Myths and Realities in Resolving Medical Disputes:
The Inside World of Utilization Review and Independent Medical Review
Overview of Texas WC System

• More than 290 insurance companies actively writing WC

• $2.6 billion in direct written premium

• Including self-insured employers and governmental entities, more than 800 insurance carriers with WC claims

• 67% of private year-round employers have WC and all governmental entities have WC

• About $1 billion in paid medical per year
  – Pharmacy accounts for 14% of medical payments
  – Opioids account for 4.6% of medical payments
Breakdown of WC IRO Requests in 2015

1,209 requests received (52% reduction since 2007)

- 98% involved preauthorization denials
- 67% requested by providers
- 4% of requests involved pharmacy services
- Only 1 request involved compound drugs
- 83% of IRO decisions upheld URA decision
- About 11% of IRO decisions appealed to DWC Contested Case Hearing, only about 5% resulted in a concluded CCH
Overview of Texas Utilization Review Process

• Governing authority
  – Statute: Texas Insurance Code, Ch 4201
  – Rules: 28 Texas Administrative Code, Chapter 19, Sub U

• What is a utilization review agent?
  – An insurance carrier that conducts UR for itself
  – An entity that conduct UR for multiple insurance carriers
  – Must be certified or registered with the Texas Department of Insurance

• Approximately 70 certified/registered URAs for WC
Utilization Review Requirements in Texas

• What is utilization review?
  – Prospective, concurrent or retrospective review of medical necessity, includes some peer review

• Who can conduct utilization review?
  – Only certified/registered URAs
  – Adjusters are not permitted to conduct UR
  – Providers who conduct UR must be Texas licensed
  – Providers who conduct UR must have “appropriate credentials”
How does UR work in Texas?

• Provider/claimant submits preauthorization request or medical bill (retrospective review)

• URA conducts review
  – Preauthorization – 3 working days
  – Concurrent review – 3 working days (1 day for hospitalization)
  – Retrospective review – 45 days

• If approved:
  – Preauthorization - URA sends approval
  – Retrospective review - Insurance carrier pays medical bill
How does UR work in Texas?

• If denied, URA must contact provider and provide a reasonable opportunity to discuss denial before it is issued

• If denied, copy of adverse determination sent to:
  – Provider
  – Claimant/representative
How does UR work in Texas?

• If denied, provider/claimant may request reconsideration from the URA

• URA chooses a different physician to conduct reconsideration

• URA conducts review of reconsideration request

• If approved:
  – Preauthorization - URA sends approval
  – Retrospective review - Insurance carrier pays medical bill
How does UR work in Texas?

• If denied, URA must contact provider and provide a reasonable opportunity to discuss denial before it is issued

• If denied, copy of adverse determination sent to:
  – Provider
  – Claimant/representative

• Adverse determination includes information on how to request a review from an Independent Review Organization (IRO)
Independent Review Requirements in Texas

• Governing authority
  – Statute: Texas Insurance Code, Ch 4202
  – Rules: 28 Texas Administrative Code, Chapter 12, 133.308

• What is a Independent Review Organization (IRO)?
  – A panel of doctors/providers that resolve disputes regarding medical necessity and appropriateness of health care
  – Handle health and WC disputes
  – Must be certified with the Texas Department of Insurance

• Approximately 37 certified/registered IROs for WC
How does IRO work in Texas?

• Who can request an IRO review?
  – Network claims: a provider or an injured employee
  – Non-network claims:
    • Preauthorization/concurrent review - a provider or an injured employee
    • Retrospective review – provider (injured employee may request if employee paid for care out of pocket)

• How are reviews requested?
  – Provider/injured employee fills out a request and sends it to URA
  – URA has 1 working day to process request and send to TDI
  – TDI electronically assigns dispute to next available IRO in about 1 day
  – If no conflict of interest, IRO accepts assignment and assigns reviewer with appropriate credentials
How does IRO work in Texas?

• Who pays for an IRO review?
  – Network claims: the insurance carrier
  – Non-network claims:
    • Preauthorization/concurrent review – the insurance carrier
    • Retrospective review – non-prevailing party (requestor must pre-pay)

• How much is an IRO review?
  – Tier 1 (MD/DO): $650/review
  – Tier 2 (all other providers): $460/review
How does IRO work in Texas?

