

Date: June 19, 2024
To: Board of Retirement
From: Doris L. Rentschler, Executive Director
Subject: MMRO Contract & Disability Retirement Process

Recommended Action:

Approve renewal agreement with Managed Medical Review Organization (MMRO) for disability retirement administrative services. Give direction on whether to change MCERA's process for disability retirement applications.

Fiscal and Financial Impacts:

Changing from utilizing a generalist for the Medical Advisory opinion to a specialist in the particular field would result in an increase in fees of \$150 per application. However, MMRO is also suggesting a change to the process that, if the Board approves, would lower MCERA's overall cost by minimizing the number of Independent Medical Evaluations (IMEs) performed.

Strategic Plan Importance and Risk Assessment:

This item does not directly relate to action items in the Board's strategic work plan. However, in general this matter relates to MCERA's goals regarding risk oversight and improving effectiveness.

Background and Discussion:

MMRO Contract Renewal

MCERA has contracted with MMRO since June 30, 2015, to provide disability retirement administrative services. The medical advisory services include claim administration, medical record review, IMEs, recommendations, and professional testimony services.

MMRO has performed satisfactorily and with the processing of more applications both for MCERA and other 37 Act systems, has gained a more comprehensive understanding of applicable laws. There are no substantive changes to the contract and staff recommends approval.

In addition to utilizing a specialist for the medical advisory, MMRO is suggesting changes to the process used in reviewing disability applications.

Provide Direction on Possible Change to Disability Retirement Process

Current Disability Process

For many years, the process for reviewing these applications has been to send applicants for a service connected (work related) disability retirement benefit to an independent medical examiner (IME). The IME is usually a medical expert who specializes in the type of disability involved. The

IME reviews the medical file, examines the applicant, and answers questions as to whether the disability is permanent, and if it is work related.

The entire file, including the IME report, is then sent to a medical advisor for review. This medical advisor is typically a general physician, who summarizes the medical opinions in the file and is asked whether he/she agrees or disagrees with those opinions.

All reports are shared with the Board in closed session to make an initial determination of whether to grant or deny the application. If it is denied, the applicant can request a hearing that would be held before an independent hearing officer

Proposed Changes to Disability Process

First, MMRO is proposing that the medical advisor be a medical expert who specializes in the type of disability involved, instead of a generalist. As there is not much of an increased cost for MCERA, staff supports this change.

Second, MMRO proposes changing the current process by not automatically sending the applicant to an IME in every case. Instead, since the medical advisor is now going to be an expert in the area involved, the application and medical records will be reviewed by the expert medical advisor. If the medical advisor feels there is sufficient objective medical evidence in the records provided, such that he/she can opine on whether the applicant is incapacitated, those reports would go to the Board in closed session for consideration. There would NOT be an IME report. However, if the medical advisor feels more information is needed to make a recommendation or recommends a denial, then staff would send the applicant to an IME. This change would result in cost savings by reducing the number of IME appointments.

MCERA would require an IME prior to the initial Board consideration if the Medical Advisor does not support granting the application to avoid being disadvantaged at a hearing. If MCERA only had medical records review, without a physician who saw the applicant in person, the hearing officer would likely give greater weight to the opinion(s) of the physician(s) who saw the applicant.

There are advantages and disadvantages to the proposed process changes. The advantages are: (1) Applications would be processed faster; (2) There would be less burden on the applicant as he/she would not automatically have to be sent for an in-person exam; and (3) There would be cost savings to MCERA, as fewer in person evaluations would be needed. The disadvantages are that: (1) There would be one less “check” in the process; and (2) A medical advisor may be more inclined to agree with the applicant’s physicians since the medical advisor only reviews the applicant’s records and does not see the applicant.

Staff is looking for direction as to whether the board wants to continue with the current IME/medical advisor review process, or only send the applicant to an IME if the expert medical advisor’s opinion is to deny the application.

Attachments:

1. Draft Contract
2. MMRO Proposal dated May 24, 2024

**EIGHTH AMENDMENT
TO MEDICAL CONSULTING AGREEMENT**

This Eighth Amendment to the June 30, 2015 Medical Consulting Agreement Services Agreement (“Eighth Amendment”), which is made effective as of July 1, 2024 (“Effective Date”) is made and entered into by the Mendocino County Employees’ Retirement Association (“MCERA”) and Managed Medical Review Organization, Inc. (“MMRO”). MCERA and MMRO shall collectively hereafter be referred to as the “Parties.”

