

Extending the Days of HCO Control

In the early days of the HCO program (1995-2005), there was only one way to defend against an applicant who refused to comply with the legislation: keep extending the length of days of control until they treat with whom they are referred by the employer for a minimum of 90/180 days.

This was done by applying the mandates of 4600.3 (c)(1) and (c)(2): the statutory authority re: HCO days of control for 90 and 180 respectively. This language was used with *Ordorica* to allow the employer a viable and very meaningful remedy for intentional non-compliance.

Subsequent to the enactment of SB 899, which created the MPN program, the majority of MEDEX employers opted to greatly reduce asking the Board to have the HCO days extended for non-compliant applicants, and began simply using the Transfer of Care into the MPN (same network).

The control days in the statute should always be viewed as “a minimum of 90/180.” For the employee who has treated within the HCO as directed by claims/MEDEX for the statutory time period, active claims can then be transferred into the MPN per CCR 9767.9.

But MEDEX has a number of employers who have begun to use “old school” methods of extending the HCO control period, and the results have been staggering!

The process is no more difficult than filing a DOR on this issue, and have the accompanying documentation (HCO notice, objection letters from claims/MEDEX, etc.).

I want to share with you one of the cases in which the HCO control was extended. This is very typical of all of our recent experiences.

EE sustains an accepted injury on August 14, 2014. The HCO control period (minimum) is 180 days. The EE went to two appointments set up by claims/MEDEX TNCM. EE then retained counsel and was told not to continue treatment within the HCO and was referred to an outside provider. At this time, more appointments were set, objection letters re: self-procured treatment were sent, and no medical or TD payments were being made.

The MEDEX TNCM closed her file after repeated appointments were missed by the EE. The claim progressed in this way and DA filed a DOR in San Jose in early June. The expedited hearing was set for July 1, and I was subpoenaed and there as an expert witness on the subject of the HCO

statute, regulations, and legislative intent. Of course, I could also testify as to what actions were undertaken by MEDEX.

After an uneventful very early flight from LAX, I met the DA at 8:30, and we began to discuss the case with AA. We also had informal discussions with the judge. By 9:20 AM, it became apparent what would occur if the AA wanted to put this on the record and have me testify.

So now it was time to write up the stipulation. The judge asked me if I could get an appointment scheduled so we could put it in the stip. I called the nurse case manager, and she immediately got an appointment with USHW for July 8, one week from the trial date.

Here is what was in the signed stipulation:

- The employer has an agreement with MEDEX HCO.
- MEDEX is a valid HCO certified by DWC.
- The EE received the HCO notification and is a legal enrollee.
- EE treated within the HCO for 19 days and will be given credit for that.
- EE still owes 161 days of HCO treatment to the employer.
- An appointment is scheduled for July 8. EE will make all good faith attempts to make this appointment.
- Whenever the EE begins to again treat within the HCO, the 161 days will begin to run.
- These days of HCO control will once again be tolled if there is future non-compliance.
- All medical treatment and orders for temporary disability subsequent to the last HCO treatment shall be considered self-procured.

So, what we have here is at least 279 days of self-procured medical treatment and temporary disability which will not be paid, and the EE was mandated to treat within the HCO until at least December 15, 2015. This is approximately 16 months or 485 days from the date of injury: absolute medical control within the HCO and no access requirements of 3 providers of each specialty (as we have in the MPN).