

AMENDED IN SENATE APRIL 6, 2015

**SENATE BILL**

**No. 522**

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**Introduced by Senator Mendoza**

February 26, 2015

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An act to amend Section ~~139.45~~ 4616.4 of the Labor Code, relating to workers' compensation.

LEGISLATIVE COUNSEL'S DIGEST

SB 522, as amended, Mendoza. Workers' compensation: advertisements.

*Existing law establishes a worker's 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 independent medical reviews.*

*This bill would clarify that those independent medical reviews are medical provider network independent medical reviews. The bill would make conforming changes.*

~~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 requires the administrative director to promulgate regulations regarding advertisements relating to workers' compensation, and requires the administrative director to take particular care to preclude any~~

~~advertisements with respect to industrial injuries or illnesses that are false or that mislead the public with respect to workers' compensation.~~

~~This bill would make technical, nonsubstantive changes to these provisions:~~

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

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

3     4616.4. (a) (1) The administrative director shall contract with  
4     individual physicians, as described in paragraph (2), or an  
5     independent medical review organization to perform *medical*  
6     *provider network (MPN)* independent medical reviews pursuant  
7     to this section.

8     (2) Only physicians licensed pursuant to Chapter 5 (commencing  
9     with Section 2000) of the Business and Professions Code may be  
10    independent medical reviewers.

11    (3) The administrative director shall ensure that the independent  
12    medical reviewers or those within the review organization shall  
13    do all of the following:

14    (A) Be appropriately credentialed and privileged.

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

18    (C) Ensure that the method of selecting medical professionals  
19    for individual cases achieves a fair and impartial panel of medical  
20    professionals who are qualified to render recommendations  
21    regarding the clinical conditions consistent with the medical  
22    utilization schedule established pursuant to Section 5307.27, or  
23    the American College of Occupational and Environmental  
24    Medicine's Occupational Medicine Practice Guidelines.

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

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

1 (4) Medical professionals selected by the administrative director  
2 or the independent medical review organizations to review medical  
3 treatment decisions shall be physicians, as specified in paragraph  
4 (2) of subdivision (a), who meet the following minimum  
5 requirements:

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

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

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

19 (b) If, after the third physician’s opinion, the treatment or  
20 diagnostic service remains disputed, the injured employee may  
21 request *MPN* independent medical review regarding the disputed  
22 treatment or diagnostic service still in dispute after the third  
23 physician’s opinion in accordance with Section 4616.3. The  
24 standard to be utilized for *MPN* independent medical review is  
25 identical to that contained in the medical treatment utilization  
26 schedule established in Section 5307.27, or the American College  
27 of Occupational and Environmental Medicine’s Occupational  
28 Medicine Practice Guidelines, as appropriate.

29 (c) Applications for *MPN* independent medical review shall be  
30 submitted to the administrative director on a one-page form  
31 provided by the administrative director entitled—“~~Independent~~  
32 “*MPN Independent Medical Review Application.*” The form shall  
33 contain a signed release from the injured employee, or a person  
34 authorized pursuant to law to act on behalf of the injured employee,  
35 authorizing the release of medical and treatment information. The  
36 injured employee may provide any relevant material or  
37 documentation with the application. The administrative director  
38 or the independent medical review organization shall assign the  
39 independent medical reviewer.

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

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

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

13 (e) Upon receipt of information and documents related to the  
14 application for *MPN* independent medical review, the independent  
15 medical reviewer shall conduct a physical examination of the  
16 injured employee at the employee's discretion. The reviewer may  
17 order any diagnostic tests necessary to make his or her  
18 determination regarding medical treatment. Utilizing the medical  
19 treatment utilization schedule established pursuant to Section  
20 5307.27, or the American College of Occupational and  
21 Environmental Medicine's Occupational Medicine Practice  
22 Guidelines, as appropriate, and taking into account any reports  
23 and information provided, the reviewer shall determine whether  
24 the disputed health care service was consistent with Section  
25 5307.27 or the American College of Occupational and  
26 Environmental Medicine's Occupational Medicine Practice  
27 Guidelines based on the specific medical needs of the injured  
28 employee.

