STATE OF CALIFORNIA
DEPARTMENT OF INDUSTRIAL RELATIONS
DIVISION OF WORKERS' COMPENSATION

PUBLIC HEARING

Thursday, July 25, 2024
Elihu Harris State Office Building Auditorium
1515 Clay Street
Oakland, California 94612

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DIR Official Reporters: Julie A. Evans and Jennifer Ferguson

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(Time Noted: 11:00 A.M.)

MR. PARISOTTO: Good morning. Thank you for coming to Oakland to join us. My name is George Parisotto. I'm the Administrative Director of the Division of Workers' Compensation. This is a public hearing for the proposed revisions to the regulations concerning the Utilization Review procedures under Labor Code section 4610. And you'll hear "UR" a lot, which stands for Utilization Review. Additional regulatory changes related to physician reporting and coordination of care requirements are also included.

The proposed regulations in our rulemaking -- and I'm taking this from our Newsline that we issued last month -- primarily implements exemptions to prospective UR created under Senate Bill 1160 (for treatment rendered within the first 30 days from the initial date of injury) and Assembly Bill 1124 (for drugs listed as exempt on our medical treatment utilization schedule drug formulary).

Additionally, the proposal implements the statutory accreditation requirements and DWC's oversight of UR plans, which includes extensive changes to UR enforcement rules; makes changes to or improve or fix issues relating to the coordination of medical treatment; and would add a physician reporting form, the form PR-1, which combines other reports (that's our Form RFA, Request for Authorization, and our current PR-2) to centralize reporting duties of treating

physicians. Implementation of these regulations is anticipated to harmonize our regulations with statutory changes from Senate Bill 1160 and Assembly Bill 1124, and fix system inefficiencies with respect to the delivery of medical treatment.

There are copies of the notice on the front desk, which is over to my right, your left. Please make sure you sign the sign-in sheet and indicate as to whether you want to testify today.

I would like to introduce the other DWC staff here today with me. On my far right is Maureen Gray, the Division's Regulation Coordinator. Next to Maureen is River Sung, an attorney with the DWC Legal Unit who did not get the memo about wearing a blue shirt. To my immediate left is our chief counsel, Ted Richards, and we have Dr. Raymond Meister, who's our -- who is our Executive Medical Director. Our hearing reporters today are Jennifer Ferguson and Julie Evans. Thank you for coming.

Now, when I call your name and you come up to testify, please give your card, if you have one, to Ms. Gray. All testimony given today will be taken down by our hearing reporters. If you have any written testimony you would like to provide, please hand them to Ms. Gray. If you wish to be notified of the final adoption or any subsequent changes to the proposed regulations, please provide your complete name, mailing address and e-mail address on the hearing registration

attendance sheet located at the sign-in table. The final notice or notice of changes to proposed regulations will be sent to everyone who requests such information.

I will call the names for those who have checked that they want to testify. I will also check to see if anyone new has decided to comment. This hearing will continue as long as there are people present who wish to comment on the regulations, but we'll close at 5:00 o'clock. I think since we started at 11:00, we'll probably go to 1:00 o'clock and take a break if necessary.

Written comments, as I've mentioned, can be given to Maureen, if you have them, or will be accepted by fax, e-mail or delivery up until -- 11:59 p.m.?

MS. GRAY: Yep.

MR. PARISOTTO: Is that correct?

At the Division's office on the 18th floor of this building, although, I do not recommend going up there after 6:00 o'clock, which I think is when they close the lock.

MS. GRAY: 5:00 o'clock.

MR PARISOTTO: 5:00 o'clock.

The purpose of this hearing is to receive comments on the proposed amendments to the regulations, and we certainly welcome any comments you have about them. We will not question, respond to or discuss anyone's comments, although, we may ask for clarification or ask you to elaborate further on

any points you are presenting.

All of your comments, both given here today and those submitted in writing, will be considered in determining what revisions we may make to the regulations. Please restrict the subject of your comments to the regulations and any suggestions you have for changing our proposed rules. As a reminder, please be sure you've signed in and, if you wish to speak, that you've checked the box indicating that.

