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SB-914 Workers' compensation: medical provider networks: independent medical reviews. (2015-2016)

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Senate Bill No. 914

CHAPTER 84

An act to amend Section 4616.4 of the Labor Code, relating to workers' compensation.

[Approved by Governor July 22, 2016. Filed with Secretary of State July 22, 2016.]

LEGISLATIVE COUNSEL'S DIGEST

SB 914, Mendoza. Workers' compensation: medical provider networks: independent medical reviews.

Existing law establishes a workers' compensation system, administered by the Administrative Director of the Division of Workers' Compensation, to compensate an employee for injuries sustained in the course of his or her employment. Existing law authorizes an insurer, employer, or entity that provides physician network services to establish or modify a medical provider network for the provision of medical treatment to injured employees, and requires the administrative director to contract with individual physicians or an independent medical review organization to perform medical provider network independent medical reviews. Existing law provides that if a treatment or diagnostic service remains disputed after a 3rd physician's opinion, the injured employee may request a medical provider network independent medical review. Existing law requires the review to use standards established in statute or use the American College of Occupational and Environmental Medicine's Occupational Medicine Practice Guidelines.

This bill would delete the authorization to use the American College of Occupational and Environmental Medicine's Occupational Medicine Practice Guidelines as standards for those independent medical reviews. The bill would make additional technical, nonsubstantive changes.

Vote: majority Appropriation: no Fiscal Committee: no Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 4616.4 of the Labor Code is amended to read:

4616.4. (a) (1) The administrative director shall contract with individual physicians, as described in paragraph (2), or an independent medical review organization to perform medical provider network (MPN) independent medical reviews pursuant to this section.

(2) Only a physician licensed pursuant to Chapter 5 (commencing with Section 2000) of the Business and Professions Code may be an MPN independent medical reviewer.

(3) The administrative director shall ensure that an MPN independent medical reviewer or those within the review organization shall do all of the following:

(A) Be appropriately credentialed and privileged.

(B) Ensure that the reviews provided by the medical professionals are timely, clear, and credible, and that reviews are monitored for quality on an ongoing basis.

(C) Ensure that the method of selecting medical professionals for individual cases achieves a fair and impartial panel of medical professionals who are qualified to render recommendations regarding the clinical conditions consistent with the medical utilization schedule established pursuant to Section 5307.27.

(D) Ensure that confidentiality of medical records and the review materials, consistent with the requirements of this section and applicable state and federal law.

(E) Ensure the independence of the medical professionals retained to perform the reviews through conflict-of-interest policies and prohibitions, and ensure adequate screening for conflicts of interest.

(4) A medical professional selected by the administrative director or the independent medical review organization to review medical treatment decisions shall be a physician, as specified in paragraph (2) of subdivision (a), who meets the following minimum requirements:

(A) The medical professional shall be a clinician knowledgeable in the treatment of the employee's medical condition, knowledgeable about the proposed treatment, and familiar with guidelines and protocols in the area of treatment under review.

(B) Notwithstanding any other law, the medical professional shall hold a nonrestricted license in any state of the United States, and for a physician, a current certification by a recognized American medical specialty board in the area or areas appropriate to the condition or treatment under review.

(C) The medical professional shall have no history of disciplinary action or sanctions, including, but not limited to, loss of staff privileges or participation restrictions taken or pending by any hospital, government, or regulatory body.

(b) If, after the third physician's opinion, the treatment or diagnostic service remains disputed, the injured employee may request an MPN independent medical review regarding the disputed treatment or diagnostic service still in dispute after the third physician's opinion in accordance with Section 4616.3. The standard to be utilized for an MPN independent medical review is identical to that contained in the medical treatment utilization schedule established in Section 5307.27.

(c) An application for an MPN independent medical review shall be submitted to the administrative director on a one-page form provided by the administrative director entitled "MPN Independent Medical Review Application." The form shall contain a signed release from the injured employee, or a person authorized pursuant to law to act on behalf of the injured employee, authorizing the release of medical and treatment information. The injured employee may provide any relevant material or documentation with the application. The administrative director or the independent medical review organization shall assign the MPN independent medical reviewer.

(d) Following receipt of the application for an MPN independent medical review, the employer or insurer shall provide the MPN independent medical reviewer, assigned pursuant to subdivision (c), with all information that was considered in relation to the disputed treatment or diagnostic service, including both of the following:

(1) A copy of all correspondence from, and received by, any treating physician who provided a treatment or diagnostic service to the injured employee in connection with the injury.

(2) A complete and legible copy of all medical records and other information used by the physicians in making a decision regarding the disputed treatment or diagnostic service.

(e) Upon receipt of information and documents related to the application for an MPN independent medical review, the MPN independent medical reviewer shall conduct a physical examination of the injured employee at the employee's discretion. The MPN independent medical reviewer may order any diagnostic tests necessary to make his or her determination regarding medical treatment. Utilizing the medical treatment utilization schedule established pursuant to Section 5307.27, and taking into account any reports and information provided, the MPN independent medical reviewer shall determine whether the disputed health care service was consistent with Section 5307.27 based on the specific medical needs of the injured employee.

(f) The MPN independent medical reviewer shall issue a report to the administrative director, in writing, and in layperson's terms to the maximum extent practicable, containing his or her analysis and determination whether the disputed health care service was consistent with the medical treatment utilization schedule established pursuant to Section 5307.27, within 30 days of the examination of the injured employee, or within less time as prescribed by the administrative director. If the disputed health care service has not been provided and the MPN independent medical reviewer certifies in writing that an imminent and serious threat to the health of the injured employee may exist, including, but not limited to, serious pain, the potential loss of life, limb, or major bodily function, or the immediate and serious deterioration of the injured employee, the report shall be expedited and rendered

within three days of the examination by the MPN independent medical reviewer. Subject to the approval of the administrative director, the deadlines for analyses and determinations involving both regular and expedited reviews may be extended by the administrative director for up to three days in extraordinary circumstances or for good cause.

(g) The MPN independent medical reviewer's analysis shall cite the injured employee's medical condition, the relevant documents in the record, and the relevant findings associated with the documents or any other information submitted to the MPN independent medical reviewer in order to support the determination.

(h) The administrative director shall immediately adopt the determination of the MPN independent medical reviewer, and shall promptly issue a written decision to the parties.

(i) If the determination of the MPN independent medical reviewer finds that the disputed treatment or diagnostic service is consistent with Section 5307.27, the injured employee may seek the disputed treatment or diagnostic service from a physician of his or her choice from within or outside the medical provider network. Treatment outside the medical provider network shall be provided consistent with Section 5307.27. The employer shall be liable for the cost of any approved medical treatment in accordance with Section 5307.1 or 5307.11.