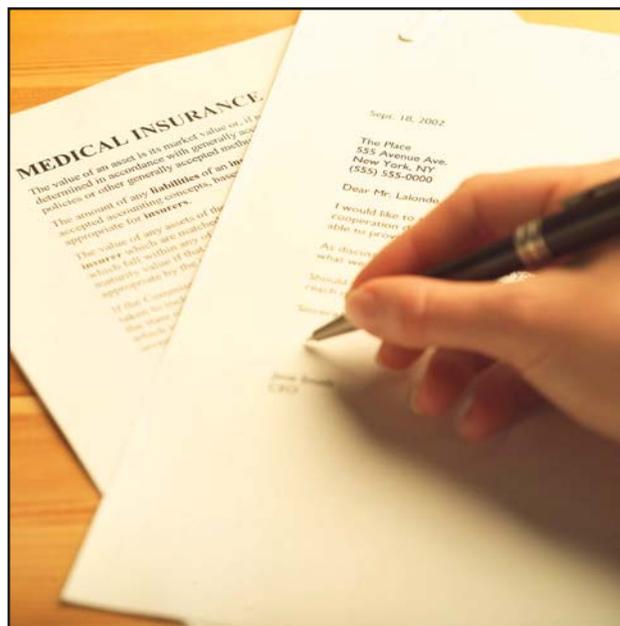


# First report from DLI dispute issue tracking study

By David Berry, Policy Development, Research and Statistics

The Department of Labor and Industry (DLI) has just released *Dispute Issue Tracking Report 1*, the first report from its dispute issue tracking study. A summary of the report follows; the full report is now on the department's Web site at [www.dli.mn.gov/Research.asp](http://www.dli.mn.gov/Research.asp).<sup>1</sup>

Although the DLI workers' compensation database contains a large amount of information to assist in the dispute-resolution process, it does not provide all of the data needed to monitor the performance of that process. In consideration of this, DLI began an issue-tracking project in the fall of 2006. The project tracks individual dispute issues through the dispute-resolution system, using a database and coding structure separate from the main DLI database. The coded data comes primarily from imaged documents in the DLI database, but also from an electronic log of dispute-resolution activities. The project has been tracking medical and rehabilitation disputes filed in 2003 and in 2007, and claim petition disputes filed in 2003.



The first report from the project deals with medical disputes filed in 2003 and 2007. It analyzes the paths of the issues in those disputes through the resolution process at DLI and the Office of Administrative Hearings (OAH). It also analyzes the time it takes for the issues to travel the different paths.

Following are some of the main findings for the 2003 and 2007 medical disputes.

## Dispute characteristics

- Some 77 percent of the 2003 disputes and 82 percent of the 2007 disputes involved sprains, strains, tears and pain. This compares with 54 to 60 percent of all workers' compensation paid indemnity claims for injury years 2003 through 2007. This difference is to be expected because this type of injury is often more difficult to verify than more objective injuries, such as fractures. In addition, there tends to be more diversity of medical opinion regarding appropriate treatment for these types of injuries, giving more latitude for disagreement.
- The two most common services at issue in these disputes were diagnostic imaging and surgery.
- The most common point in dispute in these disputes was causation; the second most common was reasonableness and necessity.

*Dispute study*, continues ...

<sup>1</sup> The report is also available by calling (651) 284-5025. For alternative formats, call 1-800-342-5354 or TTY at (651) 297-4198.

*Dispute study*, continued ...

