

ADMINISTRATIVE BULLETIN #10

To: All Parties
From: Omar Hernández, Senior Judge
Re: Post-Covid Changes for Dispute Resolution Events
Date: June 24, 2021

As you are aware, Governor Baker rescinded all remaining COVID-19 restrictions effective May 29, 2021. The purpose of this Administrative Bulletin is to outline how Dispute Resolution will be phasing out certain protocols that have been in place since March 16, 2020, and identifying those procedures that will remain in place or have been modified.

BRIEF SUMMARY

As of the week of July 5, 2021, *all* courtrooms will be available for use and the Judges may schedule matters without concern of courtroom scheduling conflicts.

As of the week of July 5, 2021, we will return to scheduling three Hearings per day during the Judge's Hearing weeks.

As of the week of July 12, 2021, we will return to "In-Person" Conferences with all Conference times at 1:15 p.m. and we will be scheduling six Conferences per day during the Judge's Conference weeks.

As the DIA and its stakeholders readjust to "In-Person" Conferences and Hearings, Conciliations will remain virtual.

Walk-In Lump Sum Settlements have been assigned to Administrative Law Judges for their review and approval only after review by a Conciliator as it is currently done.

DISPUTE RESOLUTION PROCEDURES

CONCILIATIONS

As the DIA and its stakeholders readjust to "In-Person" Conferences and Hearings, Conciliations will remain virtual. DIA will continue to communicate with its stakeholders regarding an in-person option for Conciliations. We will continue to conduct Conciliations through the VirtualQ Meeting system for the time being.

All Conciliation submissions should be sent directly to the Conciliator by e-mail.

Please note that Section 36 evaluations can be done virtually but Conciliators will be available if an In-Person evaluation is required. Please contact the Conciliator in advance to schedule an In-Person Section 36 evaluation.

We will continue to provide a link, in a series of prompts, that will grant access to the Conciliator's virtual waiting room. A link to the VirtualQ will be added to the Attorney Calendar at approximately 2:00 PM in the afternoon prior to the scheduled Conciliation.

The link will display under the heading Today's and Upcoming Web Meetings. The link will be displayed and available only on the calendar of the attorney with a current Appearance Form 114 on file with the DIA (attorney of record). It is the responsibility of the attorney of record to ensure that the link is available to any other attorney presenting on his/her behalf and to their respective clients.

Once the link has been established no other notices or notification will go out from the DIA regarding the meeting. All information regarding the necessary steps to join the web meeting is available on the DIA website.

Notices for scheduled Conciliations will continue to be sent out two weeks in advance of the meeting.

If a party would like to withdraw a claim for a case that has not yet been referred to Dispute Resolution, please e-mail the Form 109 to the assigned Conciliator and opposing counsel.

CONFERENCES

Beginning the week of July 12th, the DIA will return to conducting In-Person Conferences with all Conference times at 1:15 p.m. We will be scheduling six Conferences a day during the Judge's Conference weeks.

Parties **are required** to submit **ALL Conference submissions by e-mail and CMS Uploads where applicable** (Form 140, medical documents, non-medical documents, and hypothetical questions) no later than two business days **BEFORE** the scheduled Conference meeting.

The parties will be limited to **two** reschedule requests per Conference. The parties will have to seek the approval of the Senior Judge if they exceed the amount of reschedule requests.

The Form 140 Conference Memorandum pdf document should be unlocked and signed by both parties and include the medical specialty and injured body part(s).

Please note that any additional medical documents that are not part of the Conference packet will only be accepted and forwarded if received by the Department at least fifteen (15) business days prior to the scheduled impartial examination. This rule was implemented in 2015 because

impartial physicians review the medical packet days before the impartial examination. The DIA cannot assure the parties that a physician will review any new medical evidence with little notice. It would be unreasonable to place the burden upon the physicians with demanding medical practices to endlessly check the board file to determine whether new medical evidence had been imported.

Please note that it is not necessary to resubmit medical records each time the parties reschedule a Conference.

The Administrative Judge will have the discretion to conduct a virtual Conference on a pre-determined day during their Continued or Mediation Week.

If the Administrative Judge agrees to conduct a virtual Conference in lieu of an In-Person Conference, Employee's attorney shall make the necessary arrangements to ensure that the Employee has the proper audio and video connection to join the meeting.

The Administrative Judge will have the discretion to allow or deny the parties' request for a virtual Conference.

Motions and Status Conferences

All Motion Sessions and Status Conferences will continue to be conducted through virtual platforms.

All motions must be filed at least **fifteen business days** prior to any proceedings.

Impartial Examinations and Appeals

Any communication with the Impartial Scheduling Unit is best through e-mail.

The parties shall continue to contact the 11A physician's office to confirm whether the 11A examination will take place and whether the 11A physician requires a Covid Pre-Screening Form. The impartial physician's telephone number can be found on the examination notice.

Beginning July 5, 2021, the parties WILL have to petition the Director to request an extension to file a late appeal.

The parties do NOT have to file a petition for late fee submission or a petition to extend time for fee submission.

