

MEDICAL PROVIDER NETWORKS	RULEMAKING COMMENTS 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
9767.1(a)(1)	<p>Commenter objects to the inclusion of interpreters under the definition of "Ancillary Services."</p> <p>Commenter notes that Labor Code Section 4616(a)(1) specifies that the purpose of a MPN is for the "provision of medical treatment to injured workers." [emp. added] It goes on to provide that, "[t]he provider network shall include an adequate number and type of physicians, as described in Section 3209 .3, or other providers, as described in Section 3209.5, to treat common injuries experienced by injured employees .... " Labor Code Section 3209 .5 lists the non-physician "other providers" to include physical therapists "as licensed by California state law and within the scope of their practice as defined by law. Commenter opines that language interpreters are not listed in Section 3209.5 but from the other enumerated professions listed therein, it is clear that the Legislature intended the term "other providers" to be those who provide hands-on health care for which a state license is required. Interpreters do not treat. Commenter states that interpreters simply facilitate</p>	<p>Adelaida Hayden December 22, 2013</p> <p>Agusto Salazar December 26, 2013</p> <p>Alexandria Garcia December 22, 2103</p> <p>Alina Castaneda December 21, 2013</p> <p>Alondra Galvez December 18, 2013</p> <p>Ana Garcia December 22, 2013</p> <p>Ana Hernandez December 19, 2013</p> <p>Andrea Hernandez December 23, 2013</p> <p>Ana Kunkin December 18, 2013</p> <p>Araceli Rubio December 23. 2013</p> <p>Aracely Cisneros</p>	<p>Reject. The reference to "interpreter services" is a clarification of an existing right of an MPN to provide necessary ancillary services to effectuate Labor Code 4616 and 4600.</p> <p>Reject. DWC is authorized to make the proposed changes to the MPN regulations that would expressly authorize interpreters to be included in an MPN as ancillary service providers (8 CCR §§ 9767.1 &amp; 9767.3) because Labor Code section 4616 states that an MPN may be established "for the provision of medical treatment to injured workers," and section 4600 describes medical treatment expansively to include all reasonably required services, not limited to physicians. In <u>Guitron v. Santa Fe Extruders</u> (2011) 76 Cal. Comp. Cases 228, the WCAB <i>en banc</i> interpreted Section 4600 to include the right to an interpreter as part of medical treatment, and that</p>	<p>None.</p> <p>None.</p>

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	<p>communication so the physician can properly treat the patient.</p> <p>Commenter states that language interpreting services are not "medical treatment" as that term is used in Labor Code Section 4600(a). Commenter opines that this must have been the Legislature's intent because if it had wanted language interpreting services to be "medical treatment," it would have included the term in subdivision (a) when it amended Labor Code Section 4600 last year in SB 863. On the contrary, the Legislature added a new subdivision (g) to Labor Code Section 4600 clearly demonstrating an intent to treat language interpreting services differently from "medical treatment."</p> <p>Commenter opines that DWC's attempt to bootstrap the definition of ancillary services to include language interpreting services could have costly and devastating unintended consequences for MPNs.</p> <p>For example, if DWC claims that language interpreting services are "medical treatment," how does</p>	<p>December 18, 2013</p> <p>Armando Villalobos December 18, 2013</p> <p>Azucena Fernandez December 20, 2013</p> <p>Betty Cortez December 18, 2013</p> <p>Camilo Castano December 20, 2013</p> <p>Caryle R. Brakensiek, Legislative Advocate Advocal December 24, 2013</p> <p>Carlos Peschiera December 25, 2013</p> <p>Carolisa Morgan December 23, 2013</p> <p>Cecilia Ibarra December 18, 2013</p> <p>Darrin Altman December 26, 2013</p>	<p>judicial interpretation was codified in Section 4600(g).</p> <p>Reject: Section 4600 describes medical treatment expansively to include all reasonably required services, not limited to physicians. In <u>Guitron v. Santa Fe Extruders</u> (2011) 76 Cal. Comp. Cases 228, the WCAB <i>en banc</i> interpreted Section 4600 to include the right to an interpreter as part of medical treatment. Therefore, these regulations comport with Labor Code section 4616(e) if the interpreter services is reasonably required to properly communicate so that medical treatment can be provided in accordance with 5307.27.</p> <p>Reject. The reference to "interpreter services" is a clarification of an existing right of an MPN to provide necessary ancillary services to effectuate Labor Code 4616 and 4600. There are MPN's who currently list interpreter services in their ancillary</p>	<p>None.</p> <p>None.</p>

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	<p>that comport with Labor Code Section 4616(e) which provides that, " [a]ll treatment provided [by an MPN] shall be provided in accordance with the medical treatment utilization schedule established pursuant to Section 5307.27"? The MTUS has no guidelines whatsoever with regard to language interpreting.</p> <p>Second, if language interpreting is considered medical treatment, is a dispute over the need for, or accuracy of, interpreting services subject to utilization review (UR) and independent medical review (IMR)? What skills, if any, does Maxim us have to resolve such disputes?</p> <p>Third, the Legislature has mandated that physicians be sensitive to the cultural and linguistic needs of their patients, including the use of appropriate language interpreters. Commenter opines that the selection of the proper interpreter for a particular patient is a complex task and must not be left to an adjuster simply deciding to send someone out from the pool. In order to comply fully</p>	<p>Eddie Navarro December 21, 2013</p> <p>Eduardo Villalobos December 18, 2013</p> <p>Eduardo Villegas December 18, 2013</p> <p>Elizabeth Cortez December 18, 2013</p> <p>Elizabeth Valencia December 18, 2013</p> <p>Elizabeth Varga December 23, 2013</p> <p>Eric Lai December 18, 2013</p> <p>Esmey Villacreses December 24, 2013</p> <p>Ethel Carbone December 26, 2013</p> <p>Evangelina Jimenez December 19, 2013</p> <p>Fernando Ariel</p>	<p>service provider listing.</p> <p>Reject: A dispute regarding language interpreting does not relate to the reasonableness and necessity of medical treatment but, rather, will be a factual legal dispute that will not be subject to IMR review.</p>	<p>None.</p>

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	<p>with the scope and intent of medical provider networks, each MPN will be forced to demonstrate that it has a cadre of certified interpreters in many languages and dialects as well as ensuring that they are also culturally appropriate for each individual injured worker. If a particular MPN could not supply a linguistically and culturally appropriate language interpreter, it would be a denial of medical treatment entitling the worker to treat outside the MPN.</p> <p>Fourth, language interpreters must remain impartial at all times. Commenter opines that it is inappropriate if not unethical for them to be beholden to the employer or insurer through mandatory participation in an MPN.</p>	<p>Busciglio December 18, 2013</p> <p>Fernando P. Rodriquez December 26, 2013</p> <p>Guillerman Torlaksson December 18, 2013</p> <p>Hanaranjo December 26, 2013</p> <p>Irene Consejo December 23, 2013</p> <p>Iris Galvez December 18, 2013</p> <p>Isis Bolanos December 20, 2013</p> <p>Jackie Foigelman December 20, 2013</p> <p>Jacqueline Zittle December 26, 2013</p> <p>Jenny Palomo December 20, 2013</p>		

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		<p>Jessica Hernandez December 19, 2013</p> <p>Jessica Santillan December 19, 2013</p> <p>Jimmy Yu December 19, 2013</p> <p>Jose Manzo December 26, 2013</p> <p>Juan Carlos Morales December 20, 2013</p> <p>Julio Villasenor December 23, 2013</p> <p>Katherine Jimenez December 18, 2013</p> <p>Leonardo Garcia December 26, 2013</p> <p>Leslie Rivera Melton December 26, 2013</p> <p>Lizeth Huerta December 20, 2013</p>		

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		<p>Lourdes December 22, 2013</p> <p>Lucy Bosch December 18, 2013</p> <p>Luis Vazquez December 18, 2013</p> <p>Manny Cortes December 19, 2013</p> <p>Manuel Cortes December 23, 2013</p> <p>Marcela Font December 25, 2013</p> <p>Maria Hernandez December 23, 2013</p> <p>Maria Zepeda December 19, 2013</p> <p>Marisol Parra December 20, 2013</p> <p>Marisol Vellalvazo December 22, 2013</p> <p>Mary Galindo</p>		

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		December 22, 2013 Matias Hernandez December 23, 2013 Maurice Abarr December 26, 2013 Mayra Fuentes December 20, 2013 Miguel Ramirez December 19, 2013 Mike Sanchez December 21, 2013 Nancy Galvez December 18, 2013 Nick Zacherl December 19, 2013 Olga Lilia Castaneda Simmons December 18, 2013 Pati Charvez December 26, 2013 Patricia Tejada		

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		<p>December 19, 2013</p> <p>Paul Boutin December 25, 2013</p> <p>Ramon Santiago December 19, 2013</p> <p>Raymond Chon December 18, 2013</p> <p>Rebecca Bosch December 18, 2013</p> <p>Rita Navarro December 25, 2013</p> <p>Robert A. Duran December 26, 2013</p> <p>Rod Olguin December 24, 2013</p> <p>Rogelio James December 19, 2013</p> <p>Rosela Castillo December 20, 2103</p> <p>Shilpa Kapadia December 19, 2013</p>		

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		<p>Sigifredo Hernandez December 19, 2013</p> <p>Somaya Khalil December 19, 2013</p> <p>Susan Barron December 20, 2013</p> <p>Susana Barron December 18, 2013</p> <p>Tito Orlando Silva December 20, 2013</p> <p>Tommy Salas December 18, 2013</p> <p>Valentina Hernandez December 23, 2013</p> <p>Vincent Mejia December 21, 2013</p> <p>Yesenia Sanchez December 20, 2013</p> <p>Yulicia Camacho December 19, 2013</p>		

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9767.1(a)(12)	<p>Commenter recommends the following revised language:</p> <p>“Health care shortage” means a geographical area listed as a “health care shortage area” by the US Department of Health and Human Services.</p> <p>Commenter agrees with the concept that before a physician can be considered available, the physician must be willing to treat injured workers. Commenter is concerned that the definition of Health Care Shortage is overly complicated and will make it difficult to comply with or monitor. Commenter recommends using the federal US Department of Health and Human Services designation of health care shortage areas as a guide. If a geographic area is listed as a health care shortage area on the federal look up tool then that area will also be one for purposes of complying with MPN requirements. Commenter opines that if an area is a health care shortage area, then the MPN should be permitted to include Health Care Shortage in its definition of rural areas and use the MPN rural access plan to</p>	<p>Anne Searcy, MD Sr. Vice President and Chief Medical Office Zenith Insurance December 24, 2013 Written Comment</p>	<p>Reject: The federal US Department of Health and Human Services designation of health care shortage areas has no relation to whether or not physicians are willing to treat injured employees under the California worker’s compensation system. In addition, the federal definition of primary care physician does not comport with the California workers’ compensation system which allows other specialties to be primary treating physicians (i.e. chiropractors, acupuncturists, podiatrists, etc.). Therefore, the data will be inaccurate for our purposes.</p>	None.

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	<p>provide care in the impacted areas. Commenter opines that by using the federal listing for Health Care Shortage areas this will eliminate confusion on what qualifies as a health care shortage area, promote consistency within the industry as all parties would be using the same listing and provide immediate access to a look up tool at <a href="http://www.hrsa.gov/shortage/">http://www.hrsa.gov/shortage/</a>. Commenter states that this would minimize administrative burden in showing there is a Health Care Shortage area. Commenter opines that while this does not deal with the issue of providers not being willing to treat injured workers, that information could be used to supplement the determination of a health care shortage by showing that the carrier had attempted to contract with providers and they refused.</p> <p>Commenter states that this modification would also eliminate having to submit a separate list of all zip codes in which there is a health care shortage under 9767.3(d)(8)(H) as the list would be the same for all MPNs and be available online through</p>			

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9767.1(a)(16)	<p>the DHHS website.</p> <p>Commenter recommends the following revised language:</p> <p>“Medical Provider Network Medical Access Assistant” means an individual in the United States available to assist injured workers with finding available Medical Provider Network physicians and with scheduling provider appointments.</p> <p>Commenter recommends the deletion of the phrase “whose primary duty” is to assist... Commenter acknowledges the state has the power to require the use of a medical access assistant; however, she opines that the state exceeds their authority when rules begin instructing entities on how to comply or run their business operations.</p>	<p>Anne Searcy, MD Sr. Vice President and Chief Medical Officer Zenith Insurance December 24, 2013 Written Comment</p>	<p>Accept: The phrase “whose primary duty is to assist” will be deleted because this provision impinges on a business’ operational functions.</p>	<p>9767.1(a)(16) is revised to delete the phrase “whose primary duty is to assist”</p>
9767.2(b)	<p>Commenter opines that the time frame that the Administrative Director has 180 days to approve or disapprove a filing for a complete plan re-filing, is too long. Commenter opines that the review of a re-filing should be completed within the same time frame as an original filing. Commenter states that there is essentially no difference</p>	<p>Anne Searcy, MD Sr. Vice President and Chief Medical Officer Zenith Insurance December 24, 2013 Written Comment</p>	<p>Reject: Labor Code §4616(b)(1) requires MPN applicants submit Plans for reapproval for MPNs six months before the expiration of the four-year approval period. There is no reason to require DWC to complete its review within 60 days from the</p>	<p>None.</p>

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	<p>between the two filings and the MPN is dependent on timely turnaround of the filing to assure its certificate remains valid and does not expire. Commenter states that §4616(b)(1) requires the applicant to submit renewal filings at least 6 months before the expiration date of their existing certification, and that the code section is clear that upon filing, the state has 60 days from the date the submission is made to approve or deny it. The code did not set out a separate review time for renewal filings. It is commenter's interpretation that the 60 day review period applies to all submissions regardless of whether it is the original submission or a submission for re-approval. Commenter states that if the carrier files 6 months in advance and the state does not approve or deny until six months later, the MPN certification will end and the MPN will be in limbo unless the state provides conditional approvals. Based on the requirements of §4616, commenter states that the period of review for a complete plan re-filing should be changed from 180 days to 60 days and 181<sup>st</sup> day to 61<sup>st</sup></p>		<p>filing date because the MPN will still be in affect provided that DWC completes its review before the expiration of the four-year approval period.</p>	

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	day in this subsection.			
9767.3(c)	<p>Commenter requests that the last sentence of this section requiring the retention of the hard copy of the original signed cover page be stricken.</p> <p>Commenter states that her company has not kept hard copies of filings for several years. Instead electronic copies are maintained on site. As drafted, 9767.3(c) will require paper files to be created solely for the purpose of retaining the application cover page. Commenter opines that the electronic copy of the application should serve the same purpose as a hard copy containing a “wet ink” signature. Commenter states that this approach is common within the insurance industry. For example, the National Association of Insurance Commissioners (NAIC) has utilized SERFF for insurance policy rate and form filings since the early 1990s. Filings are submitted electronically through SERFF and there is no requirement to retain a hard copy of a “wet ink” signature page. The same is true with EAMS. The filing is submitted electronically through EAMS and there is no requirement to</p>	<p>Anne Searcy, MD Sr. Vice President and Chief Medical Office Zenith Insurance December 24, 2013 Written Comment</p>	<p>Reject: The requirement to maintain the hard copy of the original signed cover page by the MPN is not administratively burdensome. The Cover Page for Medical Provider Network Application or Plan for Reapproval is only a page and a half long.</p>	None.

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	<p>keep a hard copy to show a wet ink signature. Submission of an MPN filing on a disk is simply another form of an electronic filing and should not generate a requirement to keep a paper file just to retain a copy of the wet ink signature. If the state continues to require a hard copy be retained, commenter opines that it would be administratively simpler for the state to maintain a single alphabetical file of all applicant cover pages than to have every applicant retain a separate paper file solely for that purpose.</p>			
9767.3(c)(2)	<p>Commenter notes that this section was modified to add a listing of providers that must be listed separately for filing purposes. Commenter questions how these listings will correspond or be utilized in review of an MPN. Section 9767.5 sets for the Access Standards and requires that an MPN have at least three available physicians of each specialty. Commenter would like clarification if it is the state's intent to require that the MPN have 3 of every provider type listed in 9767.3(c)(2) in all geographic locations. Commenter opines that if this is the intent, the regulation may exceed the authority provided under Labor Code 4616 as it</p>	<p>Anne Searcy, MD Sr. Vice President and Chief Medical Officer Zenith Insurance December 24, 2013 Written Comment</p>	<p>Reject: Disagree with commenter's definition of "type" of physician. As mentioned in above response, Labor Code §4616.3(d)(1) states, "Selection by the injured employee of a treating physician and any subsequent physicians shall be based on the physician's <b>specialty</b> or recognized expertise in treating the particular injury or condition in question." DWC's interpretation of the word "type" is synonymous with "specialty". Therefore, the "types" of physicians listed</p>	None.

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	<p>only requires that “The number of physicians in the medical provider network shall be sufficient to enable treatment for injuries or conditions to be provided in a timely manner. The provider network shall include an adequate number and type of physicians, as described in 3209.3, or other providers as described in Section 3209.5, to treat common injuries experienced by injured employees based on the type of occupation or industry in which the employee is engaged, and the geographic area where the employees are employed.”</p> <p>Commenter opines that, technically, a single physician could meet this need for an MPN within a geographic area given the MPN’s amount of business within the area. Commenter states that this requirement that there be 3 physicians of each specialty is questionable as it appears to exceed what is required by the labor code and becomes even more questionable if that requirement is applied to the listing set forth under 9767.3(c)(2). Commenter opines that MPNs should not be forced to artificially expand the size of the network to meet a</p>		<p>in 3209.3 are listed by their specialties.</p> <p>Reject: A minimum of three physicians in each specialty are needed to fulfill access standards because of Labor Code §4616.3 requirements that specifically describes an injured worker’s right to seek a second and third opinion from physicians in the MPN.</p>	<p>None.</p>

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	<p>“numbers” requirement if the MPN is able to service the needs of its injured workers with fewer providers. Commenter requests that this section be clarified.</p> <p>Commenter notes that the listing is for physicians; however, it includes occupational therapists and physical therapists who are not physicians. Some of the categories listed are very limited in supply such as pain specialty medicine, psychology and psychiatry. Commenter questions breaking out similar or like specialties such as psychology from psychiatry, especially if the standard will be 3 of each provider type in all geographic areas when either may be able to provide the services requested or needed, or a single psychiatrist could service all needs within a geographic area based on volume of business the MPN has in that area.</p>		Reject: See response above regarding “type” and “specialty”.	None.
9767.3(d)(8)(G)	<p>Commenter recommends adding the following sentence to the end of this subsection:</p> <p>“Clinics may be listed by the clinic name, location and services available at the clinic without listing each</p>	Anne Searcy, MD Sr. Vice President and Chief Medical Officer Zenith Insurance December 24, 2013 Written Comment	Reject: Pursuant to Labor Code §4616.3(d)(1) the injured worker has the right to select a physician based on the	None.

