

NOTICE OF MODIFICATION TO TEXT OF PROPOSED REGULATIONS

Subject Matter of Regulations: Workers' Compensation – Medical Provider Networks

TITLE 8, CALIFORNIA CODE OF REGULATIONS, **SECTIONS 9767.1 – 9767.19**

NOTICE IS HEREBY GIVEN that the Acting Administrative Director of the Division of Workers' Compensation (hereinafter "Acting Administrative Director") pursuant to the authority vested in her by Labor Code Sections 59, 133, and 4616 proposes to adopt or modify the text of the following proposed regulations:

Amend Section 9767.1	Medical Provider Networks - Definitions
Amend Section 9767.2	Review of Medical Provider Network Application or Plan for Reapproval
Amend Section 9767.3	Requirements for a Medical Provider Network Plan
Amend Section 9767.4	Cover Page for Medical Provider Network Application or Plan for Reapproval
Amend Section 9767.5	Access Standards
Adopt Section 9767.5.1	Physician Acknowledgments
Amend Section 9767.6	Treatment and Change of Physicians Within MPN
Amend Section 9767.7	Second and Third Opinions
Amend Section 9767.8	Modification of Medical Provider Network Plan
Amend Section 9767.9	Transfer of Ongoing Care into the MPN
Amend Section 9767.10	Continuity of Care Policy
Amend Section 9767.11	Economic Profiling Policy
Amend Section 9767.12	Employee Notification
Amend Section 9767.13	Denial of Approval of Application or Reapproval; Re-Evaluation
Amend Section 9767.14	Probation, Suspension or Revocation of Medical Provider Network Plan; Hearing
Amend Section 9767.15	Compliance with Current MPN Regulations; Reapproval
Amend Section 9767.16	Medical Provider Network Complaints
Adopt Section 9767.16.5	DWC Medical Provider Network Complaint Form 9767.16.5
Adopt Section 9767.17	Petition for Suspension or Revocation of a Medical Provider Network
Adopt Section 9767.17.5	DWC Petition for Suspension or Revocation of a Medical Provider Network Form 9767.17.5
Adopt Section 9767.18	Random Reviews
Adopt Section 9767.19	Administrative Penalty Schedule; Hearing, Mitigation and Appeal

PRESENTATION OF WRITTEN COMMENTS AND DEADLINE FOR SUBMISSION OF WRITTEN COMMENTS

Members of the public are invited to present written comments regarding these proposed modifications. **Only comments directly concerning the proposed modifications to the text of**

the regulations will be considered and responded to in the Final Statement of Reasons.

Written comments should be addressed to:

Maureen Gray
Regulations Coordinator
Department of Industrial Relations
P.O. Box 420603
San Francisco, CA 94612

The Division's contact person must receive all written comments concerning the proposed modifications to the regulations no later than 5:00 p.m. on December 26, 2013. Written comments may be submitted via facsimile transmission (FAX), addressed to the above-named contact person at (510) 286-0687. Written comments may also be sent electronically (via e-mail) using the following e-mail address: dwcrules@dir.ca.gov.

Due to the inherent risks of non-delivery by facsimile transmission, the Acting Administrative Director suggests, but does not require, that a copy of any comments transmitted by facsimile transmission also be submitted by regular mail.

Comments sent to other e-mail addresses or facsimile numbers will not be accepted. Comments sent by e-mail or facsimile are subject to the deadline set forth above for written comments.

AVAILABILITY OF TEXT OF REGULATIONS AND RULEMAKING FILE

Copies of the original text and modified text with modifications clearly indicated, and the entire rulemaking file, are currently available for inspection at the Department of Industrial Relations, Division of Workers' Compensation, 1515 Clay Street, 17th Floor, Oakland, California 94612, between 9:00 A.M. and 4:30 P.M., Monday through Friday. Please contact the Division's regulations coordinator, Ms. Maureen Gray, at (510) 286-7100 to arrange to inspect the rulemaking file.

FORMAT OF PROPOSED MODIFICATIONS

Proposed Text Noticed for 45-Day Comment Period:

The proposed text was indicated by underlining, thus: added language. Deletions are indicated by strikeout, thus: ~~deleted language~~.

Proposed Text Noticed for 15-Day Comment Period on Modified Text:

The proposed text was indicated by double underlining, thus: added language. Deletions are indicated by double strikeout, thus: ~~~~deleted language~~~~.