So, again, when you come up to give your testimony, please give Maureen your card, if you have one, so that we can also get the correct spelling of your name. Please speak into the microphone, which is at the podium on stage right of the auditorium. Before starting your testimony, please identify yourself for the record.

And I see that our first speaker today is Ben Roberts.

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BEN ROBERTS

MR. ROBERTS: I suppose the benefits of going first.

I'm Ben Roberts. I represent Genex Services. We are a utilization review organization within the State of California, and certainly appreciate the opportunity to -- to share a few comments about these proposed regulations. We've submitted written comments to Mrs. Gray this morning, and I just wanted to elaborate on a couple of items. Despite my large stack of paper, I will be brief.

The first item I wanted to address is with respect to the new PR-1 form. Overall, we're very supportive of the direction of the Division to consolidate and concentrate the PR-2 and the RFA form down into a single form with the goal of simplifying the process, ideally reducing the burden on providers and stakeholders looking to request authorization. We do have some concerns as a URO about the length and breadth of the form, the number of fields that providers need to fill out, the number of checked boxes. As a URO, we access the completeness of submissions for Requests for Authorization, and the additional complexity will likely result in a slow down in the process to initiate Utilization Review referrals -- excuse me, to achieve an outcome or a decision. And so, our hope is that through simplification, we can shorten the time for response rather than potentially increase the time for response.

Additionally, in Section 9785(g), there's an option to allow for a narrative report in lieu of a PR-1 form, and we have some concerns about that as it's going to potentially be a challenge for payers and URO's to process reviews and requests from a narrative report. We've spent a lot of time since the implementation of SB 863 and the RFA form to get that into the system, and we view it's fully adhered to now. All providers utilize it today. They complete the form accurately and adequately to facilitate fast turnaround. If we have a narrative report option, not a mandate to use a form, then that

will potentially interject confusion and delay into the overall process.

We're very happy to see additional requirements for URO filings, as well as reporting from a material change perspective. We view that has been a gap for a period of time, and so the consistency around that will be beneficial for URO's within California to be able to more easily file Utilization Review plans, receive feedback from the DWC and just ensure that everything is being done in accordance with DWC expectations.

We also, as a long-term utilization review organization and as one of the first URO's who had workers' compensation utilization management URAC accreditation, we appreciate the requirement for URAC accreditation. We think that's a minimum standard that should be utilized by all URO's, and certainly appreciate the Division's emphasis on URAC as a governing body and as an accreditation standard.

Lastly, I would just note that there was something that we feel was potentially left out of the regulations and we assume that was deliberate. SB 1160 created a new section in the Labor Code, 4510(o), which stated that the Administrative Director shall develop a system for the mandatory electronic reporting of documents related to every Utilization Review performed by each employer which shall be administered by the Division of Workers' Compensation.

We assume that that was deliberately left out of the -- these regulations, but we would note that that's still a requirement under the -- under the statute under SB 1160. And Genex would just respectfully request that as the Division continues to consider the electronic reporting requirements, that they involve stakeholders in those discussions to ensure that that is a well thought out and implemented process because any time we talk about electronic data reporting, it involves -- with payers, employers, URO's, it's gonna involve a lot of different systems, a lot of IT development, and we would like to ensure that we have adequate notice as well as participation in that process.

Thank you very much for your time this morning.

MR. PARISOTTO: Thank you. I'm gonna bypass the microphone. I assume everybody can hear me.

Diane Przepiorski?

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DIANE PRZEPIORSKI

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MS. PRZEPIORSKI: Good morning, Everyone. I'm Diane Przepiorski with the California Orthopaedic Association. We also really appreciate the opportunity to comment on these UR regs. They've been long in coming. I know that a lot has happened since 1160 has passed in the legislature, but these UR regs are really sorely needed.

So, I always take a pragmatic approach when we're looking at regulations and trying to improve the system. So, the first thing I did was reach out to some of our orthopeadic practices and ask them what their three top UR problems were. And as you all know, UR is the number one complaint that we get, and I'm sure you get your share of complaints, too, about the UR system.

