

TITLE 8. INDUSTRIAL RELATIONS
DIVISION 1. DEPARTMENT OF INDUSTRIAL RELATIONS
CHAPTER 4.5. DIVISION OF WORKERS' COMPENSATION
SUBCHAPTER 1. ADMINISTRATIVE DIRECTOR --
ADMINISTRATIVE RULES

ARTICLE 3.7. CONTRACTED PROVISION OF MEDICINES

Section 9769.1. Definitions.

(a) **Contract.** For purposes of this Article, “contract” means any agreement subject to Labor Code section 4600.2 between or among a self-insured employer, group of self-insured employers, insurer of an employer, or group of insurers and a pharmacy, group of pharmacies, or pharmacy benefit network, to provide medicines to injured employees.

(b) **Employer plan.** For purposes of this Article, “employer plan” means any plan developed or used by an employer, which limits or purports to limit an injured employee of that employer to obtaining medicines from the employer, from companies related to or affiliated with the employer, or from specified providers, or which directs an injured employee to obtain medicines from the employer, from companies related to or affiliated with the employer, or from specified providers.

(c) **Limiting contract.** For purposes of this Article, “limiting contract” means any contract which limits or purports to limit an injured employee to obtaining medicines from specified providers or which directs an injured employee to obtain medicines from specified providers.

(e) **Medicine.** For purposes of this Article, “medicine” means any and all pharmaceuticals, drugs, medical supplies, and durable medical equipment which may be prescribed to or for an injured employee or dispensed to an injured employee pursuant to Labor Code section 4600 except those medicines which are dispensed while the employee is an inpatient at a hospital.

(f) **Network.** For purposes of this Article, “network” means an employer plan or limiting contract, as those terms are defined in this article.

(g) **Specified provider.** For purposes of this Article, “specified provider” means any provider of medicine which is included in a limiting contract or employer plan among the providers from which an injured employee is directed to obtain any medicine under the limiting contract or employer plan,

or which is included in a limiting contract or employer plan among the providers from which an injured employee is limited in seeking to obtain any medicine.

(h) **Off work status.** For purposes of this Article, “off work status” means that the employee is not going to the employee’s normal place of work on the employee’s normally scheduled work days.

Section 9769.2. Compliance with standards.

If a self-insured employer, group of self-insured employers, insurer of an employer, or group of insurers contracts with, or has contracted with, a pharmacy, group of pharmacies, or pharmacy benefit network to provide medicines to injured employees, the contract shall comply with standards prescribed in this Article, and the provision of the medicines to injured employees by the employer shall comply with the standards prescribed in this Article. An employer plan shall also comply with the standards prescribed in this article.

Section 9769.3. Standards for networks.

(a) Except as provided in subdivisions (b), (e), and (f), networks shall have a specified provider or a facility of a specified provider within 15 miles or thirty minutes’ driving time of the residence of every employee covered by the limiting contract, which is open for the dispensing of the prescribed medicine seven days a week.

(b) Employer plans need not meet the geographic standards of subdivision (a), if there is a specified provider at, or within 15 miles or within thirty minutes’ driving time of the place of employment of employees whose residences do not fall within the geographic standards of subdivision (a).

(c) If an injured employee changes his or her residence and is no longer within the geographic standards of subdivision (a), the employee shall no longer be covered by limitations in the contract or employer plan on source or price of medicines, except for medicines prescribed for mail or other delivery pursuant to subdivision (h), and the employee may obtain medicines from any source.

(d) If an injured employee covered by an employer plan, whose residence is not within the geographic standards of subdivision (a), is in off work status, the employee shall no longer be covered by limitations in the contract or employer

plan on source or price of medicines, except for medicines prescribed for mail or other delivery pursuant to subdivision (h), and except for medicines which the network will provide by physical delivery pursuant to subdivision (f), and the employee may obtain medicines from any source.

