



## SENATE BILL 636 PROTECTS SOME WORKERS

By Scott A. O'Mara

### SUMMARY & REVIEW:

SB 636 would protect some workers by requiring, only private employers, to engage with the utilization review in workers' compensation cases to be done by medical professionals who are licensed in California and subject to regulation by the Medical Board of California.

At the onset of the summary the Bill specifically states two segments of the labor market; the first being private employers, and the second being public employers.

The Bill then further states, SB 636 would require private employers, UR for workers' compensation cases be done by a medical professional licensed in California. This ensures that the Medical Board of California can discipline medical professionals performing UR if they violate practice standards.

This summary is a significant and relevant factor to the standard of care that is going to be mandated on the Utilization Review doctors.

In the examination of the proposed legislation on page 1 of the Bill, it states: *"This bill would, for private employers, require the psychologist to be licensed by California state law"*. On page 2 it states: *"This bill would, for private employers, require the physician to be licensed by California state law"*. Further, on page 2, it reiterates: *"For purposes of private employers, "psychologist" means a psychologist licensed pursuant to California state law with a doctoral degree in psychology, or a doctoral degree deemed equivalent for the license."*

On the same page (2) there is verbiage used to characterize the medical care as stated: *"to cure and relieve"*. This is contrary to the case law that indicates that the medical care does not have to cure and relieve, that it can cure *or* relieve.

An example of this is the serious cancer cases where the treatment is not going to cure, but the treatment may relieve pain and discomfort that they have.

On page 6 on line 4 and 5 states: *"These policies and procedures shall ensure that decisions based on the medical necessity to cure and relieve of proposed medical treatment services are consistent with the schedule for medical treatment utilization, including the drug formulary, adopted pursuant to Section 5307.27."*

Again there is reliance upon the dual process to cure and relieve which is contrary to the case law.

On that same page (6), under item number 3, there is reiteration that “For purposes of public employers or public employees, a person other than a licensed physician who is competent to evaluate the specific clinical issues involved in the medical treatment services, if these services are within the scope of the physician’s practice, requested by the physician, shall not modify or deny requests for authorization of medical treatment for reasons of medical necessity to cure and relieve or due to incomplete or insufficient information under subdivision (i) and (j). Again, the discussion is cure and relieve.

Then under the next section it states: “For purposes of private employers, a person other than a physician licensed pursuant to California state law who is competent to evaluate the specific clinical issues involved in the medical treatment services, if these services are within the scope of the physician’s practice, requested by the physician, shall not modify or deny requests for authorization of medical treatment for reasons of medical necessity to cure and relieve or due to incomplete or insufficient information under subdivisions (i) and (j).”

This limits the protection that is provided to public employees; it speaks of private employers, and does not mandate public employers have that same standard of protection. Also, there is the usage of cure and relieve which could create a legal problem.

This proposed legislative changes offered by Senator Dave Cortese in SB 636 regards Utilization Review, has strong merit and encapsulates some of the proposed modifications suggested in LAW1199 Newsletter 2019 Issue #3, but the challenge is that the bill limits the protection for public employees and does not afford them the same full protection as private employees receive.



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