CHAPTER Lab 700 MANAGED CARE PROGRAMS IN WORKERS' COMPENSATION

PART Lab 701 PURPOSE AND APPLICABILITY

Readopt with amendment Lab 701, effective 10-25-16 (Document #12013), to read as follows:

Lab 701.01 Purpose. This chapter sets forth the rules which govern the implementation of RSA 281-A:23-a pertaining to the approval and use of managed care programs in workers' compensation.

Lab 701.02 Applicability. This chapter~~These rules~~ shall apply to all managed care programs. ~~upon adoption~~.

Readopt with amendment Lab 702, effective 10-25-16 (Document #12013), to read as follows:

PART Lab 702 DEFINITIONS

Lab 702.01 "Healthcare provider" means a hospital, medical practice, physician or medical specialist offering services within the managed care system.

Lab 702.02 "Independent medical examination" means a medical examination conducted by a qualified healthcare provider at the request of either the injured employee or insurance carrier solely for the purpose of determining compensability, degree of disability or degree of impairment arising from the injury, as set forth in RSA 281-A:38-a.

Lab 702.03 "Injury management facilitator" means an individual employed by, or contracted as a worker for payment by, a managed care organization, and approved by the department of labor and workers' compensation advisory council using criteria specified in Lab 703.01~~(m)~~ to provide case management services to injured employees ~~workers~~ receiving services within a workers' compensation managed care system.

Lab 702.04 "Managed care organization" means an organization which coordinates medical services for workers' compensation cases in accordance with RSA 281-A:23-a.

Lab 702.05 "Network" means a system of healthcare providers, contracted by a managed care organization, to render services, as needed, to workers' compensation injured employees. ~~unless a different definition is specified.~~

Lab 702.06 "Protocol" means the medical guidelines established by a managed care organization to which a healthcare provider, wishing to provide services within a managed care program, agrees to comply.

Lab 702.07 "Second opinion" means a medical examination conducted by a qualified healthcare provider at the request of an injured employee within a managed care network solely for the purpose of determining or confirming a diagnosis or the proper course or treatment for the injuries.

Lab 702.08 "Workers' compensation advisory council" (WCAC) means the council established in accordance with RSA 281-A:62.

Readopt with amendment Lab 703, effective 10-25-2016 (Document #12013), to read as follows:

PART Lab 703 MANAGED CARE PROGRAM CRITERIA AND APPROVAL PROCESS

Lab 703.01 ~~Necessary Components~~Program Criteria.

(a) No managed care program in workers' compensation shall be offered or used in this state unless the commissioner finds that the program meets the requirements of (b)-(n~~p~~) below.

(b) The network of health care providers shall be sufficiently comprehensive with respect to both geography and medical specialties. To be sufficiently comprehensive, the network of health care providers shall:

~~(c)~~ (1) ~~A network shall be deemed comprehensive if it~~ ~~i~~Include~~s~~ 2 or more vocational rehabilitation providers certified pursuant to RSA 281-A:68~~,~~ for injuries covered by the program; and~~.~~

~~(d)~~ (2) ~~A network of health care providers shall be sufficiently comprehensive with respect to geography and medical specializations when the commissioner finds that network~~~~it~~ ~~o~~Offer~~s~~ a covered employee ~~in each county~~ a choice of 2 or more of each of the following health care providers in each county:

a.(~~1~~) Chiropractic services;

b.(~~2~~) Family practice or occupational medicine physicians or internal medicine physicians;

c. ~~(3)~~ Neurologists;

d. ~~(4)~~ Neurosurgeons;

e.(~~5~~) Ophthalmologists;

f.(~~6~~) Occupational therapists:

g.~~(7~~) Physical therapists;

h~~(8)~~ Orthopedic surgeons;

i.~~(9)~~ Physiatrist or rehabilitation medicine physicians; and

j.(~~10~~) Spine surgeons.

(~~e~~c) In cases where 2 or more of such choices specified in 703.01(b)(2)(a) through (j) are not available in each county covered by the proposed network, the program shall be considered comprehensive if it allows access to such medical services in an adjacent county. In the event that 2 or more of the services specified in (b)-(j) above are not available in the adjacent county, the program shall:

(1)Submit a complete Form MCO-01 "MCO Network Waiver" specifying the closest county where services are available for the WCAC's consideration; and

(2)Provide an explanation of why waiver of the rule is necessary.

(~~f~~d) The program may include additional healthcare providers and medical services other than those listed in part (b~~d~~)(2) above, provided the injured employee has a choice of at least 2 such providers within

the radius of 25 miles from the injured employee's residence. An injured employee shall be required to use ~~as part of the network~~ only those health care providers that are part of the network, unless in instances defined by (e)(1-5) below.