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	<p>physician within the clinic.”</p> <p>Commenter states that as currently proposed, this section addresses physicians and medical group practices but does not address clinic models which are very different from medical group practice models. Commenter states that medical group practice models generally are appointment based and the injured worker has a specific physician that sees the injured worker. Clinic models provide medical services on a walk-in basis as well as by appointment. For walk-in services, the injured worker sees whoever is available when they come to the clinic. For ongoing care, they may see a specific physician or whoever is on duty the day of their appointment. For clinic models commenter opines that only the clinic should be required to be listed and not every physician within the clinic.</p>		<p>physician’s specialty or recognized expertise. Unlike the medical group model, the clinical model described by commenter does not allow the injured worker to select a physician.</p>	
9767.3(d)(8)(H)	<p>Commenter recommends the following revised language:</p> <p>Provide an electronic copy in Microsoft Excel format of the geocoding results of the MPN provider directory to show compliance</p>	<p>Anne Searcy, MD Sr. Vice President and Chief Medical Officer Zenith Insurance December 24, 2013 Written Comment</p>	<p>Reject: The access standards as set forth in §9767.5 requires at least three available physicians not a vague and</p>	<p>None.</p>

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	<p>with the access standards for the injured workers being covered by the MPN. The geocoding results shall include the following separate files: 1) a complete list of all zip codes within the MPN geographic service area; 2) a narrative and/or graphic report that establishes that there <b>are at least three is a sufficient supply of</b> available primary treating physicians <b>to treat injured workers</b> within the fifteen-mile access standard <b>based on where employees are employed from the center of each zip code</b> within the MPN geographic service area; 3) a narrative and/or graphic report that establishes that there is a hospital or an emergency health care service provider within the fifteen-mile access standard <b>based on where employees are employed from the center of each zip code</b> within the MPN geographic service area; 4) a narrative and/or graphic report that establishes that there <b>is a sufficient supply of are at least three</b> available specialists to provide occupational health services in each listed specialty within the thirty-mile access standard <b>based on where employees are employed from the</b></p>		<p>ambiguous “sufficient supply” of physicians. Moreover, the proposed regulatory language uses the “center of a zip code” not to allow MPNs to provide access based on the center of the geographic zip code, but rather to run geocoding sweeps at the centroid of a land parcel. In either case, access standards will not be precisely determined because the unknown variable of an injured employee’s address is not considered. Requiring the address of every employee covered by an MPN is overly burdensome and impractical.</p>	

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	<p><del>center of each zip code</del> within the MPN geographic service area; 5) <del>a list of all zip codes in which there is a health care shortage and where the access standards are not met for each specialty</del> and an explanation of how medical treatment will be provided in Health Care Shortage Areas and rural areas where access standards are not met <del>those areas not meeting the access standards</del>; 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.</p> <p>Commenter does not agree with setting the “center of the zip code” as the measuring point for access. Labor Code 4616(a)(1) states in pertinent part: “The number of physicians in the medical provider network shall be sufficient to enable treatment for injuries or conditions to be provided in a timely manner. The provider network shall include an adequate number and type of physicians, as described in 3209.3, or other providers as described in Section 3209.5, to treat</p>			

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	<p>common injuries experienced by injured employees based on the type of occupation or industry in which the employee is engaged, and the geographic area where the employees are employed.” Commenter opines that this clearly shows an intent to allow MPNs to provide access based on where the employers covered by the MPN are located, not the center of the geographic zip code. This also makes sense from a practical standpoint since employers may be at the fringe of a zip code area, not near the center.</p>			
9767.5(b)	<p>Commenter recommends the following revised language:</p> <p>If an MPN applicant believes that, given the facts and circumstances with regard to a portion of its service area, specifically areas in which there is a health care shortage, including non-rural areas and rural areas in which health facilities are located at least 30 miles apart, the accessibility standards set forth in subdivisions (a)(1) and/or (a)(2) cannot be met, the MPN applicant may propose alternative standards of accessibility for that portion of its service area. The</p>	<p>Anne Searcy, MD Sr. Vice President and Chief Medical Officer Zenith Insurance December 24, 2013 Written Comment</p>	<p>Reject: The federal US Department of Health and Human Services designation of health care shortage areas has no relation to whether or not physicians are willing to treat injured employees under the California worker’s compensation system. In addition, the federal definition of primary care physician does not comport with the California workers’</p>	<p>None.</p>

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	<p>MPN applicant shall do so by including the proposed alternative standards in writing in its plan application or in a notice of MPN plan modification and shall be reviewed and approved by the Administrative Director before the alternative standard can be used. The applicant shall provide a global access plan explaining the alternate standards that will be applied to address coverage in rural areas and areas where there is a health care shortage. <del>shall explain how the proposed alternative mileage standard was determined to be necessary for the specialty(ies) in which there is a health care shortage, 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.</del> The alternative standards shall provide that all services shall be available and accessible at reasonable times to all covered employees.</p> <p>Commenter opines that the Health</p>		<p>compensation system which allows other specialties to be primary treating physicians (i.e. chiropractors, acupuncturists, podiatrists, etc.). Therefore, the data will be inaccurate for our purposes.</p>	

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	<p>Care Shortage Area should be a consistently applied term to aid in consistency and administration of the MPNs. Commenter states that if the federal standard is adopted, MPNs should not have to address every single specialty separately.</p> <p>Commenter opines that a single global access plan that describes how treatment will be provided in rural areas and areas where there is a Health Care Shortage should suffice.</p> <p>Commenter states that this approach has been used quite successfully in Texas for addressing coverage for Health Care Networks in that state.</p> <p>Commenter state that this approach will avoid confusion for providers, employers and injured workers since a single access standard will be used to address rural and health care shortage areas and that it will also ease administrative burdens for both the MPN and the DWC.</p>			
9767.5(g)	<p>Commenter is concerned that 5 business days to schedule an appointment with a specialist may be too short a period of time to arrange the appointment. Commenter's company has had numerous situations where the physician being referred to</p>	<p>Anne Searcy, MD Sr. Vice President and Chief Medical Officer Zenith Insurance December 24, 2013 Written Comment</p>	<p>Reject in part. Accept in part. Reject: The commenter's recommendation to extend the time period to set a specialist appointment from five days fifteen days will not be accepted.</p>	<p>None.</p>

MEDICAL PROVIDER NETWORKS	RULEMAKING COMMENTS 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>asks to review medical records prior to accepting a referral. In those situations, it generally takes more than 5 days to provide the medical records to the physician and for the physician to conduct a review. Commenter recommends extending the time period to set the appointment to 15 days as long as the appointment occurs within the required 20 business days. Commenter opines that there is no harm to the injured worker, the injured worker will at a minimum still have 5 days notice of the appointment and it gives providers time to conduct reviews of the medical records prior to accepting the injured worker if that is their normal business practice. It also gives the MPN time to check with another specialist should the first one opt not to treat the injured worker for some reason based on their review of the medical records. Commenter states that this occurs with some frequency on claims that have been open for a long time and there is a complicated medical history.</p>		<p>Accept: The regulatory text will be revised to extend the time period for an MPN medical access assistant to set an appointment with a specialist from five days to ten days.</p>	<p>§9767.5(g) will be revised to delete the phrase “directly with a physician or” and the word “five”. The five day time period will be extended to “ten” days.</p>
<p>9767.5.1(a), (c) and (d)</p>	<p>Commenter recommends the following revised language:  (a) Each physician in an MPN, unless</p>	<p>Anne Searcy, MD Sr. Vice President and Chief Medical Officer</p>	<p>Note: The organizational structure of §9767.5.1 has been rearranged in its entirety for brevity and clarity to make it</p>	

MEDICAL PROVIDER NETWORKS	RULEMAKING COMMENTS 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>the physician is a shareholder, partner, or <del>employer-employee</del> of a medical group, or <b>part of a medical clinic</b> that elects to be part of the MPN <b>and has been selected by the MPN</b>, shall have a written acknowledgment that the physician elects to participate in a California workers' compensation medical provider network. The acknowledgment by the physician shall comply with subdivisions (b) and (c). The acknowledgment(s) by the physician shall either specify the MPN or MPNs in which the physician is or will be participating or authorize the agent or designee of a medical group to act on the physician's behalf to specify the MPN or MPNs in which the physician is or will be participating. If the physician authorizes a <b>clinic or</b> medical group's agent or designee <b>to sign on their behalf</b>, the specification of MPNs by the <b>clinic</b> or medical group's agent or designee shall comply with subdivision (d).</p> <p>(b) <b>If selected for participation in the MPN</b>, a physician may acknowledge participation in one or more MPNs in a single written</p>	<p>Zenith Insurance December 24, 2013 Written Comment</p>	<p>easier to follow.</p> <p>Accept in part. Reject in part. Accept: The word "employer" is a typographical error and will be revised to "employee". Reject: The commenter's recommendation to include "medical clinic" will not be adopted because under Labor Code §4616.3(d)(1) the injured worker has the right to select a physician based on the physician's specialty or recognized expertise. Unlike the medical group model, the clinical model described by commenter does not allow the injured worker to select a physician.</p> <p>Reject: The commenter's recommended language is unnecessary because a physician acknowledgment</p>	<p>§9767.5.1(a) is revised to delete the word "employer" and replace it with "employee."</p> <p>None.</p>

MEDICAL PROVIDER NETWORKS	RULEMAKING COMMENTS 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>acknowledgment. The acknowledgment shall be signed by the physician or by an authorized employee of the physician or the physician’s office. If the acknowledgment is included with other terms of an agreement or contract, the acknowledgment shall bear a separate signature of the physician or authorized employee of the physician or the physician’s office. Electronic signatures in compliance with California Government Code section 16.5 are acceptable.</p> <p><b>(d) If a medical group or clinic is selected as a whole or in part to participate in an MPN,</b> a single written group acknowledgment may be submitted for a <b>clinic or</b> medical group participating in an MPN by the <b>clinic or</b> medical group’s agent or designee on behalf of MPN participating physicians in the <b>clinic or</b> medical group who are shareholders, partners, or employees of the medical group, <b>physicians working in a clinic</b> or who have executed individual acknowledgments in accordance with subdivisions (a) and (b). Each medical group</p>		<p>would not be required if the physician was not selected to participate in the MPN.</p> <p>Reject: The commenter’s recommended language is unnecessary because a physician acknowledgment would not be required if the medical group or physician were not selected to participate in the MPN. In addition, the commenter’s recommendation to include “medical clinic” will not be adopted because under Labor Code §4616.3(d)(1) the injured worker has the right to select a physician based on the physician’s specialty or recognized expertise. Unlike</p>	None.

MEDICAL PROVIDER NETWORKS	RULEMAKING COMMENTS 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>acknowledgment shall include a list of all physicians in the medical group and shall affirm that each physician listed has agreed to participate in the MPN. When a physician listed on the group acknowledgment is no longer participating in the MPN or if when new members join the medical group, then the medical group acknowledgment shall be updated with a new master list of MPN participating physicians in the medical group. This amendment shall be submitted to the MPN within thirty days of the effective date of the change. The medical group's agent or designee shall affirm that each listed physician in the updated list is participating in the MPN or MPNs as indicated on the list. The acknowledgment must clearly specify the time frame of the acknowledgment, which may continue for as long as the medical group's MPN contract is effective. A new acknowledgment shall be submitted with a new or renewed MPN contract.</p> <p><b>Clinics are not subject to the physician listing requirements set forth in this provision for medical groups. Nothing in this section</b></p>		<p>the medical group model, the clinical model described by commenter does not allow the injured worker to select a physician.</p>	

MEDICAL PROVIDER NETWORKS	RULEMAKING COMMENTS 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p><b>precludes the selection of all or a subset of physicians for participation in the MPN.</b> Electronic signatures in compliance with California Government Code section 16.5 are acceptable.</p> <p>Commenter states that the regulations address physicians and medical groups but do not address the clinic model which is distinctly different. Commenter recommends that clinics be specifically referenced and that the regulations permit a single acknowledgement be signed for the entity and all physicians that practice in the clinic. Commenter opines that the section loses sight of the fact that the physician must be selected for inclusion in the MPN. The physician can elect to participate but that election has no effect unless the MPN has chosen the provider for inclusion in the MPN. Commenter believes a typo was made in line two as it appears the word should be “employee”, not “employer”.</p>			
9767.5.1(g)	Commenter states that the current draft regulations do not clearly address leased networks and what authority the MPN applicant may have to	Anne Searcy, MD Sr. Vice President and Chief Medical Officer	Reject: Ultimately, the MPN applicant is responsible for the physician acknowledgments and must ensure that all	None.

MEDICAL PROVIDER NETWORKS	RULEMAKING COMMENTS 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>delegate the acknowledgement process to a leased network. Under Section 9767.1(a)(1)(19), MPN Applicant is defined as “means an insurer or employer as defined in subdivisions (6) and (13) of this section, or an entity that provides physician network services as defined in subdivision (7), who is legally responsible for the Medical Provider Network. Commenter recommends modifying 9767.5.1(g) to clearly show the MPN can delegate the responsibility for obtaining appropriate acknowledgement forms; but with the understanding that the MPN is ultimately responsible for regulatory compliance.</p> <p>Commenter recommends that following revised language:</p> <p>(g) The MPN applicant is responsible for obtaining physician acknowledgments and must ensure that all physician acknowledgments are up to date, meet regulatory requirements, and are readily available for review upon request by the Administrative Director. <b>The MPN applicant is</b></p>	<p>Zenith Insurance December 24, 2013 Written Comment</p>	<p>physician acknowledgments are up to date, meet regulatory requirements, and are readily available for review upon request by the Administrative Director. The commenter’s recommended language is unnecessary.</p>	

MEDICAL PROVIDER NETWORKS	RULEMAKING COMMENTS 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p><b>permitted to delegate this responsibility to a third party. However, the MPN applicant will be required to oversee the third party and will be held responsible for regulatory compliance. If the MPN utilizes a leased network, the MPN applicant may rely on the acknowledgements obtained by the leased network from physicians electing to participate in the MPN applicant’s network if selected by the MPN applicant to meet this acknowledgment requirement. Under this circumstance, the MPN applicant is required to send the physician a letter at the time the physician is selected for participation in the MPN applicant’s network and the effective date of that participation.</b></p>			
9767.12(a)(2)(A)	<p>Commenter dis-agrees that medical access assistants should be required to “confirm appointments.” Labor Code 4616(a)(5) limits the role of the medical access assistant to helping injured employees find available MPN physicians and assisting with scheduling of appointments. Commenter opines that asking the MPN to begin confirming</p>	<p>Anne Searcy, MD Sr. Vice President and Chief Medical Officer Zenith Insurance December 24, 2013 Written Comment</p>	<p>Reject: Requiring an MPN medical access assistant to assist in scheduling appointment with MPN physicians and confirming that the appointment is set is consistent with the mandates of Labor Code §4616(a)(5) because an appointment should not be considered scheduled</p>	<p>None.</p>

MEDICAL PROVIDER NETWORKS	RULEMAKING COMMENTS 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>appointments goes beyond that required by the labor code and creates an additional administrative and unnecessary burden. The addition also conflicts with the stated purpose of medical access assistants as set forth in the definition under 9767.1(a)(16) which mirrors the Labor Code requirements. Commenter recommends that the provision be clarified to limit use of the medical access assistants to the employee as stated in Labor Code 4616.</p> <p>Commenter states that providers and applicant attorneys have other avenues available to them to address concerns and the telephone lines should be dedicated to use by the injured worker. Commenter requests the language "confirm physician appointments" be removed from the regulations as modified as follows:</p> <p>A toll-free number must also be listed for MPN Medical Access Assistants, with a description of the access assistance they can provide, including finding available physicians and scheduling <del>and confirming physician</del> appointments, and the times they are available to assist workers with</p>		unless it is confirmed.	

MEDICAL PROVIDER NETWORKS	RULEMAKING COMMENTS 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	obtaining access to medical treatment under the MPN. <b>Use of the MPN Medical Access Assistants is limited to the injured worker.</b>			
9767.12(a)(2)(C)	<p>Commenter states that due to the steps necessary to update internal systems and external lookup tools, she recommends that the time allowed for updating and provider listings remain at 60 days.</p> <p>Commenter recommends the following revised language:</p> <p>If a listed provider becomes deceased or is no longer treating workers' compensation patients at the listed address, the provider shall be taken off the provider directory within <b>60</b> days of notice to the MPN through the contact method stated on the provider directory listing to report inaccuracies.</p>	<p>Anne Searcy, MD Sr. Vice President and Chief Medical Officer Zenith Insurance December 24, 2013 Written Comment</p>	<p>Reject: MPNs are required to update or refresh its provider listings on a quarterly basis or every 90 days. However, if the MPN is notified of an inaccuracy or an error in their provider listing then 45 days is sufficient time to remedy the inaccuracy or error.</p>	None.
9767.15(b)(5)	<p>Commenter does not believe that requiring access to be determined based on the "center of each zip code" is appropriate based on Labor Code 4616(a)(1). Commenter recommends that the method used to determine a health care shortage area and access for both rural areas and areas of health care shortage be changed to allow a</p>	<p>Anne Searcy, MD Sr. Vice President and Chief Medical Officer Zenith Insurance December 24, 2013 Written Comment</p>	<p>Reject: See above responses.</p>	None.

MEDICAL PROVIDER NETWORKS	RULEMAKING COMMENTS 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>single global access plan. Commenter opines that it is questionable whether the labor code supports the requirement that three physicians are required in each geographic area. Rather the code requires that the supply of physicians be sufficient to meet the needs. If this requirement is modified, commenter recommends deleting the reference to three physicians in this section.</p> <p>Commenter recommends the following revised language:</p> <p>(5) Each filing for reapproval shall meet the requirements for geocoding as follows: Provide an electronic copy in Microsoft Excel format of the geocoding results of the MPN provider directory to show compliance with the access standards for the injured workers being covered by the MPN. The geocoding results shall include the following separate files: 1) a complete list of all zip codes within the MPN geographic service area; 2) a narrative and/or graphic report that establishes that there are <b>is a sufficient supply of</b> <del>are at least three</del> primary treating physicians to</p>			

MEDICAL PROVIDER NETWORKS	RULEMAKING COMMENTS 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p><b>treat injured</b> workers within the fifteen-mile access standard <b>based on where employees are employed from the center of each zip code</b> within the MPN geographic service area; 3) a narrative and/or graphic report that establishes that there is a hospital or an emergency health care service provider within the fifteen-mile access standard <b>based on where employees are employed from the center of each zip code</b> within the MPN geographic service area; 4) a narrative and/or graphic report that establishes that there <b>is a sufficient supply of are at least three</b> available specialists to provide occupational health services in each listed specialty within the thirty-mile access standard <b>based on where employees are employed from the center of each zip code</b> within the MPN geographic service area; 5) <b>a list of all zip codes in which there is a health care shortage and where the access standards are not met for each specialty and an explanation of how medical treatment will be provided in those areas not meeting the access standards; a list of all zip codes in which there is a health care</b></p>			

MEDICAL PROVIDER NETWORKS	RULEMAKING COMMENTS 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p><del>shortage and where the access standards are not met for each specialty and an explanation of how medical treatment will be provided in Health Care Shortage Areas and rural areas where access standards are not met those areas not meeting the access standards;</del> 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.</p>			
9767.15(b)(6)	<p>Commenter believes that the citation to 9767.2(a) is 9767.2(b) which applies to re-approval filings.</p>	<p>Anne Searcy, MD Sr. Vice President and Chief Medical Officer Zenith Insurance December 24, 2013 Written Comment</p>	<p>Accept: The typographical error will be revised.</p>	<p>§9767.15(b)(6) is revised to reference “section 9767.2(b)” instead of (a).</p>
9767.15(b)(1)	<p>Commenter opines that the intent of this section is not clear. Material modifications may involve filings of policies and procedures such as transfer of care policies or may include the filing of new provider lists. Any of these filings will generate an approval letter from the DWC. Therefore, it is not clear what the “most recently approved” filing is referring to in this section. Commenter</p>	<p>Anne Searcy, MD Sr. Vice President and Chief Medical Officer Zenith Insurance December 24, 2013 Written Comment</p>	<p>Reject: The phrase “most recently approved filing” means the most recent MPN application or modification approval date. The commenter’s recommendation to use MPN listing is too narrow.</p>	<p>None.</p>

MEDICAL PROVIDER NETWORKS	RULEMAKING COMMENTS 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>recommends changing the regulatory language along the lines of the following to help clarify what is meant:</p> <p><b>MPNs that were approved prior to January 1, 2014 and that filed and received approval of a modified MPN listing after January 1, 2011 will have four years from the date of the last approval of the MPN listing to file for reapproval. MPNs that were approved prior to January 1, 2011 and have not filed and received approval of the MPN listing since January 1, 2011, will be deemed approved until December 31, 2014. Reapprovals for these MPNs shall be filed no later than June 30, 2014.</b></p>			
9767.16(b)(3)	<p>Commenter believes the MPN Liaison should be contacted regarding any investigation and therefore recommends the following change:</p> <p>If the investigation confirms a violation or if other violations are found as a result of the investigation, the Administrative Director shall notify the <del>MPN's authorized individual</del> <b>MPN's Liaison and</b> MPN Contact in writing of the specific</p>	<p>Anne Searcy, MD Sr. Vice President and Chief Medical Officer Zenith Insurance December 24, 2013 Written Comment</p>	<p>Reject: The MPN's authorized individual has legal authority to act on behalf of the MPN that is why he/she must be contacted if the Administrative Director confirms a statutory or regulatory violation.</p>	<p>None.</p>

MEDICAL PROVIDER NETWORKS	RULEMAKING COMMENTS 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	violation(s) found and shall follow the procedures set forth in §9767.14 and/or §9767.19, if the MPN fails to remedy the violation as required.			
9767.19(a)(2)(E)	<p>Commenter states that section 9767.5(f) was changed to use the term “first treatment”, not “initial treatment.”</p> <p>Commenter recommends the following change in this section for consistency:</p> <p>Failure of an MPN medical access assistant to ensure an appointment for nonemergency services for <del>initial</del> <b>the first treatment in the MPN treatment</b> is available within 3 business days of a covered employee’s request for treatment pursuant to section 9767.5(f), \$500 for each occurrence.</p>	<p>Anne Searcy, MD Sr. Vice President and Chief Medical Officer Zenith Insurance December 24, 2013 Written Comment</p>	<p>Reject: Unnecessary as the word “initial” and “first” are synonymous and used interchangeably.</p>	<p>None.</p>
9767.19(a)(2)(G)	<p>Commenter recommends that a cap be added to the penalty set forth as a single innocent error could result in every acknowledgement in the MPN being incorrect which would lead to a penalty that is not commensurate with the offense.</p>	<p>Anne Searcy, MD Sr. Vice President and Chief Medical Officer Zenith Insurance December 24, 2013 Written Comment</p>	<p>Reject: Mitigating facts will be considered when assessing penalties and certainly if there is a single innocent error, it will be a mitigating factor.</p>	<p>None.</p>
9767.1(a)(7)	<p>Commenter recommends the following revised language:</p>	<p>Brenda Ramirez Claims and Medical</p>		

