DENIED TREATMENT: How California Workers’ Comp Is Failing Injured Workers

A White Paper Presented by

Law Offices of William S. Lindheim
Imagine that you were injured at work. Your first priority is getting the medical treatment you need, when you need it.

You take all the right steps – reporting the injury to your employer, filing the correct workers’ compensation paperwork and seeking treatment through the appropriate network. The doctor or specialist prescribes a course of treatment, perhaps medication, therapy, surgery, MRIs, CAT scans or other procedures.

Even though your doctor has physically examined you – applying professional medical judgment to recommend a course of testing or treatment – that isn't enough. Under the current workers’ compensation system in California, your doctor’s recommendation must be approved by your employer’s insurance company.

What does this approval process entail? First, your doctor sends a form requesting authorization. The insurance company then ships that request off to a reviewing physician, who could be based anywhere in the country. The reviewer is supposed to compare the proposed medical treatment against California's mandated treatment guidelines to make a decision. You won't meet with the reviewer; you won't even talk with him or her.

This approval process – called **Utilization Review** – is intended to manage costs by ensuring that treatments are medically necessary. Yet, far too often, it's used as a roadblock to stall or stop much-needed treatment. The result is a denial letter saying you can't get the treatment or tests your doctor ordered.

*For many workers in California, this scenario is not an imaginary one. It’s real, and it impacts not only the injured individual, but also his or her employer and loved ones.*
It used to be that you could get a meaningful second opinion after a treatment denial. A medical examiner would act as a neutral third party, conducting a thorough review to come to a reasoned conclusion. If you still received an unfavorable decision, you could appeal it and make your case in court.

Now, you only have one option to challenge the decision: Independent Medical Review (IMR). While it sounds similar to the independent medical examiner process, the resemblance is in name only. IMR is a far less thorough – and less personal – process that suffers from significant shortcomings. It is not a second opinion so much as a rubber-stamping of the treatment denial.

### Getting Treatment: More Checks And Balances In The Old Process Vs. The New Process

**Old Process**

1. **Treatment Request**  
   Worker requests treatment

2. **Utilization Review**  
   Insurer approves, denies or modifies treatment request

3. **Second Opinion**  
   Neutral medical examiner prepares report based on in-person examination

4. **Court**  
   Worker has right to hearing/appeal before administrative law judge

**New Process**

1. **Treatment Request**  
   Worker requests treatment

2. **Utilization Review**  
   Insurer approves, denies or modifies treatment request

3. **IMR**  
   Anonymous doctor makes a final decision based on medical records alone
Anonymous Decision-Making

In contrast to your treating doctor – who met with you and examined you in person – the doctor who ultimately decides whether you need treatment will remain anonymous. The state contracts with a private business, called Maximus, to review the medical records. Its doctors must come to a decision based solely on those records. There is no in-person examination and no opportunity for a hearing. Except in very limited circumstances, IMR decisions are final. This means, as an injured worker, your right to treatment is decided by a stranger whose name you will never know.¹

For the average person, the thought of having personal medical decisions made by a total stranger – without the opportunity to even know that person’s name or meet in person – is unthinkable. For injured workers in California, it’s now commonplace.

Inexcusable Delays

The IMR process was intended to improve upon the sometimes slow, cumbersome and costly judicial process. It was supposed to improve access to treatment for injured workers while cutting costs for employers.² Ironically, it does neither.

The process suffers from inexcusable delays. Recognizing the importance of prompt treatment and diagnosis, California’s Labor Code imposes a 30-day deadline for IMR decisions.³ But the system was not designed to handle the high volume of cases it received (a byproduct of the high percentage of treatment denials during Utilization Review). As a result, IMR decisions routinely take up to 90 or even 120 days before a decision is rendered.

¹ Cal. Lab. Code § 4610.6
³ Cal. Lab. Code § 4610.6(d)
The sluggishness of the IMR process is apparent in the numbers. The process was modeled after a similar program that reviewed 750 cases a year and overturned, on average, 43 percent of treatment denials. By contrast, during its first year, IMR received more than 73,000 cases. It issued only 3,723 decisions, and only 16 percent overturned treatment denials.\footnote{See SB 863: Assessment of Workers’ Compensation Reforms at 1.}

What do these numbers mean for the injured workers? They mean delayed access to treatment – which, in many cases, amounts to a denial of treatment. Serious medical conditions require prompt diagnosis and swift action. The longer these critical decisions are put off, the greater the harm that results.

**How These Flaws Erode The System**

Fundamentally, IMR undermines the purpose of workers’ compensation: to get injured workers the treatment they need so they can go back to work as quickly as possible.

Now, injured workers are stuck in a proverbial no man’s land. They spend months awaiting a decision that will, more likely than not, slam the door shut on their treatment – and shut them out from further appeals.
So how can this broken system get fixed? Two key elements need an overhaul: Utilization Review and the new IMR process.

**Removing Utilization Review As A Roadblock**

First, the Utilization Review process must have more checks and balances. Injured workers should have a right to seek a second opinion when their doctor’s treatment or testing recommendations are summarily denied.

Under the current system, the treating doctor often gets overruled by the insurer’s out-of-state reviewer – who *never even examines* the patient. Granting patients the right to a second opinion would level the playing field. Their treating doctor’s opinions would not be so hastily swept aside.

Nor should every treatment and diagnostic decision be subject to second-guessing through Utilization Review. Eliminating this requirement would, in many cases, actually cut costs for the insurer. By the time a denied treatment request goes through the Utilization Review and subsequent IMR process, the insurer may have spent upwards of $1,000 to fight a treatment or test that may have cost much less. Unfortunately, insurers pass along these costs to employers as increased premiums.

Finally, the reviewers should be medical professionals based in California. This requirement would both curb delays and ensure greater accountability, as the reviewers would then be subject to the same standards and disciplinary rules as the California-based treating doctors. It would also eliminate many of the alarmingly baseless reasons that treatments are denied – for example, because the reviewer was unable to contact the treating doctor due to differences in time zones.

*Of course, it’s the injured workers – and their loved ones – who pay the highest price in terms of physical, emotional and financial wellness.*
Sticking With What Works

Second, the IMR process is a step backward that should be reconsidered. The prior process – involving independent medical examiners who actually examined and interviewed the patient – gave both sides a fair opportunity. The process was more neutral, with the independent examiner essentially acting as a third-party arbitrator.

What’s more, under the old system, patients also had the ability to seek recourse in court. Judges were far more apt to defer to the treating doctor’s decision and uphold treatment.\(^5\) Now the courts have no jurisdiction to address Utilization Review decisions, and they rarely have the ability to overturn IMR decisions.\(^6\) As a result, many injured workers are denied access to treatment and access to justice.

Could Positive Change Be On The Way?

California’s Constitution establishes a clear mission for workers’ compensation. It mandates that the system “accomplish substantial justice in all cases expeditiously, inexpensively, and without incumbrance of any character.”\(^7\) The current system falls far short of accomplishing that objective.

Fortunately, there is a glimmer of hope. California appellate courts may soon weigh in on the current system and its fundamental flaws. In December, the 1st District Court of Appeal accepted an important case that challenges the IMR process. The appeal asserts that IMR violates patients’ constitutional rights by denying them the opportunity to seek review in court.\(^8\)

Change may be on the horizon. Unfortunately, it may come too late for the thousands of injured workers who have already waited long enough.

---

\(^5\) See SB 863: Assessment of Workers’ Compensation Reforms at 17.
\(^6\) Cal. Lab. Code § 4610.6
\(^7\) Cal. Const., art. XIV, § 4