(e) A network may provide for physical delivery to the employee's residence on a next day basis for employees whose residences are outside the geographic standards of subdivision (a). Such a network shall be considered to meet the geographic standards of subdivision (a).

(f) A network need not comply with the geographic standards of subdivision (a), if the network documents, notices and plan description furnished to the employees clearly state that the network limitations on provider and price do not apply to any prescriptions for injured employees whose residence is not within 15 miles or thirty minutes' driving time of a specified provider or facility.

(g) Network documents shall provide that an injured employee shall not be subject to the limitations in the contract or employer plan on source or price of medicines in the following circumstances:

(1) Before the employer has provided the employee the notices required to be distributed to injured employees and claimants pursuant to subdivisions (a) and (d) of section 9769.4.

(2) If, when an employee requests of a specified provider the dispensing of any prescribed medicine, the provider does not provide the prescribed medicine to the employee at the time of request, without charge to the employee. The injured employee may again be subject to the limitations in the contract or plan on source or price of medicines if and after the employer shall notify the employee and the employee's physician in writing that a specific specified provider within the geographic standards of subdivision (a) will dispense the medicine to the employee without charge.

(3) When the employer has notified the employee or the employee's physician of a utilization review decision that the use of the medicine as a course of treatment is delayed, denied, or modified, or that more information is required. This exemption from the limitations in the contract or employer plan shall apply only to the specific medicine prescribed, and only for the duration of the utilization review. This subdivision does not create any liability of the employer to reimburse for a medicine for which the ultimate decision in

utilization review of a denial or modification is not decided in favor of the employee.

(h) If the treating physician electronically transmits or faxes a prescription for a medicine to a specified provider, a network may provide for mail or other delivery service of medicines which are not required earlier than two weeks from the date of prescription. A mail or other delivery of such a medicine is timely if actually delivered within two weeks of the time of the transmission of the prescription.

(i) Electronic transmission of prescriptions is the most favored type of delivery. The terms of a Medical Provider Network may require that physician members electronically transmit prescriptions to specified providers located within the geographic standards of subdivision (a), if the network guarantees that the prescription will be filled by the provider when the employee first presents to the provider to retrieve the prescribed medicine, or to specified providers outside the geographic standards of subdivision (a), if the network guarantees that the prescription will be delivered to the employee's residence the next day.

(j) To reduce costs in the provision of medicines to injured employees, contracts and employer plans which provide for delivery of medicines to injured employees which is cost-effective, certain, and expeditious are encouraged. To the extent possible, contracts and employer plans should provide for the immediate provision of a medicine to an injured employee when the injured employee first comes to a specified provider to retrieve a prescription.

(k) A network shall maintain a toll free number which employees and physicians may call to obtain information about the network, and to inquire where and how prescriptions for medicines may filled.

Section 9769.4. Notice to employees.

(a) An employer or insurer that adopts or has adopted a contract or employer plan subject to this Article shall notify every covered employee in writing about the use of the contract or employer plan at least 14 days prior to the implementation of the contract or employer plan or at the time of hire for new employees. Notification shall be made to all existing employees within sixty days of the adoption of this regulation. The notification shall also be sent to a covered employee when the employer has notice of an injury. Notices shall be

provided in English and Spanish. The notice may be in the form of a booklet or pamphlet. The notice shall include a complete description of the operation of the contract or employer plan, and how injured employees may obtain medicines under the contract or employer plan. The written notice shall include at least the following information:

(1) If there are any limitations on from what entity an employee can obtain any medicines, the notice document shall state in at least 14 point bold face type: **“This plan provides that drugs [and, if the plan covers medicines besides prescription drugs, list here the other covered classes of medicines] prescribed for treating your work injury can be obtained only from companies specified in the plan. If you have any questions about how to obtain prescribed medications, call the following toll free number: [list toll free telephone number].”**

(2) If there are any limitations on from what entity an employee can obtain any medicines, what the limitations are;

(3) How to obtain medicines covered by the plan or contract;

