation Division prior to filing a medical request.

- When there are questions about the fee schedule or treatment parameters.
- When you believe a payment or billing standard is being incorrectly applied and discussing it with the payer has not resolved it.
- When the same issue is disputed on a large number of separate accounts.
- When your past experience is that compromise has been necessary to resolve similar issues.
- When the health care provider does not understand the payer's reasons for denial or reduction.
- When you are unable to determine who the insurer is through your contacts with the employee, the employer and DLI's insurance verification service.
- When bills have been submitted and there has not been a response.



³See the flowchart on p. 4, showing medical request jurisdiction, in *History and Development of ADR*.

and the employee agreed the insurer would then have the opportunity to evaluate the results of the injection before approving the next one.

Another example of an agreement resulting from an administrative conference arose when the parties were having a disagreement about obtaining a second opinion of treatment options for the employee. The employee had requested a second opinion or consultation with a specialist to explore treatment options for his injury. The insurer was taking the position that, because the employee’s treating doctor had no further treatment recommendations, there was no need for further evaluation. The mediator in that case facilitated an agreement that the employee could have a consultation with a different specialist – one the parties mutually agreed to use.

Practice tip: Avoid expensive delays by always serving notice of right to intervene on all potential intervenors early enough so the statutory intervention period (see Minnesota Statutes § 176.361, Subd. 2) will have elapsed by the time an administrative conference is scheduled.

Depending on the circumstances, an injured worker or their health care provider may have standing to file a medical request to have their dispute heard at an administrative conference. The employer/insurer’s *reason* for denial of a medical benefit dictates the options available to either the employee or the provider. Simply put, the employee can file a medical request as long as the insurer has not denied primary liability for the injury. Providers may not bill the employee directly if their bill was reduced or denied due to excessiveness (of either the treatment or the billing rate), but they may file a medical request under that circumstance. These options are shown in the following chart.

Why is payment denied or reduced?	Who may the provider bill for denied, reduced amount?	What dispute resolution form may the employee file?	What dispute resolution form may the provider file?
Primary liability	Patient or health carrier	Claim Petition	Intervention*
Causation	Patient or health carrier	Medical Request**	Intervention*
Medical necessity	No one	Medical Request**	Intervention or Medical Request
Treatment parameters	No one	Medical Request**	Intervention or Medical Request
Fee schedule reduction	No one	Medical Request**	Intervention or Medical Request

*Provider can *intervene* in a proceeding brought by the patient/injured worker to establish his/her claim or to secure payment of medical bills.
 **A Claim Petition form is filed instead of a Medical Request form if primary liability is denied or monetary benefits are also claimed.

Conclusion

The Workers’ Compensation Division offers a variety of alternative dispute resolution services designed specifically to resolve medical issues before they become costly litigated matters. In an age when medical expenses have outstripped indemnity benefits as a cost-driver in workers’ compensation cases⁴, the need for informal and efficient dispute resolution services is greater than ever. The division is committed to continue to meet new challenges with innovative dispute resolution strategies as the medical dispute environment continues to evolve.

⁴DLI Research and Statistics. *Minnesota Workers’ Compensation System Report, 2009*; Minnesota Department of Labor and Industry (June 2011), www.dli.mn.gov/RS/PDF/wcfact09.pdf.

DLI mediation service helps parties work together toward compromise

By Tom Germscheid and Amy Borgeson, Mediator/arbitrators, Alternative Dispute Resolution

History and capability

The Department of Labor and Industry (DLI) mediation program has operated successfully since 1983. It was initiated as part of major reform in response to concerns about high insurance costs.¹ Since then, the program has grown and today DLI's mediation services are widely used by parties to workers' compensation cases, to address everything from small issues to global settlements involving complex and multi-party litigated claims.²

Mediation is a problem-solving approach allowing both sides to maintain control and achieve a compromised and certain outcome. A successful outcome is never guaranteed if a dispute goes to a hearing, and the outcome comes at a price. For the employers and insurers that price is primarily the cost of litigation; for the injured worker the price is the financial hardship, emotional turmoil and frustration endured during pending litigation.

DLI's experienced staff of mediators includes former workers' compensation trial attorneys (both claimant and defense) and former judges (workers' compensation and district court), as well as people with nursing, vocational rehabilitation and claims adjusting backgrounds. (For more detail, see page II.)

Statutory authority/mandate

- Minnesota Statutes § 176.261 requires the department to "... make efforts to settle problems of employees and employers by contacting third parties, including attorneys, insurers and health care providers, on behalf of employers and employees and using the department's persuasion to settle issues quickly and cooperatively."
- Minnesota Statutes § 176.521 authorizes the commissioner at DLI to approve settlement agreements. This authority is delegated to the mediators.
- Minnesota Rules 5220.2670, Mediation, describes the details concerning DLI's mediation and conciliation process.

Expanding mediation to address escalating costs, disputes

In 2008, the Alternative Dispute Resolution (ADR)³ unit initiated a project to strategically expand the use of mediation to address escalating workers' compensation costs and disputes.⁴ At that time, dispute rates in Minnesota's workers' compensation system were increasing at disturbing rates.⁵ There were fewer mediations and

¹See Neigh, Charlotte. "Mediation of Workers' Compensation Claims: Benefit Disputes and Close-outs." Minnesota Institute of Legal Education CLE (August 1987).

²OAH added its own workers' compensation mediation program in 2008. OAH is an independent state agency, separate from DLI, formed in 1976 to adjudicate administrative disputes and proceedings.

³Previously known as the Benefit Management and Resolution unit.

⁴DLI Research and Statistics. *Minnesota Workers' Compensation System Report, 2009*; Minnesota Department of Labor and Industry (June 2011), www.dli.mn.gov/RS/PDF/wcfact09.pdf.

