ADVISORY NO. 485

TOPIC: INSURANCE COMMISSIONER ADOPTS NEW UR RULES ON SHORT NOTICE

On January 31, 2013, Commissioner of Insurance Eleanor Kitzman adopted 28 TAC 19.2001-2017 (Subchapter U) (Utilization Review Agent rules) "Utilization Reviews for Health Care Coverage Provided Under Workers' Compensation Insurance Coverage". A copy of the new Utilization Review Agent rules can be found at:

http://www.tdi.texas.gov/rules/2013/documents/19.1701_New.pdf.

The adoption also included Subchapter R, "Utilization Reviews for Health Care Provided under a Health Benefit Plan or Health Insurance Policy", 28 TAC §§19.1701-19.1719. Those rules applicable to health benefit plans will not be reviewed in this advisory.

The rule adoption order is 339 pages long. Pursuant to the Texas Government Code, the new rules are effective February 20, 2013 and will require insurance company utilization review departments and utilization review agents to bring their business processes and claims management systems into line with the new rules.

This is a very short time frame for carriers and their URAs to absorb the changes required by the new rules and to adapt their business practices to the changes.

The intent of the rule adoption is to update utilization review requirements in response to legislative changes and to make review procedures for group health and workers' compensation as similar as possible. Many of these rules changes reflect processes already in practice.

Some misinformation is already making the rounds regarding the rules. In one important area, at least one industry publication has maintained that the rules will require "insurers or their URAs to respond to preauthorization disputes over treatment for injured workers within two days – when the workers' compensation statute sets the time at three days."

This statement is not accurate. These rules continue to adopt the long-standing time requirements of Rule 134.600 for non-network claims and Rule 10.102 for network claims. The initial prospective review period is still 3 working days. See Rule 19.2009(a)(2). And the 30 day

period for retrospective review remains. See Rule 19.2009(a)(3).

What has changed arises from the requirement that the "reasonable opportunity discussion" (the peer-to-peer) must occur no less than one working day from the issuance of an adverse determination. For the 30 day retrospective review period, the discussion period must be no less than 5 working days before issuance of an adverse determination. Before this change, there was no guideline as to when that discussion had to occur. See Rule 19.2003(b)(28) for the new definition of "Reasonable Opportunity". Rule 19.2010 sets out the information that must be provided to and discussed with the requesting provider relevant to the reasonable opportunity discussion.

Some of the other more important changes and clarifications are:

- If in conflict, DWC rules prevail. Rule 19.2002(b)(3) and (b)(4)
- Denial for failure to request preauthorization or concurrent review is not "utilization review".
- A complaint about the URA process is not an "appeal". A promptly cleared misunderstanding is not a complaint.
- The definition of "disqualifying association" has been clarified. Rule 19.2003(b)(4)
- Being employed by or contracted with the same URA as the provider does not itself constitute a disqualifying association. Rule 19.2006(b);
- Subchapter U rules apply to a peer review addressing the medical necessity of or appropriateness of medical care. These rules do not apply to peer reviews addressing such issues as extent of injury, compensability and return to work.
- General standards for URAs are discussed in Rule 19.2005. These sections add some screening criteria. A URA must now also take into account "special circumstances" which might require deviation form screening criteria/guidelines, such as disability, acute conditions and life threatening situations.
- Rule 19.2009(b) describes the information that must be included in an Adverse Determination. The license number of the reviewing healthcare professional must be included.
- Preauthorization numbers must now comply with federal guidelines under 45 CFR § 162.1102.
- URAs must provide telephone access at least 40 hours per week and during normal business hours in the Central AND Mountain Time zones.
- URAs must implement procedures for high risk situations such as (1) requests for drugs required if the claimant is currently receiving them and (2) requests for medications for post-stabilization care and pain management following surgery or emergency care. Rule 19.2012

There are many more changes and clarifications, including issues related to regulation, violations, applications and re-certifications that are not discussed here in detail.

The Insurance Commissioner also repealed existing Utilization Review Agent rules in conjunction with the passage of the new rules. The order repealing the current rules is available at http://www.tdi.texas.gov/rules/2013/documents/19_1701_repeal.pdf.

Attached is a summary proposed by the Texas Department of Insurance entitled "Summary Sheet for Rules Related to Utilization Review Agents." The Department put together the attached summary, but stakeholders should note that the summary does not replace a complete reading of the rules.

Flahive, Ogden & Latson will provide a comprehensive analysis of the new rules shortly. Moreover, the effect of the new rules will be a subject of discussion at the firm's annual client seminars on March 27 and 28, 2013. If you have questions concerning the newly adopted rules, please contact Steve Tipton, James Sheffield, or Bobby Stokes in our office.