• Who can submit documentation to the IRO?
  – The insurance carrier, URA, injured employee or employee’s treating doctor

• How much time does the IRO have to make a decision?
  – Preauthorization/concurrent review: 20 days
  – Retrospective review: 30 days
  – Life threatening conditions: no later than 8 days
Required elements of an IRO decision:

• List of all medical records reviewed

• Description and source of screening criteria or clinical basis used to make the decision

• An analysis of, and explanation for, the decision, including findings and conclusions

• Description of the qualifications of the reviewer
Required elements of an IRO decision:

- Clear statement of whether each of the services in dispute is medically necessary

- Certification that the review has no conflicts of interest

- If IRO decision is contrary to DWC adopted treatment guidelines, decision must explain the basis for divergence

- Certification of the date and means by which the decision was sent to the parties
IRO Appeals

- Parties may appeal IRO decision by requesting a medical contested case hearing (CCH) at DWC

- Medical CCHs conducted by DWC Hearing Officers (54 concluded in 2015)

- Parties may appeal a medical CCH decision to district court (substantial evidence review)
### IMR/IRO Comparisons- CA and TX

<table>
<thead>
<tr>
<th>System Feature</th>
<th>CA</th>
<th>TX</th>
</tr>
</thead>
<tbody>
<tr>
<td># of requests/yr</td>
<td>160,000 in 2015</td>
<td>1,209 in 2015</td>
</tr>
<tr>
<td># of entities conducting review</td>
<td>One</td>
<td>37 (assigned on rotating decision basis)</td>
</tr>
<tr>
<td>Pre-requisite to requesting review</td>
<td>• Med necessity dispute only</td>
<td>• Reconsideration by URA</td>
</tr>
<tr>
<td></td>
<td>• Application &amp; UR decision filed by eligible party w/i 30 days</td>
<td>• Must be an approved requester</td>
</tr>
<tr>
<td>Timeframe to conduct review</td>
<td>From receipt of application &amp; med records:</td>
<td>• Preauth/concurrent – 20 days</td>
</tr>
<tr>
<td></td>
<td>• 30 days for regular review</td>
<td>• Retrospective – 30 days</td>
</tr>
<tr>
<td></td>
<td>• 3 days for expedited review</td>
<td>• Life threatening – 8 days</td>
</tr>
<tr>
<td>Cost of review</td>
<td>• Standard non-Rx: $390</td>
<td>• Tier 1 - $650</td>
</tr>
<tr>
<td></td>
<td>• Expedited non-Rx: $515</td>
<td>• Tier 2 - $460</td>
</tr>
<tr>
<td></td>
<td>• Standard Rx-only: $345</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• Term/dismissed: $123</td>
<td></td>
</tr>
</tbody>
</table>
## IMR/IRO Comparisons - CA and TX

<table>
<thead>
<tr>
<th>System Feature</th>
<th>CA</th>
<th>TX</th>
</tr>
</thead>
<tbody>
<tr>
<td>Who pays for review</td>
<td>• Claims administrator</td>
<td>• Network claims – carrier</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• Non-network – carrier unless retrospective review and then loser pays</td>
</tr>
<tr>
<td>Decision required to use treatment guidelines?</td>
<td>• MTUS if applicable</td>
<td>• IRO can diverge, but must explain rationale in decision</td>
</tr>
<tr>
<td></td>
<td>• If not, best evidence-base</td>
<td></td>
</tr>
<tr>
<td>Decision able to be audited by DWC?</td>
<td>• DWC retains the right to determine eligibility</td>
<td>• DWC Medical Quality Review Panel may audit the quality of IRO decision and take enforcement action, if needed</td>
</tr>
<tr>
<td></td>
<td>• IMR determination is deemed to be the DWC Administrative Director’s</td>
<td></td>
</tr>
<tr>
<td>Appeals</td>
<td>• May only be appealed to WCAB on limited grounds</td>
<td>• IRO decision may be appealed to CCH</td>
</tr>
<tr>
<td></td>
<td>• Only remedy is another IMR</td>
<td>• CCH decision may be appealed to district court</td>
</tr>
</tbody>
</table>
Medical Dispute Resolution

Alex Swedlow
CWCI
California within the National Landscape

Highest Expenses

Source: NCCI 2015
Claims with Attorney Involvement

California is #2

Source: WCRI CompScope 2015
Claims with Medical Cost Containment

California is #1

Source: WCRI CompScope 2015
Medical Cost Containment
Indemnity Claims at 24 Months post DOI

