

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 March 25, 2014. 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~~~~.

Proposed Text Noticed for 2nd 15-Day Comment Period on Modified Text:

The proposed text was indicated by bold underlining, thus: **added language**. Deletions are indicated by bold strike-through, thus: **~~deleted language~~**.

SUMMARY OF PROPOSED CHANGES

Section 9767.1 Medical Provider Networks – Definitions

- Subdivision (a)(1)(B) is amended to delete the word “and” for accuracy to the definition of a “covered employee”.
- Subdivision (a)(7) is amended to delete “including” and replace it with the phrase “and may include” but “is” to clarify the word “entity” and not the word “providers” is being modified. The word “networks” is deleted and replaced with “entities” for accuracy to the definition of an “entity that provides physician network services”.
- Subdivision (a)(15) is amended to delete “approval” and replace it with “identification” for accuracy and for a more descriptive term to the definition of a “Medical Provider Network Identification Number”.
- Subdivision (a)(16) is amended to add the phrases “provided by the Medical Provider Network to help” and “of the injured workers’ choice” for clarity and to delete the phrase “whose primary duty is to assist” for accuracy to the definition of “Medical Provider Network Medical Access Assistant”.
- Subdivision (a)(19) is amended to delete the phrases “as defined in subdivision (6) and (4413) of this section” and “subdivision (7)” and to add “this section” for brevity to the definition of “MPN Applicant”.
- Subdivision (a)(20) is amended to add the phrase “pursuant to Labor Code section 4616.4” for clarity to the definition of “MPN Contact”.
- Subdivision (a)(25)(A) and (B) is amended to delete the words “and” for clarity to the definition of “Regional area listing.”
- Subdivision (a)(28) is amended to add the phrase “pursuant to Labor Code section 4616.3” for clarity to the definition of “Second Opinion”.
- Subdivision (a)(32) is amended to add the phrase “pursuant to Labor Code section 4616.3” for clarity to the definition of “Third Opinion”.

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

- Subdivision (b) is amended to delete the letter “e” from the word reapproval and replace it with the letter “a” to correct a misspelling.

- Subdivision (f) is amended to add the words “unique” “Identification” for descriptive purposes and to delete the phrases “approval number” and “approval number is to be” because these terms will no longer be used to identify MPNs. The phrase “and shall be included in the complete employee notification, transfer of care notice, continuity of care notice, MPN IMR notice and end of MPN coverage notice” is added for clarity.

Section 9767.3 - Requirements for a Medical Provider Network Plan

- Subdivision (a) is amended to delete the phrase “plans in its” and to add the letter “s” after the word “application” to clarify MPNs can submit one or more medical provider network applications for approval.
- Subdivision (c) is amended to revise the order of the last two sentences for clarity because electronic signatures in compliance with California Government Code section 16.5 are accepted in lieu of the original signed cover page.
- Subdivision (c)(1) is amended to delete the word “or” for accuracy.
- Subdivision (c)(3) is amended to add the sentence “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)” to clarify the necessary qualifications for an interpreter to be included as an MPN ancillary service provider.
- Subdivision (d)(1) is amended to add the sentences “Provide a description of the entity’s qualifications to be an eligible MPN Applicant” and “Attach proof of MPN eligibility” to clarify what shall be included in a Medical Provider Network application.
- Subdivision (d)(4) is amended to delete the phrase “Select a name that is not used by an existing approved Medical Provider Network” because this requirement will no longer be required as DWC will assign each MPN a unique MPN identification number.
- Subdivision (d)(8)(E) is amended to delete “MPN”, add the phrase “roster of all treating” and delete the phrase “provider listing” for clarity. In addition, MPN’s must provide affirmations that the roster of treating physicians in the MPN shall indicate if a physician is not currently taking new workers’ compensation patients and affirm that secondary treating physicians who can only be seen with an approved referral are clearly designated ‘by referral only’.
- Subdivision (d)(8)(F) is amended to add the phrase “or medical group” and to add the words “are” and “and” for accuracy and to delete the phrase “in writing” to clarify that MPNs must obtain physician acknowledgments from medical groups as well as physicians.
- Subdivision (d)(8)(H) is amended to add the word “estimated” and the phrase “set forth in section 9767.5” and to delete the phrase “for the injured workers being covered by the MPN” to clarify that the geocoding results will provide an estimated compliance with the MPN