The top three things that they would like to see resolved in these UR regs -- the number one is denials based on lack of information. Having to search around for RFA responses -- sometimes they're sent to one office, sometimes to a fax number, sometimes to an e-mail address, sometimes not at all, right? And then the third kind of goes along with that is timely responses to the RFA. The five working days goes by, no response. Everything just stops. And those are the three things that cause our members the most administrative work and hassles in trying to keep the treatment of an injured worker on track.

So, I went to the regs to see if the Division was trying to approach or address any of these problems. And, unfortunately, I have to say I really did not see any language in the draft regulations that would go towards trying to solve some of these issues. So, you will see in our comments some suggestions of ways to solve these problems, and they're not necessarily new to you. We talked about them when 1160 was

being passed.

But just to give you an idea, the denial of lack of information -- to me, it's just incredible that we even think that a UR doc -- and, first of all, I should say COA has members who work on both sides of this issue. We have orthopeadic surgeons who work as UR review doctors, and we obviously have treaters. And I hear complaints from both sides, and the one complaint I hear from the UR docs is they just don't have access to the complete medical record. How we can possibly believe that they can even make a good decision without having access to the medical record is beyond us, so you will see in our comments that we really tighten up the requirements on the UR docs and the requirement that they be given access to all the medical records, particularly, when you're denying, right? If you're approving, it's probably not so important to necessarily have access to all the records, but on the denials we think it's critical.

The searching around for the RFA responses? We would actually suggest there be an additional field added to the form that would be designated as the place where the payer must respond to the RFA request. Again, it's just common sense to try to improve the communication and not have people calling or trying to search around to see if an RFA request has been received.

And then on the timely responses, you know, there are

other areas of medicine where if a timely response is not received, the service is deemed approved. I know that that's perhaps a radical idea in workers' comp, to say things are deemed approved, but there really needs to be some tightening up of the timely response to the RFA. It doesn't do anybody any good -- including, most importantly, the injured worker -- to have treatment just stop because people cannot get authorization or any kind of a response. Our members actually are getting to the point when they get a denial, they just tell the carrier to send the injured worker to someone else because they really can't help that injured worker if the -- if the carrier or the UR company is not going to approve the service that they recommend. Often that leads to a conversation, and sometimes it leads to the service being approved, but it really isn't helpful for the injured worker to just keep coming back every 45 days to the orthopeadic office just for the orthopeadic surgeon to say, "Sorry, we can't do anything more for you." So, you will see in our comments some suggestions around those points.

Regarding the narrative report, the narrative PR-1 form -- you know, we really have to object to the comment in the Division's materials that the large group practices would be the only ones affected by having to program in this new form. This is going to hit on each and every one of our members. And to assume that large groups can absorb that cost and they won't

object to it we think is just wrong, and small practices will even have a harder time. So that's why we actually always appreciate the Division's caveat that the doctor could satisfy the reporting requirements by using a narrative report because a narrative report is a little easier for them to incorporate into their EH -- EHR system rather than having to create a form.

I appreciate the comments from Mr. Roberts as far as how it makes it maybe more difficult for the UR review companies, but I think the narrative report is specified that it would have to be in the same order and with the same headings, so maybe that helps know where the information is.

But, honestly, there's really a fundamental thing -- issue in all of this that I think needs to be addressed. The UR system is very archaic. You know, just as Mr. Parisotto mentioned about maybe having a hybrid meeting for these regulatory hearings, UR needs to be automated. There needs to be an online portal where providers would send in their information, the payers would go. They would get their information, it's all date stamped. We get rid of all these arguments that I sent it in, no, you didn't, and back and forth.

And I know that group health commonly uses an online system here in California. Some of the same payers who do workers' comp do group health, and why they don't use that

online system for workers' comp is a -- is a mystery. I know that other states are moving to a more online UR system for workers' comp. It will have some hiccups along the way and bumps along the way for everyone to get on board with that system, but I think the benefits of an automated system just cannot be denied.

