



March 11, 2023  
 The Honorable Liz Ortega  
 California State Assembly  
 1021 O Street, Room 5640  
 Sacramento, CA 95814

RE: AB 1213 (Ortega) – Temporary Disability and Utilization Review  
**OPPOSE**

Dear Assemblymember Ortega,

The organizations listed above must respectfully oppose your AB 1213, which further complicates an already onerous claims-handling process and creates a disincentive for medical providers to comply with medical standards prescribed by the State of California. While we share the objective to reduce delays in the medical treatment authorization process, the bill as drafted, is aimed in the wrong direction. ***In the most recent data that is available from the state, only 7.2% of UR decisions that were challenged and sent to IMR were overturned. That means that disputed UR decisions are correct 92.8% of the time.*** The actual delay in the system related to care comes from the overuse of IMR by a small number of attorneys and physicians trying to push care that is conflicting with the state-established guidelines for determining medical necessity.

**HOW MEDICAL TREATMENT DISPUTES GET RESOLVED**

When a medical provider requests treatment for an injured worker, that treatment must be authorized by the claims administrator before it is provided. The vast majority of requested medical treatment is immediately approved, but some are reviewed to determine whether the request adheres to state medical treatment guidelines that have been established by the legislature and state regulators. This Utilization Review (UR) takes place in a tightly regulated environment, and the UR provider is subject to audit and penalty for failure to adhere to the myriad rules and regulations. If an injured worker disputes the results of the UR process, then the worker, their attorney, or their physician can trigger the Independent Medical Review (IMR) process.

Below is a brief description of both the Utilization Review (UR) and Independent Medical Review (IMR) processes:

1. *Utilization Review*

In compliance with the California Labor Code, all employers or their claims administrators are required to have a UR program. When a claims administrator receives a medical treatment request (known as a Request for Authorization, or RFA) from a physician, they must confirm the request follows established medical treatment guidelines and they can either approve the treatment or refer it to UR for review. UR has five business days to approve, deny, or modify (meaning to change in some way; e.g. approve 6 weeks of physical therapy instead of 10) the RFA. That can be extended to 14 days if the treatment request wasn't supported by medical records and some additional information is needed from the requesting physician.

If the RFA is approved, then the process stops here. A claims administrator cannot challenge a UR approval. If the RFA is modified or denied, then the Independent Medical Review (IMR) process can be triggered by the injured worker, their attorney, or the physician.

In 2019, the California Institute on Workers Compensation published a report using the top law firms identified in UR data which showed that some attorneys submitted nearly all their client's treatment denials or modifications to IMR and others sent none.

If IMR is not requested, then the decision stands as final. Though the UR process is controlled entirely by the claims administrator or a contractor, it is tightly regulated and every claims administrator and UR provider is audited frequently to review their performance. Audit scores are public and compliance errors are met with steep financial penalties.

2. *Independent Medical Review*

If UR modifies or denies an RFA, then an injured worker has 30 days to request IMR. IMR is provided through a company called Maximus that has an exclusive contract with the State of California to provide those services. Maximus contracts with physicians to provide the independent reviews after an initial examination by the Division of Workers' Compensation to ensure that an IMR request is eligible.

The IMR provider applies the exact same medical standards that were used by the UR organization in the decision to modify or deny medical treatment. IMR serves as a "check and balance" on the decision of medical necessity that was made by the UR organization. Once IMR is triggered by a request, a claims administrator has 14 days to deliver records to the IMR provider. Once the IMR provider gets the records, they have 30 days to deliver a decision. The decision is final.

Prior to IMR medical disputes were resolved by obtaining a medical report that would then inform a decision made by a judge at the workers' compensation appeals board, and this process could take months or years depending on the specific circumstances. IMR was a significant improvement for the system, leading to faster resolution of disputes, less delay for injured workers, and less cost for employers.

The UR portion of this process is quite fast – 5 to 14 days. The IMR portion, with the 30 days to request and 30 days to reach a decision, extends the process considerably. However, this is a vast improvement over the prior processes when medical treatment disputes were settled by a comprehensive medical evaluation and then litigated at the workers’ compensation appeals board. In many cases this process took 6-12 months to resolve disputes of medical treatment because of the time needed to schedule evaluations and court proceedings. The legislative history on this issue is clear. It is indisputable that the UR and IMR processes have streamlined the decision-making process and delivered treatment more quickly to injured workers.

