

ADDENDUM TO FINAL STATEMENT OF REASONS

Division of Workers' Compensation

Subject Matter of Regulations: Medical Provider Networks

REQUEST AND GOOD CAUSE FOR EFFECTIVE DATE UPON FILING WITH THE SECRETARY OF STATE

The proposed Medical Provider Network (MPN) regulations implement statutory changes enacted by Senate Bill 863 (Chapter 363, stats. of 2012, effective January 1, 2013). It is important and necessary that these regulations are effective upon filing with the Secretary of State so that there is clarity and consistency for the public.

In passing Senate Bill 863, the Legislature made substantial revisions to the MPN system to make it more efficient, more effective, and more accessible to injured workers to obtain necessary medical treatment through MPNs. However, these revisions, which became effective on January 1, 2014 for all dates of injury, will not be meaningful without regulatory interpretation. Further, the continuing lack of guidance and defined structure for the SB 863 revisions will result in confusion over the legal requirements, likely resulting in increased litigation and costs for California employers, and possible delays in medical treatment for injured workers. The proposed regulations clearly define the entities who can qualify to have an MPN (including an entity that provides physician network services) and refine the MPN application process to reflect new statutory requirements and facilitate administrative review. The proposed regulatory changes limit MPN approvals and reapprovals to a period of four years and establish the procedures for MPN reapprovals. Again, these regulations provide clarity and guidance for the public in complying with the current MPN statutory mandates.

Injured workers will clearly benefit from an earlier effective date of the regulations. Simply knowing the physicians who are available to provide treatment for an occupational injury is crucial to the success of an MPN and critical in providing efficient, quality care with positive outcomes. In this regard, the proposed regulations provide clarity by streamlining MPN employee notice requirements; unambiguously defining the responsibilities of medical access assistants (those individuals who are to directly assist injured workers in obtaining MPN treatment and response to questions and concerns); and outlining with specificity access standards to better address health care shortages. The proposed regulations further mandate the posting of provider listings on the MPN website, and require quarterly updates of provider listings. Labor Code section 4616(a)(3) mandates that MPNs obtain physician acknowledgments, a mandate that became effective January 1, 2014. The complexities in obtaining physician acknowledgments require guidance provided in these regulations in section 9767.5.1. The continued absence of a regulatory structure will eliminate any confusion regarding MPN obligations and physician availability.

The proposed new MPN regulations address additional methods of enforcement to ensure MPN regulatory compliance. An expedited effective date of the proposed enforcement regulations will benefit injured workers, by clarifying the manner in which disputes can be resolved, and also employers, by setting a clear standard for appropriate conduct. 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; and amend the appeal process for appealing an adverse determination by the Administrative Director. By adopting stringent standards of enforcement, including random audits, formalized complaint forms, and

administrative penalties, the Division will be able to efficiently monitor MPN performance and deter unlawful conduct, thereby ensuring that quality care is promptly given to injured workers. 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 benefits of an expedited effective date of the proposed MPN regulations will outweigh any negative effect on that may occur. The proposed regulations will improve the oversight of MPNs, will result improved medical outcomes, and reduce the frictional cost (litigation) in the provision of benefits to injured workers (through fewer disputes regarding the medical necessity of treatment and the scope of disability, both temporary and permanent.)

SUMMARY IN RESPONSE TO COMMENT CHART

After submission of these proposed regulations for review by the Office of Administrative Law, the Division provides the following summary in response to comment charts to questions raised by that Office.

45 Day Comment Period:

1. Safeway comment on page 204 regarding section 9767.3(d)(8)(L) is partially rejected however there is no explanation why.

Section	Comment	Name of Person Affiliation	Response	Action
9767.3(d)(8)(L)	<p>Commenter recommends the following revised language:</p> <p>Describe how the MPN complies with the access standards set forth in section 9767.5 for all covered <u>injured</u> employees and state the five <u>types of physicians</u> most commonly used <u>specialties for the to treat</u> injured workers <u>for the five most common injuries being covered under the MPN</u>;</p>	<p>Anita Weir, RN CRRN Director, Medical & Disability Management Safeway, Inc. September 30, 2013 Written Comment And Oral Comment</p>	<p>Accept in part. Reject in part: The regulatory provisions will be revised to delete this requirement. The commenter's recommended revised language will not be adopted. ADD: Partially rejected because DWC will not adopt commenter's recommended revised language. However, DWC revised §9767.3(d)(8)(L) to delete the requirement to list the five most common specialties.</p>	<p>§9767.3(d)(8)(L) is revised to delete the requirement to list the five most common specialties based on the common injuries for workers covered under the MPN.</p>

2. Dizenfeld comment of 9/26/13. Comments related to objection C, other than No. 1, do not appear to be addressed in the summaries or responses, also D.

