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SENATE BILL 636 STILL NEEDS TO GROW

BY: SCOTT A. O'MARA

Senate Bill 636 was reintroduced to the California legislative body on August 22, 2024 by Senator Cortese, the Bill has passed the Assembly on August 29, 2024, and passed the Senate on August 30, 2024. This Bill is sponsored by the American Federation, State and County Municipal Employees, Union of American Physicians and Dentist and California Neurological Society. The Bill is constructed because the current Utilization Review doctors are not mandated to have state licenses, this can limit proper medical care to cure or relieve the effects of the injury.

This legislation mandates that the Utilization Review doctors be licensed in California and this mandate of licensing goes to utilization for private employers that will commence as of July 1, 2026.

The discussion was that the Senate Bill 636 is a necessity because of lack of state licensing means that there is no regulatory structure to hold the Utilization Review doctors accountable for malpractice or other inappropriate conduct.

The opponents of the Bill out of the California Chamber of Commerce in the California Coalition of Workers' Compensation argue that the Utilization Review is based upon national recognized standards and any variation should be done based upon evidence nationally recognized standards.

The second element of the argument against the mandate of licensing of Utilization Review doctors in California is that this mandate could reduce the number of doctors available for Utilization Review, mandate factor in driving up the cost.

The current regulations on Utilization Review prohibits any person other than a licensed physician who is competent to evaluate specific clinical issues involved in medical treatment services for modifying, delaying or denying requests for authorization of medical treatment to cure or relieve.

The mandate that the utilization doctors are to be licensed by the state of California creates more accountability on the doctors. The physicians that are not mandated would not be subject to other aspects such as the Medical Board of California. The Medical Board of California is a California State Government Agency which can impose discipline on medical doctors who fail to meet certain standards of care.

If the doctor is not mandated to be a California licensed doctor, they would not be subject to the Medical Board of California's review and discipline.

The Medical Board of California is an organization to ensure a high standard of care.

This legislation eliminates governmental entities, i.e., public employers such as the State, County, City or other governmental entities from being subject to the mandate the Utilization Review doctors have to be licensed in California and again subject to the Medical Board of California. These limitations on public employers need to be removed to protect all workers.

There has been, and continues to be, many options available for the employer or the provider of care to directly or indirectly discourage the medical care. This new legislation removes some of the potentially manipulative maneuvers that the adjuster could take because the Utilization Review doctors would be subject to the California Medical Board potentially.

The concerns that the opponents have failed to consider delays in medical care not only causes harm to the worker, but potentially increases substantial costs of the medical provider and a longer period of time of the worker being off of work, or further damages occurring because of delay in medical care.

The concept of the mandate of licensing of Utilization Review doctors is a necessity that indeed could provide more expeditious medical care and lower time off, cost to the employer, and lower harm to the worker.

The elimination of the public employers does not benefit the society. The public employers should also be mandated to utilize Utilization Review doctors that are licensed within California.

This change by Senate Bill 636 once signed by the Governor creates a greater opportunity for the worker to be cured and relieved of the effects of the injury.

Returning back to the heavily charged *King* case in which there was a delay of medical care causing seizures needs to be examined again. The legislative enactments that were drafted and set forth in Labor Code §4610.5(3)(4) that the Utilization Review doctor was not subject to the medical malpractice case pursuant to findings in *King v. CompPartners Inc*.

Currently, the UR doctors do not see the patient nor are they require to be licensed in California. The pivotal case in the California Supreme Court decision, *King v.CompPartners, Inc*., a UR doctor who was being sued for malpractice as was his employer took the position that different rules and duties apply to UR doctors. The defendants in this case, the doctor and CompPartners, argued that the treating physician obviously has a responsible role in the day to day care of the injured worker they treat, but UR doctors do not have a duty to thoroughly vet each case brought to their attention and have immunity for their responsibility of any care, negligence or harmful decisions they make regarding the denial or limitations of medical care (Labor Code §4610.5(3)(4).

In the *King* case, this individual was denied appropriate medical care that then caused seizures. There was a suit brought against the utilization review doctor for failure to apply appropriate standards in the curtailing of the medication. The case went to trial and ultimately made itself to the California Supreme Court. The Supreme Court came back and indicated that because of the legislative enactment pursuant to Labor Code §4610.5 (3)(4), the doctor that did the Utilization Review was not subject to the malpractice lawsuit. The specific legislation that was placed in §4610.5 (3)(4) had unbeknownst to most people afforded a umbrella of protection and the doctor did not have to meet reasonable medical standards regarding the medical care.

The *King* case also raised the specter that the current utilization review system needs to be reexamined, and specifically the fact that the tort remedies that the injured worker sought against the Utilization Review doctor were not available because of the specific legislation that was drawn and was not easily discernible as to the impact that was going to take place. The legislative body had created this new standard. The California Supreme Court in their opinion on the *King* case made a very strong statement. They stated "the legislator may wish to examine other existing safe guards provide sufficient incentives for competent and careful utilization review".

The concept that the Utilization Review doctors must be licensed in California is a significant move. If the doctor is licensed in California and has a failure to meet particular standards this may force that doctor to recognize a higher standard of review and recommendations that if they do not meet those higher level of standards, even though they are utilization review doctors, they are now subject to the California standard of a medical practitioner and this could impact their license. Senate Bill 636 still needs to grow and expand to cover that all UR doctors are to be California licensed.

A change has occurred on September 21, 2024 Governor Gavin Newsom vetoed the Bill that required the Utilization Review doctors to be licensed within the state of California.

The Bills that the Governor rejected were Senate Bills 636 and Assembly Bill 2872. Governor Newsom, in his letter to the Assembly and Senate, stated that he had appreciation for the increased accountability in the UR process, but he indicated that he had concern for the lack of data to warrant the proposed changes.

The Governor stated specifically, "existing workers' compensation law already provides a regulatory structure that holds Utilization Review organizations and the utilization reviewers accountable for their decisions." The Governor went on and also expressed the concern. The Bills will result in differential treatment for employees of private employers' verses public employees while also narrowing the pool of utilization reviewers causing potential delays in medical treatment and increase administrative costs to private employers.

The Governor and his staff needs to be further educated that his statement of, "existing workers' compensation law already provides a regulatory structure that holds Utilization Review organizations and the utilization reviewers accountable for their decisions", this is not a full analysis. The other cases cited in *Newsletter 2023, Issue #3* indicates the legislative manipulation that occurred which allowed UR doctors not to have the same responsibilities or accountability if they do not do an adequate evaluation of the individual seeking medical care.

What is required now is for the legislative body to go back and fully educate the Governor and his staff as to the inadequacies of UR and the lack of accountability that does impact and take away from a faster way to cure or relieve the effects of injuries and minimize residual disability.

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