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UR AND IMR MODIFICATIONS REQUIRED TO PROVIDE MEDICAL CARE

By Scott A. O'Mara

This is a summary of UR and IMR and modifications required to provide medical care.

As Stated in the LAW1199 2019 Issue #3 page 1:

"Senate Bill 863, which was signed by Gov. Brown in September 2012 and went into effect in January 2013, changed the Workers' Compensation system by implementing Independent Medical Review (IMR) Prior to that time, the Utilization Review (UR) protocol existed. In both of these protocols (UR and IMR), the reviewing doctors never see the injured workers for whom they are making important decisions regarding their medical care needs.

Utilization Review doctors are a group of physicians who have a contract with, and are paid by, the employer or the employer's adjusting agency.

Independent Medical Review doctors are paid by the employer. Of significance, again, is the fact that none of these doctors ever see the injured workers whose medical care they are determining. In addition, IMR doctors are protected by a cloak of secrecy, as their identities are never revealed."

Labor Code §4610.5(e):

"(e) A utilization review decision may be reviewed or appealed only by independent medical review pursuant to this section. Neither the employee nor the employer shall have any liability for medical treatment furnished without the authorization of the employer if the treatment is modified or denied by a utilization review decision, unless the utilization review decision is overturned by independent medical review in accordance with this section."

Under Labor Code §4610.6 it states:

"The independent medical review organization shall keep the names of the reviewers confidential in all communications with entities or individuals outside the independent medical review organization."
It further states:
"(g) The determination of the independent medical review organization shall be deemed to be the determination of the administrative director and shall be binding on all parties."

In the same Labor Code:

“The determination of the administrative director shall be presumed to be correct and shall be set aside only upon proof by clear and convincing evidence of one or more of the following grounds for appeal:

(1) The administrative director acted without or excess of the administrative director’s powers.
(2) The determination of the administrative director was procured by fraud.
(3) The independent medical reviewer was subject to a material conflict of interest that is in violation of Section 139.5.
(4) The determination was a result of the bias on the basis of race, national origin, ethnic group identification, religion, age, sex, sexual orientation, color, or disability
(5) The determination was a result of a plainly erroneous express of implied finding of fact, provided that the mistake of fact is a matter of ordinary knowledge based on the information submitted for review pursuant to Section 4610.5.”

In looking at these Labor Codes that are the binding law on all California workers, there is a blanket of secrecy that is placed upon the independent medical review doctors.

The IMR doctors (or Independent Medical Review Doctors’) determinations has to be based upon many factors one is what is their medical background in having appropriate license, honesty and integrity.

Doctors that are licensed in the State of California are listed under the Medical Board of California in that site the license verification of the doctor can be done. The website states “Important information on their profiling includes the fact that the physician is licensed, the status of the licensed and whether or not the doctor has had any administrative or disciplinary action taken against their license by the Board, or another state, or a Federal Government Agency”. The profile also includes information regarding the physician’s practice location, physician specialty or practice. Lastly, at the bottom of the physicians profile are links to the actual documents related to the actions the Board has available on a physician.

The Labor Code §4610.6 specifically provides a blanket on top of the Independent Medical Review doctors who are making monumental decisions regarding the medical care for the worker. This blanket precludes the worker and his or her attorney from a determination as to material facts that would remove the Independent Medical Review doctor as a determining agent.

In addition, as the parties are aware, the Independent Medical Review doctor never sees the patient.

It is significant that SB863 the California law has put a blanket of denying on the IMR doctors precluding full disclosure of medical potential discipline against the IMR doctors. The past legislation SB863 did not recognize at the time that it was instituted created a wall of secrecy placing the workers in a dark hole because they do not have the opportunity to obtain information as to the erroneous conduct or behavior that the IRM doctors may have engaged in.

In addition, the Utilization Review and Independent Medical Review doctors are also wearing a cloak of secrecy as to their responsibility of providing correct and accurate medical care. If they are subject to review for medical malpractice this raises the standard of their participation to the same level as the treating doctor.

Without the knowledge of who the IMR doctor there is no opportunity for a checks and balance by deposition of the doctor regarding their status in the medical field and their rationale for their medical determination. The purpose of the needed modification is to remove the wall of secrecy that is blocking who the IMR doctor is. The secrecy removal insures that the reports and determinations of the IMR doctor/UR doctor are based on substantial medical evidence. If the substantial medical evidence is not there the worker has the right to go before an impartial judge who is paid for by the State and not paid for by the employer such as the UR and IMR doctors. This establishes a fair and independent review of findings made by UR and IMR doctors.

Finally, several California Supreme Court Justices have stated (LAW1199.com - Issue 2019 #10):

Supreme Court Justice Goodwin H. Liu, after reviewing this subject in great depth, made this finding: "But the undisputed facts in this case suggest that the workers' compensation system, and the utilization review process in particular, may not be working as the Legislature intended." Justice Goodwin H. Liu reflected: "The Legislature may wish to examine whether the existing safeguards provide sufficient incentives for competent and careful Utilization Review."

Ultimately, Justice Mariano-Florentino Cuellar opined regarding the failure of UR and IMR, stating: "Even now those safeguards and remedies may not be set at optimal levels, and the Legislature may find it makes sense to change them."

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