STATE OF CALIFORNIA
DEPARTMENT OF INDUSTRIAL RELATIONS
DIVISION OF WORKERS' COMPENSATION

INITIAL STATEMENT OF REASONS
Subject Matter of Regulations: Medical Provider Network
California Code of Regulations, Title 8, Article 3.5
Sections 9767.1, 9767.2, 976.3, 9767.4, 9767.5, 9767.5.1, 9767.6, 9767.7, 9767.8, 9767.9, 9767.10, 9767.11, 9767.12, 9767.13, 9767.14, 9767.15, 9767.16, 9767.16.5, 9767.17, 9767.17.5, 9767.18, and 9767.19

1. Introduction.

This Initial Statement of Reasons ("ISOR") describes the purposes, rationales, and necessity of the Division of Workers' Compensation's (DWC) proposed revisions to existing Medical Provider Network (MPN) regulations and proposed new regulations. Medical Provider Networks were created by legislation in 2004 with the goal of providing injured workers with adequate and cost-effective medical treatment through approved and regulated networks of medical providers, controlled by eligible employers and insurers. In passing Senate Bill 863 (Statutes of 2012, Chapter 363), the Legislature made substantial revisions to make the MPN system more efficient, more effective, and more accessible to injured workers to obtain necessary medical treatment through MPNs. This Initial Statement of Reasons (ISOR) fulfills the requirements of California's Administrative Procedure Act (see Government Code section 11340 et seq.).

Under Senate Bill 863 (Statutes of 2012, Chapter 363), DWC has been authorized to make revisions to Medical Provider Networks regulations. The authorizing statutes, Labor Code sections 4616 through 4616.7, have been amended to do the following: create a new type of MPN applicant; require written MPN physician acknowledgments; require an MPN website with online access to its provider directory with quarterly updates; require medical access assistants; require MPNs to apply for reapproval every four years with geocoding of provider listings; creates an official complaint process and petition process to suspend or revoke an MPN; give the Administrative Director the additional authority to use probation, conduct random reviews and assess penalties for statutory and regulatory violations; require appeals to be filed with the Workers' Compensation Appeals Board; and require notice to providers if the MPN network may be sold, leased, assigned, transferred or conveyed.

To implement these SB 863 changes, DWC proposes to make regulatory amendments to Article 3.5, sections 9767.1-16 and to add sections 9767.17-19.

The proposed revisions to existing MPN regulations expand who qualifies to have an MPN to include an entity that provides physician network services, amend the MPN application process to reflect new statutory requirements, and facilitate administrative review. The proposed regulatory changes limit MPN approvals to a period of four years and establish the procedures for MPN reapprovals.

The proposed amendments also include extensive changes to MPN plan operating requirements to improve access to care, including modifying access standards to better address health care shortages, requiring physician acknowledgments, requiring MPN website postings of provider listings, providing medical access assistants, requiring quality of care procedures, requiring provider listing geocoding, requiring quarterly updates of provider listings, and streamlining MPN employee notice requirements.

The proposed new MPN regulations address additional methods of enforcement to ensure MPN regulatory compliance. The new regulations set forth a process for third parties to submit written complaints against an MPN or file a petition for suspension or revocation of an MPN and allow random MPN reviews by the Administrative Director. The proposed new regulations also detail when penalties, probation, suspension and/or revocation of an MPN are applicable if a violation of MPN requirements is found. The MPN regulations also amend the appeal process for appealing a decision by the Administrative Director.

DWC welcomes comments on the ISOR and on the proposed regulations that the ISOR describes. Please see the accompanying Notice of Rulemaking for instructions on how to submit comments electronically, on paper, and orally at the DWC hearing on the proposed regulations.

2. Technical, Theoretical, or Empirical Studies, Reports, or Documents.

DWC did not rely on any technical, theoretical, or empirical studies, reports, or documents in creating this ISOR.

3. Problem Addressed with this Rulemaking.

This rulemaking allows the Division to comply with SB 863's mandate to revise the existing process through which injured workers receive medical treatment from approved medical provider networks. The revised regulations address medical access concerns by requiring online access to MPN provider listings and by requiring regular updates to reduce inaccuracies in the listings, by requiring medical access assistants to assist injured workers with obtaining medical appointments, by improving medical access requirements. The amendments also ensure that MPN physicians know and consent to being in an MPN by requiring written acknowledgments. The amendments also promote better MPN compliance with requirements through more administrative oversight from additional enforcement actions and the four-year reapproval process as well as third-party complaints and petitions.

4. Specific Technologies or Equipment.

None.

5. Reasonable Alternative to the Proposed Regulations and Reasons for Rejecting Those Alternative.

The Administrative Director has not identified any effective alternative, or any equally effective and less burdensome alternative to the regulation at this time. The public is invited to submit such alternatives during the public comment process.

6. Duplication or Conflicts with Federal Regulations (Gov. Code section 11346.2(b)(7)).

The proposed regulations do not duplicate or conflict with any federal regulations. There are no federal regulations that prescribe rules for Medical Provider Networks.

7. Facts, evidence, documents, testimony, or other evidence on which the agency relies to support an initial determination that the action will not have a significant adverse economic impact on business. (Gov. Code section 11346.2(b)(6)(A)).

The Administrative Director has determined that the proposed regulations will not have a significant adverse economic impact on business. Although SB 863 mandates changes that will initially affect costs, the anticipated savings from the changes will more than offset those costs. New administrative requirements and oversight provisions will initially increase some operational costs on business, such as having medical access assistants to assist injured workers and using geocoding software for MPN provider listings. The new requirements that MPNs have medical access assistants to help injured workers access medical care may require MPNs to hire additional staff to fulfill these duties. The new geocoding requirements may also require MPNs to purchase geocoding software. SB 863 also includes provisions that increase MPN oversight and provides DWC with additional authority to enforce MPN regulatory compliance. These provisions may increase costs because an MPN may now be subject to administrative penalties if it is determined to be non-compliant with the regulations. Other changes do not add costs: the requirement for quarterly provider listing updates already exists in the regulations, so the new statutory requirement does not increase existing costs. Overall, these provisions of SB 863 and the corresponding proposed regulations are designed to make MPNs more efficient by streamlining requirements, by improving medical access and accuracy of information, all of which enable MPNs to be more effective at reducing workers' compensation medical costs for insurers and employers.

By improving MPN performance and assuring that MPNs have better capacity to deliver medical care for injured workers, and assuring that injured workers will be able to find providers within the network who are available to provide treatment, the following should result: (1) improved medical outcome; (2) avoidance of unnecessary disability, and (3) reduction in frictional costs (primarily litigation costs) in the provision of benefits to injured workers. By improving MPN performance, California businesses, in the long run, should see a net savings.