RECITALS

WHEREAS, the Parties entered into a Medical Consulting Agreement as of June 30, 2015 (the “Medical Consulting Agreement”), setting forth the terms and conditions under which MMRO provides certain medical consulting services to MCERA; and

WHEREAS, the Parties entered into a First Amendment to the Medical Consulting Agreement, which was effective as of October 1, 2016, a Second Amendment to the Medical Consulting Agreement effective as of October 1, 2018, a Third Amendment to the Medical Consulting Agreement effective as of October 1, 2019, a Fourth Amendment to the Medical Consulting Agreement effective as of July 1, 2020; a Fifth Amendment to the Medical Consulting Agreement effective as of July 1, 2021; and a Sixth Amendment to the Medical Consulting Agreement effective as of July 1, 2022; and a Seventh Amendment to the Medical Consulting Agreement effective as of July 1, 2023; and an Eighth Amendment to the Medical Consulting Agreement effective as of July 1, 2024;

WHEREAS, the Parties now desire to amend the Medical Consulting Agreement, as is more fully set forth herein.

AMENDMENT

NOW THEREFORE, in consideration of the foregoing premises and of the covenants, terms and conditions contained herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties do hereby mutually agree as follows:

1. The first sentence in Article 6, Section 6.1 shall be deleted in its entirety and replaced by the following:

General. The term of this Agreement shall be in effect from October 1, 2015 through June 30, 2025 but may be renewed for successive one-year periods upon the written agreement of the Parties executed no later than 30 days prior to the end of the then-current term, unless otherwise amended or unless terminated sooner according to the provision set forth below.

2. STANDARD OF CARE: MCERA has relied upon the professional ability and training of CONSULTANT as a material inducement to enter into this Agreement. CONSULTANT hereby

agrees that all its work will be performed and that its operations shall be conducted in accordance with generally accepted and applicable professional practices and standards as well as the requirement of applicable federal, state and local laws, it being understood that acceptance of CONSULTANT'S work by MCERA shall not operate as a waiver or release.

3. PERFORMANCE STANDARD: CONSULTANT shall perform all work hereunder in a manner consistent with the level of competency and standard of care normally observed by a person practicing in CONSULTANT'S profession. CONSULTANT hereby agrees to provide all services under this Agreement in accordance with generally accepted professional practices and standards of care, as well as the requirements of applicable federal, state and local laws, it being understood that acceptance of CONSULTANT'S work by MCERA shall not operate as a waiver or release. If MCERA determines that any of CONSULTANT'S work is not in accordance with such level of competency and standard of care, MCERA, in its sole discretion, shall have the right to do any or all of the following: (a) require CONSULTANT to meet with MCERA to review the quality of the work and resolve matters of concern; (b) require CONSULTANT to repeat the work at no additional charge until it is satisfactory; (c) terminate this Agreement pursuant to the provisions of Article 4; or (d) pursue any and all other remedies at law or in equity.
4. Exhibit A – Fee Proposal is hereby added and incorporated into, and replaces Exhibit A, in the June 30, 2015, Medical Consulting Agreement
5. Exhibit C – Insurance Requirements is hereby added and incorporated into, and replaces Article 7.1 Insurance, in the June 30, 2015, Medical Consulting Agreement
6. Exhibit D – Privacy and Data Protection; Security Events and Artificial Intelligence is hereby added and incorporated into the June 30, 2015, Medical Consulting Agreement.
7. Other than the modifications made above, the terms of the Medical Consulting Agreement shall remain in full force and effect.

The authorized representative of each party has executed this Sixth Amendment, with the intention that it be considered effective as of the Effective Date.

Managed Medical Review Organization, Inc.

Signature: _____

Name: Douglas L. Minke

Title: Vice President/General Counsel

**Mendocino County Employees'
Retirement Association**

Signature: _____

Name: _____

Title: _____

EXHIBIT A

FEE SCHEDULE

Revised Fee Schedule for Specialist Medical Board Service Model

Revised Fees

| | |
|--|----------------------|
| New Claim Review; Completion of Specialist Medical Board Report ¹ : | \$1,950 per case |
| Appearance fee (Board Meetings, Disability Hearings, etc.) ^{2, 3} | \$445-\$490 per hour |

Other Fees

- Independent Medical Evaluations (IME)⁴ Exam Cost + \$400
- Independent Psychiatric Evaluations (IPE)⁴ Exam Cost + \$400
- Recommendation Report Addendum fees \$ varies based on request

¹ For claim files in excess of 600 pages, there will be an Excess Medical Record (EMR) surcharge of \$125.00 for every 100-page increment above 600 pages of medical records.

