



<b>Z E N I T H M E D I C A L P R O V I D E R N E T W O R K P O L I C Y</b>	
<b>Title: Provider Appeal for Network Exclusion Policy</b>	
<b>Application: Zenith Insurance Company and All Affiliated Entities</b>	
<b>Policy Number:</b> CA011	<b>Issued:</b> October 15, 2008
<b>Approved By:</b> Michael Jansen, EVP and General Counsel Bernyce Peplowski, DO, MS, EVP and National Medical Director	

## **POLICY STATEMENT**

It is Zenith's policy to: (1) comply with applicable contract provisions, laws, rules and regulations when determining whether to Exclude a Provider from a Zenith Network; (2) give Providers fair and adequate notice of the reasons for Exclusion from a Zenith Network; and (3) give Providers a fair and reasonable opportunity to respond to and appeal an Exclusion from a Zenith Network.

## **PURPOSE**

This policy sets forth the appeal rights of Providers to dispute Zenith's decisions to Exclude Providers from Zenith's networks. This policy applies only to Exclusion decisions made by Zenith staff, unless otherwise indicated. Decisions made by a contracted network vendor to Exclude a provider from the vendor's global network will be subject to the dispute resolution processes provided by the contracted network vendor. This policy does not replace Zenith Provider dispute mechanisms in place for other types of Provider disputes including utilization review determinations.

If Zenith receives a dispute resolution request that should be handled by a contracted network vendor or credentialing vendor, Zenith will forward the dispute to the appropriate vendor and notify the applicable Provider.

## **DEFINITIONS**

"Exclude", "Excluded" or "Exclusion" as used in this policy means that a Provider is either not included in a Zenith Network following a request for inclusion by the Provider or is not being retained in a Zenith Network following a period of participation in a Zenith Network.

"Excluded Provider" means a Provider that was Excluded from a Zenith Network under either a Qualitative Exclusion or an Objective Exclusion.

"Objective Considerations" means that Zenith based its Exclusion of the Provider upon one or more objective factors based upon supportable documentation or data including but not limited to: (1) volume of injured workers treated during a given period; (2) saturation of providers within

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a given geographic area; (3) Provider being convicted of a felony; (4) Provider being declared mentally incompetent by a court of law; or (5) failure to maintain unrestricted required licensure.

“Provider” means physicians and surgeons holding an M.D. or D. O. degree, psychologists, acupuncturists, optometrists, dentists, podiatrists, and chiropractic practitioners, medical groups, medical clinics, hospitals, surgical centers, durable medical equipment entities, physical therapists or any other entity or individual that either participates in a Zenith Network or is seeking to participate in a Zenith Network in order to provide medically necessary services an injured worker is entitled to receive under the applicable state workers’ compensation system within the scope of practice as defined by the appropriate licensing board.

“Qualitative Considerations” means that Zenith based its Exclusion of the Provider upon one or more factors that does not qualify as an Objective Consideration, including but not limited to (1) performance or quality of care issues including failure to follow applicable treatment guidelines, failing to meet expected performance for return to work or total disability; (2) violation of the terms and conditions of the Provider’s network contract; (3) failure to pass credentialing; or (4) other subjective determinations of a provider’s worthiness to be in the network such as responsiveness to Zenith, timeliness in reporting, accessibility to injured workers or other performance related considerations.

“Zenith Network” means the network of providers and facilities that Zenith has access to through either a direct or indirect contractual relationship. It does not include subsets of providers within a Zenith Network or other providers who may participate in medical management, quality or other programs implemented by Zenith that are permitted under the Workers’ Compensation laws, rules and regulations, including but not limited to programs developed pursuant to Zenith’s Provider Evaluation Policy.

### PROCEDURE

A Provider may be Excluded based upon either Objective Considerations or Qualitative Considerations. Exclusions based on Objective Considerations may be made by the Zenith Provider Relations team or a Zenith Medical Director (with concurrence of the National Medical Director). Exclusions based on Qualitative Considerations must be made by a Zenith Medical Director (with concurrence of the National Medical Director) or by a contracted network based on the contracted network’s policies. The reasons for Exclusion based on either Objective or Qualitative Considerations shall be applied in a substantively rational and procedurally fair manner.

After a decision is made to Exclude a Provider, the Provider Relations department shall notify the Provider in writing that he or she has been Excluded from the network. This letter will state the reason for the Exclusion, and set forth appeal rights.