8. Economic Impact Analysis ((Gov. Code section 11346(b)(1)(A)-(D)).

<u>Purpose</u>

The proposed regulations clarify and interpret changes made to Labor Code sections 4616 through 4616.7 as a result of the passage of Senate Bill 863 (Statutes of 2012, Chapter 363) and are designed to improve Medical Provider Network (hereinafter "MPN") performance by

assuring MPNs have better capacity to deliver medical care for injured workers. (A more detailed explanation of the regulatory changes is stated in the introduction section above.)

The Creation or Elimination of Jobs within the State of California

The Administrative Director has determined that the proposed regulations will not have a significant impact on jobs within the State of California. SB 863 mandates that MPNs have medical access assistants available at least six days a week, thirteen hours a day, to assist injured workers with access to medical care within the network. Each MPN is required to ensure medical access assistants are available during requisite times to assist injured workers. Some MPNs will comply with this new requirement by assigning the duties to existing staff, but some will need to hire additional staff to perform the tasks required by statute and the proposed regulations.

This is not overly burdensome on MPNs and should not result in the elimination of jobs in California. To the contrary, jobs within the State of California will be created as a result of these requirements. DWC has approved approximately 2000 medical provider networks. However, because MPN applicants can have multiple MPNs, there are only about 700 distinct medical provider network organizations. Accordingly, DWC estimates approximately 300 jobs will be created to fill the medical access assistant positions mandated by SB 863 and these proposed MPN regulations.

Creation of New Businesses or the Elimination of Existing Businesses within the State of California

The Administrative Director has determined that the proposed regulations will not significantly create or eliminate businesses within the State of California. The additional costs to businesses due to the SB 863 mandatory changes should be absorbable by existing businesses and should not result in either a substantial change in their existing business practices or their elimination. The primary new requirement under SB 863 that could result in the creation of some new businesses is the addition of a new MPN applicant entity type. Some new businesses may be formed to be entities that provide physician network services to serve specific geographic areas within California. However, it is not expected that a significant number of new businesses will be formed, as a significant portion of the market is taken by existing MPNs, many of which have large established physician networks covering the entire state.

The Expansion of Businesses Currently Doing Business within the State of California

The Administrative Director has determined that the proposed regulations will not significantly expand businesses within the State of California. Medical Provider Networks are contracting intermediaries between medical providers and workers' compensation insurers or self-insured employers. SB 863, however, expands who may qualify to establish an MPN to include entities that provide physician network services. The regulations clarify and interpret who qualifies as

this new applicant entity that can have an MPN. Many existing physician networks are already doing business within the State of California because their networks are being leased to MPNs. Now, these existing physician networks will be able to establish their own MPN and qualifying existing medical groups will also have the opportunity to establish an MPN to gain additional business. At this point, it is unclear if these existing physician networks or existing medical groups will apply to have their own MPNs. Nevertheless, the amendments brought about with the passage of SB 863 and these proposed regulations clearly provide the opportunity for existing businesses within the State of California to expand and take advantage of this new business opportunity.

Benefits of the Regulations to the Health and Welfare of California Residents, Worker Safety, and the State's Environment

The proposed regulations will improve MPN performance by assuring MPNs have better capacity to deliver medical care for injured workers. Increasing the ability of injured workers to find and schedule appointments with available providers from a more accurate provider listing will result in improved medical outcome, avoid unnecessary disability, and reduce frictional cost (litigation costs) in the provision of benefits to injured workers. The net savings in workers' compensation costs will more than offset the costs of improved customer service. While some MPNs will initially experience slight increase in operational costs, the overall effect on workers' compensation costs for California business and employers is expected to be a slight net reduction in the cost of worker' compensation coverage.

9. The Specific Purpose, Rationale, and Necessity of Each Section of the proposed revisions and proposed new regulations to the MPN statutes (Gov. Code section 11346.2(b)(1)).

The Specific Purpose, Rationale, and Necessity of Each Section of the proposed revisions and proposed new regulations to the MPN statutes, in accordance with Government Code section 11346.2(b)(1) is provided below.

Section 9767.1. Medical Provider Network-Definitions.

Specific Purpose:

This section lists and defines the terms used in the Medical Provider Network regulations. The purpose of the definitions is to implement, interpret and make specific Labor Code sections, 4616 through 4616.7, and to ensure that the meanings of the terms are clearly understood by the workers' compensation community.

The section has been amended to: (1) clarify what non-physician medical services are considered ancillary services; (2) delete "cessation of use" as it is a definition that is no longer used; (3) replace "has established" with "is using" which is more reflective of the intent; (4) add

a new definition for “an entity providing physician network services” which is a new type of MPN applicant; (5) add a new definition for “geocoding” to clarify the new requirement for the geographic mapping of provider listings to show that the listings meet access standards; (6) add a definition of “health care shortage” to meet the statutory change requiring adequate access to medical care for areas meeting that standard; (7) add a definition of “medical provider network approval number” to be able to distinguish between the different MPNs; (8) add a definition for “medical provider network access assistant” to establish the criteria for such assistants; (9) add a definition for “medical provider network geographical service area” to clarify that the MPN service area is within California; (10) update the definition of a “Medical Provider Network Plan” to include the new MPN applicant type, to capitalize the reference to medical provider network for clarity and to include the word “complete” before application to clarify that incomplete applications do not qualify and to change “a” to “an” before “MPN” for grammatical purposes.

In addition, the definition of “MPN Applicant” is revised to include the new applicant entity type and the definition of “MPN Contact” is revised to clarify that the role of this individual is in part to respond to complaints.

The “MPN Contact” definition was also revised to delete “is responsible” for editing purposes as it is unnecessary and to clarify that the type of independent medical review being referenced is the review applied to MPNs only.

The definitions for “Nonoccupational Medicine” and “Physicians primarily engaged in treatment of nonoccupational injuries” are deleted for editing purposes as these definitions are no longer necessary or used.

The addition of “probation” is necessary for the public to understand when and how it applies and the definition of “Provider” is revised for accuracy to use the term “practitioner” as used in the Labor Code section listed.

A new definition for the terms, “revocation” and “suspension” are added to define when an MPN is revoked or suspended and the consequence of such revocation or suspension on the MPN.

The revision to the definition of “termination” of MPN to clarify that termination of an MPN is permanent reduces ambiguity regarding the impact of termination of an MPN.

Lastly, the definition for “withdrawal” has been added to reduce confusion over the withdrawal process and to clarify when it applies and that it is permanent.

The subdivisions also have been renumbered to reflect the deletion and addition of definitions.

Necessity:

It is necessary to define each of the key terms used in the medical provider network regulations to ensure that their content and meaning are clearly understood by the workers’ compensation community. New definitions have been added and existing definitions are amended to ensure

consistency of interpretation of new statutory requirements and terms being used in order to provide clarity and to ensure proper compliance with the regulations.

