

Commonwealth of Massachusetts

Executive Office of Labor and Workforce Development

Presentation for the Work Related Injuries Workshop

**Department of Industrial Accidents/
Opioid Alternative Treatment Pathway
Senior Judge Omar Hernández**

*Work Related Injuries Workshop
May 1st & 2nd, 2017*



Opioid Alternative Treatment Pathway

Too many injured workers in Massachusetts become addicted to prescription opioids. The Department of Industrial Accidents recognized that its current litigation process often failed to adequately address this problem. Therefore, DIA is launching a pilot program called the Opioid Alternative Treatment Pathway (OATP) to address the problem in a timely manner.

- The Opioid Alternative Treatment Pathway would be available in DIA cases where injured workers have settled Workers' Compensation claims but continue to treat with opioids, and where insurers seek to discontinue payment for the continued use of opioids.
- There are approximately 75-100 DIA cases each year in which insurers seek to discontinue medical treatment or opioids. These cases currently take, on average, a year to settle, while the injured worker continues the use of opioids.
- DIA has reviewed 600 post-lump sum cases filed between Jan. 2015 and July 2016 where the claim was for medical treatment only. Of these injured workers 102 were on opioid-based pain medication and an additional 28 were taking other narcotic pain medications as part of their treatment.



Opioid Alternative Treatment Pathway

- Either the Insurer or injured worker can initiate a request to participate in the Opioid Alternative Treatment Pathway. **If both parties agree to participate, the insurer incurs the cost of the program including alternative medical treatments for the injured worker.**
- The DIA incurs minimal cost for the program – staff/ scheduling.
- The program aims to be another tool to address the state's opioid epidemic by giving attorneys, judges, and injured workers within the DIA system quicker access to medical professionals to make treatment decisions.
- Massachusetts would be the first Workers' Compensation system in the country to implement an Opioid Alternative Treatment Pathway (OATP).



Opioid Alternative Treatment Pathway



Many injured workers who have been prescribed opioids, or other pain killers, often find themselves dependent on these drugs.



After spending thousands of dollars on prescription drugs, insurers often move to discontinue opioid treatment, arguing it is not improving the underlying injury.



To stop paying for pain medication, the insurer files a complaint to modify or discontinue medical benefits. The worker may file a claim seeking continuation of medical benefits (pain killers).

Process start to finish can take over one year!

Traditional Dispute Resolution begins - the conciliation is scheduled within 14 days.

Conference – A conference before an Administrative Judge (AJ) takes place 8 to 10 weeks after the conciliation. Since AJ are not medical prescribers they are reluctant to terminate or modify drug prescriptions at conference level. The binding order of the AJ is often appealed in these matters.

Hearing - Following an appeal of the conference order, the worker is examined by a DIA-appointed physician and the matter is subsequently scheduled for hearing. The timeframe between conference and hearing is 6-8 months. A year has passed.



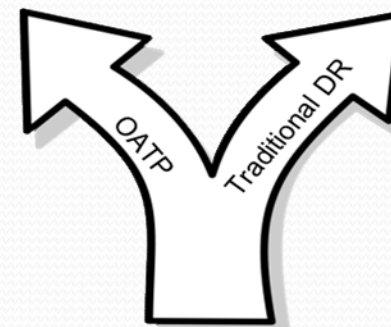
Opioid Alternative Treatment Pathway



The injured worker continues to need opioids to manage pain and the insurer seeks to end payment of those medications.



The insurers will often initiate the process to discontinue such treatment as it is very expensive and does not improve the worker's health or quality of life.



Under the new Opioid Alternative Treatment Pathway, either party may request this alternative dispute resolution but both parties have to agree to participate.

Injured Workers would be assigned a care coordinator within 30 days!

OATP Begins

Initial Meeting – The DIA will assign the case to an AJ who will meet with the parties within 30 days. The goal of the initial meeting is to formulate and memorialize an understanding of the OATP goals; the procedure to follow in reaching goals; and the obligations of the parties with regard to participation, payments, time frames, costs, and fees

Care Coordinator – Injured workers who agree to enter the program will be assigned a specialized nurse (care coordinator), who will oversee care. **Insurers will incur costs of the specially qualified nurse.**

Move worker away from medication-based treatment – The care coordinator will seek to find viable treatment alternatives to manage worker's pain without addictive narcotics. Should the process be unsuccessful, either party can unilaterally withdraw and reenter DIA's traditional dispute resolution process.