SUMMARY OF PROPOSED CHANGES

Section 9767.1 Medical Provider Networks – Definitions

- Subdivision (a)(1) is amended for clarity to add “but not limited to,” in the definition of “ancillary services.”
- Subdivision (a)(7) is amended for clarity to add “including but not limited to third party administrators and managed care networks,” in the definition of an “entity that provides physician network services.”
- Subdivision (a)(12) is amended for brevity and clarity to delete the phrase “either a rural or non-rural” area and add the phrase “a geographical” area. The definition clarifies a health care shortage exists in a geographical area in which “the” number of physicians in a particular specialty “who are available and willing to treat injured workers’ under the California workers compensation system is insufficient” to meet the Medical Provider Network access standards. The letter “n” is deleted from “An” and the phrases “insufficient number” and “is not established when there are non-MPN” are deleted. The definition also clarifies that a lack of physicians “participating in an MPN does not constitute a health care shortage” if there is a sufficient number of physicians in that specialty who “are” available within the access standards “and willing to treat injured workers under the California workers’ compensation system.”
- Subdivision (a)(16) is amended for clarity and deletions made for brevity to define a “Medical Provider Network Medical Access Assistant” as “an individual in the United States whose primary duty is to assist injured workers with finding available Medical Provider Network physicians and with scheduling provider appointments.”
- Subdivision (a)(18) is amended for clarity to add “submitted according to the requirements of this article,” in the definition of “Medical Provider Network Plan”.
- Subdivision (a)(19) is amended for clarity to add “, who is legally responsible for the Medical Provider Network,” in the definition of “MPN Applicant.”
- Subdivision (a)(20) is amended for clarity and consistency to add “for” before the phrase “answering employees’ questions.”

Section 9767.2 – Review of Medical Provider Network Application or Plan for Reapproval

- The title of the section is amended for accuracy to replace “Application” with “Plan” before “for Reapproval”.
- Subdivision (a) is amended for clarity to add “new” before references to “application” to distinguish between a new application plan from a plan for reapproval.

- Subdivision (b) is amended to distinguish reviews of reapproval plans from new applications. The first added sentence states the 180-day time frame for administrative review of complete reapproval plans, which will be approved for a four-year period or disapproved based on the requirements of Labor Code section 4616 *et seq.* and this article. The second added sentence clarifies that a plan for reapproval shall be considered complete if it includes correct information responsive to each applicable subdivision of section 9767.3. Finally, the third added sentence states that if the Administrative Director has not acted on a reapproval plan within 180 days, it shall be deemed approved on the 181st day for a period of four years.
- Subdivision (b) is re-lettered to (c) and is amended for clarity to reference “or reapproval plan” and to add a third category that the Administrative Director will provide notification to the MPN applicant if the Administrative Director is aware that the applicant is not eligible to have an MPN.
- Subdivision (c) is re-lettered to (d) and the reference to subdivision (b) is changed to (c) to reflect the re-lettered subdivisions.
- Subdivision (d) is re-lettered to (e) and is amended for clarity to add “or reapproval plan.”
- Subdivision (e) is re-lettered to (f) and is amended to clarify the reference to “a new” MPN plan. The phrase “At minimum, t” is deleted and the sentence now begins with “This.”
- Subdivision (f) re-lettered to (g) and is amended to reference “the MPN” instead of “that MPN” and to delete “does not wish to” to clarify the requirement that the MPN applicant will not use the MPN.

Section 9767.3 - Requirements for a Medical Provider Network Plan

- The title of the section is amended for accuracy to delete “Application” and replaced with “Requirements.”
- Subdivision (c) is amended to replace the reference to “application” with “plan” in three instances. The subdivision reference to “valid” is deleted and the phrase, “in compliance with California Government Code section 16.5” is added to clarify what types of electronic signatures are accepted.
- Subdivision (c)(1) is amended to include the reference to “, a flash drive” to be consistent with the other electronic submission requirements.
- Subdivision (c)(2) is amended to replace the requirement for six columns with eight columns and clarification added to require a seventh column to include any MPN medical group affiliations and an eighth column to include an assigned provider code for each physician listed. Clarification of the provider codes to be used for common medical specialties is stated; with a “MISC” code to be used for any specialty not already assigned a code. The

physician affirmation requirement is modified to require that physicians “have been informed” that the MTUS is presumptively correct.

- Subdivision (c)(3) is amended to add “If an MPN chooses to provide ancillary services” to the beginning of the text to clarify such services are not required to be included in an MPN. The requirement to include zip codes for mobile providers is deleted as well as the requirement that the MPN affirms the providers can provide reasonable and necessary services. The MPN affirmation is clarified to reference that the providers can provide “the requested medical services or goods” and adds the requirement to have a current valid certification, if applicable.
- Subdivision (c)(4) is deleted in its entirety and the remaining subdivisions renumbered.
- Subdivision (c)(5) is renumbered to (c)(4) and edited for clarity by amending the reference to “providing” and replacing it with “provides” treatment under the MPN. A new sentence is started by deleting “which” and replacing it with “Approved locations” are listed “in an MPN’s” provider listing. The phrase “however, an” MPN is added to clarify an MPN has discretion to approve treatment at non-listed locations.
- Subdivision (c)(6) is renumbered to (c)(5).
- Subdivision (d)(1) is amended to replace the phrase “certificate(s) of insurance” with a “certificate of authority” for accuracy and to delete “please” to clarify the requirement is not an option.
- Subdivision (d)(4) is amended to replace “Use” with “Select” for accuracy.
- Subdivision (d)(8)(A) is amended to delete the phrase “State the number of employees expected to be covered by the MPN plan and the method used to calculated the number” and replaced by “Affirm that the MPN network is adequate to handle the expected number of claims covered under the MPN and explain how this was determined.”
- Subdivision (d)(8)(C) is amended to add “State” to clarify the MPN’s medical access assistant’s contact information must be included in the MPN plan.
- Subdivision (d)(8)(D) is amended to add “State” to clarify the MPN’s website address must be included in the MPN plan.
- Subdivision (d)(8)(E) is amended to add “State” to clarify the MPN’s web address or URL to the MPN provider listing must be included in the MPN plan.
- Subdivision (d)(8)(F) is amended to delete the phrase “with original signatures” as this requirement will no longer be required of all written acknowledgments.

