



## California Workers' Compensation Institute

1111 Broadway Suite 2350, Oakland, CA 94607 • Tel: (510) 251-9470 • Fax: (510) 763-1592

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VIA E-MAIL – DWCRules@hq.dir.ca.gov

Maureen Gray, Regulations Coordinator  
Department of Industrial Relations  
Division of Workers' Compensation  
1515 Clay Street, 18th Floor  
Oakland, CA 94612

**Re: CWCI 3rd 15-Day Comment - Additional Modifications to Proposed MPN Regulations  
Sections 9767.1 - 9767.19**

Dear Ms. Gray:

These written 15-day comments on additional modifications to proposed revisions to the Medical Provider Network (MPN) regulations are presented on behalf of the California Workers' Compensation Institute (CWCI) members. Institute members include insurers writing 70% of California's workers' compensation premium, and self-insured employers with \$42B of annual payroll (24% of the state's total annual self-insured payroll).

Insurer members of the Institute include ACE, AIG, Alaska National Insurance Company, AmTrust North America, Chubb Group, CNA, CompWest Insurance Company, Crum & Forster, Employers, Everest National Insurance Company, Fireman's Fund Insurance Company, The Hartford, ICW Group, Liberty Mutual Insurance, Pacific Compensation Insurance Company, Preferred Employers Group, Springfield Insurance Company, State Compensation Insurance Fund, State Farm Insurance Companies, Travelers, XL America, Zenith Insurance Company, and Zurich North America.

Self-insured employer members are Adventist Health, Agilent Technologies, Chevron Corporation, City and County of San Francisco, City of Santa Ana, City of Torrance, Contra Costa County Schools Insurance Group, Costco Wholesale, County of San Bernardino Risk Management, County of Santa Clara Risk Management, Dignity Health, Foster Farms, Grimmway Enterprises Inc., Kaiser Permanente, Marriott International, Inc., Pacific Gas & Electric Company, Safeway, Inc., Schools Insurance Authority, Sempra Energy, Shasta County Risk Management, Southern California Edison, Sutter Health, University of California, and The Walt Disney Company.

## **Introduction**

### **Common Industrial Injuries**

Labor Code section 4616(a) requires that MPNs include an adequate number and type of physicians to treat common injuries. The following table lists the most common California workers' compensation injuries identified by CWCI's ICIS database, with data updated through 2013.

**Table A**

<b>Common WC Injuries</b>	<b>2010</b>	<b>2011</b>	<b>2012</b>	<b>2013</b>	<b>2010 - 2013</b>
Minor wounds and injuries	21.1%	21.3%	20.8%	<b>21.5%</b>	21.2%
Medical back problems w/out spinal cord involvement	19.0%	18.7%	18.7%	<b>19.0%</b>	18.8%
Sprain of shoulder, arm, knee, lower leg	14.2%	14.2%	14.5%	<b>15.6%</b>	14.5%
Ruptured tendon, tendonitis, myositis, bursitis	5.7%	5.8%	5.9%	<b>5.9%</b>	5.8%
Joint pain	4.6%	5.0%	5.3%	<b>5.1%</b>	5.0%
Wound or fracture of shoulder, arm, knee, lower leg	3.2%	3.3%	3.2%	<b>3.5%</b>	3.3%
External eye disorders	2.9%	2.9%	2.7%	<b>2.7%</b>	2.8%
Trauma of fingers, toes	2.4%	2.3%	2.5%	<b>2.7%</b>	2.5%
Total	73.2%	73.5%	73.6%	<b>76.0%</b>	73.9%

The list of common injuries in Table A is relevant for most MPNs, including those used by insurers that provide statewide, homogenous coverage.