Opioid Alternative Treatment Pathway

OBJECTIVES:

- Dramatically improve quality of care for those suffering with chronic pain conditions.
- Reduce time required to resolve clinical disputes.
- Reduce pain, suffering and side effects associate with inappropriate opiate prescribing.
- Provide attorneys, hearing officers, judges and injured workers with better tools for appropriate decision-making.



Opioid Alternative Treatment Pathway

- The new pathway may be accessed through new online forms: Forms 110A and 108A, either of which will allow the parties to express a desire to explore the Pathway with the filing of their claim or complaint.



Opioid Alternative Treatment Pathway

- If the parties agree that they are interested in entering the OATP, then the case will be forwarded to Dispute Resolution with a notation that the parties want to explore the OATP.
- Within thirty (30) days a Mediating Judge will be assigned and the parties will then have their first meeting, during which they will begin to negotiate and enter into a Form 19A agreement.



Opioid Alternative Treatment Pathway

- The goal of the initial meeting and the initial Form 19A is for the parties to formulate and memorialize their understanding of the initial goals in entering into the OATP, the procedure they plan to follow in reaching those goals; and the obligations of the parties with regard to participation, payments, time frames, costs, and fees.



Opiooid Alternative Treatment Pathway

- The Employee will execute a comprehensive Medical Authorization and Release at or before the time he or she signs the initial Form 19A and will execute any additional medical authorizations for relevant records as required by the Mediating Judge.
- In recognition of the complexities of treating individuals with long-term opiooid use, the Medical Authorization and Release will cover the release of medical records *and* mental health treatment records.



Opioid Alternative Treatment Pathway

- The Mediating Judge will have the authority to grant orders for the release of medical records from providers, as warranted. A §13A(3) fee will be due to the Employee's counsel upon approval of the initial Form 19A by the Mediating Judge.



Opioid Alternative Treatment Pathway

- At any time after entering into the OATP, the parties will have the option of leaving the OATP and moving back into the traditional litigation track.
- Regardless of how long they have been working through the OATP, or what progress they had reached toward their goals, if either party requests a return to the traditional litigation track, then the case will be removed from the OATP and placed in the queue for a Conference with a different Administrative Judge.



Opioid Alternative Treatment Pathway

- The Administrative Judge will not be permitted to inquire about, or make any assumptions or inferences about participation in the OATP or the return to traditional litigation.
- The Mediating Judge will retain jurisdiction over the case until the OATP is completed or the case returns to a traditional litigation track. If the case returns to the OATP system in the future, the case may return to the same Mediating Judge.



Opioid Alternative Treatment Pathway

- Once the initial Form 19A is signed and approved by the Mediating Judge, the insurer will incur the cost of a specially qualified nurse with knowledge and experience in dealing with issues relating to the long-term use of natural and synthetic narcotics to be the Care Coordinator for the Employee.



Opioid Alternative Treatment Pathway

- The Care Coordinator may assist the Employee:
- in finding new practitioners in a variety of specialties;
- with research into alternative treatment options;
- in the coordination of interdisciplinary care;
- in scheduling appointments, and;
- in navigating the path forward toward the goals set by the parties and memorialized in the Form 19A.



Opioid Alternative Treatment Pathway

- The Insurer will pay the costs associated with the Care Coordinator and with treatment, at board rates, in accordance with the agreement of the parties as set forth in the Form 19A.
- If need be, a new Form 19A may be negotiated, signed, and approved by the Mediating Judge at any time during the OATP if the parties agree that the original Form 19A is no longer an adequate reflection of the goals and agreements of the parties.



Opioid Alternative Treatment Pathway

- When the goals of the Form 19A have been met to the satisfaction of the parties, a final Form 19A will be signed by the parties and approved by the Mediating Judge.
- That final Form 19A will set forth the obligations of the parties going forward, with regard to ongoing treatment and payments and with any appropriate time frames.



