

**STATE OF CALIFORNIA
DEPARTMENT OF INDUSTRIAL RELATIONS
DIVISION OF WORKERS' COMPENSATION**

FINAL STATEMENT OF REASONS

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

Title 8, California Code of Regulations, Article 3.5

**Sections 9767.1, 9767.2, 9767.3, 9767.4, 9767.5, 9767.5.1, 9767.6, 9767.7, 9767.8, 9767.9,
9767.10, 9767.11, 9767.12, 9767.13, 9767.14, 9767.15, 9767.16, 9767.16.5, 9767.17, 9767.17.5,
9767.18, and 9767.19**

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, 4603.5 and 5307.3, has amended and adopted the following 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

REQUEST AND GOOD CAUSE FOR EFFECTIVE DATE UPON FILING WITH THE SECRETARY OF STATE

These regulations are required by legislative enactment – Senate Bill 863 (Chapter 363, stats. of 2012, effective January 1, 2013), which made substantial changes to the Medical Provider Network (MPN) statutory provisions. The MPN statutory provisions of Senate Bill 863 are already in effect as of January 1, 2014 for all dates of injury. It is important and necessary that these regulations are effective upon filing with the Secretary of State so that there is clarity and guidance for the public in complying with the MPN statutory mandates. For example, Labor Code section 4616(a)(3) mandating MPNs obtain physician acknowledgments became effective January 1, 2014. The complexities in obtaining physician acknowledgments require guidance provided in these regulations in section 9767.5.1. Another example is Labor Code section 4616(b)(1) which introduced a new MPN four-year approval period. As of January 1, 2014, MPN's must file their plans for reapproval at least six months before the expiration of the four-year approval period. The first batch of required reapproval submissions are already past due as of June 30, 2014. Again, these regulations provide clarity and guidance for the public in complying with the MPN statutory mandates.

UPDATE OF INITIAL STATEMENT OF REASONS AND INFORMATIVE DIGEST

As authorized by Government Code section 11346.9(d), the Acting Administrative Director hereby incorporates by reference the entire the Initial Statement of Reasons prepared in this matter. Unless a specific basis is stated below for any modification to the regulations as initially proposed, the necessity for the amendments to existing regulations and for the adoption of new regulations as set forth in the Initial Statement of Reasons continues to apply to the regulations as now adopted.

All modifications from the initially proposed text of the regulations are summarized below.

Section 9767.1 Medical Provider Networks – Definitions

- Subdivision (a)(1) the definition of “ancillary services” as originally noticed to the public was modified by adding the phrase “but not limited to” as clarification that interpreter services, physical therapy and pharmaceutical services are a few examples of non-physician medical services considered to be ancillary services. This was done as a response to comments received from members of the directly affected public seeking this clarification.
- Subdivision (a)(2)(B) the word “and” was deleted because the conjunction “or” by itself is accurate and sufficient.
- Subdivision (a)(7) the definition of an “entity that provides physician network services” as originally noticed to the public was modified by adding the phrase “or contracting with physician networks” to clarify this entity may contract with existing physician networks. In addition, the definition was also modified to include examples of entities that may qualify such as third party administrators and managed care entities. These changes were made in

response to comments received from members of the directly affected public seeking this clarification.

