

**ADVISORY NO. 402**  
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**TOPIC: COMMISSIONER'S BULLETIN #B-0036-06**

The Division of Worker's Compensation has issued the attached Bulletin warning carriers to have appropriately licensed physicians performing Utilization Review and performing peer reviews. This is obviously a very high priority with the Legislature, and it is very likely that non compliance with these rules will result in fines.

When discussing these requirements, recall that the words “medical necessity review” and “peer review” have different connotations to different people. Simply stated, the terms are mutually exclusive. Peer reviews are physician opinions having to do with every service that is *not* performed in response to a preauthorization request under Rule 134.600.

There are two categories of medical necessity reviews: 1) reviews covered by preauthorization and 2) reviews of medical services not requiring preauthorization.

A preauthorization process determining the medical necessity of a service *requiring preauthorization under Rule 134.600* is conducted by a URA. Physicians performing prospective reviews under a preauthorization process by a URA do not have to be licensed in Texas so long as they are supervised by a Texas licensed physician. URAs are a statutory exception to the Texas licensure requirement.

A medical opinion resolving any other medical issue performed by a doctor hired by the carrier to express an opinion without performing a physical examination of the employee is a peer review opinion. Peer review opinions may review issues of medical necessity for services not requiring preauthorization, disability, MMI, impairment, compensability, extent of injury, or relatedness. All peer review physicians must be licensed in Texas. Remember also that the preamble to the peer review rule also states:

[Rule §180.28\(b\) requires the peer review report be sent to the treating doctor when the carrier uses the report to reduce benefits.](#)

The DWC preamble also restates the HB 7 requirement that a peer review opinion must not purport to conclude for a compensable injury that no further medical treatment will be denied. Absent a change in the employee’s condition, for compensable injuries, carriers must never indicate that all future medical care is denied. This firm is of the opinion that a current peer review opinion prior to a service not requiring preauthorization under Rule 134.600 may form a good faith basis that a subsequent bill from a provider for similar care is not medically

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necessary.

Remember also that carriers may continue to request an RME opinion on the question of medical necessity, even after the effective date of the new DDR and RME rules. An RME may not cost that much more, and may be considered by DWC to be more credible evidence.

Not all peer reviews are regulated by DWC. The term peer review in the DWC rules does not encompass peer to peer conversations within a preauthorization process. It does not apply to hospital peer reviews of admitting privileges of doctors, etc. It would not cover suspected medical malpractice in a professional liability suit. It only covers medical opinions relevant to a carrier issue about workers' compensation benefits.

To summarize, if the URA supervising physician is licensed in Texas, and if the physician supervises the preauthorization process, no other doctor working under her supervision for any service required as a part of the preauthorization process must be licensed in Texas. This is true even if a dispute about preauthorization is elevated to a “peer to peer” review and or discussion of the disputed position.

For any peer review independent of a preauthorization request, the physician performing the review must be Texas licensed. If a URA physician, *apart from responding to a preauthorization request*, reviews a file and expresses an opinion about medical necessity of a service for which preauthorization was not required, compensability, extent, or relatedness, etc., then notwithstanding the URA employment, the doctor is performing the function of a “peer review” physician and must be Texas licensed.