⁵DLI Research and Statistics. *Minnesota Workers' Compensation System Report, 2006*; Minnesota Department of Labor and Industry (July 2008), www.dli.mn.gov/RS/PDF/wcfact06.pdf.

settlement conferences to address disputes from 1999 to 2006. Also, there were increased trials at the Office of Administrative Hearings (OAH) and administrative conferences at the Department of Labor and Industry.⁶

The trend in rising dispute rates continued through 2009 with indemnity dispute rates up 40 percent and the medical dispute rate up 136 percent.⁷

The objectives of the 2008 plan were to:

- increase the number of disputes resolved;
- reduce the time frame for resolving disputes; and
- increase the number of resolutions occurring early in the life cycle of disputes.

Education and outreach has been a key component of the project. Department of Labor and Industry ADR unit mediators developed and conducted training for stakeholders to encourage the use of alternative dispute resolution strategies, including mediation, as soon as possible after a dispute is identified.

The plan is working. The following statistics are taken from the *Minnesota Workers' Compensation System Report, 2008*, available at www.dli.mn.gov/RS/PDF/wcfact08.pdf.

The numbers of administrative conferences and mediations at DLI have increased since 1999. Administrative conferences peaked in 2006 and mediations in 2009.

- From 1999 to 2010:
 - administrative conferences rose by 400;
 - mediations rose by 260;
 - total conferences and mediations increased by 660; and
 - the number of agreements via mediation or administrative conference was 630 for 2010, up from 560 for 1999, but down from the peak of 890 for 2009, and these agreements rose substantially after 2006, coinciding with an increased DLI emphasis on early dispute resolution.

Identifying cases for mediation

Factors to consider when determining if the early initiation of mediation is feasible include:

- whether the parties are emotionally ready and motivated to resolve the dispute; and
- whether sufficient information has been received to properly evaluate the claim.

Parties should also consider “turning points” or changes in the dynamics of a dispute when determining when to mediate. Turning points are specific times, events or results that can influence resolution, such as a deadline for filing an answer or response, scheduled depositions, deadlines for filing motions and/or the trial calendar.⁸

New, enhanced features of DLI mediation

While in-person meetings are normally the most effective way to conduct mediations, the location of the parties and time constraints do not always make that possible. DLI staff members may conduct mediations by telephone, fax, email and teleconferencing, whatever is appropriate to accommodate the parties' needs.⁹

⁶During the period from 2001 to 2007, settlement conferences at OAH decreased 19 percent while the number of trials increased 8 percent. The number of mediations at DLI fell 3 percent from 1999 to 2007, and total resolutions by agreement of the parties at DLI fell 2 percent during the same period. *Minnesota Workers' Compensation System Report, 2009*.

⁷*Minnesota Workers' Compensation System Report, 2009*.

⁸For additional information see: *COMPACT* (DLI's quarterly newsletter for workers' compensation (DLI professionals), February 2007, www.dli.mn.gov/WC/PDF/0207c.pdf).

⁹For details see: *COMPACT* (DLI's quarterly newsletter for workers' compensation professionals), February 2010, www.dli.mn.gov/WC/PDF/0210c.pdf.



As in the case of its administrative conferences and other processes, DLI aims to make its mediation service easy to use and accessible to all parties. Mediation sessions can be arranged within days or even hours of a request. An interpreter may be arranged by DLI, if requested far enough in advance. Like the mediation itself, this service is provided at no cost to the parties.



How to request mediation and scheduling

DLI's mediation services are available to the parties at any stage of a dispute, regardless of whether a case is in litigation. The only requirement is the parties' desire to mediate, since it is a voluntary process. A mediator can usually be made available to handle a mediation the same day the party calls for assistance, and almost always within days. Whether a specific mediator is available depends on his or her schedule, however.

Scheduling may be completed by an ADR unit office administrative specialist (call (651) 284-5326) or directly by the mediator (see contact information on page 30). Either way, the parties are consulted to find a mutually agreeable date. If the date is far enough out, a formal notice will be sent to all participants by U.S. mail, otherwise it may be finalized via email.

Process and procedure, flexibility and control

Minnesota Rules Part 5220.2670 outlines the process and requirements for mediation, including the request/referral to the mediation unit, the agreement to mediate, the mediation resolution and the mediation award.

DLI mediators facilitate the negotiations and give "ownership" of it to the parties. How long the mediation will take depends on a number of factors, including the complexity of the case and whether any negotiations have begun prior to the mediation. Generally, DLI mediators like to schedule three or four hours, but can conclude the mediation within two hours; occasionally, a complicated mediation may take the better part of a day or it may even have to be continued to another date.

Mediation is *voluntary* and gives all parties the most *control* and *flexibility* of the details of the process and the final outcome. Every mediation is as unique as the issues and the parties involved. DLI mediations result in resolution about 80 percent of the time.

Award upon mediation resolution or upon stipulation

If the parties reach agreement about the issues, they will choose whether to have the agreement memorialized in a Mediation Award, a Mediation Award incorporating a settlement or a Stipulation for Settlement to be approved by a compensation judge at OAH.

Recent trends: increased medical disputes between health care providers and insurers

If similar issues are present with the same parties for a number of cases, multiple cases can be mediated together. Increased numbers of medical disputes involving primarily insurers and medical providers have provided challenges and opportunities for mediations of multiple claims.

For example, in a four-hour mediation, a health care provider settled 23 cases involving 23 different patients and five different insurers. Subsequently, DLI conducted a two-day mediation in St. Paul, Minn., that resulted in the settlement of more than 75 medical bills for about 75 different employees, from one health care provider and involving about 10 different insurers or third-party administrators. DLI also conducted a two-day mediation in outstate Minnesota, involving another health care provider and multiple insurers in which numerous issues were resolved for more than 40 claims.

DLI mediation program receives positive feedback

In 2010, the Department of Labor and Industry gathered feedback from its mediation customers from March 22 through May 21. The feedback indicates mediation service participants were generally very pleased with their experience; 84 percent of respondents rated their experience as excellent.¹⁰

Many attorneys are making increasing use of DLI mediators and also reported they are happy with the process and results. The department received the following feedback in October 2010.