² Upon request by MCERA, MMRO will provide an MMRO Medical Board Physician to participate in Board Meeting(s) at the hourly rates set forth above.

³ Travel Expense Reimbursement. In the event that MMRO representatives appear at a Board meeting in-person, MCERA shall reimburse MMRO for all incurred travel expenses, including airline flight(s) (coach class), meals and lodging. Such reimbursements shall be made within thirty (30) days following MMROs submission of a travel expense reimbursement request, which shall include documentation supporting each expense.

⁴ Only used when applicable to the circumstances of the claim.

EXHIBIT C

INSURANCE REQUIREMENTS

Insurance coverage in a minimum amount set forth herein shall not be construed to relieve CONSULTANT for liability in excess of such coverage, nor shall it preclude MCERA from taking such other action as is available to it under any other provisions of this Agreement or otherwise in law.

CONSULTANT agrees to indemnify and hold harmless MCERA, its elected or appointed officials, employees or volunteers against any claims, actions, or demands against them, or any of them, and against any damages, liabilities or expenses, including costs of defense and attorneys' fees, for personal injury or death, or for the loss or damage to the property, or any or all of them, to the extent arising out of the performance of this Agreement by CONSULTANT.

CONSULTANT shall obtain and maintain insurance coverage as follows:

- a. Combined single limit bodily injury liability and property damage liability - \$1,000,000 each occurrence.
- b. Vehicle / Bodily Injury combined single limit vehicle bodily injury and property damage liability - \$500,000 each occurrence.
- c. General and/or Professional Liability Insurance in the amount of \$1,000,000.00.
- d. Workers Compensation and Employers Liability Insurance with statutory limits as required by the Labor Code of the State of California, if the CONSULTANT has employees.
- e. Professional (Errors and Omissions) Liability Insurance minimum limit \$2,000,000

Standards for Insurance Companies: Insurers shall have an A.M. Best's rating of at least A:VII or equivalent.

Documentation: CONSULTANT is required to provide Evidence of Coverage for all required insurance policies. Required Evidence of Coverage shall be submitted for any renewal or replacement policy that already exist, at least ten (10) days before expiration or other termination of existing policy.

CONSULTANT shall provide immediate written notice if: (1) any of the required insurance policies are terminated; or (2) the limits of any required policy are reduced.

Material Breach: If CONSULTANT fails to maintain insurance coverage required pursuant to this Agreement, it shall be deemed a material breach of this Agreement. MCERA, at its sole option, may terminate the. Alternatively, MCERA may purchase the required insurance coverage, and without further notice to CONSULTANT, MCERA may deduct from sums due to CONSULTANT any premium cost advanced by MCERA for such insurance. This remedy shall be in addition to any other remedies available.

[END OF INSURANCE REQUIREMENTS]

EXHIBIT D

PRIVACY AND DATA PROTECTION; SECURITY EVENTS & AI.

SECURITY EVENTS

CONSULTANT will ensure that its use of all MCERA information will comply with all applicable laws relating to the privacy of MCERA members or the protection of their personal data promulgated.

CONSULTANT acknowledges that certain information may contain personally identifiable information (“PII”), including sensitive data such as unique device identifiers or credit card information. CONSULTANT will be responsible for any unauthorized access, use, reproduction, distribution, disposition, disclosure, possession, damage, or other activity (“Unauthorized Use”).

CONSULTANT will implement and maintain administrative, physical, and technical safeguards that are designed to prevent any unauthorized access (“Safeguards”). The Safeguards will include, at a minimum, a data security program which integrates technology-based security measures, policies, procedures, and practices, and ongoing education and awareness designed to protect the security of the information that includes PII and which meets the standards of general industry practice to safeguard such information.

CONSULTANT represents and warrants that the CONSULTANT has not suffered an actual or reasonably suspected security breach involving such information. CONSULTANT will transmit, transfer, and deliver all PII in accordance with applicable law and applicable industry standards. If member information is to be shared back and forth, all transfers of such information between MCERA and CONSULTANT will be in an agreed-upon secure format.

