Proposed Changes to Medical Provider Network (MPN) Regulations

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I. Overview of our Rulemaking Progress

• Changes to the MPN regulatory provisions prompted by the passage of SB 863.
• DWC publicized the first draft of the proposed MPN regulations during the 10-day Public Forum in May 2013.
• Began formal rulemaking in August 2013 first 45-day comment period ended on September 30, 2013. We held a public hearing in Oakland on that day.
• Began the 1st – 15 day comment period in December 2013 and that ended on December 26, 2013.
• Rulemaking is ongoing but many statutory provisions in effect. What do we do during this interim period?
• 2nd – 15 day comment period.

II. Proposed Changes to MPN Regulations

Definitions:

• “Medical Provider Network” – No changes but...
• “Ancillary Services” – Added, “...including, but not limited to, interpreter services, physical therapy and pharmaceutical services.”
• “Entity that provides physician network services”
  1. A legal entity
  2. employing or contracting with physicians and other medical providers to deliver medical treatment to injured workers
  3. on behalf of one or more insurers, self-insured employers, the Uninsured Employers Benefits Trust Fund, CIGA, or the Self-Insurers Security Fund.
II. Proposed Changes to MPN Regulations

Medical Access Assistant:

- Medical Access Assistant Definition:
  1. An individual in the Unites States;
  2. Provided by the Medical Provider Network;
  3. To help injured workers with finding available MPN physicians, of the injured workers’ choice and with scheduling provider appointments.
- Toll-free number available from 7 am-8 p.m. Pacific Standard Time, Monday through Saturday.
- Shall keep telephone call logs tracking the calls and content of the calls made to and by the MAA.
- Can claims adjusters also be Medical Access Assistants?

II. Proposed Changes to MPN Regulations

Internet posting of a roster of all treating physicians in the MPN:

- MPNs are now required to post in their internet website a roster of all treating physicians in the MPN.
- MPNs shall provide DWC the internet web site address that includes its roster of all treating physicians, and DWC shall post this URL address on the divisions’ website.
- MPNs shall update the roster of all treating physicians in the MPN on a quarterly basis.
II. Proposed Changes to MPN Regulations

MPN 4 year approval period: SB 863 contained the following provisions regarding the four year approval period and reapprovals.

- Beginning 1/1/2014 DWC will approve MPN applications for a period of four years.
- Also, beginning 1/1/2014 existing approved plans shall be deemed approved for a period of four years from the most recent application or modification approval date.
- Plans for MPN reapproval shall be submitted at least six months before the expiration of the four-year approval period.

MPN 4 year approval period:
- Caused plenty of concern. Example: Must an MPN last approved on 7/1/2009 file a Plan reapproval by 1/1/2014?
- The proposed regulations attempts to give leeway for MPNs approved on or before 1/1/2011.
- Section 9767.15(b)(1) – MPNs most recently approved on or before 1/1/2011 will be deemed approved until 12/31/2014. Reapprovals for these MPNs shall be filed no later than 6/30/2014.
II. Proposed Changes to MPN Regulations

Geocoding: (Access Standards)

• The MPN access standards are determined by an injured covered employees residence or employers address, not from the center of a zip code.
• From a geocoding perspective, this would require MPNs submit all of their covered employees residential addresses and all of the employer’s addresses to DWC. This would be impractical and overly burdensome.
• Geocoding results will be used by DWC in reviewing MPN plans.
• Therefore, DWC will attempt to clarify this in our next version of the proposed regulations.

Geocoding – (Health Care Shortage)

• Section 9767.3(d)(8)(H)– “...5) a list of all zip codes in which there is a health care shortage and where the access standards are not met...” This will be deleted in our next version of the proposed MPN regulations.
II. Proposed Changes to MPN Regulations

Access Standards: Proposed regulatory changes attempt to clarify rather than make wholesale changes.

- Geographic requirements of 15 miles/30 minutes or 30 miles/60 minutes still remain the same.
- Time requirements of 3 business days for first visit and within 20 business days for specialist appointments remains the same.
- Alternative Access Standard for those who qualify in rural areas remain the same.

II. Proposed Changes to MPN Regulations

Access Standards: What has changed?

- MPN must have at least three “available” physicians = Meets geographic and time requirements.
- If an MPN does not have three “available”, then they must permit the injured covered employee to obtain treatment outside the MPN (necessary treatment, from an appropriate specialist, and within a reasonable geographic area).
- However, a covered employee treating outside the MPN may be required to treat in an MPN when transfer of care is appropriate.
II. Proposed Changes to MPN Regulations

**Access Standards:** What else has changed?

- Alternative Access Standard – Areas where there is a Health Care Shortage will now be considered. Urban areas and suburban areas may potentially qualify for an alternative access standard.
- Medical Access Assistant Requirement see 9767.5(g): Schedule a timely appointment (within 20 days) with an MPN specialist within 10 business days of an employee’s request.