(~~g~~e) The program shall provide for treatment and remedial services, nursing, medicines and mechanical and surgical aids outside of the network under the following circumstances:

(1) When ~~If~~ the necessary services or aids are not available to the employee within the network, or if emergency circumstances prohibit use of the network;

(2) When transfer of care outside the network is recommended by an in-network provider, the reasonableness of future treatment shall be determined by reviewing the physician's recommendations and the network's availability to assist the injured employee in obtaining the needed services and aids within the network;

(3) When~~If~~ emergency circumstances require the immediate provision or administration of medical treatment or assistive devices necessary in order to protect the health of the injured employee, and there is insufficient opportunity or it is infeasible to notify the program's designated representative or otherwise obtain and follow the representative's directives before such treatment or devices are provided; ~~in which treatment or aids necessary required to protect the health of an injured employee are required to be applied or administered immediately and without opportunity to notify the person or persons designee(s) ated for such notification by the program or to follow the directive of such person or persons if such notification occurred;~~

(4) When~~If~~ an injured employee has been treated by a provider who is not a member of the network for~~to treat~~ a recurrence or aggravation of an injury treated by such provider within the prior 6 months, as long as such provider complies with all the terms, conditions, protocols, referral procedures, and levels of reimbursement established by the network; or

(5) When~~If~~ unique circumstances, based upon an individual case, are sent in writing to the commissioner of labor or designee ~~showing~~ demonstrating that the requested services or aids were not available within the network, upon which the commissioner of labor or designee shall investigate the circumstances and the network's resources to determine if it is necessary to seek out of network services and shall advise the parties, in writing, of the decision.

(f~~h~~) The program shall include a process for determining professional qualifications of health care providers in the network. Internal credentialing procedures shall be sufficient, as long as the data utilized in the process of credentialing is sufficiently detailed to ~~shall be in enough detail to~~ enable the commissioner of labor to verify the validity of the process.

(~~i~~g) The program shall provide for acceptable quality assurance measures. Acceptable quality assurance measures mean~~s~~ regularly utilized procedures to assure that medical providers shall be continually qualified by training and experience to administer the treatment or aids offered to covered injured employees. ~~Additionally, following such treatment and aids, medical records shall be retained and available for inspection.~~ These measures shall include the use of a quality assurance committee which regularly inspects such evidence or records and the quality of care being delivered by the program. Following such treatment and aids, medical records shall be retained and available for inspection by the quality assurance committee.

(~~j~~h) The program ~~shall~~ includes the following:

1. ~~both~~ I~~i~~n-patient case management;
2. ~~and~~ O~~o~~ut-patient case management;~~, and~~

3. M~~m~~edical case management; and
4.V~~v~~ocational and rehabilitation case management.

(i)Case management as required by (j)(1)-(4) above shall ~~that~~ include~~s~~ prospective and concurrent review, discharge planning, work-hardening and return to work programs.

(j~~k~~) The program shall also include a sufficient number of injury management facilitators who shall be qualified by reason of education, experience and training to manage an injured employee's medical care by interacting with the injured employee, treating physician, other healthcare providers and the employer to facilitate the expeditious intervention of medical treatment and an early return to work. This number shall include at least one resident injury management facilitator with a ~~business office~~ location in New Hampshire that is accessible to injured workers in person or by video conference during business hours.

~~(ki) Each managed care organization shall have a sufficient number of injury management facilitators. This number shall include at least one resident injury management facilitator with a business office in New Hampshire.~~

(k~~l~~) In determining what constitutes a sufficient number of injury management facilitators, the following shall be used to determine compliance:

(1) The number of employers subscribing to the program:

(2) The approximate number of employees covered by the program; and

(3) The average number of cases referred to each injury management facilitator annually, up to 3 years.

(~~m~~k) At least one in every 5 injury management facilitators shall be a resident injury management facilitator with a business office in New Hampshire.

(~~n~~l) Injury management facilitators employed or contracted by the managed care organization shall be qualified, with such qualification valid for only 5 years and subject to requalification an unlimited number of times, in one or more of the following ways:

(1) By holding a license as a registered nurse issued by the New Hampshire board of nursing or a compact nursing license and having at least ~~one~~ 1 year of experience in the medical management of workers' compensation claims in New Hampshire or in lieu of experience has completed a training program offered by the department;

(2) By holding a designation as a certified case manager issued by The Commission on Case Manager Certification, and having at least ~~one~~ 1 year of experience in the medical management of workers' compensations claims in New Hampshire or in lieu of the experience has completed a training program offered by the department;

(3) By holding a designation as a certified rehabilitation counselor issued by The Commission on Rehabilitation Counselor Certification, and having at least ~~one~~ 1 year of experience in the medical management of workers' compensation claims in New Hampshire or in lieu of the experience has completed a training program offered by the department; or

(4) By holding a designation as a certified disability management specialist issued by The Commission on Disability Management Specialists, ~~–~~and having at least 1 ~~one~~ year of experience in the medical management of workers' compensation claims in New Hampshire or in lieu of the experience has completed a training program offered by the department.

