

SB 899
Workers' Compensation Amendments
Effective 1/1/05

Under this bill employers and insurers are permitted to create "Medical Provider Networks" (MPN). Once these MPNs are created and approved by the Administrative Director for the Division of Workers' Compensation, employees will be required to choose their treating physician for workers' compensation purposes from these employer-created networks. Some provisions of this bill were effective April 2004 and others will be effective 1/1/05.

The following are the major changes included in this bill:

1. **Employer Control of Treatment Program** – Beginning January 1, 2005 employers who have a contract with an "approved medical provider network" can control the treatment of a work-related injury and illness for an indefinite period of time. Employees would be permitted to obtain a second or third opinion from a doctor of their choice within the "approved medical provider network". If an employee is dissatisfied with the "approved medical provider network" physician's treatment and/or recommendations, the employee can appeal to an Independent Medical Reviewer (IMR). If the IMR agrees with the injured worker, the injured worker may obtain treatment from a doctor of his/her choosing and the employer loses medical control.
2. **Employee Pre-designation of Physician** – Under prior law, the employee had the right to pre-designate a physician of the employee's choosing. This bill amends that right – employees may only pre-designate a physician who is in the employer's "approved provider network". This information is not 100% correct. An employee can designate a physician outside of the network as long as that doctor has previously treated them or has prior medical records, agrees to the pre-designation guidelines and signs a form stating that they agree. The criteria is that the employee may pre-designate a physician only if the employer provides non-occupational group health coverage in a health care plan either a PPO or HMO.
3. **Automatic Authorization of Medical Treatment** – The employer/insurer must authorize medical treatment within one day of receiving a claim form from the employee – even if the claim will be delayed for up to 90 days for investigation. The maximum liability for pre-acceptance medical care is \$10,000 until claim liability is determined.
4. **Employee Lawsuits** – Workers' Compensation disputes are excluded under this bill from penalty enforcement under the "Sue Your Boss" law signed by Governor Davis in 2003. In addition, current laws favoring employee interests in litigation are replaced with procedures that require all parties be treated as equals.
5. **Designation of Injury/Illness** – Physicians are required to designate an injury or illness as either work-related or not work related in determining disability. This must be addressed on medical reports.
6. **Subsidies** – Employers with fewer than 50 employees may be eligible for subsidies in order to facilitate "return to work programs." These include subsidies for workplace modifications and special equipment.

7. **Presumption of Correctness** – The bill retroactively eliminates the primary treating physician’s “presumption of correctness.” (The bill does not permit reopening prior decisions.) The “presumption of correctness” provision placed the burden of proof on the employer and insurance carrier to prove how and why the primary treating physician’s opinions were flawed. This meant that any initial designation and treatment plan was difficult or impossible to rebut. This retroactive elimination applies to any medical opinion made by pre-designated treating physician.
8. **Notice to Employees (Form 13708)** - Must be posted in an area frequented by employees and should appear in the languages of staff for that location.
9. **When Injury Occurs** - Provide Employee with DWC-1 (Employee Claim Form), Facts for Injured Workers and Facts about Workers’ Compensation, Complete the Employer’s First Report / Form 5020. Refer the employee to medical facility (MPN) or pre-designated doctor. Report injury to Carrier. Penalties may apply if these processes are not completed timely.

Employers with 50 or more employees are eligible for the following:

1. **Incentives to Return Disabled Employees to Work** – Employers would be eligible for a 15% reduction in permanent disability payments if the employer returns the employee to the same job at the same pay rate OR accommodates the employee with a modified job that pays at least 85% of the pay rate of the previous job. The permanent modified/alternative job must be available to the employee for at least 12 months.
2. **Increased Permanent Disability Award** – If an injured worker is not offered a return to regular, modified or alternative work, the worker is eligible for a 15% increase in his/her permanent disability award.

