

Medical Provider Networks (MPNs):

SB 542, Telehealth in MPNs, and Notices for End of
MPN Coverage and Transfer of Care

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Senate Bill 542

- Effective January 1, 2016
- MPN clean up legislation



- https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201520160SB542

Senate Bill 542

- Amended or added the following MPN Labor Code sections:
 - Added Section 4616(a)(4)(B)
 - Amended Section 4616(b)(1)
 - Amended Section 4616.2
 - Amended Section 4616.4
 - Added Section 4616.5(b)

Senate Bill 542

- Added Labor Code section 4616(a)(4)(B).
- MPNs are now required to post on its internet website information on:
 1. How to contact the MPN Contact and MPN Medical Access Assistants, and;
 2. How to obtain a copy of any notification regarding the MPN that is required to be given to employees.

Senate Bill 542

- Amended Labor Code section 4616(b)(1).
- Allows MPN Applicants to file a Modification that updates an entire MPN Plan to bring it into full compliance with all current statutes and regulations.
- If DWC approves the Plan Modification, then the MPN shall be deemed approved for a period of four years from the modification approval date.

Senate Bill 542

- (continued) Labor Code section 4616(b)(1).
- If the Plan Modification is disapproved, then the expiration date of the four-year approval period will NOT change.
- Check the last box of the Notice of Medical Provider Network Plan Modification §9767.8.
 - “Update of MPN plan to the current regulations pursuant to section 9767.15. Please include entire updated plan.”

Senate Bill 542

- Amended Labor Code section 4616.5(b).
- Statutory definition for an “entity that provides physician network services” means a medical network licensed by the Department of Insurance or Department of Managed Health Care, or a third-party claims adjusting organization licensed by the Department of Insurance or certified by the Office of Self Insurance Plans, or a legal entity that offers medical management and physician network services within California
- Precludes non-healthcare related businesses from establishing an MPN.

Senate Bill 542

- Amended Labor Code section 4616.2.
- SB 863 authorized for the first time “entities that provide physician network services” to establish MPNs.
- As a result, this phrase was added whenever “insurer or employer” was used, becoming “insurer, employer or entity that provides physician network services” throughout the MPN statutes.
- Created problems in the Continuity of Care section because an entity that provides physician network services may not be able to authorize treatment for injured workers to continue.

Senate Bill 542

- Amended Labor Code section 4616.4.
- Added the “MPN” acronym before the phrase “Independent Medical Review” to clarify this section refers to the MPN IMR.
- MPN IMR process is different from the IMR process referred to in Labor Code section 4610 pertaining to UR disputes.

Telehealth and MPNs

- The use of telehealth or telemedicine has been expanding in California.
- 2011 enacted the Telehealth Advancement Act - Business and Professions code section 2290.5(b)
- Noteworthy panel decision *Cherish Oranje v. Crestwood Behavioral Health* 2014 Cal. Wrk. Comp. P.D. LEXIS
- The DWC recognizes the potential of telehealth as a vehicle for injured workers to access medical care, particularly in rural areas and areas where there is a health care shortage.

Telehealth and MPNs

- We have not yet received an MPN Application or MPN Plan Modification that contains physicians who are seeing patients via telehealth.
- FAQ's:
 - Telehealth and MPN Access Standards?
 - Must the telehealth physician be licensed by California?
 - If a physician is using telehealth, how will an examination be conducted that requires physical manipulation or touch of the patient?

Telehealth and MPNs

- Telehealth and MPN Access Standards.
- Will the medical provider be seeing patients solely via telehealth or will the medical provider see patients in an office as well?
- Providers who only see patients via telehealth will NOT be counted when determining if the MPN Access Standards have been met.
- Business and Professions code section 2290.5(b) requires patient consent to treat via telehealth. This consent must be documented.

Telehealth and MPNs

- Must the telehealth physician be licensed in California?
- YES. Labor Code section 4616(a)(1) states that the provider network shall include physicians and medical providers as described in Labor Code sections 3209.3 and 3209.5.
- Labor Code sections 3209.3 and 3209.5 state that the physician and medical providers be licensed by California state law and within the scope of their practice as defined by California state law.

Telehealth and MPNs

- If a physician is using telehealth, how will an examination be conducted that requires physician manipulation or touch of the patient?
- Telehealth used for assessment or evaluation should not pose a problem.
- However, if telehealth is used for an examination that requires physical manipulation or touching of the patient, that process needs to be described with sufficient details in the MPN Application Plan or Plan Modification.

Notices for End of MPN Coverage and Transfer of Care

- End of MPN Coverage Notice, set forth in section 9767.12(b).
- Every employer or insurer must provide an End of MPN Coverage Notice to its injured covered employees when terminating MPN coverage.
- Will MPN coverage be terminated completely or will MPN coverage continue for existing claims?
- The End of MPN Coverage Notice must be sent to every injured covered employee.

Notices for End of MPN Coverage and Transfer of Care

- When can the streamlined End of Medical Provider Network (MPN) Coverage Notice – (No Effect on Medical Treatment) be used?

http://www.dir.ca.gov/dwc/mpn/DWC_MPN_Main.html

- Only when MPNs are being consolidated and the same network of physicians and providers are being used. Effectively, medical care will NOT be disrupted.
- The streamlined version combines the End of MPN Coverage with the Transfer of Care Notice.

Notices for End of MPN Coverage and Transfer of Care

When does section 9767.9(d) apply?

