

Frequently Asked Questions

Office of Health Policy

April 2018

1. How do you apply the 10% Rule in the MA Treatment Guidelines?

Treatment Guidelines are meant to cover the usage of a vast majority of tests and treatments, but it is expected that approximately 10% of cases will fall outside these guidelines and thus require a review on a case by case basis. The 10% Rule should be used to approve treatment not otherwise allowed under the MA Treatment Guidelines when the proposed treatment/procedure is supported by objective clinical findings. If the ordering practitioner's diagnosis corresponds to a MA Treatment Guideline, the MA Guideline should be used. If the treatment/procedure requested is not allowed under the MA Treatment Guideline, but the treatment/procedure is appropriate and medically necessary based on objective clinical findings, the UR Agent may approve the request using the 10% Rule. The UR Agent's determination letter should cite the MA Treatment Guideline, the 10% Rule, and the specific objective clinical findings that warrant approval of the treatment/procedure. There is no need to cite a secondary source when approving treatment using the 10% Rule if objective clinical findings support the approval. If the ordering practitioner's diagnosis is not addressed in the MA Treatment Guidelines, the UR Agent proceeds to a secondary source listed in their application. The determination letter should note that no MA Treatment Guideline applies and cite the secondary source. The 10% Rule should not be cited as the injured worker is not an outlier because no Massachusetts Guideline applies.

2. If the injured worker continues to improve, but additional treatment will exceed the guideline recommendations, can the UR nurse approve the treatment?

Yes. The consensus and evidence-based documents that the initial licensed reviewer consults to determine whether or not treatment is reasonable and necessary are guidelines, not mandates. The injured worker may require less or more treatment than the recommendations set forth in the MA Treatment Guidelines and secondary sources. If a MA Treatment Guideline applies, the UR agent cites the Guideline, applies the 10% rule, and sets forth the clinical rationale for approval of services not recommended under the MA Treatment Guideline. If MA Treatment Guidelines do not apply, a secondary source should be cited and the UR agent must set forth the clinical rationale to support the determination.

3. When the practitioner changes a diagnosis, do we need to change to a prospective review?

If the practitioner changes the diagnosis and the guideline changes, the UR agent may consider the request for approval of treatment a concurrent review rather than a prospective review, if the proposed treatment/procedure involves the original injured body part.

4. Do I need to cite the clinical rationale when a treatment/procedure is approved?

Yes. A clinical rationale indicates the application of the treatment guideline to the objective clinical findings. Although a proposed treatment may be allowed under a particular guideline, the injured worker must have objective clinical findings to warrant the treatment.

5. If the initial clinical reviewer used the incorrect guideline or applies it incorrectly, must the peer reviewer still use that guideline?

No. The UR agent needs to correct the mistake. Two reviews based on an incorrect guideline are a waste of time and money and have an adverse effect on the quality of care for the injured employee.

6. If compensability has not been determined, does the UR agent hold the request until it is determined, or send a letter stating it has not been determined?

The UR request must be obtained in writing and compensability should be confirmed before conducting UR. During the "pay without prejudice" period, UR should be conducted. Compensability is documented in the UR case notes. If the claims adjuster states compensability is an issue, the UR agent should inform the injured worker and ordering practitioner that the claims adjuster has raised the issue of compensability and as such, UR will not be conducted until the issue is resolved. The UR agent should instruct the parties to contact the claims adjuster.

7. What if the claim is compensable, but the body part is not?

If the body part is not compensable, UR is not conducted for that body part. This must be documented in the UR case notes and the injured worker and ordering practitioner must be informed of the claim issue.

8. When additional medical information is requested, and only some of the information is provided, can the Medical Director deny the services for lack of information or does the school or school reviewer render the adverse determination based on existing medical documentation?

If the medical information that was requested is not provided and the information is needed to render a determination, the Medical Director may deny the request noting that the adverse determination was rendered due to insufficient clinical information. If some of the information is provided but not all, the UR Agent should make a decision regarding the most appropriate person to render the determination. In this situation, it may be appropriate to have a school or school reviewer render a determination.

