Workers' Comp

Kentucky Administrative Rule Updates

May 10, 2022
5 MIN READ

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.

The current KY regulation governing UR and MBA (Medical Bill Audit) was set to expire. The state was intent on amending this regulation via a proposed version, but that amendment was nullified. This meant there would be no KY regulations governing UR and MBA, hence the emergency adoption of 803 KAR 25:195E.

The proposed changes include, but are not limited to, the following:

- Adds new definitions for "Business Day" and “Calendar Day”
  - “Business day" means any day except Saturday, Sunday or any day which is a legal holiday
  - "Calendar day" means all days in a month, including Saturday, Sunday and any day which is a legal holiday
  - References to “Business Days” replace existing references to “Working Days”, and references to “Calendar Days” replace existing references to “Days”
- Amends definition of "Denial" to also include denial of proposed treatment and/or medication
- Revises “Utilization Review and Medical Bill Audit Written Plan Requirements” by assuring that broadly adopted medical treatment guidelines, instead of acute low back pain practice parameters, are incorporated into the plan
- All UR preauthorization reconsiderations now follow a process for peer-to-peer discussions
  - Specifies that if the payer denies preauthorization following utilization review, it must issue a written notice of denial
  - Allows the medical provider whose recommendation for treatment is denied, to request reconsideration, and may require the reconsideration include a peer-to-peer conference with a second utilization review physician.
  - Specifies that a request for a peer-to-peer conference must be made by electronic communication and must provide:
    - A telephone number for the reviewing physician to call
    - A date or dates for the conference not less than 5 business days after the date of the request
    - A 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 specialty as the medical provider requesting reconsideration
    - Specifies that failure of the reviewing physician to participate during the date and time specified may result in the approval of the request for preauthorization and approval of the recommended treatment unless good cause exists for the failure to participate
    - Requires that a written reconsideration decision be rendered within 5 business days of date of the peer-to-peer conference
    - Allows a requesting medical provider or injured workers to file a medical dispute if a Final Utilization Review Decision is rendered denying authorization for treatment before an award has been entered by or agreement approved by an administrative law judge
- Establishes Annual UR data report
    - If an insurer contracts with an approved vendor for utilization reviews, the Commissioner must be provided annually summaries of the number of utilization reviews conducted, utilization reviews waived, utilization reviews resulting in an approval, and utilization reviews resulting in a denial
    - **Carriers and Self-Insured Employers must submit this annual report to the Commissioner no later than August 1 for the preceding year**
- The Planned UR State Appeal Process was removed from the regulation language
    - Under the previous proposed amendments, the DWC purposed to establish a Medical Director to perform appeals (with carrier responsible for appeal fees) of UR and bill review determinations
    - **This emergency regulation does not contain any reference to a Medical Director or to the previously planned process for appealing UR denials at the state level**

Next Steps

You can be assured that Genex is monitoring all updates to the KY regulations and will keep you informed of actions that you, as the carrier, need to take. We may see changes to the rules still. Under Kentucky Law, emergency regulations become effective immediately upon filing and last for 270 days or until replaced by an ordinary regulation.

A public hearing on the emergency administrative regulation will be held on 05/31/2022, at 10:00 a.m. (EDT) at the Department of Workers' Claims, 500 Mero Street, Frankfort, KY 40601.

Individuals interested in attending or being heard at this hearing must notify the Department of Workers' Claims in writing of their intent to attend no later than 5 workdays prior to the hearing along with contact information. Written comments will be accepted through 05/31/2022.

What This Law Means for You

The biggest takeaway is the annual reporting requirement for the carrier. Payers can obtain most of the data required from Genex as your UR vendor. However, a key point is the report will also need to show how many times UR has been "waived" – meaning that a request for authorization of treatment was approved without being referred to UR. So, identifying an internal tracking measure for this is strongly recommended.

Also, it should be noted that while the peer-to-peer process was added to this new regulation, before the 195 Reg was effective, the 260 Reg had the peer-to-peer wording in it for medication requests. The 195 Reg makes this same peer-to-peer process effective for all treatment requests.

The Genex UR/MBA plan is currently approved through 9/27/24. Per the state, we do not have to recertify our plan until our plan is ready for renewal. However, as we must adhere to the updated regulations, we are in

compliance with these regulations.

If you are a new KY UR/MBA client, we will add you to our approved KY UR/MBA Plan.

Also, if you are a new client the state simply encourages you to notify them you have selected Genex as your UR vendor as soon as you can; however, there is no requirement for notification within a certain timeframe.



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