access standards set forth in section 9767.5. The sentences “The access standards set forth in section 9767.5 is determined by the injured employee’s residence or workplace address and not the center of a zip code. The geocoding results will be used by DWC in reviewing MPN plans to give an approximation of MPN compliance with the access standards set forth in section 9767.5” are added to clarify geocoding requirements will be used by DWC in reviewing MPN plans but is not the MPN Access Standards which is set forth in section 9767.5. The phrase “summarizing data reasonably available at the time of compilation” is added for clarity. The phrase “and/or” is amended to delete the “and” choice for clarity three times. The word “that” is deleted and replaced with the word “where” for clarity three times. The phrase “specialist to provide occupational health services in each listed specialty” is deleted and replaced with the phrase “physicians in each of the specialties commonly required to treat injured workers covered by the MPN” for clarity and more specificity. The phrase “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” is deleted and replaced with the phrase “a list of all zip codes where access standards are not met for primary treating physicians, for acute care hospitals or emergency facilities, and for each specialty listed to treat common injuries experienced by injured workers covered by the MPN, and a narrative report explaining if medical treatment will be provided according to an approved alternative access standard or according to a written policy permitting out of MPN treatment in those areas; and” for accuracy and clarity.

- Subdivision (d)(8)(I) is amended to delete the word “medical” for accuracy.

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

- The box “for DWC only” is amended to delete the word “Approval” and replace it with “Identification” for accuracy and for a more descriptive term for the number DWC will be using to identify MPNs.
- No.4: The box for “Insurer” is amended to delete “SCIF” because State Compensation Insurance Fund is an insurer and the clarification is unnecessary. The acronym “UEBTF” for the Uninsured Employers Benefits Trust Fund is added to clarify the UEBTF qualifies as an insurer.
- No. 7: The phrase “and MPN Identification Number” is added for clarity to require MPN’s provide DWC with their assigned MPN Identification Number.
- The form revision date is updated numerically to reflect a March 2014 revision.

Section 9767.5 – Access Standards

- Subdivision (f) is amended to delete the phrase “the employer or to” for clarity and accuracy because the timeline of 3 business days will be triggered against the MPN only when a MPN medical access assistant receives notice.
- Subdivision (g) is amended to delete the phrase “directly with a physician or” for clarity and accuracy because the timelines will be triggered against the MPN only when a MPN medical access assistant receives notice. In addition, the timeline for an MPN medical access to schedule a timely medical appointment with an appropriate specialist has been amended from within five business days of an employee’s request to within ten business days of an employee’s request.
- Subdivision (h)(2) is amended to delete the word “the” used before “MPN medical access assistants” on two occasions as unnecessary. The phrases “do not authorize treatment and” “are not to function as claims adjusters” are deleted for clarity and brevity. The sentence “Although their duties are different, if the same person performs both, the MPN medical access assistant’s contacts must be separately and accurately logged” is added to provide clarity when the same person performs both the duties of a claims adjuster and an MPN medical access assistant.

Section 9767.5.1 – Physician Acknowledgments

- Section 9767.5.1 sets forth the requirements for physician acknowledgments. The organizational structure of this section has been rearranged in its entirety for brevity and clarity to make it easier to follow.
- Subdivision (a) is deleted in its entirety and replaced by “An MPN applicant shall obtain from each physician participating in the MPN a written acknowledgment in which the physician affirmatively elects to be a member of the MPN as provided in this section. This section does not apply to a physician who is a shareholder, partner, or employee of a medical group that elects to participate in the MPN, however this section applies to the medical group that elects to participate in the MPN” for clarity to describe who must sign a physician acknowledgment and who is exempt.
- Subdivision (b) is deleted in its entirety and replaced with “The following persons may execute the acknowledgment:”
- Subdivisions (b)(1)(A)-(C) is amended to add if the acknowledgment is for one or more physicians, it shall be executed by the physician(s); or an employee of the physician or an employee of the physician’s office; or if authorized by the physician(s), an agent or representative of a medical group.
- Subdivision (b)(2) is amended to add if a medical group elects to participate in an MPN, an authorized officer or agent of a medical group shall execute the acknowledgment. Unless the

acknowledgment is for all physicians who are shareholders, partners, or employees of a medical group or all the physicians in a distinct department or unit of the medical group, the medical group acknowledgment shall include or refer to a list of the participating physicians and shall be updated by the officer or agent within 90 days of any additions to or removals from the list.