### **Physicians Necessary to Treat Common Injuries**

The latest version of the Administrative Director's proposed MPN regulations continues to require that networks adhere to the "specialists' standards" under threat of severe administrative penalties. Labor Code section 4616(d) describes the right of employers and insurers to exclusively determine the members of their networks. By requiring MPNs to be composed of "physician specialists" rather than "types of physicians," the regulations conflict with the statutory standard in Labor Code section 4616(a)(1). By referring specifically to the statutory definition of physician, the Legislature unmistakably and expressly mandated that the networks contain "an adequate number and type of physicians" to treat common injuries experienced by injured employees. Simply stated, in any given area there are many more generalists than there are specialists. Generalists appropriately treat the great majority of the common workers' compensation injuries in California (see Table A). Basing network staffing standards on specialists alters the ability of networks to function as the Legislature intended, lowers the quality of the network, and impedes network operations.

### **Access Standards**

Labor Code section 4616(a)(2) directs the Administrative Director to consider the needs of areas in which health facilities are at least thirty miles apart. According to Health and Safety Code section 1250, a "health facility" is any facility, place, or building that is organized, maintained, and operated for the diagnosis, care, prevention, and treatment of human illness. The offices of primary treating physicians, hospitals, providers of emergency health and clinics are all health facilities. The Institute believes that the MPN access standards for physicians and health facilities should cover 30 miles and 60 minutes instead of 15 miles and 30 minutes so that they are consistent with the thirty-mile benchmark set by statute.

## Physician Acknowledgements

As currently written, the regulation in section 9767.5.1 impermissibly enlarges the scope of the statute by failing to limit the acknowledgement requirement to those written at the time of entering into or renewing a network agreement as Labor Code section 4616(g) requires.

## Penalties

While the enabling statute clearly allows the Administrative Director to enforce the statutory provisions by implementing regulations with administrative penalties, the Institute is concerned that the overly aggressive penalty structure will cause legitimate MPNs to drop out of the workers' compensation system and prevent medical networks from using the statutory tools that the Legislature provided to achieve the highest quality of care.

## Other

- **Medical assistant** – exceeds the specific statutory requirements by adding requirements for logs, appointment confirmation, voice messaging, faxing, messaging, and availability in English and Spanish
- **Interpreter** – restricts MPN interpreters to certified interpreters instead of to qualified interpreters as specifically permitted by Labor Code section 4600(f), Health and Safety Code section 1367.04, and Government Code section 11435.40
- **Provider coding** – requires unnecessary provider coding in the MPN plan provider file and MPN provider directory listing
- **MPN roster** – requires an unnecessary identifier in the MPN roster for secondary treating physicians who are seen by referral only.

The Institute's prior comments and the recommendations below are intended to provide the flexibility necessary to allow medical networks to provide injured workers with the best medical care as promptly as possible, within or outside the network. Recommended specific modifications are indicated by underline and ~~strikethrough~~, and discussion by *italics*.

## Regulations

### Section 9767.1 Medical Provider Networks – Definitions:

(a)(7) "Entity that provides physician network services" means a legal entity employing or contracting with physicians and other medical providers or contracting with physician and ancillary provider networks, and may include but is not limited to third party administrators and managed care entities, to deliver medical treatment to injured workers on behalf of one or more insurers, self-insured employers, the Uninsured Employers Benefits Trust Fund, the California Insurance Guarantee Association, or the Self-Insurers Security Fund, and that meets the requirements of this article, Labor Code 4616 *et seq.*, and corresponding regulations.

### **Discussion**

*The addition of "or contracting with physician network" is helpful, but adding "and ancillary provider" is needed for clarity and to avoid disputes over whether entities that contract with ancillary providers are meant to be excluded from the definition.*

(a)(15) "Medical Provider Network Identification Number" means the unique number assigned by DWC to a Medical Provider Network upon approval or within ~~ninety-fifteen (9015)~~ days of the effective date of these regulations and used to identify each approved Medical Provider Network.