So, we would really respectfully ask the Division to maybe -- maybe hold up these regs until there's a more broader application of some of the problems that we're seeing in the UR process. We certainly don't want to wait another -- many years for another UR package to come along and -- and convene some stakeholder meetings to where we could actually sit across the table from the payers and try to refine the UR regs more to address some of the real life problems that our members are having.

So, thank you very much for the opportunity. I'm open to any questions.

MR. PARISOTTO: Thank you very much.

Diane Worley?

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DIANE WORLEY

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MS. WORLEY: My apologies. I didn't bring a card. I'm still in the Zoom environment so I'll spell my name. My name's Diane Worley, D-i-a-n-e, W-o-r-l-e-y. I am the Executive

Director of the California Applicant's Attorneys Association. Thank you for this hearing today. We haven't had one for a little while in person.

Our comments which we've submitted online, and I just handed to Maureen, come from a place of we want to have the best outcome as possible for the injured worker and the Utilization Review process, and we also look to the proposed regs with regard to places where they may create friction and unnecessary delays 'cause we're now in such a complex medical review system with a lot of -- lot of pitfalls, land mines, you know, a lot of traps to try to get treatment approved for that injured worker.

So, initially, medical records. The provisions in Section 9767.6 talk about providing relevant medical records to the initial primary treating physician. Our comments support that all medical records should be provided to the primary treating physician, and to all the treating physicians, whether they're the initial, secondary or third physician.

The reason for that is "relevant" is sort of a subjective term depending on who's looking up those records, and we have seen in the practice, in the UR process, that sometimes the treating physician or the practitioners or the injured workers have to go through sort of a peer review process of you didn't have this medical report. It creates delays for the worker. It creates unnecessary friction, and that can just be

eliminated by requiring that all medical records be provided to the initial treater. And in a perfect world, there's a secondary treater. You would think an initial treater would provide those records, but it doesn't happen that way. So, we just think it should be all doctors and all medical records.

Secondary -- and this is a big one -- Section 9786, subdivision (b), paragraph 6, now has a method by which the claims people can petition for change of treating physician if the treater has a pattern and practice of failing to render treatment that is consistent with the MTUS. Our concern with this is one, it seems to directly contradict another subdivision in 9786, which says: "Good cause shall not include a showing that current treatment is inappropriate ..." which technically means, doesn't comply with the MTUS.

We also haven't given up on the concept of education. We continue to advocate for better educational programs to doctors so that they can learn how to use the treatment guidelines. Clearly, there's -- there's some that aren't. It's creating a problem for claims departments. It's creating a problem for injured workers. I know that the DWC has created an education module to try to address education. But if that's not enough, you know, there might be some way of looking at the MPN's themselves because these are their doctors that they are approving to be in the MPN. Can the MPN's themselves provide some type of education before kicking the doctors out.

The reason I say this is sometimes an injured worker who knows nothing about these technicalities has a relationship with that treating doctor. It could be someone they've been treating with for, you know, five years. And then suddenly, if this type of provision is enforced, their care is abruptly terminated. And through no fault of their own, they're kind of left in limbo in this system.

We also have a comment with regard to another loophole or road block to getting medical treatment authorized with regard to Section 9792.6.1, subdivision (u), paragraph (2), which provides that the definition of "Completed" for an RFA means a limitation that documentation has to be issued or created no earlier than 30 days before the date of submission of that RFA.

Again, this is sort of contradicting. But talking about, you know, kicking doctors out, you want -- you want to -- sometimes treatment goes on for several months -- to document that this treatment being requested is in compliance with the MTUS guidelines, right? So, by limiting the evidence to 30 days before the RFA, you're knocking that -- that evidence out. So, we just think that should be removed, the language, with regard to the 30 days.

We also have some issues with regard to the shortening of time lines for formulary drugs, both with regard to filing an IMR and with regard to submitting records to the IMR reviewer. Ten days in a practitioner's life is basically seconds.