9. What if the specific DME requested is the most expensive model, while a less expensive model is just as effective?

UR agents determine medical necessity and appropriateness of care. The issue of cost or specific brand of DME is a claim issue.

10. Can the UR agent release UR info/medical documentation to a case manager?

No. The statute allows for information to be shared within the workers' compensation system, i.e. adjuster to UR. Case management is an ancillary service provided by some managed care systems. *Circular Letter 274* provides in part that ancillary services cannot be conducted under the UR regulations. UR records must have limited access and ensure confidentiality. The case manager may access UR information from the claims adjuster (we do not regulate adjusters). However, UR records must be separate and distinct from insurer functions.

11. Can a licensed acupuncturist initiate an appeal for acupuncture treatments?

No. In accordance with the MA General Acupuncture Protocol, acupuncture may only be ordered by specific health care providers and an appeal should be initiated by the practitioner who ordered the acupuncture. If a MD ordered the acupuncture, the MD should file the appeal.

12. Should UR be conducted if the judge over-rules the UR adverse determination and orders treatment?

If a judge approves a procedure or treatment within a period of time, UR should not be done. The judge has the final say as to whether or not the treatment is appropriate and necessary. If additional treatment is requested after the period allowed by the judge, then UR should be conducted.

13. When conducting UR, what role does the independent medical examiner's recommendation have?

The recommendation of an independent medical examiner may be considered when conducting UR. However, the utilization reviewer makes his/her own determination based on all available records.

14. Can a nurse make a medical necessity determination of a partial approval?

The nurse cannot issue denials. If the nurse is unable to approve the entire request he/she would refer the request to a school to school reviewer for a determination. If the school to school reviewer only approves part of the request, the determination letter should specify the approved treatment and provide notice of the appeal process for the treatment that was not approved.

If the nurse (initial non-peer reviewer) cannot approve the request solely because of the length of the requested treatment period (e.g. PT 3x/wk x 8wks) the nurse may ask the requesting medical practitioner if he/she would agree to change the length of the period to that which the nurse may approve within the treatment guidelines (e.g. 3x/wk x 4wks). If the practitioner agrees, this would not constitute a change in the treatment plan as the practitioner may seek approval for additional treatment if necessary. If not in agreement, the nurse would send the request for a school to school review.

15. Can physical therapy be done by someone other than a licensed physical therapist e.g. a medical doctor or a physician assistant?

If the MD or PA is not a licensed physical therapist, he/she cannot perform physical therapy. However, licensed practitioners may provide services commonly rendered by physical therapists if the service is within their scope of training. Contact the appropriate Board of Registration to determine if the provider is trained to perform a specific service.

16. Can a DME vendor appeal a denial?

No. Appeals relating to DME should be from the injured worker, his/her representative, or the ordering provider.

17. Can physical therapists write their own orders?

Yes. In Massachusetts, physical therapists may order physical therapy treatment.

18. What if the treating health care practitioner wants to engage in a school to school discussion at the appeal level but is not available within the time frame required for the UR Agent to render a determination?

The UR Agent should make a reasonable effort to allow for the discussion to take place. The UR Agent should document in the UR case note why the determination will not be rendered within regulatory time period.

19. What constitutes a “material change” which would require the UR Agent to notify the OHP?

Examples include but are not limited to:

- Change of medical director or other UR Agent medical employees who are involved in any way with the MA UR process (nurses, MA corporate contact, QA personnel...)
 - Change of location where initial reviews will be conducted or Change in operation hours
 - Change of treatment guidelines listed in the UR application and used to conduct reviews
 - Change in UR Agent clients
 - Change in legal status of UR company (name, merger, sale...)
 - Change in QA program
 - Change in any person or entity contracted with the UR Agent to assist with the review process.
- If the UR Agent relies on a medical review organization with many reviewers, it is not necessary to send an updated list of reviewers each time a reviewer is added or removed. An up-to-date list must be provided at the time of the application renewal.

20. Is it necessary to cite a Treatment Guideline if the Acupuncture Protocol is cited?

Yes. The acupuncture protocol is not a treatment guideline and is not diagnosis based.