- Subdivision (c) is deleted in its entirety and replaced with “A written acknowledgment may be in any of the following forms:”
- Subdivisions (c)(1)-(3) are replaced with the former text of subdivisions (e)(1)-(3). A written acknowledgment may be a tangible document bearing an original signature, or facsimile or electronic image of the original document and signature or an electronically signed document in compliance with Government Code section 16.5, or an electronic acknowledgment using generally accepted means of authentication to confirm the identity of the person making the acknowledgment.
- Subdivision (d) is deleted in its entirety and replaced with a description of the contents of the acknowledgments. The acknowledgments shall identify the MPN in which the physician or group participates. Multiple MPNs may be identified in a single acknowledgment or separate acknowledgments or in any combination. 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. The MPN or MPNs may be identified by reference to a website listing where a person described in subdivision (b) is enabled to observe which MPN or MPNs are selected for the physician or group. If permitted by the written acknowledgment, the website listing may be amended without further action by the physician or the group, provided that the website enables the physician or the group to de-select any MPN. If the physician or group is removed from an MPN by anyone other than a person described in subdivision (b), the MPN applicant shall give the physician or group notice of that fact in writing or electronically.
- Subdivision (e) has been deleted and replaced with the sentence “The acknowledgment shall be obtained at the time of the following occurrences:” for clarity to establish when MPNs are required to obtain acknowledgments.
- Subdivision (e)(1) is added for clarity to establish that on or after the effective date of these regulations, acknowledgments shall be obtained at the time the physician or medical group enters into a new contract to participate in the MPN.
- Subdivision (e)(2) is added for clarity to establish that on or after the effective date of these regulations, acknowledgments shall be obtained from a physician who joins a medical group that already has a contract to participate in an MPN or MPNs.
- Subdivision (e)(3) is added for clarity to establish that on or after January 1, 2014 but before the effective date of these regulations, acknowledgments shall be obtained from the physician

or medical group that enters into a new contract or renews a contract to participate in the MPN no later than January 1, 2015.

- Subdivision (e)(4) is added for clarity to establish that on or after January 1, 2014 but before the effective date of these regulations, acknowledgments shall be obtained from the physician who joins a medical group that already has a contract to participate in an MPN or MPNs no later than January 1, 2015.
- Subdivision (e)(5) is added for clarity to establish that prior to the effective date of these regulations, if a contract is entered that is continuous and automatically renews without a new execution by or on behalf of the physician, then the acknowledgments shall be obtained no later than January 1, 2016, provided, however that no further acknowledgment is required if either of the following is true: (A) the contract identifies the MPN in which the physician or group is participating (B) a website address is openly published where a person described in subdivision (b) can enter the website and see which MPN or MPNs have been selected for the physician or medical group and to de-select any MPN. Upon request, reasonable proof to authenticate a person's identity as a person authorized in subdivision (b), may be made.
- Subdivision (f) is deleted and replaced with the sentence "The MPN applicant shall retain a copy of the executed acknowledgment so long as it remains in force and for three years thereafter".

Section 9767.6 – Treatment and Change of Physicians Within MPN

- Subdivision (d) is amended to delete the phrase "or entity that provides physician network services" for accuracy because insurers or employers shall provide this notice.
- Subdivision (e) is amended to add the phrase "and if the employee fails to do so, then the insurer, employer, or entity that provides physician network services may assign another treating physician who is not a chiropractor" for clarity.

Section 9767.7 – Second and Third Opinions

- Subdivision (g) is amended to delete the phrase "outside the MPN" and add the phrase "the employee may choose a physician outside the MPN within a reasonable geographic area" to clarify the parameters that the out-of-network physician chosen must be within a reasonable geographic area.

Section 9767.8 – Modification of Medical Provider Network Plan

- Subdivisions (a)(8-13) are amended to replace incorrectly numbered subdivisions with the correct number.
- Subdivision (j) Notice of Medical Provider Network Plan Modification is amended as

follows:

- The box “For DWC Only” has been amended to delete the word “Approval” and replace it with “Identification”.
- No. 2: Has been amended to delete the word “Approval” and replace it with “Identification”.
- The form revision date is updated numerically to reflect a March 2014 revision.

Section 9767.9 Transfer of Ongoing Care into the MPN

- Subdivision (f) has been amended to delete the word “residence” and replace it with “address” for accuracy because some injured covered employees only provide a P.O. Box address and not their residence address.

Section 9767.10 Continuity of Care Policy

- Subdivision (d)(1) has been amended to delete the word “residence” and replace it with “address” for accuracy because some injured covered employees only provide a P.O. Box address and not their residence address.