When the Objective Exclusion is based on volume and/or network saturation, the Provider will be given the opportunity to request that he or she be placed on a network waiting list for future consideration. Any Provider Excluded based on Qualitative Considerations will not be eligible for placement on the network waiting list.

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### Appeal Process

Zenith provides an appeal process for Provider's that disagree with Zenith's decision to Exclude the Provider from the network. This process will apply to all disputes related to Exclusion of a Provider unless law or contract requires a different process.

Providers may choose to initially contact Zenith telephonically to inquire about Zenith's decision to Exclude the Provider from the Zenith Network. If the Provider makes a telephonic inquiry and it does not resolve the Provider's issues, the Provider may submit a written appeal. The Provider may also choose to seek a written appeal without first making a telephonic inquiry. If Zenith's determination on the written appeal does not resolve the Provider's issues, the Provider may request a hearing. Hearings will be granted only if the Provider meets the criteria for a hearing set forth in this policy.

All telephonic inquiries, appeals and requests for hearing from Excluded Providers must be directed to:

Telephonic Inquiries:

Provider Relations  
Telephone: 800-841-3988

Written appeals and requests for hearing:

Zenith Insurance Company  
Manager of Network Operations  
ATTN: Provider Exclusion Appeals  
21255 Califa Street  
Woodland Hills, CA 91367 – 5021

Inquiries, appeals and hearing requests received by Zenith staff will be coordinated with Corporate Legal.

### *Submission of Written Appeal*

All written Provider appeals must be submitted to Zenith within 30 days of the date the Provider was notified of the termination. The appeal must include:

1. Provider's name;
2. license type and number;
3. federal tax identification number;
4. office address;
5. office telephone and fax number;
6. a narrative explaining why the Provider believes the original Exclusion decision was incorrect and why the Provider believes it should be overturned; and
7. all supporting documentation, including medical reports, and any other information the Provider intends to rely upon in support of his or her appeal.

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### *Appeal Decisions*

Zenith will conduct a review of the file and all applicable information and records and will take one of the following actions within 30 calendar days of receipt of the Provider appeal:

1. request additional pertinent information or clarifications (upon receipt of such information or clarifications, the 30 calendar day review period begins anew; if the requested information is not received within 20 working days, Zenith will deny the appeal for lack of response and information); or
2. issue a written opinion based on the submitted written materials and Zenith file materials.

The appeal determination will be based on the materials provided by the Provider and any records, information or data obtained by, produced by or in the possession of Zenith at the time the determination is rendered as well as information obtained through verbal communications between the Provider or the Provider's designated representative(s) and Zenith.

Zenith will send the Provider written notification of its determination, including:

1. who made the determination; and
2. the rationale for the determination.

Decisions will be made by appropriate internal staff or external consultants. If the Provider subsequently obtains new information that was not considered by Zenith as part of the written appeal, the Provider may request reconsideration of the appeal determination by submitting the new information to Zenith within 30 days of the date the provider first becomes aware of the new information. The request must be sent in writing to the address set out above for written appeals and hearing requests. "New information" means information that did not exist or was unknown to the Provider at the time the Provider submitted information to Zenith for considerations as part of the appeal and determination.

### *Submission of Hearing Request on Appeal Determination*

A Provider may dispute Zenith's appeal decision by requesting a hearing. Hearing requests must be made within 30 days of the date the Provider receives the written appeal determination. A hearing will be granted only if the Provider has fully complied with the written appeal process and the Provider submits evidence showing that Zenith's exclusion of the Provider from the Zenith Network would:

1. significantly impair the ability of an ordinary, competent Provider to practice medicine or a medicine specialty in the Excluded Provider's particular geographic area, and
2. that exclusion from the Network affects a substantial economic interest of the Excluded Provider.

Zenith will make a determination on the request for hearing within 30 days of the date the request is received by Zenith. If the Provider meets the hearing criteria, a hearing will be scheduled. Otherwise, the request for hearing will be denied and the original appeal determination will stand. Hearings will be held telephonically unless the Provider requests an in person hearing. If the Provider requests an in person hearing, the hearing will be held in the Zenith regional office nearest the Provider or at another location selected by Zenith.

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The Provider will be notified of Zenith's determination in writing if the request for hearing is denied. If the request is granted, the Provider will be contacted to set the hearing date. Hearings will be conducted using the following process.

Counsel are generally not present in the hearings, except to assist in monitoring the fairness of the process, as this is an informal process. If the Provider will have counsel present at the hearing, the Provider must notify Zenith of that in the request for hearing.

