

PREPARING THE CASE MANAGER FOR DEPOSITIONS & TRIAL

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Presentation Available Online Now

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In the back pocket folder of your Michigan No Fault Resource Binder, you will find a prepared Notes Sheet so that you may take notes.

If you have any questions throughout the Presentation, please write them on the note card that was given to you upon check-in. Towards the end of the presentation these note cards will be collected and we will try to get to all questions in a timely manner.

OUTLINE OF PRESENTATION:

1. A short video on deposition testimony
2. Michigan No-Fault Act and Case Management Services
 - A. Role of Case Manager
 - (1) Medical Perspective
 - (2) Legal Perspective
 - B. Obtaining Support for Need for Case Management Services
3. Documentation/Communications with client, attorney and insurance company
 - A. One year back rule
 - B. Submitting bills and reports
 - C. “Reasonable Proof”

4. Litigation Process

A. Filing of Lawsuit

B. Discovery Phase

C. Case Evaluation

D. Trial

5. What to Do if Case Management Bills are Not Paid?

6. Questions/Answers

2. MICHIGAN NO-FAULT CASE AND CASE MANAGEMENT SERVICES

A. Role of Case Manager

(1) Medical Perspective

- (a) Provide Background Information to Treaters**
- (b) Coordinate Medical Care**
- (c) Obtain medical records for treaters; i.e. ER Records, EMS Report**
- (d) Obtain background information from family members**
- (e) Attend all initial medical appointments**
- (f) Obtain copy of police report**
- (g) Photographs of injuries**
- (h) Make sure patient gets to appointments**

(2) Legal Perspective

MCLA 500.3107

Allowable expenses consisting of all reasonable charges incurred for reasonably necessary products, services and accommodations for an injured person's care, recovery, or rehabilitation. (Emphasis added)

- **CASE MANAGER IS A MEDICAL PROVIDER**
- **INSUREDS HAVE THE RIGHT TO CHOOSE THEIR OWN MEDICAL PROVIDER**
- **NO-FAULT SYSTEM IS NOT A MANAGED CARE SYSTEM: NO-PREAUTHORIZATION REQUIRED**

**Griffith v. State Farm Mutual Auto Insurance Company,
472 Mich. 521, 697 N.W.2d 895 (2005)**

- (1) "Recovery" - "restoration or return to any former and better condition, esp. to health from sickness, injury, addiction, etc."**
- (2) "Rehabilitate" - "to restore or bring to a condition of good health, ability to work, or productive activity."**
- (3) "Care" - "expenses for those products, services, or accommodations whose provision is necessitated by the injury sustained in the motor vehicle accident."**

This encompasses expenses that are "necessary because of the accident but that may not restore a person to his pre-injury state."

Role of Case Manager from Legal Perspective

- **Help Coordinate Care (Attorneys are not experts at this and need help)**
- **Obtain accurate information**
- **Provide info regarding no-fault benefits (can't give legal advice)**
- **Communicate with adjusters regarding medical status**
- **Communicate with attorneys regarding medical status**
- **Obtain work disability, attendant care disability and household chores disability notes**
- **Obtain support for case management services**
- **Provide rationale for recommendations**

Things that Case Manager should not do:

- **Give Legal Advice**
- **Negotiate medical bills, attendant care rates, etc.**
- **Act as an agent for the insurance company**
- **Should not render a medical diagnosis**

B. Obtaining Support for Need for Case Management Services

Case Management services must be reasonably necessary for the patient's care, recovery and rehabilitation.

Prescription from doctor is not required but is strongly recommended

Reason for Necessity of Case Management Services should be documented

3. Documentation/Communications with Client, Attorney and Insurance Company

A. One year back rule:

All claims must be submitted within one year of service and a lawsuit must be filed within one year of the last unpaid bill

B. Submitting Bills and Reports

- **Bills and reports should be submitted on a monthly basis**
- **Bills should be detailed and outline what was done**
- **Reports should provide detail on services performed, with supporting documentation**

- **Language to Add to Case Management Bills:**

The attached bills and reports constitute reasonable proof of the fact and the amount of the outstanding charges pursuant to the Michigan No-Fault Act. If reimbursement will not be forthcoming, please advise us in writing and pursuant to Section 6 of the Michigan Trade Practices Act as to any and all reasons for your delay and/or denial of the outstanding charges.

THINGS TO BE CAREFUL IN REPORTS AND BILLS:

- Remember that anything you put in writing can be used against you and your client.
- **Do Not Bill for Telephone Contact with Attorney** – how is it related to the person's care, recovery and rehabilitation?

4. Litigation Process

A. Filing of Lawsuit

- **Summons and Complaint**
- **Answer**
- **Affirmative Defenses**

B. Discovery Phase

(1) Responding to Subpoenas

- **What to give in response to subpoena?**
- **How much can you charge?**

(2) Answering interrogatories and request for production of documents

(3) Preparing for Deposition

- Know the case and the file**
- Spend time doing this**
- Assume that the Defense attorney will know the case as well or better than you**

(4) Testifying at Deposition

What is a deposition?

- **Opportunity for one party to obtain testimony of witnesses under oath**
- **Usually, deposition takes place in an attorney's office**
- **Usually, only attorneys and court reporter are present for the deposition**
- **Testimony during deposition can be used to impeach witness at the time of trial**

How Much Can Charge for Deposition and What Can Testify To?

