

## Legislature Wraps Up Session with Reforms to Utilization Review

*Labor Concerns Over Frequency Drive Effort to Curb UR in the First 30 Days*

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The California State Legislature ended the 2015-2016 legislative session at midnight on August 31, and one of the last bills passed and sent to the Governor was a small-scale modification to the statutes governing Utilization Review (UR) in California's workers' compensation system. Driven largely by concerns voiced by organized labor, [Senate Bill 1160 \(Mendoza\)](#) attempts to curb the frequency of utilization early in the life of a workers' compensation claim.



While the cost of expenses like UR and Independent Medical Review (IMR) have climbed steadily in recent years, analysis from the California Workers' Compensation Institute indicates that over 90 percent of the UR denials are ultimately upheld by IMR conducted by the state-contracted reviewer. CCWC believes that this is an indicator that treatment recommendations by some physicians are outside of evidence-based guidelines developed by the State of California. In other words, some doctors are missing the mark with respect to treatment standards established by the state and enforced only through the application of UR and IMR. When doctors miss their target by that significant a margin, then employers are forced to more frequently review their recommendations, and the associated UR costs rise.

Organized labor and injured worker advocates have long held that there is "too much UR" despite the fact that the data suggests otherwise. SB 1160 seeks to address the frequency of Utilization Review by generally precluding Utilization Review within the first 30 days of a claim, with exceptions for such things as surgery, expensive durable medical equipment, and some diagnostic tests. The bill authorizes employers to perform retrospective review on treatment provided in the first 30 days for the purpose of evaluating a physician's adherence to medical treatment guidelines. If there is a pattern of non-compliance by a particular physician, then the employer – through a process that has yet to be outlined specifically – can reassert their right to perform Utilization Review within the first 30 days with respect to that particular physician.

The idea behind the legislation was to take "best practices" from some insurance companies and self-insured employers and apply them to the system in hopes of speeding the delivery of medical treatment and reducing costs for employers. While treatment will certainly be delivered with more speed within the first 30 days of a workplace injury, it is unclear what impact this policy change will have on the quality of medical care delivered to injured workers or the cost paid by employers.

Following a thorough evaluation of the proposed legislation, the CCWC Board of Directors voted to remain neutral on SB 1160 and requested several amendments to improve the legislation. CCWC remained neutral on SB 1160, as opposed to supporting or opposing the proposal, because there were several provisions that offset concerns about the changes to the Utilization Review process.

In addition to the changes to UR, SB 1160 included the following provisions:

- Requires Utilization Review Organization (URO) to become URAC certified to ensure that industry best practices are implemented, but allows an alternative compliance mechanism for non-profits and public entities.
- Prohibits employers from entering into a contract with a URO that provides an incentive to delay or deny medical treatment.
- Requires a TPA that directs Utilization Review to a URO in which they have any financial interest to disclose that relationship to their clients.
- Establishes additional reporting requirements for UROs and claims administrators to ensure that the state has necessary data on the performance of the Utilization Review process.
- Requires filers of liens to provide additional information to show the validity of their claim, prohibits the assignment of liens, and provides for dismissal of liens under certain conditions.
- Clarifies existing law on liens by codifying *Chron v. WCAB*, which should help resolve issues with many liens for services provided during the 2013-2016 timeframe.

CCWC was neutral on SB 1160 but worked aggressively to keep opponents to the bill, namely those interested in preserving their ability to file liens, from convincing the legislature to remove the lien reform provisions in the bill.

SB 1160 passed the legislature with massive bipartisan support, and is likely to be signed by Governor Brown considering that it was largely developed and advanced by an arm of his administration. CCWC will continue to monitor the situation and work with the Division of Workers' Compensation (DWC) during the extensive implementation process.