- Subdivision (d)(8)(G) is amended to add “Provide a” to begin the sentence for clarity. The phrase “Only individual physicians in the MPN shall be listed, but MPN medical group affiliation(s) may be included with each individual physician listed,” is added to clarify that individual listings are required and that medical group affiliations are optional.
- Subdivision (d)(8)(H) is amended to require an electronic copy “in Microsoft Excel format” of the geocoding results of the MPN provider directory. The sentence, “This geocoded listing must be provided in electronic format created with geocoding software” and the phrase “mapping of the provider locations by street address or zip code within the applicable access standards for the entire MPN geographic service area and be mapped on separate maps by specialty” are deleted because more detailed geocoding parameters are given. Specific requirements are added that the geocoding results of an MPN’s provider directory shall include the following separate files 1) a complete list of all zip codes within the MPN geographic service area; 2) a narrative and/or graphic report that establishes that there are at least three available primary treating physicians within the fifteen-mile access standard from the center of each zip code within the MPN geographic service area; 3) a narrative and/or graphic report that establishes that there is a hospital or an emergency health care service provider within the fifteen-mile access standard from the center of each zip code within the MPN geographic service area; 4) a narrative and/or graphic report that establishes that there are at least three available specialists to provide occupational health services in each listed specialty within the thirty-mile access standard from the center of each zip code within the MPN geographic service area; 5) a list of all zip codes in which there is a health care shortage and where the access standards are not met for each specialty and an explanation of how medical treatment will be provided in those areas not meeting the access standards; and 6) each physician listed in the MPN provider directory listing shall be assigned at least one provider code to be used in the geocoding reports.
- Subdivision (d)(8)(I) is amended to replace “A voluntary” listing with, “If an MPN chooses to include ancillary services in its network, a” to clarify that MPN’s have the discretion to list ancillary service providers. The phrase “or goods” is added for clarity and the phrase “and that the ancillary services will be available at reasonable times and within a reasonable geographic area to covered employees” is added to set forth a minimum ancillary service standard that must be met.
- Subdivision (d)(8)(J) is amended to delete the phrase “arranges for” and replaces the word “providing” with the word “provides” for clarity and brevity. It is added for clarity that ancillary services not able to be provided within the MPN pursuant to section 9767.5(d) will be provided outside the MPN.
- Subdivision (d)(8)(L) is amended to delete the provisions requiring an MPN state, from the specified list, the five most commonly used specialties based on the common injuries for

workers covered under the MPN because this will no longer be required to comply with MPN access standards.

- Subdivision (d)(8)(S) is amended to add a comma after “procedures” and to replace the phrase “used to ensure ongoing” with a requirement to state the “criteria and how data is used to continuously review” quality of care. The word, “how,” is deleted as well as the phrase, “provided by the MPN are sufficient to provide adequate and necessary medical treatment for covered employees.”
- Subdivision (d)(8)(T) is amended for clarity to add “to” before “another”.
- Subdivision (e) is amended to delete the exclusion of subdivisions “(e)(9), (d)(8)(G), (d)(8)(H) and (e)(15), (d)(8)(I)” to clarify that those exclusions no longer exists.
- Reference citation is amended to add “and Section 16.5, Government Code.”

Section 9767.4 – Cover Page for Medical Provider Network Application or Plan for Reapproval

- The title of the section is amended for accuracy to replace “Application” with “Plan” before “for Reapproval.”
- The title of the Cover Page is amended for accuracy to replace “Application” with “Plan” before “for Reapproval.”
- No.4:
 - The box for “Self-Insured Employer” is clarified to include “SISF”.
 - The box for “Insurer” is amended to add “SCIF” and deletes “SISF” for accuracy.
- No. 7: The phrase “an application” is stricken and replaced with “a plan” for clarity to distinguish a plan for reapproval from a new MPN application.
- No. 11: the phrase “or Plan for Reapproval” and the phrase “or plan” is added for clarity to distinguish a plan for reapproval from an MPN application.
- The form revision date is updated numerically to reflect a November 2013 revision.

Section 9767.5 – Access Standards

- Subdivision (a) is amended to reference a change in subdivision from (b) to (1) and from (e) to (2) as these subdivisions have been renumbered. The phrase “An MPN shall meet the access standards for the five commonly used specialties listed in its application at all times” is deleted because access standards have been revised and this will no longer be required.

