

Burden Remains on Employer to Prove if Treatment is Unreasonable and Unnecessary

When treatment appears to be endless and costs prove to be quickly mounting, the Utilization Review process may provide refuge for an employer faced with increasing exposure. The Workers' Compensation Act allows for payment of treatment deemed reasonable, necessary and causally-related to the work injury. Initiated by a Utilization Review Request, the review allows an employer to challenge treatment rendered by a specific provider under the basis of whether it is "reasonable and necessary." The Utilization Review Request identifies the provider under review, the treatment to be addressed and the period of under review.

UTILIZATION REVIEW REQUEST TIPS

- If you seek to review a specific type of treatment, such as opioid medications or physical therapy, be sure to identify the prescribing physician in the review.
- Reviews do not need to be limited to a closed period of time and you may request a prospective review of a provider's treatment.
- A review can cover all of a provider's treatment, not just a specific portion. To have all treatment of a provider reviewed, indicate "any and all" in the treatment field.
- To challenge a precise bill, be sure to file the review within 30 days of receiving it.
- Once the review is filed, medical bills relative to the treatment subject to review do not need to be paid during the review's pendency.

Following the filing of the Utilization Review Request with the Workers' Compensation Bureau, the request is sent to a Utilization Review Organization (URO), which acts to acquire the provider's treatment records relative to the period addressed by the review. An independent reviewer within the provider under review's treatment field, whether it is a medical doctor, chiropractor, or other provider defined under the Workers' Compensation Act, will analyze the treatment records for the period under review and obtain optional statements from the provider under review as well as the employee. The independent reviewer drafts a report providing his or her opinion with relation to each component of the provider under review's treatment.

After the assignment of the Utilization Review Request, the Utilization Review Organization has five days to request records from the provider under review. The Utilization Review Organization must complete the report within 30 days of receiving records or 65 days from the date of the review's assignment. The determination will indicate on its cover sheet whether the treatment subject to the review is reasonable and necessary in whole, part, or not at all. The details of the Utilization Review Determination's outcome are documented within the independent reviewer's report. The report will contain a table of the separately considered treatment modalities and the respective determinations of the reviewer.

In the event of a favorable review, the treatment under review will remain un-payable, unless challenged via a Petition to Review the Utilization Review Determination. If treatment is deemed reasonable and necessary, the employer must then render payment. To address an unfavorable determination, a Petition to Review the Utilization Review Determination must be filed within 30 days of receiving the report. During the pendency of a Petition to Review following a determination in favor of the provider (i.e. treatment is reasonable and necessary), the employer remains liable for payment of treatment. Throughout the litigation of a Petition to Review, whether filed by the employer or employee, the burden remains on the employer to prove that treatment is unreasonable and unnecessary.

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