

Know Your Rights

How to Defeat a Peer Review



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I. BACKGROUND TO THE PEER REVIEW PROCESS

Before being able to defeat a peer review, it is necessary to understand the history and background of the law which created it. The Pennsylvania legislature passed Act 6 on February 7, 1990. The law was an attempt by the legislature to contain rising medical costs. A peer review is an integral part of Act 6 in which one medical provider on behalf of an insurance company reviews the care rendered by another provider. A PRO, or Peer Review Organization, is a company which acts as the middleman between the insurance carrier who contracts with the PRO and the reviewer who actually writes the peer review. The PRO collects all of the documents and contracts with the reviewer to perform the review.

According to Insurance Department regulations interpreting Act 6, a PRO has the authority to determine the reasonableness and necessity of all care rendered by the provider to the patient. The Insurance Department regulations also require that a provider's bill shall be referred by the insurance carrier to the PRO for review "only when circumstances or conditions relating to medical and rehabilitative services provided cause a prudent person, familiar with PRO procedures, standards and practices, to believe it necessary that a PRO determine the reasonableness and the necessity of care, the appropriateness of the setting where care is

rendered, and the appropriateness of the delivery of care.”

The referral by the insurance carrier to the PRO must be made within 90 days of receipt of sufficient documentation supporting the submitted bills. All bills submitted to the carrier with sufficient documentation must be paid within 30 days unless referred to a PRO. The PRO shall request in writing all documents from the provider necessary to do its review. Parenthetically, answering the reviewer’s questions about past and future care during the review process will go a long way towards rebutting any suggestion the defense attorney can make in court that the provider was trying to hide something.

The PRO must complete the review within 30 days after receipt of the documentation. If a provider fails to provide information, the PRO can begin its determination on its own 30 days after the request for information from the provider is postmarked. The PRO must provide a written analysis to the carrier within 3 days, which in turn must provide a copy to the provider within 5 days of receiving the analysis.

The insurance regulations state that a review must be done by a licensed practitioner of like specialty or experience providing and prescribing the care under review. The term “specialty” seems to mean only an orthopedist can review an orthopedist. The “experience providing and prescribing” factor seems to mean only a

chiropractor can review a chiropractor, or an osteopath an osteopath. This will be commented on later.

Many practitioners are not aware that if the patient's condition changes, the provider can bill the carrier even with an adverse peer review. Although this language is within the same paragraph that discusses reconsideration, which is no longer required, it is stand-alone language and can be followed.

The PRO must reimburse the provider for the cost of copying records at the current rate HCFA reimburses its contracted PRO. The PRO must also use national, or when appropriate, regional norms in its review.

II. WAYS TO OVERTURN A PEER REVIEW

A peer review can be overturned in Court if any of the following occur. A provider has standing to overturn a peer review in Court.

1. Reasonableness and necessity versus causation

It is not clear from both the language in the statute and the Insurance Commission's regulations interpreting the statute that only reasonableness and necessity of the care rendered by the provider can be discussed in the peer review. Issues such as the setting and/or frequency of the treatment can be discussed in the peer review. Ascribing the care to preexisting pathology or lack of substantial impact with minimal property damage at the time of accident goes to etiology or causation and cannot be discussed in a peer review.

2. Timely compliance with all aspects of Act 6

Every time requirement in Act 6 must be strictly complied with. This means that the bills must be sent out by the carrier to the PRO within 30 days of receipt. It also means that the carrier has 90 days to collect all the material for reviewing, including contact with the provider under review. The reviewer then has 30 days to complete the review, unless an additional 20 days has been requested. The PRO then has 3 days to mail the review to the carrier, who in turn must mail the review to the provider within 5 days of receipt. If any of these dates are not strictly complied with, the peer review is invalid, and the provider must be paid. This means that the substantive issues raised in the peer review need not even be addressed.