- Subdivision (b) is renumbered to (1) and has been amended to reference “An MPN” instead of “A MPN” for accuracy and adds the phrase “at least three available” primary treating physicians to clarify the MPN access standards.
- Subdivision (c) is renumbered to (2) and has been amended to reference “An MPN” instead of “A MPN” for accuracy and adds the phrase “who can treat common injuries experienced by the covered injured employees” to clarify the MPN access standards.
- Subdivision (d) is re-lettered to (b) and has been amended to delete the phrase “such as” and adds the phrase “including non-rural areas and” for accuracy to describe a health care shortage can be found in non-rural areas. The reference to subdivisions (b) and (c) are stricken and replaced with the correct renumbered citations to (a)(1) and (a)(2). The phrase “are unreasonably restrictive” is deleted and replaced with “cannot be met” for brevity. The phrase “for approval” is deleted and replaced with the phrase “and shall be reviewed and approved by the Administrative Director before the alternative standard can be used” to clarify who must approve an alternative access standard and when the alternative access standard can be used after it is proposed. Finally, the phrase “including a description of the geographic area(s) affected for each specialty at issue, how the applicant determined a physician shortage exists in each area and specialty how the alternative access distance was determined and why it is necessary” is added to clarify the information that must be submitted and the criteria used when an MPN applicant proposes an alternative access standard.
- Proposed new subdivision (c) is amended to add the new access requirement that “If a covered employee is not able to obtain from an MPN physician reasonable and necessary medical treatment within the applicable access standards in subdivisions (a) or (b) and the required time frames in subdivisions (f) and (g), then the MPN shall have a written policy permitting the covered employee to obtain necessary treatment for that injury from an appropriate specialist outside the MPN within a reasonable geographic area. When the MPN is able to provide the necessary treatment through an MPN physician, a covered employee treating outside the MPN may be required to treat with an MPN physician when a transfer is appropriate” to clarify the revised MPN access standards.”
- Proposed new subdivision (d) is amended to add the phrase “If an MPN provides ancillary services and those services or goods are not available within a reasonable time or a reasonable geographic area to a covered employee, then the employee may obtain necessary ancillary services outside of the MPN within a reasonable geographic area” to establish a standard for MPN ancillary service providers.
- Subdivision (e)(3) deletes references to subdivisions (c) and (d) and replaces it with subdivision (a),

- Subdivision (e)(4) is amended to add “a” before “covered employee.”
- Subdivision (f) is amended to delete the word “initial” and add the phrases “the first” treatment and “visit under the MPN” for clarity and specificity. The phrase, “the MPN applicant’s receipt of a request for treatment within the MPN” is deleted and replaced with the phrase, “a covered employee’s notice to the employer or to an MPN medical access assistant that treatment is needed” to provide clarity as to when the time frames apply.
- Subdivision (g) is amended to add the word “initial” and the phrase “with a specialist in an appropriate referred specialty” for clarity. The phrase, “the MPN applicant’s receipt of a referral to a specialist within the MPN” is deleted and replaced with the phrase, “a covered employee’s reasonable requests for an appointment directly with a physician or through an MPN medical access assistant. If an MPN medical access assistant is unable to schedule a timely medical appointment with an appropriate specialist within five business days of an employee’s request, the employer shall permit the employee to obtain necessary treatment with an appropriate specialist outside of the MPN” to provide clarity as to when the time frames apply.
- Subdivision (h) is amended to add the word “medical” before access assistants for clarity. Medical access assistants “shall be” available “at a minimum, from Monday through Saturday from 7 am to 8 pm, Pacific Time.” The phrase “in English or Spanish” is deleted and incorporated in a sentence added to clarify that “The employee assistance shall be available in English and Spanish.” Another sentence is added “The assistance shall include but be limited” to contacting provider offices during regular business hours and scheduling medical appointment for “covered employees.” Finally, the phrase “at a minimum from Monday through Saturday, from 7 am to 8 pm, Pacific Standard Time” is deleted from the end of the subdivision because it was moved to the beginning for clarity.
- Subdivision (h)(1) is amended to add the phrase “at least” to replace the phrase “or more” for clarity and deletes the “s” in assistant to make it singular. The phrase “medical access” is added before assistants for clarity.
- Subdivision (h)(2) is amended to add the word “medical” before access assistants and to add the phrase, “do not authorize treatment and have different duties than claims adjusters” for clarity. The sentence, “The MPN medical access assistants are not to function as claims adjusters,” is added to further clarify a medical access assistant’s role from that of a claims adjuster. The word “and” and “also” are deleted and the phrase “However, the assistants” is added for clarity.

Section 9767.5.1 – Physician Acknowledgments

- Subdivision (a) is amended to delete the phrase “as defined in Labor Code section 3209.3” for brevity because each physician in an MPN shall have a written acknowledgment electing

to participate in a California workers' compensation medical provider network "unless the physician is a shareholder, partner, or employer of a medical group." The phrase, "The acknowledgment by the physician shall comply with subdivisions (b) and (c). The acknowledgment(s) by the physician shall either specify the MPN or MPNs in which the physician is or will be participating or authorize the agent or designee of a medical group to act on the physician's behalf to specify the MPN or MPNs in which the physician is or will be participating" is added to clarify the requirements for the individual physician acknowledgements. The phrase "If the physician authorizes a medical group's agent or designee, the specification of MPNs by the medical group's agent or designee shall comply with subdivision (d)" is added to clarify the requirements for medical group physician acknowledgements.

