

INTER-OFFICE MEMORANDUM

TO: ATTORNEYS & CLIENTS

FROM: W. Joseph Truce

DATE: November 27, 2006

RE: **George's Doctor Beats Utilization Review**

FROM THE LOBBY BAR AT THE HYATT:

I managed to squeeze into the last seat at the Hyatt Bar and as I was ordering my usual Beefeaters Martini with two olives I heard a familiar voice to my left. Dr. Nickelsberg was telling George the Bartender to buy a second round of drinks for the house. Since I had previously explained to Dr. Nickelsberg that balance billing for his hospitals was contrary to law when he had already accepted payment from Medi-Cal/Medicare I naturally wanted to know why he was being so generous in treating the house. Dr. Nickelsberg told me he had found a new scam that was both foolproof and legal resulting in an incredible cash flow.

Dr. Nickelsberg told me that his cousin is an adjuster for a large insurance carrier and had told him the secret to avoid utilization review as follows: Instead of calling or requesting the carrier or TPA for authority to perform a medical procedure simply go ahead and perform the medical service (without authorization) and then send your billing and report to the carrier. Dr. Nickelsberg explained that pursuant to L.C. 4600 the defendant is required to pay all treatment bills of the Primary Treating Doctor unless either they are timely denied by Utilization Review or the Administrator Director grants a defendant's Petition for a Change of Physicians pursuant to AD 9786 which provides, in part, as follows: "...(f) The claims administrator's liability to pay for medical treatment by the primary treating physician shall continue until an order of the Administrative Director issues granting the petition..." Dr. Nickelsberg smiled broadly, ordered his third round of drinks for the bar, and commented: "Can you imagine a system when all medical bills by the PTP must be paid regardless of merit or length of treatment--What a Country!..."

I cautioned Dr. Nickelsberg not to forget the limits put on ongoing medical treatment by Utilization Review and after ordering the 4th round for the house the good Dr. explained the secret for beating Utilization Review. Dr. Nickelsberg's cousin had explained to him that almost all carriers and TPA's are only set up for prospective utilization review and therefore if you are so uninformed to actually request authorization, the requested medical procedure will certainly be put thru the utilization review process and non meritorious treatment or treatment that does not comply with the ACOEM Guidelines will be denied. How if authorization is not requested and the bill is simply sent to the carrier the bill will not go thru utilization review but will simply be sent to the bill review company for payment pursuant to the Official Medical Fee Schedule.

Unfortunately Dr. Nickelsberg and his adjuster cousin are correct. Utilization Review became law on 1/1/04 or before SB 899. It took our industry about a year to come up with effective Utilization Review procedures and with certain exceptions most carriers and TPA's have an adequate response to PROSPECTIVE utilization review. However we were too successful and when the cash flow of several PTP's was slowed down these doctors read and analyzed L.C. 4610 (the Utilization Review statute) in conjunction with L.C. 4600 and AD 9786. These doctors then came to the conclusion that since defendants have an ongoing liability to pay for medical treatment and since, with rare exceptions, carriers do not have a procedure for retrospective UR as set for in L.C. 4600, the surest way not to interrupt their cash flow is to perform the medical service and send their bill to the carrier.

Yes, theoretically L.C. 4610 does provide a procedure for RETROSPECTIVE Utilization Review but for all practical purposes this is not followed. An adjuster pursuant to L.C. 4610 (g)(1) has thirty days to refer a disputed procedure to UR and the 30 days commences from the receipt of the bill. However in most cases the medical bills, before they are ever seen by an adjuster, are sent to Bill Review for adjustment and payment per the official medical fee schedule and so Dr. Nickelsberg's plan is to make sure all his bills bypass the adjuster and go directly to bill review.

This is a loop hole that we as an industry need to address although we may have been helped out by a recent decision by the Court of Appeal in a case called Sierra Pacific Industries v WCAB 140 Cal. App. 4th 1498; 71 CCC 714. Although we now know that the time limits for UR are mandatory per the Court of Appeal decision in Brice Sanhagen, the Court in Sierra Pacific, unlike the Court in Sanhagen, addressed the application of UR given not only the UR law effective 1/1/04 but the added effect given to it by SB 899 which amended L.C. 4600 as follows: "...medical treatment that is reasonable required to cure or relieve from the effects of his or her injury means medical treatment that is based upon the guidelines adopted by the administrative director pursuant to Section 5307.27..." By the way we keep referring to the ACOEM Guidelines but now that these guidelines have been adopted by the AD we can start referring to these medical protocols as a rule of the Administrative Director. In Sierra Pacific the Court of Appeal addressed the question as to whether treatment rendered prior to the enactment of L.C. 4610 can be reviewed retroactively pursuant to Utilization Review. In noting the synergy between L.C. 4610 and the subsequent enactment of SB 899 the Court held: "...We conclude the provisions of Bill No. 899 setting forth new guidelines for the determination of reasonable medical treatment apply to this case..." In Sierra Pacific the disputed treatment commenced in 2003 or before UR was a twinkle in the legislature's eye. Clearly this treatment was not objected to on a retrospective basis but the Court still held that the bills were still bound by the amendment to L.C. 4600 courtesy of SB 899 and must comply with the medical protocols of the Administrative Director (ACOEM). Query: Does this make the Court's decision in Sanhagen moot? Dr. Nickelsberg? Dr. Nickelsberg? Please don't go away mad. Make mine a double George.--joe truce