Opioid Alternative Treatment Pathway

- If a treatment plan established through the OATP is to remain in place and progress forward, then the parties should so state in the final Form 19A and specific goals and guidelines should be established in that final Form 19A.
- Upon completion of a final Form 19A, the case will be marked “adjusted” and the Employee’s attorney will be paid an attorney’s fee in accordance with G.L. c. 152, §13A(3).



Opioid Alternative Treatment Pathway

- The Administrative Judge will not be permitted to inquire about, or make any assumptions or inferences about participation in the OATP or the return to traditional litigation.
- If the case is returned to the traditional litigation track, all treatment records produced while the parties are engaged in the OATP are available to the Administrative Judge for the purposes of litigation.



Opioid Alternative Treatment Pathway

This pilot program will run for two years:

- Status updates will be given on a monthly basis to EOLWD and Workers Comp Advisory Council.
- Tracking will be managed by the DIA scheduling unit (positions are already funded).
- A committee will be formed for consultation purposes consisting of stakeholders representing:
 - Injured Employees, attorneys that represent them
 - Insurers
 - Physicians/ Medical personnel
 - Alternative treatment community
 - EOLWD/DIA
 - EOHHS
- Stats will be measured and recorded on a quarterly basis



Opiooid Alternative Treatment Pathway

- **Metrics that will be used:**
 - How many employees discontinue the use of opioids
 - How many cases enter the pilot
 - How many parties opt out and return to the normal litigation process
 - Reductions in prescription amounts and corresponding alternative care changes
 - Average length of time to resolve cases
 - Average cost to insurers (the average cost of continued opioid use compared to the average cost of treatment)



Opioid Alternative Treatment Pathway

- **Costs estimates:**

- A survey of Massachusetts pharmacies found that moderate doses of OxyContin (60 mg to 80 mg at 10 pills per day) could cost an insurer as much as \$66,000 per year.
- The same survey found the cost of Fentanyl cost could be as high as \$76,000 per year.
- A large workers' compensation insurer (who provided information on the condition of confidentiality) has confirmed that opioid prescriptions can cost upwards of \$5,000/month, and as much as \$500,000 over the lifetime of an injured worker who is unable to wean off of opioids due to chronic pain.
- This same large workers' compensation insurer paid over \$6,000,000 in pain medications to claimants between 2005 and 2011. Of that, nearly \$4,000,000 was for opioid based medications

- **Alternative Treatment Pathway:**

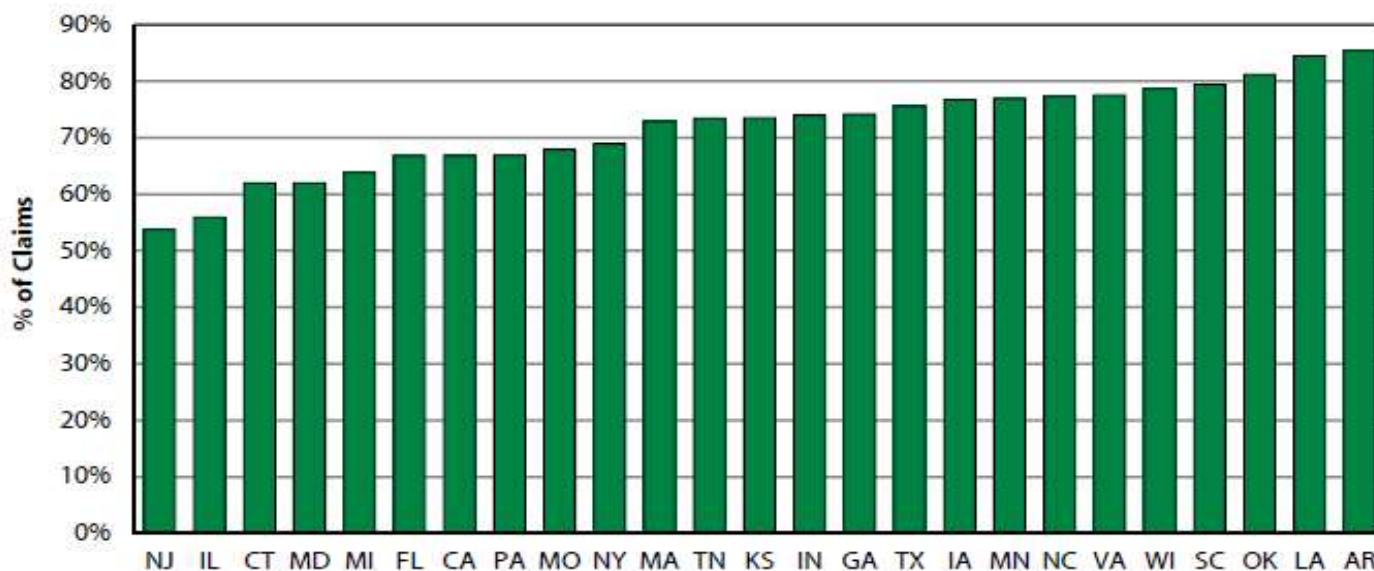
- Insurers that have signed onto and endorsed the program indicate the costs of such a program would be approximately \$40,000 (based on a 4 week **treatment period**).



