**90-351 WORKERS' COMPENSATION BOARD**

**Chapter 7: UTILIZATION REVIEW, TREATMENT GUIDELINES, PERMANENT IMPAIRMENT**

This rule establishes the appropriate use of Treatment Guidelines for determining the extent and duration of treatment provided to injured workers. It outlines the process for Board certification of entities to perform utilization review activities, sets forth Utilization Review procedures, and designates the Board’s appeal process. Additionally, this rule includes the requirements for determining permanent impairment.

**§ 1. Certification**

1. An entity may conduct utilization review only if that entity is certified by the Board.

2. An Insurer, Self‑Insurer or Group Self‑Insurer which contracts with another entity to perform utilization review activities, maintains full responsibility for compliance with Maine Workers’ Compensation law and Board Rules.

3. To become certified by the Board, the entity shall show proof of one the following by attaching the appropriate documentation:

A. **Unconditional Certification**: Accreditation by the Utilization Review Accreditation Commission (URAC) under URAC’s National Workers’ Compensation Utilization Management Standards by providing a copy of the Certificate of Accreditation and any other documents/information as requested by the Board; or

B. **Conditional Certification**: Verification that an Application for Accreditation under URAC’s National Workers’ Compensation Utilization Management Standards has been submitted to URAC by providing a copy of the URAC confirmation letter indicating the application is under review and any other documents/information as requested by the Board.

(1) The entity requesting Board certification shall advise the Board if the URAC application is withdrawn or denied. Withdrawal or denial of the URAC application shall result in immediate revocation of Board certification.

(2) Within six months of applying for a Conditional Certification, an entity must submit proof of accreditation as outlined in A above and achieve Unconditional Certification. If proof of accreditation is not provided, immediate revocation of Board certification will result. Entities may re‑apply for Board certification as outlined in this Chapter at any time.

4. An Unconditional Board certification shall expire for entities upon the date of their URAC certification expiration date unless proof that URAC certification has been renewed and the new expiration date is provided.

5. The Board may at any time revoke certification to perform Utilization Review upon findings that an entity is not in compliance with any portion of 39‑A M.R.S.A. §210 or Workers’ Compensation Board Rule Chapter 7.

6. The Board may at any time request case records for purposes of investigating Insurers/Utilization Review Agents compliance with 39‑A M.R.S.A. §210 and Board Rules.

7. The Board shall make available the list of entities certified by the Board to perform utilization review activities.

**§ 2.** *[Reserved]*

**§ 3. Utilization Review; Procedures**

1. When an employer/insurer requests Utilization Review, the employer/ insurer must notify the injured employee that it intends to initiate Utilization Review.

2. Notice to the employee must, at a minimum, contain:

A. An explanation of the reason(s) Utilization Review is being requested;

B. Identification of the Utilization Review Agent that has been selected; and

C. Notice that the injured employee can send a letter to the Utilization Review Agent, within 10 days, explaining why the contested treatment is appropriate.

3. If the employer/insurer fails to send the required notice to the injured worker, the employer/insurer will be precluded from entering the Utilization Review determination into evidence in any subsequent Board proceeding.

4. If the Insurer/Utilization Review Agent makes a request for records, the health care provider may insist the request be submitted in writing. The provider shall in turn provide the requested information within ten (10) business days. A fee for medical records or narratives shall be paid in accordance with Workers’ Compensation Board Rule Chapter 5.

5. After each level of Utilization Review, the Utilization Review Agent shall provide notice to the injured employee, the affected health care provider(s), and the employer/insurer of the Utilization Review Agent’s determination. This notice must include an explanation of each party’s appeal rights.

6. Within one business day of the completion of the final level of Utilization Review, the Utilization Review Agent shall send a report to the injured employee, the affected health care provider, and the employer/insurer. This report must include, at a minimum, the Utilization Review Agent’s determination, and the reasons therefore.

7. If the Insurer/Utilization Review Agent determines that the provider of record has made any excessive charges or required unjustified treatment, hospitalization or visits, the health facility or health care provider may not receive payment for those health care services from the Insurer and is liable to return to the Insurer any such fees or charges already collected.

8. Except as ordered pursuant to 39‑A M.R.S.A. §206(2)(B), the injured employee is not liable for any portion of the cost of any provided medical or health care services.

**§ 4. Board Appeals**

1. Once a health care provider or an employee has received final notification that health care services will not be certified by the UR Agent, the health care provider, employee or their representative may initiate a Board Appeal by submitting a copy of the notification not to certify to the Board. This submission shall be referred to the appropriate Claims Resolution Specialist. If the Claims Resolution Specialist is unable to informally resolve the dispute, it shall be scheduled for mediation.

2. Once a provider receives notification that they are liable for the return of any fees, the provider may submit a copy of the notification to the Board. This submission shall be referred to the appropriate Claims Resolution Specialist. If the Claims Resolution Specialist is unable to informally resolve the dispute, it shall be scheduled for mediation.

3. If the mediator is unable to informally resolve the dispute, the matter shall, upon appropriate petition, be scheduled for a formal hearing.

4. Except as provided in Section 3.3, a Utilization Review report is admissible as evidence of the appropriateness in terms of both the level and quality of health care and health care services provided an injured employee, but is not binding on these issues.

**§ 5. Definitions**

1. **Board Appeal**: If a health care provider or injured employee disagrees with the determination rendered in the utilization review process, that party may appeal to the Board by submitting a copy of the notification not to certify.

2. **Conditional Certification**: Certification by the Board of an entity to perform utilization review activities that requires proof of application for accreditation with the Utilization Review Accreditation Commission (URAC) under URAC’s National Workers’ Compensation Utilization Management Standards.

3. **Insurer**: An insurance carrier, self‑insurer or group self‑insurer.

4. **Treatment Guidelines**: Standards of care and clinical pathways approved by the Workers’ Compensation Board.

5. **Unconditional Certification**: Certification by the Board of an entity to perform utilization review activities that requires proof of accreditation by the Utilization Review Accreditation Commission (URAC) under URAC’s National Workers’ Compensation Utilization Management Standards.

6. **Utilization Review (UR)**: The initial prospective, concurrent or retrospective evaluation of the appropriateness in terms of both the level and the quality of health care and health services provided an injured employee, based on the appropriate Maine Workers’ Compensation Board Treatment Guidelines.

7. **Utilization Review Accreditation Commission (URAC)**: a non‑profit organization established to encourage efficient and effective utilization management processes and to develop and provide a method of evaluation and accreditation of utilization management programs.

8. **Utilization Review Agent**: Any person or entity, including insurance carriers, self‑insurers, and group self‑insurers, certified by the Board, to perform utilization review activities.

STATUTORY AUTHORITY: 39-A M.R.S. §§ 101 *et seq.*

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