2002 to 13: +269%

Last Year: +10%
Components of Medical Cost Containment

Utilization Review, Medical Bill Review & Network Fees

Source: CWCI 2016
# Elevated Utilization Review

## Top Ten UR Events

<table>
<thead>
<tr>
<th>Event</th>
<th>All Events</th>
<th>Approved</th>
<th>Modified</th>
<th>Denied</th>
</tr>
</thead>
<tbody>
<tr>
<td>Pharmacy</td>
<td>43%</td>
<td>74%</td>
<td>7%</td>
<td>19%</td>
</tr>
<tr>
<td>Diagnostic Testing</td>
<td>12%</td>
<td>80%</td>
<td>2%</td>
<td>18%</td>
</tr>
<tr>
<td>Physical Therapy</td>
<td>9%</td>
<td>75%</td>
<td>13%</td>
<td>12%</td>
</tr>
<tr>
<td>Durable Med Equip</td>
<td>8%</td>
<td>72%</td>
<td>6%</td>
<td>22%</td>
</tr>
<tr>
<td>Consultation</td>
<td>8%</td>
<td>93%</td>
<td>2%</td>
<td>5%</td>
</tr>
<tr>
<td>Medical Treatment – Other</td>
<td>5%</td>
<td>84%</td>
<td>4%</td>
<td>12%</td>
</tr>
<tr>
<td>Injections</td>
<td>4%</td>
<td>71%</td>
<td>5%</td>
<td>24%</td>
</tr>
<tr>
<td>Surgery</td>
<td>3%</td>
<td>83%</td>
<td>2%</td>
<td>15%</td>
</tr>
<tr>
<td>Chiropractic Manipulation</td>
<td>3%</td>
<td>65%</td>
<td>16%</td>
<td>19%</td>
</tr>
<tr>
<td>Acupuncture</td>
<td>1%</td>
<td>53%</td>
<td>21%</td>
<td>25%</td>
</tr>
<tr>
<td><strong>Sub-Total</strong></td>
<td><strong>96%</strong></td>
<td><strong>75%</strong></td>
<td><strong>8%</strong></td>
<td><strong>17%</strong></td>
</tr>
<tr>
<td><strong>Grand Total</strong></td>
<td><strong>100%</strong></td>
<td><strong>77%</strong></td>
<td><strong>7%</strong></td>
<td><strong>17%</strong></td>
</tr>
</tbody>
</table>

Source: CWCI 2014
SB 863

Independent Medical Review

SB 863 built the rationale for creating Independent Medical Review. The Legislature declared:

- The prior system of resolving disputes was costly, time consuming and inconsistent
- Medical professionals are necessary to implement medical dispute resolution
- IMR is a necessary exercise of the Legislature's plenary power to provide for resolution of disputes over medical necessity.
Medical Dispute Resolution: From Physician Request to Final Decision

- Request for Approval (RFA)
- Utilization Review
- Independent Medical Review
- New 1st Quarter 2016
Proportion of Care With RFA Review

2014 Services

- Services Paid with No RFA: 84.7%
- Services Requested in RFAs: 15.3%

Range of Formal RFAs
- Low: 9%
- Mean: 15%
- High: 19%
Physician Decisions

2014 Physician UR Outcomes

Services Paid with No RFA: 84.7%

RFA Physician Review: 6.1%
- Physician Modified/Denied: 70.1% (4.3% of All Services)
- Physician Approved: 29.9% (1.8% of All Services)

RFA Non-Physician Approved: 9.2%

Range of Modified/Denials
- Low: .5%
- Mean: 4%
- High: 5%
Independent Medical Review
Volume of Letters & Decisions

IMR Letters & Decisions
2013 - 2015

Letters
2013: 1,141
2014: 137,781
2015: 163,824

Decisions
2013: 2,476
2014: 260,899
2015: 294,458

Source: CWCI 2016
Independent Medical Review
Other Systems: Texas Workers’ Comp

IMR Decision Letters

Source: Texas Department of Insurance, Division of Workers’ Compensation; CWCI 2016
Independent Medical Review
Other Systems: CA Dept. of Managed Care

