Workers' Comp

# August 2022 Utilization Review Compliance Update

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7 MIN READ

Kentucky Administrative Rule Updates

Two rules have recently been introduced in Kentucky that may impact your Utilization Review program: KAR 803 25:195E and KAR 803 35:195 Proposed. KAR 803 25:195E is an emergency rule in effect as of April 15, 2022. KAR 803 35:195 Proposed is the same as the emergency rule but will be permanent if adopted.

**Guidance on Definitions**

Recent updates have provided clarification regarding certain term definitions including:

- "**Medical payment obligor**" means any self-insured employer, carrier, insurance carrier, self-insurer, or any person acting on behalf of or as an agent of the self-insured employer, carrier, insurance carrier, or self-insurer
- "**Same medical specialty**" means a branch of medical practice focused regularly and routinely on a defined group of patients, diseases, skills, body part, or type of injury and performed by a physician with the same or similar qualifications

**Annual Reporting Details**

- A medical payment obligor shall provide annually to the commissioner summaries of the number of utilization reviews conducted, utilization reviews resulting in an approval, and utilization reviews resulting in a denial. (**no longer requesting waiver reporting**) After public comments and consideration, the administrative regulation was amended to remove the requirement that insurance carriers, self-insured employers, and self-insured groups must report utilization reviews waived pursuant to KRS 342.035(5)(c)
- The annual report shall be filed with the commissioner no later than August 1 for the preceding year, including any fiscal year ending on or before June 30
- **Per KY, the first reporting is due August 1, 2023 to include data from July 1 2022- June 30 2023**
- **Also, the administrative regulation was amended to make clear the medical payment obligor is responsible to provide the summaries to the commissioner; however, the underlying information may be obtained by the medical payment obligor from the utilization review vendor
- **Action Item**: Carrier shall submit the annual report as detailed above to the state. Genex UR will provide the data timely to carrier for the submission. The state has not yet determined a method of submission (email or particular form) but will let us know when this is decided

**Utilization Review and Denial Timeframes**

- Utilization review shall commence when the medical payment obligor has notice that a claims selection criteria has been met. **The medical payment obligor may waive utilization review pursuant to KRS 342.035(5)(c) within two (2) business days of notice that a claims selection criteria has been met unless additional information is required, in which case, utilization review shall be waived within two (2) business days following receipt of the requested information**
- The following requirements shall apply if **preauthorization** has been requested and utilization review has not been waived by the medical payment obligor:
    - The initial utilization review decision shall be communicated to the medical provider and employee within two (2) business days of the initiation of the utilization review process unless additional information is required. If additional information is required, a single request shall be made within two (2) additional business days
    - The requested information shall be submitted by the medical provider within ten (10) business days
    - The initial utilization review decision shall be rendered and communicated within two (2) business days following receipt of the requested information
- The following requirements shall apply if a **retrospective** utilization review occurs:
    - The initial utilization review decision shall be communicated to the medical provider and employee within seven (7) business days of the initiation of the utilization review process unless additional information is required. If additional information is required, a single request shall be made within two (2) additional business days.
    - The requested information shall be submitted by the medical provider within ten (10) business days.
    - The initial utilization review decision shall be rendered within two (2) business days following receipt of the requested information.
    - A medical provider may request an expedited utilization review determination for proposed medical treatment or services, the lack of which could reasonably be expected to lead to serious physical or mental disability or death. The expedited utilization review determination shall be rendered and communicated within twenty-four (24) hours following a request for expedited review.
- Written Notice of Denial following the initial review, a written notice of denial shall:
    - Be issued to both the medical provider and the employee in a timely manner but no more than two (2) business days after initiation of the utilization review process **unless additional information was required, in which case, the written notice of denial shall be issued no later than two (2) business days after the initial utilization review decision (changed from 10 calendar days)**
    - **The administrative regulation was amended to state the time periods using business days rather than calendar days; additional language was added to make the time periods match.