Section 9767.12 Employee Notification

- Subdivision (a) is amended to add the phrase “that is subject to an MPN” to clarify when a complete employee notification shall be provided.
- Subdivision (a)(2)(A) is amended to add the sentence “The unique MPN Identification number” for clarity and is amended to add the acronym “MPN” and the phrase “of the injured workers’ choice” to clarify that injured covered employees may choose their MPN physicians.
- Subdivision (a)(2)(B) is amended to add the phrase “and the web address that includes a roster of all treating physicians in the MPN” for clarity and to delete the phrase “and the MPN’s approval number” because the unique MPN Identification number will be provided instead of the MPN’s approval number.
- Subdivision (a)(2)(C) is amended to add the word “or” for accuracy because the complete provider directory may be included in the MPN website.
- Subdivision (b)(1)(A) is amended to add the phrase “unique MPN Identification” because this requirement replaces the deleted requirement to provide the “specific MPN name and MPN approval” number.
- Subdivision (b)(2) is amended to delete the references to “approval” number and replaced with the unique MPN Identification number.

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 2016 to 2018 for MPNs approved prior to January 1, 2014.
- Subdivision (b)(5) is amended to add the word “estimated” and the phrase “set forth in section 9767.5” and to delete the phrase “for the injured workers being covered by the MPN” to clarify that the geocoding results will provide an estimated compliance with the MPN access standards set forth in section 9767.5. The sentences “The access standards set forth in section 9767.5 is determined by the injured employee’s residence or workplace address and not the center of a zip code. The geocoding results will be used by DWC in reviewing MPN plans to give an approximation of MPN compliance with the access standards set forth in section 9767.5” are added to clarify geocoding requirements will be used by DWC in reviewing MPN plans but is not the MPN Access Standards which is set forth in section 9767.5. The phrase “summarizing data reasonably available at the time of compilation” is added for clarity. The phrase “and/or” is amended to delete the “and” choice for clarity three times. The word “that” is deleted and replaced with the word “where” for clarity three times. The phrase “specialist to provide occupational health services in each listed specialty” is deleted and replaced with the phrase “physicians in each of the specialties commonly required to treat injured workers covered by the MPN” for clarity and more specificity. The phrase “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” is deleted and replaced with the phrase “a list of all zip codes where access standards are not met for primary treating physicians, for acute care hospitals or emergency facilities, and for each specialty listed to treat common injuries experienced by injured workers covered by the MPN, and a narrative report explaining if medical treatment will be provided according to an approved alternative access standard or according to a written policy permitting out of MPN treatment in those areas; and” for accuracy and clarity.
- Subdivision (b)(6) is amended to correctly cite section 9767.2(b) instead of (a).

Section 9767.16.5 – DWC Medical Provider Network Complaint Form 9767.16.5

The form is amended to delete “MPN Approval Number” and replace it with “MPN Identification Number”.

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

The form is amended to delete “MPN Approval Number” and replace it with “MPN Identification Number”.

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

- The existing text in subdivision (a)(2)(C) is deleted in its entirety.

- Subdivision (a)(2)(D) is re-lettered to (a)(2)(C).
- Subdivision (a)(2)(E) is re-lettered to (a)(2)(D) and the existing text is deleted and replaced with “Failure of an MPN Applicant to permit an injured covered employee to obtain necessary non-emergency services for an initial MPN treatment from an out-of-network physician when the Medical Access Assistant fails to schedule an appointment within 3 business days of receipt of request from the injured covered employee” to clarify it is the failure to permit out-of-network treatment that will trigger the penalty.
- Subdivision (a)(2)(F) is re-lettered to (a)(2)(E) and the existing text is deleted and replaced with “Failure of an MPN Applicant to permit an injured covered employee to obtain necessary medical treatment from an appropriate out-of-network specialists requested by the primary treating physician when, within 10 business days of receipt of request from the injured covered employee, the MPN Medical Access Assistant has failed to schedule or offer an appointment with an appropriate specialist to occur within 20 days of the receipt of the request” to clarify it is the failure to permit out-of-network treatment that will trigger the penalty.
- Subdivision (a)(2)(G) is re-lettered to (a)(2)(F).
- Subdivision (b)(1) is amended to delete the word “written” and replace it with the word “complete” for accuracy. The reference to subdivision (a) is deleted from section 9767.12 for brevity. The penalty is amended from \$1,500 per occurrence to \$500 per occurrence up to \$10,000.
- Subdivision (b)(5) is added to address failure to provide the Transfer of Care notice to an injured covered employee, \$250 per occurrence up to \$10,000.
- Subdivision (b)(6) is added to address failure to provide the Continuity of Care notice to an injured covered employee, \$250 per occurrence up to \$10,000.