

State of California
DEPARTMENT OF INDUSTRIAL RELATIONS
Division of Workers' Compensation

**NOTICE OF MODIFICATION TO TEXT OF
PROPOSED REGULATIONS**
(Adoption of Emergency Regulations)

Subject Matter of Regulations: Medical Provider Networks

TITLE 8, CALIFORNIA CODE OF REGULATIONS
SECTIONS 9767.1 – 9767.14

NOTICE IS HEREBY GIVEN that the Administrative Director of the Division of Workers' Compensation, pursuant to the authority vested in her by Labor Code sections 59, 133, and 4616 proposes to modify the text of the following proposed amendments to Title 8, California Code of Regulations:

Section 9767.1	Medical Provider Networks - Definitions
Section 9767.3	Application for a Medical Provider Network Plan
Section 9767.4	Cover Page for Medical Provider Network Application
Section 9767.5	Access Standards
Section 9767.7	Second and Third Opinions
Section 9767.8	Modification of Medical Provider Network Plan
Section 9767.9	Transfer of Ongoing Care into the MPN
Section 9767.10	Continuity of Care Policy
Section 9767.12	Employee Notification
Section 9767.13	Denial of Approval of Application and Reconsideration
Section 9767.14	Suspension or Revocation of Medical Provider Network Plan; Hearing

**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
Division of Workers' Compensation
Post Office Box 420603
San Francisco, CA 94142

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 Friday, June 10, 2005**. Written

comments may be submitted by facsimile transmission (FAX), addressed to the contact person at (415) 703-4720. Written comments may also be sent electronically (via e-mail), using the following e-mail address: dwcrules@hq.dir.ca.gov.

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 public review during normal business hours of 8:00 a.m. to 5:00 p.m., Monday through Friday, excluding legal holidays, at the offices of the Division of Workers' Compensation. The Division is located at 455 Golden Gate Avenue, 9th Floor, San Francisco, California.

Please contact the Division's regulations coordinator, Ms. Maureen Gray, at (415) 703-4600 to arrange to inspect the rulemaking file.

The specific modifications proposed include changes to the text of the proposed amendments Title 8, California Code of Regulations:

Section 9767.1	Medical Provider Networks - Definitions
Section 9767.3	Application for a Medical Provider Network Plan
Section 9767.4	Cover Page for Medical Provider Network Application
Section 9767.5	Access Standards
Section 9767.7	Second and Third Opinions
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Section 9767.14	Suspension or Revocation of Medical Provider Network Plan; Hearing

DOCUMENTS SUPPORTING THE RULEMAKING FILE

Comments from various interested parties concerning the Division's proposed changes have been added to the rulemaking file.

FORMAT OF PROPOSED MODIFICATIONS

Proposed Text Noticed for 45-Day Comment Period:

Deletions from the codified emergency regulatory text are indicated by strike-through, thus: ~~deleted language~~.

Additions to the codified emergency regulatory text are indicated by underlining, thus: underlined language.

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

Double strike-through indicates deleted language proposed on February 9, 2005, thus: ~~deleted language~~.

Double underline indicates added language proposed on February 9, 2005, thus: added language.

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

Italics, double strike-through indicates deleted language proposed on May 26, 2005, thus: ~~*deleted language*~~.

Italics, double underline indicates added language proposed on May 26, 2005, thus: *added language*.

SUMMARY OF PROPOSED CHANGES

Modifications to Section 9767.1 Medical Provider Networks - Definitions

Subdivision (a)(2): The definition of “Covered employee” is amended to include “or former employee whose employer has ongoing workers’ compensation obligations and...” This phrase is included because this class of employees is entitled to medical care for workers’ compensation injuries.

Subdivision (a)(6): The definition of “Employer” was amended to replace the term “a group self-insurer” with “a group of self-insured employers,” which is the term more commonly used by the public.

In subdivision (a)(20), the definition of “Regional area listing” were added to define the smaller, local list of providers that the MPN applicant may provide to the covered employees pursuant to section 9767.7(b) and (d) and section 9767.12 (a)(3). The definition is necessary to ensure that the employee will be provided with a list of providers including at least the county in which the employee resides or works, or in rural counties, providers within the county in which the employee resides or works and at least two adjacent counties.

The remainder of this section was renumbered.

Modifications to Section 9767.3 Application for a Medical Provider Network Plan

Paragraphs (c)(1), (2), and (3) were added to allow MPN applicants to submit the provider information or ancillary service provider information on computer disks or CD ROMs. Currently the lists are submitted in a printed out form. This modification will save time and paper for the MPN applicants. The modification requires the information to be submitted as a Microsoft Excel sheet or Microsoft Access File so that the Division will be able to read the files. The amendment also requires that the information be set forth in lists which will allow the Division to locate the appropriate information.

