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What's Going On With California UR Regs?

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[Dan Maldonado](#)

It's been nearly three years since California passed Senate Bill 1160, a utilization review reform measure designed to accelerate and improve workers' comp care for injured employees. While components of the law have been implemented, the final regulations have not yet gone into effect. Genex clinical director Dan Maldonado gives us an update

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Tom Kerr (TK): It's been nearly three years since California passed Senate Bill 1160, a utilization review reform measure designed to accelerate and improve workers' comp care for injured employees. While components of the law have been implemented, the final regulations have not yet gone into effect. Today, Genex Clinical Director Dan Maldonado gives us an update on the process and what we can expect once the new regs go into effect. Dan, thanks for joining us.

Dan Maldonado (DM): Great to be here, Tom. Thank you.

TK: Dan, California had planned to make their final UR regulation changes effective in September. Are they still on target to meet that date?

DM: There is no official date yet, which is a little bit frustrating for several parties. And the state has not yet published their final implementation guide. Same with the regulations. The regulations have to go into a final rule-making phase and that will help give us a better idea of when they will be finally implemented and become law. But they haven't started that, and we don't know when they will be ready, so, there are projections but no certainty.

TK: So, why was this date pushed back?

DM: Yeah, the state board was a little noncommittal. The best opportunity we had to talk with them directly and get an idea on what is our timetable for 2019 was at the education conferences that they hosted in February and March. They had indicated to everybody that the rules that were drafted at the time were ready to go into the final rule-making phase that might initiate sometime in May. And they had indicated that the Data Reporting Implementation Guide was in its final draft and ready to be published, that it might be published sometime in June or early summer.

And, for both of those, they'd be looking for organizations, providers and companies to be compliant by sometime in the fall to the end of the year. But here we are in August, and neither one has been really published or pushed into that next phase of the process.

And so, they haven't formally extended the due dates, but because they were noncommittal and just knowing what we know right now, everyone is considering that a lot of this stuff's going to be pushed into 2020.

TK: Even with this delay, UR providers have had a few years to prepare for these changes. How have you and your team worked to meet these regulations in California.

DM: With these draft regulations that are coming forth, several steps happened beforehand that gave us some opportunities to know what's coming and how to prepare. [That all began with Senate Bill 1160 that was signed by the governor near the end of 2016](#) and gave us some indication on what the lawmakers, the voters, and the governor of California wanted to see in utilization review and workers' comp claim management.

There were changes that effectively came to the labor code at the beginning of 2018. And that initiated some of the implementation of what was directed in Senate Bill 1160. And there was a lot of preparation in 2017 for those changes to the labor code. We implemented them successfully. And even yet now here in 2019, we're still discussing with accounts and stakeholders on what were some of the changes in the labor code, how we've adapted. And we're witnessing some of the repercussions of those changes.

For example, one of the changes is the labor code carved out is a 30-day window or exemption for several services that could be provided to injured workers without pre-authorization. And that had impacts on utilization review and its part in the pre-authorization process. Also, the [MTUS drug formulary](#) and a significant update to the MTUS guidelines that was made effective in 2018, as well and another element that even yet in 2019 we're discussing with stakeholders and some of the repercussions.

That drug formulary provided some exemptions. Some medications could be dispensed to injured workers without pre-authorization, and once more that impacted utilization review. So here we are looking at the draft regulations or the rules that are going to provide some further clarity to some of the direction issued in Senate Bill 1160 and the changes we've already implemented. So, our preparation has been quite successful in this regard. It's been a staged process over about three years now.

TK: And an important requirement of SB 1160 is that UR services offered in the state need to be accredited. Have we gotten to the point in the process where providers who are not accredited are being penalized?

DM: You know, it's a curious scenario that highlights the interplay between labor code and regulation in California. So, the labor code already effectively requires that any organization conducting utilization review must be [URAC accredited](#). But there's no penalty or no process for penalty in play yet. And that's what the regulations are bringing forth.

So the state has contacted UR organizations and let them know there is an effective requirement in place, but there's no regulatory penalty quite yet. And so, organizations might still be conducting UR in California noncompliant with that accreditation requirement. And, as soon as the rules go into effect, then the state will be able to effectively discontinue that practice. But until then, it's a non-compliant practice without an avenue for penalty or repercussion.

TK: OK, so once the new regulations officially take hold, will UR companies without accreditation immediately lose their ability to practice in California? Will there be any type of grace period?

DM: No. The effective date that UR organizations were required to have URAC accreditation was July 2018. So, I would imagine that as soon as the regulations being drafted now are implemented, penalties against organizations that are still doing UR and not accredited will be issued immediately and that will discontinue or prohibit their option to conduct UR in the state.

There's a secondary process going on where the state is going to require UR organizations to get their plan or their policies and procedures approved by the state. And those policies and procedures not only have to describe exactly how that organization will conduct utilization review, but it also has to be evident that the organization is URAC accredited. And it's going to give the state another option and opportunity to validate URAC accreditation for these organizations. And, if proof of accreditation is nonexistent or expired, then they can discontinue the UR plan.

TK: OK, so the delay in the implementation date is probably allowing those who haven't become accredited to earn their accreditation without penalty, correct?

