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June 5, 2012

The Honorable Ted Lieu
Chair, Senate Labor and IR Committee
State Capitol, Room 4090
Sacramento, CA 95814

RE: AB 1687 (Fong) – Workers' Compensation Utilization Review
OPPOSE

Dear Senator Lieu:

The California Coalition on Workers' Compensation (CCWC) is an association of California's public and private sector employers that advocates for a balanced workers' compensation system that provides injured workers with fair benefits, while keeping costs low for employers. Our members include not only businesses of every size, but also cities, counties and other public entities.

The California Coalition on Workers' Compensation must respectfully **OPPOSE** AB 1687 (Fong), which would allow for attorney fees when an injured worker receiving medical treatment on a future medical award is successful in overturning a utilization review (UR) decision at the Workers' Compensation Appeals Board (WCAB).

The need for AB 1687 is based on the premise that employers who deny care based on utilization review are acting unreasonably and that injured workers have no recourse outside of legal representation – this premise is false.

Utilization Review in Workers' Compensation

SB 228 (Alarcon), which was passed by the legislature and signed by Governor Gray Davis in 2008, established objective, nationally-based, and peer-reviewed guidelines that were intended to improve the quality of medical care provided to injured workers. Utilization Review, also established by SB 228 in 2003, was specifically designed as a tool for ensuring that medical treatment for injured workers is provided in a manner consistent with the guidelines.

When a medical treatment request is received by a claims administrator it is often sent to UR to ensure that the care is appropriate. Claims administrators are not required to send a medical treatment request to utilization review, but case law restricts an employer's ability to contest treatment based on medical necessity in cases where UR was not performed in a timely manner. In the case of *Vasquez v. Colton Unified School District* the WCAB found that medical necessity is established as a function of law if UR is not performed on a medical treatment request. The message to employers is simple – perform UR or lose the ability to contest potentially inadequate or harmful treatment.

UR denials most often occur for a few specific reasons:

- *Medically Inappropriate* – UR will deny medical treatment because it is inconsistent with a nationally recognized, evidence-based, and peer-reviewed medical treatment guideline as required by law. In short, medical treatment is denied because a physician is recommending a potentially ineffective or harmful course of treatment.

- *Insufficient Medical Information* – The California Code of Regulations require that UR decisions be made within tight timeframes to ensure the prompt delivery of medical care to injured workers. Incomplete and undocumented medical treatment requests leave reviewing physicians without sufficient information to make a decision pertaining to appropriateness of care. In these situations the reviewing physician will either ask for additional records or attempt to speak with the requesting physician. If the requesting physician fails to substantiate their request for treatment, then a denial will be issued until such a time that the treatment request can be appropriately documented.

Good Faith Denials

Labor Code Section 4610(b) requires every employer to establish a program to implement UR on their own, through their insurer, or a third party. The Division of Workers' Compensation is then responsible for reviewing, approving, and auditing the performance of the UR plan. It is absurd for the state of California to pass laws and implement regulations imposing a UR process on California employers only to turn around and penalize those employers for compliance.

California workers' compensation law already contains provisions for penalties and attorney fees when a claims administrator is found to have unreasonably denied medical treatment:

LC 5814.5. When the payment of compensation has been unreasonably delayed or refused subsequent to the issuance of an award by an employer that has secured the payment of compensation pursuant to Section 3700, the appeals board shall, in addition to increasing the order, decision, or award pursuant to Section 5814, award reasonable attorneys' fees incurred in enforcing the payment of compensation awarded.

AB 1687 will likely provide an incentive for litigation in cases where medical treatment was legitimately denied through the application of nationally recognized, evidence-based, and peer-reviewed medical treatment guidelines.

Access to Courts

The justification for allowing the WCAB to award attorney's fees when disputing a UR decision is that injured workers obtaining treatment under a future medical award is that they would have no other method of being adequately represented in front of the WCAB. However, the Division of Workers' Compensation maintains the Information and Assistance Unit specifically for the purpose of helping injured workers navigate the system. These I&A Officers are present at every single WCAB venue – 24 locations – in the State of California and would be available to assist any injured worker that needed help accessing medical treatment under a future medical award.

The ultimate impact of AB 1687 would be to penalize employers for using utilization review as mandated by state law and further burdening the system with additional litigation. For these reasons and more, CCWC must respectfully **OPPOSE** AB 1687 and request that you vote "no" when it comes before your committee.

Sincerely,



Jason Schmelzer
Legislative Advocate

cc. Members, Senate Labor and IR Committee