Subdivision (d)(8)(A): The word “Describe” was replaced with “State” for clarity purposes.

Subdivision (d)(8)(C): The phrase “in which the providers have agreed to provide treatment for

injured workers in the workers' compensation system" has been added to ensure that the providers included in the MPN will accept workers' compensation patients. A grammatical change was also made to the last sentence of this subdivision: "The MPN applicant shall confirm that the contractual agreement is in compliance with Labor Code section 4609." It now states "and that the contractual agreement is in compliance with Labor Code section 4609. "

Subdivision (d)(8)(G) was deleted as redundant because subdivision (d)(8)(H) requires the MPN applicant to describe how the MPN complies with the access standards set forth in 9767.5 for all covered employees. This includes the employees who were previously listed in subdivision (d)(8)(G).

The following paragraphs in (d) were renumbered.

Subdivision (e)(16) was added to state: "By submission of the application, the MPN applicant is confirming that a contractual agreement in which the providers have agreed to provide treatment for injured workers in the workers' compensation system exists either between the Health Care Organization and the physicians, providers or medical group practice in the MPN or the MPN applicant and the Health Care Organization and that the contractual agreement with the providers is in compliance with Labor Code section 4609." This paragraph mirrors the requirement set forth in Subdivision (d)(8)(C) and is added to confirm contracts exist between the parties and to prevent the improper selling, leasing, or transferring of provider's contracts.

Modifications to Section 9767.4 Cover Page for Medical Provider Network Application

Section 9767.4 was amended to change the check-off box entitled "Group Self-Insurer" to "Group of Self-Insured Employers," which reflects the change made to the definitions in 9767.1(a)(6).

Modifications to Section 9767.5 Access Standards

Subdivision (e) is amended to clarify that the MPN applicant shall have a written policy for arranging or approving non-emergency medical care for three types of employees who are outside the geographic service area: "(A) a covered employee authorized by the employer to temporarily work or travel for work outside the MPN geographic service area when the need for medical care arises; (B) a former employee whose employer has ongoing workers' compensation obligations and who permanently resides outside the MPN geographic service area; and (C) an injured employee who decides to temporarily reside outside the MPN geographic service area during recovery."

Paragraphs (e)(2), (3), and (4) define minimum standards that must be included in the written access policy:

"(e)(2) The written policy shall provide the employees described in subdivision (e)(1) above with the choice of at least three physicians outside the MPN geographic service area who either have been referred by the employee's primary treating physician within the MPN or have been selected by the MPN applicant. In addition to physicians within the MPN, the employee may change physicians among the referred physicians and may obtain a second and third opinion from the referred physicians.

(3) The referred physicians shall be located within the access standards described in paragraphs (c) and (d) of this section.

(4) Nothing in this section precludes a MPN applicant from having a written policy that allows a covered employee outside the MPN geographic service area to choose his or her own provider for non-emergency medical care.”

Former subdivision (f) has been re-lettered as subdivision (i).

In re-lettered subdivision (f) (formerly subdivision (g)), the phrase “within one day after the employee files a claim form under Labor Code section 5401, the MPN applicant shall authorize the provision of all treatment as required by Labor Code section 5402” has been removed for clarity. This section deals with the requirement of providing an appointment for initial treatment within 3 business days of the request for treatment within the MPN. The reference to Labor Code section 5401 and 5402 was unnecessary in this section and confusing.

Former subdivision (h) has been re-lettered as subdivision (g).

Subdivision (h) has been added to state: “(h) If the primary treating physician refers the covered employee to a type of specialist not included in the MPN, the covered employee may select a specialist from outside the MPN.” As a MPN is only required to have specialists “expected to treat common injuries experienced by injured employees based on the type of occupation or industry in which the employee is engaged,” it is possible that an employee will be referred to a specialist that is not within the MPN. This subdivision deals with that situation.

Modifications to Section 9767.7 Second and Third Opinions

Subdivisions (b) and (c) are amended by replacing the word “list” with “regional area listing.” “Regional area listing” was added to the definitions in section 9767.1(a)(20). This modification clarifies which providers’ names must be given to the employee when the employee requests a second or third opinion.

Subdivision (f) was modified. The sentence, “The employer or insurer shall permit the employee to obtain the recommended treatment within the MPN,” was deleted from this section and moved to the first sentence in (g).

Subdivision (g) was added and states: “The employer or insurer shall permit the employee to obtain the recommended treatment within the MPN. The covered employee may obtain the recommended treatment by changing physicians to the second opinion physician, third opinion physician, or other MPN physician.” This section clarifies that the employee shall be allowed to obtain the treatment recommended by the second or third opinion and how the treatment may be obtained.