MEDICAL PROVIDER NETWORKS	RULEMAKING COMMENTS 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>Entity that provides physician network services” means <del>an legal entity employing or contracting with</del> <u>providing</u> physicians and other medical providers, including but not limited to third party administrators and managed care <del>networks entities</del>, to deliver medical treatment to injured workers on behalf of one or more <del>insurers, self-insured employers, the Uninsured Employers Benefits Trust Fund, the California Insurance Guaranty Association, or the Self-Insurers Security Fund</del> <u>claims administrators</u>, and that meets the requirements of this article, Labor Code 4616 <i>et seq.</i>, and corresponding regulations.</p> <p>Commenter opines that the term “legal” is unclear and should be struck or defined.</p> <p>Commenter states that the term “contracting” should be replaced with the term “providing,” which is used in Labor Code section 4616(b)(3)(1). Harmonizing this language will reduce disputes and confusion over which</p>	<p>Director California Workers’ Compensation Institute December 26, 2013 Written Comment</p>	<p>Reject in part. Accept in part. DWC rejects the suggested language since the words “legal” and “contracting with” are important for MPN Applications verification purposes. DWC also rejects the recommendation to use the phrase “claim administrator” because “third-party administrator” is already being used. Accept: DWC agrees with the need for additional clarification to list a few entities that may be categorized as an entity that provides physician network services such as “managed care entities.”</p>	<p>§ 9767.1(a)(7) is revised to delete the word “including” and replace it with the phrase “and may include” but “is”. The word “networks” is deleted and replaced with “entities” for additional clarity.</p>

<b>MEDICAL PROVIDER NETWORKS</b>	<b>RULEMAKING COMMENTS 15 DAY COMMENT PERIOD</b>	<b>NAME OF PERSON/ AFFILIATION</b>	<b>RESPONSE</b>	<b>ACTION</b>
	<p>types of entities fit within the definition.</p> <p>Commenter recommends using the term “managed care entities.” The term “network” could imply that these entities have direct contracts with medical providers which may not be the case in all situations. A managed care entity’s MPN may include medical providers under direct contract with the MPN and medical providers accessed through a contract(s) with a “traditional” provider network.</p> <p>Commenter states that the claims administrator is the entity that that administers the claims. A claims administrator may use one or more MPNs to deliver medical treatment to injured employees. Using the term “claims administrator” is clear and simple. If the Division decides to list claims administrator types, commenter recommends adding “third party administrator,” and either adding “State Compensation Insurance Fund” to the proposed listing, or since the definition of insurer in (a)(13)</p>			

MEDICAL PROVIDER NETWORKS	RULEMAKING COMMENTS 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	includes “the California Insurance Guaranty Association,” deleting “the California Insurance Guaranty Association.”			
9767.1(a)(12)	<p>Commenter recommends the following revised language:</p> <p>“Health care shortage” means a situation in a geographical area in which the number of physicians <u>of a particular type in a particular specialty</u> who are available and willing to treat injured employees under the California workers’ compensation system is insufficient to meet the Medical Provider Network access standards set forth in 9767.5(a) through (c) to ensure medical treatment is available and accessible at reasonable times. A lack of physicians participating in an MPN does not constitute a health care shortage where a sufficient number of physicians <u>in that specialty of that type is</u> <del>are</del> available within the access standards and willing to treat injured workers under the California workers’ compensation system.</p> <p>Please refer to commenter’s recommendation in 9767.1(a)(25)(C)</p>	Brenda Ramirez Claims and Medical Director California Workers’ Compensation Institute December 26, 2013 Written Comment	Reject: Disagree with commenter’s definition of “type” of physician. Labor Code §4616.3(d)(1) states, “Selection by the injured employee of a treating physician and any subsequent physicians shall be based on the physician’s <b>specialty</b> or recognized expertise in treating the particular injury or condition in question.”	None.

MEDICAL PROVIDER NETWORKS	RULEMAKING COMMENTS 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
9767.1(a)(16)	<p>regarding type of physician.</p> <p>Commenter recommends the following revised language:</p> <p>“Medical Provider Network Medical Access Assistant” means an individual in the United States whose <del>primary</del> duty is to assist injured workers with finding available Medical Provider Network physicians and with scheduling provider appointments, <u>but unless the assistant is also an adjuster, may not authorize payment of goods or services.</u></p> <p>Commenter states that the recommended modification clarifies that a medical access assistant does not authorize payment for goods or services.</p>	<p>Brenda Ramirez Claims and Medical Director California Workers’ Compensation Institute December 26, 2013 Written Comment</p>	<p>Accept in part. Reject in part. Accept: The phrase “whose primary duty is to assist” will be deleted because this provision impinges on a business’ operational functions. Reject: The commenter’s suggested addition of the phrase “but unless the assistant is also an adjuster, may not authorize payment of goods or services” will not be adopted in this section which is the definition of Medical Provider Network Medical Access Assistant.</p>	<p>§9767.1(a)(16) will be revised to delete “whose primary duty is to assist” and to add the phrase “provided by the Medical Provider Network to help” and “of the injured workers’ choice” for clarity.</p>
9767.1(a)(19)	<p>Commenter recommends the following revised language:</p> <p>“MPN Applicant” means <u>a claims administrator</u> <del>an insurer or employer</del> as defined in subdivision <del>(36)s (6) and (13) of this section</del>, or an entity that provides physician network services as defined in subdivision (7), <del>who that</del> is <del>legally</del> responsible for the Medical Provider Network.</p>	<p>Brenda Ramirez Claims and Medical Director California Workers’ Compensation Institute December 26, 2013 Written Comment</p>	<p>Reject: Labor Code §4616(a)(1) lists an “insurer, employer, or entity that provides physician network services” as the entities that can be MPN Applicants and does not list “claims administrator”. Although these regulations clearly allow “claims administrators” to file and an MPN application as an</p>	<p>None.</p>

MEDICAL PROVIDER NETWORKS	RULEMAKING COMMENTS 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>Commenter states that this proposed change together with the recommended addition of 9767.1(a)(36) will allow a third party administrator (TPA) to submit an application for an MPN that can be used by its clients. This will eliminate unnecessary duplicate filings by the clients of TPAs. See also comment on the recommended addition of 9767.1(a)(36).</p> <p>Commenter opines that the term “legally” is unnecessary and unclear and should be struck or defined.</p>		<p>“entity that provides physician network services.</p> <p>Reject: The MPN is the entity approved by the DWC as a Medical Provider Network and the MPN Applicant is legally responsible for the MPN. In other words, the MPN Applicant is the entity that legally acts on behalf of the MPN and, therefore, the word “legally” is necessary and shall remain.</p>	None.
9767.1(a)(25)(C)	<p>Commenter recommends the following revised language:</p> <p>If the listing described in either (A) or (B) does not <del>provide a minimum of three</del> physicians of each <u>specialty type</u>, then the listing shall be expanded by adjacent counties or by 5-mile increments until the minimum number of physicians per <u>specialty type</u> are met.</p> <p>Commenter notes that Labor Code section 4616(a)(1) states:</p>	Brenda Ramirez Claims and Medical Director California Workers’ Compensation Institute December 26, 2013 Written Comment	Reject: Disagree with commenter’s definition of “type” of physician. As mentioned in above response, Labor Code §4616.3(d)(1) states, “Selection by the injured employee of a treating physician and any subsequent physicians shall be based on the physician’s <b>specialty</b> or recognized expertise in treating the particular injury or condition in question.” DWC’s interpretation of the	None.

MEDICAL PROVIDER NETWORKS	RULEMAKING COMMENTS 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>“... The provider network shall include an adequate number and type of physicians, as described in Section 3209.3, or other providers, as described in Section 3209.5, to treat common injuries experienced by injured employees based on the type of occupation or industry in which the employee is engaged, and the geographic area where the employees are employed.”</p> <p>Commenter states that <u>the most common California workers’ compensation injuries</u> in 2010, 2011 and 2012 identified in CWCI’s ICIS database are listed in Table A in order of frequency. Labor Code section 4616(a) requires an adequate number and type of physician to treat common injuries. The list of common injures in Table A is relevant for most MPNs including those used by insurers that provide statewide homogenous coverage. <b>[Copy of table submitted provided upon request.]</b></p> <p>Commenter states that <u>physician types</u> are described in Section 3209.3 as physicians and surgeons holding an</p>		<p>word “type” is synonymous with “specialty”. Therefore, the “types” of physicians listed in 3209.3 are listed by their specialties.</p> <p>Reject: A minimum of three physicians in each specialty are needed to fulfill access standards because of Labor Code §4616.3 requirements that specifically describes an injured worker’s right to seek a second and third opinion from physicians in the MPN.</p>	None.

MEDICAL PROVIDER NETWORKS	RULEMAKING COMMENTS 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>M.D. or D.O. degree, psychologists, acupuncturists, optometrists, dentists, podiatrists, and chiropractors; and the other providers described in Section 3209.5 include physical therapists.</p> <p><u>Authority</u>  Commenter opines that when the statutory language is clear and unambiguous, there is no room for interpretation and the statutory language must prevail. Per <u>DuBois v WCAB</u> (1993) 58 CCC 286, a regulation must be: 1) within the scope of the authority conferred by the statute; and 2) reasonably necessary to effectuate the purpose of the statute; see: <u>Woods v Superior Court</u> (1981) 28 Cal 3d 668, where the Supreme Court held that regulations that exceed the scope of the enabling statute are invalid and have no force or life.</p> <p>In <u>Mendoza v WCAB</u> (2010) en banc opinion 75 CCC 634, the Board found the Administrative Director’s rule invalid and held:  “... no regulation adopted is valid or effective unless consistent and not in conflict with the statute.” ... An administrative agency has no</p>			

<b>MEDICAL PROVIDER NETWORKS</b>	<b>RULEMAKING COMMENTS 15 DAY COMMENT PERIOD</b>	<b>NAME OF PERSON/ AFFILIATION</b>	<b>RESPONSE</b>	<b>ACTION</b>
	<p>discretion to promulgate a regulation that is inconsistent with the governing statutes.”</p> <p>Commenter opines that in this instance, the Administrative Director has defined “physician type” to mean “specialty,” even though the statute specifically defines physician type by reference to sections 3209.3. The result has been to make the physician access standards considerably more difficult and costly to meet and the networks larger and less effective. Commenter states that this is clearly an impermissible expansion of the Administrative Director’s authority to set a standard for the number of physicians by specialty, instead of by type. As the Supreme Court has ruled, an administrative agency has no discretion to promulgate a regulation that is inconsistent with the governing statutes. The Administrative Director needs to rectify this standard.</p> <p>MPN listings will continue to identify physician specialties, but a correction to the regulation will allow MPNs to determine the number necessary for each specialty, instead of being</p>			

MEDICAL PROVIDER NETWORKS	RULEMAKING COMMENTS 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	artificially constrained by a minimum number for each, no matter the need. This will ensure better, more flexible networks.			
9767.1(a)(36)	<p>Commenter recommends the creation of a new subsection (a)(36) with the following language:</p> <p><u>“Claims administrator” means an employer as described in subdivision (6), an insurer as defined in subdivision (13) or a third party administrator (TPA) acting on behalf of an insurer or employer.</u></p> <p>Commenter opines that this definition is necessary to efficiently and completely describe the type of entities that administer claims, and that may serve as an MPN applicant, in addition to an entity that provides physician network services.</p> <p>Please refer to her comment regarding 9767.1 (a)(19). If this recommendation is accepted, the definitions in this section will need to be re-ordered alphabetically.</p>	Brenda Ramirez Claims and Medical Director California Workers’ Compensation Institute December 26, 2013 Written Comment	Reject: A Claims Administer may file an MPN Application as an entity that provides physician network services. Therefore, this change is unnecessary and is substantively incorrect.	None.
9767.1(a)(37)	Commenter recommends the creation of a new subsection (a)(37) with the	Brenda Ramirez Claims and Medical		

MEDICAL PROVIDER NETWORKS	RULEMAKING COMMENTS 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>following language:</p> <p><u>“Primary care physician” means a physician who has limited his or her practice of medicine to general practice or who is a board-certified or board-eligible internist, pediatrician, obstetrician-gynecologist or family practitioner.”</u></p> <p>Commenter states that this definition is adapted from the definition in the Insurance Commissioner’s regulation Title 10, CCR, section 2240(k). Title 10, CCR, section 2240.1(c) addresses time/distance provider network access standards that the Insurance Commissioner requires for disability policies and agreements. Section 2240(k), is necessary to implement the Institute’s recommendation to apply those time and distance access network standard for primary care physicians in section 9767.5(b).</p> <p>If accepted, the definitions in this section will need to be re-ordered alphabetically.</p>	<p>Director California Workers’ Compensation Institute December 26, 2013 Written Comment</p>	<p>Reject: The term “Primary care physician” is not a term normally used in workers’ compensation and the addition of this definition is confusing because the term “Primary Treating Physician” is used and is already defined.</p>	<p>None.</p>
9767.2(b)	<p>Commenter recommends the following revised language:</p>	<p>Brenda Ramirez Claims and Medical Director</p>	<p>Accept in part. Reject in part. Accept: The typographical error with the word reapproval</p>	<p>§9767.2(b) is revised to correct the typographical error</p>

MEDICAL PROVIDER NETWORKS	RULEMAKING COMMENTS 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>Within <del>180</del> <u>60</u> days of the Administrative Director’s receipt of a complete plan for reapproval, the Administrative Director shall approve for a four-year period or disapprove the complete plan for <del>reapproval</del> <u>reapproval</u> based on the requirement 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. If the Administrative Director has not acted within <del>180</del> <u>60</u> days of receipt of a complete plan for reapproval, it shall be deemed approved on the <del>181</del> <u>61</u>st day for a period of four years.</p> <p>Commenter opines that it is not necessary for the Administrative Director to allow six months for a review of a complete plan for MPN approval. More than 60 days is not needed for such review and approval. Only 60 days is allowed for review of a new application and the time needed to review of a plan for reapproval is expected to take less time than for a new application. A plan for reapproval that waits six months for</p>	<p>California Workers’ Compensation Institute December 26, 2013 Written Comment</p>	<p>will be corrected.</p> <p>Reject: Labor Code §4616(b)(1) mandates MPN Applicant’s submit complete Plans for Reapproval no later than six months prior to the expiration of the MPN’s four-year date of approval; therefore, DWC should be allowed 180 days to review the application before the 4 year approval period expires.</p>	<p>“reapproval” to “reapproval”.</p> <p>None.</p>

MEDICAL PROVIDER NETWORKS	RULEMAKING COMMENTS 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	approval may become outdated or obsolete before it is approved.			
9767.3(a)	<p>Commenter recommends the following revised language:</p> <p>As long as the application for a medical provider network plan meets the requirements of Labor Code section 4616 et seq. and this article, nothing in this section precludes <del>an employer or insurer</del> <u>a claims administrator</u> or entity that provides physician network services from submitting for approval one or more medical provider network plans in its application.</p> <p>Commenter states that the recommended language will allow a TPA to submit an application for one or more MPNs that can be used by its clients. This will eliminate unnecessary duplicate filings. See also the comments regarding 9767.1(a)(35) and 9767.1(a)(19).</p>	Brenda Ramirez Claims and Medical Director California Workers' Compensation Institute December 26, 2013 Written Comment	Reject: Labor Code §4616(a)(1) lists an “insurer, employer, or entity that provides physician network services” as the entities that can be MPN Applicants and does not list “claims administrator”. Although these regulations clearly allow “claims administrators” to file and an MPN application as an “entity that provides physician network services.	None.
9767.3(c)	<p>Commenter recommends the addition of the following language:</p> <p><u>Nothing in this section precludes an MPN applicant from submitting an application for approval of an MPN</u></p>	Brenda Ramirez Claims and Medical Director California Workers' Compensation Institute	Reject: If an “entity that provides physician network services” files and is approved as an MPN, then it will be able	None.

MEDICAL PROVIDER NETWORKS	RULEMAKING COMMENTS 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p><u>for the benefit and use of multiple claims administrators. If an MPN is accessed by an entity other than the MPN Applicant, the MPN application shall include a list of those entities pursuant to Section 9767.3(d)(7).</u></p> <p>Commenter opines that the cover page requirements are not clear for Applications and Plans for Reapproval that are submitted with electronic signatures. Commenter suggests clarifying whether or not a hard copy with original signature must be maintained in those circumstances.</p> <p>Commenter recommends adding the highlighted language to this section to clarify that an MPN applicant may submit an application for an MPN that can be accessed by multiple entities. This will eliminate unnecessary duplicate filings.</p>	<p>December 26, 2013 Written Comment</p>	<p>to cover multiple employer or insurer clients. The commenter's recommended language is unnecessary. 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.</p>	
9767.3(c)(2)	<p>Commenter recommends the following revised language:</p> <p>The network provider information shall be submitted on a disk(s), CD ROM(s), or a flash drive, and the provider file shall have only the following eight columns. These</p>	<p>Brenda Ramirez Claims and Medical Director California Workers' Compensation Institute December 26, 2013 Written Comment</p>	<p>Reject: Disagree with commenter's definition of "type" of physician. As mentioned in above response, Labor Code §4616.3(d)(1)</p>	None.

MEDICAL PROVIDER NETWORKS	RULEMAKING COMMENTS 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>columns shall be in the following order: (1) physician name (2) <del>specialty type</del> (3) physical address (4) city (5) state (6) zip code (7) any MPN medical group affiliations and (8) an assigned provider code for each physician listed. <del>If a physician falls under more than one provider code, the physician shall be listed separately for each applicable provider code.</del> The following are the provider codes to be used: <del>primary treating physician (PTP), orthopedic medicine (ORTHO), chiropractic medicine (DC), occupational medicine (OCCM), acupuncture medicine (LAC), psychology (PSYCH), pain specialty medicine (PM), occupational therapy medicine (OT), psychiatry (PSY), neurosurgery (NSG), family medicine (GP), neurology (NEURO), internal medicine (IM), physical medicine and rehabilitation (PMR), or podiatry (DPM).</del> If the specialty does not fall under any one of the previously listed categories, then the <del>specialty shall be clearly identified in the specialty column and the code used shall be (MISC).</del> By submission of its provider listing, the applicant is affirming that all of the physicians</p>		<p>states, "Selection by the injured employee of a treating physician and any subsequent physicians shall be based on the physician's <b>specialty</b> or recognized expertise in treating the particular injury or condition in question." DWC's interpretation of the word "type" is synonymous with "specialty". Therefore, the "types" of physicians listed in 3209.3 are listed by their specialties. Therefore, the provider codes will remain because these codes are necessary for geocoding purposes.</p> <p>Reject: A minimum of three physicians in each specialty are needed to fulfill access standards because of Labor Code §4616.3 requirements that specifically describes an injured worker's right to seek a second and third opinion from physicians in the MPN.</p>	None.