A staff attorney for insurer SFM

This is the 11th difficult case in a row my client has successfully settled with your assistance at mediation. This avoided protracted and expensive litigation. In these tough budget times, I wish to share with you that your mediation practice at DLI is quickly becoming one of my first recommendations to my clients. I have been able to get a quick mediation date and you have put my clients at ease with your approachable style and level of preparedness. My clients have shared, more than once, how impressed they have been with your free service and success rate. Also, as my schedule gets tougher to time manage, you have consistently achieved these results in three hours or fewer, which is remarkable given the complexity of these cases.

– Beth Giebel; Lynn, Scharfenberg & Associates

A lawyer for a law firm from Minneapolis that primarily represents employees

I have recently begun to use the mediation services at DLI more frequently than in the past. I have always found the mediation services at DLI to be efficient in scheduling my cases, the mediators expertly prepared despite the complications with being so and the results very satisfactory. I will certainly be scheduling as many cases as possible for mediation with DLI in the future.

– Carl Sommerer; Sommerer and Schultz, PA

A member of a law firm in Greater Minnesota that primarily represents employees

My name is Michael Garbow and I am an attorney with the Rodgers, Garbow & Jelokov law firm in Bemidji, Minn. Approximately 80 percent of our law firm's business is dedicated to workers' compensation. I have utilized mediation services at DLI on approximately 25 to 30 cases. Of those cases, approximately 90 to 95 percent have settled. I have found the staff at DLI to be extremely knowledgeable and helpful in reaching settlements. There have been times when the agreement to mediate was at the last moment before trial and the DLI staff was able to accommodate the defense attorney and me, and get the case mediated before trial. We are extremely thankful to DLI for the free mediation services. The ability to either have the mediator in our office in Bemidji or via video conference is invaluable.

– Michael Garbow, Rodgers, Garbow & Jelokov

¹⁰See further details in *COMPACT* (DLI's quarterly newsletter for workers' compensation professionals), August 2010, www.dli.mn.gov/WC/PDF/0810c.pdf, p. 9: A customer feedback form was distributed to 84 participants who completed the 12-item feedback form. The respondents were distributed among four groups: injured workers, their attorneys, employers and employers' representatives; and insurance company representatives. The results were compiled and analyzed by DLI Research and Statistics.

Trends in disputes and DLI dispute resolution

By David Berry, Research and Statistics

This article presents trend data about disputes and dispute resolution in Minnesota’s workers’ compensation system. Except where otherwise noted, the statistics are from the DLI workers’ compensation claims database. Where the statistics are by year of injury, they are projected to full claim maturity for comparability across injury years.¹

Dispute rates

Perhaps the best barometer of the extent of workers’ compensation disputes is the overall dispute rate, defined here as the percentage of filed indemnity claims with at least one dispute of any type.² Between 1997 and 2009, the overall dispute rate increased from 15.4 percent to 21.6 percent, a 40-percent increase (Figure 1).³ During the same period:

- the rate of claim petitions rose 4.6 percentage points (40 percent);
- the rate of discontinuance disputes rose 1.4 points (21 percent);⁴
- the rate of medical requests rose 5.5 points (144 percent);
- the rate of rehabilitation requests rose 3.1 points (87 percent); and
- the rate of formal litigation rose 4.6 points (33 percent).

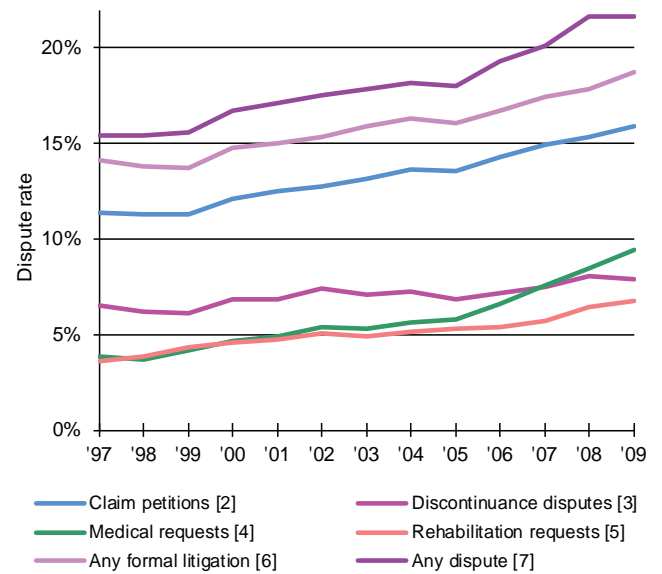
Disputes filed

Figure 2 shows the trends in actual numbers of dispute filings by type. Although claim petitions and discontinuance disputes are under the jurisdiction of the Office of Administrative Hearings (OAH), they are shown along with medical and vocational rehabilitation requests for context.

From 1997 to 2010:

- claim petitions fell 20 percent;
- discontinuance disputes fell 33 percent;

Figure 1
Incidence of disputes, injury years 1997-2009 [1]



Injury year	Dispute rate					
	Claim petitions [2]	Discontinuation disputes [3]	Medical requests [4]	Rehabilitation requests [5]	Any formal litigation [6]	Any dispute [7]
1997	11.3%	6.5%	3.9%	3.6%	14.1%	15.4%
1999	11.3%	6.1%	4.2%	4.3%	13.7%	15.6%
2005	13.5%	6.8%	5.8%	5.3%	16.1%	18.0%
2006	14.3%	7.2%	6.6%	5.3%	16.7%	19.3%
2007	14.9%	7.5%	7.6%	5.7%	17.4%	20.1%
2008	15.3%	8.0%	8.4%	6.4%	17.9%	21.6%
2009	15.9%	7.9%	9.4%	6.7%	18.7%	21.6%

1. Data from DLI. Numbers are projected to full maturity.
2. Percentage of filed indemnity claims with claim petitions. (Filed indemnity claims are claims for indemnity benefits, whether ultimately paid or not.)
3. Percentage of paid wage-loss claims with discontinuance disputes. A discontinuance dispute may be initiated by the employee’s request for administrative conference (in response to employer’s proposed discontinuance), the employee’s objection to discontinuance or the employer’s petition to discontinue benefits.
4. Percentage of paid indemnity claims with medical requests.
5. Percentage of paid indemnity claims with rehabilitation requests.
6. Percentage of filed indemnity claims with disputes that lead to a hearing at the Office of Administrative Hearings (unless the parties settle beforehand). These disputes include claim petitions, requests for formal hearing, objections to discontinuance, petitions to discontinue benefits, petitions for permanent total disability benefits and petitions for dependency benefits.
7. Percentage of filed indemnity claims with any disputes.