### *Hearing Panel*

Matters set for hearing will be reviewed by the Provider Exclusion Committee ("PEC"). The PEC will be chaired by a designee of the Corporate Legal Department (the "PEC Chair"). The composition of the PEC will vary depending on the basis of the Exclusion decision and be selected by Zenith. In all situations, the Committee will include the PEC Chair. Voting members may not include any Zenith employee or individual that was involved in the original decision to Exclude the Provider.

All PEC panels shall be comprised of at least three and no more than five voting members as follows:

1. If the basis of the Exclusion was clinical in nature, such as quality of care issues, the voting panel will be comprised of peer reviewers with appropriate clinical experience to review the issues and make a final determination.
2. If the basis of the Exclusion was non-clinical in nature such as a persistent failure to follow Zenith business policies and procedures, the voting panel will be comprised of Zenith employees or external resources with appropriate experience to review the issues and make a final determination.

In either a clinical or non-clinical file, the PEC may confer with members of Zenith's medical staff and/or other external physicians or other individuals deemed appropriate to review the issues raised by the Provider. All appeal hearing determinations must be supported by a majority of the PEC panel.

All external panel participants will be required to sign a confidentiality agreement prior to participating on the panel. Internal staff participating on the PEC panel will be bound by confidentiality.

### *Hearing Procedure:*

1. All hearing requests will be routed directly to Corporate Legal for handling and response. A copy of the hearing request will be sent to Zenith Provider Relations for logging into the appeal log.
2. Corporate Legal will review the hearing request submission to determine if the request was received within the applicable time frame and whether the Provider meets the requirements for a hearing.
3. If hearing requirements have been met, Provider Relations will summarize the appeal request, gather information included with the request and obtain any additional data reports or information required to review the appeal along with applicable historical Provider information.

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4. Provider relations will give the information packet to the PEC Chair. The PEC Chair will appoint an appropriate panel for the hearing review.
5. Any Zenith Medical Director that participated in the decision to Exclude the Provider may not participate as a voting member of the PEC appeal hearing panel. Other Zenith Medical Directors who were not involved in the prior Exclusion decision are eligible to participate as voting members.
6. The hearing will be scheduled within 30 business days of the appointment of the panel by the PEC Chair.
7. The Excluded Provider will receive written notice from the Provider Relations Department of the date and time of the PEC hearing. The notice will include the names and position of the members of the PEC review panel.
8. The PEC hearing will consider all newly submitted and historical information.
9. Within ten business days of the hearing, the PEC Chair will provide the Provider Relations Department the PEC's written determination. The determination must be supported by a majority vote of the PEC members.
10. Within 2 business days of receiving the written determination, the Provider Relations Department shall record the determination and send the determination to the Excluded Provider with a copy to the presenting Medical Director.
11. All information obtained and exchanged as part of this process is confidential.
12. The Provider Relations Department shall take all actions necessary to effectuate the final determination.

### *Presentation of Evidence Before and During Hearing*

Hearings will not follow the Court Rules of Evidence but will be conducted in an informal manner. At least 5 business days prior to the date of hearing, both Zenith and the Provider will be expected to share issue lists, summary arguments and any evidence or materials to be relied upon at the hearing. If either the Provider or Zenith expects to request a witness to appear at the hearing, the name, occupation and a summary of the expected testimony of that witness must be provided to the other party and the PEC Chair at least 5 business days prior to the date of the hearing. This requirement does not include the Provider or the designated presenter for Zenith. The PEC Chair is responsible for assuring that all panel members are provided information necessary for review of the file and prepare for the hearing. If the Provider will have an attorney at the hearing, the Provider must state so in the original request for hearing. At the hearing the order of presentation will be:

1. PEC Chair will request that an overview of the issues be provided;
2. Both parties will be asked to verify that the facts were stated correctly and that all issues were raised;
3. the Provider will be asked to present the Provider's information and position on each issue;
4. PEC panel members will be given the opportunity to ask questions and the Provider to respond to each question;
5. Zenith will be asked to present its information and position on each issue;
6. PEC panel members will be given the opportunity to ask questions and Zenith to respond to each question;
7. Provider will be given the opportunity to respond to Zenith presentation;

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8. Provider and Zenith will be asked if they have any additional information they would like to share or questions;
9. Panel will be asked if they have any additional questions or require any additional information;
10. Provider and Zenith presenter will be thanked and call terminated, or they will be asked to leave the meeting if the hearing is in person;
11. PEC panel will discuss issues and evidence and make a determination outside the presence of the Provider and Zenith presenter.