- Subdivision (a)(12) the definition of “health care shortage” is clarified by deleting the phrase “either a rural or non-rural” and replaced with “a geographical” area because the original phrase was confusing. To constitute a health care shortage area, there must be an insufficient number of non-MPN physicians in a particular specialty to meet the Medical Provider Network access standards “who are available and willing to treat injured workers under the California Workers’ compensation system”. These changes were made to make clear when a geographical area can be considered to have a health care shortage.
- Subdivision (a)(15) the term “Medical Provider Network Approval Number” has been deleted and is replaced with the term “Medical Provider Network Identification Number”. This change was made because the Medical Provider Network Approval Number is the tax identification number plus the log number of approved MPNs. Since this number will be publicly posted, DWC decided against using the Medical Provider Network Approval Number and instead assigning a unique Medical Provider Network Identification Number to each MPN upon approval or within ninety (90) days of the effective date of these regulations.
- Subdivision (a)(16) the definition of “Medical Provider Network Medical Assistant” as originally noticed to the public has been modified to clarify that they are “provided by the Medical Provider Network to help injured workers with finding available Medical Provider Network physicians of the injured workers’ choice and with scheduling provider appointments.” These changes were made because it uses specific statutory language that makes clear the Medical Provider Network is responsible for providing Medical Provider Network Medical Assistants and that the injured worker has the choice of picking from the available Medical Provider Network physicians.
- Subdivision (a)(18) the definition of “Medical Provider Network Plan” has been modified to clarify that it is “submitted according to the requirements of this article”.
- Subdivision (a)(19) the definition of “MPN Applicant” has been modified to delete the specific reference to the subdivisions of this section and to replace it with the broader phrase “this section” in case this rulemaking required additional changes to the citation referenced. Also, the definition was clarified to make clear the MPN Applicant is legally responsible for the Medical Provider Network.
- Subdivision (a)(20) the “MPN Contact” is responsible for assisting and arranging for an MPN independent medical review and it is clarified that this is “pursuant to Labor Code section 4616.4.”
- Subdivision (a)(25)(A) and (B) the word “and” is deleted from the definition of “Regional area listing” because the conjunction “or” by itself is sufficient and more accurate because it is consistent with the MPN access standards set forth in section 9767.5(a) and (b).

- Subdivision (a)(28) the definition of “Second Opinion” is clarified by adding the reference “pursuant to Labor Code section 4616.3.”
- Subdivision (a)(32) the definition of Third Opinion” is clarified by adding the reference “pursuant to Labor Code section 4616.3.”

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

- The title of the section was modified to delete “Application for Reapproval” and replace it with “Plan for Reapproval” because this is the language used in the statute.
- Subdivision (a) the word “new” was added in front of the word “application” to make a clear distinction between a new application and a plan for reapproval.
- Subdivision (b) is added to make clear the Administrative Director has 180 days from receipt of a Plan for Reapproval to review and approve for a four-year period or disapprove based on the requirements of Labor Code section 4616 et seq. and this article. A plan for reapproval shall be considered complete if it includes correct information responsive to each applicable subdivision of section 9767.3. The Plan for Reapproval shall be deemed approved for a period of 4 years if the Administrative Director does not act within 180 days of receipt of the a complete plan for reapproval. This subdivision was added because the statutory requirement that plans for reapproval shall be submitted at least six months before the expiration of the four-year approval was not mentioned as originally noticed to the public.
- Subdivision (c) is re-lettered from (b) and the phrase “or reapproval plan” was added to clarify the Administrative Director shall provide notice to the MPN applicant for new applications as well as plans for reapproval. The following shall be provided: (1) the date the MPN application or reapproval plan was received by the Division, (2) if the MPN application or reapproval plan is not complete and the item(s) necessary to complete the application or reapproval plan; (3) if the Administrative Director is award that the MPN applicant is not eligible to have an MPN.
- Subdivision (d) is re-lettered from (c) and the reference to subdivision (b) now references subdivision (c) for accuracy.
- Subdivision (e) is re-lettered from (d) and the phrase “reapproval plan” is added to clarify this subdivision applies to new MPN applications and plans for reapproval.
- Subdivision (f) is re-lettered from (e) and the reference to the MPN approval number has been deleted and replaced with a “unique” MPN “Identification” number. The MPN Identification number shall be assigned by DWC and shall be used in all correspondence with DWC regarding the MPN and shall be included in the complete notification, transfer of care notice, continuity of care notice, MPN IMR notice and end of MPN coverage notice. This was done as a response to comments received from members of the directly affected public seeking this clarification.

- Subdivision (g) is re-lettered from (f) and a typographical error was corrected deleting use of the word “that” and replacing it with the word “the” and the phrase “does not wish to” is deleted and replaced with “will not” use the MPN in the future for clarification.