(mo) The program shall provide an injured employee with access to a second medical opinion, inside or outside the program, regarding diagnosis or the proper course of treatment, and adequate methods for resolving conflicting medical opinions. Access to a second medical opinion shall be warranted when following an examination and diagnosis by a medical provider, the injured employee remains uncertain about the nature of the injury or the proper course of treatment necessary to cure or alleviate it.

(np) The program shall document and provide a method for prompt and impartial resolution of questions or disagreements between a healthcare provider and the managed care organization.

Lab 703.02 Filing.

(a) A proponent of a managed care program applicant in workers' compensation shall file a complete description of the program with the commissioner of labor, or the commissioner of labor's designee, who shall review the filing for compliance with the provisions of RSA 281-A:23-a and Lab 703.01.

(b) The filing shall include all information deemed by the proponent to be relevant to a determination of compliance hereunder, including as at a minimum the following:

(1) The name and business address of all health care providers included in the network as required in Lab 703.01(b)-(d);

(2) A description of the program's procedure for establishing compliance with Lab 703.01(eg);

(3) A description of the program's treatment protocols;

(4) A description of the program's in-patient and out-patient case management programs establishing compliance with Lab 703.01(hj);

(5) A description of the program's procedures establishing compliance with Lab 703.01(mo);

(6) Sample employee information material establishing compliance with Lab 704.02(a)(1); and

(7) Any further information requested by the commissioner of labor or the commissioner of labor's designee in order to determine whether the proposed managed care program complies with the provisions of RSA 281-A:23-a and this chapter.

(c) The format of filing shall include a printed spreadsheet of healthcare providers in the network with columns for county, specialty and provider, and an alphabetical listing at the end with all the healthcare providers for each county. This spreadsheet shall be submitted electronically to SIFMC@dol.nh.gov.

(d) The geographic area for which the proponent seeks approval of the managed care program shall be the entire state of New Hampshire.

Lab 703.03 Commissioner Approval Process.

(a) The commissioner of labor, or the commissioner of labor's designee, shall have 45 days to review a managed care program and make a preliminary determination for approval. If, aAfter a review of the managed care program, if the commissioner of labor, or commissioner of labor's designee, determines a program filed under Lab 703.02 is in compliance, the programcommissioner shall be approved it and provide written notice of such approval shall be provided to the applicant. proponent.

(b) ~~Any program filed under Lab 703.02 shall be deemed approved by the commissioner, unless within 45 days after its filing, the commissioner,~~ If the commissioner of labor, or commissioner of labor's designee, within 45 days after its filing, makes a preliminary determination of noncompliance, the applicant shall be notified in writing, specifying ~~in writing~~ the reasons why the program does not comply with RSA 281-A:23-a and Lab 703.01.

(c) If the commissioner of labor or commissioner of labor's designee determines that the managed care program does not meet the criteria set forth in RSA 281-A:23-a and Lab 703.01, the commissioner of labor or commissioner of labor's designee shall advise the applicant in writing and specify which criteria have not been met.

(d) The proponent of such program shall have the right to a hearing before the commissioner or the commissioner's authorized representative to contest the preliminary determination.

(e) Upon a preliminary determination approving the program by the commissioner, the proponent shall provide a copy of the program to each member of the advisory council no later than 14 days prior to the next regularly scheduled meeting at which the program is to be acted upon.

Lab 703.04 ~~Advisory Council~~WCAC Process.

(a) A managed care program ~~approved or deemed~~ approved by the commissioner of labor under Lab 703.03 shall be submitted to the ~~advisory council~~WCAC.

(b) Upon receipt of the program, the council shall take the following actions:

(1) Consider the ratification of the program at its next regularly scheduled meeting, which shall be held no fewer than 19 days following the commissioner's approval;

(2) Either approve the program or specify its reasons in writing why the program does not meet the requirements of RSA 281-A:23-a and Lab 703.01 ~~in writing~~; and

(3) Provide the program proponents with the opportunity for a hearing before the council to appeal the non-ratification.

Lab 703.05 Duration of Approval and Review.