### **Dispute-resolution activity at DLI**

- The percentage of medical disputes not certified rose from 31 percent to 38 percent between 2003 and 2007. This increase is attributable to a larger percentage of disputes being resolved in the certification process.
- Among certified disputes,<sup>2</sup> the percentage scheduled for an administrative conference at DLI increased from 33 percent to 60 percent between 2003 and 2007, while the percentage referred to OAH fell from 39 percent to 19 percent.
- The total number of disputes referred to OAH fell from 310 per 1,000 to 149 per 1,000 between 2003 and 2007. Most of this change resulted from the 2005 legislated increase from \$1,500 to \$7,500 in the threshold delineating the jurisdictions of DLI and OAH in medical disputes.<sup>3</sup> Some of the change resulted from a decrease in the number of disputes within DLI jurisdiction that were referred on a discretionary basis.
- For disputes with a conference scheduled at DLI, the median time from first medical request to scheduled conference date fell by a third between 2003 and 2007, from 66 days to 44 days.
- Twenty-one percent of scheduled DLI conferences had re-sets for 2003, and 19 percent for 2007. There was a median of 27 days from the originally scheduled date to the re-set date for 2003, and 23 days for 2007.
- Where the scheduled DLI conference was not held, the median time from the medical request to the final dispute-resolution event was as follows.

#### **For 2003 disputes:**

- 61 days where the dispute was resolved informally at DLI;
- 122 days where the final event was an award on stipulation after action at DLI; and
- 347 days where the final event was an award on stipulation after action at OAH.

#### **For 2007 disputes:**

- 49 days where the dispute was resolved informally at DLI; and
  - 98 days where the final event was an award on stipulation after action at DLI.<sup>4</sup>
- Where DLI issued a decision-and-order after a conference, 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.

*Dispute study*, continues ...



<sup>2</sup> In this analysis, disputes not certified because of pending litigation and disputes without a recorded certification decision are counted with certified disputes.

<sup>3</sup> DLI has jurisdiction in medical disputes with a disputed amount less than or equal to the threshold at the time of dispute filing, provided primary liability is not in dispute.

<sup>4</sup> The amount of time to final resolution at OAH was not computed for the 2007 disputes because many of them were still in process at the time of coding.

**Dispute study**, continued ...

- When the employee was the prevailing party in a DLI decision-and-order for 2003, the employer filed an appeal 38 percent of the time. When the employer was the prevailing party, the employee appealed 75 percent of the time. The percentages were roughly the same for 2007 disputes.
- For 2003 disputes with appeals from DLI decision-and-orders, the median time from medical request to final resolution was 274 days. For 10 percent of these disputes, the time was 531 days or longer.

**Dispute resolution activity at OAH for 2003 disputes referred from DLI**

- Most disputes scheduled for a hearing at OAH (not counting appeals from DLI or OAH decision-and-orders) had a surgery issue or an order for consolidation with other disputes. Most disputes scheduled for an administrative conference at OAH had neither of these characteristics.
- The median time from medical request to first scheduled proceeding date was 78 days for disputes initially scheduled for an OAH administrative conference, and 83 days for those initially scheduled for hearing.
- Twenty-one percent of scheduled OAH administrative conferences had re-sets. There was a median of 40 days from the originally scheduled date to the re-set date.
- Where OAH issued a decision-and-order after a conference, it occurred, at the median, 14 days after the conference and 99 days after the first medical request.
- The appeal rate from OAH decision-and-orders was 32 percent when the employee prevailed, and 65 percent when the employer prevailed. These are somewhat below the appeal rates from DLI decision-and-orders.
- The median time to final resolution for these appeals (usually an award on stipulation or findings-and-order) was 285 days from the first medical request. For 10 percent of these cases, the time was 632 days or more.
- Of the disputes scheduled for hearing (not counting appeals), about three-quarters were scheduled initially for hearing while about one-quarter were scheduled first for an OAH administrative conference. In the former case, the median time from referral to OAH to the scheduled hearing date was 69 days; in the latter, it was 182 days.



**Dispute study**, continues ...

<sup>5</sup> These hearings include pre-trials and exclude *de novo* hearings (hearings on appeal).

*Dispute study*, continued ...