Section 9767.3 - Requirements for a Medical Provider Network Plan

- The title of the section is amended to delete “Application” and is replaced with the word “Requirements” for accuracy.
- Subdivision (c) is amended to delete the reference to “Application for Reapproval” and replace it with “Plan for Reapproval” for accuracy. The word “application” is deleted from the phrase “MPN Plan” for consistency. The word “Plan” is added after MPN to clarify the optional form will be the MPN Plan Application Form. The phrase “The completed application 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 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 phrase “Valid electronic signatures are accepted” is deleted and replaced with the phrase “Electronic signatures in compliance with California Government code section 16.5 are accepted” to clarify the specific requirements to determine if an electronic signature is valid. The phrase “The hard copy of the original signed cover page shall be maintained by the MPN applicant and made available for review by the Administrative Director upon request” has been modified to “The hard copy of the completed, signed original Cover Page for Medical Provider Network Application or Plan for Reapproval and the complete MPN Plan shall be maintained by the MPN applicant and made available for review by the Administrative Director upon request.” These changes were made to provide more detailed instructions when submitting the Cover Page for Medical Provider Network Application or Plan for Reapproval and the complete MPN Plan.
- Subdivision (c)(1) is modified to delete the conjunction “or” because “and” is sufficient and accurate. The reference to computer disks are deleted and replaced 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 modified 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. 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”. Eight columns are now required instead of six columns as originally noticed to the public. Column (7) is added to indicate “any MPN medical group affiliations” and column (8) is added for the assigned provider code for each physician listed. Clarification of the provider codes to be used for common medical specialties is as follows:

primary treating physician (PTP), orthopedic medicine (ORTHO), chiropractic medicine (DC), occupational medicine (OCCM), acupuncture medicine (LAC), psychology (PSYCH), pain specialty medicine (PM), psychiatry (PSY), neurosurgery (NSG), family medicine (GP), neurology (NEURO), internal medicine (IM), physical medicine and rehabilitation (PMR), or podiatry (DPM) and 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 rather than to affirm that the MPN physician’s “understand” the MTUS. The amendments to this subdivision were made to make clear how the network provider information shall be submitted to DWC and the provider codes are necessary to enable DWC to geocode an MPN’s network of physicians.

- Subdivision (c)(3) the phrase “If an MPN chooses to provide ancillary services” is added to clarify that it is not necessary for MPNs to have ancillary service providers. The requirement to include zip codes for mobile providers is deleted because the location of the delivery of services may vary. For example, medical apparatus may be sent directly to the primary treating physician’s office or the injured worker’s residence. The requirement that an MPN affirm the ancillary service provider can provide reasonable and necessary services has been deleted and replaced with “the requested” medical service or “goods” for clarity because what is reasonable and necessary is oftentimes an issue that is disputed. Clarification is added that ancillary service providers have a current valid license number or certification to practice if they are required to have a license or certification by the State of California. Finally, “If interpreter services are included as an MPN ancillary service, the interpreters listed must be certified pursuant to section 9795.1(a)(2)(A) and (B).” These changes to what was originally posted were made to make sure ancillary service providers meet certain standards to qualify in response to comments received from the public.
- Subdivision (c)(4) is deleted in its entirety because injured workers must be permitted, pursuant to Labor Code section 4616.3(d)(1) to select their treating physician based on the physician’s specialty. Merely, listing the name of a medical group precludes injured workers from selecting their treating physician based on the physician’s specialty.
- Subdivision (c)(5) is re-numbered to (c)(4) and edited for clarity by adding the phrase “physicians to provide” 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. These changes to what was originally posted were made because the sentence was confusing and awkward.
- Subdivision (c)(6) is re-numbered to (c)(5).
- Subdivision (d)(1) is modified to add the sentences “Provide a description of the entity’s qualifications to be an eligible MPN Applicant. Attach proof of MPN eligibility.” These sentences are added to ensure the MPN Applicant explains to DWC its qualifications to apply for an MPN and to provide necessary proof of this eligibility. The phrase “certificate(s) of insurance” is changed to “certificate of authority” for accuracy. The word “please” is deleted as unnecessary. The phrase “and affirm that the entity employs or contracts with physicians

and other medical providers or contracts with physician networks” is added to ensure that MPN Applicants applying as an entity that provides physician network services fulfills this requirement.