MEDICAL PROVIDER NETWORKS	RULEMAKING COMMENTS 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>listed have been informed that the Medical Treatment Utilization Schedule (“MTUS”) is presumptively correct on the issue of the extent and scope of medical treatment and diagnostic services and have a valid and current license number to practice in the State of California.</p> <p>See the comment on section 9767.1(a)(25)(C) regarding physician type versus physician specialty.</p> <p>Commenter opines that the necessity for the newly proposed “provider codes” in the second sentence is not clear. If these codes are meant to identify providers that generally treat common injuries experienced by injured employees as referenced in Labor Code section 4616(a), then the Institute suggest revising the access standards in these regulations to require at least three physicians in each these provider code categories in lieu of each specialty. If this is not the case, then commenter recommends deleting this highlighted section since it is not necessary.</p>			
9767.3(c)(4)	Commenter recommends restoring the following language:	Brenda Ramirez Claims and Medical		

MEDICAL PROVIDER NETWORKS	RULEMAKING COMMENTS 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p><u>(c)(4) If an MPN lists a medical group in its provider listing, then all physicians in that medical group are considered to be approved providers. An MPN may list a subgroup of a larger medical group if all physicians in the larger group are not in the MPN, or an MPN may list approved providers individually.</u></p> <p>Commenter recommends restoring this section to accommodate MPN applicants who choose to include medical groups in their networks. Doing so will make compliance for both the MPN applicants and the selected groups less onerous. If this recommendation is accepted, the section must be renumbered.</p>	<p>Director California Workers' Compensation Institute December 26, 2013 Written Comment</p>	<p>Reject: The entire subdivision has been deleted and will not be restored as commenter recommends. MPN listings by medical group will no longer be allowed because injured employees must be allowed to select their physicians by their specialty. A listing according to the commenter's recommendation will not allow this because selection will be by medical group. Therefore, physicians in a medical group must be individually listed, although an MPN may include a medical group affiliations with each individual physician listed.</p>	<p>None.</p>
<p>9767.3(d)(8)(G)</p>	<p>Commenter recommends the following revised language:</p> <p>Provide a listing of the name, <del>specialty</del>type, and location of each physician as described in Labor Code Section 3209.3, <u>and medical groups</u> who will be providing occupational medicine services under the plan. <del>Only individual physicians in the MPN shall be listed, but</del> MPN medical</p>	<p>Brenda Ramirez Claims and Medical Director California Workers' Compensation Institute December 26, 2013 Written Comment</p>	<p>Reject: Disagree with commenter's definition of "type" of physician. As mentioned in above response, Labor Code §4616.3(d)(1) states, "Selection by the injured employee of a treating physician and any subsequent</p>	<p>None.</p>

MEDICAL PROVIDER NETWORKS	RULEMAKING COMMENTS 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>group affiliation(s) may be included with each individual physician listed. By submission of the application, the MPN applicant is confirming that a contractual agreement exists with the physicians, providers or medical group practice in the MPN to provide treatment for injured workers in the workers' compensation system and that the contractual agreement is in compliance with Labor Code section 4609, if applicable.</p> <p>MPN physician listings will include a physician's specialty to enable an injured employee to select "a treating physician and any subsequent physicians based on the physician's specialty or recognized expertise in treating the particular injury or condition in question." Commenter opines that while it is necessary to submit the physician type in an MPN application so that the Administrative Director can validate that access standards by type of physician are met pursuant to Labor Code section 4616(a)(1), there is no such statutory basis or necessity for also requiring the applicant to report the specialty in the MPN application. See in addition</p>		<p>physicians shall be based on the physician's <b>specialty</b> or recognized expertise in treating the particular injury or condition in question." DWC's interpretation of the word "type" is synonymous with "specialty". Therefore, the "types" of physicians listed in 3209.3 are listed by their specialties. Therefore, the provider codes will remain because these codes are necessary for geocoding purposes.</p> <p>Reject: A minimum of three physicians in each specialty are needed to fulfill access standards because of Labor Code §4616.3 requirements that specifically describes an injured worker's right to seek a second and third opinion from physicians in the MPN.</p>	None.

MEDICAL PROVIDER NETWORKS	RULEMAKING COMMENTS 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>the comment on section 9767.1(a)(25)(C) regarding physician type versus physician specialty.</p> <p>As also suggested in (c)(4), the other modifications will accommodate MPN applicants who choose to include medical groups in their networks. This will make compliance for both the MPN applicants and the selected groups less onerous.</p>			
9767.3(d)(8)(H)	<p>Commenter recommends the following revised language:</p> <p>...4) a narrative and/or graphic report that establishes that there are at least three available <del>specialist</del><u>types of physicians described in Labor Code section 3209.3</u> to provide occupational health services <del>in each listed specialty</del><u>to treat common injuries experienced by injured employees engaged in the type of occupation or industry</u> 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 in which there is a health care shortage and where the access standards are not met for each specialty and an explanation of how medical treatment</p>	<p>Brenda Ramirez Claims and Medical Director California Workers' Compensation Institute December 26, 2013 Written Comment</p>	<p>Reject: Disagree with commenter's definition of "type" of physician. As mentioned in above response, Labor Code §4616.3(d)(1) states, "Selection by the injured employee of a treating physician and any subsequent physicians shall be based on the physician's <b>specialty</b> or recognized expertise in treating the particular injury or condition in question." DWC's interpretation of the word "type" is synonymous with "specialty". Therefore, the "types" of physicians listed</p>	None.

MEDICAL PROVIDER NETWORKS	RULEMAKING COMMENTS 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>will be provided in those areas not meeting the access standards; 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.</p> <p>Labor Code section 4616(b)(3) requires MPNs to submit geocoding for reapproval “to establish that the number and geographic location of physicians in the network meets the required access standards.” Labor Code section 4616(a)(1) requires an adequate number and type of physicians to treat common injuries, and that the number of physicians be sufficient to enable timely treatment. Commenter opines that it does not require the same number of physicians in each area, nor does it require access standards by specialty.</p> <p>See in addition the comment on section 9767.1(a)(25)(C) regarding physician type versus physician specialty.</p> <p>See also the comment on section</p>		<p>in 3209.3 are listed by their specialties. Therefore, the provider codes will remain because these codes are necessary for geocoding purposes.</p> <p>Reject: A minimum of three physicians in each specialty are needed to fulfill access standards because of Labor Code §4616.3 requirements that specifically describes an injured worker’s right to seek a second and third opinion from physicians in the MPN.</p> <p>Reject: The provider codes will remain because these codes are necessary for geocoding purposes.</p>	<p>None.</p> <p>None.</p>

MEDICAL PROVIDER NETWORKS	RULEMAKING COMMENTS 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	(c)(2). The purpose of the newly proposed provider codes is not clear for this section as well and appears to be unnecessary.			
9767.4	<p>Commenter recommends the following revised language:</p> <p>4. Eligibility Status of MPN Applicant</p> <p><input type="checkbox"/> Self-Insured Employer    <input type="checkbox"/> Insurer (including CIGA, <u>SCIF State Fund</u>)</p> <p><input type="checkbox"/> Group of Self-Insured Employers</p> <p style="padding-left: 40px;"><input type="checkbox"/> Joint Powers Authority</p> <p style="padding-left: 40px;"><input type="checkbox"/> State</p> <p><input type="checkbox"/> <u>TPA</u>   <input type="checkbox"/> Entity that provides physician network services</p> <p>Commenter state that the proper abbreviation for State Compensation Insurance Fund is “State Fund” and not “SCIF.”</p> <p>See comments on MPN Applicant in section 9767.1(a)(19) regarding TPAs.</p>	Brenda Ramirez Claims and Medical Director California Workers’ Compensation Institute December 26, 2013 Written Comment	<p>Reject: SCIF will be deleted and replaced with the UEBTF because the regulated public is aware State Compensation Insurance Fund is an Insurer but may not know that the Uninsured Employers Benefits Trust Fund is an Insurer.</p> <p>Reject: TPA’s are not eligible to file an MPN Application as a TPA but may file as an “entity that provides physician network services.”</p>	None.  None.
9767.5(a)	<p>Commenter recommends the following revised language:</p> <p><u>An MPN must have at least three available shall include physicians</u></p>	Brenda Ramirez Claims and Medical Director California Workers’ Compensation	Reject: Disagree with commenter’s definition of	None.

MEDICAL PROVIDER NETWORKS	RULEMAKING COMMENTS 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p><u>primarily engaged in the treatment of occupational injuries, and physicians of each specialty type described in Labor Code Section 3209.3 to treat common injuries experienced by injured employees based on the type of occupation or industry in which the employee is engaged and within the access standards set forth in (1) and (2). An MPN shall meet the access standards for those physician types.</u></p> <p>Commenter states that CCR, Title 10, section 2240.1(c) addresses time/distance provider network access standards that the Insurance Commissioner requires for disability policies and agreements. Those standards require “primary care network providers with sufficient capacity to accept covered persons within 30 minutes or 15 miles of each covered person’s residence or workplace,” and “medically required network specialists who are certified or eligible for certification by the appropriate specialty board with sufficient capacity to accept covered persons within 60 minutes or 30 miles of a covered person’s residence or workplace.” Primary care physician is</p>	<p>Institute December 26, 2013 Written Comment</p>	<p>“type” of physician. As mentioned in above response, Labor Code §4616.3(d)(1) states, “Selection by the injured employee of a treating physician and any subsequent physicians shall be based on the physician’s <b>specialty</b> or recognized expertise in treating the particular injury or condition in question.” DWC’s interpretation of the word “type” is synonymous with “specialty”. Therefore, the “types” of physicians listed in 3209.3 are listed by their specialties. Therefore, the provider codes will remain because these codes are necessary for geocoding purposes.</p> <p>Reject: A minimum of three physicians in each specialty are needed to fulfill access standards because of Labor Code §4616.3 requirements that specifically describes an injured worker’s right to seek a second and third opinion from physicians in the MPN.</p>	<p>None.</p>

MEDICAL PROVIDER NETWORKS	RULEMAKING COMMENTS 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>defined in CCR, Title 10, section 2240(k) as "a physician who is responsible for providing initial and primary care to patients, for maintaining the continuity of patient care or for initiating referral for specialist care. A primary care physician may be either a physician who has limited his practice of medicine to general practice or who is a board-certified or board-eligible internist, pediatrician, obstetrician-gynecologist or family practitioner."</p> <p>Commenter opines that there is no necessity for workers' compensation provider network time/distance access standards to exceed or differ from those required by the Insurance Commissioner for provider networks used by disability insurers, and there is no statutory requirement for an MPN to include <u>three</u> physicians within the time/distance access standards. Commenter notes that a group disability insurance policy pursuant to Labor Code section 4616.7(c) is deemed an approved MPN. Commenter recommends basing the MPN time/distance access standards to those that apply to provider</p>		<p>Reject: The time/distance access requirements of 30 minutes or 15 miles for PTP's mimic the requirements for primary care physician that the commenter recommends. Also, the 60 minutes or 30 miles for specialists mimic the requirement for specialists that the commenter recommends.</p>	<p>None.</p>

MEDICAL PROVIDER NETWORKS	RULEMAKING COMMENTS 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>networks used by disability insurers.</p> <p>Commenter opines that it is not clear what is meant by “available physician.” If the term remains, it will generate unnecessary disputes over whether or not a physician is “available.”</p> <p>See the comment on section 9767.1(a)(25)(A) regarding physician specialty.</p> <p>Commenter recommends moving the reference to providers of occupational health services to this subdivision (a) from subdivision (c) since the specific access standards are required only for the physician types described in Labor Code section 3902.3.</p> <p>Labor Code section 4616(a) requires an adequate number and type of physician to treat common injuries. The most common California workers’ compensation injuries in 2010, 2011 and 2012 identified in CWCI’s ICIS database are listed in Table A in frequency order. <b>[Copy of Table A provided upon request.]</b></p>			

MEDICAL PROVIDER NETWORKS	RULEMAKING COMMENTS 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
9767.5(a)(2)	<p>Commenter recommends the following revised language:</p> <p>An MPN must have <u>the types physicians described in Labor Code section 3209.3 to who can</u> treat common injuries experienced by the covered injured employees within 60 minutes or 30 miles of a covered employee's residence or workplace.</p> <p>Since access standards are required only for the physician types described in Labor Code section 3902.3, commenter recommends moving the reference to providers of occupational health services to (a).</p> <p>See in addition the comments on section 9767.1(a)(25) and 9767.5(a).</p>	<p>Brenda Ramirez Claims and Medical Director California Workers' Compensation Institute December 26, 2013 Written Comment</p>	<p>Reject: See above responses regarding "specialty" v. "type".</p>	<p>None.</p>
9767.5(a)(3)	<p>Commenter recommends the addition of the following new subsection:</p> <p><u>Notwithstanding (b) and (c), these requirements are not intended to prevent the injured employee from selecting from the nearest three physicians of that type in the network, or selecting physicians as allowed by their network beyond the applicable geographic area specified by these</u></p>	<p>Brenda Ramirez Claims and Medical Director California Workers' Compensation Institute December 26, 2013 Written Comment</p>	<p>Reject: See above responses regarding "specialty" v. "type".</p>	<p>None.</p>

MEDICAL PROVIDER NETWORKS	RULEMAKING COMMENTS 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p><u>standards.</u></p> <p>Commenter states that this recommended subsection is adapted from the language in CCR, Title 10, section 2240.1(c)(6). It will ensure that injured employees have a choice of at least three physicians of that type.</p> <p>If this section is inserted here as commenter recommends, subsequent subdivisions (d) through (j) must be re-alphabetized.</p>			
9767.5(b)	<p>Commenter recommends the following revised language:</p> <p><u>If an MPN applicant is unable to meet the network access standard(s) required by this section due to the absence of physicians willing to treat workers' compensation injuries located within sufficient geographic proximity to covered employees, the MPN applicant may propose an alternative mileage standard in its application or may specify that the injured covered employee may select a physician of that type outside the MPN within a reasonable geographic area until the MPN is able to provide</u></p>	<p>Brenda Ramirez Claims and Medical Director California Workers' Compensation Institute December 26, 2013 Written Comment</p>	<p>Reject: See above responses regarding "specialty" v. "type".</p> <p>Reject: Commenter's recommended language "due to the absence of physicians willing to treat workers' compensation injuries..." is not comprehensive enough. What if there are physicians who are willing but not available to treat? The regulatory language "areas in which there is a health care shortage including non-rural and rural areas" will remain</p>	<p>None.</p> <p>None.</p>

MEDICAL PROVIDER NETWORKS	RULEMAKING COMMENTS 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p><u>the necessary treatment through an MPN physician. Such a proposal shall include, at a minimum, a description of the affected area and covered employees in that area, how the applicant determined the absence of practicing providers, and how the proposal will ensure the availability of treatment for injured covered employees who work and reside in that area.</u></p> <p>LC section 4616(a)(2) specifies that medical treatment for injuries must be available and accessible <u>to the extent feasible</u> at reasonable times to all covered employees. This proposed alternative language is based on language in CCR, Title 10, section 2240.1(c)(7). The MPN time and distance access standards language should parallel, to the extent feasible, the language of section 2240.1's time and distance access standards. It is reasonable for the MPN applicant to propose either an alternative mileage standard or to permit the injured employee to select a physician of that type outside the MPN within a reasonable geographic area until the MPN is able to provide the treatment</p>		because it is more comprehensive.	

MEDICAL PROVIDER NETWORKS	RULEMAKING COMMENTS 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
9767.5(f)	<p>through an MPN physician.</p> <p>Commenter recommends the following revised language:</p> <p>For non-emergency services, the MPN applicant shall ensure that an appointment for the first treatment visit under the MPN is available within 3 business days of a covered employee's notice to the employer or to an MPN medical access assistant that treatment is needed.</p> <p>Commenter recommends removing "to the employer or" as the MPN would have no way of ensuring treatment within the required timeframe if notification was to the employer. The trigger should be when the MPN applicant is notified, as noted in the current regulations, or upon notice to the medical access assistant.</p>	<p>Brenda Ramirez Claims and Medical Director California Workers' Compensation Institute December 26, 2013 Written Comment</p>	<p>Accept: The regulatory text will be revised to clarify that the timeline will be triggered when the MPN medical access assistant is notified.</p>	<p>§9767.5(f) is revised to delete "the employer or to" to make clear that the 3 business day timeline is only triggered when notice is given to the MPN medical access assistant.</p>
9767.5(g)	<p>Commenter recommends the following revised language:</p> <p>For non-emergency specialist services to treat common injuries experienced by the covered employees based on the type of occupation or industry in which the employee is engaged, the</p>	<p>Brenda Ramirez Claims and Medical Director California Workers' Compensation Institute December 26, 2013 Written Comment</p>	<p>Accept in part. Reject in part. Accept: The regulatory text will be revised to clarify that the timeline will be triggered when the MPN medical access assistant is notified.</p>	<p>§9767.5(g) is revised to delete "directly with a physician or" to make care that the timeline is only triggered when notice is given to the MPN medical access</p>

MEDICAL PROVIDER NETWORKS	RULEMAKING COMMENTS 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>MPN applicant shall ensure that an initial appointment with a specialist in an appropriate referred specialty is available within 20 business days of a covered employee's <u>notice to the MPN medical access assistant that treatment is needed</u>. <del>a covered employee's reasonable requests for an appointment directly with a physician or 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 five 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.</del></p> <p>Commenter recommends using the same standard set forth in 9767.5 (f). The requirement should start when the covered employee notifies the MPN applicant or its medical access assistant. Having the requirement start when a request is made to a physician is not consistent with the regulations. The physician that the covered employee selects may not have availability within the timeframe,</p>		<p>Reject: The requirement that the MPN medical access assistant schedule a timely medical appointment with an appropriate specialists will remain but the timeline will be extended from five business days to ten business days.</p>	<p>assistant.</p> <p>§9767.5(f) is revised to delete "five" and replace it with "ten" business days.</p>

MEDICAL PROVIDER NETWORKS	RULEMAKING COMMENTS 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>but there may be other appropriate physicians with availability within required access standard. In addition, the requirement to authorize out of network care if an appointment is not made within 5 days of a request should be removed. Not only does this dilute the established access standard of 20 business days, it does not take into account delays that are not due to the medical access assistant, such as when the covered employee doesn't respond timely to requests from the medical access assistant.</p>			
9767.5(h)	<p>Commenter recommends the following revised language:</p> <p>MPN medical access assistants shall be located in the United States and shall be available at a minimum from Monday through Saturday from 7 am to 8 pm, Pacific Time, to provide employee assistance with access to medical care under the MPN. <del>The employee assistance shall be available in English and Spanish.</del> The assistance shall include but not be limited to contacting provider offices during regular business hours and scheduling medical appointments for covered employees.</p>	<p>Brenda Ramirez Claims and Medical Director California Workers' Compensation Institute December 26, 2013 Written Comment</p>	<p>Reject: MPN medical access assistants are statutorily mandated to help an injured employee find an available MPN physician. In order to properly assist and respond to injured workers' in California an MPN medical access assistant must be able to communicate either directly or through an interpreter with the injured worker.</p>	<p>None.</p>

MEDICAL PROVIDER NETWORKS	RULEMAKING COMMENTS 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>Commenter states that there is no statutory requirement to provide a Spanish-speaking MPN access assistant. Interpreter services can be provided if needed.</p>			
9767.5(h)(1)	<p>Commenter recommends that this subsection be stricken.</p> <p>Commenter states that there is no statutory requirement for voice messaging, faxes or messages; therefore, this sub-section is not necessary.</p>	<p>Brenda Ramirez Claims and Medical Director California Workers' Compensation Institute December 26, 2013 Written Comment</p>	<p>Reject: MPN medical access assistants are statutorily mandated to help an injured employee find an available MPN physician. Requiring that MPN medical access assistants be available not only by telephone but via e-mail and fax, two very common means for businesses to communicate and serve its customers, is necessary to effectuate the statutory mandates.</p>	None.
9767.5(h)(2)	<p>Commenter recommends the following revised language:</p> <p><u>Unless the MPN medical access assistant is also a claims adjuster the</u> <del>The MPN medical access assistants do</del> <u>may not authorize treatment and have</u> <del>different duties than claims adjusters.</del> <del>The MPN medical assistants are not to</del> <del>function as claims adjusters. However,</del></p>	<p>Brenda Ramirez Claims and Medical Director California Workers' Compensation Institute December 26, 2013 Written Comment</p>	<p>Reject in part. Accept in part. The commenter's recommended language will not be adopted. Accept: Agree that some of the proposed language may impinge on a business' operational functions and</p>	<p>§9767.5(h)(2) is revised to delete the phrases "do not authorize treatment and" "are not to function as claims adjusters. However, the assistants shall"</p>

MEDICAL PROVIDER NETWORKS	RULEMAKING COMMENTS 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p><del>the assistants shall work in coordination with the MPN Contact and the claims adjuster(s) to ensure timely and appropriate medical treatment is provided to the injured worker.</del></p> <p>Commenter appreciates the clarification that the duties of a medical access assistant do not include authorizing payment for treatment; however it should be clear that an adjuster who is also acting as a medical access assistant, may do so.</p> <p>Commenter states that it is not appropriate to mandate workflow, coordination or similar matters of internal administration.</p>		revisions will be made.	and replaced with “Although their duties are different, if the same person performs both, the MPN medical access assistant’s contacts must be separately and accurately logged.”
9767.5.1(a)	<p>Commenter recommends the following revised language:</p> <p>Each physician in an MPN, unless the physician is a shareholder, partner, or <del>employer</del>employee of a medical group that elects to be part of the MPN, shall have a written acknowledgment that the physician elects to participate in a California workers’ compensation medical provider network.</p>	<p>Brenda Ramirez Claims and Medical Director California Workers’ Compensation Institute December 26, 2013 Written Comment</p>	<p>Note: The organizational structure of §9767.5.1 has been rearranged in its entirety for brevity and clarity to make it easier to follow.</p> <p>Accept: The typographical error to will be corrected.</p>	<p>§9767.5.1(a) is revised to delete “employer” and replace it with “employee.”</p>

