

ADVISORY NO. 401
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TOPIC: NEW PEER REVIEW RULES

The peer review data process remains highly politicized in Texas. Rep. Helen Giddings, Chairwoman of the House of Business & Industry Committee wrote a letter to Commissioner Albert Betts stating:

“It was always this committee’s intent to ensure that all medical reviews of workers’ compensation cases were performed by a doctor licensed in Texas.”

The statute requires “a doctor who performs peer reviews” to be licensed in Texas. 408.0231(g).

Although the rule adopted by DWC does not require Texas licensure of peer review doctors, the statute clearly imposes this responsibility. Our firm accordingly recommends using Texas licensed physicians for both medical necessity and for other questions about extent of injury, medical causation, impairment ratings, etc. in all cases.

Utilization Review Agents (URAs) are responsible for the *preauthorization* process. That process is utilized when a physician proposes treatment subject to preauthorization under Rule 134.600. URAs only review services required to be preauthorized (although, when reviewing a file for purposes of preauthorization, they are permitted to also retrospectively review other services). TEX. INS. CODE § 19.2003(33).

These reviews are performed within three days and physicians work with the Utilization Review Agents to provide the very quick response required by the short time frames in the rule. The process is regulated by TDI. Physicians used by the URA for preauthorization do not have to be Texas licensed, although if they are not Texas licensed, they must be supervised by a Texas licensed physician. Rule 180.22(g)(1).

Apart from licensure issues, a question has been presented as to whether peer review physicians must be certified as a Utilization Review Agents. The statute, the DWC rules, and Commissioner Betts’ letter do not support that conclusion. This firm accordingly believes that a peer reviewer is not required to be certified as a URA. However, when we requested clarification from the Division, they deferred an answer and submitted it to the Rules Committee.

Rule 180.28(a) requires peer review reports to include: name and license number, summary of reviewer’s qualifications, a list of records reviewed, summary of the clinical history, and an explanation of the recommendation. The Insurance Council of Texas requested a clarification of

whether peer review reports prior to August 16, 2006 not containing all information required by new Rule 180.28(a) may be relied upon by carriers. Nothing in the rule suggests that failure to include one of these elements voids the report. This is another matter to be clarified by DWC. Until we receive information to the contrary, carriers should be able to rely on these reports. Care should be taken to include this information in all reports after August 16, 2006.

Rule 180.28(c) requires carriers to submit a copy of a peer review report to the treating doctor, health care provider whose treatment is in question, the injured employee, and injured employee's representative at the time that the carrier relies upon the report to terminate or reduce benefits.

Rule 180.28(d) requires carriers and peer review doctors to maintain accurate records of the requests, reports, and results for peer review services.

In summary, until TDI responds differently to pending requests for clarification, or issues a Bulletin addressing these issues, physicians providing peer reviews will be required to have a Texas license and will not have to be URA certified. All peer review physicians must be on the ADL. URA physicians will have to be Texas licensed or must be supervised by a Texas licensed physician. New rules apply to the information contained in the peer review reports and the exchange of the reports. We recommend that carriers consult with their RME/peer review vendors to ensure that physicians comply with all requirements in the rules effective as of August 16, 2006.

Lastly, for purposes of completeness, the Lt. Governor issued a charge to the Legislature to study use of peer reviews by hospitals for credentialing of physicians. The Lt. Governor's charge is limited to non-workers' compensation use of peer reviews and does not apply to the workers' compensation process.