

## SB 863: MEDICAL PROVIDER NETWORK CHANGES AS OF JANUARY 1, 2014

As signed into law on September 19, 2012, SB 863 (Chapter 363, Statutes of 2012) made several changes to sections of the California Labor Code governing the approval, monitoring and administration of Medical Provider Networks (MPNs). Final regulations, which will provide additional detail and clarity, are pending. This Client *Briefing* is intended to help educate clients as to what changes go into effect January 1, 2014, as well as to provide insight on the current status of the regulatory process. The following changes will go into effect on January 1, 2014.

- MPN approvals will be for a four-year period. Each MPN will then need to be refiled and reapproved for another four-year period.
- MPNs will have to obtain a written acknowledgement from each physician in the network that the physician agrees to be in the MPN.
- Every MPN must post on its website a roster of all treating physicians within the network. This information must be updated quarterly.
- Every MPN must have procedures and follow procedures to review the quality of care, performance of medical personnel, utilization of services and facilities and costs.
- All MPNs will have to have a "medical access assistant" staff person or persons to aid injured workers in obtaining appointments or referrals within the MPN.
- In a court action, the approval of an MPN is presumptive proof that the MPN is validly formed.
- The Administrative Director (AD) of the Division of Workers' Compensation (DWC) is authorized to investigate complaints and to conduct random reviews of approved MPNs. Approval of an MPN may be denied, revoked or suspended for failure to comply with the statutory requirements for MPNs. Additionally, SB 863 gives the AD the authority to establish a schedule of administrative penalties, not exceeding \$5,000 per violation, or probation for violations that merit a less severe consequence than revocation or suspension.

### DRAFT REGULATIONS

On May 13, 2013, the DWC released draft MPN regulations for public comment in its online forum. These draft regulations added some detail to the changes enacted with SB 863.

**MPN Application** – In addition to existing requirements, a MPN application must include the number of employees expected to be covered by the plan and the method used to calculate the number; a description of the geographic service area of the MPN; the MPN's website address; the web address or URL to the MPN provider listing; a listing of the name, specialty and location of each physician and ancillary service provider in

the MPN; an electronic copy of the geocoded provider listing; and a description of the MPN’s procedures to ensure ongoing quality of care, performance of medical personnel, utilization of services and facilities and costs provided by the MPN sufficient to provide adequate and necessary medical treatment for covered employees.

**Physician Written Acknowledgment** – Each physician in the MPN must have a written acknowledgement to participate in the MPN, unless that physician is part of a medical group that elects to be part of the MPN. If the physician has a contract that automatically renews, then the physician must submit a written acknowledgment with an original signature no later than the contract renewal date that clearly specifies the time frame of the acknowledgement. Physicians may acknowledge participation in multiple MPNs with a single written acknowledgement. A single written group acknowledgement may be submitted for a medical group on behalf of all members of that group if each physician signs the acknowledgement with an original signature. An amendment to the group acknowledgement must be submitted within ten (10) days of a change in a group member’s participation in the MPN.

**Medical Access Assistants** – Under the draft regulations, those medical access assistants must be located in the United States and available to provide assistance with access to medical care under the MPN at a minimum from Monday through Saturday, from 7 a.m. to 8 p.m. Pacific Standard Time. There must be one or more medical access assistants available to respond at all required times, with the ability for callers to leave a message. There must be enough medical access assistants to respond to calls or messages by the next day, excluding Sundays and holidays.

**Administrative Penalties** – The draft regulations also set forth a series of administrative penalties.

Violation	Penalty
Failure to file an original Notice of MPN Plan Modification within 15 business days of a change in the name of the MPN or the MPN applicant.	\$2,500
Failure to file an original Notice of MPN Plan Modification within five (5) business days of a change in the MPN applicant’s eligibility status.	\$5,000
Failure to file an original Notice of MPN Plan Modification within 15 business days of a change in DWC liaison or authorized individual.	\$2,500
Failure to file an original Notice of MPN Plan Modification for a material change in any of the employee notification materials.	\$2,500
Failure to file an original Notice of MPN Plan Modification for all other material changes that require a filing of a Modification of MPN plan.	\$1,000
Failure to file an original application for MPN reapproval within the required time frames.	\$2,500
Failure to include geocoding of its current provider listing with the MPN reapproval application.	\$1,000 for each 30 days or part thereof that the failure continues after the date of submission of the reapproval application

Violation	Penalty
Failure to provide the complete written MPN employee notification to an injured covered employee.	\$250
Failure to provide an injured covered employee who is still treating under an MPN written notice of the date the employee will no longer be able to use the MPN.	\$500
Failure to provide the MPN Independent Medical Review notice.	\$2,500 for each employee for whom the notice is not provided when required
Failure to update the medical and ancillary provider listings on a quarterly basis.	\$1,000 for each inaccurate listing up to a total of \$25,000
Failure to meet the access standards for a specific location within the MPN geographic service area(s) described in its MPN.	\$5,000 for each geographic service area affected, up to a total of \$50,000
Failure to respond to calls made to the medical access assistant by the next day.	\$250/occurrence
Failure to ensure an appointment for non-emergency services for an initial treatment is available within three (3) business days of the MPN applicant's receipt of a request for treatment within the MPN.	\$1,000/occurrence
Failure to ensure an appointment for non-emergency specialist services is available within 20 business days of the MPN applicant's receipt of a referral to a specialist within the MPN.	\$1,000/occurrence
Failure to provide at least a regional area listing of MPN providers or specialists with five (5) calendar days of an injured covered employee's request.	\$1,000/occurrence
Failure to respond to the DWC's request for information or documents within 30 calendar days of DWC's request.	\$2,500

It is important to note that these are, at this point, only draft regulations. It is still early in the regulatory process. A number of MPN providers and other stakeholders have commented on these and other parts of the draft regulations and the DWC is taking those comments into consideration before it formally proposes MPN regulations.

In light of the above penalties for non-compliance and as these changes will impose new requirements, it is advisable for employers, carriers and self-funded plans that utilize MPNs to begin to analyze what compliance will entail. Keenan has been actively monitoring this process and will continue to inform clients regarding the development of regulations and the potential impact on MPNs.

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