If CONSULTANT discovers or is notified of a security breach (a “Security Event”), CONSULTANT will immediately notify MCERA of such Security Event and of any data involved, and, if required by law or warranted under the circumstances, promptly notify applicable law enforcement and regulatory authorities of such Security Event. All such notices will be subject to MCERA’s prior review and approval in each case. In addition, CONSULTANT will fully cooperate with MCERA; provide MCERA with a plan to remediate such Security Event and avoid its recurrence; and unless prohibited by an applicable statute or court order, notify MCERA of any legal process relating to any Security Event. The Parties will fully cooperate with each other in all respects regarding the Security Event, including (i) investigating and curing the Security Event, and (ii) assisting the other Party in investigating, remedying and taking any other action such other Party deems necessary regarding any Security Event and any dispute, inquiry, or claim that concerns such Security Event, and (iii) providing the other Party with assurances reasonably satisfactory to such other Party that such Security Event will not recur. CONSULTANT's actions under this Section will not limit its obligation to indemnify MCERA or any of MCERA's other rights or remedies under this Agreement or otherwise.

ARTIFICIAL INTELLIGENCE

CONSULTANT shall not use any confidential data provided by MCERA with any Artificial Intelligence (AI) system or model. This prohibition includes, but is not limited to, the collection, processing, storage, handling, or utilization of data for the training, development, or operation of Large Language Models (LLMs), algorithms, or similar AI products.

In the event that MCERA data is inadvertently exposed to or processed by an AI system, the CONSULTANT shall immediately cease such processing and take all necessary steps to secure the data against further exposure. CONSULTANT shall also notify MCERA without undue delay and provide a detailed account of the incident, including measures taken to prevent future occurrences.

CONSULTANT commits to maintaining full transparency in the use of AI systems within the scope of services provided to MCERA. This includes providing detailed documentation of the AI systems employed, the nature of the data processed, and the decision-making processes influenced or carried out by AI.

CONSULTANT shall be fully accountable for all decisions made with the assistance of AI systems. This accountability extends to ensuring that such decisions are fair, unbiased, and in compliance with all applicable laws and ethical standards.

GENERAL OBLIGATIONS OF CONSULTANT

- a. Limit information system access to authorized users, authorized processes acting on behalf of authorized users, and authorized devices (including other information systems).
- b. Limit information system access to the types of transactions and functions that authorized users are permitted to execute.
- c. Verify and control connections to and use of external information systems.
- d. Control information posted or processed on publicly accessible information systems.
- e. Identify information system users, processes acting on behalf of users, or devices.
- f. Authenticate (or verify) the identities of those users, processes, or devices, as a prerequisite to allowing access to organizational information systems.
- g. Sanitize or destroy information system media (i.e., any device containing MCERA data) before disposal or release for reuse of the media for another purposes.
- h. Limit physical access to organizational information systems, equipment, and the respective operating environments to authorized individuals.

- i. Know and monitor visitor activity; maintain audit logs of physical access; and control and manage physical access devices (i.e., badges.)
- j. Monitor, control, and protect organizational electronic communications (i.e., information transmitted or received by organizational information systems.)
- k. Create a separate subnetwork for third party users to access specific information that does not allow the third-party users to access or provide any information beyond that network to contain exposure to an untrusted source. (This is also known as DMZ – demilitarized zone.)
- l. Identify, report, and correct information and information system flaws in a timely manner.
- m. Provide protection from malicious code at appropriate locations within organizational information systems.
- n. Update malicious code protection mechanism when new releases are available.
- o. Perform periodic scans of the information system and real-time scans of files from external sources as files are downloaded, opened, or executed to protect against malware.

INDEMNIFICATION

CONSULTANT shall indemnify and hold harmless MCERA from any claims, damages, or losses arising from the unauthorized use of its data in connection with any of the above. This indemnification includes any misuse of data, breaches of data security, and violations of privacy rights.



PROPOSAL

Provision of Specialist Medical Board Services by Managed Medical Review Organization, Inc.

Prepared for:

The Mendocino County Employees' Retirement Association

May 13, 2024

*MANAGED MEDICAL REVIEW ORGANIZATION, INC.
44090 W. TWELVE MILE ROAD
NOVI, MI 48377
(866) 516-6676
www.mmroinc.com*

Transition to Specialist Medical Board Services

Managed Medical Review Organization, Inc. (MMRO) is pleased to have served as Medical Advisor to the Mendicino County Employees' Retirement Association ("MCERA") for nearly the past nine (9) years. Through its work for more than 75 state, county and municipal retirement systems, MMRO has reviewed its service offerings, and has concluded that shifting from the currently contracted model (which involves the completion of Recommendation Reports by MMRO's Executive Medical Director, Dr. Jeffrey Deitch, who is a generalist) to a specialist medical review model (which utilizes MMRO's extensive Medical Board Panel of more than 375 physicians to ensure that Recommendation Reports are completed by specialists who are board-certified in the condition(s) at issue), is an opportunity for a valuable process improvement for our clients.

