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BIG BUSINESS BENEFITS VERSUS THE LITTLE INJURED WORKERS' NEEDS

By Scott A. O'Mara

The California Legislation Senate Bill 863 was signed by Governor Brown on 09/18/2012. Section 1, subdivision (e) states that "having medical professionals ultimately determine the necessity of requested treatment furthers the social policy of this state in reference to using evidence-based medicine to provide injured workers with the highest quality of medical care and that the provision of the act establishing independent medical review are necessary to implement that policy."

This Legislation created a new and massive business opportunity that went into play and continues to be in play to this date called Independent Medical Review (IMR). These doctors wear an absolute cloak of secrecy. The employer and the worker are not allowed to know who the physicians are or what state they are licensed in, it is unknown whether they have ever been subject to any type of professional review for lack of doing their work as a physician by the Medical Quality Control Board nor are they mandated to be licensed in the state of California when they are rendering decisions that have medical and legal impact on the injured workers.

This process of IMR was thought to deal with the Labor Code specific mandate that the employer is responsible for all medical treatment used to cure or relieve an injured worker and the effects of their injury, but it has failed.

Recently, on 03/25/2023, a review was done by ProPublica which is a non-profit organization that investigates abuses of power, completed a study on Cigna denials and limits placed on medical care prescribed by the treating doctor.

ProPublica's study was of medical care, delay and denial of the care of one of the major corporations that is involved in medicine and medical care and review of same.

This corporate entity has expanded their use of a system review that they created that limits in depth analysis of medical records and criteria used by the treater to show the medical need for the medical care.

In the review by ProPublica, they determined that this major medical corporation, Cigna, has cases where a patient seeking care was one among 60,000 other patients that were denied care in a single month. The rejection was based upon a system that Cigna has that "allows its doctors to instantly reject a claim on medical grounds without opening the patient file, leaving people with unexpected bills, according to corporate documents and interviews with Cigna officials. Over a period of two months last year, Cigna doctors denied over 300,000

requests for payments using this method, spending an average of 1.2 seconds on each case, the documents show. The company has reported it covers or administers health care plans for **18 million people**."

The ProPublica article reflects that "Patients expect insurers to treat them fairly and meaningfully review each claim, said Dave Jones, California's former insurance commissioner. Under **California regulations**, insurers must consider patient claims using a thorough, fair and objective investigation. It's hard to imagine that spending only seconds to review medical records complies with the California law." Jones further stated "at a minimum, I believe it warrants an investigation."

Cigna acknowledged that they have a review system called PXDX that allows the doctors who are doing the review as to access medical care to quickly deny claims in bulk. PXDX is shorthand for procedure-to-diagnosis. The article in ProPublica states "The list saved money in two ways. It allowed Cigna to begin turning down claims that it had once paid. And, it made it cheaper to turn down claims, because the company's doctors never had to open a file or conduct an in-depth review. They simply denied the claims in bulk with an electronic signature." (*Very similar to work*-comp).

When there is a denial of prescription medication (formulary) sought by the workers treating doctor, the UR protocol pursuant to Labor Code §4610.5 sets time perimeters for the worker or representative to seek a review of the denial of the decision. The period of time is ten days after the service of UR to the employee for prescription medication, and for all other medical treatment a window of appeal is 30 days.

If no appeal is made, or if the appeal goes forward and it is upheld by IMR, the worker cannot seek that particular care for 12 months if there remains a consistency in his/her medical needs and problems.

The UR and IMR systems have created an unjust impact on the workers, and an unjust impact on the doctors that treat the worker. The workers that do not have counsel, or if their counsel is no longer involved in the case, this can destroy the injured workers ability to obtain care. The treating doctor that seeks approval for medical care is required to have substantial knowledge and the ability to justify the medical care. Equally as important, it requires the injured worker to have knowledge as to the time perimeters and follow through on the appeal. Without that the appeal process going forward there is going to be a removal of that care for up to 12 months.

This goes back to how Cigna and other carriers have medical care systems that are designed specifically to minimize or take away care that the worker should have entitlement for with a job related injury.

The corporate entity, Cigna, is similar to the other corporate entities that are involved in UR and IMR. The legislation that was drawn regarding IMR sets forth an unreasonable standard that is not one that can be challenged. It indicates that if the worker can prove that there are certain violations done by the IMR doctor, this can be a determination for removal. The basis for challenging the IMR determination could be allegation of fraud, material conflict of interest, biased because of race, national origin, ethnicity, religion, age, gender, sexual orientation, color, a disability of the injured worker, or an erroneous expression of facts or material factual mistakes made.

With the cloak of secrecy of not knowing who the doctor is for IMR, it is not possible to make this discovery, nor is there a possibility to present evidence to an independent party (a judge) regarding the erroneous and harmful acts that are taken by either the employer or the information that would be used to remove the IMR doctor. The IMR doctor does not see the patient, does not examine the patient and therefore there is great suspicion UR and IMR doctors are utilizing the systems discovered by ProPublica regarding Cigna. The concept that this major corporate entity has engaged in is a harmful act to deny medical care and is a door opener as to the high probability that the IMR doctor and UR doctor follow a similar corporate path to delay and deny medical care.

These denial systems used by the carrier, third-party administrations or self-insured employers are designed to increase profits and lower cost by denial or delay at the expense and harm to the injured worker. These systems of denial and delay ignore the mandate of the California State Constitution to cure or relieve the effects of the job-related injury. The current UR and IMR systems established Big Business Benefits to the employer at the expense of the Little Injured Workers'. *(Law1199.com Newsletter 2019 #3) sets labor code changes needed to correct the errors by SB 863)*

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