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**SENATE BILL 1160
UPDATES BARGAIN ON
UTILIZATION REVIEW AND LIENS**

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SB 863 dramatically changed how medical treatment is provided for work related injuries. Most importantly, it implemented Utilization Review (UR) and Independent Medical Review (IMR) as the primary arbitrators for the provision of medical treatment for admitted injuries.

Applicant attorneys reacted to this by challenging UR decisions at a rate completely unanticipated by SB 863, and appealing many denials through IMR.

SB 1160, signed into law by Governor Brown on 9/30/16, seeks to address concerns of both applicants regarding Utilization Review, as well as defendants regarding the continuing problem of liens and fraud. SB 1160 makes changes to the current medical treatment process in three major areas: UR during the first 30 days, UR Requirements, and Anti-Fraud.

THE BILL

1. Utilization Review of Treatment Requests Within First 30 Days

Starting for dates of injury on or after 1/1/18, SB 1160 no longer requires a Request for Authorization or UR during the first 30 days of treatment if the applicant is treating within an MPN or with a pre-designated physician. There are exceptions for surgery, medications not covered in the upcoming prescription formulary, psychological treatment, imaging other than x-rays, medical equipment costing over \$250, and home health care. However, in the absence of any such exception, treatment requests during the first 30 days must be authorized. The treatment must still be reported to the claims administrator and a provider may be forced to go through retroactive UR, or be removed from the MPN if they show a pattern of going outside evidence based medical standards.

2. Requirements for Utilization Review Vendors starting 7/1/18

- Employers and claims administrators are prohibited from providing financial incentives to deny or modify treatment requests.
- All UR organizations must be accredited, initially through URAC, (formerly Utilization Review Accreditation Commission) and until a final accrediting entity is determined.
- Employers and claims administrators must disclose any financial interests in the UR Company.

- SB 1160 also requires the availability of peer-to-peer communication between the UR doctor and requesting physician when there is a UR denial or modification, requires the DWC to adopt an electronic system for submitting documents to UR, and establishes an expedited timeframe of five days for Independent Medical Review decisions related to medications included on the upcoming prescription medication formulary.

3. **Lien Anti-Fraud Provisions**

- SB 1160 creates new provisions to address medical provider fraud. First, the bill requires lien claimants to file a Declaration stating that they are within the employer's MPN, or have searched and do not believe the employer has an MPN, or have proof of a denial of care. The Declaration is required of any lien filed after 1/1/17 and all liens filed prior to 1/1/17 must file such a Declaration by 7/1/17 or they are dismissed. All medical disputes that are solely regarding medical necessity or a bill review issue must still go through Independent Medical Review or Independent Bill Review, respectively.
- SB 1160 adds new Labor Code Section 4615, scheduled to take effect 1/1/17, to **immediately stay the lien of any medical provider criminally charged with fraud against the Workers' Compensation system, medical billing fraud, insurance fraud, or fraud against Medicare or Medi-Cal, until the criminal proceedings are resolved.** The bill codifies the Court of Appeals decision in *Chorn v. Workers Compensation Appeals Board*, 245 Cal.App.4th 1370 (2016), 80 CCC 637, and prohibits the assignment of a lien unless the provider has gone out of business.

ANALYSIS

Considering that treatment within the first 30 days, with some exceptions, will no longer be subject to UR beginning 1/1/18, carriers might want to keep tabs on how much treatment is provided by doctors in the MPN during that time. It is also critical to identify the exceptions and insure requests for surgeries, psychological treatment, compound medications, and medical equipment over \$250 are still sent to UR.

In order to limit the ability of a lien claimant/physician to declare there is no MPN, defendants should be sure to send the treating doctors MPN Notices.

Although new Labor Code Section 4615(b) requires the Administrative Director to post a list of stayed liens, defendants should not rely on this alone. Hearing representatives tend to "forget" which of their clients have been indicted or charged. It is more important than ever to keep track of indicted and charged providers and delay resolution of their bills until criminal proceedings are completed. Conversely, it is important to remember that formal charges must be brought against the lien claimant and a mere allegation of fraud or improper billing will not trigger a stay.

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