MMRO has now been utilizing its Specialist Medical Board review model for more than a year with a number of its public retirement system clients. After reviewing these results, MMRO firmly believes that the Specialist Medical Board model can better serve MCERA and its disability retirement program. While the current Disability Nurse Case Manager (DNCM)/Medical Director (Generalist) model has served us well historically, the use of different specialists as the reviewing physician, based on the condition(s) at issue in each respective case, is gaining traction across the country.

MMRO's Medical Board Panel

MMRO utilizes an extensive network of specialists and subspecialists on our Medical Board Panel. MMRO's nationwide network is comprised of over 375 physician specialists, in virtually all major specialties and sub-specialties. Our dedicated credentialing team ensures that our Specialist Physician Reviewers meet the strict qualifications set by URAC (board-certified, actively practicing, no conflicts of interest, etc.).

When utilizing this model, our Specialist Physician Reviewers are assigned to cases in the specialty and/or subspecialties most suitable to the eligible disabling diagnosis(es) at issue. Our Specialist Physician Reviewers will be required to review medical and claim documentation in connection with a disability retirement application and provide a written report for each review performed.

MMRO's Medical Board Panel covers virtually all major specialties most suitable for review of disability retirement claims, including:

- Cardiology
- Gastroenterology
- Internal Medicine
- Neurology
- Occupational Medicine
- Orthopedics
- Physical Medicine & Rehabilitation
- Psychiatry

- Psychology
- Oncology

Description of Specialist Medical Board Services

As the current MCERA Medical Advisor, MMRO has the comprehensive understanding and knowledge to provide the disability retirement analysis needed to properly provide recommendations under your disability standard. In transitioning to this Specialist Medical Board model, MCERA should expect little to no change in its operational interactions with MMRO. The material difference will be in the composition of the Recommendation Reports, and who authors those reports. MMRO will still engage its DNCMs to clinically triage the claim file, and make their telephonic outreaches to discuss the claim with the member and gather additional medical information (if necessary).

The difference in this new service model will entail the claim being referred to a Specialist, based on the alleged disabling condition(s) at issue, for review and completion of the Specialist Medical Board Report. We believe that having a specialist complete the ultimate recommendation back to MCERA will lead to a decrease in the overall claim turn times and a potential decrease in the number of claims referred for IME or IPE.

Program Document Revisions Needed

In anticipation of this transition, MMRO has begun to prepare the revised documentation that will be needed to serve this new service model. Currently, we see the following revisions needed:

- 1. Develop Report Questions Matrix.** To guide our Specialist Physician Reviewers through the analysis needed to address your unique disability retirement standard, we have proposed a set of questions that will be answered in every Recommendation Report, a copy of which are attached hereto as **Attachment 1**.
- 2. Revised Specialist Medical Board Report Template.** Included as **Attachment 2** is the revised Specialist Medical Board Report template that MMRO proposes to utilize moving forward. The provided example is for another client with their system-specific questions. Of course, we would overlay the agreed-upon MCERA questions in this report format for your reports.

Revised Fee Schedule for Specialist Medical Board Service Model

Revised Fees

| | |
|--|----------------------|
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| Appearance fee (Board Meetings, Disability Hearings, etc.) ^{2, 3} | \$445-\$490 per hour |

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⁴ Only used when applicable to the circumstances of the claim.

Conclusion

Thank you for your review and consideration of this Proposal, as well as for your continued partnership with MMRO. If acceptable, MMRO is committed to a timely and efficient transition to the Specialist Medical Board model, and believe that a transition to this revised review process can be implemented in an efficient order.

Please do not hesitate to reach out to Doug Minke (dminke@mmorinc.com) if you should have any further questions.

THANK YOU!



**MCERA
MEDICAL BOARD REPORT QUESTIONS MATRIX**

| <u>MCERA DISABILITY STANDARD</u> | <u>MEDICAL BOARD REPORT QUESTIONS</u> |
|---|--|
| New Claim Permanent Incapacity | <ol style="list-style-type: none">1. Please provide the opinions of the other physicians in the record.2. Please describe why you agree or disagree with the opinions in the file as to whether the applicant is permanently incapacitated.3. Assuming the applicant is permanently incapacitated for the performance of any job duty, please address the following in your report: Please describe why you agree or disagree with the opinions in the file as to whether the applicant's incapacity is the result of any injury/illness arising out of and in the course of HIS/HER employment? If so, did the employment contribute substantially to the disability? |