



California Workers' Compensation Institute
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March 5, 2025

VIA E-MAIL – dwcf Forums@dir.ca.gov

Division of Workers' Compensation
PO Box 420603
San Francisco, CA 94142
Attn: DWC Forums

Re: Proposed Changes to the Medical Provider Network Regulations

Dear Forum Director:

These comments on proposed modifications to the text of rules related to the Medical Provider Network Regulations are presented on behalf of members of the California Workers' Compensation Institute (the Institute). Institute members include insurers writing 76% of California's workers' compensation premium, and self-insured employers with \$92B of annual payroll (30.3% of the state's total annual self-insured payroll).

Insurer members of the Institute include AF Group/CompWest, AIG, AmTrust North America, Berkshire Hathaway Homestate Companies, CHUBB, CNA, CopperPoint Insurance Companies, Crum & Forster, EMPLOYERS, Everest, GUARD Insurance Companies, The Hanover Insurance Group, The Hartford, ICW Group Insurance Companies, Liberty Mutual Insurance, North American Casualty Company, Pie Insurance, Preferred Employers Insurance, Republic Indemnity, Sentry Insurance, State Compensation Insurance Fund, Travelers, WCF Insurance, Zenith Insurance Company, and Zürich North America.

Self-insured employer members include Albertsons' Companies, Alliance of Schools for Cooperative Insurance Programs, BETA Healthcare Group, California Fair Services Authority, California Joint Powers Insurance Authority, California State University Risk Management Authority, Chevron Corporation, City and County of San Francisco, City of Los Angeles, City of Pasadena, Costco Wholesale, County of Los Angeles, County of Santa Clara Risk Management, Dignity Health, Disneyland Resort, East Bay Municipal Utility District, Grimmway Farms, Kaiser Permanente, Loma Linda University Health Risk Management, North Bay Schools Insurance Authority, Pacific Gas & Electric Company, San Diego Gas & Electric Company, Schools Insurance Authority, Shasta County Risk Management, Shasta-Trinity Schools Insurance Group, Southern California Edison, Southern California Gas Company, Special District Risk Management Authority, Sutter Health, United Airlines, and the University of California.

The Institute offers the following comments:

Section 9767.1(a)(2):

The proposed definition for “Contracting Agent” references *a preferred provider organization as defined in title 5 California Code of regulations section 4610*. Title 5 California Code of Regulations section 4610 concerns the UPC.

The Institute recommends removal of this incorrect reference.

Section 9767.1(a)(31):

The proposed definition for “Remote Service” references services delivered by non-physician providers, but includes activities performed by physician providers including diagnosis and consultations.

The Institute recommends eliminating reference to services generally performed by physicians.

Section 9767.2(h):

The Institute recommends the following language for clarity.

An MPN applicant may choose to terminate an approved MPN that was implemented and is no longer in use by transmitting a letter signed by the MPN applicant’s authorized individual to the Administrative Director. The termination letter shall include the name and identification number of the MPN, the termination effective date, and affirmation that all covered employees will be notified of the termination and of the continuity of care plan prior to the termination of the MPN.

Section 9767.3(d)(8)(E):

This section requires that *If the treating physician is providing telehealth services the geographic service area in California to be serviced by the telehealth provider shall be provided* and indicate if telehealth only is being offered by the physician.

To avoid additional administrative burden, the Institute recommends that the geographic service area for a telehealth provider be required only if the provider is limiting provision of telehealth services to a subset of California.

Section 9767.3(d)(8)(H):

This section is inconsistent. It states that *Telehealth only providers shall not be considered in the access standards calculation for the MPN application as they do not meet the requirements of Business and Professions code section 2290.5. A judge or the Workers’ Compensation Appeals Board may consider telehealth only providers in a determination as to access standards.*

The Institute recommends that telehealth only providers be considered in the access standards calculation for the MPN application, since their presence may be considered by a WCJ or the WCAB. This is a particular concern in rural areas that are currently underserved by medical providers. We also request clarification of the contention that telehealth only providers do not meet the requirements of Business and Professions code section 2290.5

Section 9767.3(d)(8)(J):

As recommended in section 9767.3(d)(8)(E), to avoid additional administrative burden, we suggest that the geographic service area for an ancillary telehealth provider be required only if the provider limits the provision of telehealth services to a subset of California.

Section 9767.3(d)(8)(U):

The Institute request clarification of whether the requirement that the *contract between the contracting agent, employer or carrier and the health care provider or health facility provides for an express agreement as to the complete list of the employers, contracting agents and insured that are subject to the agreement and rate under the contract* applies to all employers whether insured or self-insured, and to all carriers. The relationships between employers, carriers and contracting agents are fluid. Requiring contractual changes whenever these relationships change would be untenable.

This language appears to be misplaced in a section that addresses the requirements of the MPN plan. *The medical provider network that provides the Complete Employee Notification to the injured worker must also inform the participating provider of that medical provider network of all notice requirements of Labor Code section 4609.*

Section 9767.5(d):

This section requires *at least 3 primary treating physicians from a different medical practice group*.

Labor Code section 4616(a)(2) states that *the administrative director shall consider the needs of rural areas, specifically those in which health facilities are located at least 30 miles apart and areas in which there is a health care shortage*. Requiring at least 3 primary treating physicians from a different medical practice group may adversely impact access in rural areas. The Institute recommends removing that language.

Section 9767.5(h), Section 9767.5(h)(2):

The new language in these sections is repetitive. The Institute recommends deleting the proposed new language from section 9767.5(h)(2).

Section 9767.6(h):

The Institute requests further clarification of what is considered an unreasonable delay in authorizing treatment, and the basis for a set penalty of \$1000 for any unreasonable delay, given Labor Code section 5814(a). It is also unclear what would constitute a failure to act by the MPN that would result in an authorization delay. It appears the references to Labor Code section 5814(e) and section 9767.19(a)(1)(G) are misplaced.

Section 9767.8(d):

The Institute supports the elimination of a change in MPN liaison from the list of events requiring a plan modification.

Section 9767.12(a)(2)(B):

The addition of the requirement to include *information about how to obtain a copy of MPN employee notification* in this section which addresses the content of the MPN employee notification seems to be misplaced.

Section 9767.14(a)(9):

This section addresses the MPN status of new claims filed during the period an MPN is suspended. As the claim was never within the MPN, the Institute recommends the removal of “back” from the last sentence.

Section 9767.19(a)(1)(I):

Section 9767.19(a)(1) addresses MPN filing requirements with the DWC. Proposed sub-section (I) appears to be misplaced as it involves providing notices to providers.

Section 9767.19(a)(2)(G):

Clarification of what constitutes MPN error or mishandling is necessary. Would this penalty be assessed against the MPN or the MPN applicant?

Section 9767.19(i):

Clarification of the period in which a penalty must be paid or appealed is necessary.

Section 9792.5.16:

As noted in section 9767.1(a)(2), the reference to title 5 California Code of regulations section 4610 is incorrect.

General recommendation:

The proposed regulations frequently add *or claims administrator* to the current text referencing the employer or insurer. For simplicity, the Institute recommends using claims administrator only.

Thank you for the opportunity to comment. Please contact us if additional information would be helpful.

Sincerely,

Sara Widener-Brightwell

Sara Widener-Brightwell, SVP Claims and General Counsel
California Workers' Compensation Institute

SWB/pm

cc: Katrina Hagen, DIR Executive Director
George Parisotto, DWC Administrative Director
CWCI Claims Committee
CWCI Medical Care Committee

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CWCI Associate Members