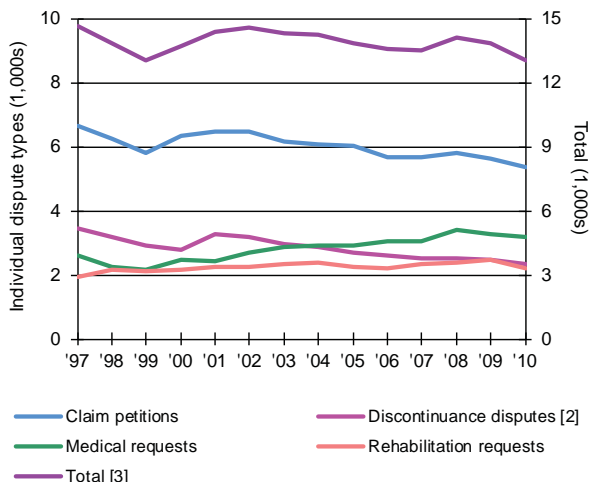
¹This is done with projection factors computed from observed rates at which statistics for individual injury years develop over time. The “developed” statistics are through injury year 2009. Other statistics in this article are through 2010. This is because they are counted in some way other than year of injury (e.g., year of dispute filing) and, therefore, are simply tabulated without a need for development.

²A filed indemnity claim is a claim for indemnity benefits, whether paid or not. Indemnity benefits are benefits paid to the injured worker or survivors to compensate for wage-loss, permanent impairment or death.

³A “percent increase” means the proportionate increase in the initial percentage, not the number of the percentage points of increase. For example, an increase from 10 percent to 15 percent is a 50-percent increase.

⁴See note 3 in Figure 1.

Figure 2
Disputes filed, 1997-2010 [1]



Calendar year filed	Claim petitions		Discontinuance disputes [2]		Medical requests		Rehabilitation requests		Total [3]
	Number	Pctg. of total	Number	Pctg. of total	Number	Pctg. of total	Number	Pctg. of total	
1997	6,660	46%	3,430	23%	2,580	18%	1,940	13%	14,620
2001	6,450	45	3,250	23	2,410	17	2,250	16	14,360
2006	5,650	42	2,620	19	3,050	23	2,220	16	13,540
2007	5,650	42	2,490	18	3,050	23	2,320	17	13,520
2008	5,800	41	2,520	18	3,380	24	2,400	17	14,100
2009	5,610	41	2,480	18	3,250	24	2,460	18	13,800
2010	5,360	41	2,310	18	3,180	24	2,210	17	13,060

1. Data from DLI. Numbers rounded to nearest 10.
 2. A discontinuance dispute may be initiated by the employee's request for administrative conference (in response to employer's proposed discontinuance), the employee's objection to discontinuance or the employer's petition to discontinue benefits.
 3. Total of dispute types shown here.

- medical requests rose 23 percent;
- rehabilitation requests rose 14 percent; and
- the total number of these disputes fell 11 percent.

These trends are the net result of rising dispute rates (Figure 1) and falling numbers of claims. For example, while the number of filed indemnity claims fell 39 percent from injury year 1997 to 2009 (not shown in figure), the total number of disputes fell relatively little because of the 40-percent increase in the overall dispute rate (Figure 1).⁵

By 2010, medical requests constituted 24 percent of all disputes filed, up from 18 percent in 1997, while vocational rehabilitation requests, made up 17 percent, up from 13 percent at the beginning of the period.

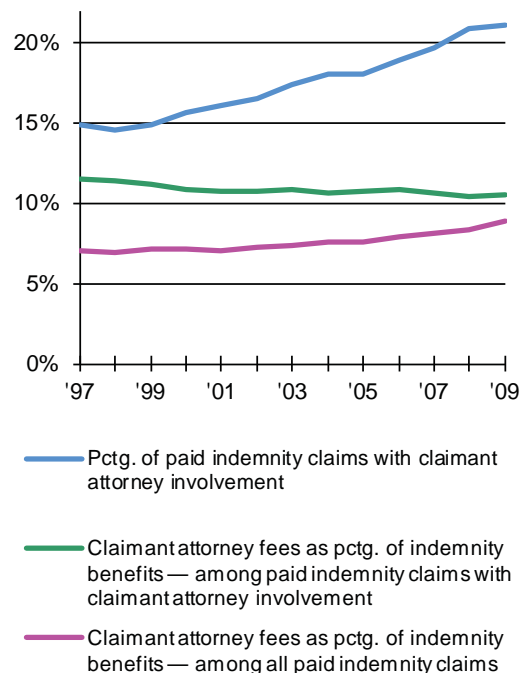
Claimant attorney involvement

Another indicator of the extent of disputes is the extent of attorney involvement. Claimant attorney involvement has increased substantially since 1997 (Figure 3).⁶

⁵These three changes are not strictly comparable because the dispute rate and the number of filed indemnity claims are by year of injury while the number of disputes is by year of dispute filing. The total number of disputes filed fell 6 percent between 1997 and 2009.

⁶DLI does not have data about defense attorney involvement.