- Subdivision (b) is added to clarify a physician may acknowledge participation in one or more MPNs in a single written acknowledgement and the parameters in which this can be done. "The acknowledgement shall be signed by the physician or by an authorized employee of the physician's office." If the acknowledgment is included with other terms of an agreement or contract, the acknowledgment provisions shall contain "a separate signature of the physician or authorized employee of the physician or the physician's office." Electronic signatures in compliance with California Government Code section 16.5 are acceptable.
- Subdivision (c) has been deleted because it is now addressed in the new subdivision (b). The previous subdivision (b) has been re-lettered to subdivision (c) and is amended to provide acknowledgments shall be executed no later than the time of the physician entering into or renewing an MPN contract on or after January 1, 2014 to clarify time frames for physician acknowledgments. If a physician has a contract that automatically renews, then the written acknowledgment "shall comply with subdivision (b)" no later than the contract renewal date "and the MPN must obtain the acknowledgment within 30 days after the contract renewal date" to clarify time frames for contracts that automatically renew. The phrase "If there is no contract renewal date, then the written acknowledgment shall be obtained by the MPN on or before July 1, 2015". The acknowledgment must clearly specify the time frame of the acknowledgment, "which may continue for as long as the contract is effective. A new acknowledgment shall be obtained by the MPN with a new or renewed contract" is added for clarity. The phrase "Valid electronic signatures are acceptable" is deleted as unnecessary because it is already referenced in subdivision (b).
- Subdivision (d) is amended to add the phrase "participating in an MPN by the medical group's agent or designee" to clarify who can submit a medical group's acknowledgment. The phrase "all members of" is deleted and replaced with "MPN participating physicians in" the medical group "who are shareholders, partners, or employees of the medical group or who have executed individual acknowledgements in accordance with subdivision (a) and (b)" to clarify who can submit a single written group acknowledgment. The phrase "if each

physician signs the acknowledgment with an original signature by the physician or his/her legal agent/designee” is deleted because it is now addressed in the new subdivision (b). The phrase “...an amendment to the original group acknowledgment shall be submitted to the MPN. The amendment shall include a statement that a physician is no longer participating in the MPN or medical group and/or the signature of the physician who is joining the medical group and MPN” is deleted as it is no longer required. Parameters are provided for single written group acknowledgments submitted by a medical group, “Each medical group acknowledgment shall include a list of all physicians in the medical group and shall affirm that each physician listed has agreed to participate in the MPN.” In addition, if there are changes to the physician list, “the medical group acknowledgment shall be updated with a new master list of MPN participating physicians in the medical group” and the amendment shall be submitted to the MPN within “thirty” days of the effective date of the change instead of “ten”. Finally, “The medical group’s agent or designee shall affirm that each listed physician in the updated list is participating in the MPN or MPNs as indicated on the list. The acknowledgment must clearly specify the time frame of the acknowledgment, which may continue for as long as the medical group’s MPN contract is effective. A new acknowledgment shall be submitted with a new or renewed MN contract. Electronic signatures in compliance with California Government Code section 16.5 are acceptable.”

- Subdivisions (e)(1-3) is amended to add that a written acknowledgment may be in the following forms. (1) A tangible document bearing an original signature, or a facsimile or electronic image of the original document and signature. (2) An electronically signed document in compliance with Government Code section 16.5. (3) An electronic acknowledgment in a web-based format using generally accepted means of authentication to confirm the identity of the person making the acknowledgment. If using a web-based form, the list of MPNs showing the physician’s selections shall be available to the physician on-line at any time outside of necessary system interruptions.
- Subdivision (f) is added to specify that any form that presents more than one MPN for the physician’s acknowledgment shall enable the physician either to opt in or to opt out of each MPN.
- Subdivision (g) is re-lettered from (e) and is amended to clarify an MPN applicant “is responsible for obtaining physician acknowledgments and” as well as ensuring “up to date, meet regulatory requirements, and are” readily available.
- Reference citation is amended to add “and Section 16.5, Government Code.”

Section 9767.7 – Second and Third Opinions

- Subdivision (g) is amended to clarify “if the MPN does not contain a physician who can provide the recommended treatment” an MPN must allow out of network treatment.