Section	Comment	Name of Person/ Affiliation	Response	Action
9767.3(d)(8)(l)	8CCR 9767.3(d)(8)(l) should be excluded or modified to require the listing of each designated and contract MPN Ancillary provider	Bruce E. Dizenfeld Law Office of Theodora Oringher	Reject: This is a misinterpretation of the current regulations and of the proposed regulations. Many MPNs do not include ancillary services. However, if an MPN includes ancillary service providers then an ancillary service listing must be available to employees covered by the MPN	None.
9767.1(a)(1) 9767.3(c)(3)	MPNs contracting for interpreting services for medical treatment may only contract with individual interpreters that meet the “qualification” standards of LC4600(g), and may not contract with an entity that is not otherwise expressly licensed or qualified by license, certification or registration to	Bruce E. Dizenfeld Law Office of Theodora Oringher	Rejected initially, because DWC was initially concerned with numerous comments received about our ability to include interpreters as an ancillary service provider. DWC partially accepted this comment as changes were subsequently made to ensure that interpreters listed as ancillary service providers be certified pursuant to	Section 9767.3(c)(3) was amended to include “If interpreter services are included as an MPN ancillary service, the interpreters listed must be certified pursuant to section 9795.1.6(a)(2)(A) and (B).”

	deliver “medical services” in the State of California.		section 9795.1.6(a)(2)(A) and (B).	
9767.5(h)	8CCR 9767.5(h) should be modified to ensure that the medical access assistants required to provide patient access assistance in Spanish meet the certification or “qualification” standards for an interpreter imposed under LC 4600(f) and (g).	Bruce E. Dizenfeld Law Office of Theodora Oringher	Reject: MPN medical access assistants must be able to effectively communicate with injured workers. However, an MPN medical access assistant is required to assist workers find and schedule appointments with physicians. This duty is not the same as interpreting complex and sensitive communication between a doctor and patient. Therefore, commenter’s recommendation that MPN medical access assistant’s should meet the certification and qualification standards for interpreter’s under LC4600(f) and (g) is rejected.	None.

3. Connie Harmon comment dated 8/22/2013 does not appear to be in responses. DWC responded to Connie Harmon’s comments in pages 9-17 of the 45-Day Comment Chart and Responses. Connie Harmon also goes by the name Carnelia Harmon.

4. Erin Van Zee regarding 9767.3(d)(8)(G)- DWC’s response does not appear to be responsive. DWC responded to Ms. Van Zee in page 191 of the 45-Day Comment Chart and Responses. DWC adds the following to its response: An employer, at their discretion, may authorize treatment with

ancillary service providers not listed in the MPN. However, if an injured worker needs the services of an ancillary service provider, for example, a physical therapist, and the MPN does not contain PT's in their ancillary service provider listing, then the employer is responsible for providing PT treatment to the injured worker.

5. Coventry Group regarding 9767.3(d)(8)(L). DWC does not explain why the rejected portion was rejected. DWC responded to Lisa Anne Forsythe, Senior Compliance Consultant Coventry Workers' Compensation Services in page 203 of the 45-Day Comment Chart and Responses. With regards to comments pertaining to 9767.5, DWC adds the following to its response on page 216-217 of the 45-Day Comment Chart and Responses: DWC accepts and deletes the requirement to list the five most common specialties based on the common injuries for workers covered under the MPN. However, it rejects commenter's suggestion to aggregate "primary treating provider" into one category. Occupational medicine, family medicine, internal medicine and general practitioners can be listed as a primary care physician or separately in their respective specialties.

First 15-Day Comment Period

1. PacificComp comment by Mark Webb. Issue regarding private cause of action on page 5 of comment. With regard to private causes of action, Labor Code section 4616(b)(5) allows this against MPN's and commenter thinks this is "a very bad idea." DWC addresses this by pointing out our regulations merely follow "the statutory language of establishing a schedule of administrative penalties not to exceed five thousand dollars (\$5,000) per violation." DWC also specifically addressed commenter's concerns regarding geocoding and access standard in our previous response. DWC ADDS: If commenter wishes to abolish a person's right to a private cause of action against an MPN pursuant to Labor Code section 4616(b)(5), then amendment to the Labor Code would be required.

2. Bob Duran. One issue raised is recommendation on certified interpreters including having valid ID Cards with state assigned numbers. The issue of certified interpreters does not appear to be addressed nor does this requirement. DWC initially rejected Mr. Duran's comment during the 45-Day Comment Period because DWC was concerned with numerous comments received regarding DWC's ability to include interpreters as an ancillary service provider. DWC partially accepted this comment as changes were subsequently made to ensure that interpreters listed as ancillary service providers be certified pursuant to section 9795.1.6(a)(2)(A) and (B). Section 9767.3(c)(3) was amended to include "If interpreter services are included as an MPN ancillary service, the interpreters listed must be certified pursuant to section 9795.1.6(a)(2)(A) and (B)."