(4) The effective date of coverage under a new contract or employer plan;

(5) For a new contract or employer plan, whether and when existing work injuries will be covered;

(6) For a new contract or employer plan, when the employee should stop using providers under a previous plan;

(7) For a new contract or employer plan, how existing prescriptions are to be transferred to new providers;

(8) That if a specified provider, listed or described in the contract or employer plan as a provider for a particular type of medicine, declines to dispense to the employee, without charge to the employee, the prescribed medicine at the time of request, that the employee will not be subject to the limitations in the contract or employer plan on source or price of medicines, until the employee and the employee’s physician have been subsequently advised in writing that a specified provider within the geographic standards of subdivision (a) of section 9769.3 is willing and able to provide the medicine to the employee, and that until that time, the employee may obtain the medicine elsewhere.

(9) That if the employer, administrator or insurance carrier has notified the employee or the employee's physician of a utilization review decision that the use of the medicine as a course of treatment is delayed, denied, or modified, or that more information is required, that the employee will not be subject to the limitations in the contract or employer plan on the source or price of that medicine if the employee obtains it from a source which is not a specified provider, but that if a utilization modification or denial is subsequently upheld, that the employer may not have to reimburse for the cost of the medicine.

(10) If the employer, insurance carrier, administrator or network maintains an internet website, a website address/URL where an employee or physician can find information about obtaining medicines and supplies under the contract or employer plan and a listing of all providers covered by the contract or employer plan, shall be stated.

(b) The notice may be distributed to existing and new employees through electronic means, including email, to all covered employees who have regular electronic access to email at work to receive this notice.

(c) The complete written employee notice shall also be posted in both English and Spanish in a conspicuous location frequented by employees during the hours of the workday and next to the workers' compensation posting required under section 9881.

(d) Notification to an employee made when an employer has notice of an injury shall be in paper form. The notice may additionally be distributed to injured employees through electronic means, including email, if the employee has regular electronic access to email at work to receive this notice.

ARTICLE 8.5. EMPLOYEE INFORMATION

Section 9880. Written Notice to New Employees

[Changes which have already been proposed are highlighted in yellow; additional changes now proposed are highlighted in red.]

(a) Every employer shall provide to every new employee, either at the time of hire or by the end of the first pay period, the Written Notice to New Employees

concerning the rights, benefits and obligations under worker's compensation law. The content of the notice must be approved by the Administrative Director.

(b) The notice shall be easily understandable. It shall be available in both English and Spanish where there are Spanish-speaking employees.

(c) The notice provided shall be in writing, in non-technical terms and shall include the following information:

(1) The name of the current compensation insurance carrier of the employer at the time of distribution, or when such is the fact, that the employer is self-insured, and who is responsible for claims adjustment;

(2) How to get emergency medical treatment, if needed;

(3) The kind of events, injuries and illnesses covered by workers' compensation;

(4) The injured employee's right to receive medical care;

(5) How to obtain appropriate medical care for a job injury;

(6) The role and function of the primary treating physician;

(7) The rights of the employee to select and change the treating physician pursuant to the provisions of Labor Code sections 4600 to 4601, including the right to predesignate a personal physician or a medical provider group;

(8) A form that the employee may use as an optional method for notifying the employer of the name of the employee's "personal physician," as defined by Labor Code section 4600, or "personal chiropractor," as defined by Labor Code section 4601;

(9) The rights of the employee to receive temporary disability indemnity, permanent disability indemnity, ~~vocational rehabilitation services~~, supplemental job displacement benefits, and death benefits, as appropriate;

(10) To whom the injuries should be reported;

(11) The existence of time limits for the employer to be notified of an occupational injury;

(12) The protections against discrimination provided pursuant to Section 132a; and

(13) The location and telephone number of the nearest information and assistance officer, including an explanation of services available.