3. Notice to Provider

Each provider who submits bills must have an individual peer review performed. This means that if an MD refers a patient to a physical therapist, the MD and therapist have to have individual peer reviews performed for the care each of them performed. It is not enough that the referring provider is reviewed, and then the carrier tries to use this review to not pay care rendered by the physical therapist.

4. Reviewer of the same profession

Current case law seems only to hold that a review must be performed by a member of the same profession, and not a review by a member of the same specialty. This means that a chiropractor must be reviewed by another chiropractor. It does not mean, however, that a chiropractor who has been certified to perform adjunctive therapy must be reviewed by someone with the same certification. Similarly, a physical therapist can only be reviewed by another physical therapist, and not an MD with a specialty in rehabilitative medicine. This seems contradictory to the language of the insurance regulations referred to earlier in this pamphlet, but it is the current state of the case law.

5. Prudent person standard

The insurance regulations discussed earlier mention the standard of a “prudent person” working for an insurance carrier, i.e. the adjustor, referring the bills out for review. Unfortunately, there is a dearth of case law dealing with what specific criteria need to be met before an insurance adjustor would satisfy this “prudent person” standard. Failure to follow a carrier’s own internal procedures for referring the bills to a PRO, which could be developed at trial, would be one obvious way to prove an adjustor had acted imprudently.

III. RECOMMENDED ACTION

The case law interpreting the above is evolving. As such, rather than relying on the above summation of existing law regarding Act 6 at the time of writing of this pamphlet, it is highly recommended that any provider who has had a peer review performed as a result of care rendered to a patient contact this office to obtain the latest status of the law.

Act 6 also provides for a peer review to be overturned in court. Normally, a claim is brought in District (Municipal in Philadelphia) Court against the Insurance carrier by the provider. The patient does not have to be the plaintiff in the suit, as the provider has standing on his own to bring the lawsuit. Attorneys' fees, interest and costs can be assessed by the court when a favorable verdict occurs. The attached Case Questionnaire can be sent in, or the firm can be contacted as indicated below.

III. LAWYER BIOGRAPHY

Jules Zacher has practiced law since 1974 in state and federal court in Pennsylvania. He has represented plaintiffs in personal injury lawsuits which have included damages because of children being poisoned by lead paint, workers being injured on construction sites, persons injured in motor vehicle accidents, people falling or being injured on someone's premises, and medical providers not being paid by insurance companies.

Mr. Zacher received his law degree at Temple University in 1974, as well as a masters degree in economics from Temple in 1970. Mr. Zacher has taken non-degree course work at Princeton University, Woodrow Wilson School of Public and International Affairs. He received his undergraduate degree from the University of Pittsburgh in 1964.

Mr. Zacher's legal career has included working as a trial lawyer in one of the premier personal injury law firms in the nation prior to starting his own firm in 1982. He has litigated automobile accident cases since 1974. He has been active in community affairs in the Grays Ferry area of Philadelphia. Many of the cases he has tried have involved numerous defendants and complex issues of facts and law.

Mr. Zacher is a member of the Philadelphia Bar Association, and the Philadelphia Trial Lawyers Association. He is admitted to practice law in Pennsylvania and the United States District Court for the Eastern District of Pennsylvania.

IV. HOW TO CONTACT THE FIRM

Jules Zacher, P.C. is a law firm incorporated as a professional corporation with offices at 1601 Walnut Street, Suite 707, Philadelphia, PA, 19102. Its phone number is 215-988-0160; its fax number is 215- 988-0169; and its e-mail address is Zacherlaw@aol.com. Its website is www.juleszacher.com.

V. CASE QUESTIONNAIRE

Do I Have A Case?

Provide the details and we will make a free, preliminary determination.

Your Name: _____

Address: _____

City: _____

State: _____

Zip Code: _____

E- Mail: _____

Phone Number: _____

Enter your question or case details here: _____

I understand that my request and my response thereto does not form an attorney-client relationship