Section 9767.2. Review of Medical Provider Network Application.

Specific Purpose:

This section sets out the process, requirements and time frames for review of a Medical Provider Network application or application for reapproval. The proposed amendments are being made to conform the regulation with the recent statutory changes to Labor Code section 4616 and to clarify the existing review and withdrawal processes.

Subdivision (a) is amended to implement the new statutory requirement limiting approvals to four years and to clarify that only complete applications start the review time period of 60 days. Also, the section is amended to clarify that if an MPN application is deemed approved by default, then the default approval period is also limited to four years.

Subdivision (b) is amended to include that the Administrative Director will send a notification if an MPN applicant is not eligible to have an MPN, so the applicant knows that their application will not be reviewed.

Subdivision (e) is amended to delete "applicant" from the first sentence to correctly state that it is the MPN that is assigned an approval number, not the MPN applicant. A second sentence is added to require that at minimum, the approval number be included in correspondence with the Division to reduce confusion over which specific MPN is being referred to in correspondence regarding MPNs.

Subdivision (f) is added to put into regulation the process by which an MPN applicant can choose to withdraw an approved MPN if it decides not to use the MPN. This section states the requirements for withdrawal and prevents an underground regulation regarding the withdrawal process.

Necessity:

This section is necessary to implement the changes to Labor Code section 4616 and to ensure that time frame requirements for review and approval as well as the process for withdrawal are clear, so MPN applicants know the parameters of having an MPN.

Section 9767.3. Application for a Medical Provider Network Plan.

Specific Purpose:

This section specifies the information required in an application for a MPN.

Subdivision (a) is amended to reflect the new statutory requirement adding a new MPN applicant entity.

Subdivision (b) is amended to replace the reference to "an insurer and an insured employer" with "MPN applicant," to be more accurate, to include the new type of MPN applicant, and to be more concise.

Subdivision (c) is amended to revise the submission format for the required information regarding provider listings to be easier to review. The section is also amended to refer to a new optional MPN Application form that can be used to make the application process easier. The application submission requirements have been amended to require electronic submissions and electronic signatures to reduce paper and storage needs. The last new requirement added is to require the hard copy of the application be kept as a back-up in case it is needed.

Subdivision (c)(1) is amended to clarify what provider listings, if any, an MPN using a Health Care Organization ("HCO") network should submit with its application. This amendment streamlines the regulation by eliminating the need for the original subdivision (e) of this section, which has now been deleted as unnecessary.

Subdivision (c)(2) is amended to revise the submission format for the required information regarding provider listings for consistency and ease of review. In addition, the amendment to require that the physicians have read the Medical Treatment Utilization Schedule ("MTUS") helps verify that the MPN providers know the treatment parameters of the California workers' compensation system.

Subdivision (c)(3) is amended to revise the submission format for the required information regarding provider listings for consistency and ease of review. The addition of an exception for mobile ancillary service providers allows them to be included in the MPN even if the required location information cannot be provided. An additional affirmation is included to help verify that the service providers are able to meet the minimum standard for provision of medical services.

Subdivision (c)(4) is added to clarify that all the providers in listed medical groups are approved MPN providers. The second sentence is added to clarify that if not all providers in a medical group are MPN providers, a subgroup can be listed in the MPN or MPN providers in a group can be listed individually.

Subdivision (c)(5) is added to clarify that services under the MPN can only be provided at the listed locations, unless the MPN chooses to allow non-listed locations on a case-by-case basis.

Subdivision (c)(6) is added to clarify the right of all MPN applicants, including the new MPN applicant entity, to determine the providers in its MPN.

Subdivision (d) is amended to apply to all MPN applicants, including those using an HCO network, and unnecessary language is deleted. Subdivision (d)(1) is amended to require proof of status to be an MPN applicant to ensure that all applicants are eligible to apply. Minor amendments are made to ensure consistency of reference to "MPN applicant" (lowercase) in subdivisions (d)(2) and (3) and the amendment to refer to "MPN Liaison to DWC" instead of

"Division Liaison" is for purposes of clarity in subdivision (d)(5). Subdivision (d)(4) is amended to require that a unique MPN name be selected to reduce confusion over multiple MPNs having the same name. The amendment to subdivision (d)(7) is to include all types of MPN applicants.

Subdivision (d)(8) is amended as follows: subdivision (A) includes a new requirement to state the method used to determine the number of covered employees for clarity and accuracy; subdivision (B) clarifies that the reference to the geographic service area is with respect to the MPN; new text to subdivisions (C), (D) and (E) reflect new statutory requirements for the provision of medical access assistants, MPN website and provider listing web addresses, and replace the original text in the subdivisions, which have been re-lettered; subdivision (F) deletes the existing language and is replaced with an affirmation that the new statutory requirement for MPNs to have physician acknowledgments are met; subdivision (G) is the new letter for the original subdivision (C) and deletes a reference to Labor Code section 3209.5 to reduce confusion over which providers are to be included in the primary MPN provider listing; subdivision (H) is a new requirement that extends the new statutory requirement for MPN reapprovals to include geocoding of provider listings to all new MPN applications, for purposes of consistency and quality assurance that access standards are met; subdivision (I) is the new letter for the original subdivision (D) and clarifies that an MPN ancillary service provider listing is not required; the original text in subdivision (E) has moved to subdivision (K); the original subdivision (F) is struck as it is no longer a statutory requirement; (J) is the new letter for the original subdivision (G); subdivision (L) is the new letter for the original subdivision (H) which is amended to add a new requirement that the five most commonly used specialties be listed for access standard consistency and compliance; subdivision (M) is the new letter for the original subdivision (I) and clarifies that all required MPN information given to employees to use the MPN be provided in English and Spanish; subdivisions (N)-(R) are the new letters for the original subdivisions (J) –(N); the new subdivision (S) includes a new statutory requirement for quality of care procedures to be included; the new subdivision (T) includes a new affirmation that a new statutory requirement for contractual disclosures to physicians in MPNs is met.

The original subdivision (e) setting forth the application requirements for an MPN using an HCO network, is deleted in its entirety as unnecessary and duplicative, due to these requirements being combined with the requirements for other MPN applications in subdivision (d). The new subdivision (e) was the original subdivision (f), and includes updated subdivision references to reflect the new amendments to the section. Subdivisions (f) through (h) are the new letters for the original subdivisions (g) through (i).

Necessity:

The proposed amendments are necessary to conform this section to the recent statutory changes to Labor Code section 4616 that amend the requirements for an MPN to be approved. Additional amendments in subdivisions (a) through (c) also have been made to streamline the MPN application process to make the application process easier for applicants, and to improve consistency, clarity and efficiency of review. The exception for mobile ancillary service provider listings is necessary as many service providers do not provide services out of a specific location or office, but may provide the service at the injured worker's location or through mail. The additional provider affirmations are intended to support quality assurance and the goal that

workers receive reasonable and necessary medical treatment to recover from their injury. The addition of subdivision (c)(4) is necessary to reduce the confusion over whether a provider in a listed medical group is in an MPN. The addition of (c)(5) is also necessary to reduce confusion over which locations are approved for a worker to receive treatment covered by an MPN. Subdivision (c)(6) is added to eliminate ambiguity or confusion over whether the new MPN applicant entity has the same right as the other MPN applicant types to select the providers of its MPN network.

