

SB 1002 (Portantino)

Workers' Compensation – Access to Mental Health Care

As Amended on March 24, 2022.

Key Points

- *California workers are experiencing unprecedented levels of mental health challenges, worsened by the effects of the pandemic.*
 - *The supply of available behavioral health professionals is dwindling.*
 - *This bill would allow Licensed Clinical Social Workers to be added as providers to a Workers' Compensation Medical Provider Network, as needed, to help address this gap.*
 - *This bill prohibits an LCSW from making disability determinations and preserves the ability of the MPN's to add LCSW's at their discretion.*
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PROBLEM

The addition of LCSWs into the Labor Code will increase the behavioral health provider footprint in California by more than 29,000 LCSW professionals. According to the Workers' Compensation Insurance Rating Bureau, there are approximately 600,000 workers' compensation claims filed each year. Many stress claims are not reported due to the shortage of psychologists and psychiatrists. Addressing the shortage of mental and behavioral health providers in the workers' compensation system also will increase counseling opportunities for workers who may not wish to submit to formal psychiatric disability evaluation.

Despite growing demand, the available supply of mental health providers has not been able to keep pace, and is in fact, sharply declining. On August 10, 2021, a panel of experts from UC Berkeley and UC Davis briefed California State Senate staffers on the issue of behavioral health workforce shortages, noting that "...just one third of Californians who live with a mental illness receive the care they need due to a shortage of behavioral healthcare workers"⁶. Furthermore, the UCSF School of Nursing noted that the number of available psychiatrists is predicted to decline by 34% over the course of the next decade, resulting in a "severe shortage of psychiatrists by 2028"⁷. This will only compound the currently-existing psychiatrist supply shortage. The Steinberg Institute reports that even today "...23 of California's 58 counties have less than one psychiatrist per 10,000 residents. Six counties have no psychiatrist at all..."⁸

In short, California is facing a mental and behavioral health crisis, heightened due to the stresses of the Covid-19 pandemic. In parallel fashion, the Workers' Compensation system also suffers from a lack of available mental health providers. Compounding the problem is the California Labor Code's outdated list of mental health provider types that has not been updated since 1998 and does not meet the mental and behavioral health needs of today's worker population. The addition of Licensed Clinical Social Workers (LCSW) to the available

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provider types for Medical Provider Networks (MPN's) can help to address this looming crisis, to provide better access to mental and behavioral health services for injured workers. States such as Texas and New York have mobilized LCSWs to help fill the need for mental health clinicians; however, current California workers' compensation law does not include LCSW's amongst the accepted provider types in MPN's.

BACKGROUND

Increasing Demand for Mental Health Services

According to the American Psychiatric Association, PTSD affects approximately 3.5 percent of U.S. adults every year, and an estimated one in 11 people will be diagnosed with PTSD in their lifetime¹. The number is exponentially higher for medical staff, firefighters, EMTs and police officers. According to Kaiser Permanente, occupational exposure to traumatic events and life-threatening situations — and the stress of working long hours away from family members and under high-stakes conditions — can easily build up and take an enormous toll on mental health. Kaiser reported the following statistics:

- Police officers and firefighters are more likely to die by suicide than in the line of duty.²
- 85% of first responders have experienced symptoms related to mental health conditions.³
- Depression and PTSD are up to 5 times more common in first responders.⁴

The pandemic has had the unfortunate impact of compounding these occupationally related mental health challenges. In 2021, the Kaiser Family Foundation noted that a whopping 62% of frontline health care workers reported that worry and stress related to the pandemic had negatively affected their mental health and 3 in 10 frontline health care workers either received mental health services or thought they needed them directly as a result of the pandemic.⁵ The mental health needs of our workforce are arguably at their highest levels ever in recent history.

Declining Supply of Available Behavioral Health Professionals

Despite growing demand, the available supply of mental health providers has not been able to keep pace, and is, in fact, sharply declining. On August 10, 2021, a panel of experts from UC Berkeley and UC Davis briefed California State Senate staffers on the issue of behavioral health workforce shortages, noting that "...just one third of Californians who live with a mental illness receive the care they need due to a shortage of behavioral healthcare workers"⁶. Furthermore, the UCSF School of Nursing noted that the number of available psychiatrists is predicted to decline by 34% over the course of the next decade, resulting in a "severe shortage of psychiatrists by 2028"⁷. This will only compound the currently-existing psychiatrist supply shortage. The Steinberg Institute reports that even today "...23 of California's 58 counties have fewer than one psychiatrist per 10,000 residents. Six counties have no psychiatrist at all..."⁸

In short, California is facing a mental and behavioral health crisis, heightened due to the stresses of the Covid-19 pandemic. In parallel fashion, the Workers' Compensation system also suffers from a lack of available mental health providers. Compounding the problem is the California Labor Code's outdated list of mental health provider types that has not been updated since 1998 and does not meet the mental and behavioral health needs of today's worker population. The addition of Licensed Clinical Social Workers (LCSW) to the available provider types for Medical Provider Networks (MPN's) can help to address this looming crisis, to provide better access to mental and behavioral health services for injured workers. States such as Texas and New York have mobilized LCSWs to help fill the need for mental health clinicians; however, current California workers' compensation law does not include LCSW's amongst the accepted provider types in MPN's.

