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MORE LEGISLATIVE REFORM NEEDED: REINTRODUCTION OF SENATE BILL 626 (SPONSORED BY SENATOR JIM BEALL)

By Scott O'Mara

California injured workers who sustain job-related injuries have a right to receive medical care reasonably designed to cure or relieve the effects of their injuries. The medical treatment provided constitutes a wide range of care, the purpose of which is to promote a quick recovery so workers can return to their jobs after a minimal amount of time off and avoid ancillary problems which can develop if timely and appropriate care is not provided.

"Medical care" is a broad, inclusive term covering a wide variety of treatment options, such as medications, injections, surgery, acupuncture, chiropractic care, hospitalization and nursing care, as well as surgical supplies such as crutches, orthotics and prosthetic devices. In extreme cases, this care can also cover transplants involving organs such as the liver and the heart, and house reconfiguration if a job-related injury requires modifications to enable the injured worker to perform basic activities of daily living.

Medical care is the primary pillar for the injured worker and the employer. However, it unfortunately has been subject to changes which have produced many undesirable results, such as an increase in medical costs, time off work and residual disability, as well as the creation of two new business entities which have increased employer costs and in many cases delayed or denied recovery for injured workers.

The first attack on the pillar of medical care was the implementation of a process called utilization review ("UR"), which took effect on 1/1/04 and impacted all Workers' Compensation cases, regardless of the date of injury. This change mandated that the employer or carrier must have a contract for services with an outside vendor whose function is to review the "reasonableness" and "necessity" of medical care recommended for an injured worker and then approve, modify, delay or deny said care. Significantly, *despite the power given to the utilization review*

doctors employed by the outside vendors, they do not need to be licensed in the state of California, nor are they required to see the injured workers whose need for care is subject to their unilateral decisions.

These outside vendors are able to maintain their existence in competition with other vendors seeking contracts with employers or carriers by keeping their costs down. Therefore, UR doctors — having no direct interaction with the injured workers whose medical care is within their control — base their determinations solely upon a review of records. Thus, the utilization review process involves a partisan approach to medical care where the first priority is cost reduction so vendors can compete successfully in winning contracts with employers and insurance carriers.

In many cases, the determination made by the UR doctors involved in this flawed process is a denial of care or a delay in providing same. This results in ancillary problems and places many injured workers off work for a longer period of time than would have been necessary had appropriate care been provided. It also raises their level of impairment in many instances.

Therefore, the benefactor of the utilization process is certainly *not* the injured worker. Interestingly, the benefactor may not necessarily be the employer, either, because of the extra expense imposed by workers' additional time off work and increased disability.

Until July 2013, the UR process allowed for the potential of an impartial decision being rendered as to the necessity of medical care. This potential was based on the possibility that a Workers' Compensation Judge could weigh and measure the reasonableness and necessity of the treatment recommended for an injured worker and make a decision supported by medical evidence provided by the treater — a doctor who is licensed in the state of California, has seen the injured worker, and has set forth the subjective complaints and objective findings, along with the rationale for treatment — and the injured worker's testimony, rather than having an arbitrary determination made by a doctor who, again, may not be licensed in California and has not seen the worker. The positive benefit to the worker was the receipt of appropriate care with subsequent improvement, allowing an earlier return to work with less time off and less permanent disability.

The 2004 legislative enactment has created substantial problems to the extent that even former Governor Schwarzenegger recognized the problems and through Senate Bill 186 allowed injured workers to predesignate a physician in the event

they should sustain a job-related injury. This predesignation allowed for impartial doctors to provide adequate and appropriate medical care and return injured workers to their jobs as quickly as possible, resulting in a lower level of impairment in many cases, as well as decreased costs to employers.

In September 2012, additional legislation attempted to correct some of the errors made in the 2004 legislation. Unfortunately, however, Senate Bill 863, in certain respects, actually compounded and made more difficult some of the existing problems in accessing medical care with the utilization review process set in place on 1/1/04. The 2012 legislation eliminated the Constitutional right California workers previously had to present evidence before a judge as to the medical necessity of treatment.

Like utilization review, the Independent Medical Review ("IMR") system is crafted in a manner which creates economic opportunities for vendors. Therefore, SB 863 hurts and harms injured workers . . . *and employers*. It provides for a delay in the provision of medical care for up to one year by IMR doctors (who again do not need to be licensed in the state of California and do not see the injured worker, *and whose identities are withheld*). Nonetheless, barring some extraordinary circumstances, the determinations of the IMR physician are mandated.

Once again, the original intent of the Workers' Compensation system was to enable injured workers to receive medical care to cure or relieve the effects of their injuries and minimize both their time off work and their level of residual impairment. The Independent Medical Review process effectively does just the opposite — increasing injured workers' time off work and their levels of disability.

California workers need to go back and revisit the legislative enactments that were intended to benefit both injured workers and employers. Proposed Senate Bill 626, introduced by State Sen. Jim Beall, would have rectified these wrongs, minimizing increased costs to employers and allowing workers to heal faster and return to work sooner with lower levels of disability. SB 626 would have required that medical treatment, utilization reviews and Independent Medical Reviews be conducted by doctors or medical professionals who hold the same California license as the requesting physician. Unfortunately, however, SB 626 was later withdrawn in April 2013.

This bill would have created additional checks and balances, as doctors who are licensed in the state of California are subject to the Medical Quality Control Board, which reviews the nature and adequacy of doctors' care. It also would have

removed doctors who do not have the proper credentials to make IMR determinations and are in it simply for the money. In addition, SB 626 would have made available to all parties the identity of the reviewing doctors, removing the confidentiality originally built into the IMR process.

Finally, California workers must have the right to present their cases before a judge. This allows the judge to review doctor reports, listen to a worker's testimony, and decide which report adequately reflects the reasonableness and necessity of ongoing medical care. This procedure would meet the Constitutional standard of due process and ensure fair and impartial evaluation as to appropriate medical treatment. This is in complete contrast to the present system which involves a group of essentially businesspeople making medical decisions, resulting in denials or delays in the provision of medical care to injured workers and increased costs for employers.

The time has come for Sen. Jim Beall to reintroduce SB 626 because it has substance and value and would have positive impact on all Workers' Compensation participants — both injured workers and employers. However, the parties should anticipate that the vendors who do utilization reviews and Independent Medical Reviews will take a staunch position against any such changes.

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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.*

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