Figure 3
Claimant attorney fees paid with respect to indemnity benefits, injury years 1997-2009 [1]

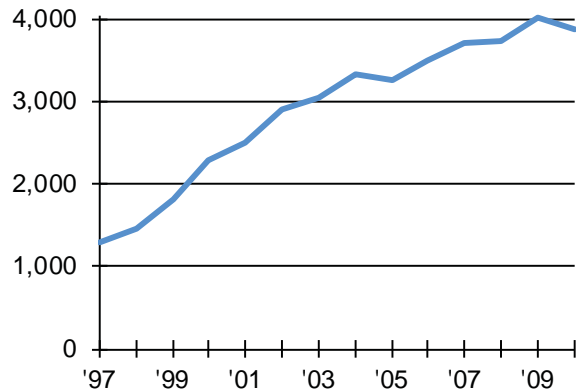


Injury year	Percentage of paid indemnity claims with claimant attorney involvement	Claimant attorney fees as pctg. of indemnity benefits	
		Among paid indemnity claims with claimant attorney involvement	Among all paid indemnity claims
1997	14.9%	11.5%	7.0%
2005	18.0	10.7	7.5
2006	18.9	10.9	7.9
2007	19.7	10.6	8.1
2008	20.8	10.4	8.3
2009	21.1	10.5	8.9

1. Data from DLI. Numbers are projected to full maturity. Claimant attorney fees counted here are those determined as a percentage of indemnity benefits plus additional amounts awarded to the claimant attorney upon application to a judge. Roraff and Heaton fees are not counted. A claimant attorney is deemed to be involved if claimant attorney fees are reported.

- From 1997 to 2009, the percentage of paid indemnity claims with claimant attorney involvement⁷ rose from 14.9 percent to 21.1 percent, a 42-percent increase. This parallels the increase in the dispute rate.
- From 1997 to 2009, claimant attorney fees rose from 7.0 percent of total indemnity benefits to 8.9 percent.
- Under statute, claimant attorney fees are limited to 25 percent of the first \$4,000 of disputed benefits and 20 percent of the next \$60,000, for a maximum of \$13,000 in fees.⁸ On an award of \$50,000, for example, the attorney fee under this formula is \$10,200 (25 percent of \$4,000 plus 20 percent of \$46,000), reducing the net award to the claimant to \$39,800.
- Total claimant attorney fees are estimated at \$41 million for injury year 2009. This represents 3.0 percent of total workers' compensation system cost for that year.

Figure 4
Dispute certification requests filed, 1997-2010 [1]



Calendar year	Requests filed
1997	1,290
2006	3,500
2007	3,700
2008	3,740
2009	4,010
2010	3,870

¹. Data from DLI. Numbers rounded to nearest 10.

Demand for DLI dispute resolution services

Part of the demand for DLI dispute resolution services takes the form of informal requests relating to issues or potential disputes before a dispute certification request or a medical or vocational rehabilitation request is filed. Although this component of demand is substantial, it is difficult to gauge, and no measure is presented here.⁹

Beyond that early stage, the demand for DLI dispute resolution services can be measured by the numbers of dispute certification requests and medical and vocational rehabilitation requests.¹⁰ The trends in medical and vocational rehabilitation requests are shown in Figure 2 above. Another potential measure is the number of requests for mediation; this latter measure is not presented here, but Figure 6 below shows the trend in mediations at DLI.

Dispute certification requests

There were 3,870 dispute certification requests in 2010, up from 1,290 in 1997; the 2010 number was slightly down from the peak of 4,010 in 2009 (Figure 4). These requests constitute only part of the demand for dispute certification at DLI because certification also occurs in response to a medical or vocational rehabilitation request if a certification request is not filed.

Dispute certification

There were nearly twice as many dispute certification decisions in 2010 as in 1999. The 6,720 certifications for 2010 were slightly down from the peak of 6,900 for 2009 (Figure 5).

- This parallels the trend in certification requests over the same period (Figure 4). (The number of certification decisions is greater than the number of certification requests because many medical and

⁷See note 1 in Figure 3.

⁸Minnesota Statutes § 176.081, subd. 1.

⁹Phone call statistics would be an unreliable measure because some calls are for information where there is no issue per se, while others pertain to issues that may develop into disputes.

¹⁰See elsewhere in this edition for a description of the DLI dispute certification process. As described, OAH has jurisdiction in medical and vocational rehabilitation disputes if primary liability is at issue, and in medical disputes if the disputed amount is more than \$7,500.

rehabilitation requests are not accompanied by certification requests, but dispute certification still occurs in those cases.)

- Between 1999 and 2010, the percentage of disputes certified fell from 66 percent to 52 percent. This was primarily attributable to an increase in the percentage of disputes not certified because they were resolved.

The large increases in 2007 and 2008 in disputes not certified because they were resolved coincided with changes made during that time at DLI: earlier identification of dispute resolution opportunities, greater emphasis on early dispute resolution and more active management of the dispute resolution process.

Mediations and administrative conferences at DLI

In 2010, DLI conducted 1,200 administrative conferences and 550 mediations (Figure 6). These numbers are up substantially from 1999, which is expected in view of the increases in medical and vocational rehabilitation requests during the same period (Figure 2). Another contributing factor is that the 2005 Legislature increased the monetary threshold between DLI and OAH jurisdiction in medical disputes from \$1,500 to \$7,500.¹¹ Administrative conferences in 2010 were down slightly from their peak in 2006; mediations were down from their peak in 2009.

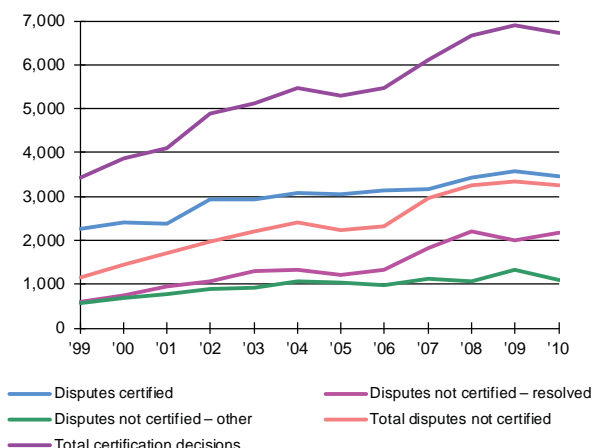
- The increase in mediation activity after 2006 coincides with the increased emphasis at DLI on mediation and other early dispute resolution activities.

Resolutions by agreement at DLI

DLI achieved 3,490 resolutions by agreement in 2010, slightly more than in 1999 (Figure 7).

- Most of these resolutions (e.g., 2,860 in 2010) took the form of resolutions by intervention, either during or after the dispute certification process but before mediation or conference. Resolutions by intervention were about the same in 2010 as in 1999.
- About 630 agreements via mediation or conference occurred in 2010, an increase from 560 in 1999.