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**Physician Acknowledgements:**

- Labor Code section 4616(a)(3): “Commencing January 1, 2014, a treating physician shall be included in the network only if, at the time of entering or renewing an agreement by which the physician would be in the network, the physician, or an authorized employee of the physician or physician’s office, provides a separate written acknowledgment in which the physician affirmatively elects to be a member of the network.”
II. Proposed Changes to MPN Regulations

Physician Acknowledgments: Individual Physicians

- Physicians may acknowledge participation in one or more MPNs in a single written acknowledgement.
- The acknowledgment must specify the MPN or MPNs the physician is participating in.
- It may be signed by the physician or by an authorized employee of the physician or physician’s office.
- The acknowledgment may be included with other terms of an agreement or contract, but the acknowledgment must bear a separate signature of the physician or authorized employee or the physician’s office.

Physician Acknowledgments: Medical Groups

- A single group acknowledgment may be submitted by the medical group’s agent or designee for all MPN participating shareholders, partners, or employees.
- Each medical group acknowledgment shall include a list of all physicians in the medical group and shall affirm that each physician on the list has agreed to participate in the MPN.
- When a physician listed on the group acknowledgment is no longer participating in the MPN or when new members join the medical group, the medical group acknowledgment shall be updated with a new master list of MPN participating physicians.
- This amendment shall be submitted to the MPN within 30 days of the effective date of the change.
II. Proposed Changes to MPN Regulations

Physician Acknowledgments: Contracts that automatically renew.

• Contracts entered into before 1/1/2014 that automatically renew with no renewal date.
• Recall the statutory language of Labor Code section 4616(a)(3) “Commencing 1/1/2014...at the time of entering into or renewing an agreement”.
• DWC will make revisions to make sure we do not exceed our statutory authority but at the same time uphold the spirit of SB 863’s physician acknowledgment provisions.

II. Proposed Changes to MPN Regulations

Employee Notice:

• Implementation Notice requirements have been deleted.
• Section 9881.1 Notice to Employees Poster – Is being revised in a separate rulemaking (see Benefit Notices)
• Notices that must be provided to covered employees include:
  1. Complete Employee Notification;
  2. Transfer of Care Notice;
  3. Continuity of Care Notice;
  4. MPN IMR Notice;
  5. End of MPN Coverage Notice
II. Proposed Changes to MPN Regulations

Enforcement: (MPN Complaints)

• Any person can initiate a complaint against an MPN.
• First step is to write a written complaint directly with the MPN Contact that provides an explanation with sufficient detail of the MPN’s alleged violations.
• Second step the MPN will have 30 calendar days from the date the complaint was received to respond in writing to the complainant.
• Within 30 calendar days, if the MPN has not taken reasonable action to remedy the violation or if the MPN disputes the complaint and denies there is a violation, the complainant can file a Medical Provider Network Complaint Form with DWC.
• DWC shall have the discretion to begin an investigation if the complaint contains credible evidence that a violation exists.

Enforcement: (Random Reviews)

• Random Reviews may be conducted to determine if an MPN is complaint with the regulations and Labor Code.
• An MPN will not be randomly reviewed more than once in a two-year period.
• To initiate a Random Review, DWC will issue a “Notice of Random Review” to the MPN’s authorized individual.
• DWC will then make reasonable requests in writing for information or documentary evidence from the MPN to conduct the review.
• The MPN Applicant shall have thirty (30) calendar days from receipt of the request to provide DWC with the requested information.
II. Proposed Changes to MPN Regulations

Enforcement: (Petition for Suspension or Revocation of a Medical Provider Network)
• MPN fails to maintain its eligibility status.
• MPN has systematically failed to meet access standards under 9767.5, at minimum, on more than one occasion in at least two specific access locations within the MPN geographic service area, and the MPN failed to ensure in each instance that a worker received necessary medical treatment either in the MPN or failed to authorize treatment outside the MPN.

Penalties:
• Access Standard Violations – Penalties will be tied to the MPN not permitting an injured employee from receiving out-of-network treatment.
• Notice Violations – Penalties only assessed if the MPN is responsible for giving actual notice.
III. Rulemaking Timeline – What’s Next?

• DWC expects to begin the Second 15-Day comment period soon.

• At the end of the Second 15-Day:
  1. Repeat the cycle for the Third 15-Day comment period, or
  2. Submit final documents to OAL.

• OAL will have 30 business days to review.