Sometimes with the mail nowadays, if the UR decision is submitted by mail, they don't get it 'til the 8th or 9th day. Everything is delayed. There's also no reasonable rationale why there should be a shorter time frame for formulary drugs other than other treatment. So, we think everything should be the same, a level playing field, you know, the same time frames whether it's a formulary drug or the other.

Lastly, your companies may not like this, but 9792.7, subdivision (e), paragraph 1, allows for two six-month grace periods if the UR plan has deficiencies and needs to correct those deficiencies. We believe it seems excessive to allow a UR plan two grace periods. We're not contesting one. And the reason is, is Senate Bill 1160, I think, was passed in 2018. It's been six years. Probably by the time these regs are finalized, it will be seven years. So this has been coming for some time now, and the knowledge has certainly been out there in the community about -- about some scrutiny and compliance needed for UR plans to comply.

So, we think, again, in the interest of the injured worker who's gonna get caught in this -- and I don't know if deficiencies can be minor or they can be major, right? So, we don't really know what that means -- one six-month grace period seems appropriate.

Thank you for your time today.

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MR. PARISOTTO: Lisa Anne.

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LISA ANNE HURT-FORSYTHE

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MS. HURT-FORSYTHE: Good morning. Is this on? You can hear me anyway. I'm Lisa Anne Hurt-Forsythe. I am with the American Association of Payers, Administrators, and Networks. I was formerly with Ben Roberts' organization -- parent organization, Enlyte. So I have been around workers' comp for a long time. We are also going to supply some written comments, but I thought I'd hit on a couple highlights and respond to some of the things that some of the other folks said.

Firstly, we do support the integration of the RFA and the PR-2 into the one form. We think that's great. However, I am of the school of thought that 1970 called and want their form back. So if that could not be actually a form, but, you know, something electronic, that would be fantastic.

Two, allow -- okay, so the narrative report. So we ended up taking kind of a middle stance to the testimony that we have heard here. Honestly, we are not huge fans of the integrated into the narrative report thing too, but we do understand the practical implications that Diane mentioned for several of the practices. So our thought would be perhaps there could be a requirement that if a narrative report is to be used, that

there is going to be in bold somewhere at the top, you know, "RFA imbedded on page" -- whatever it is, something so that we know that it's there and that we can go and find it easily. I realize that's kind of a middle ground between no narrative reports and full access, but we are thinking maybe somewhere in the middle would be a reasonable approach for those two things.

Let me go back to my others. Regarding education, I do agree with the comments that were made regarding education for all physicians in the system, that's true. I thought that was an excellent point. However, placing a burden like that on the MPNs is inappropriate, and we just don't -- are not staffed to accommodate that. I believe that's a conflating of the UR world and the MPN world, and those are two different worlds. And while I understand the Venn diagram of life that they do cross over somewhat, expecting the MPN infrastructure to support medical -- giving advice in the medical world gets a little sketchy for us. So I can't recommend that, just from a pragmatic standpoint, not to mention a liability standpoint.

A couple other things. I mentioned the boldface notification. So we weren't sure if you were intending for the RFA to be required to be on the form, or if you were trying to do the narrative, or it seemed like in different parts of the regulations there were different -- different things that said different things. So we weren't sure where -- where that was coming from.

We were also a bit confused on the definitions between "expert reviewer" and "physician reviewer." Again, in my Venn diagram of life, there's a lot of crossover there between those two. So we weren't super sure what the distinction was between one and the other. Is it that all expert reviewers are a subset of physician reviewers or -- we were just a little confused.

Also, with respect to the grant of extension for the expert reviewer -- which made sense to us if we have to get somebody to come in and look at it and make an official opinion -- we weren't sure how that would impact the timelines that are also provided for in the UR regs. So we just had a question about that.

On page 20, sub (n), we thought it was a positive change to define the criteria specifically for a material mod. That's been a bit of a Pandora's box thus far, so we found that to be very, very helpful. So thank you. We also appreciate the clarity on what constitutes a complete RFA, because we received everything under the sun, from the most complex, having everything that we need, to the cocktail napkin variety which is on the other end of the spectrum. So we really appreciate there being some continuity there in terms of what's required.

