

Alert No. 2014 – 6

U.S. ASR Hip Settlement Alert – 5/1/14

## *Document Requirements for Extraordinary Injury Fund (EIF) Claims*

1. **Introduction.** Pursuant to Article 8 of the Settlement Agreement, Qualified U.S. Claimants (“QUSCs”) who have undergone an ASR Revision Surgery and who have incurred a specified, unique or extraordinary injury in connection with their ASR Hip Implants, ASR Revision Surgery, or a subsequent Covered Re-Revision Surgery, as set forth in the Part B Award Schedule, may seek supplemental awards from the Extraordinary Injury Fund (“EIF”) Award Program. To receive **Past** Matrix Level benefits from the EIF Award Program, claimants must submit a Green Claim Form, along with all requested documentation, on or before **September 30, 2014**. For **Future** Matrix Level benefits, claimants must submit a Green Claim Form and all requested documentation within 90 days of the respective claim’s accrual. This Alert describes the document requirements for each Past and Future Matrix Level benefit. These requirements are also included in the example Green Claim Form, which you can find by clicking the “Documents” tab on the public website.
  
2. **Document Requirements.** As set forth in Section 8.2.6 of the Settlement Agreement, claimants are reminded that there are no depositions, no written discovery, no expert reports, affidavits, or hearings or trials in connection with the filing of PART B claims or the evaluation or determination of any PART B Awards. QUSCs have the burden of proof and the burden of production with respect to the contemporaneous Medical Records submitted in the Claims Package and any additional contemporaneous Medical Records of such QUSC submitted for establishing that the criteria has been met for any PART B Award. Pursuant to Section 4.1.5 of the Settlement Agreement, claimants may submit additional documentation (including, but not limited to, tax returns and W-2 statements) for the limited purpose of proving lost wages or loss of earnings under Matrix Levels VI and VII.

Below are the document requirements for each Matrix Level.

### **(a) Matrix Level I (Re-Revision Surgery).**

- (1) A true and correct copy of all contemporaneous Medical Records of the treating surgeon who performed each Re-Revision Surgery; and
- (2) A true and correct copy of the contemporaneous Medical Records, including Admission History and Physical Examination Records, Discharge Summaries and Operative Records pertaining to any Re-Revision Surgery.

### **(b) Matrix Level II (Major Complication): Pulmonary Embolism (PE) or Deep Vein Thrombosis (DVT).**

- (1) A true and correct copy of all contemporaneous Medical Records of the treating physician who treated each PE and/or DVT; and

- (2) A true and correct copy of the contemporaneous Medical Records, including Admission History and Physical Examination Records, Discharge Summaries, Radiology or Imaging Reports and Operative Records pertaining to any PE or DVT.

**(c) Matrix Level II (Major Complication): Dislocation.**

- (1) A true and correct copy of all contemporaneous Medical Records of the treating surgeon who treated each Dislocation; and
- (2) A true and correct copy of the contemporaneous Medical Records, including Admission History and Physical Examination Records, Discharge Summaries and Operative Records pertaining to any dislocation.

**(d) Matrix Level II (Major Complication): Foot Drop.**

- (1) A true and correct copy of all contemporaneous Medical Records from the hospitalization for the ASR Revision Surgery or Covered Re-Revision Surgery documenting the manifestation of a foot drop through objective physical examination;
- (2) A true and correct copy of all contemporaneous Medical Records of the treating physician or surgeon who diagnosed and/or managed the foot drop or peroneal nerve injury; and
- (3) A true and correct copy of all contemporaneous Medical Records showing the foot drop continued to manifest for 90 days or more.

**(e) Matrix Level II (Major Complication): Infection.**

- (1) A true and correct copy of all contemporaneous Medical Records from the ASR Revision Surgery Hospitalization including, but not limited to, records from pathology/histopathology, labs/chemistry, radiology, physicians' notes, and discharge summaries;
- (2) A true and correct copy of all contemporaneous Medical Records of the treating physician who treated each Infection; and
- (3) A true and correct copy of the contemporaneous Medical Records, including Admission History and Physical Examination Records, Discharge Summaries and Operative Records pertaining to an Infection.