(a) ~~Upon its first approval,~~ A~~a~~ managed care ~~organization's~~ program approval shall expire 3 years ~~after~~ from the date of initial approval.

(b) A managed care organization that seeks renewed certification shall submit a complete filing, as required by Lab 703.02, 6 months prior to the expiration of its current certification. ~~Upon each subsequent review, and re-approval, a managed care organization's approval shall expire 5 years after re-approval.~~

(c) A managed care program renewed in accord with (b) above shall be in effect for a period of 5 years from the approval's expiration date. ~~A managed care organization that seeks re-approval shall submit a full filing, as required by Lab 703.02, 6 months prior to the expiration of its approval.~~

Readopt with amendment Lab 704, effective 10-25-16 (Document #120103), to read as follows:

PART Lab 704 RIGHTS AND RESPONSIBILITIES OF THE PARTIES UNDER MANAGED CARE

Lab 704.01 Employers.

(a) An employer selecting the managed care option to fulfill its obligations under RSA 281-A:23 shall:

(1) At the time of hire, iInform all employees, in- writing, -that it is participating in a managed care program;

(2) Provide each employee with necessary information in writing on how to access the network when he or shethey suffers a work- -related injury or illness;

(3) For all non-first aid only claims, as defined in Lab 502.10, notify the insurer, third party administrator, managed care organization, and department of labor of all injuries to employees; however, employers shall notify the department of all injuries, inclusive of first-aid only claims as defined in Lab 502.11; and

(54) Cooperate with the insurer and managed care organization in providing temporary alternative duty programs and reinstatement of injured employees in accordance with Lab 504.04 and 504.05.

Lab 704.02 Managed Care Organization.

(a) Any person or organization providing managed care services for workers' compensation injuries shall:

(1) Provide the employer with information to distribute to its employees as required by Lab 704.02(2) above for distribution to its employees on how to access the network;

(2) Promptly respond to all employee inquiries on how and where to obtain treatment within the network; and

(3) Assign an injury management facilitator to the injured employee's case and advise the injured employee or the employee's representative of the name of the facilitator and the method to be used to contact the facilitator for assistance.

(b) The injury management facilitator shall:

(1) Act as the case manager for the injured employee;

(2) Upon request, furnish a complete list of the healthcare providers in the network from which the employee may choose a health care professional;

(3) Upon request of the injured employee, furnish a copy of the protocols established by the managed care organization;

(4) Coordinate among the injured employee, health care professionals and insurer to provide the employee with timely, effective and appropriate health care services in order to achieve maximum medical improvement and an expeditious return to work; and

(5) Advise the injured employee of the conditions circumstances under which the injured employeethey maycan obtain treatment outside the network, as specified by Lab 703.01.

(c) Neither a managed care organization nor an injury management facilitator shall perform the duties or functions of an insurance adjuster including, but not limited to, determining the causal relation between the injury and employment, and determining entitlement to indemnity or impairment benefits.

(d) Nothing contained in (c) above shall be used to prohibit the managed care organization or injury management facilitator from obtaining any information necessary forto the management of the injured employee's treatment and progress to return to work, nor shall any provision in (c) above be construed to relieve any party of the requirements of Lab 503.01 relating to disclosure.

(e) A managed care organization shall file with the commissioner:

(1) A report every 6 months, after approval or renewal, indicating whether there were any additions or deletions of employers for whom the organization is rendering managed care services, and if so, what those changes were;

(2) A report every 6 months, after approval or renewal, indicating whether there were any additions or deletions to its health care provider network, and if so, what those changes were; and

(3) A report whenever there is a substantial change in the managed care organization or health care provider network originally approved by the commissioner, or if there is a loss of a necessary component identified in Lab 703.01.

(f) A managed care organization shall be subject to monitoring by the commissioner under RSA 281-A:23-a,VI(a), for purposes of determining the program's continued compliance with the standards for approval and delivery of service.

(g) A managed care organization whose approval is terminated for any reason shall provide written notification to notify all its client employers by mail within one week of such termination and shall send a copy to the department of labor.

(h) The nNotice of termination as referenced in (g) above shall include the following disclosure words in a conspicuous location:

"The required New Hampshire approval for this managed care organizationprogram has been terminated. Therefore, Yyou are required to promptly should inform your employees that an injured employee worker is no longer required to get treatment only within the managed care organization's network for workers' compensation injuries. Instead, the injured employee worker shall have the right to select his or her their own healthcare provider."

Lab 704.03 Employees.