- Subdivision (d)(4) is modified to delete the phrase “Use a name that is not used by an existing approved Medical Provider Network” as this will no longer be required.
- Subdivision (8)(A) is modified to delete the phrase “State the number of employees expected to be covered by the MPN plan and the method used to calculate the number;” and replaced with “Affirm that the MPN network is adequate to handle the expected number of claims covered under the MPN and explain how this was determined.” These changes were made because DWC is concerned with the adequacy of providers in an MPN network rather than a number and the method used to calculate the number of employees expected to be covered by the MPN plan.
- Subdivision (8)(C) is modified to add the word “State” and delete the capital “T” in the word “the” for clarity.
- Subdivision (8)(D) is modified to add the word “State” and delete the capital “T” in the word “the” for clarity.
- Subdivision (8)(E) is modified to add the word “State” and delete the capital “T” in the word “the” for clarity and to delete the acronym “MPN” and add the phrase “roster of all treating physicians in the MPN” to adopt the statutory language used in Labor Code Section 4616(a)(4). In addition, the sentence “Affirm that secondary treating physicians who are counted when determining access standards but can only be seen with an approved referral are clearly designated ‘by referral only’” is added to ensure this information is posted on the website because it is a practical solution to the realities of medical practice. Many secondary treating physicians are willing to treat injured workers but will not make an appointment from a cold-call from a prospective patient. Oftentimes, the secondary treating physician will first need to talk to the referring PTP or do a preliminary review of the prospective patient’s medical records before agreeing to see a patient.
- Subdivision (8)(F) is modified to add the phrase “or medical group”, delete the phrases “in writing” and “with original signatures” and add the word “are” and the word “and” to accommodate the modifications made to the section pertaining to Physician Acknowledgments set forth in Section 9767.5.1.
- Subdivision (8)(G) is modified to add the words “Provide a” and change the capital “A” to lowercase “a” and to add the sentence “Only individual physicians in the MPN shall be listed, but MPN medical group affiliation(s) may be included with each individual physician listed.” This modification was made because the accuracy of the provider lists can only be determined if individual physicians are listed rather than a general medical group listing; however, the listing of an MPN medical group affiliation(s) with each individual physician listed is important to some MPNs for administration reasons.

- Subdivision (8)(H) is modified to add the phrase “in Microsoft Excel format”. The word “geocoded” has been amended to “geocoding”. The phrase “results of the MPN” is added and the word “listing” is deleted. The word “estimated” is added and the phrase “for the injured workers being covered by the MPN” is deleted. The following is added, “set forth in section 9767.5. The access standards set forth in section 9767.5 are determined by the injured employee’s residence or workplace address and not the center of the 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.” The sentence “This geocoded listing must be provided in electronic format created with geocoding software” is deleted. The word “results” is added. The rest of the subdivision is modified by adding, “the following separate files summarizing data reasonably available at the time of compilation: 1) a complete list of all zip codes within the MPN geographic service area; 2) a narrative or graphic report that establishes where 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 or graphic report that establishes where 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 or graphic report that establishes where there are at least three available physicians in each of the specialties commonly required to treat injured workers covered by the MPN 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 where access standards are not met in the geographic service area or areas to be served by the MPN 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 6) each physician listed in the MPN provider directory listing shall be assigned at least one provider code as set forth in subdivision (c)(2) of this section to be used in the geocoding reports.” Finally, the following phrase is deleted “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.” These amendments were made as a response to comments received from members of the directly affected public seeking clarification. The electronic copy of the geocoding results of the MPN director shall be in Microsoft Excel format. The modifications make clear that the access standards set forth in section 9767.5 are determined by the injured employee’s residence or workplace address and not the center of a zip code. The modifications also make clear that the geocoding results will only 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. Finally, detailed geocoding parameters are given to clarify what must be submitted to DWC.
- Subdivision 8(I) is modified to delete the phrase “A voluntary” and replace it with the phrase “If an MPN chooses to include ancillary services in its network, a” for clarity. The phrase “or goods” is added because ancillary services can be either services or goods. The phrase “and that the ancillary services will be available at reasonable times and within a reasonable geographic area to covered employees” was added to provide a minimum standard applicable to the listed ancillary service providers.

- Subdivision 8(J) is modified to delete the phrase “arranges for” and changes the word “providing” to “provides” for clarity and accuracy. The phrases “able to be provided” and “pursuant to section 9767.5(d)” are added for clarity and to reference the standard that must be met for ancillary service providers set forth in section 9767.5(d).
- Subdivision 8(L) is modified to delete the requirement to state the five most commonly used specialties based on the common injuries for workers covered under the MPN. These deletions to what was originally posted were made as a response to comments received from members of the directly affected public because this requirement would have added a difficult and unnecessary administrative burden on MPNs.
- Subdivision 8(S) is modified to delete the phrase “used to ensure ongoing”, the word “how” and the phrase “provided by the MPN are sufficient to provide adequate and necessary medical treatment for covered employees” and the phrase “criteria and how data is used to continuously review” is added. These changes were made to clarify data analytics was not required as suggested by concerns raised in comments received from members of the directly affected public.
- Subdivision (e) is modified to delete the exclusion of subdivisions “(d)(8)(G), (d)(8)(H), and (d)(8)(I)” to clarify that those exclusions no longer exists.
- Reference citation is modified to add “and Section 16.5, Government Code” because it is now referenced in this section.