The changes to subdivision (d) are necessary to include the new statutory requirements of medical access assistants, MPN website addresses, physician acknowledgments, geocoding of provider listings, quality of care and contract disclosure requirements. The amendments also clarify existing requirements and to ensure the accuracy of the information provided in an application, which is necessary to ensure MPNs are properly approved. Proof of eligibility of MPN applicants is necessary as applicants have been found to be ineligible after MPN approval. The requirement to select a unique MPN name is necessary to help with identifying MPNs, especially during complaint investigation. The listing of the five commonly used specialties is necessary to ensure better compliance with the statutory requirements and access standards. These amendments are necessary to address the common problems of non-compliance regarding eligibility status and ensuring sufficient access to medical providers.

Section 9767.4. Cover Page for Medical Provider Network Application.

Specific Purpose:

The purpose of this section is to provide a cover page form with necessary information for all MPN applicants to submit with their applications.

The title of the form is amended to refer to reapproval applications in order to incorporate the new requirement of applications for reapproval and to have one form used for all applications.

The amendment to require the legal name of an MPN applicant helps ensure that the applicant name submitted is correct and that the applicant is an eligible entity to have an MPN. The amendment to add “MPN applicant” before the address requirement is to clarify which address is to be provided on the form.

The amendment in number 4 of the form to change “type of” to “eligibility status” of an MPN applicant was made to more accurately reflect that only certain entities are eligible to have an MPN. The text in this section is also revised to include the new MPN applicant entity as an option for selection and for editing purposes.

The text for the original language in number 7 of the form is deleted because the information was deemed unnecessary. New language is added to distinguish for purposes of review whether the application is for a new MPN or an existing approved MPN. Including the date of last approval helps the reviewer to determine if the applicant has submitted the application in a timely manner.

Numbers 8 and 9 are additions to the form to incorporate the new statutory requirements for the inclusion of an MPN website and the online provider listing web address for each MPN. The existing number 8 has been renumbered to number 10 and the word, "ability" has been changed to "belief" to accurately conform to existing regulatory requirements in 9767.3(d)(6). The addition of the phone and email for the authorized individual and the MPN Liaison to DWC is to provide additional contact information for follow-up purposes if needed during the application review process.

The instructions at the bottom of the form have been revised to conform to the proposed amendments for submission of the application as set forth in 9767.3(c) and the address updated to reflect the correct mailing address.

Necessity:

The change in the form title allows one form to be used for both new applications and reapproval applications and is more efficient, consistent and promotes accurate tracking and recordkeeping of MPN applications. Requiring the legal name helps address the problems with ineligible entities applying for MPNs and with reducing inaccuracies in the application and in Division records. Other changes were necessary to eliminate ambiguity and to conform to the new statutory requirements for MPN applicants and applications. Distinguishing whether the application is for a reapproval or a new application is necessary for accurate tracking purposes and to avoid assigning a new MPN number to an existing MPN. Knowing whether a reapproval is submitted in a timely manner is necessary to determine if other steps for regulatory compliance may need to be taken by the Division. The addition of the website and provider listing web addresses conforms to new statutory requirements, corrections were made to the verification language in number 10 for consistency, and changes to the instructions reflect proposed regulatory amendments for electronic submission. Lastly, the addition of more contact information for the authorized individual and the DWC liaison provides additional contact information to better facilitate communication with the key individuals responsible for the MPN to ensure compliance with the regulations.

Section 9767.5. Access Standards.

Specific Purpose:

Section 9767.5 sets forth the requirements to meet access standards generally as well as in areas in which there is a health care shortage within an MPN's geographic service area and in areas outside of an MPN's geographic service area. This section also sets forth the minimum requirements for obtaining medical appointments as well as the new requirements for MPN access assistants.

Subdivision (a) is amended to require that at least three physicians of each specialty are available to treat injured workers at all times to help ensure sufficient access to necessary medical treatment. A sentence was added to clarify that the access standards must be met at all times in at least the five commonly used specialties to ensure the medical provider network meets the minimum access to the most commonly used providers in the network to treat common injuries.

Subdivision (d) is amended to provide clarity as to when an alternative access standard may apply and the standard of review for such an alternative access standard. The other minor changes to the wording have been made for accuracy purposes.

Subdivision (e)(2) is amended to clarify that a list of physicians shall be given to injured workers when outside the MPN geographic service area.

Subdivision (e)(4) is amended to clarify that when a worker is outside the MPN geographic service area, they can choose their own provider for non-emergency medical care.

Subdivisions (h), (h)(1) and (h)(2) are added to clarify and specify the new requirements for medical access assistants to facilitate better access to medical treatment.

Necessity:

The amendments to subdivision (a) are necessary to reduce problems with getting access to necessary providers within the MPN and to set the minimum standard for the provider network to at least ensure access to commonly used specialists within an MPN. Subdivision (d) is amended to reflect a new statutory requirement to allow alternative access standards in areas in which there is a health care shortage. Other changes to the subdivision have been made to ensure that alternative standards requiring workers to go farther distances for medical treatment are sufficiently justified and the standard of review is provided for transparency. Amendments to subdivisions (e) are necessary to ensure proper compliance with the regulation. Subdivision (h) in its entirety is necessary to effect the new regulatory requirements for medical access assistants.

Section 9767.5.1. Physician Acknowledgments.

Specific Purpose:

This section sets forth the requirements for written acknowledgments by physicians to be a member of the MPN.

Subdivision (a) clarifies which physicians in an MPN need to provide a written acknowledgment to be in the MPN.

Subdivision (b) clarifies when a physician with an automatically renewing contract must submit a written acknowledgment and allows a legal agent or designee to sign the acknowledgment or to use an electronic signature to ease the administrative burden of providing such acknowledgments.

Subdivision (c) is intended to allow for efficiency and to reduce the administrative burden by allowing a physician or his/her legal agent or designee to use one acknowledgment to indicate participation in multiple MPNs.

Subdivision (d) is added to clarify what physician acknowledgments are required of physicians whose medical group is participating in an MPN. The specified requirements are intended to ensure that that an acknowledgment exists for all physicians in a listed MPN medical group at all times and that the acknowledgment is timely updated when a physician is added or removed from a participating medical group.

Subdivision (e) clarifies who is responsible for having physician acknowledgments and when a showing of compliance with this statutory requirement to the Administrative Director is expected.