Modifications to Section 9767.8 Modification of Medical Provider Network Plan

Subdivision (a)(1) was amended to include the words “in the composition” to clarify that a Notice of MPN Plan Modification is required if there has been a 10% change in physicians in the MPN, even if the number of physicians remains the same.

Subdivision (a)(4) was added to include a material change in the transfer of care policy.

Subdivision (a)(9) was added to include a material change in any of the employee notification letters required by section 9767.12.

Subdivision (b) was stricken, as subdivision (a) states what must be served, and a copy of the entire application is not required.

In subdivision (e)(2), the word “reconsideration” was replaced with the word “re-evaluation” to distinguish this process from an appeal with the WCAB.

Subdivision (f) was re-written to set forth the re-evaluation procedure. The re-evaluation will be based on documentation. The re-evaluation may be appealed to the WCAB. The section now states:

“(f) Any MPN applicant may request a re-evaluation of the denial by submitting with the Division, within 20 days of the issuance of the Notice of Disapproval, a written request for a re-evaluation with a detailed statement explaining the basis upon which a re-evaluation is requested. The request for re-evaluation shall be accompanied by supportive documentary material relevant to the specific allegations raised and shall be verified under penalty of perjury. The MPN application and modification at issue shall not be re-filed; they shall be made part of the administrative record by incorporation by reference.

(g) The Administrative Director shall, within 45 days of the receipt of the request for a re-evaluation, either:

(1) Issue a Decision and Order affirming or modifying the Notice of Disapproval based on a failure to meet the procedural requirements of this section or based on a failure to meet the requirements of Labor Code section 4616 et seq. and this article; or

(2) Issue a Decision and Order revoking the Notice of Disapproval and issue an approval of the modification;

(h) The Administrative Director may extend the time specified in subdivision (h) within which to act upon the request for a re-evaluation for a period of 30 days and may order a party to submit additional documents or information.

(i) A MPN applicant may appeal the Administrative Director’s decision and order regarding the MPN by filing, within twenty (20) days of the issuance of the decision and order, a petition at the district office of the Workers’ Compensation Appeals Board closest to the MPN applicant’s principal place of business, together with a Declaration of Readiness to Proceed. The petition shall set forth the specific factual and/or legal reason(s) for the appeal. A copy of the petition and of the Declaration of Readiness to Proceed shall be concurrently served on the Administrative Director.”

The section was re-numbered and re-lettered due to the changes made in the subdivisions.

The first page of the form was amended to change the check-off box entitled “Group Self-Insurer” to “Group of Self-Insured Employers,” which reflect the change made to the definitions in 9767.1(a)(6). The second page of the form was amended to add check-off boxes that reflect the requirements to file a Notice of MPN Plan Modification in subdivision (a): “Change in the *composition of Network Providers*,” “Change in transfer of care policy: Provide a copy of the revised written transfer of care policy,” Change in how the MPN complies with the access standards: Explain what change has been made and describe how the MPN still complies with the access standards,” and “ Change of employee notification letter(s): Provide a copy of the revised notification letter(s).”

The references to the Government Code were deleted as those sections are no longer referenced in the section.

Modifications to Section 9767.9 Transfer of Ongoing Care into the MPN

Subdivision (b) was deleted and replaced with a new (b) which states, “Until the injured covered employee is transferred into the MPN, the employee’s physician may make referrals to providers within or outside the MPN.

Modifications to Section 9767.10 Continuity of Care Policy

Subdivision (c), which states, “‘An extended period of time,’ as referred to in Labor Code section 4616.2(d)(3)(B) with regard to a serious and chronic condition, means a duration of at least ninety days,” was added to this section to interpret and define the term “an extended period of time.

Subdivision (d) was added to the section to require the MPN applicant to include a dispute process in its written continuity of care policy. The requirements are listed and mirror the requirements for the dispute process for transfer of care in section 9767.9.

Modifications to Section 9767.12 Employee Notification

Subdivision (a)(3) was amended to replacing the words “regional list” with “regional area listing.” “Regional area listing” was added to the definitions in section 9767.1(a)(20). This modification clarifies which providers’ names must be given to the employee if the employer chooses to give an initial provider list. The section was also amended to require the employer or insurer to provide the URL address if the provider list is accessible on a website.

Subdivision (a)(4) was amended to require the insurer or employer to state what the access standards are under section 9767.5 to ensure that the covered employees are aware of these requirements.

