

BENEFIT NOTICE AND MEDICAL PROVIDER NETWORK	RULEMAKING COMMENTS 2nd 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
General Comment	Commenter appreciates the changes made and concurs with them.	Christine D. Coakley Legislative & Regulatory Analyst The Boeing Company September 27, 2007 Written Comment	While the Administrative Director appreciates this comment, the comment does not constitute an objection or recommendation that requires explanation or accommodation pursuant to Government Code §11346.9(a)(3).	None.
General Comment	<p>Commenter reiterates that several of the proposed regulations as modified fail to comply with the Government Code § 11349.1 standards of necessity and clarify.</p> <p>Commenter believes that the proposed regulations will impose unneeded substantial additional costs and present implementation problems to workers' compensation insurers.</p>	Steve Suchil Assistant Vice President American Insurance Company October 3, 2007 Written Comment	This comment repeats a prior general objection to the adoption of the regulations based on conclusory allegations of failure to meet APA standards and questioning the need for the regulations. The comment does not make recommendations or objections addressing any specific sections of the regulations. Generalized objections such as this one do not require specific responses pursuant to Government Code §11346.9(a)(3).	None.
Section 9767.16(a) and (c)	Commenter states that provision should be made in these subdivisions for the situation where an MPN initiates a cessation or termination of service to the MPN Applicant without giving at least 45 days notice, thereby preventing the MPN applicant from noticing the Division of Workers' Compensation and covered employees on a timely basis.	Steve Suchil Assistant Vice President American Insurance Company October 3, 2007 Written Comment	The Administrative Director accepts this comment. The requirement for 30-day prior notice for MPN termination or cessation of use will be changed to just require prior notice of termination or cessation of use.	Amended language has been distributed for public comment.
Section 9767.16(a)	Commenter suggests adding "as appropriate" at the end of the paragraph to make it consistent with the addition to Section 9810(i).	Steve Suchil Assistant Vice President American Insurance Company October 3, 2007 Written Comment	The Administrative Director does not accept this comment. This language is consistent with notice requirements in §9767.12.	None.
Section	Commenter states that the terminology and	Steve Suchil	The Administrative Director does not	None.

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9767.16(a)(1)(B) and (a) (2)	<p>description of entities in these provisions is confusing and lacks clarity. Section (a)(1)(B) uses the terms “insureds” and “employers”. The term “employer” is defined in Section 9767.1(a)(7) to be a self-insured employer, the Self-Insurer’s Security Fund, a group of self-insured employers, a joint powers authority, or the state. Commenter states that this definition is not a standard one and will create confusion when used in the subdivision.</p> <p>In subdivision (a)(2) the entities are termed “MPN Applicants and Insured Employers.” Commenter points out that there is no definition for an “insured employer.” If “employer” is defined as in Section 9767.1(a)(7), it would be a self-insured, etc., who by definition are not “insured.” If the more common usage for “employer” is used, it is one who has purchased workers’ compensation coverage from an insurer. In this case, the employer is subject to the insurer’s MPN Application and would not seem to need separate identification here.</p>	Assistant Vice President American Insurance Company October 3, 2007 Written Comment	<p>accept this comment. The applicable definitions are defined in §9767.1 and the inclusion of “insureds” is specifically intended by the regulation and the plain meaning of the term is clear.</p> <p>The Administrative Director does not accept this comment for the same reason as stated above.</p>	None.
Section 9767.16(c)(1)	Commenter points out the definitions for “transfer of care” and “continuity of care” are not included in Section 9767.1. He opines that the use of the term “transfer of care” in subdivision (c)(1) of this section appear to be more in keeping with “continuity of care” as described in Section 9767.10. Commenter believes that using these terms interchangeably will create confusion, and for this reason this subdivision fails to comply with the clarity standard.	Steve Suchil Assistant Vice President American Insurance Company October 3, 2007 Written Comment	The Administrative Director does not accept this comment. There is no need for further clarification because “transfer of care” is briefly defined in the regulation section and the specific transfer of care regulation is also referenced. Continuity of care does not apply in this situation so there should be no confusion.	None.
Section 9767.16(a)(1) and (a)(2)	Commenter opines that much, but not all, of the chaos this regulation would cause is	Mark Webb Vice President	The Administrative Director accepts this comment in part.	Amended language has been distributed for