Necessity:

This new section is necessary to implement the new statutory requirement for written physician acknowledgments to ensure that all physicians in an MPN agree to be providers in the MPN. The specific subdivisions are necessary to give clear direction as to which physicians are required to submit written acknowledgments; what to do if a physician has an automatically renewing contract, which includes a significant number of physicians; what to do with the common reality of a physician who participates in multiple MPNs; how to address physicians in a medical group participating in an MPN and ensure that the statutory requirements are met; and when an MPN applicant is required to produce the written acknowledgments of the physicians in its MPN to establish statutory compliance.

Section 9767.6. Treatment and Change of Physicians Within MPN.

Specific Purpose:

This section sets forth the requirements for medical treatment and change of physician within an MPN.

Subdivisions (a) and (d) are amended to include the new MPN applicant entity, which is entitled to take the same actions stated in the subdivisions as an insurer or employer.

Subdivision (e) is amended to clarify the new requirement limiting a chiropractor's ability to be a treating physician and the consequence to an injured worker if they are treating within the MPN with a chiropractor who has reached his treatment limit.

Necessity:

The amendments to this section are necessary to incorporate statutory changes to Labor Code section 4616 that allows a new entity to be an MPN applicant, as well as a statutory change in Labor Code section 4600(c) that limits a chiropractor's authority to be a treating physician. It is also necessary to inform the injured worker of what s/he is expected to do if this limitation affects her/his treating physician and that the worker is expected to continue treating with another physician within the MPN.

Section 9767.7. Second and Third Opinions.

Specific Purpose:

This section sets forth the requirements for a second and third opinion from physicians within the MPN and states when the MPN Independent Medical Review ("MPN IMR") process applies. Subdivisions (b) and (d) are amended to clarify that the minimum provider listing to be given is a regional area provider listing, so an injured worker is not necessarily limited to selecting providers solely within the regional area.

Subdivision (g) is amended to clarify the choice that a worker has to obtain medical treatment recommended through the second and third opinion process from outside the MPN or from within the MPN.

Subdivision (h) clarifies that the reference to an independent medical review process is to the MPN IMR process, by setting forth the applicable regulatory and statutory provisions that apply only to MPNs.

Necessity:

The clarifying amendments to subdivisions (b), (d) and (g) are necessary to ensure that the intent of the regulations are properly understood and followed by employers and insurers. The amendments to subdivision (h) are needed to distinguish the MPN IMR process, which applies only when an injured worker has a dispute with the treating physician's diagnosis or treatment prior to requesting authorization for the treatment. There has been public confusion over the MPN IMR process and a separate new statutory IMR process to address utilization review disputes over authorization of proposed treatment by a physician. This clarification is necessary to ensure that the correct MPN IMR procedures are followed under the applicable circumstances.

Section 9767.8. Modification of Medical Provider Network Plan.

Specific Purpose:
This section sets forth the requirements and procedures to submit a modification of an MPN plan as well as the parameters for review of the modifications by the Administrative Director and avenue for appeal of the Administrative Director's review.

Subdivision (a) is amended to clarify and highlight that some of the required modifications have a filing deadline.

Subdivisions (a)(1) includes the following amendments: it moves the original text in (a)(1) to (a)(5); it moves the original (a)(6) which requires a modification filing when there is a change in the name of the MPN or MPN applicant to the proposed new (a)(1) and clarifies that a filing is required for a change in the name of the MPN applicant also and sets a filing deadline of fifteen business days of the name change. These amendments are made to ensure that the Division receives notice in a timely manner for more accurate tracking, recordkeeping and correspondence with the MPN.

The original subdivision (a)(2) is renumbered to (a)(6) and the proposed new modification is included in (a)(2) to require a filing within five business days when an MPN applicant's eligibility status changes to ensure DWC has notice when an MPN applicant is no longer eligible to have an MPN.

The original subdivision (a)(3) is renumbered to (a)(7) and replaced by a requirement to file a modification within fifteen business days of a change of authorized individual or division liaison to ensure that DWC receives timely notice of changes to the primary MPN contacts that DWC communicates with when there is a compliance issue with an MPN.

The original subdivision (a)(4)is renumbered to (a)(8) and the original (a)(7) has been moved and renumbered to the proposed (a)(4) to correspond to and be consistent with the required modification form in this section that accompanies each filing.

Subdivisions (a)(5) through (a)(9) is the new numbering for the original subdivisions (a)(1) through (a)(5).

Subdivision (a)(10) is the new number for the original subdivision (a)(8).

Subdivision (a)(11) is the new number for the original subdivision (a)(9) and is amended to include a reference to "medical access assistants" as required by the new statutory changes.

Subdivisions (a)(12) through (a)(14) are the new numbers for the original subdivisions (a)(10) through (a)(12).

Subdivision (a)(15) is the new number for the original subdivision (a)(13) and replaces the word "permanent" with "current" to replace outdated language and clearly require that applications must be modified to comply with current regulatory requirements.

Subdivision (b) has been modified to reflect the proposed new filing deadlines of fifteen business days for the filing of changes to the name of the MPN, the name of the MPN applicant, the authorized individual, and the division liaison and the filing deadline of five business days for a change in an MPN's eligibility status. A statement is also included to inform MPN applicants that administrative actions may result from an MPN's failure to file the required information within the requisite time frame to give notice of what actions the Administrative Director may take if the filing requirements are not met.

Subdivision (c) is amended to more accurately reflect that the verification that the information is true and correct is for the entire modification filing, not just the modification notice form.

Subdivision (d) is amended to update the subdivision references to the name and eligibility modifications that are effective before the modification filing is approved by DWC.

Subdivision (g)(2) is amended to use “rescinding” instead of “revoking” for clarity and to avoid confusion with the separate MPN revocation process set forth in section 9767.14 that the Administrative Director may use for regulatory compliance.

Subdivision (h) is amended to correct the reference to subdivision (h) to (g) to reflect the intended subdivision.

Subdivision (i) is amended to reflect the new statutory changes to appeal the Administrative Director’s decisions regarding modifications.

Subdivision (j) is the required modification form that is amended to conform to the changes in the regulatory text in this section as follows:

Under number 1, change to add “legal” to the applicant name was intended to ensure that the correct legal name is provided, which has not always been the case.

The addition of the new requirement in number 2 of the name of the MPN and the MPN approval number makes Division tracking and processing of the MPN more efficient. Number 3 is the original number 2 with “MPN applicant” added to clarify which address to use. Number 4 is the original number 3. Number 5 is the original number 4 with the box for “insurer” moved for formatting purposes, the box for “Self Insured Security Fund” deleted as unnecessary, and a box for the new applicant entity added to comply with current statutory requirements.

The MPN name and approval number required in the original text of numbers 5 and 6 have been moved up to be the new number 2 for better organization, with other information in the original text deleted as unnecessary.