So our biggest beef, I'll tell you, 9792.7, sub (c), sub (3), on page 25. We have very large concerns with the DIR inserting itself into the URAC process and granting itself

authority to just look at anything anytime anywhere and require that all UR organizations essentially bypass their rights to privacy. We don't have an issue with those types of criteria that would standardly -- that would be standardly considered to be reviewed when trying to determine the appropriateness and the ability of the URO to function. We don't have issues there. But Version 8.1 of URAC is quite broad in its application. That just went through a year ago. We weren't sure if these regs were written under the prior version, which I believe was 7.3. In the 7.3 version there was the Core and the Work Comp UM that were split, and one would be appropriate for disclosure and the other would not. But in 8.1 they are integrated. So we have things in there that would not really be appropriate, such as contracts and risk management strategies, marketing strategies, all of those things that are now required under URAC accreditation that were not previously. We don't feel that those types of things would be appropriate for DIR disclosure. We would also be concerned about where would that information go within the morass of the government. Right? No offense, George. But you see where we're coming from. It's not that we have any issue with being an open book in terms of being evaluated for our appropriateness as a URO, but there's got to be a line there at which point it's not appropriate.

Section 9792.9.2, which is also on page 41, on deferrals.

We were a little confused on how that section works in tandem with the tolling of time frames. So we thought perhaps some -- some explanation there would be helpful, because we weren't super sure how that would go.

Oh, so on page 25, we would like to thank the DWC for the positive change providing the acknowledgement of a receipt by the DIR of an application. We were wondering, would that apply to new plans and renewals and mods or just new. But in any case, getting anything back saying "yes, we got it" is great. We appreciate that. Thank you.

Oh, one other suggestion we had. It would be super helpful if the DIR was to produce a checklist comparable to that that we have for the MPN submission that just -- this is what success looks like, go right down the list. We have that for MPNs. It's fantastic because then everybody is operating from the same playbook. And we thought that would be super, super helpful to have that for UR as well.

We will be submitting some written comments with some more detail, but that hits some highlights. Thank you.

MR. PARISOTTO: Thank you very much.

I think it would be interesting if I asked all of our stakeholders to submit a Venn diagram of what they think UR looks like, because it would be quite interesting to see what it would be.

Well, I have come to the end of people who indicated that

they wanted to offer a comment today. So I would like to offer anyone here the chance to offer oral comment.

All right. Well, thank you very much. If there is no one else here who is going to testify, this hearing will be closed.

The opportunity to file written comments will stay open until 11:59 p.m. this evening. These comments should be delivered to the DWC office on the 18th floor of this building. Of course, again, if it's after 5:00 o'clock, then fax, email, or any other type of electronic transmission would be correct.

So thank you for your attendance and the input you have given us here today. And I would also like to thank our staff, our hearing reporters for their work here this morning. This hearing is now closed.

(The proceedings concluded at 11:35 a.m.)

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REPORTER'S CERTIFICATE

I, the undersigned Official Hearing Reporter for the State of California, Department of Industrial Relations, Division of Workers' Compensation, hereby certify that the foregoing matter is a full, true and correct transcript of the proceedings taken by me in shorthand, and with the aid of audio backup recording, on the date and in the matter described on the first page thereof.

Dated: August 2, 2024
Santa Rosa, California

/s/ Julie A. Evans
Julie A. Evans
Official Hearing Reporter

REPORTER'S CERTIFICATE

I, Jennifer Ferguson, the undersigned Official Hearing Reporter for the State of California, Department of Industrial Relations, Division of Workers' Compensation, do hereby certify that the foregoing is a full, true, and correct transcript of the proceedings taken by me in shorthand, and with the aid of audio backup recording, on the date and in the matter described on the first page thereof.

Signed and dated at San Francisco, California, this 5th day of August, 2024.

/s/ Jennifer Ferguson
Jennifer Ferguson
Official Hearing Reporter