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CONCERNS ABOUT EFFICACY OF UR AND IMR AND MOTIVATION OF THEIR DOCTORS CONTINUE TO BE RAISED

By Scott O'Mara

As many readers are aware, the Workers' Compensation system has evolved into a system which has a complex formula for obtaining access to medical care, and the complexity of this system operates to the benefit of employers while placing a great burden upon injured workers. Two protocols constitute the heart and the source of the problems related to the current system — Utilization Review (UR) and Independent Medical Review (IMR).

Utilization Review is a protocol whereby doctors contracted by employers and insurers review recommendations made by treating doctors and either approve or deny the recommended care based on their determination as to whether it is reasonable and appropriate. When treatment is denied, the injured worker may proceed to the second protocol — Independent Medical Review — whereby a determination is made as to whether to uphold or reverse the denial made by Utilization Review. Unfortunately, however, history has shown that IMR doctors uphold UR denials 88.6% of the time, and challenging IMR determinations is extremely difficult, if not impossible, because the identity of IMR doctors is never revealed.

Ever since the UR/IMR process was instituted, questions as to its efficacy and substantiality have continued to be raised. In a very troubling case called *Dubon* several years ago, it was discovered that the Workers' Compensation carrier had not forwarded all the relevant and necessary medical documents to the UR doctor so that an adequate determination as to the need for care could be made. Initially, the *Dubon* case was viewed as a landmark decision which would change the current protocol to allow injured workers to bypass the IMR protocol and present evidence before a judge as to the need for care which has been denied. Ultimately, however, that hope was quashed, as the Court ruled that the IMR process constitutes the only acceptable avenue for appeal of UR denials.

Recently, the Division of Workers' Compensation has set forth that it will review the documents being provided to Independent Medical Review, and if there is a failure of the claims administrator to provide all the appropriate records, or to provide them on a timely basis, the claims administrator will be subject to a $500-per-day penalty for each day the submission of records to IMR is incomplete, up to a maximum of $5,000. This penalty is designed to create accountability on the part of claims administrators.

The Independent Medical Review system is controlled by a vendor named Maximus Federal Services, which has a contract with the State of California to provide the doctors who make the IMR determinations as to injured workers' access to medical

care. If an IMR doctor determines that the care recommended by an injured worker's treating physician is not necessary, the worker is denied access to that care for a period of 12 months.

This process has a very troubling aspect for many workers who have completed the traditional Workers' Compensation process and received awards for lifetime medical care, and therefore are no longer represented by counsel. These workers can be impacted severely when claims adjusters either intentionally or negligently do not provide all the appropriate records to IMR doctors on a timely basis, as the workers then lose their access to the lifetime care which has already received court approval.

Currently, Maximus has reviewed 165,619 applications for appeal of UR denials, and, as stated above, 88.6% of those appeals have been denied. Therefore, the protocol currently in place is clearly problematic, as it unfairly continues to shift to workers and their personal health plans the employer's obligation to provide medical care to cure or relieve the effects of industrial injuries. Acknowledgment of this problem through the institution of $500-per-day penalties up to a maximum of $5,000, as noted above, is a movement in the right direction, but certainly not one which is going to resolve all the UR/IMR problems.

The solution lies in undoing the legislative enactments which have occurred as a result of Senate Bill 863, thereby allowing injured workers to have access to the reasonable medical care to which they are rightfully entitled.

A final thought is that many UR and IMR doctors are physicians who participate in the current protocol as a source of revenue. They engage in what I call the "catch-and-release" program — the more quickly they can deal with each patient's treatment recommendations, the more quickly they can move on to the next patient's care, and the greater their economic reward will be. Therefore, questions arise as to these doctors' knowledge, competency and, of course, motivation.

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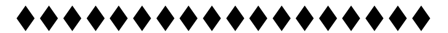

NOTICE

Making a false or fraudulent Workers' Compensation claim is a felony subject to up to 5 years in prison or a fine of up to $50,000 or double the value of the fraud, whichever is greater, or by both imprisonment and fine.