



Useful Idiots



By Curtis Winter, Esq.

Uninformed decisions by reviewing physicians under Workers' Compensation utilization review are denying and delaying needed medical care.

IN THE 20 MONTHS THAT THE CURRENT legal procedure for approval of care for injured workers has existed, I have received approximately 1,700 utilization review opinions - most of which deny medical care or modify it substantially by limitation of care. The current utilization review process is clearly inappropriate, especially in light of the level of education required by physicians to actively practice medicine, licensure requirements, peer review, and other disciplinary means to assure appropriate patient care. As an example, what follows below is an actual edited Compensation Injury Utilization Review opinion, with my letter of response:

"The question for this review is if the purpose of an electric wheelchair with a tilt is medically necessary. This patient has a history of lower back pain. The pain is described as burning, pins and needles, numbness and aching. The pain is currently rated on a visual analogue scale as 7 out of 10..."

"He is a 47-year-old male with history of low back pain. He recently received trigger point injections and reported 35% relief. His medication includes Lotensin, Neurontin and Baclofen. The diagnoses are myofascial pain syndrome, lumbar degenerative disc disease, lumbar radiculitis, lumbar facet arthropathy, a spinal cord injury, hypertension and diabetes mellitus. There is again no mention about the medical need for the care in the doctor's note.

"The ACOEM1 guidelines page 308 Summary of Recommendations for Evaluating and Managing Low Back Complaints were reviewed for this request. The guides are silent on durable medical equipment. As a supplement to the ACOEM guidelines, other evidence-based material has been reviewed and considered.

"There is insufficient information provided to determine whether an electric wheelchair is clinically warranted. In addition, there is not a description of the degree of disability that is present, such that the patient would need to give up walking and rely on electric means. I'm not able to verify medical necessity based on the material provided.

"This device fails to meet the FDA definition of durable medical equipment, as it is not proven to be required for the patient's injury treatment. In fact, an electric wheelchair can cause further deconditioning and the debilitation in persons capable of walking."

"Dear M___...

"You have been had.

"Enclosed are the records of my client, noting that he is, in fact, paraplegic. The debilitating dependence that you so wished to avoid by providing my client a replacement wheelchair somehow corresponds with my client's wishes but not the facts. Would you

please review these medical records and conform your opinion to that which is prevalent in the medical community?

"(signed) Curtis Winter, Esq."

The excerpts above portray an inconceivable misuse of utilization review as used in the California workers' compensation system. This little stunt by the workers' compensation carrier resulted in a two-month delay in the replacement of an appropriate powered wheelchair to an injured T-10, T-11, T-12 paraplegic laborer.

The only item for review given to the utilization review physician was a handwritten, 3 x 5 prescription note. No other pertinent operative, postoperative or clinical information was given to this doctor. What else could be expected, but a recitation of guidelines to deny treatment?

Some may expect that a penalty against the carrier would be sufficient punishment for this denial and delay of care. But, the prospect of a \$7,500 penalty obviously did not deter this carrier from this passive-aggressive course of inaction. The prospect of a \$7,500 penalty probably never entered the minds of the patient's children and spouse who carried him to the shower, the dinner table, and his vehicle.

Utilization review was adopted as a manner of shielding a carrier from unwarranted medical expenses. However, it has become a pugilistic procedure to drive claimants into the ground with frustration, embarrassment and delay.

All too frequently, carriers fail to adequately inform utilization review personnel of the true condition of the person whose treatment is being evaluated. Illegitimate delay of even routine medical care subverts the very underpinnings of medical care.

Reviewing physicians thus handicapped are employed to make uninformed decisions, and their opinions are legally presumed to be correct. Inadequate information or description of the injury in relation to the medical treatment allows an insurance carrier to cement itself in a profitable barrier of ignorance. The utilization review physician can become a useful idiot.