Third 15-Day Comment Period

1. Comment from Dan Jackle. This comment is not responded to. Mr. Jackle's comments pertain to copy service which is beyond the scope of these regulations.

2. Comment from Mary Cavelieri. This comment is not responded to. Summary of her comments:

a. MPN's contain lists of doctors who do not treat injured workers. Someone needs to clean up these MPN's. DWC response: Reject. The following sections address her concerns: MPN medical access assistant sections 9767.5(h)(1) and (2) along with the new enforcement provisions set forth in sections 9767.16, 9767.17, 9767.18 and 9767.19.

b. MPN doctors are demanding a letter from a claims adjuster for authorization to see the patient and adjuster are refusing or delaying sending this authorization. Reject. Section 9767.5 pertaining to access standards requires at least three physicians be available in an MPN to treat injured workers.

c. Employers are not providing MPN info on how to access the MPN. Reject. Section 9767.12 requires a Complete Employee Notification be provided to all injured workers at the time of injury or at the time care is transferred into the MPN.

d. Some claims adjusters are gamming the MPN by only sending injured workers lists of doctors they carve out of the MPN and leaving out many doctors. Reject. Section 9767.5 pertaining to access standards requires at least three physicians be available in an MPN to treat injured workers. In addition, MPN medical access assistant sections 9767.5(h)(1) and (2) along with the new enforcement provisions set forth in sections 9767.16, 9767.17, 9767.18 and 9767.19 addresses her concerns.

e. MPN's do not have enough and/or doctors of a certain specialty to pick from. Reject. Section 9767.5 pertaining to access standards requires at least three physicians be available in an MPN to treat injured workers.

3. Comment from Michael Bazel. This comment is not responded to. Mr. Bazel's comments pertain to the Medical Treatment Utilization Schedule which is beyond the scope of these regulations.

ALTERNATIVES THAT WILL LESSEN THE IMPACT ON SMALL BUSINESSES

The controversial part of these regulations is the inclusion of interpreter services as ancillary service providers. Small businesses, namely independent interpreters, are concerned that the inclusion of interpreter services as an MPN ancillary service provider will detrimentally affect their business. However, DWC is authorized to make the proposed changes to the MPN regulations that would expressly authorize interpreters to be included in an MPN as ancillary service providers (8 CCR §§ 9767.1 & 9767.3) because Labor Code section 4616 states that an MPN may be established "for the provision of medical treatment to injured workers," and section 4600 describes medical treatment expansively to include all reasonably required services, not limited to physicians. In Guiron v. Santa Fe Extruders (2011) 76 Cal. Comp. Cases 228, the WCAB *en banc* interpreted Section 4600 to include the right to an interpreter as part of medical treatment, and that judicial interpretation was codified in Section 4600(g).

However, throughout this rulemaking process changes were made to the proposed MPN regulations to lessen the impact on interpreters. The most important change was to section 9767.3(c)(3) that incorporated this provision, "If interpreter services are included as an MPN ancillary service, the interpreters listed must be certified pursuant to section 9795.1.6(a)(2)(A) and (B). In addition, the following provision was incorporated into section 9767.3(d)(8)(I) which states, the MPN applicant is confirming that a contractual agreement exists with the ancillary service providers to provide services to be used under the MPN "and that the ancillary services will be available at reasonable times and within a reasonable geographic area to covered employee."

With the addition of these regulatory provisions, interpreters have been assured that MPN's are only allowed to include qualified interpreters that are certified pursuant to section 9767.3(d)(8)(I) and that a minimum standard must be applied in terms of availability and geographic area. Although many interpreters remain concerned, the addition of these regulatory provisions prompted positive comments from interpreters and their representatives.

CHANGES IN REGULATORY TEXT

After submission of these proposed regulations for review by the Office of Administrative Law, the Division made a number of changes to the proposed regulations as suggested by that Office. Those changes include: (1) the reinsertion or correction of underline/strikeout text that was inadvertently omitted from the final regulations submitted to OAL; (2) conforming the language of the regulations to the express statutory mandates; (3) correction to punctuation and grammar; (4) corrections to cross-references located within the regulations; and (5) reinsertion of underline and strikeouts of a Labor Code citation in the Authority and References; (6) insertion of the effective date of these regulations in the physician acknowledgment section; (7) corrections to form headings to indicate they are new forms and are to be published. These changes will not affect the meaning, interpretation or implementation of the regulations as the meanings of the regulations are apparent from the text of the regulations.