(a) For purposes of Lab 704.03, concerning the injured employee's obligation to accept treatment within the network and right to treatment outside the network, "network" means only those healthcare providers listed in Lab 703.01(bd) and Lab 703.01(df), as originally approved by the commissioner and ratified by the advisory council or as changed through reports submitted under Lab 704.02(e).

(b) An employee who receives medical, hospital or remedial care under a workers' compensation managed care program shall:

(1) Have the right to choose a physician or other health care provider from the network, and to make one change of physician or health care provider within the network for the categories of health care providers listed at Lab 703.01(b)(a) - (j)at each level of treatment;

(2) Have the right to privacy during examinations conducted by a health care provider;

(3) Have the right to obtain a copy of the protocols established by the managed care organization;

(4) Have the right to treatment outside the network in accordance with the provisions of Lab 703.01(eg);

(5) Have the right to request a second opinion relative to diagnosis or course of treatment in accordance with Lab 703.01(mo);

(6) Have the right to request an independent medical opinion in accordance with Lab 705.01;

(7) Have the right to subsequent independent medical opinions, as provided in RSA 281-A:38-a;

(8) Have the obligation to accept treatment within the healthcare provider network, if the services are provided therein as described in Lab 703.01(bd) and (df); and

(9) Have the obligation to cooperate with the managed care organization, insurer and employer with respect to temporary alternative duty assignments and reinstatement to employment as provided in Lab 504.04 and Lab 504.05.

Lab 704.04 Carriers, Self-Insurers and their Representatives.

~~(a) The~~A carrier or self-insurer providing benefits under RSA 281-A shall have the responsibility to:

(~~1~~a) Determine the causal relationship between the injury and the employee's employment;

(~~2~~b) Review and authorize or deny payment of all related medical expenses within 30 days of its receipt of the billing in accordance with RSA 281-A:23;

(~~3~~c) Issue any denials for treatment or benefits presented as associated with the employee's injuries;

(~~4~~d) Request and schedule any independent medical examinations in accordance with RSA 281-A:38 and Lab 506.02~~1(g)~~;

(~~5~~e) Pay for an independent medical examination allowed to the injured employee under the provisions or RSA 281-A:38-a, and Lab 705.03; and

(~~6~~f) Pay only for charges for care rendered by the health care providers within the network approved by the commissioner of labor, except for treatment outside the network specifically authorized or directed by RSA 281-A:23-a, I(b), or by these rules.

~~(b) Any carrier, or self-insured employer or employer group, or third party administrator that provided or paid or gave direction and guidance to injury management facilitators who worked with their injured workers prior to July 1, 2011, may continue to operate in that manner. Such injury management facilitators shall be certified in accordance with Lab 703.01(n).~~

Readopt with amendment Lab 705, effective 10-25-16 (Document #12013), to read as follows:

PART Lab 705 PROCEDURE TO REQUEST AN INDEPENDENT MEDICAL EXAMINATION

Lab 705.01 First Request to be Granted. ~~If~~ A~~a~~n injured employee ~~who is~~ covered by a managed care program is dissatisfied with a determination made by the program relating to compensability, degree of disability or degree of impairment arising from a work~~n~~ injury~~, the injured employee~~ they may apply to the commissioner of labor for authorization to obtain an independent examination and report thereof by a health

care provider of the injured employee's choice. Any application for such authorization must be made to the commissioner of labor, in writing, with clear copy to the program. The commissioner of labor shall grant one such authorization as a matter of course, in accordance with RSA 281-A:38-a.

Lab 705.02 Subsequent Requests. Subsequent requests by an injured worker covered by a managed care program for a~~A~~uthorization of ~~for~~ additional independent examination regarding the same injury shall be made in writing. Authorization for additional independent medical examinations shall be granted only if the commissioner of labor finds that circumstances exist which cast reasonable doubt on the accuracy of the report of the first independent examination based upon the circumstances of the particular case and any written material which contradicts the first independent examination or the circumstances surrounding that examination.

Lab 705.03 Payment for Provider's Services. The health care provider conducting an independent examination authorized by the commissioner of labor in Lab 705.01 shall be paid by the employer or the employer's insurance carrier. Nothing in this section shall be construed to prevent an injured employee from obtaining an examination by a health care provider of the injured employee's choice at the employee's own expense.

Repeal Lab 706, effective 10-25-16 (Document #12013), to read as follows:
~~PART Lab 706 RESERVED~~

~~Lab 706.01 Reserved.~~

Appendix

Rule	Specific State Statute which the Rule Implements
Lab 701	RSA 281-A:23-a
Lab 702	RSA 281-A:23-a
Lab 703	RSA 281-A:38-a
Lab 704	RSA 281-A:23-a
Lab 705	RSA 281-A:38-a