TheZenith

ZENITH MEDICAL PROVIDER NETWORK POLICY	
Title: Provider Appeal of Network Exclusion Policy	
Application: Zenith Insurance Company and Wholly Owned Subsidiaries	
Policy Number: NAT 011	**Issued:** October 15, 2008 **Most Recently Revised:** October 20, 2016
Approved By: Jill Rosenthal, M.D., SVP and Chief Medical Officer; Rupali Das, M.D., SVP and California Medical Director; Nanette de la Torre, VP Provider Relations; Sharon Hulbert, VP & Assistant General Counsel	

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, when applicable; and (3) give Providers a fair and reasonable opportunity to respond to and appeal an Exclusion from a Zenith Network, when applicable.

PURPOSE

This policy sets forth the appeal rights of a Provider to dispute Zenith's decisions to Exclude a Provider from a Zenith Network. This policy applies only to Exclusion decisions made by Zenith, 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 and are not subject to these guidelines. This policy does not replace Zenith's 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

"Corrective Action" means the plan developed and implemented by Zenith to address a Provider's performance or non-compliance with Zenith Network expectations or applicable Workers' Compensation laws, rules and regulations. Corrective Actions taken by Zenith may include mentoring, sending the provider a warning letter, requiring training or Exclusion from

the Zenith Network depending on the severity of the performance concern or non-compliance issue.

"Exclusion", "Exclude" or "Excluded" as used in this policy means that a Provider is (1) is not Included in a Zenith Network following application by the Provider; (2) is or was not selected for Inclusion upon Zenith establishing or modifying a Zenith Network; (3) is not being retained in a Zenith Network following a period of participation by the Provider in a Zenith Network; or (4) was removed from the Authorization Collaboration and Treatment Program (ACT Program) but not the ZMPN.

"Excluded Provider" means a Provider that was Excluded from a Zenith Network based upon either a Qualitative Consideration, Objective Consideration or Partnership Consideration.

"Inclusion" or "Include" or "Inclusion" as used in this policy means that a Provider is (1) is accepted for participation in a Zenith Network following application by the Provider; (2) is or was selected for participation in a Zenith Network upon Zenith establishing or modifying a Zenith Network; (3) is being retained in a Zenith Network following a period of participation by the Provider in a Zenith Network or (4) was previously accepted for participation in the Authorization Collaboration and Treatment Program (ACT Program).

"Included Provider" means a Provider that was Included in a Zenith Network based upon either a Qualitative Consideration or an Objective Consideration.

"Network Review Committee" is a committee established by Zenith to review Providers for network Inclusion or Exclusion. The Network Review Committee will also make determinations to help ensure that the Zenith Network is in compliance with all requirements and policies regarding provider participation and conduct respective to state jurisdiction and Zenith's policies and procedures

"New Information" means information that did not exist or was unknown to the Provider prior to Zenith rendering its determination on an appeal.

"Objective Considerations" means that Zenith based its Inclusion/Exclusion decision, Provider Review or Corrective Action upon one or more objective factors based upon supportable documentation or data including but not limited to: (1) volume of injured employees treated during the past twelve (12) consecutive months; (2) medical claim paid amount to provider for specified period of time; (3) litigation rate; (4) lien history; (5) provider performance related to predictive performance; (6) average temporary disability days in relationship to other providers in the state who were deemed the predominant treating provider treating the injured employee; (7) average duration of claim related to other providers in the state who were deemed the predominant treating provider treating the injured employee; (8) saturation of Providers within a given geographic area; (9) provider non-compliance with state workers' compensation rules and regulations; (10) violation of the terms and conditions of the Provider's network contract; (11) Provider being convicted of a felony; (12) Provider being declared mentally incompetent by a court of law; (13) failure to maintain unrestricted required licensure or permits or pass nationally recognized credentialing or re-credentialing standards; or (14) provider's billing accuracy history.

"Partnership Considerations" means that Zenith based its Inclusion/Exclusion decision, Provider Review or Corrective Action upon one or more factors that do not qualify as Objective Considerations or Qualitative Considerations. Partnership Considerations evaluate Provider behavior such as but not limited to the following: (1) avoid participation in fraudulent or abusive action; (2) bills reflect services rendered and are billed accurately; (3) avoid treating and billing for denied body parts; (4) practice within their scope and specialty certification; (5) avoid submitting duplicate treatment requests; (6) avoid filing liens for amounts above and beyond contractually agreed upon or negotiated amounts; (7) avoid conditions that delay treatment; or (8) compliance with Zenith's participation or Zenith Network expectations.