Section 9767.8 – Modification of Medical Provider Network Plan

- Subdivision (a)(1) is amended to delete the capital “A” in MPN applicant and replace it with the lower case “a”. The phrase “Provide written documentation reflecting the date of change” is added for enforcement purposes.
- Subdivision (a)(2) is amended to delete the capital “A” in MPN applicant and replace it with the lower case “a” for consistency. The filing requirement is amended from “five” to “fifteen (15)” business days of “written” knowledge of a change in MPN eligibility status for consistency with other similar modifications. The phrase “Provide written documentation reflecting the date of change” is added for enforcement purposes.
- Subdivision (a)(3) is amended to delete the word “Division” and replace it with “MPN” for clarity. The phrase “Provide written documentation reflecting the date of change” is added for enforcement purposes. Subdivisions (a)(5) and (a)(6) are deleted because these will no longer be requirements.
- Subdivisions (a)(7), (a)(8), and (a)(9) have been renumbered to (a)(5), (a)(6), and (a)(7) respectively.
- Subdivision (a)(11) is amended to delete the word “or” and replaced with the phrase “a change in the” before Medical Access Assistants and the word “contact” is added for clarity.
- Subdivision (b) is amended to delete the phrase “The MPN applicant shall serve the Administrative Director with a Notice of MPN Plan Modification within fifteen (15) business days of a change of the DWC liaison, or authorized individual, MPN name or MPN applicant name, and within five (5) business days of a change in eligibility status of the MPN applicant” because these time frames have been revised. The phrase “the updated information” is deleted and the phrase “a material modification” is added to clarify that failure to file any material modification within the required time frames may be subject to an enforcement action by the Administrative Director
- Subdivision (j) Notice of Medical Provider Network Plan Modification is amended as follows:
 - No. 5: Has been deleted because the information is unnecessary since DWC will already have this information.
 - No. 6: Has been deleted because the information is unnecessary since DWC will already have this information.
 - No. 7: Has been renumbered to 5.
 - No. 8: Has been renumbered to 6.
 - No. 9: Has been renumbered to 7. The time frame for an MPN to notify DWC of a change in MPN Applicant eligibility has been amended from five to fifteen business days. The requirement to notify DWC when there has been a 10% change or more in the number or

specialty of providers participating in the MPN is deleted because it is no longer required. The requirement to notify DWC when there has been a 25% change or more in the number of covered employees in the MPN is deleted because it is no longer required. The requirement to notify DWC when there has been a change in employee notification materials is amended to delete the word “of” and is replaced by “in”. The word “contact” is added after Medical Access Assistants for clarity.

- The form revision date is updated numerically to reflect a November 2013 revision.

Section 9767.12 Employee Notification

- Subdivision (a) is amended to clarify in the beginning that “When an injury is reported or an employer has knowledge of an injury” then the notification required by the subdivision shall be given by the employer, “or the insurer for the employer.” The phrase, “or entity that provides physician network services” is deleted to align notice requirements with those entities who are actually giving notice to covered employees.
- Subdivision (a)(2)(A) is amended to clarify the duties medical access assistants provide, “including finding available physicians and scheduling and confirming physician appointments.”
- Subdivision (a)(2)(B) is amended to clarify that the employee notification’s description of MPN services shall include the MPN’s web address for workers to obtain more information about the MPN.
- Subdivision (a)(2)(C) is amended to allow provider directories to be distributed to workers on a “flash drive” or “via email” to allow flexibility to accommodate the various electronic means of current communication. The addition of “directory” is included before references to “listing” for clarification. The phrase, “and for confirming the accuracy of” is deleted to limit the quarterly responsibility of MPN applicants to updating the provider listings every quarter. In addition, MPNs will be given 45 days instead of 30 days to correct inaccuracies reported through the provider directory listing contact information.
- Subdivision (b) deletes the phrase “MPN Applicant” and replaces it with “employer or the insurer for the employer” to clarify who must provide notice when MPN coverage ends.
- Subdivision (b)(1) deletes the phrase “MPN Applicant” and replaces it with “employer or the insurer for the employer” to clarify who must provide notice when MPN coverage ends.
- Subdivision (b)(2) is amended to add “Medical” before “Access Assistants” for clarity.

Section 9767.13 – Denial of Approval of Application or Reapproval; Re-Evaluation

- Subdivision (b)(1) is amended to add “or plan for reapproval” for clarity and accuracy.

Section 9767.14 – Probation, Suspension or Revocation of Medical Provider Network Plan; Hearing

- Subdivision (b) is amended to replace “and/or” with “or” and to add “with a plan of action to correct the violation in a timely manner” to clarify that an MPN is expected to correct a violation or produce a plan to correct a violation within ten days of notice. The subsequent sentence in the subdivision clarifies that violations need to be cured “in a timely manner” or administrative actions may be taken by the agency.

Section 9767.15 – Compliance with Current MPN Regulations; Reapproval

- Subdivision (a) is amended to change the required deadline for updating to the current regulations from 2015 to 2016 for MPNs approved prior to January 1, 2014.
- Subdivision (b)(1) is amended to add, “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.”
- Subdivision (b)(3) is amended to replace “most recent” with “last complete plan” reapproval for accuracy.
- Subdivision (b)(5) is amended to replace the general requirement to “use geocoding software to create a separate map for each specialty for all listed providers within the service area to establish compliance with the access standards for the MPN geographic service area” with more specific geocoding requirements. The new requirements include an electronic copy in Microsoft Excel format of the geocoding results of the MPN provider directory to show compliance with the access standards for the injured workers being covered by the MPN. The geocoding results shall include the following separate files 1) a complete list of all zip codes within the MPN geographic service area; 2) a narrative and/or graphic report that establishes that there are at least three available primary treating physicians within the fifteen-mile access standard from the center of each zip code within the MPN geographic service area; 3) a narrative and/or graphic report that establishes that there is a hospital or an emergency health care service provider within the fifteen-mile access standard from the center of each zip code within the MPN geographic service area; 4) a narrative and/or graphic report that establishes that there are at least three available specialists to provide occupational health services in each listed specialty within the thirty-mile access standard from the center of each zip code within the MPN geographic service area; 5) a list of all zip codes in which there is a health care shortage and where the access standards are not met for each specialty and an explanation of how medical treatment will be provided in those areas not meeting the access standards; 6) each physician listed in the MPN provider directory shall be assigned at least one provider code to be used in the geocoding reports.

