



California Coalition on
Workers' Compensation



April 12, 2023

TO: Members, Senate Labor, Public Employment and Retirement Committee

**SUBJECT: SB 636 (CORTESE) WORKERS' COMPENSATION: UTILIZATION REVIEW
OPPOSE – AS AMENDED APRIL 10, 2023**

The California Chamber of Commerce and the undersigned organizations are respectfully **OPPOSED** to **SB 636 (Cortese)**.

There is No Justification For Requiring Utilization Review Doctors to be Licensed in California

SB 636 would require any psychologist or physician who conducts utilization review in a workers' compensation claim involving a private employer to be licensed in the State of California. There is no evidence that this would improve care to injured workers. This requirement is entirely unrelated to the effective execution of the duties entrusted to a utilization review psychologist or physician. All decisions made by utilization review psychologists and physicians are required to be based on the medical treatment utilization schedule that has been adopted by the Administrative Director for the Division of Workers' Compensation. If treatment varies from that schedule, it must be based on evidence-based, peer reviewed, nationally recognized standards. Because the utilization review standards are nationally based, there is no scenario in which a California psychologist or physician would be more qualified to make a utilization review decision based solely on the fact that they are licensed in California.

California psychologists and physicians do not have specific knowledge that would make this process any more fair or efficient. Conversely, a requirement that such professionals be licensed in California would only limit the number of doctors available to perform utilization review services, thereby creating a logjam of cases that need to be reviewed. Additionally, this limitation would likely drive up the cost of utilization review services because the demand for those services would increase relative to the number of providers who are legally able to perform them. Utilization review enables employers to hold psychologists and physicians to evidence based medical treatment standards and to ensure that employees received the best medical treatment possible while keeping costs under control.

Indeed, Governor Brown vetoed a similar bill in 2011:

I am returning Assembly Bill 584 without my signature. This bill would require that the physician conducting utilization review of requests for medical treatment in Workers Compensation claims be licensed in California. This requirement of using only California-licensed physicians to conduct utilization review in Workers Compensation cases would be an abrupt change and inconsistent with the manner in which utilization review is conducted by health care service plans under the Knox-Keene Act and by those regulated by the California Department of Insurance. I am not convinced that establishing a separate standard for Workers Compensation utilization review makes sense. Sincerely, Edmund G. Brown Jr.

SB 636's Duty of Care Language Misunderstands Utilization Review

Further, the April 10 amendment requiring employers to ensure that a utilization review physician has "the same duty of care" to the employee as a treating physician appears to misunderstand utilization review. Physicians in the utilization review system are reviewing whether specific requests for authorization to provide medical treatment are medically necessary and consistent with existing evidence-based guidelines. The utilization review physician does not interact directly with the patient and patient examination is not the purpose of utilization review. It is therefore unclear exactly what this duty of care language would mean in

practice or what the legal ramifications of this duty would be in light of the process and purpose of utilization review.

For these and other reasons, we respectfully **OPPOSE SB 636**.

Sincerely,



Ashley Hoffman
Policy Advocate
California Chamber of Commerce

American Property Casualty Insurance Association, Mark Sektnan
California Association of Joint Power Authorities, Faith Borges
California Chamber of Commerce, Ashley Hoffman
California Coalition on Workers' Compensation, Jason Schmeltzer

cc: Legislative Affairs, Office of the Governor
Evan Fern, Office of Senator Cortese
Consultant, Senate Labor, Public Employment and Retirement Committee
Cory Botts, Senate Republican Caucus
Scott Seekatz, Senate Republican Caucus

AH:am