DM: That's correct. So, until the rules come into play, UROs have been strongly advised by the state that they cannot conduct utilization review according to the labor code. But there's no process yet in place for them to revoke their licenses to conduct utilization review.

That's what the rules will provide — penalties and revocation of those UR certifications for those organizations.

TK: What's holding up the process of implementing these regulations?

DM: In my opinion, the California DWC identified that they have an opportunity here to provide very clear, specific, and polished regulations for utilization review in the state. And I think they want to get it right.

When we saw the draft that they had published back in December, and as we were talking to lawmakers and board members from the California DWC, which Genex does — we attend the conference, and we go meet, the DWC in person to talk to the people that are writing these rules and regulations — we can identify they had high confidence. They did a fair job, that they had great rules with clear direction on how UR should be conducted, and we confirmed that for them.

Our read through the rules and regulations that they drafted is that they're quite specific. They provide a lot of valuable clarity to questions that had come up with Senate Bill 1160 and the changes to the labor code. And I think they're taking feedback from the public and from stakeholders and other professionals in the workers' compensation space in California, taking it to heart to make sure they get this right.

TK: Have there been major changes to the process since the bill was passed? Or has it been more about refining details?

DM: It's been more of a refinement, from my perspective, and also just the challenge of how you implement what were lofty directives that came out of the Senate bill. The idea

of having UR organizations report to the state on UR outcomes in an electronic fashion was a lofty goal to put forth to lawmakers and to organizations conducting utilization review.

That's an enormous amount of data, and I know that the DWC is looking to do it in a coordinated and organized fashion so the data can be analyzed and value can be garnered from understanding what are the UR outcomes for their injured workers in California.

But identifying the technological pathways, and then working with UR organizations to identify what can they reasonably accomplish operationally is what adds to the time and delay, and also adds to the development going on here. So, it's really a refinement and an investigation on how we achieve these goals.

One of the other things that came through with the Senate Bill 1160 was an adoption of a whole new set of evidence-based medical guidelines to be applied by providers and utilization review physicians. Another significant undertaking that I think took time to do well was to identify the right set of guidelines, to find a group that the state could work with constructively, and to make sure that they're published and then updated in a timely fashion, which is happening now, but it took time to prepare.

TK: So what changes can those in industry expect once the regulations are implemented in California?

DM: I don't expect significant changes to come immediately, but it might be good to visit some of the themes that were in Senate Bill 1160 that we're seeing being implemented through the labor code and regulations. The thing here was to really provide some clear instruction from the DWC on what they have determined or what, on advisement, they've determined with partners in the industry, is medically necessary on a routine and general basis for injured workers.

And then, how to get the bureaucracy, and how to get the authorization processes out of the way between the injured worker and that medically necessary care. And I think what we're going to ultimately see is in the time period immediately following an injury, that

injured workers will have access to standard medically necessary care quite rapidly without the need for utilization review. And we'll see it sequestered more to those sub-acute and chronic phases of an injury, or those medical services that fall into investigational, experimental, or perhaps even dangerous categories. And that might reduce the amount of utilization review that's happening in California, to not impair, inhibit, or slow down an injured worker's opportunity to get medically necessary care.

And where utilization review is most valuable in evaluating medical services that might be investigational or experimental, or evaluating when someone falls into a chronic pain or chronic phase of their injury, now what is medically appropriate versus what might not be medically appropriate anymore for the injured worker.

Utilization review provides an excellent answer to that question on what is medically necessary, and I think that's where we're going to see it move to those spaces and time periods away from immediate injury, more to when did that injury start to transition to sub-acute and chronic? And now, how do we start identifying what's medically necessary for this injured worker? Ultimately, it will have an impact, but there will be less utilization review in the state.

This is a significant shift for California, and I think it's a significant shift for the industry. And I think it will take time for providers, and even injured workers themselves, to adjust to that change.

TK: Do you see other states following California's lead in reforming the UR process in workers' comp?

DM: I think from a thematic perspective, very much so. In speaking to stakeholders and other professionals in the industry, I don't think that that is accurate. Different states have cultures and subcultures to their injured workers, and they'll often identify different means or different mechanisms for assisting or facilitating the claim management of an injury in their state.

But there are certain themes coming out of California, and other states as well, that I think do share broadly across jurisdictions and the claim management process, on how

we can carve out exemption windows where UR may not be necessary, and better focus its efficacy on places where it is necessary.

We're seeing several states implement drug formularies to help insurers and carriers identify medically necessary drugs that can be provided to the injured worker without delay. And, we're also seeing many states carve out these pre-authorization exemptions or pre-authorization windows for injured workers where medically necessary services can be provided without any formal review.

As there is enough evidence, enough recommendation in the evidence-based guidelines, the scientific and medical literature provides enough confidence that such care is medically necessary immediately following an injury. So, things like that do spread across the states — drug formularies and pre-authorization exemptions — and how each state might accomplish that certainly varies, and we see that in California, Texas, New York and other states.

TK: Thanks, Dan. In our next Inside Workers' Comp, we'll discuss the impact that post-traumatic stress has on injured employees and how the industry is addressing it. Until then, thanks for listening.



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