- Subdivision (b)(6) is amended to delete the phrase “an application” and replaced with “a plan” for reapproval for accuracy. The phrase “will be the same as for an original application” is deleted for accuracy since the time frames for a plan for reapproval “are as stated in section 9767.2(a)” and are now different from the time frames for an original application.
- Subdivision (b)(7) is amended to delete “60 day review period” and replace it with “expiration of the MPN plan’s approval” for accuracy.

Section 9767.16 –Medical Provider Network Complaints

- Subdivision (a)(2) is amended to add “applicant” after “MPN” for clarity as to which entity is responsible for acting.
- Subdivision (a)(2)(A) is amended to capitalize “C” in “contact” and “person” is deleted to clarify that the defined MPN Contact is the individual specifically being referenced.
- Subdivision (a)(2)(B) is amended to clarify the requirement for a showing that a facsimile transmission “was successfully sent” to establish proper receipt by the MPN Contact.
- Subdivisions (a)(3), (b) and (b)(2)(A) are amended to add “applicant after “MPN” for clarity as to which entity is responsible for acting.
- Subdivision (b)(3) is amended to clarify that the Administrative Director will notify the “MPN’s authorized individual” who is the legal agent for the MPN applicant, in addition to the MPN Contact.

Section 9767.16.5 – DWC Medical Provider Network Complaint Form 9767.16.5

The form is amended in substance to add clarification to the instructions to better reflect the regulatory requirements and to only give instruction on submission by mail as the other submission methods may change.

The format of the form is also amended to maximize space, to prepare for potential electronic submission to the Division, and for accessibility purposes.

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

- Subdivision (a)(2) is amended to redefine a “systematic failure” of an MPN as failing to meet MPN access standards pursuant to section 9767.5, at minimum, on more than one occasion in at least two specific access locations within the MPN geographic service area. In addition, “the MPN failed to ensure in each instance that a worker received necessary medical treatment within the MPN or failed to authorize treatment outside of the MPN within the required time frames and access standards.”

- Subdivision (c) is amended to delete “for specific locations within the geographic service area described in its plan” for brevity.
- Subdivision (c)(2) is amended to add the requirement “on more than one occasion” for clarity and accuracy.
- Subdivisions (d), (e) and (e)(1) are amended to add “applicant” after “MPN” for clarity.

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

The form is amended in substance to delete employer information, MPN address and MPN authorized individual information as unnecessary. Added to the form instead is the requirement to provide the MPN applicant’s name to assist with determining which MPN applicant is responsible for the MPN at issue. In addition, the second basis for filing a petition has been revised to reflect the regulatory revisions in section 9767.17. Other text changes have been made to delete unnecessary verbiage.

The format of the form is also amended to maximize space and reduce paper, to prepare for potential electronic submission to the Division, and for accessibility purposes.

Section 9767.18 – Random Reviews

- Subdivision (a)(2)(B) is amended to clarify that “MPN applicants shall be prepared to respond to” reasonable requests for information or documentary evidence by the DWC “including, but not limited to” the listed items.
- Subdivision (a)(2)(B)(i) is amended to require documentary proof “that the MPN name or MPN applicant name is legally correct and consistent with the approved MPN plan, or that the MPN status is still valid and approved.” This amendment is for auditing and penalty enforcement purposes.
- Subdivision (a)(2)(B)(ii) is amended to add “complete” copy for clarity, to replace reapproval “application” with “plan” for accuracy, and to delete the unnecessary phrase, “along with the cover page and all attachments.” The phrase “including a copy of the most recent employee notification and MPN notices given to covered employees and/or a listing of all plan filings to date after the effective date of this section” is added for auditing and penalty enforcement purposes.
- Subdivision (a)(2)(B)(iii) is amended to replace for accuracy the requirement for a “current” with “most recent” provider listing as well as to add as a requirement the provision of “the URL address of the MPN’s network provider listing, documentary evidence of quarterly updates to the provider listing for the past year and documentary evidence of timely corrections to the provider listing for inaccuracies reported to the MPN within a reasonable time period.” These amendments are for auditing and penalty enforcement purposes.

- Subdivision (a)(2)(B)(iv) is amended to delete as redundant the requirement to provide “The URL address of the MPN’s network provider listing” which was moved. The subdivision is also amended to require “A copy of any MPN complaints or petitions for suspension or revocation received by the MPN and the MPN’s responses” and “documentation of any administrative actions taken by the Administrative Director against the MPN within a reasonable period of time.” These amendments are for auditing and penalty enforcement purposes.
- Subdivision (a)(2)(B)(v) is amended to delete “during the last thirty (30) calendar days preceding the date of the DWC request” to allow for auditing flexibility “within a reasonable time period.”
- Subdivision (a)(2)(B)(vi) is amended to delete the “e” after the “g” in “acknowledgments” for consistency.
- Subdivision (a)(3) is amended to add “applicant” after “MPN” for clarity.

Section 9767.19 Administrative Penalty Schedule; Hearing, Mitigation and Appeal.