**STATE DATA SHOWS UR and IMR WORK**

We understand why the legislature would be concerned about delays that erode an injured worker’s time-limited Temporary Disability (TD) benefits. Fortunately, there is clear data that demonstrates that UR is not a problem. The problem lies with attorneys and doctors who continue to needlessly challenge UR decisions at obscene volumes, despite losing these appeals at a rate of 90% for an entire decade. The UR process is fast, accurate, and accountable. The delay comes from the hundreds of thousands of IMR requests that are needlessly requested on an annual basis and cause a substantial delay for the injured worker.

Calendar Year	Total Number of IMR Requests	UR Decision Upheld	UR Decision Overturned
2021	264,196	92.8%	7.2%
2020	270,281	90.5%	9.5%
2019	319,505	89.6%	10.4%
2018	360,124	89.7%	10.3%
2017	343,451	91.7%	8.3%
2016	343,141	91.6%	8.4%
2015	308,785	88.8%	11.2%
2014	274,598	91.4%	8.6%
2013	7,805	84.3%	15.7%

*Source: State of California Department of Industrial Relations & Division of Workers’ Compensation: 2022 Independent Medical Review (IMR) Report: Analysis of 2021 Data ([LINK](#))*

The data contained in the chart above is unimpeachable and clear. IMR is overutilized and that is where the delay occurs for injured workers. If the legislature wants to meaningfully reduce delays, then they should focus on the overuse of IMR by attorneys and physicians. In 2021, which is the most recent year for which IMR data is available, there was a total of 264,196 requests for IMR. An incredible 245,173 out of the 264,196 reviews upheld the UR decision that had been challenged, and only 19,023 reviews overturned the IMR decision. If mitigating unreasonable delay is the issue, then the data clearly shows that ten times as many injured workers are experiencing delays because of an overuse of IMR. The Utilization Review process is not perfect, but it is consistently providing strong results for the system and the data shows clearly that UR is not the cause of delays.

Data continues to suggest that a small number of physicians are driving this high volume of IMR requests and therefore causing delays for injured workers. A 2021 Research Update from the California Workers’ Compensation Institute found that 1% of requesting physicians (89 doctors) account for 39.9% of disputed treatment requests. Just ten individual providers account for 11% of the disputed treatment requests. The report also notes that the same providers continue to be a problem year over year.

Again, we understand why the legislature would want to act if there was a problem related to utilization review and causing delays for injured workers on temporary disability. That is not what the data shows. There is, however, a decade's worth of data clearly demonstrating substantial delays for injured workers resulting from the overuse of IMR caused by providers continuing to prescribe treatment that is outside of established medical evidence and attorneys who have a business model of overusing IMR.

### **RECORD-KEEPING NIGHTMARE**

California's workers' compensation system is known for its complexity, and claims administrators are responsible for collecting, processing, and appropriately accounting for vast amounts of factual, medical, and other pieces of information in the execution of their duties. There are complex systems of accountability and oversight of claims administrators by state regulators, attorneys representing injured workers, and the workers' compensation appeals board.

The requirements of AB 1213 would represent a substantial new complication in the administration of claims. Claims administrators would be charged with retroactively determining which benefits paid to an injured worker belonged inside versus outside of the statutory cap, which will lead to disputes and litigation related to the pursuit of penalties.

Injured workers are having their benefits wasted with needless disputes, but the data shows clearly that it isn't UR decisions driving that delay. It is the continued flow of time consuming and expensive IMR disputes that uphold UR decisions at a consistently high rate. For these reasons and more, the undersigned organizations must oppose your AB 1213.

Sincerely,

Acclamation Insurance Management Services  
Allied Managed Care  
American Property Casualty Insurance Association  
Association of California Healthcare Districts  
Association of Claims Professionals  
California Association for Health Services at Home  
California Association of Joint Powers Authorities  
California Chamber of Commerce  
California Coalition on Workers' Compensation  
California Hotel & Lodging Association  
California League of Food Producers  
California Special Districts Association  
California State Association of Counties  
Coalition of Small and Disabled Veteran Businesses  
Flasher Barricade Association  
Independent Lodging Industry Association  
League of California Cities  
Public Risk Innovation, Solutions, and Management  
Western Electrical Contractors Association