

RESOLUTION 06-02-06

DIGEST

Workers' Compensation: Qualified Medical Evaluators in Medical Provider Networks
Amends Labor Code section 4616 to require the inclusion of certified Qualified Medical Evaluators in Medical Provider Networks.

TEXT OF RESOLUTION

RESOLVED, that the Conference of Delegates of California Bar Associations recommends that legislation be sponsored to amend Labor Code section 4616 to read as follows:

1 § 4616
2 (a)(1) On or after January 1, 2005, an insurer or employer may establish or modify a
3 medical provider network for the provision of medical treatment to injured employees. The
4 network shall include physicians primarily engaged in the treatment of occupational injuries
5 and physicians primarily engaged in the treatment of nonoccupational injuries. The goal
6 shall be at least 25 percent of physicians primarily engaged in the treatment of
7 nonoccupational injuries. The administrative director shall encourage the integration of
8 occupational and nonoccupational providers. The number of physicians in the medical
9 provider network shall be sufficient to enable treatment for injuries or conditions to be
10 provided in a timely manner. The provider network shall include an adequate number and
11 type of physicians, as described in Section 3209.3, or other providers, as described in
12 Section 3209.5, to treat common injuries experienced by injured employees based on the
13 type of occupation or industry in which the employee is engaged, and the geographic area
14 where the employees are employed. Except upon request, any Qualified Medical Evaluator
15 duly certified by the Division under the provisions of Title 8, California Code of
16 Regulations, shall be included in any medical provider network established under this
17 article.
18 (2) Medical treatment for injuries shall be readily available at reasonable times to all
19 employees. To the extent feasible, all medical treatment for injuries shall be readily
20 accessible to all employees. With respect to availability and accessibility of treatment, the
21 administrative director shall consider the needs of rural areas, specifically those in which
22 health facilities are located at least 30 miles apart.
23 (b) The employer or insurer shall submit a plan for the medical provider network to
24 the administrative director for approval. The administrative director shall approve the plan
25 if he or she determines that the plan meets the requirements of this section. If the
26 administrative director does not act on the plan within 60 days of submitting the plan, it shall
27 be deemed approved.
28 (c) Physician compensation may not be structured in order to achieve the goal of
29 reducing, delaying, or denying medical treatment or restricting access to medical treatment.
30 (d) If the employer or insurer meets the requirements of this section, the
31 administrative director may not withhold approval or disapprove an employer's or insurer's
32 medical provider network based solely on the selection of providers. In developing a
33 medical provider network, an employer or insurer shall have the exclusive right to determine
34 the members of their network.

35 (e) All treatment provided shall be provided in accordance with the medical
36 treatment utilization schedule established pursuant to Section 5307.27 or the American
37 College of Occupational Medicine's Occupational Medicine Practice Guidelines, as
38 appropriate.

39 (f) No person other than a licensed physician who is competent to evaluate the
40 specific clinical issues involved in the medical treatment services, when these services are
41 within the scope of the physician's practice, may modify, delay, or deny requests for
42 authorization of medical treatment.

43 (g) On or before November 1, 2004, the administrative director, in consultation with
44 the Department of Managed Health Care, shall adopt regulations implementing this article.
45 The administrative director shall develop regulations that establish procedures for purposes
46 of making medical provider network modifications.

(Proposed new language underlined; language to be deleted stricken.)

PROPONENT: Los Angeles County Bar Association

STATEMENT OF REASONS

Existing Law: Provides for the establishment of medical provider networks by the insurer or employer to provide medical treatment to injured employees for treatment of occupational injuries. There is no requirement that medical provider networks include Qualified Medical Evaluators in their networks. Qualified Medical Evaluators are physicians who have been certified by the California Division of Industrial Accidents as qualified to examine and treat injured workers.

This Resolution: Would require inclusion of any certified Qualified Medical Evaluator in any medical provider network established by the insurer or employer.

The Problem: Prior to the enactment of Labor Code section 4616, the injured worker could select the physician to treat his or her industrial injuries. With passage of SB 899 in 2004, selection of medical providers was transferred to workers' compensation insurers or to the self-insured employer. In establishing the medical provider networks under Labor Code section 4616, insurers have excluded many qualified physicians who have been pre-certified by the Division of Industrial Accidents as Qualified Medical Evaluators. Instead, the insurers have limited their medical provider networks to physicians who are partial to the positions of the insurer, not the injured worker. This amendment would correct this partiality and require insurers and self-insured employers to include all Qualified Medical Evaluators upon request of the Qualified Medical Evaluator in their medical provider networks.

IMPACT STATEMENT

This resolution does not affect any other law, statute or rule.

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