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	<p>premised on the application of these requirements to the situation where an insured employer changes insurance companies since an insured employer cannot contract directly with an MPN. [8 CCR §§ 9767.1(a)(11); 9767.1(a)(13); Labor Code § 4616.5]. Since the regulations require 30 day notice of a termination or cessation of use of an MPN, if the regulations apply to when an insured employer changes insurance companies there exists the unintended consequence of requiring the MPN Applicant to remain responsible for care for injuries that occurred after the termination of the insurance contract. Employers are not obliged to make their workers' compensation insurance decisions prior to 30 days preceding the expiration of a policy. Consequently, if this regulation is intended to apply to employers changing insurers (MPN Applicant), the 30 day notice period could run past the expiration date of the policy and into the new policy of the new insurer. Clearly, the Division does not have the authority to bind coverage to an insurer for injuries that occur after the expiration of an insurance policy.</p> <p>Resolving this issue by deleting the reference to "insured employer" in proposed 8 CCR §§ 9767.16(a)(1) and 9767.16(a)(2) is one option to resolve this issue, but it offers only a partial resolution. Another option would be not to require a time specific notice but rather only make certain the MPN Applicant who is no longer insuring the employer provide notice of termination prior to the policy expiration date. This will require an expedited review from the</p>	<p>Governmental Relations Employer Direct Ins. Co. October 3, 2007 Written Comment</p>	<p>The requirement for 30-day prior notice for MPN termination or cessation of use will be changed to just require <i>prior</i> notice of termination or cessation of use.</p> <p>As to this portion of the comment, to clarify, the regulation is not intended to extend insurance policies beyond their date of expiration. There would simply be a gap in MPN coverage if old MPN coverage ends and new MPN coverage has not yet become effective because 30 day notice has not been provided.</p>	<p>public comment.</p> <p>None.</p>

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	<p>DWC or some other accommodation to allow the notice to be delivered without being delayed by the 15 day review period contemplated in these proposed regulations.</p> <p>Even if the regulations are revised to address the issue of change in insurance policies, however, there remains a practical issue framed by the following proposed language:</p> <p style="padding-left: 40px;">“If there will be a period of no MPN coverage due to a termination, cessation of use, or before a change to a different MPN is effective, then notice shall be given of an employee’s rights to a choice of physician under Labor Code section 4600. Specifically, an employee who has an existing industrial illness or injury that is being treated under the MPN shall have the right under Labor Code section 4600 to be treated by a physician of his or her own choice or at a facility of his or her own choice within a reasonable geographic area after 30 days have elapsed from the date the employee notified the employer of his or her injury,” [Proposed 8 CCR § 9767.16(a)(1)(D)]</p> <p>At best, this proposed notice language is confusing. An employee will receive notice of a termination of an MPN, a notice that within 30 days a new MPN will be in effect, and, if</p>		<p>The Administrative Director does not accept this portion of the comment. The language at issue is simply a statement of an employee’s rights</p>	<p>None.</p>