Other changes include the following:

1. **Temporary Disability Payments** - TD payments shall not extend for more than 104 compensable weeks within a period of two years from the date of the beginning of disability payments. Some injuries may allow for extended TD periods of up to 240 weeks from the date of injury. Employers must provide a wage statement of employee’s earnings. (52 weeks) to the insurance carrier for accurate calculation of disability benefits.
2. **Permanent Disability Awards** – Prohibits permanent disability awards in excess of 100% for any region of the body over the employee’s lifetime. Benefits are increased for workers with more than 70% disability and benefits are reduced for those with less than 15% disability. Employers must provide a wage statement of employee’s earnings. (52 weeks) to the insurance carrier for accurate calculation of disability benefits.
3. **Permanent Disability Standard** - Revises the standard used to evaluate “permanent disability” from “ability to compete in the open labor market” to “diminished future earning capacity”. These guidelines will be in accordance with the AMA guidelines.
4. **Medical Disputes** - All medical disputes must be referred to a panel of Qualified Medical Examiners. Alternative dispute resolution procedures will allow employers and groups of employers of union-represented employees to negotiate pilot programs.

5. **Vocational Rehabilitation Benefits** – Benefits for injuries that occurred prior to 1/1/04 are reinstated.
6. **Penalty Structure** - Penalty structure on most violations are revised to reduce penalties – but the bill includes a penalty of up to \$400,000 for an employee or insurer who has a record of violations that indicated a practice of non-compliance.
7. **Fraud** – The bill encourages good faith reporting of fraud and protects the reporting party from civil liability.
8. **IIPP Review** – The bill limits the requirement that insurers review the Illness and Injury Prevention Programs (IIPP) of insures with an experience modification factor of over 2.0.
9. **Permanent Disability**
10. **Medical Treatment Limits** – The bill implemented limits on medical treatment. Employers should refer additional treatment beyond the initial examination to the insurance carrier for review and approval.
11. **Apportionment** - The bill limits the employer’s liability to a percentage of Permanent Disability caused directly by the employee’s injury. The employer should notify the insurance carrier in writing of any known prior accidents, work related and non-work related injuries. All prior injuries will be considered during final medical evaluation of the employee.
12. **Utilization Review** - The bill implements utilization review to control medically necessary treatment. Employers should refer additional medical requests to the insurance carrier for Utilization Review for approval.

CREATING A MEDICAL PROVIDER NETWORK

The Administrative Director has issued draft regulations concerning the requirements for a “medical provider network”. The regulations state that a network may be created to reflect “the specific needs of an employer considering the experience...the common injuries...type of occupation...and the geographic area.” In addition the following is a list of requirements for a Medical Provider Network:

1. **Non-occupational Treaters** - 25% of the physicians on the panel must be “primarily engaged in the treatment of non-occupational injuries.”
2. **Designated Division Liaison** - The medical provider applicant must provide a name, title, address, e-mail address, and telephone number of a person designated as the liaison for the Division, who will be responsible for receiving compliance and informational communications from the Division and for disseminating the same within the MPN.
3. **Geographical Location of Providers** - A covered employee must have a residence or work place within 30 minutes or 15 miles of an MPN primary care physician and a hospital for emergency care, or if separate from such hospital, a provider of all emergency health care services. A covered employee must have a residence or work place within 60 minutes or 30 miles of other occupational health services and specialists.
4. **Services from Non-Member Providers** - The medical care provider must have a written policy to allow an injured employee to receive emergency medical treatment from a health care provider or hospital who is not a member of the Network. This policy must also arrange or approve medical care if an employee is working or traveling for work or requires treatment outside of the service area when the need for medical care arises.

5. **Provision of Non-Emergency Care** – The medical care provider must ensure that an appointment for initial treatment is available within 3 business days of the medical care provider’s receipt of a request for treatment within the MPN. For non-emergency specialist services to treat common injuries experienced by the covered employees based on the type of occupation or industry in which the employee is engaged, the medical care provider must ensure that an appointment is available within 20 business days of the medical care provider’s receipt of a referral to a specialist within the MPN.
6. **Second and Third Opinions** - If the covered employee disputes either the diagnosis or the treatment prescribed by the treating physician, the employee may obtain a second and third opinion from physicians within the MPN. During this process, the employee is required to continue his/her treatment with the treating physician.

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