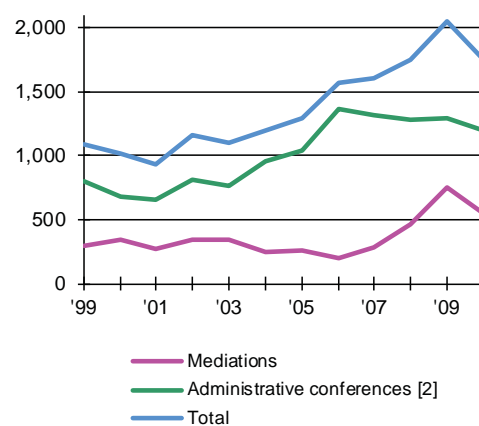
Figure 5
Dispute certification activity at the Department of Labor and Industry, calendar years 1999-2010 [1]



Calendar year	Disputes certified		Disputes not certified						Total certification decisions
	Number	Pctg. of total	Resolved		Other reasons		Total not certified		
			Number	Pctg. of total	Number	Pctg. of total	Number	Pctg. of total	
1999	2,270	66%	590	17%	570	17%	1,150	34%	3,420
2001	2,370	58	950	23	770	19	1,720	42	4,090
2006	3,140	58	1,340	25	980	18	2,310	42	5,460
2007	3,160	52	1,830	30	1,120	18	2,960	48	6,110
2008	3,420	51	2,200	33	1,060	16	3,260	49	6,680
2009	3,560	52	2,000	29	1,330	19	3,340	48	6,900
2010	3,470	52	2,170	32	1,080	16	3,250	48	6,720

¹ Data from DLI. Data not available before 1999. Numbers rounded to nearest 10.

Figure 6
Mediations and administrative conferences at the Department of Labor and Industry, 1999-2010 [1]



Calendar year	Admini- strative con- ferences [2]		Total
	Mediations		
1999	290	800	1,090
2006	200	1,360	1,560
2007	280	1,320	1,600
2008	460	1,280	1,740
2009	750	1,290	2,040
2010	550	1,200	1,750

¹ Data from DLI. Data not available before 1999. Numbers rounded to nearest 10.

² Includes conferences where agreement was reached.

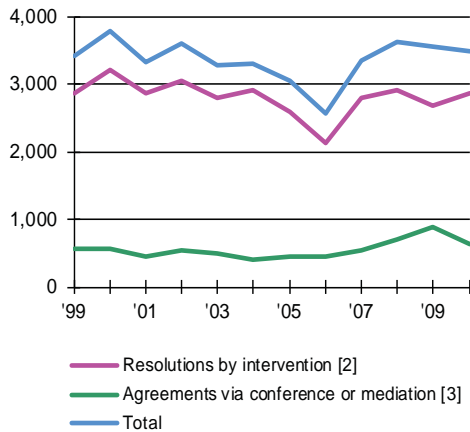
¹¹DLI refers medical disputes above this threshold to OAH.

Total resolutions at DLI

The total number of resolutions at DLI increased from 3,950 in 1999 to 4,520 in 2010 (Figure 8).

- Most of this increase was accounted for by an increase in decision-and-orders, which rose from 530 in 1999 to 1,030 in 2010.

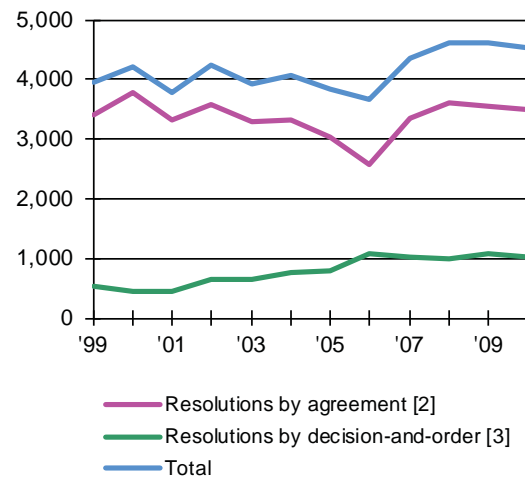
Figure 7
Resolutions by agreement at the Department of Labor and Industry, 1999-2010 [1]



Calendar year	Resolutions by intervention [2]	Agreements via mediation or conference [3]	Total
1999	2,860	560	3,420
2006	2,120	450	2,570
2007	2,800	550	3,350
2008	2,910	700	3,620
2009	2,670	890	3,550
2010	2,860	630	3,490

1. Data from DLI. Data not available before 1999. Numbers rounded to nearest 10.
2. These are instances in which a DLI specialist, through phone or walk-in contact or correspondence, resolved a dispute prior to a mediation or conference. Many of these resolutions occur through the dispute certification process.
3. These include mediation awards and other agreements.

Figure 8
Total resolutions at the Department of Labor and Industry, 1999-2010 [1]



Calendar year	Resolutions by agreement [2]		Resolutions by decision-and-order [3]		Total
	Number	Pctg.	Number	Pctg.	
1999	3,420	87%	530	13%	3,950
2005	3,040	79	800	21	3,840
2006	2,570	70	1,080	30	3,650
2007	3,350	77	1,010	23	4,350
2008	3,620	79	990	21	4,600
2010	3,490	77	1,030	23	4,520

1. Data from DLI. Data not available before 1999. Numbers rounded to nearest 10.
2. From Figure 7.
3. Almost all of these are from an administrative conference. A very small number occur without a conference.

Alternative dispute resolution: Past, present and future

By Mark McCrea, Supervisor, Alternative Dispute Resolution

As the Department of Labor and Industry (DLI) looks ahead, it faces many increasing challenges, affected by many factors, including an economic situation that has not been seen since the Great Depression. Other current challenges include escalating benefit costs, changing litigation and dispute management practices, and demands from stakeholders for more efficient, cost-effective, dispute resolution outcomes.