(14) A description about Medical Provider Networks (“MPN”) which includes what a MPN is, the predesignation exemption from the MPN, when an employee must begin to use a physician from the MPN, and how to request information about using a MPN.

(15) A description of the operation of any contract or employer plan, as defined in Section 9769.1, for the provision of medicines or medical supplies. The description shall include how an employee may obtain medicines and supplies, any restrictions on the providers from which an employee may obtain medicines and supplies, a listing of the providers included in the agreement or plan, and how to request information about obtaining medicines and supplies under the plan or agreement. The toll free contact telephone number for information about obtaining medicines and supplies under the contract or employer plan, and, if the employer, insurance carrier, administrator, or network maintains an internet website, a website address/URL where the employee can find information about obtaining medicines and supplies under the contract or employer plan and a listing of all providers covered by the contract or employer plan, shall be stated.

Section 9881. Posting of Notice to Employees

[Changes which have already been proposed are highlighted in yellow; additional changes now proposed are highlighted in red.]

(a) Every employer shall post and keep posted in a conspicuous location frequented by employees during the hours of the workday a Notice to Employees.

(b) The Notice to Employees poster shall be easily understandable. It shall be posted in both English and Spanish where there are Spanish-speaking employees.

(c) The Notice to Employees poster shall include the following information:

(1) The name of the current compensation insurance carrier of the employer, or when such is the fact, that the employer is self-insured, and who is responsible for claims adjustment.

(2) How to get emergency medical treatment, if needed.

(3) Emergency telephone numbers(s), for ~~physician~~ hospital, ambulance, police and firefighting services.

(4) The kinds of events, injuries and illnesses covered by workers' compensation.

(5) Advice that the employer may not be responsible for compensation because of an injury due to the employee's voluntary participation in any off-duty recreational, social, or athletic activity that is not a part of the employee's work-related duties.

(6) The injured employee's right to receive medical care.

(7) The rights of the employee to select and change the treating physician pursuant to the provisions of Labor Code Section 4600, including the right to predesignate a personal physician or medical group.

(8) The rights of the employee to receive temporary disability indemnity, permanent disability indemnity, ~~vocational rehabilitation services~~, supplemental job displacement benefits, and death benefits, as appropriate.

(9) To whom the injuries should be reported.

(10) The existence of time limits for the employer to be notified of an occupational injury.

(11) The protections against discrimination provided pursuant to Labor Code Section 132a.

(12) The location and telephone number of the nearest information and assistance officer.

(13) A description about Medical Provider Networks ("MPN") which includes what a MPN is, the predesignation exemption from the MPN, when an employee must begin to use a physician from the MPN, and how to request

information about using a MPN. The MPN Contact telephone number, address and, if available, the MPN website address/URL, as well as the period of MPN coverage for the MPN being used by the employer to cover current injuries shall also be stated.

(15) A description of the operation of any contract or employer plan, as defined in Section 9769.1, for the provision of medicines or medical supplies. The description shall include how an employee may obtain medicines and supplies, any restrictions on the providers from which an employee may obtain medicines and supplies, a listing of the providers included in the agreement or plan, and how to request information about obtaining medicines and supplies under the agreement or plan. The toll free contact telephone number for information about obtaining medicines and supplies under the contract or employer plan, and, if the employer, insurance carrier, or network maintains an internet website, a website address/URL where the employee can find information about obtaining medicines and supplies under the contract or employer plan and a listing of all providers covered by the contract or employer plan, shall be stated. The period of coverage for the agreement or plan being used by the employer to cover current injuries shall also be stated.

(e-d) The employer may post the Administrative Director's approved Notice to Employee Poster provided in Section 9881.1. If the employer chooses not to use the Notice to Employee Poster provided in Section 9881.1, the employer may use a poster which meets the posting requirements of [Labor Code Section 3550](#), includes the information required by this regulation, and has been approved by the Administrative Director.

Workers' compensation claim form (DWC 1) & notice of Potential eligibility

[Additional paragraph to be added]

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.