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 box “for DWC only” is amended to delete the word “Approval” and replace it with “Identification” for accuracy as MPN Approval Numbers will no longer be needed because it is replaced with the MPN Identification Number.
- 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 amended to add “(including SISF)” and delete “SISF” from the box for “Insurer” for accuracy. The acronym “UEBTF” for the Uninsured Employers Benefits Trust Fund is added to clarify the UEBTF qualifies as an insurer.
- 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. The phrase “and MPN Identification Number” is added to ensure MPN’s filing a Plan for Reapproval indicate this unique identifying number.

- 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 (a) is amended to reference a change in subdivision from (b) to (1) and from (c) 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 phrase “including those” is deleted. 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. The word “mileage” is deleted. 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.
- Subdivision (c) is modified to add “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”. These changes were made to clarify and strengthen the current regulations regarding access standards.

- Subdivision (d) is modified to add “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”. These changes were made to clarify and strengthen the current regulations regarding access standards.
- Subdivision (e)(3) deletes references to subdivisions (c) and (d) and replaces it with subdivision (a) of this section for accuracy.
- 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 an MPN medical access assistant that treatment is needed” to provide clarity as to when the 3 business day time frame is triggered.
- 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 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 ten 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 10 business day time frame and the 20 business day time frames are triggered.
- 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. These changes were made to clarify the role of MPN medical access assistants.
- 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.

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 as originally noticed to the public for brevity and clarity to make it easier to follow. This was done as a response to comments received from members of the directly affected public seeking this clarification.
- 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) is amended to add 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 or Civil Code section 1633.1 *et seq.* whichever is applicable; (3) 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 in its entirety and replaced with the sentence “The acknowledgment shall be obtained at the time of the following occurrences:”
- 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 or renews a 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, unless the MPN applicant can satisfy either (A) or (B) below:”
- Subdivision (e)(5)(A) states, “The contract identifies the MPN in which the physician or group is participating”.
- Subdivision (e)(5)(B) states, “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 added to state “The MPN applicant shall retain a copy of the executed acknowledgment so long as it remains in force and for three years thereafter”.

- 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.

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 or employer, 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 “or outside” and add the phrase “or if the MPN does not contain a physician who can provide the recommended treatment, the employee may choose a physician outside the MPN within a reasonable geographic area.” 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

- Subdivision (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.
- 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.

- Subdivision (a)(5) is re-numbered from former (a)(7).
- Subdivision (a)(6) is re-numbered from former (a)(8).
- Subdivision (a)(7) is re-numbered from former (a)(9).
- Subdivision (a)(8) is re-numbered from former (a)(10).
- Subdivision (a)(9) is re-numbered from former (a)(11).
- Subdivision (a)(10) is re-numbered from former (a)(12).
- Subdivision (a)(11) is re-numbered from former (a)(13).
- Subdivision (a)(12) is re-numbered from former (a)(14).
- Subdivision (a)(13) is re-numbered from former (a)(15).

- 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:
 - 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.2: The box “for DWC only” is amended to delete the word “Approval” and replaced with “Identification” for accuracy and for a more descriptive term for the number DWC will be using to identify MPNs.
 - 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 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 May 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) is 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) the phrase “At the time of” is deleted and replaced with “When an injury is reported or an employer has knowledge of an injury that is subject to an MPN” to clarify when the employee notification shall be provided. The phrase “or entity that provides physician network services” is deleted because it will be the employer or insurer that will provide the employee notification to covered employees.
- Subdivision (a)(2)(A) is amended to add the sentence “The unique MPN Identification number” because the MPN Identification will be required in all employee notifications. The word “can” is deleted and replaced with the phrase “including finding available MPN physicians of the injured workers’ choice and scheduling and confirming physician appointments” to include clarifying specifics of the MPN Medical Access Assistant’s duties to covered employees.
- 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 and the web address that includes a roster of all treating physicians in the MPN.

