Utilization Review

Lawyer Style

By

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Effective January 1, 2004, the legislature repealed CCR 9792.6, which established a system of employer or insurer utilization review of medical treatment.

In place of the repealed regulation, the legislature has enacted a new system of medical treatment utilization review.
Every employer is required to establish a utilization review process in compliance with LC 4610, either directly or through its insurer or an entity with which an employer or insurer contracts for these services.
For purposes of this statute "utilization review" means utilization review or utilization management functions that prospectively, retrospectively, or concurrently review and approve, modify, delay, or deny, based in whole or in part on medical necessity to cure and relieve, treatment recommendations by physicians, as defined in LC 3209.3, prior to, retrospectively, or concurrent with the provision of medical treatment services pursuant to LC 4600.
Some Interesting *Legal* Utilization Review Facts

- An employee is not entitled to an increase in compensation under LC 5814 for unreasonable delay in the provision of medical treatment for periods of time necessary to complete the utilization review process in compliance with LC 4610.

- An increase under LC 5814 is appropriate, however, when an employer has unreasonably delayed or denied medical treatment due to an unreasonable delay in completion of the utilization review process set forth in LC 4610.
Some Interesting U.R. Case Law
Willette v. WCAB

(2004) 69 CCC 1298

(Appeals Board *en banc*)

The Appeals Board has held *en banc* that, when an employee is unrepresented, proper procedures for resolving a post-utilization review medical treatment dispute are as follows:
(1) if the employer's utilization review physician does not approve the treating physician's treatment authorization request in full, then the unrepresented employee (if desiring to dispute the utilization review physician's determination) must timely object, and then a panel Q.M.E. must be obtained to resolve the disputed treatment issues;

(2) once the panel Q.M.E.'s evaluation has been obtained, neither the treating physician nor the utilization review physician may issue any further reports addressing the post-utilization review treatment dispute;

(3) the panel Q.M.E. should ordinarily be provided with and consider reports of both the treating physician and the utilization review physician regarding the disputed issues;

(4) if a post-utilization review medical treatment dispute goes to trial after the panel Q.M.E. issues a report, both the treating physician's and the utilization review physician's reports are admissible in evidence; and

(5) when the WCJ or the Appeals Board issues a decision on the post-utilization review medical treatment dispute, reports of the panel Q.M.E., the treating physician, and the utilization review physician will all be considered, but none of them is necessarily determinative.
Sandhagen v. WCAB (2004)
69 Cal. Comp. Cases 1452

Deadlines Are Mandatory!!!
4610 (g) In determining whether to approve, modify, delay, or deny requests by physicians prior to, retrospectively, or concurrent with the provisions of medical treatment services to employees all of the following requirements must be met:

(1) Prospective or concurrent decisions shall be made in a timely fashion that is appropriate for the nature of the employee's condition, not to exceed five working days from the receipt of the information reasonably necessary to make the determination, but in no event more than 14 days from the date of the medical treatment recommendation by the physician. In cases where the review is retrospective, the decision shall be communicated to the individual who received services, or to the individual's designee, within 30 days of receipt of information that is reasonably necessary to make this determination.
1) The utilization review time deadlines of section 4610(g)(1) are mandatory and, if a defendant fails to meet these mandatory deadline, it is precluded from using the utilization review procedure for the particular medical treatment dispute in question;

2) If a defendant undertakes an untimely utilization review procedure, any utilization review report obtained as to the particular treatment in dispute is not admissible in evidence, and any utilization review report obtained cannot be forwarded to an AME or QME if section 4062(a) procedures are timely pursued; and;

3) When a defendant does not meet the section 4610(g)(1) deadlines, it may use the procedure established by section 4062(a) to dispute the treating physician's treatment recommendation; however, the defendant (not the applicant) is then the "objecting party" and the defendant must meet the section 4062(a) deadlines, unless those deadlines are extended for good cause or by mutual agreement.
“He uttered a feeble groan and…”
Lisa Simmons
vs.
State of California, Dept of Mental Health (Metropolitan State Hospital), Legally Uninsured; and State Compensation Insurance Fund (Adjusting Agent)
(2005)

70 CCC 866

U.R. REPORTS ARE ADMISSIBLE BUT ONLY ON TREATMENT, NOT AOE/COE ISSUES!

Or, in legalese....
(1) If a defendant undertakes utilization review to determine whether a proposed treatment is medically necessary, and if the utilization review physician finds that the treatment is medically necessary but raises questions as to whether the treatment is industrially-related, the utilization review report is admissible in evidence for the limited purposes of establishing:

(a) utilization review was undertaken and the date(s) of the utilization review physician's report(s);

(b) the utilization review physician found the proposed treatment to be medically necessary; and

(c) the utilization review process has resulted in a dispute as to whether the industrial injury caused or contributed to the need for the treatment;

(2) A utilization review physician finds that a treatment is medically necessary but questions whether the need for that treatment is causally related to the industrial injury, the defendant must either:

(a) authorize the treatment; or

(b) timely deny authorization based on causation within the deadlines set forth in section 4610(g)(1); timely communicate the denial based on causation to both the treating physician and the applicant within the deadlines set forth in section 4610(g)(3)(A); and timely initiate the AME/QME process within 20 days of the receipt of the utilization of physician's report, if the employee is represented by an attorney, or 30 days, if the employee is unrepresented, in accordance with section 4062(a)*; and

(4) Although the ACOEM guidelines are "presumptively correct on the issue of extent and scope of medical treatment" (Lab.Code 4604.5(c), they are not presumptively correct on the issue of whether a need for medical treatment is causally related to the industrial injury.

* In reaching this holding, the court did not address any issues relating to proposed spinal surgery under sections 4610(g)(3)(A) & (B) and 4062(b).
Applicant alleged injury to multiple body parts, and the parties agreed to multiple AMEs. Defendants sent requests for treatment to Utilization Review, who recommended treatment denial. Applicant attorney set the deposition of the Utilization Review physician. Defendants moved to quash the Notice of Deposition.

The WCAB found that the UR doctor cannot be deposed by a party. If a party disagrees with the findings of the Utilization Review physician, the proper procedure is to go through the AME/QME process.
Treatment Dispute Flowchart

Lousy Report
OBJECT!!!!

Utilization Review
- 5 days
- 14 days (max.)

Medical-Legal (4062)
- 20 days (Represented)
- 30 days (Unrepresented)
SOME FINAL THOUGHTS