"Provider", as used in this policy, means physicians holding an M.D. D.O. or DPM degree, psychologists, acupuncturists, optometrists, dentists, chiropractic practitioners, medical groups, medical clinics, that either participates in a Zenith Network or is seeking to participate in a Zenith Network in order to provide medically necessary and compensable services or non-medical services as authorized by Zenith or its agent to an injured employee is entitled to receive under the applicable state workers' compensation system within the scope of the Provider's license and specialty certification.

"Provisional Period" means a period of time not to exceed two years in which a provider is added to a Zenith Network as a Provisional Provider and is under assessment. Appeal and hearing rights are not available during the Provisional Period.

"Provisional Provider" means a provider that is participating in a Zenith Network during the Provisional Period.

"Provider Review" means a review conducted by Zenith or its designated representative to determine a Provider's compliance with Zenith expectations, vendor expectations and applicable Workers' Compensation laws, rules and regulations.

"Qualitative Considerations" means that Zenith based its Inclusion/Exclusion decision, Provider Review or Corrective Action 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 adopted by the state [e.g. MTUS, Academy of Occupational and Emergency Medicine (ACOEM) and Official Disability Guidelines (ODG)]; (2) failing to meet expected performance for return to work or total disability; or (3) other subjective determinations of a Provider's worthiness to be in the network such as responsiveness to Zenith, timeliness in reporting, accessibility to injured employees, non-compliance with Zenith participation expectations or other clinical performance related considerations.

"Zenith Network" or "Network" means the network of Providers that Zenith has access to as a result of either a contracted leased network or direct contractual relationship. It does not include provider programs 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

If a Provider is Excluded from a Zenith Network or the ACT Program, Zenith will use the following processes to determine if the provider is eligible for appeal or hearing processes. If eligible for appeal or hearing processes, Zenith will use the procedures below to review the appeal or hearing.

Provisional Providers

Provisional Providers do not have appeal or hearing rights during the Provisional Period. If a Provisional Provider requests an appeal or hearing, Zenith will respond to the letter and explain that appeal and hearing rights are not available to Provisional Providers. Responses will be coordinated with Corporate Legal.

Non-Provisional Providers

Zenith provides an appeal process for Providers 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. The Exclusion letter sent to the Provider sets forth the applicable appeal or hearing right and informs the provider how to submit the appeal or hearing request to Zenith.

Only Providers who are not within a Provisional Period have appeal and hearing rights.

Appeal Process

If a Provider contacts Zenith telephonically to inquire about Zenith's decision to Exclude the Provider from a Zenith Network, Zenith will respond to the Provider but does not consider the telephone call an appeal under this policy. The Provider will be informed that if they wish to formally appeal the Exclusion, the Provider must submit a written appeal.

To initiate the appeal process, the Provider must submit a written appeal within thirty calendar (30) days of receipt of Zenith's notice of removal or Exclusion. If Zenith's determination on the Provider's 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 must be directed to:

Provider Group at 800-841-3988

Written appeals must be directed to:

Zenith Insurance Company
ATTN: Provider and Network Management – Appeals
21255 Califa Street

Woodland Hills, CA 91367 – 5021

Written requests for a hearing must be directed to:

Zenith Insurance Company
ATTN: Corporate Legal – Provider Hearing Request
21255 Califa Street
Woodland Hills, CA 91367 – 5021

Review and response to inquiries, appeals and hearing requests received by Zenith from Excluded Providers will be coordinated with Corporate Legal.

Submission of Written Appeal

All Provider appeals must be submitted to Zenith in writing within thirty (30) calendar days of receipt of Zenith's letter of removal or Exclusion. 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;
7. a narrative as to why the Provider believes it should be overturned; and
8. all supporting documentation, including medical reports, and any other information the Provider intends to rely upon in support of his or her appeal.

