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FAILURE OF THE IMR PROCESS MIRRORS THE FEDERAL GOVERNMENT'S MEDICAL CARE FIASCO

By Scott O'Mara

Medical care is a necessity we all have need for at various times in our lives. The goal of this care is to provide either improvement or stabilization, and achieving this goal requires access to timely and proper medical care.

Currently, we are observing the Federal Government's failure to provide this care. We also are witnessing the tremendous inadequacies which exist in the Federal Government relative to the establishment of a computerized system to access medical care. As a result, the Federal computerized program has not yet been studied as to the level of care it will provide. California workers observing this debacle unfortunately are seeing an example of what is happening — and will continue to happen — to them.

Senate Bill 863, signed on 9/18/12, created a new avenue for accessing medical care. However, an efficient system has not been established to access this care, thereby causing great harm to California injured workers and their family members.

When a worker needs medical care for an injury or illness which is job-related, his/her treating physician will issue a report setting forth the doctor's opinion as to the care that is needed and the appropriateness and necessity thereof. It should be noted that *the treating doctor is a physician who has actually seen the patient, and who in many cases has had a long-term treating relationship with the patient and has established a substantial record of medical documentation*.

According to the protocol previously instituted, a treating doctor's recommended treatment is subject to the utilization review (UR) process, which allows the employer, carrier or third-party administrator to send the doctor's treatment recommendations for review by an outside vendor — *someone who does not even have to be licensed in California or reside in California*. Ultimately, this vendor, despite never having seen the injured worker, provides an opinion as to the appropriateness and necessity of the care and treatment recommended.

However, the UR process as it originally existed did provide a back-up plan for injured workers who disagreed with the findings of the outside vendor. This plan allowed such workers to present evidence to a trial judge as to the findings and opinions of their treating doctor. It further allowed these workers to testify as to their current symptomatology, and explain the benefits they had received from care and treatment which had been provided.

Unfortunately, Senate Bill 863 introduced a frightening new element to supplement the UR process — the advent of Independent Medical Review (IMR). This add-on protocol raises a substantial Constitutional issue, as IMR doctors are "hidden" from the public. *Their identity*

remains unknown, and yet their unilateral determinations greatly impact the lives of injured workers they have never even seen.

This new protocol removes a significant element from the medical care determination process — the right of an injured worker to present evidence to a judge as to what the treating doctor has found and seen, and to provide testimony as to the adequacy of the medical care which has been provided. This constitutional evisceration, on its surface, creates a substantial obstacle for California injured workers.

In addition to these factors, participants in the Workers' Compensation system are now subject to a new discovery — the discovery that *the "protocol" being used is not really a protocol at all; it's simply a developing system . . . a system which cannot keep up with the great volume of information which is overwhelming it*.

Under the current system, California workers have 30 days from the date of a utilization review denial to seek an Independent Medical Review. If the worker fails to accomplish this within the 30-day window, the UR decision remains effective for 12 months from the date of its issuance.

Therefore, all California workers must participate in the IMR process. If they do not, they then lose access to the medical care recommended by their treater for a full year. This fiasco has created a tremendous surge in the requests for IMR determinations.

Initially, between January and June 2013, the number of requests for Independent Medical Reviews *totaled* 870. As of July 2013, however, *all* injured workers — regardless of their dates of injury — became subject to the IMR process, dramatically increasing the number of IMR requests for that month alone to 4,410.

A significant increase occurred again in August 2013, when 15,731 workers applied for IMRs. While the figure decreased very slightly to 14,990 in September, it rose significantly again to 20,000 in October. Of note also is the fact that *these requests for reviews cause carriers to incur a cost of more than $500 per review*.

One of the project directors for the vendor with the only contract to provide Independent Medical Reviews has been quoted as follows:

"The actual volume that we're experiencing, not that it's unprecedented, but really it was not planned for. The actual volume is five times greater than the planned volume."

That statement is clearly supported by the fact that the vendor has reassigned 50 employees to review IMR applications, added a second shift of workers to monitor mail and fax machines, and doubled the number of fax lines from 23 to 46 and is still questioning whether that is enough. In addition, they are receiving approximately 300 pages of documents per case.

This lack of preparation, and the lack of having a satisfactory system to deal with a mandated program, is, unfortunately, a mirror example (on a smaller scale) of what is occurring with the Federal Government. *This disastrous situation is having a horrendous impact on California injured workers and their families, and is obviously very costly for employers.*

The vendor anticipates the number of IMR requests will increase during the remainder of the year. They are therefore attempting to modify the process and create a platform to deal with the electronic filing of documents for which they currently do not have a satisfactory protocol.

Beyond all that, the failure of the IMR system does not even take into account the Constitutional issues which exist for injured workers relative to not knowing the identity of the IMR physicians and not being allowed to present evidence at a trial.

The legislators need to make some quick and correct changes so injured workers can experience a prompt recovery and return to work. They also need to take action to correct the fact that the only beneficiaries of the IMR process are the vendor and the IMR doctors, as this system is very costly and inefficient for both employers and injured workers.

The fact that IMR requests have increased from 870 between January and June 2013 to between 15,000 and 20,000 per month since August 2013 clearly demonstrates the medical needs which California injured workers have and the failure of the present system to meet those needs, thereby resulting in the loss of timely and proper care for countless workers. The present system *must* be changed so these workers and their families can receive the full cup of justice to which they are entitled.

Again, the present system is doomed to failure, and California workers and employers must not be tied to it. Injured workers have the right to know the identity of the IMR doctors, and they must be allowed the right to present evidence to a judge regarding their need for recommended medical treatment which will improve their health and enable them to return to work. Accomplishing these goals will also save employers a considerable amount of money.

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