Number 6 is the original number 7 with an amendment to require only the last MPN plan approval date to obtain the most relevant information for review. The original numbers 8 and 9 have been deleted as unnecessary. Number 7 is the original number 10. The verification text in number 7 is revised to conform to the proposed regulatory language in section 9767.8(c). The line for the phone and email of the authorized individual and the liaison have been moved to a separate line in numbers 7 and 8 to ensure that sufficient space is provided for the most used contact information. Number 9 is the summary requirement in the original number 11, with the last sentence deleted as unnecessary.

The boxes and the changes listed on the form have all been amended to reflect and be consistent with the proposed changes in subdivision (a).

The instructions at the end of the form are updated to be consistent with MPN application electronic submission instructions. The form revision date in the footer will be updated to the approved date of revision to accurately reflect the version of the form being used.

Necessity:

The amendments to the regulations and the corresponding regulatory form regarding the name of the MPN, the name of the MPN applicant, the authorized individual, and the division liaison are important to ensuring that DWC has accurate records to ensure that the MPN applicant is legally eligible to have an MPN, and that the correct legal entity is being held responsible for its MPN and that DWC has accurate contact information to communicate with the individuals who are responsible for the MPN to ensure regulatory compliance. The amendment requiring notice of a change in an MPN applicant's eligibility is critical to enabling DWC to ensure proper and timely follow up with an MPN applicant who is no longer eligible to have an MPN to take the proper steps to end the use of the MPN including giving notice to workers.

The subdivisions in the regulations and the corresponding form have been reorganized to set forth those modifications with filing deadlines first and then those without filing deadlines after to promote clearer organization and better compliance with the modification filing requirements.

The subdivisions have also been renumbered and reorganized to be more consistent with the existing form and to incorporate new statutory requirements, such as the medical access assistants. Other amendments to the regulatory text have been made to promote a clearer understanding of the intent of the regulations and to conform the appeals process to the new statutory mandates.

The mandatory modification form needed to be amended to reflect the proposed changes to the modification filing requirements and to update the instructions to reflect the proposed submission changes, including the correct mailing address, to ensure proper filings.

Section 9767.9. Transfer of Ongoing Care into the MPN.

Specific Purpose:
This section sets forth the requirements for transferring care into the MPN when an injured worker is treating with a physician outside the MPN.

Subdivision (a) is amended to clarify the right of an employer or insurer to authorize treatment outside the MPN.

Subdivisions (d), (d)(2) and (f) are amended to include the new MPN applicant entity, which has the right to also take the actions specified in those subdivisions.

Necessity:

The amendments to this section conform the regulation to reflect statutory changes and to ensure that regulated entities understand what they have a right to do under the MPN scheme.

Section 9767.10. Continuity of Care.

Specific Purpose:

Subdivision (a) and (d)(1) are amended to include references to the new MPN applicant entity to clarify that the new entity has a right to take the action specified in the subdivisions.

Necessity:

The amendments to this section conform the regulation to reflect statutory changes and to ensure that regulated entities understand what they have a right to do under the MPN scheme.

Section 9767.11. Economic Profiling Policy.

Specific Purpose:

This section sets forth the requirements for submission when an MPN is performing economic profiling of its MPN providers.

Subdivision (a) is amended to include the new MPN applicant entity, which is also subject to this regulatory and statutory requirement.

Necessity:

The amendments to this section conforms the regulation to reflect statutory changes that created a new MPN applicant entity.

Section 9767.12. Employee Notification.

Specific Purpose:

This section sets forth the requirements for the complete written notification that must be provided to injured employees of the policies and procedures for using an MPN, as well as the notice that needs to be provided to injured employees when they will no longer be covered by an MPN.

The original text in subdivisions (a) through (c) have been deleted as unnecessary as the text concerns an implementation notice that will no longer be required.

Subdivision (a) is the original subdivision (d) re-lettered and amended to clarify when the notification required in the subdivision should be provided, revise the references to the original subdivision (f) to reflect the new numbering to (2), include the new applicant entity, and more succinctly state the Spanish language requirement. Minor revisions for clarity are made to subdivision (a)(1).

Amendments to subdivision (a)(2) are made in the following subdivisions, which have all been re-lettered: (A) to clarify and distinguish the role of the MPN Contact, add the new requirement of medical access assistants and their different role; (B) to give employees a specific number to identify the MPN s/he is using especially to follow up on MPN problems; (C) to include the new statutory requirements of the new applicant entity, the MPN website, and the provider listing

web address, as well as to clarify the information needed to access provider listings and to clarify the MPN applicant's responsibilities to affirmatively update the listings on a quarterly basis and respond to reported inaccuracies within a shorter time frame to ensure more accurate provider listings; (D) to remind employees that medical access assistants are available for scheduling assistance; (F) to conform the reference to MPN geographical area as a defined term; (H) to clarify how medical access assistance can help; (L) to clarify and reduce confusion over the MPN Independent Medical Review ("IMR") process which is different than the non-MPN IMR process; (M) and (N) to be clear and consistent in requiring all MPN notifications to be provide in at least English and Spanish.

The proposed new text for subdivision (b) sets forth the requirements for a notice to be sent when MPN coverage ends for an employee. Subdivision (b) clarifies why the notice is being sent, which employees should receive the notice and in which language(s); (1) clarifies when the notice must be provided and what information needs to be in the notice to properly inform the worker that coverage is ending, how the end of coverage impacts the worker, who to contact if the worker has questions and what rights the worker has to treatment after coverage ends.

Subdivision (b)(2) offers a model notice that can be used to make notice compliance easier and (3) clarifies the parameters for electronic distribution of the notice; and (4) clarifies that any pending MPN Independent Medical Review will end with the employee's coverage under the MPN and will make the resolution of those treatment disputes moot.

The new subdivision (c), which is the original subdivision (g) re-lettered, clarifies that it is referring to the MPN IMR process, and what that process entails by referencing the applicable section that explains the MPN IMR process and requires the IMR notification to be in English and Spanish. The last sentence regarding the language requirement is deleted as unnecessary because this requirement is stated in the referenced IMR section.

Necessity:

The amendments to subdivision (a) are necessary to make the MPN process more efficient and to reduce costs by streamlining the notice requirements and to incorporate references to the new statutory changes and requirements. The changes to remaining notice requirements in subdivision (a) are made to reduce common notification mistakes, facilitate better compliance and ensure better access to MPN providers.

The proposed notice requirements in amended subdivision (b) which apply when an employee is no longer covered under an MPN, are necessary to ensure that the worker knows when to stop using the specified MPN, who to contact if s/he has questions about what to do, and what her/his rights are after MPN coverage ends.

The changes to subdivisions (b)(4) and (c) are necessary to reduce current confusion over the use of the MPN and non-MPN IMR processes, which apply under different circumstances and the clarification is needed to ensure that the public properly follows the correct IMR process.