MEDICAL PROVIDER NETWORKS	RULEMAKING COMMENTS 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	Suggested change corrects a typographical error.			
9767.5.1(d)	<p>Commenter recommends the following revised language:</p> <p>A single written group acknowledgment may be submitted for a medical group participating in an MPN by the medical group’s agent or designee on behalf of MPN participating physicians in the medical group <del>who are shareholders, partners, or employees of the medical group or who have executed individual</del> acknowledgments in accordance with <del>subdivisions (a) and (b)</del>.</p> <p>Commenter notes that 4616(a)(3) contains a provision that the acknowledgement form may be signed by an authorized employee of the physician or the physician’s office. The section refers to “a medical group that elects to be part of the network” which indicates that a medical group as a whole may participate in an MPN.</p> <p>The requirement in 9767.5.1(d) conflicts with the statute by limiting group acknowledgement to physicians in the medical group who have</p>	<p>Brenda Ramirez Claims and Medical Director California Workers’ Compensation Institute December 26, 2013 Written Comment</p>	<p>Reject: Disagree with commenter’s statement, “Under 4616(a)(3), if the medical group acknowledges participation and the MPN lists the medical group as a whole in the network, that is all that is required.” Pursuant to Labor Code §4616.3(d)(1) the injured worker has the right to select a physician based on the physician’s specialty or recognized expertise. Therefore, a single physician acknowledgment may be submitted on behalf of the medical group, but the medical group acknowledgment shall include or refer to a list of the participating physicians in the medical group.</p>	<p>§9767.5.1(b)(2) is added to state “If a medical group elects to participate in an MPN, an authorized officer or agent of the 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 physicians in a distinct department or unit of the medical group, the acknowledgment shall include or refer to a list of the participating physicians, and the officer or agent shall update the list within 90 days of any additions to or</p>

MEDICAL PROVIDER NETWORKS	RULEMAKING COMMENTS 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>executed individual acknowledgements or who are shareholders, partners, or employees of the medical group. The requirement that each physician signs an acknowledgement for the medical group is a limitation that is administratively burdensome and not contained in the enabling statute. Under 4616(a)(3), if the medical group acknowledges participation and the MPN lists the medical group as a whole in the network, that is all that is required. If the MPN selects only specific providers from a medical group, then each provider would be required to sign a separate acknowledgement.</p>			removals from the list.”
9767.8	<p>Commenter notes that Section (a) needs to be renumbered as it is missing (8) and (9). This section should be (a)(1) through (a)(13).</p>	<p>Brenda Ramirez Claims and Medical Director California Workers' Compensation Institute December 26, 2013 Written Comment</p>	<p>Accept: This section will be revised and properly renumbered.</p>	<p>§9767.8 is revised to properly add (8) and (9) and renumbered to (a)(1) through (a)(13).</p>
9767.12(a)	<p>Commenter recommends the following revised language:  When an injury is reported or an employer has knowledge of an injury</p>	<p>Brenda Ramirez Claims and Medical Director California Workers' Compensation</p>	<p>Accept in part. Reject in part. Accept: Commenter's recommendation to add "that is subject to an MPN" will be added. Reject: Commenter's</p>	<p>§9767.12(a) is revised to add "that is subject to an MPN".  None.</p>

MEDICAL PROVIDER NETWORKS	RULEMAKING COMMENTS 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>that is subject to an MPN or when an employee with an existing injury is required to transfer treatment to an MPN, a complete written MPN employee notification with the information specified in paragraph (2) of this subdivision, shall be provided to the covered employee by the employer or the <del>insurer for the employer</del> <u>claims administrator</u>. This MPN notification shall be provided to employees in English and also in Spanish if the employee <u>primarily speaks Spanish and does not proficiently speak or understand the English language</u>.</p> <p>Commenter states that the first recommended modification will clarify that the injury is subject to an MPN.</p> <p>The claims administrator (the entity adjusting the claim) may also provide the notification.</p> <p>Commenter opines that the notice in Spanish is only necessary if the employee does not proficiently speak or understand the English language. There is no necessity to provide a</p>	<p>Institute December 26, 2013 Written Comment</p>	<p>recommendations to delete “insurer for the employer” and replace it with “claims administrator” will not be adopted as unnecessary. Reject: The notice is required when the employee primarily speaks Spanish. Making a determination as to whether or not the injured worker proficiently speaks or understands the English language is onerous and would ultimately be difficult to determine without having an element of arbitrariness.</p>	<p>None.</p>

MEDICAL PROVIDER NETWORKS	RULEMAKING COMMENTS 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	notice in Spanish if the employee proficiently speaks and understands English, even if the employee primarily speaks Spanish.			
9767.12(a)(1)	<p>Commenter recommends the following revised language:</p> <p>A complete MPN notification with the information specified in paragraph (2) of this subdivision may be sent electronically <del>in lieu of by mail</del>, if the covered employee has regular electronic access to email at work to receive this notice at the time of injury or when the employee is being transferred into the MPN.</p> <p>Commenter opines that this phrase is unnecessary.</p>	<p>Brenda Ramirez Claims and Medical Director California Workers' Compensation Institute December 26, 2013 Written Comment</p>	<p>Reject: Not subject to this rulemaking because no changes were made to §9767.12(a)(1) during this Comment Period.</p>	None.
9767.12(a)(2)(A)	<p>Commenter recommends the following revised language:</p> <p>... A toll-free number must also be listed for MPN Medical Access Assistants, with a description of the access assistance they provide, including finding available physicians and scheduling <del>and confirming</del> physician appointments, and the times they are available to assist workers with obtaining access to medical</p>	<p>Brenda Ramirez Claims and Medical Director California Workers' Compensation Institute December 26, 2013 Written Comment</p>	<p>Reject: Requiring an MPN medical access assistant to assist in scheduling appointment with MPN physicians and confirming that the appointment is set is consistent with the mandates of Labor Code §4616(a)(5) because an appointment should</p>	None.

MEDICAL PROVIDER NETWORKS	RULEMAKING COMMENTS 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>treatment under the MPN;</p> <p>Commenter states that confirming appointments is not a duty that is required by statute.</p>		not be considered made unless it is confirmed.	
9767.12(a)(2)(B)	<p>Commenter recommends the following revised language:</p> <p><del>A description of MPN services as well as the</del> <u>The MPN’s web address for the directory of MPN providers more information about the MPN and the MPN’s approval number;</u></p> <p>Commenter states that the statute requires a web address for the listing of providers that is in the directory.</p>	<p>Brenda Ramirez Claims and Medical Director California Workers’ Compensation Institute December 26, 2013 Written Comment</p>	Accept in part. Reject in part: Accept: The clarification that this includes the roster of all treating physicians in the MPN will be made.	§9767.12(a)(2)(b) is revised to add “and the web address that includes a roster of all treating physicians in the MPN” and delete “and the MPN’s approval number.”
9767.15(b)(1)	<p>Commenter recommends the following revised language:</p> <p>For MPNs approved prior to January 1, 2014, the four-year date of approval begins from the most recent approved filing prior to January 1, 2014. MPNs most recently approved on or before January 1, 2011 will be deemed approved until <del>December 31, 2014</del> <u>twelve months from the date the regulations are filed with the Secretary of State, or the effective date of these regulations, whichever is later.</u></p>	<p>Brenda Ramirez Claims and Medical Director California Workers’ Compensation Institute December 26, 2013 Written Comment</p>	Reject: Labor Code §4616(b)(1) makes clear that “Commencing January 1, 2014, existing approved plans shall be deemed approved for a period of four years from the most recent application or modification approval date. Plans for reapproval for medical provider networks shall be submitted at least six	None.

MEDICAL PROVIDER NETWORKS	RULEMAKING COMMENTS 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>Reapprovals for these MPNs shall be filed no later than <del>June 30, 2014</del> <u>six months from the date the regulations are filed with the Secretary of State, or the effective date of these regulations, whichever is later.</u></p> <p>These revisions are recommended because the anticipated filing and effective dates are uncertain and anticipated to be later than expected.</p>		<p>months before the expiration of the four-year approval period.” Therefore, by statutory mandate that means December 31, 2014.</p>	
9767.15(b)(5)	<p>Commenter recommends the following revised language:</p> <p>4) a narrative and/or graphic report that establishes that there are at least three available <del>specialist</del> <u>types of physicians described in Labor Code section 3209.3</u> to provide occupational health services <del>in each listed specialty</del> <u>to treat common injuries experienced by injured employees engaged in the type of occupation or industry within the thirty-mile access standard from the center of each zip code within the MPN geographic service area;</u> 5) a list of all zip codes in which there is a health care shortage and where the access standards are not met for each specialty and an explanation of how medical treatment</p>	<p>Brenda Ramirez Claims and Medical Director California Workers’ Compensation Institute December 26, 2013 Written Comment</p>	<p>Reject: See previous responses regarding “Specialty” v “Type”.</p> <p>Reject: Disagree with commenter’s definition of “type” of physician. Labor Code §4616.3(d)(1) states, “Selection by the injured employee of a treating physician and any subsequent physicians shall be based on the physician’s <b>specialty</b> or recognized expertise in treating the particular injury or condition in question.” DWC’s interpretation of the word “type” is synonymous with “specialty”. Therefore, the “types” of physicians listed</p>	None.

MEDICAL PROVIDER NETWORKS	RULEMAKING COMMENTS 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>will be provided in those areas not meeting the access standards; 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.</p> <p>Commenter states that Labor Code section 4616(b)(3) requires MPNs to submit geocoding for reapproval “to establish that the number and geographic location of physicians in the network meets the required access standards.” Labor Code section 4616(a)(1) requires an adequate number and type of physicians to treat common injuries, and that the number of physicians be sufficient to enable timely treatment. It does not require the same number of physicians in each area, nor does it require access standards by specialty.</p> <p>See in addition the comment on section 9767.1(a)(25)(C) regarding physician type versus physician specialty.</p> <p>See also the comment on section</p>		<p>in 3209.3 are listed by their specialties.</p>	

MEDICAL PROVIDER NETWORKS	RULEMAKING COMMENTS 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	9767.3(c)(2). The purpose of the newly proposed provider codes is not clear for this section as well and appears to be unnecessary.			
9767.17(a)(2)	<p>Commenter recommends the following revised language:</p> <p>That an MPN has systematically failed to meet access standards under 9767.5 at minimum, on more than <del>one</del><u>two</u> occasions in at least <del>two</del><u>three</u> specific access locations within the MPN geographic service area. Additionally, the <u>petitioner must show that the MPN failed to ensure in each instance occurrence</u> that a worker received necessary medical treatment within the MPN <del>or</del><u>and</u> failed to authorize treatment outside of the MPN within the required time frames and access standards.</p> <p>Commenter states that a systematic failure to meet access standards should equate to the MPN's inability, overall, to meet regulatory and statutory requirements over a period of time. The basis for a petition to reasonably trigger an investigation should be more than just a couple of isolated</p>	Brenda Ramirez Claims and Medical Director California Workers' Compensation Institute December 26, 2013 Written Comment	Reject: Systematic failure of an MPN is sufficiently shown if access standards are not met on more than one occasion in at least two specific access locations within the MPN geographic service area and that in each instance an MPN failed to ensure that a worker received necessary medical treating within the MPN or failed to authorize treatment outside of the MPN within the required time frames and access standards. Requiring more is overkill.	None.

MEDICAL PROVIDER NETWORKS	RULEMAKING COMMENTS 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>incidents. Given the potential disruption to the medical care of multiple injured employees and the penalty (suspension or revocation), a minimum standard of two occasions in two locations as a baseline for submitting a petition is unreasonably low.</p> <p>For a more reasonable red flag for investigating whether there is a systematic failure, each incident should involve a failure to both provide necessary treatment within the MPN and to authorize it out of network on at least three occasions in three locations.</p>			
9767.17(c)(2)	<p>Commenter recommends the following revised language:</p> <p>Results of any and all attempts by petitioner to determine if the MPN has met the access standards on more than <del>one</del><u>two</u> occasions <del>for the</del><u>in at least three</u> specific locations within the geographic service area or areas described in its plan <u>without authorizing treatment outside the network</u>.</p> <p>As discussed in (a)(2), a petition</p>	<p>Brenda Ramirez Claims and Medical Director California Workers' Compensation Institute December 26, 2013 Written Comment</p>	<p>Reject: See overkill response above.</p>	<p>None.</p>

MEDICAL PROVIDER NETWORKS	RULEMAKING COMMENTS 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>should show a failure to both provide necessary treatment within the MPN and to authorize it out of network on at least three occasions in three locations.</p>			
9767.17.5	<p>Commenter recommends the following revised language:</p> <p>MPN <del>Contact</del> <u>Applicant</u> Information</p> <p>Commenter recommends changing on the form the “MPN Contact Information” to “MPN Applicant Information” and the subsequent references to “MPN Contact” to “MPN Applicant Liaison” as any such petition should go directly to the MPN applicant.</p> <p>The MPN has systematically failed to meet MPN access standards pursuant to section 9767.5 on more than <del>one</del> <u>two</u> occasions in at least <del>two</del> <u>three</u> specific access locations within the MPN geographic service area. Each failure resulted in a worker being unable to obtain necessary treatment after the MPN has had a reasonable opportunity to remedy the access failure for each occasion and location.</p>	<p>Brenda Ramirez Claims and Medical Director California Workers’ Compensation Institute December 26, 2013 Written Comment</p>	<p>Reject: The MPN Contact is the person designated by the MPN responsible for responding to complaints. The MPN Applicant information will be provided in the MPN Information section. The instructions already require that the completed Petition be sent to the MPN Authorized Individual.</p> <p>Reject: See above responses regarding overkill.</p>	<p>None.</p> <p>None.</p>

MEDICAL PROVIDER NETWORKS	RULEMAKING COMMENTS 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>Commenter recommends these modifications to the form because a petition should show a failure to both provide necessary treatment within the MPN and to authorize it out of network on at least three occasions in three locations, as discussed in the comments on section 9767.17 (a)(2).</p>			
9767.18(a)(1)	<p>Commenter recommends the following revised language:</p> <p>An MPN will not be randomly reviewed more than once in a <del>two</del>five-year period. However, an MPN may be subject to investigation for good cause.</p> <p>Commenter states that random MPN reviews should occur in concert with and no more frequently than Claims PAR audits.</p>	<p>Brenda Ramirez Claims and Medical Director California Workers' Compensation Institute December 26, 2013 Written Comment</p>	<p>Reject: MPN Random Reviews are not the same as Claims PAR audits.</p>	<p>None.</p>
9767.18(a)(2)(B)(ii)	<p>Commenter recommends that this subsection be stricken.</p> <p>Commenter states that it is not necessary to provide the most recent approved plan submission, cover page and all attachments as the Division already has them in its possession.</p>	<p>Brenda Ramirez Claims and Medical Director California Workers' Compensation Institute December 26, 2013 Written Comment</p>	<p>Reject: Since this will be an investigation or review by DWC, the requested information should come from the MPN.</p>	<p>None.</p>
9767.18(a)(2)(B)(iii)	<p>Commenter recommends the following revised language:</p>	<p>Brenda Ramirez Claims and Medical</p>		

MEDICAL PROVIDER NETWORKS	RULEMAKING COMMENTS 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>A copy of the most recent network provider listing, 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 <u>within a reasonable time period through the contact method stated on the provider directory listing to report inaccuracies.</u></p> <p>This recommended modification is consistent with the requirements in 9767.12(a)(2)(C) where the contact method and period for response are specified.</p>	<p>Director California Workers’ Compensation Institute December 26, 2013 Written Comment</p>	<p>Reject: The phrase “within a reasonable time period” is a reference to the time period in which the MPN will need to provide documentary evidence to DWC of timely corrections to the provider listing reported through the contact method stated on the provider directory listing to report inaccuracies.</p>	<p>None.</p>
<p>9767.18(a)(2)(B) (iv)</p>	<p>Commenter recommends the following revised language:</p> <p>A copy of any MPN complaints or petitions for suspension or revocation received by the MPN and the MPN’s responses. <del>In addition, documentation of any administrative actions taken by the Administrative Director against the MPN within a reasonable time period may be requested.</del></p>	<p>Brenda Ramirez Claims and Medical Director California Workers’ Compensation Institute December 26, 2013 Written Comment</p>	<p>Reject: Since this will be an investigation or review by DWC, the requested information should come from the MPN.</p>	<p>None.</p>

MEDICAL PROVIDER NETWORKS	RULEMAKING COMMENTS 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>Commenter states that this is not necessary because it is already in the possession of the Administrative Director.</p>			
9767.18(a)(2)(B)(v)	<p>Commenter recommends that this subsection should be stricken.</p> <p>Commenter states that telephone logs are not, and should not be required. If reference to telephone logs remains there, commenter states that there must be clarification that telephone logs are optional, not required.</p>	<p>Brenda Ramirez Claims and Medical Director California Workers' Compensation Institute December 26, 2013 Written Comment</p>	<p>Reject: DWC must be able to review the MPN Medical Access Assistant telephone logs in order to properly regulate their actions and to effectuate the statutory mandates.</p>	None.
9767.19	<p>Commenter opines that the proposed penalty scheme contained in the proposed regulations restrict the scope of statute authorizing the creation and use of Medical Provider Networks. The problem, simply stated, is that the threat of excessive access standards and penalties will curtail legitimate network operations that the statute permits.</p> <p>While the enabling statute clearly allows the AD to enforce the statutory provisions and the implementing regulations with administrative</p>	<p>Brenda Ramirez Claims and Medical Director California Workers' Compensation Institute December 26, 2013 Written Comment</p>	<p>Reject: The penalty regulations follow the statutory language of establishing a schedule of administrative penalties not to exceed five thousand dollars (\$5,000) per violation.</p>	None.

<b>MEDICAL PROVIDER NETWORKS</b>	<b>RULEMAKING COMMENTS 15 DAY COMMENT PERIOD</b>	<b>NAME OF PERSON/ AFFILIATION</b>	<b>RESPONSE</b>	<b>ACTION</b>
	<p>penalties, commenter is concerned that an overly aggressive penalty structure will cause legitimate MPNs to drop out of the workers' compensation system and prevent medical networks from using the statutory tools that the Legislature provided to achieve the highest quality of care. The networks will not want run the risk of incurring excessive and unreasonable penalties. Physician network access standards that dilute network quality and the penalty provisions taken together threaten to terminate the effective use of MPNs and reverse, by regulatory fiat, the Legislature's social policy decision to allow employers to control medical care through the use of Medical Provider Networks.</p> <p>The art of crafting proper regulations requires that the state agency focus on the provisions of the statute. As is true of all regulations, the Division of Workers' Compensation (DWC) must implement, interpret, and make specific the statutory provisions of Labor Code section 4616. The resulting regulations must be consistent with and not in conflict with the statute and reasonably</p>			

MEDICAL PROVIDER NETWORKS	RULEMAKING COMMENTS 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>necessary to effectuate the purpose of the statute.</p> <p>Commenter opines that the penalty provisions must not prohibit or impede the delivery of medical care through the Medical Provider Network that is mandated or permitted by the statute. “[a] regulation that is inconsistent with the statute it seeks to implement is invalid.” <u>Mendoza v WCAB</u> (2010) En Banc Opinion 75 CCC 63.</p> <p>Commenter appreciates the impact penalties have as a deterrent to non-compliance, but opines that there is a difference between a deterrent to non-compliance and an impediment to the legitimate operation of an MPN. Commenter recommends limiting penalties to those activities that have a detrimental impact on the operation of the MPN, adopting penalties that are proportionate to the violation and to other penalties, instituting a penalty cap for each review period, and including provisions for mitigation as permitted under other administrative penalty provisions. The Administrative Director can achieve compliance and accountability with a</p>			

MEDICAL PROVIDER NETWORKS	RULEMAKING COMMENTS 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
9767.1(a)(16)	<p>more reasonable penalty schedule.</p> <p>Commenter recommends the following revised language:</p> <p>"an individual within the United States whose primary duty is to assist injured workers with finding <del>available</del> <u>Medical Provider Network physicians of the worker's choice who are available and willing to treat injured workers under California's workers' compensation system and with scheduling provider appointments within the required timeframes as set forth in § 9767.5 of these Regulations.</u>"</p> <p>Commenter recommends that these additional changes be made to conform this definition to the statutory language as adopted in SB 863. Labor Code §4616(a)(5) mandates the provision of medical access assistants, as follows:</p> <p><i>(5) Commencing January 1, 2014, every medical provider network shall provide one or more persons within the United States to serve as medical access assistants to <b>help an injured employee find an available physician of the employee's choice</b>, and subsequent physicians if necessary, under Section</i></p>	Diane Worley California Applicants' Attorneys Association December 26, 2013 Written Comment	Accept in part. Reject in part. Accept: The regulatory text will be revised to include "of the injured workers' choice." Reject: The commenter's recommended language will not be adopted.	§9767.1(a)(16) is revised to add "of the injured workers' choice".