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	<p>the employee has an industrial injury after 30 days from the date of injury notice that the worker may seek treatment from any physician if there is a period of no MPN coverage.</p> <p>This is problematic for two reasons. First, it does not inform the injured worker that, even if treatment is obtained outside the MPN during the brief window of no MPN coverage ,once the MPN becomes operative care will most likely be transferred back into the MPN.</p> <p>The second problem with this notice is that it could be interpreted to mean that an existing injury being treated through an MPN that was in effect during a prior policy year also would allow for treatment under Section 4600 during the period of no MPN coverage. It is our hope that the Division intends this notice to apply only to those injuries that occurred during the period of no MPN coverage and not injuries that occurred during a prior MPN Applicant insuring the employer. (The commenter explains that technically, since workers' compensation insurance is an occurrence based policy, there is no period of "no MPN coverage" for an injury that occurs while the employer is insured under a prior policy of insurance. In other words, the care for injuries prior to the inception date of a new policy of insurance remains with the MPN Applicant/insurer for the lifetime of the claim and any care issues created by a change in providers would be addressed through continuity of care requirements.)</p>		<p>under Labor Code §4600, which they are entitled to know.</p> <p>The Administrative Director accepts this portion of the comment. Language has been added to clarify that an employee may be expected to treat with an MPN physician after transfer of care has ended.</p> <p>Labor Code §4600 rights would be effective during the time when no MPN coverage applies, and would not affect claims that were properly covered under an MPN that may now be terminated or no longer used.</p>	<p>Amended language has been distributed for public comment.</p>

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	<p>While acknowledging this is beyond the scope of this rule making proceeding, the Division should give serious reconsideration to its 30 day prior notice requirements in 8 CCR § 9767.12. The treatment of existing occupational injuries or illnesses is not affected by the change in networks or a change in MPN Applicants. In part this is because of the continuity of care requirements in the Labor Code. [Labor Code § 4616.2] Furthermore, the MPN is not a “network” in the group health sense where employees need an open enrollment period to make educated healthcare provider decisions. The MPN is a mechanism whereby the employer discharges its obligations to provide treatment consistent with the medical treatment utilization schedule and is an alternative to employee – selected treatment under Labor Code § 4600. [Labor Code § 4600(c)]. Coverage under an MPN should be immediate upon the posting of the notice required under Labor Code § 3550. Revising that notice would be more productive than the notice requirements under these and existing regulations. Indeed, if the notice under Labor Code § 3550 is not properly posted, then the treatment under the MPN is lost anyway, regardless of the multiple notices required by these regulations.</p> <p>Why, as a matter of public policy, should there <i>ever</i> be a period of no MPN coverage except when an employer elects not to discharge its obligations to provide necessary medical treatment through an MPN or if there is defective notice triggering the provisions of subdivision (e) of Labor Code § 3550? While</p>		<p>The Administrative Director does not accept this portion of the comment. This comment is beyond the scope of this rulemaking as it concerns the 30-day change of MPN notice requirement in an existing regulation, §9767.12(c), which is not being revised in this rulemaking.</p>	<p>None.</p>

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	<p>proposed 8 CCR § 9767.16(b) attempts to address this situation in two of three possible scenarios – that of the self-insured or when an insurer MPN Applicant changes networks and can coordinate the termination or cessation of one MPN and the introduction of a new one – it fails to consider the effect of when an employer changes insurance companies. Commenter recognizes that this is beyond the scope of this rule making proceeding, but it is an important issue that the Division should reconsider.</p>			
Section 9767.16(a)(1)	<p>The commenter suggests the following amendments to the proposed language:</p> <p>(a) The Medical Provider Network (“MPN”) Applicant is responsible for ensuring that each covered employee is informed in writing of the MPN policies under which he or she is covered and when the employee is no longer covered by an MPN. The MPN Applicant shall ensure each covered employee is given written notice of the date of termination or cessation of use of its MPN. The written notice shall be provided <u>communicated</u> to covered employees at least 30 calendar days prior to the effective date of termination or cessation of use of an MPN. The notices required by this section shall be made available in English and Spanish. The MPN Applicant shall advise every covered employee of the following information in all notices of termination or cessation of use of an MPN by an MPN Applicant or insured employer <u>and the insured employer shall communicate this information to its employees as requested by the MPN</u></p>	Brenda Ramirez Claims & Medical Director California Workers’ Compensation Institute October 4, 2007 Written Comment	<p>The Administrative Director accepts this comment in part. The requirement for 30-day prior notice for MPN termination or cessation of use will be changed to just require prior notice of termination or cessation of use.</p> <p>The Administrative Director does not accept the remainder of the comment. The language is clear and intended. The MPN Applicant is responsible for ensuring employees receive notices but still has the flexibility to determine if it wants to distribute the notices or if it will require its insured employers to do so.</p>	<p>Amended language has been distributed for public comment.</p> <p>None.</p>