- Subdivision (a)(2)(C) is amended to make available the MPNs complete provider “directory” listing in writing “or” on the MPN’s website. The conjunction “or” is added to clarify the complete provider director may be available in writing or on the MPN’s website. If an employee requests an electronic “provider directory” listing it shall be provided electronically on a CD, “flash drive” or “via email” or on a website to allow flexibility to accommodate the various electronic means of current communication. The addition of “directory” is included before “listing” and “within” 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. The changes made from the version as originally noticed to the public were made in response to comments received from members of the directly affected public seeking these clarifications.
- 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)(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 9767.13 – 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 January 1, 2015 to January 1, 2018 for MPNs approved prior to January 1, 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 phrase “shall meet the requirements for geocoding as follows:” is added to begin expressing the 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 estimated compliance with the access standards set forth in section 9767.5. The sentences “The access standards set forth in section 9767.5 are 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 geocoding results shall include the following separate files summarizing data reasonably available at the time of compilation: 1) a complete list of all zip codes within the MPN geographic service area; 2) a narrative or graphic report that establishes where 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 or graphic report that establishes where 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 or graphic report that establishes where there are at least three available physicians in each of the specialties commonly required to treat injured workers covered by the MPN 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 where access standards are not met in the geographic service area or areas to be served by the MPN 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, 6) each physician listed in the MPN provider directory shall be assigned at least one provider code as set forth in section 9767.3(c)(2) of this section 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(b)” and are 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)(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 format and layout of the form is changed to make it compliant with the Americans with Disabilities Act (hereinafter ADA).
- The form is amended in substance to add whether or not there is an imminent threat to an injured workers’ health. This comports with §9767.16(b). If there is an imminent threat to an injured worker then he/she may file a written complaint with the DWC against the MPN concurrently with the written complaint submitted under §9767.16(a) on the MPN.
- The form is amended in substance to add “MPN Contact E-mail” which comports with section 9767.12(a)(2)(A).
- The form is amended in substance to delete legalese such as “cite” and “remedy” and use commonly used terms such as “describe or state” and “what result”.
- 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.

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 add the phrase “systematically” before the word fails and deletes the phrase “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 format and layout of the form, Part A and Part B, is changed to make it compliant with the Americans with Disabilities Act (hereinafter ADA).
- The form Part A 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.
- The form Part A is amended to delete “MPN Approval/Log No.” and replace it with the “MPN Identification No.”
- The form Part A is amended in substance as the second basis for filing a petition has been revised to reflect the regulatory revisions in section 9767.17 and the requirement to list the three “locations” and “specialty” in which the MPN has failed to meet access standards has been deleted.
- The form Part B is amended to delete “MPN Approval/Log No.” and replace it with the “MPN Identification No.”
- The form Part B is amended to add the requirement to provide “Date MPN Received Petition”.
- The form Part B is amended to add contact information for the MPN’s Authorized Individual and to add the requirement to provide the “MPN Contact’s E-mail address”.
- The form Part B is amended to make the narrative portion more succinct and revising it to “State reasons why petition should not be granted (additional pages and documents may be attached)”.
- The form Part B is amended to add “30 days” in the instructions to the MPN for submitting this response.

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. These changes were made to clarify what is expected of the MPN applicant upon receipt of a DWC request for information.

- 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 was made 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 add the phrase “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 were made 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 “In addition, documentation of any administrative actions taken by the Administrative Director against the MPN within a reasonable period of time.” These amendments were made 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” to correct a spelling error.
- 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.
- Subdivision (a)(2) is amended to delete the existing text in its entirety and replaced with "Network access requirements:"
- Subdivision (a)(2)(A) is re-lettered from (a)(3)(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)(2)(B) is re-lettered from (a)(3)(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 instead of per "month"
- Subdivision (a)(2)(C) is re-lettered from (a)(3)(D) and is amended to delete the phrase "to respond to calls made to the" and add the phrases "of an" and to respond to calls" to clarify the penalties if an MPN medical access assistant fails to respond to calls.

