

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 May 19, 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**~~.

Proposed Text Noticed for 3rd 15-Day Comment Period on Modified Text:

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

SUMMARY OF PROPOSED CHANGES

Section 9767.1 Medical Provider Networks – Definitions

- Subdivision (a)(7) is amended to add the phrase “or contracting with physician networks” to clarify that an entity that provides physician network services includes legal entities that contract with physician networks.
- Subdivision (a)(15) is amended to add the phrase “or within ninety (90) days of the effective date of these regulations” to clarify that the DWC will assign a Medical Provider Network Identification Number to existing MPNs within this timeframe.

Section 9767.3 - Requirements for a Medical Provider Network Plan

- Subdivision (c) is amended to add the word “Plan” after MPN to clarify the optional form will be the MPN Plan Application Form. The phrase “The completed application or plan documents and a copy of the completed documents shall be submitted in word-searchable PDF format on a computer disk, CD ROM, or flash drive with an original signature on the Cover Page for Medical Provider Network Application or Application Plan for Reapproval” has been deleted and the phrase “Two copies of the completed, signed Cover Page for Medical Provider Network Application or Plan for Reapproval and the complete MPN Plan shall be submitted to the DWC in compact discs or flash drives in word-searchable PDF format” is added to clarify the requirements for MPN applicants. The word “signed” is deleted and the phrase “cover page” is deleted and replaced with the phrase “Cover Page for Medical Provider Network Application or Plan for Reapproval and the complete MPN Plan” for clarity as this specifically names the required form.
- Subdivision (c)(1) is amended to change the word “on” to “in”, delete the reference to computer disks and replace it with the phrase “compact disc” for accuracy. The “(s)” is added to flash drives to potentially make it plural and the phrase “or CD ROM(s)” has been deleted as unnecessary because this acronym is replaced with the phrase “compact disc”.
- Subdivision (c)(2) is amended to change the word “on” to “in”, add the word “compact” before disc, delete the letter “k” and replace it with the letter “c” in the word disc(s) for accuracy, and delete the phrase “or CD ROM(s)” as unnecessary because this acronym is

replaced with the phrase “compact disc”. The phrase “occupational therapy medicine (OT)” has been deleted because this provider is not a physician and belongs in the ancillary service provider listing rather than the physician listing.

- Subdivision (d)(1) is amended to add the phrase “and affirm that the entity employs or contracts with physicians and other medical providers or contracts with physician networks” to clarify the requirements for an entity that provides physician network services when submitting an MPN application.
- Subdivision (d)(8)(E) is amended to delete the phrase “Affirm that the roster of all treating physicians in the MPN shall indicate if a physician is not currently taking new workers’ compensation patients and” as this will not be required. The letter “a” is capitalized in the word “Affirm”. The phrase “are counted when determining access standards but” is added to clarify that physicians listed in the MPN roster of treating physicians website who are designated “by referral only” are counted when determining whether or not the MPN has met access standards.
- Subdivision (d)(8)(H) is amended to add the phrase “in the geographic service area or areas to be served by the MPN” to clarify that an MPN needs to provide a list of all zip codes where access standards are not met only in the geographic service area or areas served by the MPN.

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

- The instructions to submit this form is amended to clarify the requirement that two copies of the completed, signed Cover Page for Medical Provider Network Application or Plan for Reapproval and the complete MPN Plan shall be submitted in compact discs or flash drives in word searchable PDF format to the Division of Workers’ Compensation.
- The form revision date is updated numerically to reflect a May 2014 revision.

Section 9767.5 – Access Standards

- Subdivision (b) is amended to delete the word “mileage” for accuracy because an alternative standard for accessibility may be determined by mileage or time.

Section 9767.5.1 – Physician Acknowledgments

- Subdivision (c) is deleted to add the phrase “or Civil Code sections 1633.1 *et seq.* whichever is applicable” because this is the proper citation of the code sections that governs electronic signatures between private parties.

- Subdivision (e)(5) is amended to delete the phrase “ provided, however, that no further acknowledgment is required if either of the following is true” and replaced it with the phrase “unless the MPN applicant can satisfy either (A) or (B) below” for clarity.
- Subdivision (e)(5)(B) is amended to delete the capital “S” to a lower case “s” in MPNs to correct a typographical error.

Section 9767.6 – Treatment and Change of Physicians Within MPN

- Subdivision (e) is amended to delete the phrase “or entity that provides physician network services” and add the word “or” between “insurer” and “employer” for accuracy.

Section 9767.8 – Modification of Medical Provider Network Plan

- Subdivisions (a) is amended to clarify an MPN applicant shall serve the Administrative Director with two copies of the completed, signed Notice of MPN Plan Modification and any necessary documentation in compact discs or flash drives in word searchable PDF format. The phrase “The hard copy of the original signed Notice of Medical Provider Network Plan Modification form and any necessary documentation shall be maintained by the MPN applicant and made available for review by the Administrative Director upon request” is added to further clarify the MPN applicant’s responsibility when submitting an MPN modification. The phrase “Electronic signatures in compliance with California Government Code section 16.5 are accepted” is added to further clarify electronic signatures are accepted.
- The instructions to submit the Notice of MPN Plan Modification is amended to clarify the requirement that two copies of the completed, signed Notice of MPN Plan Modification and any necessary documentation shall be submitted in compact discs or flash drives in word searchable PDF format to the Division of Workers’ Compensation.
- The form revision date is updated numerically to reflect a March 2014 revision.

Section 9767.15 – Compliance with Current MPN Regulations; Reapproval

- Subdivision (b)(5) is amended to add the phrase to clarify that an MPN needs to provide a list of all zip codes where access standards are not met only in the geographic service area or areas served by the MPN.