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	<p><u>applicant</u>: ...</p> <p>Discussion Because the proposed regulation encompasses both the termination of the MPN by the MPN applicant and the insured employer obtaining coverage from a new insurance company, the timing of the notice is not feasible, because most often there is not a 75-day window between policies. Conversely, there is no gap between the coverage provided by the new insurance policy and the coverage of the new policy, generally, begins at the terminal date of the old policy. The provision of medical care for a given injured worker is governed by the statutes in effect on the date of injury, so injured employees receiving treatment through one MPN will continue to treat with that medical facility until they are released from care, even if the employer changes insurers. The initial insurer and its MPN will continue to be responsible for injuries and medical care arising within their period of coverage and the new insurer and MPN will notify the affected employees and assume responsible for new injuries within its period of coverage.</p> <p>The notice requirement for a change in the provision of medical care can involve multiple parties and a variety of circumstances. The proposed regulations attempt to address all of these contingencies and, consequently, the content and timing of the notices is not sufficiently focused and may lead to confusion and miscommunication with the injured workers.</p>			

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	<p>An “MPN applicant” is defined in the statute and the regulations as an insurer or a self-insured employer. An insured employer’s injured workers receive medical services from its insurance company’s MPN providers. The insurer is responsible to establish and administer the network, including communication with the injured workers regarding their right to medical care and the use of the medical network.</p> <p>The AD has proposed that the MPN applicant provide certain notices whenever it or an “insured employer” terminate or cease using an MPN. An insured employer will only encounter this circumstance when its insurer terminates the services of the MPN, or for new injuries when the insured employer changes insurance companies and moves from insurer A’s MPN to insurer B’s MPN. In that circumstance, the regulation provides that the MPN applicant, the insurer B, would have to provide the required notices.</p> <p>When an employer changes coverage to a new insurer, it is the responsibility of the first insurer to continue to provide medical care to the workers injured during its period of coverage. These employees need no notice because their treatment will continue with insurer A’s MPN. Under the new insurance policy, the new insurer has the responsibility to notify all covered employees of its procedures for providing medical care for future injuries. Under the statute and the regulations, the insured employer has no role</p>		<p>The Administrative Director does not accept this portion of the comment. An MPN Applicant may require its</p>	<p>None.</p>

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	<p>in selecting or establishing an MPN for its employees. Neither will the insured employer be responsible to provide notice to its employees regarding the method used by its insurer to provide medical care to injured workers.</p> <p>If the Division is including insured employers only for the purpose of requiring the cooperation in the communication of the appropriate notices from the MPN applicant, then the regulation needs to be clarified in that regard.</p> <p>Rather than requiring that all notices be “sent”, the Division should consider the various methods of effective communication that the insurers or employers might use and require that the notices be communicated to the covered workers.</p>		<p>insured employers to distribute the required notices, but it is still the responsibility of the Applicant to ensure that such notices are distributed.</p> <p>The Administrative Director does not accept this portion of the comment. The inclusion of “insured employer” is intended to highlight a common situation which results in a change of MPN, and thus requires notice. As identified, a change of insurers results in a change of MPNs, which triggers these notice requirements.</p> <p>The Administrative Director does not accept this portion of the comment. Written notice is required. “Communicated” could include oral communication which has not been deemed sufficient to give proper notice.</p>	<p>None.</p> <p>None.</p>
Section 9767.16(a)(2)(A)	<p>The commenter suggests the following amendments to the proposed language:</p> <p>(A) Notice that any injured worker receiving treatment from a provider not in the subsequent MPN, may be entitled <u>subject to transfer of care or continuity of care provisions to continue treatment with his or her current provider. Transfer of care applies</u> <u>These provisions may apply</u> when an employee has an acute, serious chronic or terminal illness or has a prior scheduled medical procedure with the non-MPN</p>	Brenda Ramirez Claims & Medical Director California Workers’ Compensation Institute October 4, 2007 Written Comment	<p>The Administrative Director does not accept this comment. Continuity of care is not applicable in this situation as it only applies when there is a terminated MPN provider. If the MPN coverage is terminated and no new MPN coverage is planned, then the MPN rule of continuity of care doesn’t apply anymore and Labor Code §4600 applies.</p> <p>If there is a change to another MPN, then the transfer of care could apply</p>	None.

