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INSURANCE PREMIUM RATES CUT AT WHOSE EXPENSE?

BY: SCOTT A. O'MARA

The California Workers' Compensation system has many elements that interplay with each other depending upon cost of benefits provided or not being provided. One of the systems is the Workers' Compensation Insurance Rating Bureau (WCIRB) a Committee that governs recommendation as to what the premium for Workers' Compensation insurance will be for the employers that obtain Workers' Compensation through insurance.

This Committee looks at the cost generally that has occurred in the Workers' Compensation system. Including all costs whether it is a State Employer, County Employer, City Employer, a Municipality, or private entities such as Amazon, UPS, 7-11 stores, Vons, etc. Some of the larger employers are self-insured, but yet they incur the cost for the providing of the care.

As the readers are aware, there were changes that occurred in 2013 to the present that have impacted workers abilities to access medical care, UR and IMR (Utilization Review and Independent Medical Review).

The creation of Utilization Review/IMR was to facilitate quicker care for the employees' and to reduce cost to the employer. It has a negative impact on care for employees' and a positive impact to reduce cost for the employers.

The Committee for WCIRB has made a recommendation that the premium rates be reduced. They anticipate the reduction is consistent with the nine (9) consecutive reductions that have been made in premium rates since 2015.

The employers could have a premium cut of 5.7% for 2020, again, consistent with the reductions that have occurred nine (9) times since 2015 as savings to the employer and insurance company.

It does not take much examination to recognize that some of the causes of these reductions impact the worker. The premium health plan a worker may have such as Blue Cross, Kaiser, or other plans have had a shift to a certain extent of cost that belong to the Workers' Compensation system shifted to Association/Union, Workers', health care plans.

This recommended rate cut for 2020, and the recognition that the rate cuts have continued since 2015, are **not** a reflection of increased medical care or access to returning back to work, but in part a shift of the cost by limits imposed by UR/IMR.

The news report of August 7, 2019 reflects WCIRB reported (the 5.7% reduction if adopted this would be a ninth consecutive premium rate decrease approved since 2015 totaling approximately 44%). Again, with any system there can be some modifications and improvement of the system. This should not be reflective in the cost shifted from the employer to the worker, or Workers' Health Care Plans.

As many readers are aware, the Utilization Review and Independent Medical Review system that was embraced in 2013 has had a dramatic impact on curtailing minimizing or removing the needed care for the worker.

A re-examination must occur. The Legislative changes, as I have previously discussed in detail on my website at www.LAW1199.com under *Newsletters* for 2019, *Issue #3*, must be implemented to protect the worker. This premium change is an interesting marketing tool for the employer, but at the expense of whom? This is at the expense of the worker and the workers' family, and the Association and Union.

The report of 08/07/2019 on WCIRB, states the cost for medical care per case in 2011 was \$39,890.00 and the estimated medical cost average or payment for 2018 per case, is \$33,743.00.

Changes and modifications can occur that benefit both the employer, insurance company and the worker, but not at the expense of the worker or the workers' family.

Pharmaceutical costs are being reviewed relative to a group policy that would insure more competitiveness in the cost of the prescribed medications.

The determinations that have been made by doctors that lack the expertise and their thoughts or opinions are followed by the Utilization Review jeopardizes both the worker or the workers family and the current Workers' Compensation system. Nick Shamie, M.D., President, at the American College of Spine Surgery in his 08/09/2019 letter states:

"Patients with workmen's compensation injuries are having a difficult time with receiving proper medical treatment due to the existing laws which puts a lot of power in the hands of Utilization Review and IMR. Our member physicians in California have noticed that the majority of people in Utilization Review as well as IMR physicians are not of the same specialty under which the injured workers are seeking treatment. For instance, a board certified spine surgeon may recommend a certain type of treatment for an injured worker and yet a family physician makes a decision that the recommended treatment is not appropriate."

The doctor also goes on and reflects, again, the failure of the Utilization Review/IMR system and Dr. Shamie says:

"These patients have no other recourse."

Board Certified Spine Surgeon, Thomas Haider, M.D., reflects a change in need regarding the Utilization Review/IMR process stating:

"If Utilization Review denies the treatment then the decision will go in the hands of IMR. If IMR denies treatment, then the patient has no recourse but to wait many months before another appeal. While this law was enacted with a good intention, there has been an unintended consequence which affects the patients' health and livelihood. The IMR physicians' historically have reconfirmed the position of Utilization Review over 90% of the time."

Dr. Haider further states:

"We have noticed the lack of treatment not only leaves the patients' incapacitated but also, puts them at risk losing everything they have worked for all their life. We respectfully request for your consideration to have these patients allow them the opportunity to have judicial review for their medical treatment needs."

Dr. Paul C. Murphy stated in his 08/13/2019 letter:

"I have been treating workers' compensation patients for approximately 31 years. I have seen the evolution of the treatment of the injured worker over these many years and the

recent Labor Code changes that have established a Utilization Review have been extremely cumbersome and unwieldy. The Utilization Review person can deny treatment without ever having examined the patient. This will subsequently lead to an independent medical review (IMR), where once again, the patient is not examined by the Independent Medical Reviewer and treatment can be denied. This will leave the patient with no ability to further appeal for approximately one year in most cases.”

“The Independent Medical Reviewer, in my experience, has simply reconfirmed the position of utilization review, and thus it does not appear to be an independent body, independently evaluating the patient in this case.”

Protect the worker; protect the workers family, by changing the protocol of UR and IMR. LOWERING EXPENSES should not be at the cost of the worker.



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