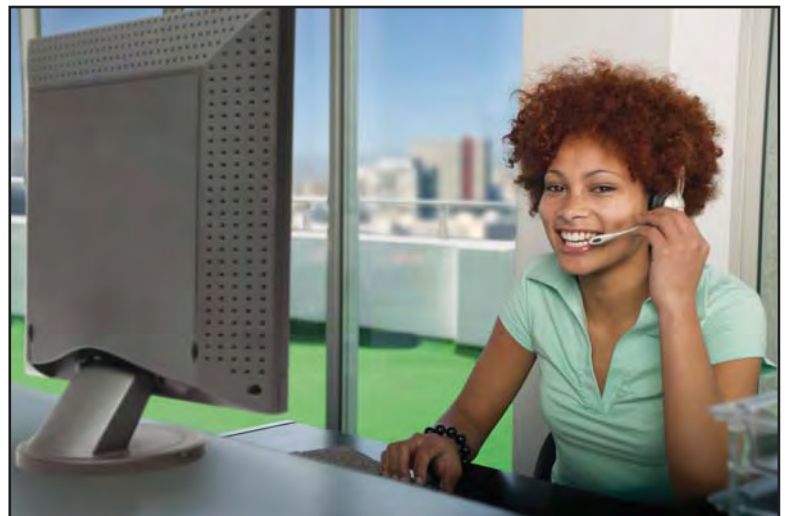
During the past several years, the Alternative Dispute Resolution (ADR) unit of the Workers' Compensation Division of DLI has implemented strategies and innovations that have been successful in preventing and resolving disputes between parties and stakeholders involved with workers' compensation claims. Other parts of this publication illustrate the details of the ADR unit's work and recent statistics about successful outcomes achieved in a timely fashion.

ADR processes should help employees promptly obtain the benefits they have coming and resolve disputed claims without any unnecessary delay and without the cost of formal litigation. It may be helpful first to look back – and then look ahead – to evaluate ADR options and services for the future.

Evolution of alternative dispute resolution

Alternative dispute resolution generally refers to a number of processes other than formal hearings, used by parties to resolve legal disputes. It is based on the assumption that many disputes stem from a lack of information, differing perceptions, unclear expectations, miscommunication and other factors. Alternative dispute resolution processes emphasize the use of informal communications, direct negotiation, facilitation, arbitration, neutral evaluation and mediation as problem-solving tools to address the perceived needs of disputing parties. These processes are generally less costly and faster than traditional legal proceedings; provide the parties with greater participation in reaching a solution; and can provide the parties with more control over the outcome.

DLI has provided some form of alternative dispute resolution services in Minnesota's workers' compensation system since 1920. Early intervention services have historically been a key component of the Workers' Compensation Division's mission, as designated in Minnesota Statutes § 176.001, to assure, in an equitable and impartial manner, the quick and efficient delivery of benefits to injured workers at a reasonable cost to employers.



Currently, these services include informal assistance, dispute certification processing, administrative conferences and mediation sessions. The objective of the alternative dispute resolution services provided by DLI are to reduce the economic consequences of disputes for employees and employers by increasing the number of disputes resolved, reducing the time frame for resolving disputes and increasing the number of resolutions occurring early in the life cycle of disputes.

Mediation is also provided by other key entities in the Minnesota workers' compensation system, including the Office of Administrative Hearings, the Union Construction Workers' Compensation Program and a number of private dispute resolution practitioners.



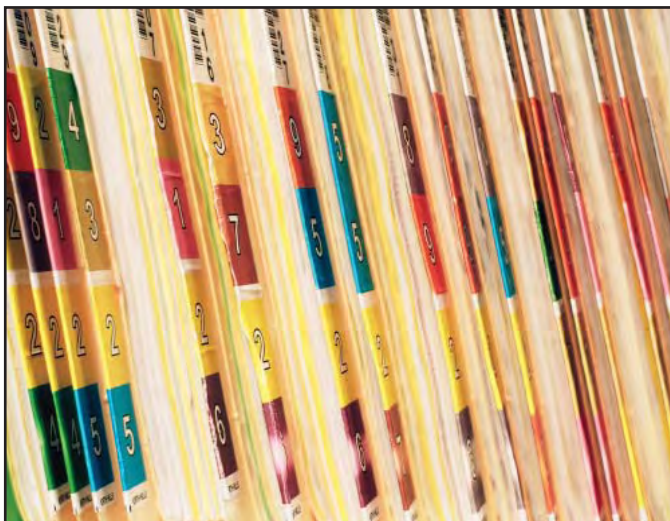
Systemic challenges

The demand for alternative dispute resolution in Minnesota's workers' compensation system is likely to continue to expand as disputes and system costs continue to increase.

According to the *Minnesota Workers' Compensation System Report, 2009*, from 1997 to 2008, average indemnity benefits per insured claim increased 39 percent while average medical benefits increased 94 percent, after adjusting for average wage growth. The Office of the Legislative Auditor's 2009 report, *Oversight of Workers' Compensation*, indicated the proportion of claims in which workers and insurers have disputes is increasing.

Large numbers of disputes in Minnesota's workers' compensation system grow out of a lack of communication; insufficient efforts by the parties to determine if issues are actually disputed; insufficient efforts by the parties to evaluate the merits of claims; disagreements exclusively between health care providers and insurers regarding the reasonable value of treatment provided to employees; and serious acrimony between employees and employers regarding workplace issues not directly related to claims.

Early dispute resolution activity is not a panacea for all of these issues nor is early resolution appropriate for all disputed claims. For a significant number of disputed claims, formal judicial determinations are essential to establish needed precedents; to effectively address patterns of unlawful practices; to reconcile complex factual and legal issues; and to correct patently unfair outcomes. Some disputes are best resolved through discovery and litigation.



However, for many claims, the unique structure of the statutory workers' compensation dispute resolution system in Minnesota provides ample opportunities for stakeholders and authorities to better use existing processes to resolve legal disputes. All stakeholders have access to DLI's workers' compensation dispute resolution processes, regardless of: when the claim originated; whether the claim has been filed; whether the claim has been formally disputed; and whether the stakeholder has proficiency in the English language. The current system encourages the resolution of some disputes at the earliest possible time and at the lowest possible level, and it offers a highly skilled array of alternative dispute resolution neutrals at DLI to conduct dispute resolution interventions.