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	<p>provider, pursuant to section 9767.9 <u>and</u> 9767.10 of these regulations.</p> <p>Discussion The regulation needs to cite both the continuity of care and transfer of care provisions, as either may apply in a given situation.</p>		because a current treating provider may not be in the new MPN, but s/he would not be terminated from it to trigger continuity of care.	
Section 9767.16(c)(1)	<p>The commenter suggests the following amendments to the proposed language:</p> <p>If an MPN Applicant or insured employer is also changing MPN coverage to a different MPN, the MPN Applicant is responsible for ensuring that every covered employee is given notice of the following information in addition to the information required for an MPN termination or cessation of use:</p> <p>Discussion Under the statute, an insured employer has no authority to change to a different MPN and, therefore the responsibility to communicate to the affected workers remains with the MPN applicant (insurer or self-insured employer).</p>	Brenda Ramirez Claims & Medical Director California Workers' Compensation Institute October 4, 2007 Written Comment	The Administrative Director does not accept this comment. The same reasoning applies as for the comment above with respect to §9767.16(a)(1).	None.
Section 9810(i)	<p>The commenter states that if the intent of the Spanish notice requirement is to educate and advise Spanish-speakers about the workers' compensation benefits being received, the proposed Fact Sheets [static/permanent text drafted by the DWC] can be easily translated into Spanish to cover the general requirements of the law and respective benefits, i.e., TD, PD, QME, etc. This would essentially be a 'one time' cost for the entire industry.</p> <p>The commenter states that if a Spanish-</p>	Jose Ruiz Claims Operations and Systems Manager State Compensation Insurance Fund October 4, 2007 Written Comment	The Administrative Director does not accept this comment. The existing requirement is consistent with the Legislative intent expressed in Labor Code §124(b) that Spanish speaking employees receive notices in the Spanish language. The Facts Sheets referred to in the regulations are already available in Spanish on the Division's website.	None.

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	<p>speaker is not able to understand the content of an English benefit notice (by their own ability or with assistance from personal or legal/professional resources), s/he can contact the Claims Administrator and/or their local Information and Assistance Office to have a Spanish-speaker explain the specifics of the notices in question. Spanish Fact Sheets and existing Spanish-speaking resources should adequately facilitate the needs of the Spanish speaking & reading community.</p> <p>The commenter acknowledges the importance of ensuring that injured employees in California understand their rights and responsibilities under the workers' compensation laws. The commenter recommends that an advisory group of industry members and the public review the language needs in California and come up with a cost effective method to address the growing need without adding significant frictional costs at an operational level. The proposed term 'as appropriate' has not resolved the issue of exactly when benefit notices shall be made available in English and Spanish and will result in litigation.</p> <p>Commenter recommends the following amended language be used instead of the proposed language:</p> <p>(i) All benefit notices shall include Spanish versions of the Fact Sheets as required by these regulations, which directs the employee to the appropriate resources available to them.</p>			