### **Discussion**

*Assigning a Medical Provider Network Identification Number to each existing MPN is necessary and helpful. The Institute recommends issuing these numbers as soon as possible, but within fifteen (15) days of the effective date of these regulations. The identification number is required on all MPN notifications and all correspondence with the DWC, including on the Notice of Medical Provider Network Plan Modification Form on which changes must be submitted within timeframes as short as fifteen (15) business days of a change or even before some changes occur.*

## **Section 9767.3 Requirements for a Medical Provider Network Plan**

(c) All MPN applicants shall complete the section 9767.4 Cover Page for Medical Provider Network Application or Plan for Reapproval with an original signature, and an MPN Plan meeting the requirements of this section ~~or the optional MPN Plan Application form~~. Two copies of the completed, signed Cover Page for Medical Provider Network Application or Plan for Reapproval and the complete MPN Plan shall be submitted to the DWC in compact discs or flash drives in word-searchable PDF format. The hard copy of the completed, signed original Cover Page for Medical Provider Network Application or Plan for Reapproval and the complete MPN Plan shall be maintained by the MPN applicant and made available for review by the Administrative Director upon request. Electronic signatures in compliance with California Government Code section 16.5 are accepted.

### **Discussion**

*Because there is no optional MPN Plan Application form, this phrase should be deleted.*

(c)(2) The network provider information shall be submitted in a compact disc(s), or a flash drive(s), and the provider file shall have only the following ~~eight~~ seven columns. These columns shall be in the following order: (1) physician name (2) ~~specialty type~~ (3) physical address (4) city (5) state (6) zip code (7) ~~and~~ any MPN medical group affiliations ~~and (8) an assigned provider code for each physician listed. If a physician falls under more than one provider code, the physician shall be listed separately for each applicable provider code. The following are the provider codes to be used: primary treating physician (PTP), orthopedic medicine (ORTHO), chiropractic medicine (DC), occupational medicine (OCCM), acupuncture medicine (LAC), psychology (PSYCH), pain specialty medicine (PM), psychiatry (PSY), neurosurgery (NSG), family medicine (GP), neurology (NEURO), internal medicine (IM), physical medicine and rehabilitation (PMR), or podiatry (DPM). If the specialty does not fall under any one of the previously listed categories, then the specialty shall be clearly identified in the specialty column and the code used shall be (MISC).~~ By submission of its provider listing, the applicant is affirming that all of the physicians listed have been informed that the Medical Treatment Utilization Schedule ("MTUS") is presumptively correct on the issue of the extent and scope of medical treatment and diagnostic services and have a valid and current license number to practice in the State of California.

### **Discussion**

*Deleting the occupational therapy medicine (OT) "provider code" is helpful, however since none of the "provider codes" in the second sentence are necessary, the Institute believes they must be removed. They are not "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,” and do not “streamline the MPN application process to make the application process easier for applicants, and to improve consistency, clarity and efficiency of review” as stated in the initial statement of reasons. The physician’s specialty is already called for in column (2). No reason for the codes has been provided, and none is evident. No definitions or descriptions are provided for the provider code names except for “occupational medicine,” which is defined in section 9767.1(a)(21) as “the diagnosis or treatment of any injury or disease arising out of and in the course of employment,” which surely is what every physician in the network provides.*

*See the comment on physician type versus physician specialty in the introduction as well as in prior comments on these proposed regulations.*

(d)(1) Type of Eligible MPN applicant. Provide a description of the entity’s qualifications to be an eligible MPN Applicant. Attach proof of MPN eligibility. If a self-insured employer or joint powers authority, attach a copy of the current valid certificate of self-insurance. For an insurer, attach a current valid certificate of authority. For an entity providing physician network services, attach documentation of current legal status including, but not limited to, legal licenses or certificates and affirm that the entity employs or contracts with physicians and other medical providers or contracts with physician **and ancillary provider** networks.