Opioid Alternative Treatment Pathway

- If DIA can speed up the court proceedings for injured workers taking opioids, it could prevent an additional year of addiction for an employee.
- Injured workers in Massachusetts receive 10% more prescriptions for opioids, on average, than those in 25 other states, according to a Workers' Compensation Research Institute study.
- Massachusetts led the study states in the percentage of pain medications that were written for oxycodone, with nearly half of all prescriptions stronger than Schedule II opioids.

Figure 3.1 Percentage of Claims with Pain Medications That Had Opioids, 2012/2014

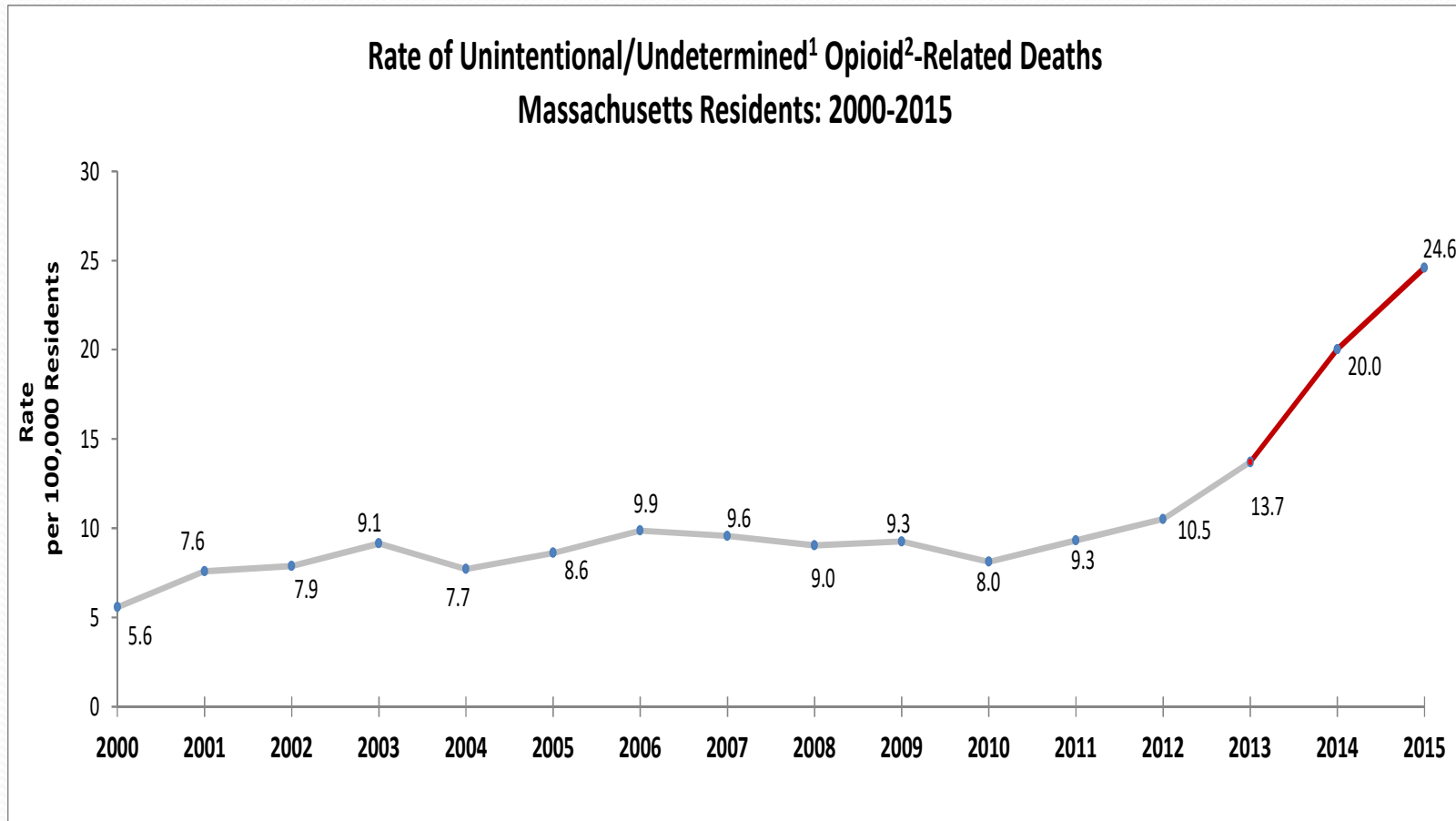


Notes: The underlying data include nonsurgical claims with more than seven days of lost time that had prescriptions filled by injured workers over the defined period and paid for by a workers' compensation payor. 2012/2014 refers to claims with injuries occurring in October 1, 2011, through September 30, 2012, and prescriptions filled through March 31, 2014.



Appendix

Opioid Alternative Treatment Pathway



¹Unintentional poisoning/overdose deaths combine unintentional and undetermined intents to account for a change in death coding that occurred in 2005. Suicides are excluded from this analysis.

² Opioids include heroin, opioid-based prescription painkillers, and other unspecified opioids. This report tracks opioid-related overdoses due to difficulties in identifying heroin and prescription opioids separately.

Unintentional Opioid Deaths in Massachusetts 2000-2015



Number of Unintentional¹ Opioid²- Related Overdose Deaths by County, MA Residents: 2000-2015³

Massachusetts Department of Public Health, Office of Data Management and Outcomes Assessment

Posted: August 2016

County	Year of Death																