DMC v. WC
IMR Decisions

Source: CA Dept. of Managed Care; CWCI 2016
New 1st Quarter IMR Study

- Expands IMR timeline through 1Q 2016
### Independent Medical Review

**Volume of Letters & Decisions**

#### IMR Letters & Decisions
2014 – 1st Qtr 2016

<table>
<thead>
<tr>
<th>Year-Quarter</th>
<th>Letters</th>
<th>Svc Decisions</th>
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<tbody>
<tr>
<td>2014-Q1</td>
<td>13,415</td>
<td>26,718</td>
</tr>
<tr>
<td>2014-Q2</td>
<td>22,920</td>
<td>44,009</td>
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<tr>
<td>2014-Q3</td>
<td>54,879</td>
<td>104,602</td>
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<tr>
<td>2014-Q4</td>
<td>46,223</td>
<td>86,146</td>
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<tr>
<td>2015-Q1</td>
<td>34,365</td>
<td>60,811</td>
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<tr>
<td>2015-Q2</td>
<td>48,479</td>
<td>84,182</td>
</tr>
<tr>
<td>2015-Q3</td>
<td>40,421</td>
<td>76,480</td>
</tr>
<tr>
<td>2015-Q4</td>
<td>39,795</td>
<td>73,033</td>
</tr>
<tr>
<td>2016-Q1</td>
<td>40,742</td>
<td>76,406</td>
</tr>
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</table>

Source: CWCI 2016
### IMR Decision Results

#### Volume & Timing

**UR Denials/Modifications Upheld vs Overturned**

2016 – Annualized from First Quarter

<table>
<thead>
<tr>
<th>Result</th>
<th>Services</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Upheld</td>
<td>271,456</td>
<td>88.8%</td>
</tr>
<tr>
<td>Overturned</td>
<td>34,168</td>
<td>11.2%</td>
</tr>
<tr>
<td>Total</td>
<td>305,624</td>
<td>100%</td>
</tr>
</tbody>
</table>

2015

<table>
<thead>
<tr>
<th>Result</th>
<th>Services</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Upheld UR</td>
<td>260,834</td>
<td>88.6%</td>
</tr>
<tr>
<td>Overturned UR</td>
<td>33,624</td>
<td>11.4%</td>
</tr>
<tr>
<td>Total</td>
<td>294,458</td>
<td>100%</td>
</tr>
</tbody>
</table>
1st Quarter 2016 IMR Decision Results By Region

IMR Service Decisions - Distribution by Region, Q1 2016

- Los Angeles: 32.2%
- Inland Empire/Orange: 15.4%
- Bay Area: 20.5%
- North Counties: 1.1%
- Central Coast: 6.4%
- Other/Unknown: 3.5%
- San Diego: 5.2%
- Sierras: 0.7%

Valleys: 15.0%
2015 Results

% of Decisions for Top Volume Providers

- Top 128 (1%)
- Top 256 (2%)
- Top 383 (3%)
- Top 511 (4%)
- Top 638 (5%)
- Top 766 (6%)
- Top 894 (7%)
- Top 1021 (8%)
- Top 1149 (9%)
- Top 1276 (10%)

2016 Results

- 1Q 2016 identified 5,525 unique provider names.
- Top 10 individual physicians associated with 11% of disputes.
- Top 1% of providers (N=53) linked to 31% of disputes
- Top 10% (N=553) linked to 76% of disputes.
## IMR Decision Results By Service

<table>
<thead>
<tr>
<th>Type of Service Requested</th>
<th>% of Service Requests</th>
<th>% Upheld</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>2014</td>
<td>2015</td>
</tr>
<tr>
<td>Pharmaceuticals</td>
<td>45.2%</td>
<td>49.6%</td>
</tr>
<tr>
<td>Physical Therapy</td>
<td>9.2%</td>
<td>8.7%</td>
</tr>
<tr>
<td>DME, Prosthetics, Orthotics &amp; Supplies</td>
<td>9.5%</td>
<td>7.8%</td>
</tr>
<tr>
<td>Injections</td>
<td>6.1%</td>
<td>5.9%</td>
</tr>
<tr>
<td>Surgery</td>
<td>4.7%</td>
<td>4.2%</td>
</tr>
<tr>
<td>MRI/CT/PET</td>
<td>3.8%</td>
<td>4.2%</td>
</tr>
<tr>
<td>Laboratory Services</td>
<td>2.9%</td>
<td>3.3%</td>
</tr>
<tr>
<td>Diagnostic Tests/Measurements</td>
<td>4.9%</td>
<td>3.9%</td>
</tr>
<tr>
<td>Acupuncture</td>
<td>2.1%</td>
<td>2.2%</td>
</tr>
<tr>
<td>Chiropractic Manipulation</td>
<td>1.8%</td>
<td>1.7%</td>
</tr>
<tr>
<td>Psych Services</td>
<td>2.1%</td>
<td>1.7%</td>
</tr>
<tr>
<td>Evaluation and Management</td>
<td>1.6%</td>
<td>1.5%</td>
</tr>
<tr>
<td>Other</td>
<td>6.0%</td>
<td>5.3%</td>
</tr>
<tr>
<td>Grand Total</td>
<td>100.0</td>
<td>100.0%</td>
</tr>
</tbody>
</table>
1st Quarter 2016 IMR Decision Results
By Rx Detail

