

MEDICAL BOARD OF CALIFORNIA
LEGISLATIVE ANALYSIS

BILL NUMBER: SB 636
AUTHOR: Cortese
BILL DATE: April 10, 2023, Amended
SUBJECT: Workers' Compensation: Utilization Review
SPONSOR: AFSCME
California Neurology Society
Union of American Physicians and Dentists

DESCRIPTION OF CURRENT LEGISLATION

Requires physicians and psychologists involved in utilization review (UR) for a workers' compensation claim for a private employer to be licensed in California. Requires a UR physician to have the same duty of care as a treating physician.

BACKGROUND

Existing law establishes the workers' compensation system, administered by the [Division of Workers' Compensation](#) within the Department of Industrial Relations and requires employers to secure payment of workers' compensation for injuries incurred by employees that arise out of, and in the course of, employment.

ANALYSIS

According to the author's fact sheet:

"[UR] is an insurance company's use of a medical professional to review then approve, modify, or deny treatment recommendations by the doctor who interviewed or examined the patient. This review is based on what the insurance company considers to be medically necessary.

Under current law, insurance companies may employ medical professionals licensed in any state to perform UR. As a result, medical professionals not licensed in California are exempt from regulation and discipline by the Medical Board of California and the California Division of Workers' Compensation. When these medical professionals wrongfully modify or deny claims, there is no regulatory structure to hold them accountable for malpractice.

The medical professionals performing UR, under current law, are not required to have the same training as the medical professionals making treatment recommendations. These medical professionals not licensed in California may also be unfamiliar with workers' compensation law and requirements specific to California."

This bill would require physicians and psychologists who engage in UR for private employers to have a license from the appropriate California board. At least two other states have already adopted a similar requirement: Texas and Tennessee.

SB 636 also states that a UR physician shall have the same duty of care to an employee as a treating physician.

Arguments from Opponents

Opponents generally argue that there is no evidence this bill will improve care for injured workers and that UR standards are nationally based. Further, they state this will limit the number of providers available to perform UR, potentially driving up costs. They object to the duty of care requirement as the UR physician does not interact directly with the patient and the legal ramifications of that requirement are unclear.

Consideration of a Board Position

UR is directly related to the practice of medicine and is intended to help determine whether a proposed treatment plan is medically necessary for an injured California worker. As this pertains to caring for California patients, it is appropriate for UR providers to have the same responsibilities and regulatory oversight as other providers who treat California residents. Therefore, staff recommend the Medical Board of California adopt a Support position.

FISCAL: Unknown potential enforcement costs related to a complaints or investigations that a UR physician violated the law.

SUPPORT: None identified.

OPPOSITION: American Property Casualty Insurance Association
California Association of Joint Powers Authorities
California Chamber of Commerce
California Coalition on Workers Compensation

POSITION: Recommendation: Support

ATTACHMENT: [SB 636, Cortese – Workers' Compensation: Utilization Review](#)
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