1. No MPN → to an MPN
2. In MPN → to another MPN

If section 9767.9(d) applies, who will receive Transfer of Care Notices?

Remember - IW can remain treating with the same physician or provider.

Transfer of Care Notices shall be sent to IW, PTP, and all treating physicians and/or providers.



Notices for End of MPN Coverage and Transfer of Care

When does section 9767.9(f) apply?

1. No MPN → to an MPN but IW is forced to transfer medical care to another physician or provider
2. In MPN → to another MPN but IW is forced to transfer medical care to another physician or provider.

Remember - IW is being forced to transfer medical care to another physician or provider within the MPN.

If section 9767.9(f) applies, who will receive Transfer of Care Notices?

Transfer of Care Notices shall be sent to IW and just the PTP.



Notices for End of MPN Coverage and Transfer of Care

What if either section 9767.9(d) or 9767.9(f) apply?

In this situation, IW is treating with two doctors; IW is then transferred into an MPN that only lists one of the two doctors.

Remember - IW can remain treating with one physician, but with the other physician IW is being forced to transfer medical care to another physician within the MPN.

If either section 9767.9(d) or 9767.9(f) applies, who will receive Transfer of Care Notices?

DWC recommends that Transfer of Care Notices be sent to IW, PTP and all treating physicians and/or providers.



Medical Provider Networks (MPNs): Access Standards, Oversight, and Looking Forward

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Access Standards

- **Governed by:**
 - Labor Code section 4616
 - Regulation section 9767.5
- **Basic Distance Access Standards for Treaters:**
 - Primary Treating Physicians: Three available within 15 miles or 30 minutes
 - Hospital or Provider for Emergency Services: One within 15 miles or 30 minutes
 - Specialists and Occupational Health Services: Three within 30 miles or 60 minutes
 - All distances measured from the employee's residence or workplace

Access Standards

- **Alternative Access Standard:**
 - For rural areas or areas where there is a health care shortage
- **Ancillary Services Access Standard:**
 - Available within a reasonable time or geographic area
 - No minimum number of service providers required
- **Time Frame Access Standards:**
 - For non-emergency services: first treatment visit within 3 business days of employee's notice to MPN medical access assistant that treatment is needed
 - For non-emergency specialist services: initial appt with appropriate specialty within 20 business days of employee's reasonable requests to MPN medical access assistant

Access Standards

- **Consequence of Not Meeting Access Standards:**
 - Injured worker is entitled to treat outside MPN
 - Determination made by WCJ
 - Expedited Hearing: Labor Code section 5502
 - However, when the MPN is able to provide the treatment through the MPN's physicians, employee may be required to treat with MPN doctor when transfer is appropriate
 - Recent WCAB decisions have interpreted distance access standards

Access Standards

- **Recent Noteworthy WCAB Panel Decisions:**
 - **Escobar v. PRN Ambulance**
 - 2015 Cal. Wrk. Comp. P.D. LEXIS 186 (3/26/15)
 - WCAB held that MPN is required to have 3 chiropractors available to serve as PTPs within 15 miles or 30 minutes of employee's residence or workplace

Access Standards

- **Recent Noteworthy WCAB Panel Decisions:**
 - **Lescallett v. Wal-Mart**
 - 2015 Cal. Wrk. Comp. P.D. LEXIS 196 (4/6/15)
 - WCAB held that if employee chooses as his/her PTP a physician whose specialty is appropriate to treat common injuries experienced by workers in that occupation/industry, the MPN must have at least 3 physicians in that medical specialty within 15 miles or 30 minutes of employee's residence or workplace
 - Dissent: If an employee chooses a specialist to serve as the PTP, then the access standards for a specialist apply (i.e. 30 miles or 60 minutes)

Oversight and Enforcement

- **Complaints:**
 - Process & Form: Sections 9767.16 & 9767.16.5 (<http://www.dir.ca.gov/dwc/forms.html>)
 - Alleges MPN is in violation of Labor Code sections 4616-4616.7 or MPN regulations
 - Investigation may result in suspension or revocation and/or penalties
 - Common Complaints & Reminder:
 - MPN has exclusive right to select providers
 - WCJ must make determination re satisfaction of access standards & ability to treat outside MPN

Oversight and Enforcement

- **Petitions for Suspension or Revocation of MPN**
 - Process and Form: Sections 9767.17 & 9767.17.5 <http://www.dir.ca.gov/dwc/forms.html>
 - Alleges either (1) employer, insurer or entity that provides physician network services failed to maintain qualifying status to have an MPN or (2) MPN has systematically failed to meet access standards
 - May result in suspension or revocation and/or penalties under sections 9767.14 and 9767.19

Oversight and Enforcement

- **Random Reviews**
 - Process: Section 9767.18
 - Purpose: Verify compliance with statutes & regulations
 - MPN not subject to more than 1 random review in two-year period
 - DWC will request information or documentary evidence so be sure to retain copies of MPN-related materials including:
 - Employee Notifications
 - End of MPN Notices
 - Transfer of Care Notices
 - Continuity of Care Notices
 - Medical Access Assistant & MPN Contact telephone logs
 - May result in probation, suspension or revocation and/or penalties under sections 9767.14 and 9767.19

What's Next for MPNs?

- Incorporating Telehealth Services into MPNs
- Regulatory Updates
 - SB 542
 - Clarifying changes and potential process changes
- Exploring Ways to Improve the Application Process
- Database Enhancements
 - Improve reporting
- Increased Oversight & Enforcement Efforts