The injured are often people who have, by working hard and long, achieved a middle class life style: family, home, cars - the works, including debt. Delays and refusals can cause the loss of a car or a home because of inability to make payments. The injured worker may experience marital and family strife, or separation, while the mishandled case drags on for years, as the powerless patient is bounced from 'provider' to therapist, to pain therapist, to chiropractor, to lawyer, to court. Unlike the injured, insurance carriers - and indeed, some professionals - profit from delay. In the face of this institutionalized abuse, the consequences for the injured can include despair, habituation to pain medication, hopelessness, and depression.

(1) Labor Code Sections 4602 and 4610 require utilization review to be performed *by a competent physician in the same area of practice as the treating physician.*

(2) Labor Code Section 4610 requires that there be a *timely response to a request for medical treatment.*

- If medical services are to be delayed for utilization review (UR), that decision to delay must be communicated to the patient, the attending physician, and where appropriate to counsel within five days from receipt of the request for treatment authorization.
- A decision to modify or deny a medical request must be communicated within 24 hours of the date of the UR opinion.
- The UR report must indicate the date the request for treatment was received, and the date of review.
- Failure to timely review a request for medical treatment must result in provisional

approval by the insurer, until the review is complete.

- The reviewing physician must provide citations for all written sources of medical information consulted or relied upon to make the determination.
- The UR denial of a request for medical treatment must set forth the procedure required to appeal a denial of medical care.

I suggest these methods to combat a shameful and inhumane process:

I. At the time of issuing a treatment request, the treating physician should indicate the applicable guidelines along with the treatment request especially when it is not mentioned within ACOEM or where the treatment plan is outlined by another source. This would lessen denials based on ACOEM/ignorance. Also, the injured worker's attorney or the courts can utilize that supporting documentation to speed up the hearing process. Sources of information generally useful for appeals or treatment recommendations include:

(a) The American College of Occupational and Environmental Medicine

(b) Occupational Medicine Practice Guide-lines or other official utilization schedules.

(c) Practices as generally accepted by the healthcare community including but not limited to appropriate and inappropriate diagnostic techniques, treatment modalities, adjustment modalities, length of treatment, and appropriate specialty referrals.

(d) Any other evidence-based treatment guidelines.

(e) Where appropriate, a statement as to why a variance from utilization review guidelines is necessary to cure and relieve the effects of the injury to this particular employee/patient. Courts have the discretion to ignore guidelines if the treating physician can adequately explain why the proposed procedure or treatment is necessary to either treat or diagnose an injured patient. The courts understand that treatment guidelines do not address every mode or possible means of treatment, and that not everyone will respond as predicted.

II. The treating physician should insist that the reviewing physician reveal his credentials, appropriate licensure, experience, and area of specialty. If the reviewing physician is not properly qualified or lacks appropriate licensing, the treating physician should insist that the reviewing physician note his lack of appropriate credentials to perform the utilization review recommendation. In every case, the treating physician should object to a utilization review denial on the grounds of an absence of a physician/patient relationship, and the reviewing physician's inability to clinically determine the best course of treatment for the patient without a face-to-face interview and examination. You must remind the UR physician of the crucial fact that he must rely upon the treating physicians observations about the patient. If he chooses to disregard that input, the transgression must be included in the UR report.

III. If the UR physicians sources are inappropriate or the UR physician records are incomplete, insist that those omissions and errors be included in the report

Under the present regulations insurers and litigants may each choose, or hire, a physician to evaluate the case. These physicians can become *de facto* employees of the opposing interests; their opinions are therefore suspect.

Courts still view UR opinions even more dimly because there is no examination and face-to-face time with the patient. Therefore, the role of an independent treating physician has become even more important to assure that the patient receives appropriate and timely medical care in the face of this oppressive process undertaken in the name of fiscal responsibility.

If utilization review cannot be educational, and supportive of physicians and patients goals, then it should be modified or repealed and the "useful idiots" deployed elsewhere.

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1. The American College of Occupational and Environmental Medicine (ACOEM) represents more than 6,000 physicians and other health care professionals specializing in occupational and environmental medicine.

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