IMR Distribution & Outcomes of Q1 2016 Pharmaceutical IMR Decisions by Drug Type

- Analgesics-Opioid (29%)
- Musculoskeletal Therapy (12%)
- Compounded (11%)
- Ulcer Drugs (7%)
- Dermatologicals (6%)
- Anti-Inflammatory (8%)
- Anticonvulsants (6%)
- Hypnotics (4%)
- Antidepressants (4%)
- Antianxiety (3%)
- Analgesics-Non-Narcotic (2%)
- Injections (2%)

Legend:
- Upheld
- Overturned
The Missing Piece In Rx Control: Formularies

• November 2014 CWCI Study: The potential impact of a state formulary
  ✓ Modeled CA data using the Texas and Washington State Formularies
  ✓ Estimated system-wide savings of $83M to $509M out of $1Billion CA Spend

• AB 1124 - October 2015
  ✓ Calls for creation of a state formulary
  ✓ Target Implementation - July 2017
Developing the State Formulary

Key Considerations in the debate

- Brand /Generic Substitutions
- Price Variations for Same Drug
- Therapeutic Alternatives
Developing the State Formulary

Key Considerations in the debate

- Brand/Generic Substitutions
- Price Variations for Same Drug
- Therapeutic Alternatives

More than 90% of available Brand to Generic substitutions are already realized
Developing the State Formulary

Key Considerations in the debate

- Brand /Generic Substitutions
- Price Variations for Same Drug
- Therapeutic Alternatives

Current RX Fee Schedule allows for significant price variation
Formulary Considerations: Unit Pricing Variation

Hydrocodone-Acetaminophen Tab 10-325 MG

<table>
<thead>
<tr>
<th></th>
<th>AWP</th>
<th>MAC</th>
</tr>
</thead>
<tbody>
<tr>
<td>Min</td>
<td>$0.58</td>
<td>$0.19</td>
</tr>
<tr>
<td>P50</td>
<td>$0.78</td>
<td>$0.33</td>
</tr>
<tr>
<td>Max</td>
<td>$3.57</td>
<td>$2.29</td>
</tr>
</tbody>
</table>

Source: CWCI 2016
Formulary Considerations: Therapeutic Equivalents
Unit Pricing Variation

Ibuprofen Tab 800 MG

Source: CWCI 2016
Formulary Considerations: Therapeutic Equivalents Unit Pricing Variation

Gabapentin Cap 300 MG

Source: CWCI 2016
Medical Review and Dispute Resolution - Summary

• **Anecdotes & Objective Data**
  - No evidence of wholesale denial
  - 85% approved without going through formal UR

• Significant variation in review stages

• Significant debate over the future of UR and IMR
Case Law Update – **IMR Timelines**

- *CHP v. WCAB (Margaris)*: Untimely IMR determination is valid and binding on the parties

- *Southard/*Baker: Still pending in 3rd District
  - What happens if these cases result in contrary opinions?

*CWCI has been granted amicus status in these cases*
Case Law Update – **Pending UR / IMR Challenges**

- *Ramirez v. WCAB*: Multiple Constitutional challenges to IMR
- *Zuniga v. WCAB*: Full frontal attack on anonymity of IMR reviewer

*CWCI has been granted amicus status in these cases*
Case Law Update – URO Civil Liability

*King v. CompPartners: Court of Appeal held that there is a physician/patient relationship between the injured worker and the UR physician, and a duty of care for UR physician to wean/warn of dangers.

*CWCI has been granted amicus status in these cases