



March 15, 2024

The Honorable Maria Elena Durazo
 California State Senate
 1021 O Street, Suite 7530
 Sacramento, CA 95814

Re: SB 1346 (Durazo) – Temporary Disability Benefits

Dear Senator Durazo,

The organizations listed above respectfully **OPPOSE** your **SB 1346**, which is a reintroduction of the extremely flawed AB 1213 (Ortega, 2023) that was vetoed by Governor Newsom. It would further complicate California’s onerous claims-handling process and create an incentive to unnecessarily challenge Utilization Review (UR) decisions through Independent Medical Review (IMR). While we share the goal of reducing delays in the medical treatment authorization process, we must oppose SB 1346 because the bill is poorly conceived and fails to protect against well-documented unintended consequences.

STATE DATA SHOWS UR & IMR WORK

We understand why the legislature would be concerned about delays that eat away at an injured worker’s time-limited Temporary Disability (TD) benefits. Fortunately, there is clear data that demonstrates that UR is not causing delay. The problem lies with attorneys and doctors who continue to needlessly challenge UR decisions at obscene volumes, despite losing these appeals at a rate of 90% for an entire decade. The UR process is fast, accurate, and accountable. The delay comes from the hundreds of thousands of IMR requests that are needlessly requested on an annual basis and cause a substantial delay for the injured worker.

Calendar Year	Total Number of IMR Requests	UR Decision Upheld	UR Decision Overturned
2021	264,196	92.8%	7.2%
2020	270,281	90.5%	9.5%
2019	319,505	89.6%	10.4%

2018	360,124	89.7%	10.3%
2017	343,451	91.7%	8.3%
2016	343,141	91.6%	8.4%
2015	308,785	88.8%	11.2%
2014	274,598	91.4%	8.6%
2013	7,805	84.3%	15.7%
<i>Source: State of California Department of Industrial Relations & Division of Workers' Compensation: 2022 Independent Medical Review (IMR) Report: Analysis of 2021 Data (LINK)</i>			

The data contained in the chart above is unimpeachable and clear. IMR is overutilized and that is where the delay occurs for injured workers. If the legislature wants to meaningfully reduce delays, then they should focus on the overuse of IMR by attorneys and physicians. If mitigating unreasonable delay is the issue, then the data clearly shows that ten times as many injured workers are experiencing delays because of an overuse of IMR. The Utilization Review process is not perfect, but it is consistently providing strong results for the system and the data shows clearly that UR is not the cause of delays.

Data continues to suggest that it's a small number of physicians driving this high volume of IMR requests and therefore causing delays for injured workers. A 2021 Research Update from the California Workers' Compensation Institute found that 1% of requesting physicians (89 doctors) account for 39.9% of disputed treatment requests. Just ten individual providers account for 11% of the disputed treatment requests. The report also notes that the same providers continue to be a problem year after year.

Again, we understand why the legislature would want to act if there was a problem related to utilization review and causing delays for injured workers on temporary disability. That is not what the data shows. There is, however, a decade's worth of data clearly demonstrating substantial delays for injured workers resulting from the overuse of IMR caused by providers continuing to prescribe treatment that is outside of established medical evidence and attorneys who have a business model of overusing IMR.

SB 1346 CREATES MORE DELAY, NOT LESS

Our coalition is opposed to SB 1346 because we believe that it will result in additional delay for injured workers, not less. [Research](#) from the California Workers' Compensation Institute conducted on a prior version of the same legislation shows that *fewer than 1%* of injured workers can benefit from the provisions in SB 1346 because they've had both a UR denial overturned by IMR and are approaching the 104-week cap in TD benefits. Any benefits from the bill are targeted at a very small group, however, we believe the unintended consequences could cause additional delays and negatively impact more workers than the bill helps.

Specifically, we believe that SB 1346 will cause injured workers and their attorneys to trigger unnecessary IMR more frequently in hopes of preserving their potential legal right to the additional temporary disability benefits allowed by the bill, with absolutely no downside for the provider or the applicant attorney, as the expenses of the IMR are carried entirely by the claims administrator even if an attorney submits an IMR for a course of treatment that has been denied by IMR as outside the legal standard dozens of times in the same year. The increase in IMR volume will have a direct impact on the turnaround time for these reviews and decisions, thus impacting the injured workers

further. The IMR process takes a substantial amount of time, and employers prevail at a rate of roughly 90% over the past decade. If the result of SB 1346 is more IMR that ultimately upholds the UR determination, then it will undermine the intent of the bill by causing even more delay for workers and more frictional cost for employers.

FURTHER COMPLICATES CLAIMS ADMINISTRATION

California's workers' compensation system is known for its complexity, high rate of litigation, and high cost of delivering benefits. Claims administrators are responsible for collecting, processing, and appropriately accounting for vast amounts of factual, medical, and other pieces of information in the execution of their duties. There are complex systems of accountability and oversight of claims administrators by state regulators, attorneys representing injured workers, and the workers' compensation appeals board. The requirements of SB 1346 would further complicate the claims administration process and result in additional system friction and litigation.

For these reasons and more, our coalition is opposed to your SB 1346. Please contact Jason Schmelzer with any questions at jason@SYASLpartners.com or (916) 446-4656.

Sincerely,

Acclamation Insurance Management
Services (AIMS)
American Property Casualty Insurance
Association
Allied Managed Care (AMC)
California Chamber of Commerce
California Coalition on Workers'
Compensation
California Association of Joint Powers
Authorities
California Joint Powers Insurance Authority
California League of Food Producers
California Restaurant Association
California State Association of Counties
Coalition of Small and Disabled Veteran
Businesses
County of Monterey
Flasher Barricade Association (FBA)
Landscape Contractors Insurance Services
League of California Cities
Public Risk Innovation, Solutions, and
Management: PRISM
Schools Insurance Authority
Self-Insured Schools of California
The Protected Insurance Program for Schools
and Community Colleges