Section 9767.13. Denial of Approval of Application; Re-Evaluation.

Specific Purpose:

This section sets forth the parameters for denial of approval of an MPN by the Administrative Director and the process for appeal of the Director's decision.

The section title and subdivision (a) is amended to reflect the new statutory requirement for reapprovals. Subdivision (a)(1) is revised to more accurately state that a corrected application must be submitted after denial; (d)(2) is revised for clarity and accuracy to rescind a disapproval notice and to distinguish this action from the revocation process set forth in section 9767.14; and subdivision (f) is amended to conform to the new statutory requirement for appeals to be directly submitted to the Workers' Compensation Appeals Board ("WCAB").

Necessity:

The changes to this section are necessary to incorporate new statutory requirements for reapprovals and appeals to the WCAB, as well as to ensure consistency of treatment for approvals and reapprovals and a clearer understanding of the regulatory requirements to facilitate better compliance.

Section 9767.14. Suspension or Revocation of Medical Provider Network Plan; Hearing.

Specific Purpose:

This section sets forth the parameters for suspension or revocation of an MPN and the reevaluation and appeal of the Administrative Director's decision.

The title of this section and subdivision (a) is amended to include the new statutory authority to place an MPN on probation. The following subdivisions have been renumbered and amended as follows: (a)(3) is amended to include the new requirement for reapproval to ensure consistency of treatment; (a)(6) is added to specifically clarify that a failure to meet MPN eligibility requirements will be considered an actionable violation and what the consequence of an MPN applicant losing eligibility status would be, including but not limited to suspension and revocation of the MPN if the violation is not cured; (a)(7) is added to clarify that failure to be responsive to the Administrative Director is also a violation that may result in probation, suspension or revocation.

Subdivision (b) is amended to use a more accurate term, "violations" instead of "deficiencies," and to include the new authority to place MPNs on probation if warranted. Subdivision (c) is amended to reflect this new authority for placing an MPN on probation and subdivision (d)(2) replaces "revoking" with "rescinding" to be more accurate and consistent with prior proposed regulatory changes; subdivision (f) is amended to comply with the new statutory requirement for appeals to be directly submitted to the Workers' Compensation Appeals Board.

Necessity:

These amendments are necessary to ensure the regulations conform to the new statutory changes, particularly with respect to the Administrative Director's enforcement authority and appeal process. The other clarifying changes are necessary to give more notice of what violations may result in actions taken by the Administrative Director to promote better compliance with the regulations.

Section 9767.15. Compliance with Permanent MPN Regulations.

Specific Purpose:

This section sets forth the grandfathering requirements for MPN compliance with the permanent regulations that went into effect on September 15, 2005.

The title is amended to update the language to the current regulations and to include the process for reapproval, which is added to this section.

The original text of subdivision (a)-(c) is deleted as it is no longer applicable to most MPNs which have become compliant with the permanent regulations. The proposed text to subdivision (a) is intended to ensure all MPNs are compliant not only with the permanent regulations, but with the current regulations. The intent of a year-long grandfathering clause is to give the remaining MPNs some flexibility in complying with the current regulations.

The proposed text to subdivision (b) sets forth the new reapproval requirements and process. Proposed subdivisions (1) and (2) clarify when the approval period begins for MPNs to determine the reapproval filing deadline; subdivisions (3) and (6) clarify that review of reapprovals will be consistent with review of new applications; subdivisions (4) and (5) clarify the information required to be submitted in a reapproval application, and subdivision (7) clarifies the potential consequences of failure to comply with the reapproval requirements.

Necessity:

The amendments to this section are necessary to make the section applicable to the current regulations and to incorporate the new statutory requirement of reapprovals. Requiring compliance with the most current regulations will help ensure that MPNs are working properly and providing the necessary treatment to injured workers.

Section 9767.16. Notice to Employee Upon Termination, Cessation of Use, or Change of Medical Provider Network

Specific Purpose:

This section sets forth the requirements for notice to employees when an MPN is terminated, ceases to be used or when there is a change of MPN.

The section title is amended to reflect the new subject matter of the section, "Medical Provider Network Complaints."

The original text is deleted in its entirety and replaced by the requirements and procedures for submitting an MPN complaint.

Subdivisions (a)(1)(A) – (F) set forth the requirements for a written complaint to the MPN to ensure that a complainant gives the MPN sufficient information for the MPN to respond to the complaint.

Subdivisions (a)(2) and (3) clarify when the complaint is deemed to be received by the MPN and the time frame for the MPN to respond to a complaint. These amendments ensure an MPN responds to a complaint within a reasonable time and gives the MPN a reasonable period to investigate, remedy or deny an alleged violation. The requirement for a written response is intended to ensure that the complainant receives a response.

Subdivisions (b) and (b)(1) clarify the procedure to file a written complaint with DWC if the MPN's actions are insufficient to address the complaint within 30 days. This allows the MPN a reasonable amount of time to address a complaint and remedy valid violations before DWC gets involved. The expedited complaint filing process is included to address more serious and time-sensitive violations that impact the health of an injured worker which may require DWC involvement to address.

Subdivision (b)(2) clarifies that the Administrative Director will only investigate credible complaints and reduce the administrative burden of investigating frivolous complaints.

Subdivision (b)(2)(A) authorizes the Administrative Director to request additional information from either the MPN or the complainant to ensure that the Director has the information necessary to adequately investigate the complaint and gives the respondent a reasonable period of time to produce the additional information.

Subdivision (b)(3) clarifies the potential actions the Administrative Director may take if a complaint investigation confirms a violation and that the MPN will have notice of such actions.

Necessity:

These regulatory provisions are necessary to implement the new complaint process mandated by Labor Code section 4616. The requirement for a complaint to be made to an MPN first before a complaint can be filed with DWC is necessary to address due process concerns that an MPN has adequate notice and opportunity to respond to complaints against the MPN. Also, the requirements ensure the Administrative Director is involved only when necessary and is provided adequate information to properly investigate the complaint.

Section 9767.16.5. DWC Medical Provider Network Complaint Form 9767.16.5.

Specific Purpose:

This new section provides a complaint form to be completed by any person seeking to file an official complaint with DWC.

The form contains identifying information regarding the complainant and identifying information regarding the MPN to ensure adequate information is provided to contact the complainant and the MPN. The form requires specific information regarding the alleged MPN violation, which reflect the information that is required by regulation to be provided in a complaint against an MPN.

Necessity:

This form is necessary to ensuring that complaints submitted to the Administrative Director have the basic information necessary to adequately investigate and follow up on the complaint. It also makes the complaint submission process easier and more efficient to submit and investigate.

Section 9767.17. Petition for Suspension or Revocation of a Medical Provider Network.