MEDICAL PROVIDER NETWORKS	RULEMAKING COMMENTS 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p><i>4616.3. Medical access assistants shall have a toll-free telephone number that injured employees may use and shall be available at least from 7 a.m. to 8 p.m. Pacific Standard Time, Monday through Saturday, inclusive, to respond to injured employees, contact physicians' offices during regular business hours, and schedule appointments. The administrative director shall promulgate regulations on or before July 1, 2013, governing the provision of medical access assistants. (Emphasis added.)</i></p> <p>Commenter notes that a key phrase in this statutory provision is that the medical access assistant is to assist in finding "<b>an available physician of the employee's choice.</b>" The regulations must be clear that it is not the role of this medical access assistant to assign a physician to the worker. The worker must have a genuine opportunity to select his or her own physician from within the MPN, and must not be limited to choosing from a limited subset of MPN providers based on geographical or other criteria. Further, to be "available" the physician must be willing to accept new workers' compensation patients and able to</p>			

MEDICAL PROVIDER NETWORKS	RULEMAKING COMMENTS 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	schedule an appointment within the mandatory time limits.			
9767.5(a)	<p>In the previous version of these proposed regulations commenter objected to a provision that would have required an MPN to have at least three physicians only in five medical specialties. Commenter appreciates that the referenced provision has been deleted in this version of the proposed rules. However, commenter opines that the revised language is confusing and should be further amended to implement the intent of the underlying statute.</p> <p>As currently proposed, this subsection requires each MPN to have "at least three available physicians of each specialty to treat common injuries experienced by injured employees based on the type of occupation or industry in which the employee is engaged and within the access standards [as] set forth in [paragraphs] (1) and (2)." Paragraph (1) mandates that an MPN have "at least three available primary treating physicians . . . within 30 minutes or 15 miles of each covered employee's residence or workplace." Paragraph (2) states that each MPN must have providers and specialists "within 60 minutes or 30 miles of a covered</p>	Diane Worley California Applicants' Attorneys Association December 26, 2013 Written Comment	Reject: The statutory language is merely establishing an "access standard" floor. A minimum of three physicians in each specialty was selected because at least three are needed to fulfill access standards because of Labor Code §4616.3 requirements that specifically describes an injured worker's right to seek a second and third opinion from physicians in the MPN. Of course, it would behoove MPN's to exceed the minimum requirement of three physicians because there will likely be situations when all three will not be available and the MPN will lose the ability to control medical care because an injured worker shall be permitted to seek appropriate treatment outside the MPN if access standards are not met.	None.

<b>MEDICAL PROVIDER NETWORKS</b>	<b>RULEMAKING COMMENTS 15 DAY COMMENT PERIOD</b>	<b>NAME OF PERSON/ AFFILIATION</b>	<b>RESPONSE</b>	<b>ACTION</b>
	<p>employee's residence or workplace."</p> <p>Commenter opines that it is unclear how these provisions tie together. Under §9767.3(d)(8)(H), an MPN applicant is required to provide geocoding results showing that there are (1) at least three primary treating physicians within fifteen miles of the center of each zip code in the MPN's service area, and (2) at least three available specialists within each specialty within 30 miles of the center of each zip code. Based on that requirement, it appears MPN applicants are required to comply with only those two access standards - that there be three primary treating physicians within 15 miles and three specialists of each specialty within 30 miles.</p> <p>Commenter does not believe this requirement fulfills the statutory intent. Labor Code §4616(a)(2) provides that the Administrative Director, in establishing access standards, should consider the needs of rural areas, "specifically those in which health facilities are located at least 30 miles apart . . . ." It is clear from this statutory language that the Legislature intended that areas in which health care facilities would be as much as 30 miles apart</p>		<p>Reject: The current access standards of 15 miles or 30 minutes for primary treating physicians or emergency services facilities and 30 mile or 60 minutes for specialists is the standard that is currently in effect. These proposed regulations are merely tightening up loopholes that existed with our current access standard regulations.</p>	<p>None.</p>

MEDICAL PROVIDER NETWORKS	RULEMAKING COMMENTS 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>would be the exception, not the standard. Commenter opines that it is important to note that this statutory language refers to "health facilities" and not "physicians" or "providers." In fact, the previously proposed language, which would have required the MPN to list at least three physicians in five different specialties, was actually much closer to the Legislative intent. Unless there are special circumstances (such as the rural areas noted in statute) commenter opines that it is unreasonable to require workers to travel two hours to attend regular medical appointments. Furthermore, in some instances injured workers will be using public transportation, and an office that is an hour away by automobile may be several hours away by bus.</p> <p>Commenter opines that adopting an access standard that requires the MPN to have only three primary treating physicians would create an additional problem with respect to the second and third opinion process as established under California Labor Code section 4616.3. Pursuant to that statute an employee is entitled to seek the opinion of another physician "in the medical</p>			



<b>MEDICAL PROVIDER NETWORKS</b>	<b>RULEMAKING COMMENTS 15 DAY COMMENT PERIOD</b>	<b>NAME OF PERSON/ AFFILIATION</b>	<b>RESPONSE</b>	<b>ACTION</b>
	<p>To implement these recommendations, commenter recommends that subdivision (a) be revised to read:</p> <p>(a) An MPN shall have at least three physicians of each specialty required to treat common injuries experienced by injured employees based on the type of occupation or industry in which the employee is engaged who are available and willing to treat injured workers under California's workers' compensation system, and a hospital for emergency health care services, or if separate from such hospital, a provider of all emergency health care services, within 30 minutes or 15 miles of each covered employee's residence or workplace.</p> <p>Commenter notes that if these suggested changes are adopted, similar revisions will need to be made in the related geocoding requirements in §§ 9767.3 and 9767.15.</p>		<p>Reject: Commenter's requested language will not be adopted. See above responses.</p>	<p>None.</p>

MEDICAL PROVIDER NETWORKS	RULEMAKING COMMENTS 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
9767.5(c)	Commenter supports this proposed subdivision that requires an MPN to have a written policy allowing a	Diane Worley California Applicants'	Accept.	None.

MEDICAL PROVIDER NETWORKS	RULEMAKING COMMENTS 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>worker to obtain treatment from a non-MPN provider if the MPN is unable to comply with the applicable access standards. Commenter supports the proposed language in §9767.5, subdivision (g) that requires the employer to permit the worker to obtain treatment from a non-MPN provider if the Medical Access Assistant is unable to schedule a timely medical appointment. Commenter opines that these proposed changes will help both workers and employers by assuring that necessary treatment is available to workers on a timely basis so that these workers can recover and return to work more quickly.</p> <p>Commenter opines that by simply requiring the MPN to have these policies, with no accompanying requirement that the worker be notified, will severely limit the benefit of these rules. Commenter recommends that the employee notice requirements in §9767.12 be amended to require that the employee notice inform workers of their right to seek treatment from a non-MPN physician where reasonable and necessary</p>	<p>Attorneys Association December 26, 2013 Written Comment</p>	<p>Reject: Unnecessary because the Complete Employee Notification is already required to contain this information see §9767.12(a)(2)(E).</p>	<p>None.</p>

MEDICAL PROVIDER NETWORKS	RULEMAKING COMMENTS 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	treatment is not available from an MPN physician within the applicable access standards and required timeframes.			
9767.7(g)	<p>Commenter notes that this subdivision has been amended to add the provision that where a second or third opinion recommends treatment, the employee must be permitted to obtain the recommended treatment within or outside of the MPN "<u>if the MPN does not contain a physician who can provide the recommended treatment.</u>" Commenter objects to this new provision. If a statewide MPN has just one physician who is able to provide the treatment and that physician is located in Eureka, this new provision means that a worker in San Diego would not be able to get the authorized treatment from a <u>local</u> physician who is outside the MPN. This would not help either the employee or employer. Commenter recommends that the proposed language in the 15 Day Notice be dropped and this subdivision be adopted as proposed in the original proposal, which allowed the employee "to obtain the recommended treatment within or outside the MPN."</p>	<p>Diane Worley California Applicants' Attorneys Association December 26, 2013 Written Comment</p>	<p>Reject: An injured employee will not be forced to see an MPN physician outside of his/her geographic service area. If there are no available MPN physicians' within the requisite access standards, then the injured employee may choose a physician outside the MPN within a reasonable geographic area.</p>	<p>None.</p>

MEDICAL PROVIDER NETWORKS	RULEMAKING COMMENTS 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
9767.12(a)(2)(A)	<p>Commenter recommends the following revised language:</p> <p>How to contact the person designated by the MPN applicant to be the MPN Contact for covered employees to answer questions about the use of MPNs and to address MPN complaints. The employer or insurer shall provide a toll-free telephone number <u>for the MPN Contact</u> if the MPN geographic service area includes more than one area code. A toll-free <u>telephone number</u> must also be listed for MPN Medical Access Assistants, with a description of the access assistance they provide, including <u>finding available physicians of the employee's choice who are available and willing to treat injured workers under California's workers' compensation system within the applicable access standards and required timeframes</u>, and scheduling and confirming physician appointments, and the times <u>these Medical Access Assistants</u> are available to assist workers with obtaining access to medical treatment under the MPN;</p>	<p>Diane Worley California Applicants' Attorneys Association December 26, 2013 Written Comment</p>	<p>Reject in part. Accept in part. Reject: The commenter's suggested language will not be adopted. Accept: The regulatory text will be revised to add "of the injured workers' choice."</p>	<p>§9767.12(a)(2)(A) is revised to add "of the injured workers' choice."</p>

MEDICAL PROVIDER NETWORKS	RULEMAKING COMMENTS 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>Commenter recommends that the notification include an email address for contacting the medical access assistants. Commenter notes that an email address for these individuals is required to be reported in the MPN Application under §9767.3(d). If these regulations include a requirement that the medical access assistants must be accessible via email, there should be a corresponding requirement that employees may contact these Assistants using that email address.</p>		<p>Reject: Although it is not specifically stated in this regulatory provision, the information to contact the MPN medical access assistant, including toll free telephone number, fax number, and email address shall be provided in the complete employee notification see 9767.12(a)(2)(D).</p>	<p>None.</p>
<p>9767.5(h)(2)</p>	<p>Commenter notes that the proposed new language in this paragraph provides that "medical access assistants do not authorize treatment and have different duties than claims adjusters. The MPN medical access assistants are not to function as claims adjusters."</p> <p>Commenter understands that there is a fundamental difference between the roles and authority of claim adjusters and these new medical access assistants, she opines that without further guidance from these regulations it is unlikely that the intent of the Legislature will be realized. These medical access assistants were</p>	<p>Diane Worley California Applicants' Attorneys Association December 26, 2013 Written Comment</p>		

<b>MEDICAL PROVIDER NETWORKS</b>	<b>RULEMAKING COMMENTS 15 DAY COMMENT PERIOD</b>	<b>NAME OF PERSON/ AFFILIATION</b>	<b>RESPONSE</b>	<b>ACTION</b>
	<p>introduced in SB 863 because workers were having major problems in finding an MPN physician who was willing to provide the necessary treatment.</p> <p>Commenter states that if a worker cannot locate a willing provider in the MPN, both the worker and the employer are harmed. Delay in providing treatment can increase both the severity of the medical problem and the ultimate cost of the claim, and additionally delays return to work. The Legislature's solution was to introduce these medical access assistants, and the statute gives these access assistants the responsibility to locate an available and willing physician of the worker's choice and to assist in scheduling an appointment with that physician.</p> <p>Commenter opines that, unfortunately, in the real world, getting an appointment with a physician for a work-related injury is not as simple as calling and scheduling the appointment. Physicians who treat injured workers will not provide treatment unless the employer, or the</p>			

MEDICAL PROVIDER NETWORKS	RULEMAKING COMMENTS 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>employer's insurer, has provided <u>written authorization</u>. In fact, the regulations proposed by your Division for Independent Bill Review define "the amount of payment" as the amount of money paid for services or goods that were authorized. [See §9792.5.4(a)(1).]</p> <p>For this reason, in her organization's comments submitted for the previous version of these regulations it was recommended that after assisting the worker to make an appointment with an MPN physician, the access assistant should arrange to provide written authorization for that visit. However, as noted above she recognizes that the medical access assistant does not have the same role or authority as the claim adjuster. Commenter recommends a slight revision to their previous recommendation - that after scheduling a medical appointment for an employee the medical access assistant shall immediately contact the claim adjuster in order to facilitate delivery of written authorization for treatment to the selected MPN provider's office.</p>		<p>Reject: Requiring an MPN medical access assistant to assist in scheduling appointments with MPN physicians and confirming those appointment fulfills the requirements set forth in Labor Code §4616(a)(5). Requiring the MPN medical access assistant to facilitate delivery of written authorization from the claims adjuster impinges on a business' operational functions.</p>	<p>None.</p>

MEDICAL PROVIDER NETWORKS	RULEMAKING COMMENTS 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
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	<p>Commenter opines that unless this, or a similar rule, is adopted, the benefit gained from the introduction of the medical access assistants will be severely limited. The proposed language that merely requires the access assistants to "work in coordination" with the MPN contact and the claim adjuster does not provide sufficient guidance to the parties. MPN physicians do not provide treatment without written authorization, and she does not believe that fact will change simply because these new medical access assistants help workers make an appointment. In fact, because the proposed rule now states, "medical access assistants do not authorize treatment," commenter opines that MPN physicians will continue to insist that they receive written authorization before they provide any treatment. If medical access assistants are to successfully assist employees, commenter opines that the regulation must specifically state that one of the required duties of these assistants is to help facilitate delivery from the claim adjuster of written authorization for a scheduled</p>			
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MEDICAL PROVIDER NETWORKS	RULEMAKING COMMENTS 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	office visit.			
9767.17	<p>Commenter opined regarding the 45 day version of this section that the proposed rules made it extremely difficult for employees to demonstrate a failure of an MPN to meet the access standards. An individual employee will simply not have the ability to prove that the MPN has systematically failed to meet the access standards "in at least two specific locations."</p> <p>Commenter opines that the 15 day amendments proposed for this section will virtually remove any chance for an employee to file a complaint. One proposed amendment requires that the employee show a failure to meet access standards in at least two specific <u>access</u> locations <u>on more than one occasion</u>. Another proposed amendment requires that a Petition for Suspension or Revocation must include details that the MPN <u>systematically</u> fails to meet access standards. Commenter states that these amendments render this provision unworkable, because as a practical matter an individual injured employee would not have access to the documentation to demonstrate a business practice to meet the</p>	<p>Diane Worley California Applicants' Attorneys Association December 26, 2013 Written Comment</p>	<p>Reject: Commenter's use of the word "complaint" is confusing in the context of this comment that discusses Petitions for Suspension or Revocation of a Medical Provider Network. To suspend or revoke an MPN requires a severe violation or deficiency of the requirements set forth in Labor Code §4616 et seq. Labor Code §4616(a)(4) expressly allows for the assessment of penalties or probation or both, "in lieu of revocation or suspension for less severe violations of the requirements of this article." Therefore, to make a determination that an MPN "is not validly constituted" must be severe enough to compose of a systematic failure in the MPN or a change in the MPN Applicant's eligibility status.</p>	None.

<b>MEDICAL PROVIDER NETWORKS</b>	<b>RULEMAKING COMMENTS 15 DAY COMMENT PERIOD</b>	<b>NAME OF PERSON/ AFFILIATION</b>	<b>RESPONSE</b>	<b>ACTION</b>
	<p>regulatory criteria proposed. Commenter opines that this proposed section does not comply with the intent of the provisions of SB 863, and the adoption of Labor Code §4616(b)(5). The Legislature adopted paragraph (5), which allows any party to petition the Administrative Director to suspend or revoke approval of an MPN, because of the widespread problems experienced by workers in finding an available MPN physician. It is clear the Legislature believes giving the employer complete control over the formation of the MPN must be balanced by giving the employee a reasonable opportunity to show that the MPN does not meet required statutory standards.</p> <p>Commenter opines that the impossibly high standards proposed under this section essentially eviscerate that Legislative intent. Commenter understands that for the efficient operation of this procedure there should be some minimal standard to demonstrate a potential violation by an MPN. Commenter states that it is the Division's responsibility, not the injured employees', to ensure that</p>			

MEDICAL PROVIDER NETWORKS	RULEMAKING COMMENTS 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>MPNs comply with all applicable statutory and regulatory standards. Commenter urges the Division to completely rewrite this section to establish a procedure for petitioning the Administrative Director that does not create an insurmountable hurdle for injured employees. Furthermore, the regulation should describe the Division's responsibilities following receipt of complaints from injured employees, which should include providing the injured employee with information regarding any steps taken by the Division in response, or an explanation of why no action was necessary.</p>			
9767.12(a)	<p>Commenter disagrees with the proposed elimination of the initial MPN notice for all covered employees. Currently, under the California Labor Code, there are mandated requirements that all employees be notified of their Workers' Compensation rights and benefits PRIOR to any work-related injury sustained. This same requirement has been extended to all employee rights, including notice of coverage by an MPN, if a work-related injury or illness is sustained.</p>	<p>Elizabeth Landers December 16, 2013 Written Comment</p>	<p>Reject: Not subject to this rulemaking because the original text of 9767.12(a) was deleted and commented on during the first 45-Day Comment Period.</p>	<p>None.</p>

MEDICAL PROVIDER NETWORKS	RULEMAKING COMMENTS 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>Commenter opines that the proposed elimination of the INITIAL implementation notice will negatively impact covered employees of their rights and benefits for a work-related injury, and the subsequent restriction of rights and Workers' Compensation benefits.</p> <p>Basically, they will be covered by an MPN, without the ability to have other options (e.g. Pre-designation) prior to a work injury. Elimination of this initial MPN notice would also contradict the DWC intent to notify all employees (covered employees) of their Workers' Compensation rights PRIOR to any work injury or illness.</p> <p>Commenter requests that the Division re-institute the "initial" MPN Implementation Employee Notice for all California workers.</p>			
9767.2(b)	<p>Commenter notes that this section identifies a 180 day approval period for modified plans. Commenter questions what if an applicant is filing a modification to change from one MPN to another and the filing replaces an existing plan? This 180 day delay</p>	<p>Gale Chmidling Assistant Vice President WellComp Managed Care Services December 23, 2013 Written Comment</p>	<p>Reject: Labor Code §4616(b)(1) requires MPN applicants submit Plans for reapproval for MPNs six months before the expiration of the four-year approval period. There is no reason to</p>	<p>None.</p>

MEDICAL PROVIDER NETWORKS	RULEMAKING COMMENTS 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	will prevent the employer from changing effectively to a new plan and create delays and possible gap period of coverage. Commenter recommends that language include the right to file and use verses file and upon approval use the plan or consideration given to modification for change from one plan to another in the 60day approval process, as in new plan filings.		require DWC to complete its review within 60 days from the filing date because the MPN will still be in affect provided that DWC completes its review before the expiration of the four-year approval period.	
9767.3(d)(H) and 9767.15(b)(5)	Commenter states that geocoding requirements complicate filings for Carrier entities or employers who file state-wide access plans due to their proliferation throughout the state. Mapping becomes very complex to show all areas of the state for coverage and for identifying and reporting deficiencies, where localized employers can very easily show mapping for coverage in their area. Commenter opines that consideration should be given to plans that are filed as “state-wide” access where the out area access standards as proposed in 9767.5 provide for appropriate out of network care. The access standards already allow for employee options when care is needed in more rural areas. Applicants have the flexibility to rely on out of network rules to	Gale Chmidling Assistant Vice President WellComp Managed Care Services December 23, 2013 Written Comment	Reject: Labor Code § 4616(b)(3) states “Every medical provider network shall submit <u>geocoding of its network</u> for reapproval to establish that the number and geographic location of physicians in the network meets the required access standards.”	None.

MEDICAL PROVIDER NETWORKS	RULEMAKING COMMENTS 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	manage areas that are deficient and direct care out of network, as needed. Commenter opines that requiring complex mapping to show deficiencies is unnecessary.			
9767.5(g)	<p>Commenter opines that changes to this section are volatile and may create more litigation rather than ensure appropriate care for employees within the MPN. What constitutes reasonable request by the employee? There can be many reasons why an appointment may not be made within 5 days and many of the delays may not be the result of the MPN or lack of action on behalf of the MAA. What if the appointment is delayed by the physician office due to lack of information and how does the MPN learn of this delay in order to respond appropriately? Who will resolve these issues when disagreements in the facts of the case occur? Commenter opines that the proposed language should reference 5502(b) when the employee believes the timely appointment is at issue. The current language states the employer shall permit the employee to go out of network. How does this language suffice in a disagreement as to what is appropriate? The employee</p>	<p>Gale Chmidling Assistant Vice President WellComp Managed Care Services December 23, 2013 Written Comment</p>	<p>Reject: The concerns raised by Commenter are issues that pertain to the “medical necessity” of a treatment request and are disputes between the injured worker and either the claims administrator or URO, not the MPN. An MPN must ensure that an initial appointment with a specialist in an appropriate referred specialty is <u>available</u> within 20 business days of a covered employee’s reasonable request for an appointment through an MPN medical access assistant. The MPN medical access assistant will have ten business days from an employee’s request to schedule a timely medical appointment with an appropriate specialist.</p>	<p>None.</p>

MEDICAL PROVIDER NETWORKS	RULEMAKING COMMENTS 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>may make the determination and simply go out of network, which is contradictory to current statute and IMR process.</p> <p>Commenter opines that if we rely on 5502(b) and the WCAB to resolve these disputes as to the appropriateness of out of network care, this can delay treatment to the employee who is waiting for the Expedited hearing to be set and be heard. This also requires the WCAB to make determinations on MPN issues when they have been most reluctant in the past.</p>			
9767.5.1(a)	Commenter notes that “employer” should be “employee.”	Gale Chmidling Assistant Vice President WellComp Managed Care Services December 23, 2013 Written Comment	Accept: The typographical error will be revised.	§9767.5.1(a) is revised to delete “employer” and replace it with “employee”.
9767.1(a)(12)	Commenter opines that the proposed language is much better, but would force an MPN to take “any willing provider” when three providers are available. To preserve the exclusive right of the MPN to have a choice of who to include in its MPN, commenter requests that the first sentence be	Greg Moore President Harbor Health Systems One Call Care Management December 23, 2013 Written Comment	Reject: Commenter’s recommended language will not be adopted because “not greater than the number required” is a more complicated way of saying “insufficient”.	None.

