

# **Workers' Utilization Pennsylvania**

# **Compensation Review in**

When a party wants a utilization review under Pennsylvania workers' compensation law, it seeks an independent determination of whether a medical treatment for a work injury is reasonable or necessary. The typical workers' compensation utilization review process begins when the insurance carrier or employer receives the bills for an employee's medical treatment and believes the treatment is not reasonable or necessary.

After the utilization-review request is made, the Pennsylvania Bureau of Workers' Compensation, the state agency responsible for administering the workers' compensation program, assigns an unbiased third party, known as a utilization review organization (URO). A URO is typically "an impartial physician, surgeon or other health care provider or a panel of such professionals." The URO receives medical information from the doctor or facility and determines whether the challenged treatment is reasonable or necessary for the particular work injury or illness.

The utilization-review process is complex and time sensitive. Pennsylvania courts have recently decided that the failure to carefully follow the law may severely prejudice an employee's utilization review and ultimately, his or her workers' compensation benefits.

## **Pennsylvania Courts' Utilization-Review Trend**

Pennsylvania courts have, up until recently, taken a substance-over-form approach to complying with mailing

deadlines for utilization-review requests. In *Sueta v. W.C.A.B.*, a case decided in 2008, the issue decided was whether a physician provided documents to the URO on time. The doctor had 30 days to forward the medical documents and mailed the material within the 30-day window, but the URO received it after the 30-day period. The court held that the language of the statute states that the records must be mailed within 30 days after receiving the request and the physician complied with the law. The action required before the deadline is the mailing, not the receiving.

But a case decided this year favors excluding an employee's medical records, even when timely mailed, if the URO is not able to open them. In *Shaw v. W.C.A.B.*, the doctor timely submitted medical materials to the URO on a CD-ROM (CD). The CD required a password, but the doctor failed to provide it. Since the CD was unusable without the password, the URO could not review the medical records. It labeled the treatment unreasonable and unnecessary under the law. The court agreed with the URO's determination, noting that the doctor had several opportunities to provide the password but failed to do so.

These contrasting decisions demonstrate the Pennsylvania courts' recent trend of literally and strictly enforcing the utilization-review process laws. If you are involved in a utilization review, it is crucial to contact an attorney experienced in workers' compensation law to help navigate through the process.