The changes are as follows:

1. Section 9767.1:
 - a. Page 3, (19), Stricken (6) should be (7).
 - Cross reference corrected
 - b. Page 4, Authority & Reference. Reference to 4616(h) is (g) in the existing CCR.
 - Correction made to conform to existing regulation.
2. Section 9764.2:
 - a. Title. Existing “.” Is missing from end of section title.
 - Correction made to conform to existing regulation.
 - b. Page 5, Authority & Reference. 4616(h) is (g) in the existing CCR.
 - Correction made to conform to existing regulation.
3. Section 9767.3:
 - a. Page 5. “.” At end of section title is missing.
 - Correction made to conform to existing regulation.
 - b. Page 6, (c)(1) “.” After “~~or CD-ROMS.~~” Should not be stricken.
 - Punctuation reinserted.
 - c. Page 6, (c)(2) – Remove the underline and strikeout for the comma after ROMS,~~or~~
 - Underline and strikeout removed.
 - d. Page 10, (M) new – “section 9767.12...” should be “sections 9767.12...”) ~~section~~
 - Insertion made to indicate deletion of letter.
 - e. Page 12, Authority citation to 4616(h) is 4616(g) in existing text
 - Correction made to conform to existing regulation.
4. Section 9767.4:
 - a. Page 13, Item 4 on form, “Insurer” should be underlined.
 - Correction made to indicate new text.
 - b. Page 14, Authority and Reference citations are missing.
 - Authority and Reference reinserted.
5. Section 9767.5:
 - a. Page 15, (b). “.” After new text ending in “necessary.” Should not be underlined.

- Correction made to conform to existing regulation.
 - b. Page 16 – Authority citation to 4616(h) is 4616(g) in existing text.
 - Correction made to conform to existing regulation.
 - c. Page 18. “OAL INSERT DATE HERE”. Absent additional issues being identified, if the regs are filed on Wednesday, August 27, 2014, this will be the effective date if effective on filing. Please revise the text to include this date.
 - Effective date of August 27, 2014 inserted.
6. Section 9767.6:
- a. Page 19. Authority citation to 4616(h) is 4616(g) in existing text.
 - Correction made to conform to existing regulation.
7. Section 9767.7:
- a. Page 21, (g), Period after “area.” Should not be underlined.
 - Correction made to conform to existing regulation.
 - b. Authority citation to 4616(h) is 4616(g) in existing text.
 - Correction made to conform to existing regulation.
8. Section 9767.8:
- a. Page 21, (a), “then” after new text should either be removed or underlined.
 - Text underlined to indicate insertion.
 - b. Page 27, Authority citation to 4616(h) is 4616(g) in existing text.
 - Correction made to conform to existing regulation.
9. Section 9767.9:
- a. Page 29, Authority citation to 4616(h) is 4616(g) in existing text.
 - Correction made to conform to existing regulation.
10. Section 9767.10:
- a. Page 30, Authority citation to 4616(h) is 4616(g) in existing text.
 - Correction made to conform to existing regulation.
11. Section 9767.11:
- a. Page 31, Authority citation to 4616(h) is 4616(g) in existing text.
 - Correction made to conform to existing regulation.
12. 9767.13:
- a. Page 35, Authority citation to 4616(h) is 4616(g) in existing text.
 - Correction made to conform to existing regulation.
13. 9767.14:
- a. Page 37, Authority citation to 4616(h) is 4616(g) in existing text.
 - Correction made to conform to existing regulation.
14. 9767.15:
- a. Page 38, (a): The phrase “based on the four-year approval period” is added to clarify that “If the MPN is required to apply for reapproval before January 1, 2018 based on the four- year approval period, then the MPN shall update to the current regulations with its reapproval filing, whichever is sooner.”

- b. Page 38, (b)(1): Language stating “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.” This language is inconsistent with the Labor Code, section 4616 in that it tries to expand the approval period for notice beyond 4 years. In addition, the requirement that the reapprovals be filed no later than June 30, 2014 is impermissible as that deadline has already passed and could be inconsistent with Labor Code, section 4616. Please remove this text. Because the text is inconsistent with the Labor Code, DWC does not have authority to adopt such regulation language and therefore this change can be done without a 15 day notice.
 - Text deleted.
 - c. Page 39, Authority citation to 4616(h) is 4616(g) in existing text.
 - Correction made to conform to existing regulation.
15. Section 9767.17:
- a. Page 45, (g), “the procedures in [sections] may apply.” Is this intended to be mandatory? Under what circumstances? How is this determined.
16. 9767.18
- a. Page 45, (a) “section” should be “sections”.
 - Correction made to “sections.”
17. Section 9767.19:
- a. Page 47, (2)(B) “\$250 up to a total of \$10,000 per quarter.” DWC may wish to change this to “\$250 per occurrence” or something similar to clarify that the intent is not a range of penalty, but a specific penalty per violation with a cap on cumulative penalties for violations at \$10k. This would be a non-substantive change.
 - Text revised to indicate “\$250 per occurrence.”
18. Form 9767.16.5 – Should reflect “new” or something so that the publisher knows to print it.
- Section title revised to indicate that the form is a new addition to the regulations.