#### **Discussion**

*The addition of “and ancillary provider” is necessary to be consistent with the modification to the definition of “entity that provides physician network services” in section 9767.1(a)(7).*

(d)(8)(E) State the web address or URL to the roster of all **primary** treating physicians in the MPN. **Affirm that secondary treating physicians who are counted when determining access standards but can only be seen with an approved referral are clearly designated “by referral only”.**

#### **Discussion**

*According to section 9767.1(a)(33), “treating physician means any physician within the MPN applicant’s medical provider network other than the primary treating physician who examines or provides treatment to the employee, but is not primarily responsible for continuing management of the care of the employee.” Unless the Administrative Director intends to include only secondary treating physicians in the roster, the Institute recommends modifying the subject of the definition in section 9767.1(a)(33) to “**secondary** treating physician.” This change will be consistent with section 9785 and will provide the means to clarify which physician is meant in these regulations. If the Administrative Director decides not to modify that definition, the Institute recommends adding “primary” as indicated.*

*The Institute supports the deletion of the requirement to affirm that the roster indicates if a physician is not currently taking new workers’ compensation patients, but also believes it is neither appropriate nor necessary to indicate physicians on the roster as “secondary treating physicians” who are seen “by referral only.” An MPN physician may be selected to serve as the primary treating physician (PTP), or an injured employee may be referred by a PTP to that same physician for testing or treatment.*

*We believe it is best that a “by referral only” designation on the roster remains optional. If not, clarification is needed that the designation is only required if the physician never provides services without a referral, otherwise there are sure to be disputes and litigation over whether the network is out of compliance when a network physician requests a*

*referral and the roster does not indicate “by referral only.” Starting this year, injured employees will have an easier time getting medical appointments since they can get the help of a medical access assistant in finding and securing appointments with available appropriate physicians.*

## **Section 9767.12 Employee Notification**

(a)(2)(B) A description of MPN services as well as the MPN’s web address for more information about the MPN and the web address that includes a roster of all primary treating physicians in the MPN;

### **Discussion**

*See the discussion on 9767.3(d)(8)(E) regarding definition of treating physician. If the Administrative Director decides not to modify the subject of the definition in section 9767.1(a)(33) to “secondary treating physician,” the Institute recommends adding “primary” as indicated. Suggest changing “roster” to “listing” for consistency.*

## **Section 9767.15 Compliance with Current MPN Regulations; Reapproval**

(b)(1) For MPNs approved prior to January 1, 2014, the four-year date of approval begins from the most recent approved filing prior to January 1, 2014. MPNs most recently approved on or before January 1, 2011-2012 will be deemed approved until December 31, 2014-2015. Reapprovals Plans for reapproval for these MPNs shall be filed no later than June 30, 2014 2015.

### **Discussion**

*If the struck out items are typographical errors, they can be easily corrected as indicated above. Under the timelines in Government Code section 11343.4, it appears that revised MPN regulations will not be effective before October 1, 2014; therefore it will not be possible for such an MPN to prepare and submit a plan for reapproval by June 30<sup>th</sup> 2014 as required by the revised regulation.*

### **Alternative Recommendation:**

(b)(1) For MPNs approved prior to January 1, 2014, the four-year date of approval begins from the most recent approved filing prior to January 1, 2014. MPNs most recently approved on or before January 1, 2011 will be deemed approved until December 31, 2014. Reapprovals for these MPNs shall be filed no later than June 30, 2014. Plans for reapproval for these MPNs shall be filed no later than six months prior to the expiration of an MPN’s four-year approval date or no later than six months after the effective date of the regulations, whichever is later.

### **Alternative Discussion**

*Under the timelines in Government Code section 11343.4, it appears that revised MPN regulations will not be effective before October 1, 2014; therefore it will not be possible for such an MPN to prepare and submit a plan for reapproval by June 30<sup>th</sup> 2014 as required by the revised regulation. The recommended alternative language will correct the impossible timeline by providing a minimum of six month in which to prepare and file a new complete application for reapproval.*

Thank you for the opportunity to provide these comments. Please contact me for further clarification or if I can be of any other assistance.

Sincerely,

Brenda Ramirez  
Claims and Medical Director

BR/pm

cc: Christine Baker, DIR Director  
Destie Overpeck, Acting Administrative Director  
Dr. Rupali Das, Executive Medical Director  
DWC Attorney John Cortes  
CWCI Claims Committee  
CWCI Medical Care Committee  
CWCI Legal Committee  
CWCI Regular Members  
CWCI Associate Members