Subdivision (a)(5) was amended to include the three categories of employees listed in section 9767.5 (e). The subdivision now states: “How to access treatment if (A) the employee is authorized by the employer to temporarily work or travel for work outside the MPN’s geographical service area; (B) a former employee whose employer has ongoing workers’ compensation obligations permanently resides outside the MPN geographical service area; and

(C) an injured employee decides to temporarily reside outside the MPN geographic service area during recovery.”

Subdivision (a)(13) was re-worded to state: “A description of the continuity of care policy and a notification that a copy of the policy shall be provided to an employee upon request.” This section was changed to comply with Labor Code section 4616.2(c).

Modification to Section 9767.13 Denial of Approval of Application and Reconsideration

In subdivision (b)(2), the word “reconsideration” was replaced with the words “a re-evaluation” to distinguish this process from an appeal with the WCAB.

Subdivision (c) was re-written to set forth the re-evaluation procedure. The re-evaluation will be based on documentation. The re-evaluation may be appealed to the WCAB. The section now states:

“(c) Any MPN applicant may request a re-evaluation by submitting with the Division, within 20 days of the issuance of the Notice of Disapproval, a written request for a re-evaluation with a detailed statement explaining the basis upon which a re-evaluation is requested. The request for a re-evaluation shall be accompanied by supportive documentary material relevant to the specific allegations raised and shall be verified under penalty of perjury. The MPN application at issue shall not be re-filed; it shall be made part of the administrative record by incorporation by reference.

(d) The Administrative Director shall, within 45 days of the receipt of the request for a re-evaluation, either:

(1) Issue a Decision and Order affirming or modifying the Notice of Disapproval based on a failure to meet the procedural requirements of this section or based on a failure to meet the requirements of Labor Code section 4616 et seq. and this article; or

(2) Issue a Decision and Order revoking the Notice of Disapproval and issue an approval of the MPN.

(e) The Administrative Director may extend the time specified in subdivision (d) within which to act upon the request for a re-evaluation for a period of 30 days and may order a party to submit additional documents or information.

(f) A MPN applicant may appeal the Administrative Director’s decision and order regarding the MPN by filing, within twenty (20) days of the issuance of the decision and order, a petition at the district office of the Workers’ Compensation Appeals Board closest to the MPN applicant’s principal place of business, together with a Declaration of Readiness to Proceed. The petition shall set forth the specific factual and/or legal reason(s) for the appeal. A copy of the petition and of the Declaration of Readiness to Proceed shall be concurrently served on the Administrative Director.”

The references to the Government Code were deleted those sections are no longer referenced in the section.

Modifications to Section 9767.14 Suspension or Revocation of Medical Provider Network Plan; Hearing

Subdivisions (b) through (f) have been amended to provide for a re-evaluation process and subsequent appeal from the Administrative Director's suspension or revocation of approval of a MPN plan. The sections now state:

“(b) If one of the circumstances in subdivision (a) exists, the Administrative Director shall notify the MPN applicant in writing of the specific deficiencies alleged. The Administrative Director shall allow the MPN applicant an opportunity to correct the deficiency and/or to respond within ten days. If the Administrative Director determines that the deficiencies have not been cured, he or she shall issue a Notice of Action to the MPN applicant that specifies the time period in which the suspension or revocation will take effect and shall transmit the Notice of Action to the MPN applicant by U.S. Mail.

(c) A MPN applicant may request a re-evaluation of the suspension or revocation by submitting to the Administrative Director, within 20 days of the issuance of the Notice of Action, a written notice of the request for a re-evaluation with a detailed statement explaining the basis upon which a re-evaluation is requested. The request for a re-evaluation shall be accompanied by supportive documentary material relevant to the specific allegations raised and shall be verified under penalty of perjury. The MPN application at issue shall not be re-filed; it shall be made part of the administrative record and incorporated by reference.

(d) The Administrative Director shall, within 45 days of the receipt of the request for a re-evaluation, either:

(1) Issue a Decision and Order affirming or modifying the Notice of Action based on a failure to meet the procedural requirements of this section or based on a failure to meet the requirements of Labor Code section 4616 et seq. and this article;

(2) Issue a Decision and Order revoking the Notice of Action;

(e) The Administrative Director may extend the time specified in subdivision (d) within which to act upon the request for a re-evaluation for a period of 30 days and may order a party to submit additional documents or information.

(f) A MPN applicant may appeal the Administrative Director's decision and order regarding the MPN by filing, within twenty (20) days of the issuance of the decision and order, a petition at the district office of the Workers' Compensation Appeals Board closest to the MPN applicant's principal place of business, together with a Declaration of Readiness to Proceed. The petition shall set forth the specific factual and/or legal reason(s) for the appeal. A copy of the petition and of the Declaration of Readiness to Proceed shall be concurrently served on the Administrative Director.”