



Government Affairs Alert

March 15, 2010

Establishment of Pharmacy Networks/Plans

On March 5, 2010, California's Division of Workers' Compensation (DWC) published informal draft regulations regarding "Contracted Provision of Medicines" on the DWC Rules Forum. The proposed regulations establish basic requirements by which employers/payors may enter into a contract(s) with pharmacy providers—mandated—for establishment of a Pharmacy Benefit Network or Plan and the subsequent direction of pharmacy care (upon completion of all notification provisions) and reduction of out-of-network bills in accordance with Labor Code Section 4600.2. The informal draft is substantially different than existing regulations allowing a payor to include pharmacy as part of their Medical Provider Network (MPN).

The draft rules are available for public comment for approximately 15-20 days on DWC's website: <http://www.dir.ca.gov/dwc/DWCWCABForum/ContractedProvisionOfMed.htm> after which the Division may revise initial proposed rules per stakeholder comment and reissue as informal or formal draft rules.

Below are key provisions (highlights) of the draft rule(s):

Contracting and Compliance

Payors must enter into an official "limiting contract" with a provider, pharmacy, group of pharmacies or Pharmacy Benefits Network (PBN) to establish an "Employer Plan" (plan or network) in order to apply requirements of proposed regulations and CA Labor Code 4600.2, including direction of care and reduction of out-of-network pharmacy bills.

Plan/Network Standards

All plans and/or their networks (including implementing contracts) must ensure adequate access to care for all injured workers and must comply with proper notification and education requirements.

- All plans shall have a specified provider (pharmacy) or facility of a specified provider within 15 miles or 30 minutes driving time from injured employee's place of residence – which must be open for dispensing 7 days a week.
- Plan requirements shall not apply and limitations of direction of care and contract reduction shall not be enforceable before notification requirements are met and in conjunction with other specific exemptions.
- Plan may provide for mail order services if treating physician electronically transmits or faxes a prescription to a specified provider and if prescribed drug is not required earlier than two weeks from date of prescription and drug is timely delivered within two weeks of prescription transmittal.
- Plan shall maintain a toll free number from which employees and physicians may obtain plan information.



Notification to Employees

Application of any Plan or Network requirements—including direction of care and reduction in out-of-network bills—must first begin with proper notification of injured worker. Any payor that adopts or contracts for plan shall notify every covered employee in writing on use of plan/network at least 14 days prior to implementation of plan/network (existing employees) or at time of hire (new employees), and notification shall also be sent to injured employees upon receipt of notice of injury by payor (must be in paper format).

- Notices shall be in English and Spanish, may take form of a booklet or pamphlet, must include complete description of plan/network and how injured employee shall obtain medicines under plan/network. At a minimum the notice shall include:
 - Any limitations of what entity or provider an employee can utilize to obtain medicines – including the following language “This plan provides that drugs (and other services) prescribed for treating your work injury that can be obtained only from companies or providers specified in your plan. If you have any questions about how to obtain prescribed medications, call the following toll free number (list number).”
 - A list of plan/network limitations, procedures for obtaining medications and effective date of coverage under plan
 - When and how employees should stop using providers under a previous plan or no plan - and procedures on transferring prescriptions to new plan
 - A URL or website address where injured employee can locate information and procedures about obtaining medicines within plan up to and including a listing of all providers maintained within plan
- A complete written notice must be posted (in English and Spanish) in a conspicuous location frequented by employees during hours of workday and next to workers’ compensation postings required by law

Written and Posting of Notification to New Employees

Existing Section 9880 – Notification to New Employees Workers’ Compensation Requirements and Section 9881 – Posting of Notification to Employees, are further amended to include new notification requirements to employees regarding the employer’s MPN (pharmacy benefit) if that MPN includes a pharmacy provider component, and a description of employer PBN plan/network which controls provision of medicines or medical supplies.

Workers’ Compensation Claim Form (DWC 1) & Notice of Potential Eligibility

Employers are required to amend their DWC1 Forms and Notice to include (where applicable) a paragraph which states “Obtaining Prescription Drugs and Medical Supplies: Your employer may have a plan with a pharmacy, pharmacy chain or other provider of medical supplies to provide drugs or medical supplies to workers injured on the job. This plan may direct you to obtain drugs or medical supplies from particular pharmacies or suppliers. Your employer should notify you if your employer has such a plan. Contact your employer for more information. Your claims administrator should pay the bills directly.”

PBN versus MPN

Currently in California employers/payors are able to establish a MPN through which they can ‘steer’ care for injured workers. Previously it was never determined if language found in Section 9767.1 California Labor Code allowed for the inclusion of pharmacy as an ancillary provider. However, recent discussions with CA-DWC (and proposed changes to MPN rules) indicate openness to allowing employers/payors to include pharmacy as part of their MPN. This change should benefit most employers/payors but could leave smaller employers and TPAs lacking the ability to control pharmacy care.

In a deviation from existing MPN regulations, the initial PBN draft language could provide all payors/employers with a simpler solution in addressing pharmacy care. Draft regulatory language for PBNs appears to remove burdensome filing and monitoring requirements associated with MPNs and provides stronger language on direction of care and reduction of out-of-network bills. However, draft PBN language lacks some of the benefits achieved through inclusion of pharmacy in an MPN. (Note: Neither existing regulation nor proposed regulation prohibits an entity from establishing an MPN and PBN program)

Though PMSI cannot determine which course of action—PBN or MPN—is the best for our clients, we can provide thoughts, strategy and the pros and cons of each situation:

PBNs

Pros

- Plan/Network not filed with state
- Allows for direction of care to specific pharmacy providers
- Allows for reduction of out-of-network bills utilizing CA Labor Code 4600.2
- May allow for direction of care for DME and Medical Supplies through network

Cons

- Requires direct and “material” contracting between payors/employers and providers
- Contracts are governed by regulation and must adhere to regulatory specifications
- Possibly limits utilization of mail order pharmacy
- Stringent pre and post injury notification before network provisions can apply
- Network standards require geographical accessibility for injured workers – 15 miles (30 minute drive) from employee's residence and must be open/able to dispense 7 days a week

MPNs

Pros

- Does not require contract with MPN providers – Regulations do not govern terms of provider contracts
- Stringent pre and post injury notification processes already in place
- Allows for employee choice within provider listing (panel) – Possibly including retail and mail order pharmacy
- Allows for denial of care (payment on care) outside of network



Cons

- Plan must be filed with state and modified/resubmitted for material change in plan (including addition or subtraction of providers)
- Must provide list of all providers and information to state
- Must maintain three providers (panel) in each specialty within 15 miles (30 minute drive) from injured employee's residence
- Fee required for filing and maintaining MPN with state

The rule making and development on these proposed regulations will continue and **in no way** should the current proposed version be considered a finished product. If anything, the process remains fluid and existing language is subject to change. Therefore, PMSI will continue to monitor informal rule making progress on both the PBN issue and changes to existing MPN regulations. In the meantime PMSI urges our clients to use provisions of California Labor Code Section 4600.2 and the recent decision of *Brambila v. Vons, Inc.* (January 28, 2010), 12 WCAB, Rptr. 12,060 [LAO0862195] when analyzing if and how they can begin reducing out-of-network bills.

For more information, please contact your Account Manager or Sales Representative. You may also contact our Director of Government Affairs, Kevin Tribout, at Kevin.Tribout@pmsionline.com or 813.627.2445.

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