**Reconsideration**

- A request for reconsideration of the initial utilization review decision shall be made by an aggrieved party within ten (10) business days of receipt of a written notice of denial (**changed from 14 calendar days**)
- Reconsideration of the initial utilization review decision shall be conducted by a different reviewer of the **same medical specialty** (**changed from "at least the same medical qualifications"**) as the medical provider whose treatment is being reconsidered
- A written reconsideration decision shall be rendered within seven (7) business days (**changed from 10 calendar days**) of receipt of a request for reconsideration **unless peer-to-peer conference is requested, in which case, the written reconsideration decision shall be rendered within five (5) business days after the day on which the peer-to-peer conference was held**
- **The administrative regulation was amended to allow for the insertion of a peer-to-peer conference in the stated time sequence; Also, please note there is no prohibition against a treating physician supplying

additional written documentation during the peer-to-peer process**

**Medical Bill Audit**

- Each medical bill audit shall be initiated within five (5) business days of receipt (**changed from 7 calendar days of receipt**)
- A request for reconsideration of the medical bill audit decision shall be made by an aggrieved party within ten business days of receipt of that decision (**changed from 14 calendar days of receipt of decision**)
- A medical bill audit written decision shall be rendered within seven (7) business days of receipt of a request for reconsideration (**changed from 10 calendar days of receipt**)

**Peer-to-Peer Conference Reminder**

- Requires the reviewing physician participating in the peer-to-peer conference to be of the same **medical** specialty as the medical provider requesting reconsideration;
- The request for a peer-to-peer conference shall be made by electronic communication and shall provide:

(a) A telephone number for the reviewing physician to call;

(b) A date or dates for the conference not less than five (5) business days after the date of the request **unless the peer-to-peer conference request stems from a denial issued pursuant to 803 KAR 25:270, in which case, a date or dates not less than two (2) business days after the date of the request. In either case, the parties may by agreement hold the conference in a shorter time period**; and

(c) A one (1)-hour period during the date or dates specified during which the requesting medical provider, or a designee, will be available to participate in the conference between the hours of 8:00 a.m. and 6:00 p.m. (Eastern Time), Monday through Friday

- Requires the reviewing physician participating in the peer-to-peer conference to be of the same medical specialty as the medical provider requesting reconsideration;
- Failure of the reviewing physician to participate during the date and time specified shall result in the approval of the request for preauthorization and approval of the recommended treatment unless good cause exists for the failure to participate. In the event of good cause for failure to participate in the peer-to-peer conference, the reviewing physician shall contact the requesting medical provider to reschedule the peer-to-peer conference. The rescheduled peer-to-peer conference shall be held no later than two (2) business days following the original conference date. Failure of the requesting medical provider or its designee to participate in the peer-to-peer conference during the time he or she specified availability may result in denial of the request for reconsideration.
- A written reconsideration decision shall be rendered within five (5) business days of date of the peer-to-peer conference. The written decision shall be entitled "FINAL UTILIZATION REVIEW DECISION."

**Key Reminders**

- Under Kentucky Law, emergency regulations become effective immediately upon filing and last for 270 days or until replaced by an ordinary regulation
- We are still monitoring the permanent rule regulation adoption of KAR 803 25:195. We anticipate it will mirror the Amended Emergency Regulation that is in effect currently
- This amended emergency administrative regulation will be reviewed by the Administrative Regulation Review Subcommittee at its July 2022 meeting
- **The Genex UR/MBA plan remains approved through 9/27/24**

**Questions?**

As your utilization review (UR) vendor, we want to keep you informed of regulation updates that impact the UR business. It is our hope that you find these periodic bulletins a helpful resource. If you have any questions about any of the information presented, please do not hesitate to contact your client account manager. Or you may reach out to a member of the Genex UR Compliance team whose information is provided at the end of this document.

**Genex Compliance Team Contact Information**

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