1. Expert Witness v. Lay Witness

2. What can testify to?

- **Not able to make medical diagnosis (hearsay issues)**
- **Can Not Testify Outside Role of Case Manager**

(5) RECOMMENDATIONS FOR DEPOSITION:

- Answer only questions that are asked of you
- Do not volunteer information
- **BE HONEST**
- **IF DO NOT KNOW AN ANSWER OR ARE UNSURE, SAY THAT**
- Remember that you are not an attorney and it is not your role to argue the case
- Remember that the deposition is not a trial

Recommendations from a Treating Physician on Preparing for Deposition

- Preparation for a deposition begins with the first day you meet the patient.
- If it isn't written it did not happen.
- The facts will speak for themselves.
- Stick to the objective information. Focus on function.
- Keep it simple: yes, no, I don't know.

Examples of Poor Testimony

21 Q. Is that what you were hired to do?

22 A. Yes.

23 Q. Did you always have the title of director of
24 residential services?

25 A. Yes.

1 Q. What were ESSIE's charges?

2 A. **I don't know.**

3 Q. What were the aides that were working under you
4 paid?

5 A. **I don't know.**

6 Q. Did ESSIE also provide the apartments or homes that
7 these people lived in?

8 A. **I don't know.**

Examples of Poor Testimony

- 25 Q. How many appointments did you go on with {client}
1 before you left {Rehabilitation facility} ?
2 A. **A whole bunch.**
3 Q. Can you give me an estimate?
4 A. **No. It's in the notes I gave {PIP adjuster}.**

Dangers of a Dual Role:

5 *Q. Were you paid a different amount through {Rehabilitation facility}*
6 *when you were acting as a case manager?*

7 A. **I don't know.**

9

10 Q. Is it fair to say then that you made \$15.00 an hour
11 for your case management services as well as director of
12 residential services duties?

13 A. **I guess.**

14 Q. In other words, there was no difference in your
15 paycheck for case management services and director of
16 residential services, correct?

17 A. **Yes, I guess. Yes.**

23 During the time that you provided
24 case management services for {client} through {XYZ
25 Employer} **did you go to her home?**

A. **I don't remember.**

You will be cross-examined on your bills:

21 Q. (BY Defense Counsel) You are looking at invoice number
22 12049, page nine of that invoice; is that correct?

23 A. Yes.

24 Q. Do you see where the date is 1-27-07?

25 A. Correct.

1 Q. Under description there's letter?

2 A. Yes.

3 Q. Under quantity it seems to say .5; is that correct?

4 A. **That's what's on there.**

5 Q. Would you have provided to the biller that it took
6 you .5 hours to do a letter on November 27, 2007?

7 A. **I don't do billing, no.**

You will be cross-examined on your bills:

16 You don't know that it actually
17 took you .5 hours to do that letter, correct?

18 A. **Correct.**

20 Q. (BY Defense Counsel) **That's a standard charge to the**
21 **insurance company for any letter, correct?**

22 A. **I don't know. I don't do billing.**

35

3 Q. That's what I'm trying to figure out. So there is
4 a form that you fill out?

5 A. **Yes. It has their name, address, telephone number,**
6 **that stuff on there, fill that out, then also who the**
7 **adjustor is.**

8 Q. Do you still have that form?

9 A. **Yeah, it's in her file.**

10 Q. Did you bring her file with you today?

11 A. **Nope.**

(C) Case Evaluation/Settlement Conference/Facilitation/Arbitration

What are these?

Case Evaluation: Independent panel of attorneys evaluate case (each party prepares summary of case and attorney argue before panel) and arrive at a number for the value of case.

There are no witnesses at hearing. If parties accept case evaluation award, case is settled for the case evaluation amount.

If either party rejects, rejecting party may face sanctions if does worse at trial

Settlement Conference: Parties meet in Court with the Judge who attempts to settle the case.

No testimony occurs at Settlement Conference.

Facilitation: Retired Judge or Attorney meets privately with the parties to try to settle the case

More time is spent trying to settle the case

Not free – can be very expensive

Arbitration: Usually panel of three lawyers review summaries, hear testimony and arguments and issue binding decision on the case.

Kind of like a mini-trial

Advantages – quicker and cheaper than trial, no appeal

Disadvantages – no appeal; usually do not hit a homerun

(D) Trial

- **Opening Statement**
- **Plaintiff's Case in Chief**
- **Defendant's Case in Chief**
- **Plaintiff's Rebuttal**
- **Plaintiff's and Defendant's Closing Arguments**
- **Jury Instructions**
- **Verdict**

5. WHAT SHOULD A CASE MANAGER DO IF BILLS ARE NOT PAID?

(a) Hire own attorney to represent case manager on bills

- **Intervene in pending no-fault lawsuit**
- **File separate lawsuit against insurance company for bills**

(b) Rely on Plaintiff's attorney

(c) Do Nothing

- **Benefits vs. Risks for each strategy**

Receiving CE Credits

This seminar has been pre-approved by the Commission for Case Managers Certification and the Ohio Nursing Board to provide continuing credit.

This course is approved for 1.0 CCM contact hour and 2.0 RN/LPN contact hours.

To receive these credits, you must complete the “Evaluation of Presentation” survey found in the back pocket of the No-Fault Binder and turn it in at check-in table.

Questions and Answers

QUESTIONS

Call Larry Buckfire or Robert Lantzy anytime at 1-800-606-1717 or e-mail at Larry@buckfirelaw.com or Robert@buckfirelaw.com

Thank you for attending!