MEDICAL PROVIDER NETWORKS	RULEMAKING COMMENTS 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>modified as follows:</p> <p>“Health care shortage” means a situation in a geographical area in which the number of physicians in a particular specialty who are available and willing to treat injured workers under the California workers’ compensation system is <b>insufficient not greater than the number required</b> to meet the Medical Provider Network access standards set forth in 9767.5(a) through (c) to ensure medical treatment is available and accessible at reasonable times.</p>			
9767.5(b)	<p>Commenter opines that the proposed language may be interpreted as limiting the areas that could qualify for an alternative standard. It is important that anywhere we identify a “health care shortage” that we retain the ability to seek approval of an alternative standard. To achieve this, commenter recommends that the first sentence be modified as follows:</p> <p>If an MPN applicant believes that, given the facts and circumstances with regard to a portion of its service area, specifically areas in which there is a health care shortage, including <b>but</b></p>	<p>Greg Moore President Harbor Health Systems One Call Care Management December 23, 2013 Written Comment</p>	<p>Reject: Commenter’s recommended language will not be adopted because there are no other types of areas. The words in the regulatory text were chosen because “rural areas” is a term of art and “non-rural areas” are all other areas that are not rural.</p>	<p>None.</p>

MEDICAL PROVIDER NETWORKS	RULEMAKING COMMENTS 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<b>not limited to</b> non-rural areas and rural areas ...			
9767.5(c)	<p>Commenter opines that the proposed language is vague about whether the injured worker would need to comply with the Transfer of Care provisions of an MPN. To clearly define the ability to transfer the care and to assure that the process conforms with the Transfer of Care policies approved for the MPN, commenter recommends that the last sentence be modified as follows:</p> <p>... When the MPN is able to provide the necessary treatment through an MPN physician, <b>Applicant may require</b> a covered employee treating outside the MPN <del>may be required</del> to treat with an MPN physician <del>when a transfer is appropriate in accordance with the MPN's Transfer of Care Policy.</del></p>	<p>Greg Moore President Harbor Health Systems One Call Care Management December 23, 2013 Written Comment</p>	<p>Reject: Pursuant to Labor Code §4603.2 transfer of care may not be appropriate in certain situations. The regulatory text as proposed which uses “when a transfer is appropriate” takes this into consideration.</p>	<p>None.</p>
9767.5(f)	<p>Commenter states that the proposed language fails to require notification of the MPN, who is the entity that will be fined for not complying with this section. Since the potential fines are levied on the MPN, they should be the only entity notified by a covered employee when they need assistance</p>	<p>Greg Moore President Harbor Health Systems One Call Care Management December 23, 2013 Written Comment</p>	<p>Accept: The regulatory text will be revised to delete “the employer or to”.</p>	<p>§9767.5(f) is revised to delete “the employer or to”.</p>

MEDICAL PROVIDER NETWORKS	RULEMAKING COMMENTS 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>in scheduling an appointment. To eliminate the risk of an employer not passing along the request timely and thereby causing the MPN to be subjected to penalties and fees without having proper awareness of the request, commenter recommends that the end of the section should be modified to remove the employer from the notice provision as follows:</p> <p>... a covered employee’s notice <del>to the employer or</del> to an MPN medical access assistant that treatment is needed.</p>			
9767.5(g)	<p>Commenter state that the proposed language fails to require notification of the MPN, who is the entity that will be fined for not complying with this section. Commenter opines that this needs to be modified to avoid the potential of an MPN being subjected to fines for not assisting in securing an appointment if the covered employee requests an appointment directly with a specialist and neither the specialists nor the covered employee notify the MPN Network Access Assistant. To better reflect the accountable built into the penalties, commenter recommends that the end of the section should be</p>	<p>Greg Moore President Harbor Health Systems One Call Care Management December 23, 2013 Written Comment</p>	<p>Accept: The regulatory text will be revised to delete “directly with a physician or”.</p>	<p>§9767.5(g) is revised to delete “directly with a physician or”.</p>

MEDICAL PROVIDER NETWORKS	RULEMAKING COMMENTS 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>modified to remove the physician from the notice provision as follows:</p> <p>... a covered employee’s reasonable requests for an appointment directly with <del>a physician or through</del> an MPN medical access assistant.</p>			
9767.5(h)(1)	<p>Commenter opines that the requirements as proposed in this regulation are unduly burdensome, and failure to address this will undermine the ability of MPN Applicants from providing a quality service for supporting covered employees. In his own operation, they have built out a call center based solution that will allow them to properly monitor Network Access Assistant professionalism, response times, and overall quality of service. To support this level of service and to meet requirements related to auditing calls, these services must be provided through a professional call center facility. Commenter states that they cannot keep such a facility open during non-business hours to allow one person to be available.</p> <p>Commenter opines that the intent is to make sure the services are available at</p>	<p>Greg Moore President Harbor Health Systems One Call Care Management December 23, 2013 Written Comment</p>	<p>Reject: Labor Code §4616(a)(5) states, “Medical access assistants shall have a toll-free telephone number that injured employees may use and shall be available at least from 7 a.m. to 8 p.m. Pacific Standard Time, Monday through Saturday, inclusive to respond to injured employees...”</p>	<p>None.</p>

MEDICAL PROVIDER NETWORKS	RULEMAKING COMMENTS 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>extended hours, but that it is reasonable to have calls during non-business hours or peak volume calls go to voicemail and to have voice mail responded to within one business day. Commenter recommends the following modifications to allow this flexibility:</p> <p>(1) There shall be at least one MPN medical access assistant available to respond <del>at all required times</del> <b>during normal business hours</b>, with the ability for callers to leave a voice message. There shall be enough medical access assistants to respond to calls, faxes or messages by the next <b>business</b> day, excluding holidays.</p>			
9767.5.1(a)	<p>Commenter notes that there is a typo in the first sentence: change “employer” to “employee”.</p> <p>Commenter states that at the time of acceptance, there may still be a process for approval of a provider in an MPN or for other credentialing activities to be completed prior to the provider being included in the MPN. To allow a more efficient process, commenter requests that the provider accept participation earlier in the on</p>	<p>Greg Moore President Harbor Health Systems One Call Care Management December 23, 2013 Written Comment</p>	<p>Accept: The typographical error to will be corrected.</p>	<p>§9767.5.1(a) is revised to delete “employer” and replace it with “employee”.</p>

MEDICAL PROVIDER NETWORKS	RULEMAKING COMMENTS 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>boarding process. To accommodate this, commenter recommends that the second to last sentence be modified as follows:</p> <p>The acknowledgment(s) by the physician shall either specify the MPN or MPNs in which the physician is or <b>will may</b> be participating or authorize the agent or designee of a medical group to act on the physician’s behalf to specify the MPN or MPNs in which the physician is or <b>will may</b> be participating.</p>			
9767.5.1(c)	<p>Given that these regulations have not been finalized as of December 23, 2013, commenter states that it is unreasonable to expect contracting operations to be able to accommodate changes in less than a month. Commenter recommends that this section be modified to provide a reasonable amount of time to comply with Physician Acknowledgements with the following change to the first sentence:</p> <p>The acknowledgment shall be executed no later than the time of the physician entering into or renewing an MPN contract on or after <b>January</b></p>	<p>Greg Moore President Harbor Health Systems One Call Care Management December 23, 2013 Written Comment</p>	<p>Note: The organizational structure of §9767.5.1 has been rearranged in its entirety for brevity and clarity to make it easier to follow.</p> <p>Reject: The commenter’s recommended language will not be adopted. Commenter’s concerns regarding the timeframes to comply with Physician Acknowledgments is considered and will prompt revisions to this section</p>	<p>§9767.5.1(e) is revised as follows:</p> <p>“The acknowledgment shall be obtained at the time of the following occurrences: (1) If, on or after [OAL to insert effective date of regulations], the physician or medical group enters into a new contract or renews a contract to</p>

MEDICAL PROVIDER NETWORKS	RULEMAKING COMMENTS 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<u>April</u> 1, 2014.			<p>participate in the MPN, then the acknowledgment shall be obtained at the time of entering into or renewing the contract.</p> <p>(2) If, on or after [OAL to insert effective date of regulations], the physician joins a medical group that already has a contract to participate in an MPN or MPNs, the acknowledgment shall be obtained at the time of the physician's joining the medical group.</p> <p>(3) If, on or after January 1, 2014 but before [OAL to insert effective date of regulations], the physician or medical group enters into a new contract or renews a contract to participate in the</p>

<b>MEDICAL PROVIDER NETWORKS</b>	<b>RULEMAKING COMMENTS 15 DAY COMMENT PERIOD</b>	<b>NAME OF PERSON/ AFFILIATION</b>	<b>RESPONSE</b>	<b>ACTION</b>
				<p>MPN, then the acknowledgment shall be obtained no later than January 1, 2015.</p> <p>(4) If, on or after January 1, 2014 but before [OAL to insert effective date of regulations], the physician joins a medical group that already has a contract to participate in an MPN or MPNs, the acknowledgment shall be obtained no later than January 1, 2015.</p> <p>(5) If a contract entered prior to [OAL to insert effective date of regulations] is continuous or automatically renews without a new execution by or on behalf of the physician, then the acknowledgment</p>

<b>MEDICAL PROVIDER NETWORKS</b>	<b>RULEMAKING COMMENTS 15 DAY COMMENT PERIOD</b>	<b>NAME OF PERSON/ AFFILIATION</b>	<b>RESPONSE</b>	<b>ACTION</b>
				<p>shall be obtained no later than January 1, 2016, provided, however that no further acknowledgment is required if either of the following is true:</p> <p>(A) The contract identifies the MPN in which the physician or group is participating.</p> <p>(B) A website address is openly published where a person described in subdivision (b) is enabled to observe which MPN or MPNS have been selected for the physician or group and to de-select any MPN. The means to authenticate a person to access the website and to de-select any MPN shall be made available upon reasonable proof of</p>

MEDICAL PROVIDER NETWORKS	RULEMAKING COMMENTS 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
				the requesting person’s identity as one of the persons authorized in subdivision (b).”
9767.9 and 9767.10	Commenter recommends that in order to avoid confusion that may arise, the terms insurer and employer should be capitalized to make it clear they are used as defined in the definitions.	Greg Moore President Harbor Health Systems One Call Care Management December 23, 2013 Written Comment	Reject: Unnecessary and will likely cause more confusion.	None.
9767.19(a)(2)(E)	<p>Commenter states that the proposed language creates a conflict between the penalty and the regulatory requirement under section 9767.5(c) that provides that if an appointment is not available with an appropriate specialist that the MPN will have a written policy of allowing the covered worker to be treated outside the MPN.</p> <p>Commenter states that the language in the related penalty should reflect the same standard rather than imposing a penalty if the MPN Network Access Assistant follows the written policy of the MPN. To avoid a conflict between the penalty and the referenced</p>	Greg Moore President Harbor Health Systems One Call Care Management December 23, 2013 Written Comment	<p>Reject in part. Agree in part. Reject: The commenter’s recommended language will not be adopted.</p> <p>Agree: The regulatory text will be revised because there is a conflict between the penalty and the regulatory requirement under §9767.5(c).</p>	§9767.19(a)(2)(E) is re-lettered to (D) and is revised to delete the regulatory text and re-phrased to state “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

MEDICAL PROVIDER NETWORKS	RULEMAKING COMMENTS 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>regulation, commenter recommends that this section be modified as follows:</p> <p>Failure of an MPN medical access assistant to <b><u>either</u></b> ensure an appointment for non-emergency services for initial MPN treatment is available within 3 business days of a covered employee’s request for treatment pursuant to section 9767.5(f), <b><u>or to notify the covered employee of an MPN’s 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 pursuant to section 9767.5(c)</u></b>, \$500 for each occurrence.</p>			<p>schedule an appointment within 3 business days of receipt of request from the injured covered employee, \$500 for each occurrence.”</p>
9767.19(a)(2)(F)	<p>Commenter states that the proposed language creates a conflict between the penalty and the regulatory requirement under section 9767.5(c) that provides that if an appointment is not available with an appropriate specialist that the MPN will have a written policy of allowing the covered worker to be treated outside the MPN.</p> <p>Commenter states that the language in</p>	<p>Greg Moore President Harbor Health Systems One Call Care Management December 23, 2013 Written Comment</p>	<p>Reject in part. Agree in part. Reject: The commenter’s recommended language will not be adopted. Agree: The regulatory text will be revised because there is a conflict between the penalty and the regulatory requirement under §9767.5(c).</p>	<p>§9767.19(a)(2)(F) is re-lettered to (E) and is revised to delete the regulatory text and re-phrased to state, “Failure of an MPN Applicant to permit an injured covered employee to obtain necessary medical treatment</p>

MEDICAL PROVIDER NETWORKS	RULEMAKING COMMENTS 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>the related penalty should reflect the same standard rather than imposing a penalty if the MPN Network Access Assistant follows the written policy of the MPN. To avoid a conflict between the penalty and the referenced regulation, commenter recommends that this section be modified as follows:</p> <p>Failure of an MPN medical access assistant to <b><u>either</u></b> ensure an appointment for non-emergency services for initial MPN treatment is available within 3 business days of a covered employee’s request for treatment pursuant to section 9767.5(f), <b><u>or to notify the covered employee of an MPN’s 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 pursuant to section 9767.5(c),</u></b> \$500 for each occurrence.</p> <p>Failure to <b><u>either</u></b> meet the requirements for providing timely non-emergency specialist services pursuant to section 9767.5(g), <b><u>or to</u></b></p>			<p>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 receipt of the request, \$500 for each occurrence.”</p>

MEDICAL PROVIDER NETWORKS	RULEMAKING COMMENTS 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p><b><u>notify the covered employee of an MPN’s 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 pursuant to section 9767.5(c) if an appointment cannot be confirmed within the timelines defined in section 9767.5(g), \$500 for each occurrence.</u></b></p>			
9767.19(c)	<p>Commenter opines that in order to allow a reasonable and consistent timeline during holidays for corrective action, the second sentence be modified as follows:</p> <p>The Administrative Director shall allow the MPN applicant an opportunity to correct the violation or to respond within ten <b>business</b> days with a plan of action to correct the violation in a timely manner.</p>	<p>Greg Moore President Harbor Health Systems One Call Care Management December 23, 2013 Written Comment</p>	<p>Reject: It is ten calendar days not business days.</p>	<p>None.</p>
9767.19 – General Comment	<p>Commenter opines that the proposed regulations implementing these changes contain overly aggressive penalties which will have a dramatic chilling effect on the MPN process. Commenter states that the intent of SB 863 was to strengthen MPNs and</p>	<p>Jeremy Merz California Chamber of Commerce</p> <p>Jason Schmelzer California Coalition on Workers’</p>	<p>Reject: The penalty regulations follow the statutory language of establishing a schedule of administrative penalties not to exceed five thousand dollars (\$5,000) per violation.</p>	<p>None.</p>

MEDICAL PROVIDER NETWORKS	RULEMAKING COMMENTS 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>increase their efficacy and use by employers. Commenter opines that the severe penalties included in the MPN regulations cut against this intent and will greatly discourage employer use. Commenter appreciates the DWC’s initial efforts to thoughtfully moderate these penalties so they are proportionate to the infraction, but believes that the penalties still disincentive MPN creation and continuation. Commenter recognizes the need to deter and penalize noncompliance with the MPN statute and regulations; however he opines that these penalties can be designed in a more effective manner to ensure that the Administrative Director maintains the tools necessary to address noncompliance without conflicting with SB 863’s intent.</p>	<p>Compensation December 26, 2013 Written Comment</p>		
9767.3(d)(8)(H)	<p>Commenter notes that this subsection requires a geocoding report regarding access to primary treating physicians within the fifteen-mile access standard from the center of each zip code within the MPN geographic service area. Measuring access from the center of each zip code conflicts with the access standard regulation §9767.5(a)(1) which requires an MPN</p>	<p>Jose Ruiz, Director Corporate Claims – Regulatory Division</p> <p>Rick J. Martinez Medical Networks Manager State Compensation Insurance Fund December 24, 2013</p>	<p>Reject: The proposed regulatory language uses the “center of a zip code” not to allow MPNs to provide access based on the center of the geographic zip code, but rather to run geocoding sweeps at the centroid of a land parcel. The access standards set forth in §9767.5 require an injured</p>	<p>None.</p>

MEDICAL PROVIDER NETWORKS	RULEMAKING COMMENTS 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>to have at least three available primary treating physicians within 30 minutes or 15 miles of each covered employee's residence or workplace.</p> <p>Commenter recommends that the DWC ensure the geocoding and access standard regulations conform to each other.</p>	Written Comment	workers address and an employer's address to determine access standards. Requiring MPNs provide this data to DWC is overly burdensome and virtually impossible because it is a variable factor that changes from minute to minute.	
9767.5(a)(2)	<p>Commenter recommends changing the language "who can treat" to "to treat" in this section in order to remain consistent with section (a) as follows:</p> <p>"An MPN must have providers of occupational health services and specialists who can to treat common injuries experienced by the covered injured employees within 60 minutes or 30 miles of a covered employee's residence or workplace."</p>	<p>Jose Ruiz, Director Corporate Claims – Regulatory Division</p> <p>Rick J. Martinez Medical Networks Manager State Compensation Insurance Fund December 24, 2013 Written Comment</p>	Reject: Unnecessary because they mean the same thing.	None.
9767.5(b)	<p>Commenter recommends the following revised language:</p> <p>"If an MPN applicant believes that, given the facts and circumstances with regard to a portion of its service area, specifically areas in which there is a health care shortage, including non-rural areas and rural areas in which health facilities are located at</p>	<p>Jose Ruiz, Director Corporate Claims – Regulatory Division</p> <p>Rick J. Martinez Medical Networks Manager State Compensation Insurance Fund December 24, 2013</p>		

MEDICAL PROVIDER NETWORKS	RULEMAKING COMMENTS 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>least 30 miles apart, the accessibility standards set forth in subdivisions (a)(1) and/or (a)(2) cannot be met, the MPN applicant may propose alternative standards of accessibility for that portion of its service area. The MPN applicant shall do so by including the proposed alternative standards in writing in its plan application, <u>Plan for Reapproval</u>, or in a notice of MPN plan modification and shall be reviewed and approved by the Administrative Director before the alternative standard can be used-, <u>unless deemed approved if Administrative Director did not respond within regulatory timeframes.</u> The applicant shall explain how the proposed alternative mileage standard was determined to be necessary for the specialty(ies) in which there is a health care shortage, 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. The alternative standards shall provide that all services shall be available and</p>	Written Comment		

MEDICAL PROVIDER NETWORKS	RULEMAKING COMMENTS 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>accessible at reasonable times to all covered employees.”</p> <p>Commenter notes that this section indicates that written proposed alternative standards be included in the Plan Application or in a notice of plan modification and shall be reviewed and approved by the Administrative Director before the alternative standards can be used. Commenter states that this language should also include the Plan for Reapproval, as well as specify that alternative standards are deemed approved if the AD does not act in response to the MPN plan modification/Plan Application within 60 days, or to the MPN plan modification within 180 days. Commenter recommends including Plan for Reapproval and language referring to the required AD response timeframes.</p>		<p>Reject: “Plan Application” covers both MPN Application and Plan for Reapproval.</p>	<p>None.</p>
9767.5(g)	<p>Commenter recommends the following revised language:</p> <p>“For non-emergency specialist services to treat common injuries experienced by the covered employees based on the type of</p>	<p>Jose Ruiz, Director Corporate Claims – Regulatory Division</p> <p>Rick J. Martinez Medical Networks Manager</p>	<p>Reject in part. Accept in part. Reject: The commenter’s recommended language will not be adopted. Accept: The regulatory text will be revised to clarify that the timeline will be triggered</p>	<p>§9767.5(g) is revised to delete “directly with a physician or” to make care that the timeline is only triggered when notice is given to the MPN</p>

