SB 1160: The Road to Exemption

By Glenn Crafts, DC, QME, Assistant Vice President, Utilization Review & Quality Assurance at EK Health

Once upon a time, health care providers roamed workers' compensation freely and without restraint, treating without limitations--that is, until SB 228 became effective in 2004 and the implementation of what is now known as utilization review (UR) based on Evidence Based Medicine (EBM). Costly medically unnecessary treatment was being rendered with reckless abandon across multiple specialties. A "playbook" was needed to rein in the questionable providers and help ensure that only medically necessary care was given, and more importantly, contain unreasonable costs burdening the claims administrator

Thus, the Medical Treatment Utilization Schedule (MTUS), a proprietary medical treatment guideline, was established. This "playbook" enables health care providers to all be on the same page in determining what type of treatment is appropriate. The MTUS is driven by the diagnosis and the concomitant medical treatment guideline that corresponds. Frequency and duration of care were no longer a mystery.

However, with great power comes great responsibility. While utilization review helped to curtail unnecessary treatment, it also placed limitations and delays on medically necessary treatment. Utilization review was required should the claims administrator not be able to authorize the treatment requested. This created somewhat of a conundrum when causation arose.

In 2013, SB 863 repealed the findings of the Simmons 2005 en banc case whereby new body part(s) were required to go through formal UR first, followed by a subsequent objection by the claims administrator. With SB 863, the questionable body part may be deferred, absent the need for formal UR pending the claims administrator's investigation into causation. Formal UR could still be applied in these cases strictly to determine medical necessity, and if denied, would still be precluded from the Independent Medical Review (IMR) process due to the question of causation. SB 863 rightfully allowed the issue of causation to be determined by the claims administrator without the immediate need to go through UR. For all intents and purposes, this eliminated the potential risk of medically necessary approvals by a UR physician while causation was still being investigated.

In 2018, SB 1160 continued to make positive gains related to expedited treatment requests and treatment in the initial 30 days from the date of injury (DOI). SB 1160 identified treatment that was considered "exempt" from formal prospective utilization review. This enabled obvious medically necessary care to be rendered without going through a formal UR process, eliminating delay of care to the injured worker. Specific exempt treatment included emergency services, medications designated under the MTUS drug formulary, and services provided by a predesignated physician, Medical Provider Network (MPN) or Health Care Organization (HCO) provider, or employer-selected physician or facility. Other significant criteria must also be met: treatment must be related to an accepted body part or condition that is addressed by the MTUS; the treatment plan must be outlined within the physician's report, usually a Doctor's First Report of Occupational Injury or Illness (DFR) and accompanying Request for Authorization (RFA), that is submitted to the claims administrator or employer; and most importantly, all treatment to be considered exempt must be "consistent" with the MTUS.

So, what about treatment requested beyond the 30 days from the date of injury after 01/01/2018? For any SB 1160 exempt related treatment after the initial 30 days from DOI, the MTUS would be applied, and the required guideline hierarchy must be adhered to. The MTUS is presumptively correct, followed by current American College of Occupational and Environmental Medicine (ACOEM) or Official Disability Guidelines (ODG), then other EBM guidelines (www.guideline.gov/), and finally peer-reviewed journals (www.ncbi.nih.gov/pubmed).

The MTUS drug formulary would be of paramount importance in leading the path to enabling care of injured workers by defining a clear route of exemption. The MTUS drug formulary clearly delineates exempt vs. non-exempt medications, which not only expedites care but also provides a consistent manner in determining which medications are in fact exempt.

However, the most significant prerequisite often missed is the recognition that exempt medication and exempt treatment are only considered "exempt" if they are consistent with the MTUS. In other words, even if a treatment is listed as exempt, it must still meet the medical necessity of the guidelines. This means that the burden remains with the requesting treating physician to clearly document both subjective and objective factors and findings to substantiate the medical necessity of the treatment being requested. ✪

TIPS AND TAKEAWAYS

- **Understanding which exempt treatment and medications do not require formal prospective utilization review will avoid unnecessary fees by escalating to a physician reviewer.**
- **Appropriate recognition of exempt treatment and medication eliminates the unnecessary delay of medically necessary care to the injured worker.**
- **Causation should be addressed by the claims administrator before going through utilization review to avoid potential approvals based solely on medical necessity.**