29 (f) The independent medical reviewer shall issue a report to the  
30 administrative director, in writing, and in layperson's terms to the  
31 maximum extent practicable, containing his or her analysis and  
32 determination whether the disputed health care service was  
33 consistent with the medical treatment utilization schedule  
34 established pursuant to Section 5307.27, or the American College  
35 of Occupational and Environmental Medicine's Occupational  
36 Medicine Practice Guidelines, as appropriate, within 30 days of  
37 the examination of the injured employee, or within less time as  
38 prescribed by the administrative director. If the disputed health  
39 care service has not been provided and the independent medical  
40 reviewer certifies in writing that an imminent and serious threat

1 to the health of the injured employee may exist, including, but not  
2 limited to, serious pain, the potential loss of life, limb, or major  
3 bodily function, or the immediate and serious deterioration of the  
4 injured employee, the report shall be expedited and rendered within  
5 three days of the examination by the independent medical reviewer.  
6 Subject to the approval of the administrative director, the deadlines  
7 for analyses and determinations involving both regular and  
8 expedited reviews may be extended by the administrative director  
9 for up to three days in extraordinary circumstances or for good  
10 cause.

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

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

19 (i) If the determination of the independent medical reviewer  
20 finds that the disputed treatment or diagnostic service is consistent  
21 with Section 5307.27 or the American College of Occupational  
22 and Environmental Medicine’s Occupational Medicine Practice  
23 Guidelines, the injured employee may seek the disputed treatment  
24 or diagnostic service from a physician of his or her choice from  
25 within or outside the medical provider network. Treatment outside  
26 the medical provider network shall be provided consistent with  
27 Section 5307.27 or the American College of Occupational and  
28 Environmental Medicine’s Occupational Practice Guidelines. The  
29 employer shall be liable for the cost of any approved medical  
30 treatment in accordance with Section 5307.1 or 5307.11.

31 ~~SECTION 1. Section 139.45 of the Labor Code is amended to~~  
32 ~~read:~~

33 ~~139.45. (a) In promulgating regulations pursuant to Sections~~  
34 ~~139.4 and 139.43, the administrative director shall take particular~~  
35 ~~care to preclude any advertisements with respect to industrial~~  
36 ~~injuries or illnesses that are false or that mislead the public with~~  
37 ~~respect to workers’ compensation. In promulgating rules with~~  
38 ~~respect to advertising, the State Bar of California and physician~~  
39 ~~licensing boards shall also take particular care to achieve the same~~  
40 ~~goal.~~

- 1     ~~(b) For purposes of subdivision (a), false or misleading~~  
2     ~~advertisements shall include advertisements that do any of the~~  
3     ~~following:~~
- 4     ~~(1) Contain an untrue statement.~~
  - 5     ~~(2) Contain any matter, or present or arrange any matter in a~~  
6     ~~manner or format that is false, deceptive, or that tends to confuse,~~  
7     ~~deceive, or mislead.~~
  - 8     ~~(3) Omit any fact necessary to make the statement made, in the~~  
9     ~~light of the circumstances under which the statement is made, not~~  
10    ~~misleading.~~
  - 11    ~~(4) Are transmitted in any manner that involves coercion, duress,~~  
12    ~~compulsion, intimidation, threats, or vexatious or harassing~~  
13    ~~conduct.~~
  - 14    ~~(5) Entice a person to respond by the offering of any~~  
15    ~~consideration, including a good or service but excluding free~~  
16    ~~medical evaluations or treatment, that would be provided either at~~  
17    ~~no charge or for less than market value. A free medical evaluation~~  
18    ~~or treatment shall not be offered for the purpose of defrauding any~~  
19    ~~entity.~~