Please disregard any Late Fee Notice automatically generated for appeals that have been created for orders that have been filed after March 3, 2020.

Please do not e-mail a copy of the Impartial Fee check to the DIA as a copy of the check is not required.

No cover sheet is required if the following forms are submitted by e-mail: 46A, 109, 112, 112A or 121.

Any request to cancel or reschedule an 11A examination or request to submit additional medical records or request for a supplement/addendum report must be submitted to the Administrative Judge's office.

Joint Pre-Hearing Memorandum and Pre-Hearing Conference

Pre-Hearing Conferences will continue to be conducted through virtual platforms.

The parties are required to submit their Joint Pre-Hearing Memorandum at least 5 business days before the Pre-Hearing Conference.

To enlarge the time to schedule the Pre-Hearing Conferences, the parties will now be required to mark-up the Pre-Hearing Conference **upon receipt of the 11A report**. This will provide the parties additional time to finalize the Joint Pre-Hearing Memorandum and present all motions.

At the time of the Pre-Hearing Conference, the parties shall submit the Joint Pre-Hearing Memorandum and be prepared to discuss the status of negotiations, identifying claims/defenses, stipulations, all motions and the identification, anticipated testimony and time needed for testimony of each expected witness.

The Pre-Hearing Conference must occur no later than 10 business days BEFORE the scheduled Hearing date.

The Administrative Judge may reschedule the Hearing back to the queue if the parties fail to submit a Joint Pre-Hearing Memorandum within the mandated timeline.

HEARINGS

Beginning the week of July 5, 2021, we will return to scheduling three Hearings a day during the Judge's Hearing weeks with all Hearing times at 9:15 a.m.

Please be advised that if a case must be tried, the parties must be prepared to proceed on the scheduled Hearing date. Due to the high volume of Hearings in the queue, the parties will be limited to **three** reschedule requests per Hearing. The parties will have to seek the approval of the Senior Judge if they exceed the amount of reschedule requests.

The parties must continue to notify the Administrative Judge by **e-mail forty-eight hours in advance** to advise the Administrative Judge whether the Hearing is going forward.

The Insurer's and Employee's Hearing Memorandum, and the Employee Biographical Data sheet must be submitted to the Administrative Judge **no later than five business days** prior to the Hearing. (Via e-mail in pdf format).

Any medical records and any agreed to exhibits must be bookmarked and received by the Administrative Judge **no later than five business days** prior to the Hearing. (Via e-mail in pdf format).

The parties shall attempt to schedule the deposition of any opinion witness prior to commencement of the Hearing.

The Administrative Judge will have the discretion to allow testimony for certain witnesses to be taken by a virtual platform.

Please note that the Administrative Judge may rescheduled the Hearing back to the queue if these steps are not followed.

Mediations

Please note that the Administrative Judges will continue to conduct Mediations on a virtual platform for the foreseeable future.

The Employee is **required** to attend the virtual Mediation.

Employee's counsel is responsible to share the virtual link to the Mediation with the Employee. Employee's attorney shall make the necessary arrangements to ensure that the Employee has the proper audio and video connection to join the Mediation.

Lump Sum Settlements

Beginning the week of July 5, 2021, we will return to "In-Person" lump sum settlement conferences before Administrative Judges for approval.

All 46A conferences before Administrative Law Judges will continue to be conducted on virtual platforms for the foreseeable future.

Please note that a claim remittance form indicating zero balance is insufficient. Administrative Judges will not approve Lump Sum settlements without a Mass Health release.

Walk-In Lump Sum Settlements

Beginning July 12, 2021, Walk-In Lump Sum Settlements will be approved by Administrative Law Judges only after review by a Conciliator as it is currently done.

All Walk-In Lump Sum Settlement requests must be sent to the Conciliation Unit for review by a Conciliator before it can be sent to an Administrative Law Judge for approval.

No Walk-In Lump Sum Settlement will be approved by an Administrative Law Judge if it is not reviewed by a Conciliator.

We will maintain our current practice of handling Walk-In Lump Sum Settlement agreements by e-mail for the foreseeable future.

If necessary, a WebEx meeting will be available if either party is working with a difficult client and the parties require an Administrative Law Judge's assistance.

For Walk-In Lump Sum settlements only, the parties shall continue to insert a line in the Lump Sum Agreement as well as in the employee's affidavit that states that "the parties have discussed the use of e-signatures and agree that they will have the same weight and effect as an original signature".

Section 15 Petitions

We will continue to maintain our current practice of handling Section 15 petitions by e-mail. Instructions for requesting a lump sum hearing can be found on the Section 15 petition form.

If you are informed that your petition contains errors that need correcting, kindly correct the petition, and electronically resubmit the entire petition, including the signature pages, expenses, and fee agreement. The department will not accept and substitute single or multiple corrected pages of a previously submitted petition.

Reviewing Board Oral Arguments

The Reviewing Board will continue to maintain the current practice of conducting all Oral Arguments and other Hearings through virtual platforms or telephone conference calls.