**(f) Matrix Level II (Major Complication): Miscellaneous Major Complication.**

- (1) A true and correct copy of all contemporaneous Medical Records of the treating physician or surgeon who diagnosed and/or managed each Miscellaneous Major Complication; and

- (2) A true and correct copy of the contemporaneous Medical Records, including Admission History and Physical Examination Records, Discharge Summaries and Operative Records pertaining to the Miscellaneous Major Complication.

**(g) Matrix Level III (Delayed Recovery): Foot Drop.**

- (1) A true and correct copy of all contemporaneous Medical Records from the hospitalization for the ASR Revision Surgery or Covered Re-Revision Surgery documenting the manifestation of the Delayed Recovery injury;
- (2) A true and correct copy of the contemporaneous Medical Records of the treating physician or surgeon who diagnosed and/or managed the Delayed Recovery injury;
- (3) A true and correct copy of all contemporaneous Medical Records showing that the injury forming the basis of the Delayed Recovery claim continued to manifest for 365 or more days after an ASR Revision Surgery or Covered Re-Revision Surgery;
- (4) If the nature of the Delayed Recovery is moderate, a true and correct copy of all contemporaneous Medical Records showing that, at 365 or more days, the claimant (1) experiences pain requiring a daily use of prescription pain medication or (2) has a gait alteration requiring the use of crutches, a cane or walker for a substantial portion of activities of daily living; and
- (5) If the nature of the Delayed Recovery is severe, a true and correct copy of all contemporaneous Medical Records showing that, at 365 or more days, the claimant (1) requires the use of a wheelchair for a substantial portion of activities or (2) underwent an amputation.

**(h) Matrix Level III (Delayed Recovery): Infection.**

- (1) A true and correct copy of all contemporaneous Medical Records from the hospitalization for the ASR Revision Surgery or Covered Re-Revision Surgery documenting the manifestation of the Delayed Recovery injury;
- (2) A true and correct copy of the contemporaneous Medical Records of the treating physician or surgeon who diagnosed and/or managed the Delayed Recovery injury;
- (3) A true and correct copy of all contemporaneous Medical Records showing that the injury forming the basis of the Delayed Recovery claim continued to manifest for 365 or more days after an ASR Revision Surgery or Covered Re-Revision Surgery;
- (4) If the nature of the Delayed Recovery is moderate, a true and correct copy of all contemporaneous Medical Records showing that, at 365 or more days, the claimant (1) experiences pain requiring a daily use of prescription pain medication or (2) has a gait alteration requiring the use of crutches, a cane or walker for a substantial portion of activities of daily living; and

- (5) If the nature of the Delayed Recovery is severe, a true and correct copy of all contemporaneous Medical Records showing that, at 365 or more days, the claimant (1) requires the use of a wheelchair for a substantial portion of activities or (2) underwent an amputation.

**(i) Matrix Level III (Delayed Recovery): Miscellaneous.**

- (1) A true and correct copy of all contemporaneous Medical Records from the hospitalization for the ASR Revision Surgery or Covered Re-Revision Surgery documenting the manifestation of the Delayed Recovery injury;
- (2) A true and correct copy of the contemporaneous Medical Records of the treating physician or surgeon who diagnosed and/or managed the Delayed Recovery injury;
- (3) A true and correct copy of all contemporaneous Medical Records showing that the injury forming the basis of the Delayed Recovery claim continued to manifest for 365 or more days after an ASR Revision Surgery or Covered Re-Revision Surgery;
- (4) If the nature of the Delayed Recovery is moderate, a true and correct copy of all contemporaneous Medical Records showing that, at 365 or more days, the claimant (1) experiences pain requiring a daily use of prescription pain medication or (2) has a gait alteration requiring the use of crutches, a cane or walker for a substantial portion of activities of daily living; and
- (5) If the nature of the Delayed Recovery is severe, a true and correct copy of all contemporaneous Medical Records showing that, at 365 or more days, the claimant (1) requires the use of a wheelchair for a substantial portion of activities or (2) underwent an amputation.