- Thirty-two percent of scheduled OAH hearings (not counting appeals) had re-sets.<sup>5</sup> There was a median of 62 days from the originally scheduled date to the re-set date.
- A findings-and-order was issued for 29 percent of the disputes scheduled for hearing; for the remaining cases, the parties typically reached agreement, usually through an award on stipulation. At the median, the findings-and-order came 210 days after the medical request where the hearing was the first scheduled proceeding, and 361 days where an OAH administrative conference had been scheduled first.
- A statistical analysis was performed to analyze the possible correlation between the scheduling of proceedings and the timing of agreements where the proceeding is canceled because of agreement (e.g., informal agreement or award on stipulation). The analysis found that for DLI administrative conferences, OAH administrative conferences and OAH hearings, the agreement tends to occur approximately one day earlier for each day earlier the proceeding had been scheduled, and that this relationship is highly statistically significant. The timing of the proceeding notice itself does not seem to affect the timing of the agreement other than through its effect on the timing of the scheduled proceeding date.



**Observations**

The data analysis in this report leads to the following observations

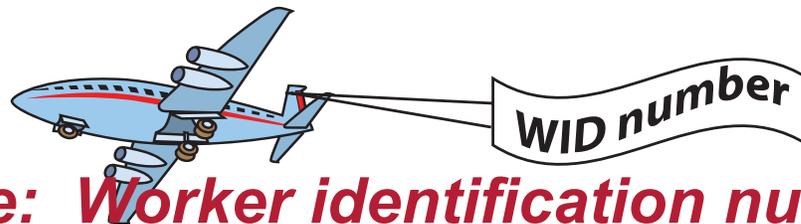
- **Some disputes take far longer to reach resolution than others with seemingly the same sequence of events.** An effort should be made to determine how to reduce the time consumed in resolving these longer disputes.
- **Re-sets of proceedings at DLI and OAH add time to the process.** Consequently, their use should be limited as much as possible, using authority in rule. In 2005, DLI began approving re-sets of administrative conferences only upon showing of good cause.<sup>6</sup>
- **For disputes that go to hearing at OAH, the time to resolution is far longer if an OAH administrative conference has been scheduled first.** Consequently, an effort should be made to determine which disputes, after being referred to OAH, are likely to go ultimately to hearing so they can be scheduled for hearing initially rather than incurring long delays by being first scheduled for an administrative conference that does not occur.
- **Enhancements made by DLI in its dispute-resolution process between 2005 and 2007 have brought about major reductions in the time taken to resolve disputes.**

*Dispute study*, continues ...

<sup>6</sup> The data suggests a reduction in the frequency of re-sets at DLI between 2003 and 2007, but is not conclusive.

*Dispute study*, continued ...

- **The data shows earlier scheduling of proceedings leads to earlier agreement where the parties reach resolution before the proceeding.** This is in addition to the expectation that earlier scheduling should bring about earlier decisions where the parties do not reach agreement. It adds to the value of scheduling proceedings as promptly as possible with sufficient time for the parties to prepare.



## ***Update: Worker identification number***

In 2008, the Workers' Compensation Division began assigning a person-specific worker identification (WID) number when a First Report of Injury (FROI) form or other claim-creating document is filed with the division. Most division forms have been modified to allow the filter to use either the Social Security number (SSN) or the WID number.

Effective June 1, the division will place only the employee's WID number, instead of the SSN, on outgoing documents generated by the division. Parties may continue to file documents with the division using either the SSN or the WID number.

Parties to a claim wanting to use the WID number on claim-related documents

instead of the SSN can either wait to see the WID number on a document generated by the Workers' Compensation Division or request the WID number in writing. A person who does not have authorized access to the division file must file a properly executed authorization form with the division to obtain the WID number. An authorization form for release of data from a division file can be found at [www.dli.mn.gov/WC/PDF/fe0005.pdf](http://www.dli.mn.gov/WC/PDF/fe0005.pdf).

Workers' compensation carriers who would like to receive WID numbers for claimants with existing open files can contact Jana Williams by phone at (651) 284-5304 or by e-mail at [jana.williams@state.mn.us](mailto:jana.williams@state.mn.us) to discuss how best to accomplish this.