That said, the system report and Legislative Auditor's report noted above suggest the workers' compensation dispute resolution system needs to improve to address the real-time concerns of employees and employers. Any improvements should be based on statistically significant input from stakeholders and sound empirical data establishing a collaborative and evidence-based framework for any decisionmaking that occurs. Key questions to be addressed when establishing this framework include the following.

- What is the impact of disputes on employees and employers?
- What are the key characteristics of disputed claims and of claims that are not disputed?
- When do most disputes resolve?
- Which disputes require a formal adjudication process for resolution and which do not?
- What are the most cost-effective dispute resolution processes?
- Does dispute resolution reduce system costs?
- Does dispute resolution increase the satisfaction of parties, stakeholders and others involved?



Future system innovation

Alternative dispute resolution systems are not merely low-cost substitutes for traditional court systems; modern systems process disputes as dynamic phenomena involving issues that may transcend narrowly defined legal principles.

Modern systems attempt to prevent disputes by:

- upgrading the conflict management skills of participating stakeholders;
- demystifying conventional litigation and claim settlement practices for employees and employers;
- providing stakeholders with more viable tools to manage their own disputes;
- establishing multiple access points for entering the dispute resolution system;
- coordinating the disputant resolution efforts of regulatory and judicial authorities;
- eliminating unnecessary jurisdictional requirements; and
- channeling more disputes into problem-solving processes earlier in the life cycle of disputes.

In essence, modern alternative dispute resolution systems emphasize the initiation of problem-solving processes and interventions closer in time to the actual emergence of disputes.

One example of a recent trend is the proliferation of disputes between health care providers and insurers regarding the reasonable value of treatment provided. These issues represent a relatively new dynamic in the Minnesota workers' compensation system. Typically, these disputes are initiated by health care providers and involve payment for various types of services or supplies under the workers' compensation law. This type of dispute is typically triggered when bill review agencies audit the billings for insurers and make payments the health care providers believe are less than what they should receive.

Employees are not direct participants because there are generally no issues of reasonableness, necessity or causation concerning treatment. The potential future volume of these disputes alone could easily eclipse the combined volume of disputes primarily involving employees and insurers. Some of these disputes involve blocks of 50 or more claims. During the past three years, the ADR unit has successfully resolved hundreds of these disputes using mediation and a variety of other interventions. One two-day mediation in 2010 resulted in complete resolution of more than 75 medical dispute claims involving a single health care provider, but more than 70 different employee claims and at least 12 worker' compensation insurers.

However, the identification and resolution of these types of disputes raised unique processing issues that are difficult to address within the context of the current worker's compensation procedural framework. The current system is designed to process all claims on a "per case" basis. In other words, all claims are associated with a single individual's file and date of injury.

Consolidation of individual worker's claims in any fashion presents data privacy issues. Both substantive and procedural changes might be explored to identify the best way in which these particular types of claims could be initiated and handled more efficiently.

DLI's dispute resolution system could be modernized by evaluating and implementing all or some of the following: an integrated conflict management system; online dispute resolution and electronic filing capabilities; large group dispute resolution processes; arbitration for health care provider/insurer disputes; and special processes for complex medical disputes.

Conclusion

Considerable progress has been made in alternative dispute resolution in the context of workers' compensation.

However, new challenges exist that require proactive change to enable us to resolve all manner of disputes even more quickly and efficiently in 2011 and beyond. We look forward to partnering with employees, employers, insurers, and medical and rehabilitation service providers to identify, evaluate and implement improved processes and services.



If you have suggestions for DLI's Alternative Dispute Resolution unit and the services it provides, the department would like to hear them. Share your thoughts by calling, writing or stopping by. Contact information for the department and its mediators is provided on page 30. Suggestions are always welcome; help DLI navigate the future.

Suggestions welcome: Help DLI navigate the future



If you have suggestions for DLI's Alternative Dispute Resolution unit and the services it provides, share your thoughts.

Call, write or stop by. Contact information for the department and its mediators is provided on page 30.

Contact information: DLI Alternative Dispute Resolution

Contact	Email address	Phone number
Director		
Christopher Leifeld	christopher.leifeld@state.mn.us	(651) 284-5434
Supervisors		
Mark McCrea	mark.mccrea@state.mn.us	(651) 284-5229
Donna Olson	donna.p.olson@state.mn.us	(651) 284-5301
Mediators		
Sandy Barnes	sandra.barnes@state.mn.us	(651) 284-5214
Amy Borgeson	amy.borgeson@state.mn.us	(651) 284-5231
Walter Bowser	walter.bowser@state.mn.us	(651) 284-5482
Tom Germscheid	thomas.germscheid@state.mn.us	(651) 284-5182
Francisco Gonzalez.....	francisco.gonzalez@state.mn.us	(651) 284-5202
Bill Hauck	william.hauck@state.mn.us	(651) 284-5144
Debra Heisick	debra.heisick@state.mn.us	(651) 284-5268
Lee Keller	lee.keller@state.mn.us	(651) 284-5230
Susan Lauer	susan.lauer@state.mn.us	(651) 284-5485
Keith Maurer	keith.maurer@state.mn.us	(651) 284-5169
Dennis Mitchell	dennis.mitchell@state.mn.us	(218) 733-7816
David Musielewicz.....	david.musielewicz@state.mn.us	(651) 284-5478
Nell Nere	nell.nere@state.mn.us	(651) 284-5483
Susan Whitten	sue.whitten@state.mn.us	(651) 284-5264
Eduardo Wolle	eduardo.wolle@state.mn.us	(651) 284-5360
Mediation scheduler		
Melanie Tischler.....	melanie.tischler@state.mn.us	(651) 284-5326
Fax number		
Alternative Dispute Resolution unit fax number (St. Paul).....		(651) 284-5727





MINNESOTA DEPARTMENT OF
LABOR & INDUSTRY

443 LAFAYETTE ROAD N., ST. PAUL, MN 55155
(651) 284-5005 • 1-800-342-5354 • TTY (651) 297-4198
WWW.DLI.MN.GOV