- Subdivision (a)(2)(D) is re-lettered from (a)(3)(E) and the existing text is deleted in its entirety except for the penalty amount of “\$500 for each occurrence”. The text of the subdivision is 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.” These changes were made to ensure penalties against an MPN may only be assessed for actions under their control.
- Subdivision (a)(2)(E) is re-lettered from (a)(3)(F) and the existing text is deleted in its entirety except for the penalty amount of “\$500 for each occurrence”. The text of the subdivision is 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”. These changes were made to ensure penalties against an MPN may only be assessed for actions under their control.
- Subdivision (a)(2)(F) is re-lettered from (a)(3)(G) and the existing text is deleted in its entirety and replaced with “Failure to meet the physician acknowledgment requirements pursuant to section 9767.5.1; \$250 per non-compliant acknowledgment.” These changes were made to ensure compliance with the physician acknowledgment requirements.
- Subdivision (a)(3) is re-numbered from (a)(4).
- Subdivision (b) is amended to state “Penalties may be assessed against the employer or insurer responsible for these notice violations” to address penalties that can only be assessed against an employer or insurer MPN Applicant. These changes were made to ensure penalties against an MPN may only be assessed for actions under their control.
- Subdivision (b)(1) is added to address the failure of an employer or insurer MPN Applicant to provide the complete MPN employee notification pursuant to section 9767.12 to an injured covered employee, \$500 per occurrence up to \$10,000.
- Subdivision (b)(2) is added to address the failure of an employer or insurer MPN Applicant to provide the entire or correct complete MPN employer notification required under section 9767.12 to an injured covered employee, \$250 per occurrence up to \$10,000.
- Subdivision (b)(3) is added to address the failure of an employer or insurer MPN Applicant 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) is added to address the failure of an employer or insurer MPN Applicant to provide the MPN Independent Medical Review notice, \$250 per occurrence.

- Subdivision (b)(5) is added to address the failure of an employer or insurer MPN Applicant 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 the failure of an employer or insurer MPN Applicant to provide the Continuity of Care notice to an injured covered employee, \$250 per occurrence up to \$10,000.
- Subdivision (c) is re-lettered from (b) and is amended to delete the word “and” and replace it with the phrase “or to” and to add “with a plan of action to correct the violation in a timely manner” and “timely manner” to clarify how an MPN Applicant can respond if notice is received from the Administrative Director that a violation has occurred.
- Subdivision (d) is re-lettered from former subdivision (c) and is 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 (e) is re-lettered from former subdivision (d).
- Subdivision (f) is re-lettered from former subdivision (e).
- Subdivision (g) is re-lettered from former subdivision (f) and the reference to subdivision (d) is updated to (f).
- Subdivision (h) is re-lettered from former subdivision (g).

THE FOLLOWING ADDITIONAL NON-SUBSTANTIVE/CORRECTIONS WITHOUT REGULATORY EFFECT WERE MADE TO THE TEXT OF THE REGULATIONS AFTER THE CLOSE OF THE FINAL COMMENT PERIOD

Section 9767.1 Medical Provider Networks – Definitions

- Subdivision (a)(18): Amend to eliminate a duplicative “submitted”.

Section 9767.3 - Requirements for a Medical Provider Network Plan

- Section heading: Amend to add a “.” after 9767.3.
- Subdivision (c)(1): Amend to correct the citations to sections 9767.3(d)(8)(C) and 9767.3(d)(8)(D) to the updated citation sections 9767.3(d)(8)(G) and 9767.3(d)(8)(I).
- Subdivision (c)(3): Amend to delete an unnecessary “the”.

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

- Section heading: Amend to add a “.” after 9767.4.
- Instructions to submit form: Amend to correct an inadvertent omission of the phrase “an original Application with the information required by Title 8, California Code of Regulations, section 9767.3 and a copy of the Cover Page and Application”. This phrase was inadvertently omitted from the proposed versions published for public comment. The instructions for submitting the Cover Page for Medical Provider Network Application or Plan for Reapproval Form are set forth in section 9767.4 and more detailed instructions are set forth in section 9767.3(c). Pursuant to both sections, “An original Application” will no longer be submitted because copies of the completed form shall be submitted electronically to DWC. Moreover, “the information required by Title 8, California Code of Regulations section 9767.3” is the “complete MPN Plan” and this phrase is included in both sections 9767.3 and 9767.4 and members of the directly affected public had an opportunity to submit comments on these proposed changes. Accordingly, the omission of the phrase “an original Application with the information required by Title 8, California Code of Regulations, section 9767.3 and a copy of the Cover Page and Application” from section 9767.4 has no regulatory effect because it should be stricken regardless of its omission.

