

## Revised Utilization Review Regulation Sparks Controversy

Since 1996, DWC Regulation 9792.6 has allowed insurers to institute utilization review (UR) programs. Under the UR program, an insurer must respond to a treating physician's "request for assurance that appropriate reimbursement will be made for a specific course of proposed medical treatment" within seven days. If the insurer denies approval, the insurer must disclose the name, telephone number and availability of the medical reviewer and the medical criteria upon which the denial is based. The medical reviewer must be a "physician with an unrestricted license . . . who has education, training, expertise, and experience that is pertinent for evaluating the specific clinical issues or services under review."

CCA's interpretation has been that the treating doctor wasn't required to submit a treatment plan to UR, nor to request "assurance" that the medical treatment would be reimbursed. Our position was, and is, that the doctor treats the injured worker and submit bills for reimbursement, which are then paid, assuming they were for services reasonably required to "cure or relieve" the effects of an industrial injury.

Changes to the UR regulation (Section 9792.6) that took effect Jan. 1, 1999, have sparked controversy. Under the revised section of 9792.6, virtually every report, starting with the doctor's first report, will constitute a "request for authorization," and thus could trigger the UR program. So, even if you don't want "assurance," you may find your care being scrutinized under the UR program of the workers' compensation insurer. Even if you don't want the insurer to review your treatment plan within seven days (as required under 9792.6), the insurer will be required to.

### "Cure or Relieve" Standard is Still in Place

The most basic and important provision in the labor code (Section 4600) says that the employer must pay for all care reasonably required to cure or relieve the effects of industrial injury. Labor Code 4600 is a statute and has the authority of law. By contrast, Section 9792.6 is only a regulation and cannot conflict with a statute.

Some fear that insurers, armed with their UR programs, will now be free to deny reimbursement for appropriate care without consequences. This is not so.

Labor Code 4600 does not say that the physician gets paid only by obtaining pre-authorization from the insurer to treat. Simply because an insurer, following 9792.6, has taken your report as a "request for assurance" and starts the wheels turning on its UR program, does not change the basic principle: You must be paid for care that is reasonably required to cure or relieve the effects of industrial injury.

So what's a treating doctor to do, especially if the UR simply delays approval? Stop treating? Wait for authorization?

Stand Your Ground

With some claims personnel, the UR process will go smoothly and your approval will arrive in a timely manner. With others, you may find the delays so long that it jeopardizes your patient's recovery. In these cases, you have a decision to make. Do you wait for authorization or treat your patient?

If you are rendering care that is reasonably required to cure or relieve the effects of industrial injury, (and assuming no other problems with your position in the case), you do no service to the patient if you delay needed care while awaiting "authorization." The bill review and UR companies may bully and harass you. Stand your ground. There is no statute requiring you to obtain "pre-authorization" as a condition of payment.

It is true that 9792.6 turns your reports into a "request for authorization." But if the insurer doesn't authorize and you know that your care is reasonably required to cure or relieve, continue to treat. Of course the insurer still has the right to request a QME if it disputes your treatment, just as the patient does if he/she has a dispute with the insurer.

If you do not receive reimbursement, you have the same recourse as you did before 9792.6 was revised: the Workers' Comp. Appeals Board (WCAB). With the WCAB, the treating doctor has a strong advantage over the review companies. According to recent cases decided by the WCAB, opinion of UR are not admissible without a QME exam. So, if it's your word against the UR physician, only your opinion will be accepted.

JULY 1999