Specific Purpose:

This new section sets forth the requirements, process and time frames to file a Petition to Suspend or Revoke a Medical Provider Network.

Subdivision (a) is added to clarify who can file a petition and the bases on which a petition can be filed to suspend or revoke an MPN. Subdivision (a)(1) is included to reflect the fact that the most common basis for MPN revocation at this time is when an MPN applicant loses its eligibility status and can no longer have an MPN. Subdivision (a)(2) addresses more serious provider access and network adequacy concerns on a systemic basis.

Subdivision (b) is added to clarify that provider inclusion in or exclusion from an MPN is not a valid basis for a petition against an MPN, as the MPN applicant has sole authority to select the providers in its MPN.

Subdivision (c) is added to clarify the process and requirements for filing a petition to ensure that the Administrative Director has adequate information to review a petition and that the MPN has an adequate opportunity to respond.

Subdivision (d) is added to establish a reasonable period of time for an MPN to respond to a petition, to give an opportunity for the MPN to provide any additional information to support its position, and to ensure the complainant receives a copy of the MPN's response.

Subdivision (e) is added to clarify that the Administrative Director can request additional information from either party to ensure that the Director has the information necessary to adequately review the petition and gives the respondent a reasonable period of time to produce the additional information.

Subdivision (f) is added to clarify the time frame for the Administrative Director's decision on the petition and what the decision will address.

Subdivision (g) is added to give the MPN notice that if a violation is found, the Administrative Director may take other administrative enforcement actions and what they may be.

Necessity:

These regulatory provisions are necessary to implement the third-party petition process for MPN suspension or revocation mandated by the amendments to Labor Code section 4616. The bases for the petition in subdivision (a) are necessary to limit petitions to more serious violations of the regulations that could justify suspension or revocation of an MPN. Subdivision (b) is necessary to be clear that common complaints over provider retention in an MPN is not a valid basis for a petition due to the statutory right given to MPN applicants to determine the providers in its MPN. Subdivisions (c)-(e) ensures the Administrative Director receives adequate information to review the petition and that the MPN has been afforded due process for notice of the petition and an opportunity to respond. Subdivisions (f) and (g) are necessary to give the petitioner and MPN notice of what to expect from the Administrative Director in response to the petition.

Section 9767.17.5. DWC Petition for Suspension or Revocation of a Medical Provider Network Form 9767.17.5.

Specific Purpose:

This section provides a petition form for any person seeking to petition for suspension or revocation of an MPN.

Part A of the form contains identifying and basic information regarding the petitioner, the MPN and the basis for the petition, to ensure the Administrative Director has adequate information to contact the complainant and the MPN and be informed of the details of the basis of the petition. A verification is required to ensure accuracy.

Part B is the section of the form for the MPN to respond to the petition and ensures the MPN has an opportunity to respond and that the Administrative Director has information from both sides to make an informed decision on the petition. A verification is required to ensure accuracy. Proof of service helps ensure the petitioner is informed of the MPN's response.

Necessity:

This form is necessary to ensure that the Administrative Director has the information needed to adequately review the petition and that the MPN has been afforded due process through notice and an opportunity to respond. The form also is necessary to ensure petitioners engage in the petition process in a manner consistent with the regulatory requirements and makes the petition process easier and more efficient.

Section 9767.18. Random Reviews.

Specific Purpose:

This new section sets forth the parameters and requirements for random reviews of MPNs by the Administrative Director.

Subdivision (a) sets forth the scope of the random review; subdivision (a)(1) clarifies the limit on the number of random reviews an MPN may be subject to in a two-year period; subdivision (a)(2) sets forth the process that will be used to initiate a random review and the information that may be requested; subdivision (a)(3) sets forth the time frame within which an MPN must respond to a random review request; subdivision (a)(4) sets forth and gives notice that if a regulatory or statutory violation is found, the Administrative Director potentially may take enforcement actions to bring the MPN into compliance.

Necessity:

This section is necessary to implement the new statutory authority provided to the Administrative Director to conduct random review of MPN as an enforcement mechanism. The specific details of the random review process are necessary to give the MPN sufficient information to prepare for random reviews and to understand what is necessary to comply with the process and the potential consequences if violations are found.

Section 9767.19. Administrative Penalty Schedule; Hearing.

Specific Purpose:

This new section sets forth the penalties for specific regulatory violations and the process for appealing penalties.

Subdivision (a)(1)(A) through (G) proposes penalties for some of the more common and critical application filing violations, including the failure to file when there is an MPN or MPN applicant name change, a change in MPN applicant eligibility, a change in MPN liaison or authorized individual, a material change in employee notification materials, any other material modifications, a failure to file a timely reapproval or required geocoded provider maps. These penalties help ensure DWC is informed of critical changes to an MPN to facilitate regulatory oversight of MPNs.

Subdivision (a)(2)(A) through (D) proposes penalties for notice violations, which impact a worker's ability to properly use an MPN, including how an injured worker uses the MPN to access medical treatment, and also whether or not the worker is still covered under an MPN or has the right to free choice of physician after 30 days.

Subdivision (a)(3)(A) through (G) concerns penalties for network access violations for failing to do the following: ensure affirmative quarterly updates of the provider listings; provide 30-day

updates for reported inaccuracies in the provider listings; meet the access standards in a specific location; respond to MPN access assistant calls; ensure timely appointments are scheduled; and provide a minimum regional area provider listing. These penalties are important to ensure injured workers have accurate, timely and adequate access to the MPN provider network to obtain necessary medical treatment.

Subdivision (a)(4) concerns penalties for failure to respond to the Administrative Director's requests for information or documentary evidence to encourage responsiveness when the Director is reviewing compliance.

Subdivision (b) provides clarity on the process for responding to a violation and that the process is consistent with the probation, suspension, and revocation processes.

Subdivision (c) provides MPN applicants an opportunity to mitigate penalties upon a showing of good faith attempts to address the violations, responsiveness of the MPN, frequency of violations, history of violations, medical consequences to a worker, and any other extraordinary circumstances that would be applicable.

Subdivisions (d), (e) and (f) detail a re-evaluation process with the Administrative Director if the MPN disagrees with the penalty assessment, which is consistent with the re-evaluation process for other key decisions by the Administrative Director with respect to MPNs.

Subdivision (g) incorporates the new statutory requirement for appeal of the Administrative Director's final decision to the WCAB.

Necessity:

The addition of this section is necessary to carry out the additional enforcement authority provided by SB 863 to the Administrative Director to ensure more compliance with the MPN statutes and regulations. Specific penalties are intended to target the more critical regulatory requirements to ensure that proper and sufficient access to medical treatment is provided to workers. The process for allowing an MPN to cure or mitigate penalties is to provide fair treatment of the MPNs and the re-evaluation and appeal process allows an MPN to have due process in disputing any penalty.