	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014 ³	2015 ³	Total 2000-2015
Barnstable	12	17	21	15	16	17	19	29	22	21	19	15	23	40	53	66	406
Berkshire	2	3	0	2	3	9	1	8	3	8	4	6	16	21	28	33	147
Bristol	37	57	65	84	70	78	81	61	79	66	74	77	94	111	137	154	1326
Dukes	1	0	1	0	0	2	0	3	1	1	0	0	0	1	5	6	21
Essex	46	61	52	79	67	80	85	85	58	72	47	55	87	112	206	223	1415
Franklin	5	2	1	5	3	4	6	4	2	2	4	6	8	9	11	17	89
Hampden	32	36	41	45	27	35	44	38	48	46	46	43	52	69	61	99	762
Hampshire	5	5	5	10	8	2	9	12	10	9	10	9	10	28	25	17	174
Middlesex	61	80	89	109	103	116	113	102	106	116	92	120	112	144	274	321	2058
Nantucket	0	1	0	0	0	0	0	1	0	1	1	0	0	1	1 ⁴	1 ⁴	7
Norfolk	26	40	42	41	40	49	48	53	69	64	55	59	69	80	125	154	1015
Plymouth	23	25	29	45	27	37	47	50	47	48	39	64	55	83	113	164	897
Suffolk	46	85	96	102	82	65	105	101	69	91	61	80	85	106	144	194	1513
Worcester	59	73	63	50	48	59	73	70	73	65	80	79	86	113	164	209	1364
TOTAL DEATHS	355	486	505	587	494	554	635	617	587	610	532	613	698	918	1,350⁵	1,658⁵	11,201

¹Unintentional poisoning/overdose deaths combine unintentional and undetermined intents to account for a change in death coding that occurred in 2005. Suicides are excluded from this analysis.

²Opioids include heroin, opioid-based prescription painkillers, and other unspecified opioids.

³Please note that data for 2000-2013 have been updated following a review of cases that did not receive an official cause of death at the time the file was closed. Data for 2014-2015 death data are preliminary and subject to updates. Case reviews of deaths are evaluated and updated on an ongoing basis. A large number of death certificates have yet to be assigned final cause-of-death codes. These counts are based on the estimates rather than confirmed cases. Data updated on 06/30/2016.

