

Date of Hearing: June 28, 2023

ASSEMBLY COMMITTEE ON INSURANCE  
Lisa Calderon, Chair  
SB 636 (Cortese) – As Amended June 21, 2023

**SENATE VOTE:** 30-8

**SUBJECT:** Workers' compensation: utilization review

**SUMMARY:** Requires, for private employers, that utilization review (UR) is performed by medical professionals licensed under California law. Specifically, **this bill:**

- 1) Requires, for private employers, psychologists performing UR to be licensed pursuant to California state law, in addition to other educational and clinical experience requirements, as specified.
- 2) Requires, for private employers, physicians performing UR to be licensed by California state law, in addition to other requirements, as specified.
- 3) Makes other technical, clarifying changes.

**EXISTING LAW:**

- 1) Establishes a 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. (Labor Code Section 3200 et seq.)
- 2) Defines, for the purpose of workers' compensation, "physician" to include physicians and surgeons holding an M.D. or D.O. degree, psychologists, acupuncturists, optometrists, dentists, podiatrists, and chiropractic practitioners licensed by California state law and within the scope of their practice as defined by California state law. (Labor Code Section 3209.3)
- 3) Defines, for purposes of workers' compensation, "psychologist" to mean a licensed psychologist with a doctoral degree in psychology, or deemed to be equivalent by the California Board of Psychology, and who has two years of clinical experience in a recognized setting or has met the standards of the National Register of Health Service Psychologists. (Labor Code Section 3209.3)
- 4) Requires every employer to establish a medical treatment UR process directly or through an insurer or an entity with which the employer or insurer contracts for these services and establishes penalties for failure to establish and comply with UR requirements. (Labor Code Section 4610)
- 5) Prohibits any person other than a licensed physician who is competent to evaluate the specific clinical issues involved in the medical treatment from modifying, delaying, or denying requests for authorization of medical treatment for reasons of medical necessity to cure and relieve. (Labor code Section 4610)

**FISCAL EFFECT:** Unknown

**COMMENTS:**

1) *Purpose.* According to the author:

When an insurance company steps in to deny a surgery or any medical treatment plan, it can be a nightmare scenario for the patient. Medical treatment is stressful enough without insurance stepping in to deny coverage. If insurance companies feel compelled to perform a utilization review, SB 636 would at least make sure the review doctor is licensed and accountable in California.

2) *Utilization Review.* UR is the mechanism by which employers or their claims administrators can modify or deny treatment requests from injured workers. All employers or their workers' compensation claims administrators are required by law to have a UR program. This program is used to decide whether or not to approve medical treatment recommended by the treating physician and must be based on the medical treatment guidelines. The timeline for this process is regulated and fairly quick, about five to 14 days. UR consists of a records review by a UR doctor. California law requires that all doctors providing care to injured workers and claims administrators' UR programs must use California's medical treatment utilization schedule (MTUS) to determine if a treatment is medically necessary. The MTUS lays out treatments that are effective for certain injuries, how often the treatment should be given, the extent of the treatment and other details.

If UR denies, delays, or modifies a treating physician's request for medical treatment because the treatment is not medically necessary, the injured employee can ask for a review of that decision through independent medical review (IMR).

3) *Need for this bill?* This bill would require the psychologists and physicians who perform UR to be licensed under California law. However, this raises the question of whether UR doctors are actually engaged in the practice of medicine or the providing of treatment to injured workers that would necessitate they be licensed under California law, in addition to the other requirements UR doctors have to already comply with.

Opponents of this bill, including the California Chamber of Commerce argue that, "Utilization review physicians and psychologists are not providing treatment to an injured worker. They are performing an administrative task whereby they use only the records provided to them to measure a provider's treatment recommendation against state-dictated treatment guidelines."

However, the author and sponsors argue that this bill is not about whether UR doctors are practicing medicine or whether them being licensed in California makes them more qualified. They argue the bill is needed to provide accountability, because when doctors are not licensed in California they cannot be held accountable by California.

The Medical Board of California (Board) has the primary responsibility of licensing and regulating physicians in the state. The Board has the authority to investigate complaints and take disciplinary action against the physicians that is licenses. So, if UR doctors were licensed under California law, the Board would have this same oversight over UR doctors.

The Board, in support of this bill notes, “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.”

In the 2018 case of *King v. CompPartners* (California Supreme Court, S232197), King filed a lawsuit against CompPartners, the UR company, and the individual UR doctor for negligence and other tort claims. The California Supreme Court ruled in favor of CompPartners noting that the state’s workers’ compensation laws provided the exclusive remedy and preempted any tort claim, including the IMR process. However, in his concurrence Justice Liu stated that “the Legislature may wish to examine whether the existing safeguards provide sufficient incentives for competent and careful utilization review.” It is possible that requiring UR doctors to be licensed in California would provide this additional oversight.

- 4) *Arguments in Support.* The American Federation of State, County, and Municipal Employees (AFSCME), AFL-CIO, one of the co-sponsors of this bill, write the following in support, “This bill increases accountability for doctors conducting UR and guarantees that California workers are provided a fair claim review process informed by our state’s licensing standards. SB 636 would not prevent physicians based in other states or countries from completing UR so long as they are licensed by the Medical Board of California.”
- 5) *Arguments in Opposition.* A coalition of employers and insurers that oppose this bill, including the California Chamber of Commerce, the California Coalition on Workers’ Comp, and APCIA, write in opposition noting the bill “would undermine the effective use of UR in workers’ compensation by limiting the number of doctors available to conduct UR.” Additionally, Zenith Insurance Company oppose the bill because it is “based on a misunderstanding of the role of doctors performing UR in the workers’ compensation system...The UR process is simply an objective application of evidence-based guidelines, ensuring that no subjective determinations are made by the insurance company.”
- 6) *Prior Legislation.*
  - a) SB 863 (De Leon) Chapter 363, Statutes of 2012 allowed, among other things, an employee to appeal a UR decision by requesting an independent medical review either immediately after the UR decision or after getting a second UR with additional information.
  - b) AB 584 (Fong) of 2011 would have required any physician conducting UR to be licensed in California. This bill was vetoed by the Governor Brown.
  - c) AB 933 (Fong) of 2010 would have required any physician conducting UR to be licensed in California. This bill was vetoed by Governor Schwarzenegger.
  - d) AB 2969 (Lieber) of 2008 would have required any physician conducting UR to be licensed in California. This bill was vetoed by Governor Schwarzenegger.

**REGISTERED SUPPORT / OPPOSITION:**

**Support**

AFSCME  
California Chiropractic Association  
California Conference of Machinists  
California Medical Association (CMA)  
Medical Board of California  
One Individual

**Opposition**

Acclamation Insurance Management Services  
Allied Managed Care  
American Property Casualty Insurance Association  
Arriba Data Systems  
Associated General Contractors  
Association of California Healthcare Districts  
Association of Claims Professionals  
California Alliance of Self-insured Groups  
California Association of Joint Powers Authorities  
California Chamber of Commerce  
California Coalition on Workers Compensation  
California League of Food Producers  
Coalition of Small and Disabled Veteran Businesses  
Encompass Health Solutions  
Flasher Barricade Association  
Housing Contractors of California  
National Association of Independent Review Organizations  
Nexus Enterprises  
Propeer Resources  
Public Risk Innovation, Solutions, and Management (PRISM)  
Rural County Representatives of California  
Zenith Insurance Company

**Analysis Prepared by:** Claire Wendt / INS. / (916) 319-2086