- The title of the section is amended to include “Mitigation” and “Appeal.”
- Subdivision (a) is amended for clarity to replace “The penalty amount that shall be assessed” with “A penalty may be assessed against an MPN applicant” for each failure “of an MPN” to comply with statutory or regulatory requirements. Additional sentences clarify that “For MPN applicants who have multiple MPNs and for multiple MPNs using the same network, if a specific violation affects more than one of an applicant’s MPNs, multiple penalties will not be assessed against the MPN applicant provided that the violation is remedied for all applicable MPNs within a reasonable time period, as determined by Administrative Director based on the nature and extent of the violation. Penalties may be assessed against an MPN applicant for the following violations...”
- Subdivision (a)(1)(A) is amended for brevity to delete the unnecessary reference to “an original” Notice of MPN Plan Modification.
- Subdivision (a)(1)(B) is amended for brevity to delete the unnecessary reference to “an original” Notice of MPN Plan Modification and to amend the required filing time frame from five to fifteen for consistency with other similar filing violations.
- Subdivision (a)(1)(C) is amended for brevity to delete the unnecessary reference to “an original” Notice of MPN Plan Modification.
- Subdivision (a)(1)(D) is amended for brevity to delete the unnecessary reference to “an original” Notice of MPN Plan Modification and to add a filing requirement if there is a change in “MPN medical access assistant” information.

- Subdivision (a)(1)(E) is amended for brevity to delete the unnecessary reference to “an original” Notice of MPN Plan Modification.
- Subdivision (a)(1)(F) is amended for brevity to delete the unnecessary reference to “an original application” to “a complete plan” for consistency and clarity.
- Subdivision (a)(1)(G) is amended to decrease the geocoding penalty from \$1000 to \$500 for each failure and to replace reapproval “application” with “plan” for clarity and accuracy.
- The existing text in subdivision (a)(2) is deleted.
- Subdivision (a)(3)(A) is re-lettered to (a)(2)(A) and is amended to delete “at least” and “to confirm the accuracy of the medical and ancillary provider listings,” to clarify that only failure to perform required quarterly provider listing updates will result in the penalty.
- Subdivision (a)(3)(B) is re-lettered to (a)(2)(B) and is amended to reflect the regulatory change from 30 to 45 days to correct reported provider listing inaccuracies and to reduce the penalty from \$500 to \$250 per inaccurate entry up to a total of \$10,000 per quarter.
- Subdivision (a)(3)(C) is re-lettered to (a)(2)(C) and is amended for brevity and to clarify that a failure to meet the access standards “as required by section 9767.5 (a) through (c)” will result in the penalty of “\$1000 per failure.”
- Subdivision (a)(3)(D) is re-lettered to (a)(2)(D) and is amended to clarify that the penalty concerns an MPN medical access assistant’s failure.
- Subdivision (a)(3)(E) is re-lettered to (a)(2)(E) and is amended to clarify that the penalty is for a “failure of an MPN medical access assistant” to ensure initial “MPN” treatment is available within three business days of “a covered employee’s request for treatment pursuant to section 9767.5(f).”
- Subdivision (a)(3)(F) is re-lettered to (a)(2)(F) and is amended to address failures to meet the requirements for providing timely, non-emergency specialist services pursuant to 9767.5(g).
- Subdivision (a)(3)(G) is re-lettered to (a)(2)(G) and is amended to delete the original penalty language and replace it with a new penalty for compliance purposes for “Failure to meet the physician acknowledgment requirements pursuant to section 9767.5.1; \$250 per non-compliant acknowledgment.”
- Subdivision (a)(4) is re-lettered to (a)(3).
- Subdivision (b) is amended to be a section that addresses penalties to be assessed only against an employer or insurer responsible for the specified notice violations.

- Subdivision (b)(1) addresses failure to provide the written MPN employee notification pursuant to section 9767.12(a) to an injured covered employee, \$1,500 per occurrence.
- Subdivision (b)(2) addresses failures to provide a complete or correct MPN notice required under section 9767.12 to an injured covered employee, \$250 per occurrence up to \$10,000.
- Subdivision (b)(3) addresses failures to provide an injured covered employee who is still treating under an MPN written notice of the date the employee will no longer be able to use the MPN, \$1000 per occurrence.
- Subdivision (b)(4) addresses failures to provide the MPN Independent Medical Review notice, \$250 per occurrence.
- Former subdivision (b) is re-lettered to subdivision (c) and amended to clarify that an MPN is expected to either correct a violation or submit a plan of action to timely correct the violation within ten days of notice.
- Former subdivision (c) is re-lettered to subdivision (d) and amended to clarify that mitigation requests must be submitted within 21 days of the date of a Notice of Action to give a reasonable but finite time frame for such a request. The subdivision is also amended for accuracy to require that MPNs document attempts to correct violations as well as to consider whether this is the first violation of its type for the MPN in mitigation.
- Subdivision (d) is re-lettered to subdivision (e).
- Subdivision (e) is re-lettered to subdivision (f).
- Subdivision (f) is re-lettered to subdivision (g) and the reference to subdivision (d) is updated to (f).
- Subdivision (g) is re-lettered to subdivision (h).