⁴Numbers and calculations based on values less than 5 are suppressed for years in which the death file is not yet closed if they are based on pending cases. The 1 death listed in Nantucket County in 2014 and 2015 is a confirmed opioid overdose death.

⁵In both 2014 and 2015, there was 1 death of an MA resident whose city/town of residence was not known.

Please note that there is rounding of counts for 2014-2015.

Technical Notes:

Cases were defined using the International Classification of Disease (ICD-10) codes for mortality. The following codes were selected from the underlying cause of death field to identify poisonings/overdoses: X40-X49, Y10-Y19. All multiple cause of death fields were then used to identify an opioid-related death: T40.0, T40.1, T40.2, T40.3, T40.4, and T40.6.

This report tracks all opioid-related overdoses due to difficulties in reporting heroin-associated overdoses separately. Many deaths related to heroin are not specifically coded as such due to the fast metabolism of heroin into morphine.

To maintain consistency with NCHS reporting, we do not include the ICD-10 code F11.1, which may include opioid-related overdose death.

Source: Registry of Vital Records and Statistics, MDPH

FORM 110-A



The Commonwealth of Massachusetts
 Department of Industrial Accidents – Department 110-A
 1 Congress Street, Suite 100, Boston, Massachusetts 02114-2017
 Info. Line 800-323-3249 ext. 7306 in Mass. / Outside Mass. - 617-727-4900 ext. 7306
<http://www.mass.gov/dia>

DIA Board #
 (If Known):



EMPLOYEE'S CLAIM FOR POST-LUMP SUM MEDICAL MEDIATION

FOR USE BY EMPLOYEES SEEKING POST-LUMP SUM MEDICAL MEDIATION ONLY.

E M P L O Y E E	1. Employee's Name (Last, First, Middle):		2. Social Security number*:	3. Home Telephone No.:	4. Date of Birth:
	5. Home Address (No., Street, City, State & Zip Code):				6. Employee's E-mail address (if available):
	7. Name, Address and BBO# of Employee's Attorney (if no attorney, leave blank)**:				
E M P L O Y E R	8. Attorney's E-mail address (Required):			8a. Attorney's Telephone No.:	
	9. Employer's Name & Address (No., Street, City, State & Zip Code):				
I N J U R Y B E N E F I T S C L A I M E D	10. Workers' Compensation Insurance Carrier's Address and Tel. No. (NOT LOCAL AGENT/ADMINISTRATOR):				
	11. DATE OF INJURY (mm/dd/yyyy):		12. L/S Date (mm/dd/yyyy):		13. Insurer's Case/Claim #:
	14. FIRST day of Total or Partial Incapacity to Earn Wages (mm/dd/yyyy):			15. FIFTH day of Total or Partial Incapacity to Earn Wages (mm/dd/yyyy):	
	16. REQUIRED: Please provide a written explanation as to why the employee is seeking medical mediation.				
	<div style="display: flex; justify-content: space-between;"> <div style="width: 45%;"> <input type="checkbox"/> Insurer's Denial of Medical Treatment <input type="checkbox"/> Insurer's Denial of Prescription Medication <input type="checkbox"/> Prescription Attached </div> <div style="width: 45%;"> <input type="checkbox"/> Medical Note/Report <input type="checkbox"/> Affidavit of Insurer's Denial </div> </div>				
17. Name and Address of Treating Physician:				18. Last Treatment (mm/dd/yyyy):	
19. Employee's/Claimant's Signature:				20. Date (mm/dd/yyyy):	
21. Attorney's Signature (if applicable):				22. Date (mm/dd/yyyy):	

*Disclosure of Social Security number is voluntary. It will aid in the processing of your claim.

**Representation by an attorney is not required.

Form 110-A - 2/2017 - Reproduce as needed.



Commonwealth of Massachusetts
Division of Industrial Accidents
Notice of Conciliation

FORM: 003



EMPLOYEE: JOHN DOE
EMPLOYER: ACME COMPANY
CITY, MA
INSURER: INSURANCE COMPANY

DEPT OF INDUSTRIAL ACCIDENTS
1 CONGRESS STREET
SUITE 100
BOSTON, MA 02114-2017

DATED: 02-03-17

JOHN DOE
XXX MAIN ST
TOWN, MA 0XXXX

ATTORNEYS ARE TO REPORT TO JUDGES BEFORE CONCILIATION.