Section 9767.5.1 – Physician Acknowledgments

- Section heading: Amend to add a “.” after 9767.5.1.
- Reference: Amend to add “and Sections 1633.1 et seq. Civil Code”

Section 9767.6 – Treatment and Change of Physicians Within MPN

- Section heading: Amend to add a “.” after 9767.6.

Section 9767.7 – Second and Third Opinions

- Section heading: Amend to add a “.” after 9767.7.
- Subdivision (g): Amend to eliminate the incorrect underline under “MPN” in the phrase “within the MPN”.

Section 9767.8 – Modification of Medical Provider Network Plan

- Section heading: Amend to add a “.” after 9767.8.

Proposed Amendments to Section 9767.9 - Transfer of Ongoing Care into the MPN

- Section heading: Amend to add a “.” after 9767.9.

Proposed Amendments to Section 9767.10 – Continuity of Care Policy

- Section heading: Amend to add a “.” after 9767.10.

Proposed Amendments to Section 9767.12 Employee Notification

- Section heading: Amend to add a “.” after 9767.12.

Proposed Amendments to Section 9767.14 – Suspension or Revocation of Medical Provider Network Plan; Hearing

- Section heading: Amend to add a “.” after 9767.14.

Proposed Amendments to Section 9767.15 – Compliance with Permanent MPN Regulations

- Section heading: Amend to add a “.” after 9767.15.

Proposed Amendments to Section 9767.16 – Notice to Employee Upon Termination, Cessation of Use, or Change of Medical Provider Network

- Section heading: Amend to add a “.” after 9767.16.
- The format and layout of the form has been revised to make it electronically fillable and to add after the heading “Nature of the Complaint” the following “and provide sufficient details of the descriptions below” to clarify the instructions for ADA purposes.
- The numbers “1)” and “2)” have been deleted from the Instruction as unnecessary and the word “the” is added to correct a grammatical error.
- The form revision date has been changed to (7/14).

Proposed Section 9767.16.5 – DWC Medical Provider Network Complaint Form 9767.16.5

- Section heading: Amend to add a “.” after 9767.16.5.

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

- Section heading: Amend to add a “.” after 9767.17.

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

- Section heading: Amend to add a “.” after 9767.17.5.

- The format and layout of the form has been revised to make it electronically fillable and to delete “Petitioner to complete all sections of this form” and add “Petitioner to complete all required fields and state the reasons for this Petition with sufficient details below” to clarify the instructions for ADA purposes.
- The form revision date has been changed to (7/14).

Proposed Section 9767.18 – Random Reviews

- Section heading: Amend to add a “.” after 9767.18.

Proposed Section 9767.19 Administrative Penalty Schedule; Hearing

- Section heading: Amend to add a “.” after 9767.19.
- Subdivision (a)(2)(A) delete the “,” after \$250.
- Subdivision (a)(2)(B) delete the “,” after \$250.
- Subdivision (b)(1) delete the “,” after \$500.

LOCAL MANDATES DETERMINATION

- Local Mandate: None. The proposed regulations will not impose any new mandated programs or increased service levels on any local agency or school district. The proposed amendments do not apply to any local agency or school district.
- Cost to any local agency or school district that is required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4 of the Government Code: None. The proposed amendments do not apply to any local agency or school district.
- Other nondiscretionary costs/savings imposed upon local agencies: None. The proposed amendments do not apply to any local agency or school district.

CONSIDERATION OF ALTERNATIVES

The Division considered all comments submitted during the public comment periods, and made modifications based on those comments to the regulations as initially proposed. The Acting Administrative Director has now determined that no alternatives proposed by the regulated public or otherwise considered by the Division of Workers' Compensation would be more effective in carrying out the purpose for which these regulations were proposed, nor would they be as effective and less burdensome to affected private persons and businesses than the regulations that were adopted or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

SUMMARY OF COMMENTS RECEIVED AND RESPONSES THERETO CONCERNING THE REGULATIONS ADOPTED

The comments of each organization or individual are addressed in the following charts.
The public comment period was as follows:

Initial 45-day comment period on proposed regulations:

August 16, 2013 through September 30, 2013

First 15-day comment period on modifications to proposed text:

December 10, 2013 – December 26, 2013

Second 15-day comment period on modifications to proposed text:

March 10, 2014 – March 25, 2014

Third 15-day comment period on modifications to proposed text:

May 2, 2014 – May 19, 2014