EXISTING LAW

The California Labor Code does not expressly authorize an LCSW to be included in a Workers' Compensation Medical Provider Network (MPN) as a provider of mental health care services, or to be included in the MPN's Provider Listing for referral by the Primary Treating Physician (PTP). Currently, Labor Code § 3209.3 defines a "Physician" to include physicians and surgeons holding an M.D. or D.O. degree, psychologists, acupuncturists, optometrists, dentists, podiatrists, and chiropractic practitioners licensed by California state law and within the scope of their practice as defined by California state law.

Labor Code § 3209.3 also states that acupuncturists shall not determine workers' compensation disability, and that an insurer or employer may require appropriate medical collaboration when a psychologist provides treatment or evaluation of a work-related injury.

SUMMARY

As amended, SB 1002 adds LCSW's who meet the licensure requirements of the state Board of Behavioral Sciences to the list of available provider types that a Medical Provider Network (MPN) may include in its Roster of Treating Physicians, rather than defer them to the ancillary service provider list. This will enable the Primary Treating Physician (PTP) to refer the injured worker to a LCSW, psychologist or psychiatrist, depending on the injured worker's level of mental health care needs and individual provider availability, and will allow LCSW's to appear in MPN provider channeling alongside psychiatrists and psychologists as available mental health providers.

Adding LCSW's directly to the MPN provider listing facilitates referrals and encourages providers to participate in the Workers' Compensation system, as well as broadens the available mental health network offering that an MPN can provide. LCSW's in turn will be able to provide assessment and psychotherapy to affected workers suffering from mental or behavioral health issues and can provide additional and readily available mental health services within their licensure to injured workers in need of mental health consultation and support.

This bill specifically prohibits an LCSW from making workers' compensation disability determinations. Appropriate medical collaboration with a primary treating physician will still be required for the purposes of state-mandated reporting and disability determinations.

As these unprecedented times continue, and stress and fatigue plague our front line and other workers, it is appropriate and necessary to address the shortage of mental and behavioral health professionals in our state's workers' compensation system, and to increase counseling opportunities for workers in need of mental and behavioral health care. The addition of LCSWs into the Labor Code can help to achieve that goal and can increase the available behavioral health provider footprint in California by more than 27,000 LCSW⁹ professionals.

¹ *What is Post-Traumatic Stress Disorder?* American Psychiatric Association at <https://www.psychiatry.org/patients-families/ptsd/what-is-ptsd>

² Miriam Heyman, et al., "The Ruderman White Paper on Mental Health and Suicide of First Responders," Ruderman Family Foundation, April 2018. <https://business.kaiserpermanente.org/insights/mental-health-workplace/first-responder-support>

³ "University of Phoenix Survey Finds Majority of First Responders Have Experienced Symptoms Related to Mental Health Issues," University of Phoenix press release, April 20, 2017. <https://business.kaiserpermanente.org/insights/mental-health-workplace/first-responder-support>

⁴ See note 1.

⁵ *KFF/Post Survey Reveals the Serious Mental Health Challenges Facing Frontline Health Care Workers a Year into the COVID-19 Pandemic*, Kaiser Family Foundation, April 6, 2021 at <https://www.kff.org/coronavirus-covid-19/press-release/kff-post-survey-reveals-the-serious-mental-health-challenges-facing-frontline-health-care-workers-a-year-into-the-covid-19-pandemic/>

⁶ *Behavioral Health Workforce Shortages in California*, UC Berkeley Social Welfare, Hawkin Chan, August 12, 2021 at <https://socialwelfare.berkeley.edu/news/behavioral-health-workforce-shortages-california#:~:text=Just%20one%20third%20of%20Californians,coming%20years%20as%20professionals%20retire>

⁷ *California Has a Shortage in Mental Health Providers. How UC's Bold New Initiative Will Address It*, UCSF School of Nursing, 1-19-21 at <https://nursing.ucsf.edu/news/california-has-shortage-mental-health-providers-how-ucs-bold-new-initiative-will-address-it>

⁸ *California needs more mental health professionals – and the shortage will get worse*, Steinberg Institute at <https://steinberginstitute.org/california-needs-more-mental-health-professionals-and-the-shortage-will-get-worse/>

⁹ *Operations Report*, California Board of Behavioral Sciences, Nov 2020 at https://www.bbs.ca.gov/pdf/agen_no-tice/2020/20201105_19_b.pdf

SUPPORT

American Association of Payers, Administrators and Networks (AAPAN)
 California Asian Pacific Chamber of Commerce
 California Association for Micro Enterprise Opportunity
 California Hispanic Chambers of Commerce
 California Metals Coalition
 Coalition of Small and Disabled Businesses
 Enlyte (Mitchell, Genex and Coventry)
 MEDEX Healthcare, Inc.
 National Association of Independent Businesses
 National Association of Social Workers -CA Chapter
 National Association of Women Business Owners – CA Chapter
 Risk and Insurance Management Society – CA Chapter
 Sierra Business Council
 Small Business California

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