CASE ID: XXXXX

BOARD NUMBER: XXX-16

INJURY DATE: 02/XX/2016

A CONCILIATION on the EMPLOYEE'S REQUEST for the **Opioid Alternative Treatment Pathway** has been scheduled for the following parties in the above referenced case on 02/06/2017 at 09:15 AM at the BOSTON regional office before Conciliator THOMAS RASHID.

Moving Party: EMPLOYEE
Represented By: LAWYER

Responding Party: INSURANCE COMPANY
Represented By: LAWYER

* If you intend to bring a representative, please notify him/her of location, date and time. Conciliations should be completed in one hour.

• At the OATP conciliation, the parties will be encouraged to discuss and consider opting into the new Pathway.

* You must bring medical reports and any other documentary matter, relevant to the case. Failure to do so may lead to a withdrawal or prevent the matter from proceeding forward to a Mediating Judge.

* Failure of the party filing the Claim for the Opioid Alternative Treatment Pathway to attend the conciliation may result in automatic withdrawal by the Department.

* Failure of the party responding to the Claim for the Opioid Alternative Treatment Pathway to attend the Conciliation may cause the matter to be referred to an Administrative Judge, and could result in a reduction of attorney's fee or increase the referral fee, and could prevent the introduction of evidence at later proceedings.

* If the parties agree to enter the OATP, the case will be forwarded to a Mediating Judge within thirty days, so that the parties may have their first meeting.

* Please use the Board Number shown above when calling for further information about the case.

* If you have a question about this proceeding, please call 617-727-4900 and refer to the board number shown above.

Commonwealth of Massachusetts
Division of Industrial Accidents
Notice of Conciliation

FORM:

EMPLOYEE:
EMPLOYER:

DEPT OF INDUSTRIAL ACCIDENTS
1 CONGRESS STREET
SUITE 100
BOSTON, MA 02114-2017

INSURER:

DATED: 02-03-17

QUINCY, MA 02169



ATTORNEYS ARE TO REPORT TO JUDGES BEFORE CONCILIATION.

CASE ID: 3

BOARD NUMBER:

INJURY DATE:

A CONCILIATION on an INSURERS' REQUEST for **Opioid Alternative Treatment Pathway** has been scheduled for the following parties in the above referenced case on 02/06/2017 at 11:30 AM at the BOSTON regional office before Conciliator ALICE LEE.

Moving Party: INSURANCE
Represented By: ESQ

Responding Party:
Represented By: ESQ

* If you intend to bring a representative, please notify him/her of location, date and time. Conciliations should be completed in one hour.

* At the OATP conciliation, the parties will be encouraged to discuss and consider opting into the new Pathway.

* Since the Insurer is the moving party, the Insurer must bring an alternative treatment proposal and any other documentary evidence relevant to the request. Failure to do so may lead to a withdrawal or prevent the matter from proceeding forward to a Mediating Judge.

* Failure of the party filing the request for the Opioid Alternative Treatment Pathway to attend the conciliation, may result in automatic withdrawal by the Department.

* Failure of the party responding to the request for the Opioid Alternative Treatment Pathway to attend the Conciliation may cause the matter to be referred to an Administrative Judge, and could result in a reduction of attorney's fee or increase the referral fee, and could prevent the introduction of evidence at later proceedings.

* If the parties agree to enter the OATP, the case will be forwarded to a Mediating Judge within thirty days so that the parties may have their first meeting.

* Please use the Board Number shown above when calling for further information about the case.

* If you have a question about this proceeding, please call 617-727-4900 and refer to the board number shown above.



Summary

- OATP applies to post-Lump Sum cases
- Insurer and Employee counsel agree that current clinical regime is not working.
- Key questions for all parties:
 - Is current diagnosis accurate?
 - Is current treatment plan appropriate for diagnosis?
 - What treatment changes should be considered?
 - What other therapeutic approaches might be beneficial for the injured worker/patient?
 - What are the current risks of the current treatment plan?
 - What are the potential barriers to recovery?