**(j) Matrix Level IV (Myocardial Infarction).**

- (1) A true and correct copy of all contemporaneous Medical Records of the cardiothoracic surgeon(s) and/or cardiologist(s) who diagnosed and treated the myocardial infarction;
- (2) A true and correct copy of the contemporaneous Medical Records, including Admission History and Physical Examination Records, Discharge Summaries and Operative Records pertaining to the surgery that precipitated the Myocardial Infarction;
- (3) A true and correct copy of the contemporaneous Medical Records, including Admission History and Physical Examination Records, Discharge Summaries and Operative Records pertaining to the treatment of the Myocardial Infarction, if different than above; and

- (4) A true and correct copy of the contemporaneous Medical Records establishing the claimant's pre- and post-myocardial infarction change in Functional Classification (as defined by the New York Heart Association).

**(k) Matrix Level V (Stroke).**

- (1) A true and correct copy of all contemporaneous Medical Records of the neurosurgeon(s) and/or neurologist(s) who diagnosed and treated the stroke;
- (2) A true and correct copy of the contemporaneous Medical Records, including Admission History and Physical Examination Records, Discharge Summaries and Operative Records pertaining to the surgery that precipitated the stroke;
- (3) A true and correct copy of the contemporaneous Medical Records, including Admission History and Physical Examination Records, Discharge Summaries and Operative Records pertaining to the treatment of the stroke, if different than above; and
- (4) A true and correct copy of the contemporaneous Medical Records establishing the claimant's American Heart Association Functional Stroke Outcome Classification.

**(l) Matrix Level VI (Death).**

- (1) A true and correct copy of all contemporaneous Medical Records of the treating surgeon who performed the ASR Revision Surgery or Covered Past Re-Revision Surgery that you believe resulted in death;
- (2) A true and correct copy of the contemporaneous Medical Records, including Admission History and Physical Examination Records, Discharge Summaries and Operative Records pertaining to the ASR Revision Surgery or Covered Past Re-Revision Surgery that you believe resulted in death;
- (3) A true and correct copy of the contemporaneous Medical Records, including Admission History and Physical Examination Records, Discharge Summaries and Operative Records for the hospitalization (if different than above) leading up to the QUSC's death;
- (4) Death Certificate and Autopsy Findings (if applicable);
- (5) Documentation confirming a Minor Child's date of birth that may include a photocopy of his/her birth certificate, social security card, or driver's license; and
- (6) Documentation (in the form of federal income tax-returns or W-2 statements) that evidences a QUSC's wages, salaries, or income from self-employment for the 3 years before his/her death.

**(m) Matrix Level VII (Discretionary).**

- (1) A true and correct copy of all contemporaneous Medical Records of the treating physician(s) who performed the ASR Revision Surgery or covered Re-Revision Surgery (that you believe resulted in injury/damage);
- (2) A true and correct copy of the contemporaneous Medical Records, including Admission History and Physical Examination Records, Discharge Summaries and Operative Records pertaining to the ASR Revision Surgery or covered Re-Revision Surgery (that you believe resulted in injury/damage);
- (3) A true and correct copy of the contemporaneous Medical Records, including Admission History and Physical Examination Records, Discharge Summaries and Operative Records pertaining to treatment for the injury/damage claimed;
- (4) A true and correct copy of all contemporaneous Medical Records of the treating physician(s) who diagnosed and/or treated the injury/damage claimed;
- (5) To the extent applicable, a true and correct copy of the contemporaneous Medical Records of the treating physician(s) who diagnosed and/or treated the medical contra-indication that delayed a QUSC's ASR Revision Surgery – leading to a reduction in the QUSC's Part A Base award; and
- (6) To the extent applicable, documentation that evidences a QUSC's unreimbursed (out of pocket) loss of earnings, including, but not limited to, federal income tax returns or W-2 statements for the two years preceding the ASR Index Surgery as well as for the years in which an earnings loss is being claimed and any documentation relating to disability coverage and determinations.

2. **Questions.** If you have any questions about this Alert, reach out to your assigned Claims Processor contact, email us at [claimsprocessor@usasrhipsettlement.com](mailto:claimsprocessor@usasrhipsettlement.com), or call (877) 391-3169.