

Post-Lump Sum Opioid Diversion Pathway

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*Work Related Injuries Workshop
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Post-Lump Sum Opioid Diversion Pathway

- The Commonwealth recognizes that the use of prescription opioid medication can have negative societal and health consequences.
- In an effort to minimize those consequences and maximize the health and well-being of all residents of the Commonwealth, the Department of Industrial Accidents (“Department”) convened a Committee tasked with exploring options for encouraging positive outcomes for post-Lump Sum cases involving issues related to the long-term use of opioid medication.



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- As a result of the work of that Committee, the Department is proposing a new, voluntary, alternative pathway for the resolution of such claims, the “Opioid Diversion Pathway” (“ODP”),
- Making use of the options created under G.L. c. 152, §10B(5), the Department hopes to encourage a team-based approach to the resolution of these cases, with the Employee’s improved health being the ultimate goal.



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- There will be new forms that will allow the parties to express a desire to explore the Pathway with the filing of their claim or complaint.
- Additionally, in cases where a regular Form 110 or 108 has been filed, but where the case involves only post-lump sum opioid prescriptions, the parties will be encouraged to discuss and consider opting into the new Pathway at conciliation.



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- If the parties agree that they are interested in entering the ODP, then the case will be forwarded to Dispute Resolution with a notation that the parties want to explore the ODP.
- Within forty-five (45) 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 an Agreement to Divert on a new Form 19A.



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- 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 ODP program, 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.



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- 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 opioid use, the Medical Authorization and Release will cover the release of medical records *and* mental health treatment records.



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- 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.



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- At any time after entering into the ODP, the parties will have the option of leaving the ODP and moving back into the traditional litigation track.
- Regardless of how long they have been working through the ODP, 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 ODP and placed in the queue for a Conference with a different Administrative Judge.



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- The Administrative Judge will not be permitted to inquire about, or make any assumptions or inferences about participation in the ODP or the return to traditional litigation.
- All treatment records produced while the parties are engaged in the Opiate Diversion Pathway are available to the Administrative Judge for the purposes of litigation.



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- The Mediating Judge will retain jurisdiction over the case until the ODP is completed or the case returns to a traditional litigation track. If the case returns to the ODP system in the future, the case may return to the same Mediating Judge.



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



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- The parties will meet regularly with the Care Coordinator and the Mediating Judge to assess progress toward the goals and compliance with the Form 19A.
- The Care Coordinator will attend medical appointments and ODP team meetings with the Mediating Judge, and they will coordinate the Employee's medical care.
- The Care Coordinator cannot be called by either party as a witness at hearing at any point in time, once he or she has met with the Employee.



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- 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.



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- 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 ODP if the parties agree that the original Form 19A is no longer an adequate reflection of the goals and agreements of the parties.



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- 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.

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- Upon the execution of each Form 19A agreement, a §13A(3) fee (Conference fee) will be due to the Employee's counsel.
- If the case is not adjusted with the approval of a final Form 19A, the case will be returned to the traditional litigation track.