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 thirty (30) calendar days of receipt of the Provider's appeal:

1. request additional pertinent information or clarifications (upon receipt of such information or clarifications, the thirty (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 review of materials submitted by the Provider, the Provider's representative 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 the NRC in consultation with Corporate Legal.

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 thirty (30) calendar days of the date the Provider receives Zenith's 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 a Zenith Network would:

1. significantly impair the ability of an ordinary, competent Provider to practice medicine or a medical 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.

If the Provider obtains New Information that was not considered by Zenith as part of the written appeal, the Provider may include the New Information with the request for hearing. At Zenith's sole discretion, Zenith may either address the New Information as an appeal reconsideration or proceed to a hearing if criteria for a hearing is met. If Zenith treats the New Information as an appeal reconsideration, Zenith will issue a new decision letter within 30 calendar days of receipt of the New Information and the Provider will have an additional 30 calendar days from the date of the reconsideration decision letter to request a hearing.

Zenith's Corporate Legal Department in conjunction with the Network Review Committee (NRC) will make a determination on the request for hearing within 30 calendar 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 Zenith's corporate office nearest the Provider or at another location selected by Zenith. Each party shall bear their own fees and expenses related to the appeal and appeal process.

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. Counsel generally is 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 written request for hearing.

Hearings will be conducted using the following process.

Hearing Panel

Matters set for hearing will be reviewed by Corporate Legal and the NRC. The hearing committee ("Hearing Committee") will be chaired by a designee of the Corporate Legal

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

The Hearing Committee shall be comprised of at least three and no more than five voting members as follows:

1. If the basis of the Exclusion was in whole or in part clinical in nature, such as quality of care issues, the Hearing Committee will include at least one provider with like or similar specialty.
2. If the basis of the Exclusion was non-clinical in nature such as failure to follow Zenith business policies and procedures, the Hearing Committee may be comprised of Zenith employees or external resources with appropriate experience to review the issues and make a final determination.

The Hearing Committee 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 so long as those individuals were not involved in the decision to remove the provider. All hearing determinations must be supported by a majority of the Hearing Committee.

All external Hearing Committee participants will be required to sign a confidentiality agreement prior to participating on the Hearing Committee. Internal staff participating on the Hearing Committee will be bound by confidentiality pursuant to Zenith's policies and procedures.

Hearing Procedure:

1. All hearing requests will be routed directly to Provider Quality and Corporate Legal for handling and response. Provider Quality will enter the hearing request into the appeal log along with the date of receipt and response due date.
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. Corporate Legal will also review the request to determine if additional information was received with the hearing request and in conjunction with Provider Quality, will determine whether to treat the New Information as an appeal reconsideration or a hearing request within fourteen (14) business days of the date the hearing request was received by Zenith.
3. If hearing requirements have been met, Provider Quality will summarize the appeal request, gather information included with the request and obtain any additional data reports or information required to review the hearing request along with applicable historical Provider information.
4. Provider Quality will submit the information described above to the Hearing Committee Chair. The Chair will appoint an appropriate panel for the hearing review.

5. Any Zenith Medical Director or other employee that participated in the decision to Exclude the Provider may not participate as a voting member of the Hearing Committee. Other Zenith Medical Directors or other employees who were not involved in the prior Exclusion decision are eligible to participate as voting members.
6. The hearing will be scheduled within thirty (30) calendar days of the date it is determined that a hearing has been granted.
7. The Excluded Provider will receive written notice from Corporate Legal of the date and time of the hearing. The notice will include the names and titles of the members of the Hearing Committee.
8. The hearing will consider all newly submitted and historical information.
9. Within ten (10) business days of the hearing, the Chair will provide the NRC the Hearing Committee's written determination. The determination must be supported by a majority vote of the Hearing Committee.
10. Within two (2) business days of receiving the written determination, the NRC shall record the determination and send the determination to the Excluded Provider.
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 five (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 Hearing Committee Chair at least five (5) business days prior to the date of the hearing. This requirement does not include the Provider or the designated presenter for Zenith. The 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 written request for hearing. At the hearing the order of presentation will be:

1. Chair will provide an overview of the issues;
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. Hearing Committee 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. Hearing Committee 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;

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. Hearing Committee members will discuss issues and evidence and make a determination outside the presence of the Provider and Zenith presenter.