MEDICAL PROVIDER NETWORKS	RULEMAKING COMMENTS 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>occupation or industry in which the employee is engaged, the MPN applicant shall ensure that an initial appointment with a specialist in an appropriate referred specialty is available within 20 business days of <u>the MPN applicant's receipt of a referral to a specialist within the MPN</u> or a covered employee's reasonable requests for an appointment <del>directly with a physician</del> or 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 five 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."</p> <p>Commenter notes that the DWC proposes to require an MPN applicant to ensure that an initial appointment with a specialist is available within 20 business days of an employee's request made directly with a physician or through a medical access assistant. An MPN applicant may not be able to meet this timeframe if the employee</p>	<p>State Compensation Insurance Fund December 24, 2013 Written Comment</p>	<p>when the MPN medical access assistant is notified.</p>	<p>medical access</p>

MEDICAL PROVIDER NETWORKS	RULEMAKING COMMENTS 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	requested an appointment directly from the physician and neither employee nor physician informs the MPN applicant of the request.			
9767.5.1(c)	<p>Commenter recommends the following revised language:</p> <p>“The acknowledgment shall be executed no later than the time of the physician entering into or renewing an MPN contract on or after January 1, 2014. If a physician has a contract that automatically renews, <del>then</del> the <u>physician must submit a written acknowledgment which</u> shall comply with subdivision (b) no later than the contract renewal date and the MPN must obtain the acknowledgement within <del>30</del><u>90</u> days after the contract renewal date. If there is no contract renewal date, then the written acknowledgment shall be obtained by the MPN on or before July 1, 2015. The acknowledgment must clearly specify the time frame of the acknowledgment, which may continue for as long as the contract is effective. A new acknowledgment shall be obtained by the MPN with a new or renewed contract.”</p>	<p>Jose Ruiz, Director Corporate Claims – Regulatory Division</p> <p>Rick J. Martinez Medical Networks Manager State Compensation Insurance Fund December 24, 2013 Written Comment</p>	<p>Note: The organizational structure of §9767.5.1 has been rearranged in its entirety for brevity and clarity to make it easier to follow.</p> <p>Reject: The commenter’s recommended language will not be adopted. Commenter’s concerns regarding the timeframes to comply with Physician Acknowledgments is considered and will prompt revisions to this section</p>	<p>§9767.5.1(c) is deleted in its entirety and re-numbered to §9767.5.1(e) and is revised as follows:</p> <p>“The acknowledgment shall be obtained at the time of the following occurrences: (1) If, on or after [OAL to insert effective date of regulations], the physician or medical group enters into a new contract or renews a contract to participate in the MPN, then the acknowledgment shall be obtained at the time of entering into or renewing the contract.</p>

<b>MEDICAL PROVIDER NETWORKS</b>	<b>RULEMAKING COMMENTS 15 DAY COMMENT PERIOD</b>	<b>NAME OF PERSON/ AFFILIATION</b>	<b>RESPONSE</b>	<b>ACTION</b>
	<p>Commenter notes that this subdivision requires the MPN to obtain a physician acknowledgment within 30 days after contract renewal date if the physician has a contract that automatically renews, or if no renewal date, on or before 7/1/15. An MPN Applicant may not have access to individual physician contract renewal dates, thus Commenter recommends retaining the language which requires that the physician submit the written acknowledgment.</p> <p>Commenter recommends extending the time period from 30 days to 90 days in order to provide the physicians a reasonable amount of time to comply.</p>			<p>(2) If, on or after [OAL to insert effective date of regulations], the physician joins a medical group that already has a contract to participate in an MPN or MPNs, the acknowledgment shall be obtained at the time of the physician's joining the medical group.</p> <p>(3) If, on or after January 1, 2014 but before [OAL to insert effective date of regulations], the physician or medical group enters into a new contract or renews a contract to participate in the MPN, then the acknowledgment shall be obtained no later than January 1, 2015.</p> <p>(4) If, on or after January 1, 2014 but</p>

MEDICAL PROVIDER NETWORKS	RULEMAKING COMMENTS 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
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				<p>before [OAL to insert effective date of regulations], the physician joins a medical group that already has a contract to participate in an MPN or MPNs, the acknowledgment shall be obtained no later than January 1, 2015.</p> <p>(5) If a contract entered prior to [OAL to insert effective date of regulations] is continuous or automatically renews without a new execution by or on behalf of the physician, then the acknowledgment shall be obtained no later than January 1, 2016, provided, however that no further acknowledgment is required if either of</p>
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MEDICAL PROVIDER NETWORKS	RULEMAKING COMMENTS 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
				<p>the following is true:            (A) The contract identifies the MPN in which the physician or group is participating.            (B) A website address is openly published where a person described in subdivision (b) is enabled to observe which MPN or MPNS have been selected for the physician or group and to de-select any MPN. The means to authenticate a person to access the website and to de-select any MPN shall be made available upon reasonable proof of the requesting person's identity as one of the persons authorized in subdivision (b)."</p>
9767.5.1(d)	Commenter notes that this subdivision	Jose Ruiz, Director	Accept. The regulatory text	§9767.5.1(c) is

MEDICAL PROVIDER NETWORKS	RULEMAKING COMMENTS 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	requires amendments to be submitted to the MPN within 30 days of the effective date of a change. Commenter recommends extending the time period from 30 days to 90 days in order to provide the physicians a reasonable amount of time to comply.	Corporate Claims – Regulatory Division  Rick J. Martinez Medical Networks Manager State Compensation Insurance Fund December 24, 2013 Written Comment	will be revised to allow medical groups to submit amendments to its list of physicians from 30 days to 90 days.	deleted in its entirety and this portion is re-numbered to §9767.5.1(b)(2) and states, “the officer or agent shall update the list within 90 days of any additions to or removals from the list.”
9767.8 – Item 7	Commenter notes that Item 7 of the “Notice of Medical Provider Network Plan Modification” form instructs the MPN applicant to “place a check mark <i>against [ital. added]</i> the box that reflects the proposed modification.” Additionally, the third such box lists a “change of Division Liaison”. Commenter notes that Section 9767.8(a)(3) now refers to an “MPN Liaison” in lieu of “Division Liaison”. To establish consistency, commenter recommends correcting the form.	Jose Ruiz, Director Corporate Claims – Regulatory Division  Rick J. Martinez Medical Networks Manager State Compensation Insurance Fund December 24, 2013 Written Comment	Reject: As unnecessary.	None.
9767.12(a)(2)(C)	Commenter notes that this subdivision proposes a timeframe of 45 days to report a listed provider who becomes deceased or is no longer treating workers’ compensation patients at the listed address and must be removed from the provider directory. Commenter opines that a minimum of	Jose Ruiz, Director Corporate Claims – Regulatory Division  Rick J. Martinez Medical Networks Manager State Compensation	Reject: The process to modify provider listings once MPNs have been notified of a change is different from the requirements set forth in Labor Code §4616(a)(4) mandating the MPNs update or refresh its provider listings on a quarterly	None.

<b>MEDICAL PROVIDER NETWORKS</b>	<b>RULEMAKING COMMENTS 15 DAY COMMENT PERIOD</b>	<b>NAME OF PERSON/ AFFILIATION</b>	<b>RESPONSE</b>	<b>ACTION</b>
	90-day period to remove a provider from the directory would be more reasonable, and in line with the existing requirement to update the list on a quarterly basis.	Insurance Fund December 24, 2013 Written Comment	basis. Therefore, “45” days will not be revised to 90 days as suggested by the commenter.	
9767.16(a)(2)(B)	Commenter notes that this subdivision indicates that if a medical provider network complaint is made by facsimile and there is no electronically stamped date recorded, the complaint shall be deemed received on the date the request was transmitted. The MPN Contact does not have a method to confirm the date the request was transmitted, therefore, commenter recommends removing this language.	Jose Ruiz, Director Corporate Claims – Regulatory Division  Rick J. Martinez Medical Networks Manager State Compensation Insurance Fund December 24, 2013 Written Comment	Reject: No, but the sender will have a fax confirmation indicating the date and time the fax was sent. If a fax transmission failed the sender would not receive a "date of transmission" confirmation. Rather, the sender will receive a notice that the attempted fax failed or was unsuccessful or there was in error in communication.	None.
9767.16(b)(3)	Commenter notes that this section indicates that if a violation is confirmed that the Administrative Director shall notify the MPN’s authorized individual and MPN Contact in writing of the specific violation(s) found. Section 9767.3 (d)(5) indicates that the MPN Liaison to DWC “is responsible for receiving compliance and informational communications from the Division and for disseminating the same within the MPN”. Commenter recommends that this section replace MPN	Jose Ruiz, Director Corporate Claims – Regulatory Division  Rick J. Martinez Medical Networks Manager State Compensation Insurance Fund December 24, 2013 Written Comment	Reject: The MPN Contact is the individual designated by the MPN Applicant to be responsible for responding to complaints. The Authorized Individual is the individual who has legal authority to act on behalf of the MPN Applicant. The MPN Liaison is the person who is responsible for receiving compliance and informational communications from the Division and for disseminating	None.

MEDICAL PROVIDER NETWORKS	RULEMAKING COMMENTS 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	authorized individual with MPN Liaison.		the same within the MPN.	
9767.19(a)(2)(B)	Commenter recommends changing the 45-day requirement to 90 days. Commenter opines that a timeframe that is less than 90 days will negatively impact MPNs by increasing administrative work, including the need for additional staff. Additionally, Section 9767.12 provides that all provider listings are to be updated on a quarterly basis. Increasing the timeframe here to 90 days would align this schedule with the limit set under Section 9767.12.	Jose Ruiz, Director Corporate Claims – Regulatory Division  Rick J. Martinez Medical Networks Manager State Compensation Insurance Fund December 24, 2013 Written Comment	Reject: The process to modify provider listings once MPNs have been notified of a change is different from the requirements set forth in Labor Code §4616(a)(4) mandating the MPNs update or refresh its provider listings on a quarterly basis. Therefore, “45” days will not be revised to 90 days as suggested by the commenter.	None.
9767.19(a)(2)(E)	In order to maintain consistency with Access Standards regulation §9767.5(f), Commenter recommends changing the language “for initial MPN treatment” to “for the first MPN treatment visit”.	Jose Ruiz, Director Corporate Claims – Regulatory Division  Rick J. Martinez Medical Networks Manager State Compensation Insurance Fund December 24, 2013 Written Comment	Reject: Unnecessary as they mean the same thing.	None.
9767.19(b)(1)	Commenter notes that this section proposes a \$1,500 penalty per occurrence against the employer or insurer for failure to provide the written MPN employee notification to	Jose Ruiz, Director Corporate Claims – Regulatory Division  Rick J. Martinez	Reject in part. Accept in part. The commenter’s recommended language will not be adopted. Accept: The penalty amount will be	§9767.19(b)(1) is revised to state “Failure to provide the complete MPN employee notification

MEDICAL PROVIDER NETWORKS	RULEMAKING COMMENTS 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	an injured employee. Commenter opines that \$1,500 is an excessive cost for an employer/insurer to incur, thus commenter recommends the amount of \$250 per occurrence.	Medical Networks Manager State Compensation Insurance Fund December 24, 2013 Written Comment	reduced to \$500 per occurrence up to \$10,000.	pursuant to section 9767.12 to an injured covered employee, \$500 per occurrence up to \$10,000.”
9767.19(b)(2)	Commenter notes that the proposed language in this section assesses a penalty of \$250 per occurrence up to \$10,000 against the employer or insurer for failure to provide a complete or correct MPN notice to an injured covered employee. Commenter opines that this imposes an additional excessive cost for the employer/insurer to incur. Commenter recommends that the maximum be changed from \$10,000 to \$1,000. In addition, the language “MPN notice” should be changed to “MPN notification” as notice may be confused with the Notice to Employees.	Jose Ruiz, Director Corporate Claims – Regulatory Division  Rick J. Martinez Medical Networks Manager State Compensation Insurance Fund December 24, 2013 Written Comment	Reject in part. Accept in part. Reject: Providing the entire or correct complete MPN employee notification to covered employees is important and the penalty is commensurate with a violation. Accept: The regulatory text will be revised to include “MPN employee notification”.	§9767.19(b)(2) is revised to add “employee notification”.
9767.19(b)(3)	Commenter notes that this section proposes a \$1,000 penalty per occurrence for the employer’s or insurer’s failure 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. Commenter	Jose Ruiz, Director Corporate Claims – Regulatory Division  Rick J. Martinez Medical Networks Manager State Compensation	Reject: Providing the end of MPN coverage notice to covered employees is important and the penalty is commensurate with a violation.	None.

MEDICAL PROVIDER NETWORKS	RULEMAKING COMMENTS 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	opines that \$1,000 is an excessive cost for an employer/insurer to incur, thus commenter recommends an amount of \$250 per occurrence.	Insurance Fund December 24, 2013 Written Comment		
9767.17.5(Part B)	<p>Commenter notes that Section 9767.17(d) specifies what information and/or documentation must be included when responding to a petition for suspension or revocation. Commenter recommends that the form include instructions regarding what is required to be submitted with the response.</p> <p>Commenter recommends the following revised language:</p> <p><del>“State reasons why petition should not be granted</del> <u>Indicate your response to the petition below. Your response must include, but not be limited to, addressing the alleged violations and providing any supporting documentation to establish that no violation has occurred or that all specified violations have been remedied in a timely manner.</u> (additional pages and documents may</p>	<p>Jose Ruiz, Director Corporate Claims – Regulatory Division</p> <p>Rick J. Martinez Medical Networks Manager State Compensation Insurance Fund December 24, 2013 Written Comment</p>	Reject: As commenter notes, §9767.17(d) already provides specificities of the requirements for a response to a petition. Spacing limitations in our form prevents these details from being included.	None.

MEDICAL PROVIDER NETWORKS	RULEMAKING COMMENTS 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	be attached).”			
9767.1(a)(16)	<p>Commenter recommends that this section be amended to state that a Medical Access Assistant is only responsible for providing “coordination” with scheduling of appointments and/or care, depending upon the circumstances, and based on the information provided to the Medical Access Assistant by the injured worker.</p> <p>Commenter states that a claims administrator cannot provide a guarantee that an appointment will be scheduled for a claimant, especially during off-business hours.</p> <p>Commenter opines that this situation is further exacerbated by the fact that many claimants who call many not have enough information on-hand (such as enough detail regarding the particular MPN that their employer subscribes to) to provide the Medical Access Assistant with the requisite information to make a referral.</p> <p>Commenter states that Medical Access Assistants will oftentimes need to coordinate with other third parties (such as a claims examiner) to facilitate appointments and cannot do</p>	<p>Lisa Anne Forsythe Senior Compliance Consultant Coventry Worker’s Compensation Services December 27, 2013 Written Comment</p>	<p>Reject: §9767.1 is the section that provides definitions to terms used in this article. The commenter’s recommendations are substantive issues that go beyond what is necessary to define this term and are not suited for this section.</p>	<p>None.</p>

MEDICAL PROVIDER NETWORKS	RULEMAKING COMMENTS 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	so completely on their own.			
9767.2(b)	<p>Commenter notes that the current language extends the timeline for the state to review and grant an MPN re-approval application. Commenter opines that this will result in the MPN applicant being unsure of its operational status for 6 months during the lengthy review period without apprising the applicant of the status and/or providing guidance on how to continue operations in the meantime.</p> <p>Commenter recommends that the DWC amend this section to provide for an initial 90-day timeframe for review, extendable for an additional 90 days thereafter, with a requirement added that the DIR provide a status update back to the applicant after cessation of the first 90-day period. Commenter recommends that the applicant be permitted to continue to operate under previously existing transactions/processes that were already in place at the time of the re-approval application.</p>	<p>Lisa Anne Forsythe Senior Compliance Consultant Coventry Worker's Compensation Services December 27, 2013 Written Comment</p>	<p>Reject: Labor Code §4616(b)(1) requires MPN's to submit reapproval plans six months before the expiration of the four-year approval period. Therefore, DWC will have six months to review the reapproval plan. During this period, the existing MPN is not affected and can continue to operate</p>	None.
9767.3(c)(2)	<p>Commenter notes that a provider code for "primary treating physician" is listed but that it is unclear from the regulations which specialties are to be</p>	<p>Lisa Anne Forsythe Senior Compliance Consultant Coventry Worker's</p>	<p>Reject A primary treating physician is defined in§9767.1(a)(22) and it is unnecessary to reiterate this</p>	None.

MEDICAL PROVIDER NETWORKS	RULEMAKING COMMENTS 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>included within the definition of “primary treating physician.”</p> <p>Commenter recommends that the Division modify this section to provide a definition for “Primary Treating Provider” that encompasses family medicine, occupational medicine, internal medicine and general practitioners into a single category.</p>	<p>Compensation Services December 27, 2013 Written Comment</p>	<p>definition in this section.</p>	
9767.3(d)(4)	<p>Commenter notes that this section contains new language that requires an applicant to avoid use of the MPN names that are currently in use by existing MPN’s. Commenter supports this concept but recommends that the rules be modified to ensure that the AD provides an updated listing of names that can be validated against when apply for an MPN.</p> <p>Commenter requests modification of this section to add a provision that the AD maintain an updated listing of MPN names currently in use.</p>	<p>Lisa Anne Forsythe Senior Compliance Consultant Coventry Worker’s Compensation Services December 27, 2013 Written Comment</p>	<p>Reject: The requirement to select a name that is not used by an existing approved MPN will be deleted because DWC will assign a unique identifier to each MPN called the Medical Provider Network Identification Number.</p>	<p>§9767.3(d)(4) is revised to delete to “select a name that is not used by an existing approved MPN”.</p>
9767.3(d)(8)(G)	<p>Commenter notes that this section as modified provides that “only individual physicians in the MPN” shall be listed on the MPN application. Commenter states that the rules do not</p>	<p>Lisa Anne Forsythe Senior Compliance Consultant Coventry Worker’s Compensation</p>	<p>Reject: This subdivision specifically deals with the physician listing. §9767.3(d)(8)(H) instructs MPN Applicants to provide “a</p>	<p>None.</p>

MEDICAL PROVIDER NETWORKS	RULEMAKING COMMENTS 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>include a provision for walk-in clinics or urgent care facilities and she opines that failure to include these types of facilities in the listing that is available to both Medical Access Assistants as well as injured workers will greatly limit the choices available to both. Commenter states that it can be difficult to maintain updated provider listings of individual physicians within larger group settings.</p> <p>Commenter requests that the DWC modify the rules to also allow for inclusion of Walk-In Clinics and Urgent Care Facilities on the overall provider listing.</p>	<p>Services December 27, 2013 Written Comment</p>	<p>narrative or graphic report that establishes where there is a hospital or an emergency health care service provider within the fifteen-mile access standard.”</p>	
9767.3(d)(8)(S)	<p>Commenter states that this section has been modified to redefine the standards by which an MPN must continually reevaluate its provider base to ensure continuing quality care within the network. In pertinent part, the rules provide for how data should be used to “...continuously review quality of care and performance of medical personnel, utilization of services and facilities, and costs...” Commenter states that this language does differ from the previous criteria for evaluation of on-going</p>	<p>Lisa Anne Forsythe Senior Compliance Consultant Coventry Worker’s Compensation Services December 27, 2013 Written Comment</p>	<p>Reject: §9767.3(d)(8)(S) requires a description of the MPN’s procedures to review quality of care. If there are differing procedures then both can be described in the MPN Plan.</p>	None.

MEDICAL PROVIDER NETWORKS	RULEMAKING COMMENTS 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>performance within an MPN, giving rise to concerns that existing contracts could potentially require a material modification in order to address the changes in criteria contained in the new rules.</p> <p>Commenter requests that the DWC include a “grandfather” clause to allow existing MPN’s to continue to operate under their current evaluation criteria until such time as re-credentialing is due.</p>			
9767.5(a)(1)	<p>Commenter notes that this section provides that “...an MPN must have at least three <i>available</i> primary treating physicians and a hospital for emergency health care services...” Commenter opines that exigent circumstances may exist which may prevent providers from being “available”, despite due diligence on the part of the MPN, such as providers’ individual scheduling demands (due to temporarily overbooked practices, vacations, illnesses, etc.) and/or the impacts of the upcoming Affordable Health Care Act. Commenter states that forced “availability” may put participating MPN providers in the tenuous position</p>	<p>Lisa Anne Forsythe Senior Compliance Consultant Coventry Worker’s Compensation Services December 27, 2013 Written Comment</p>	<p>Reject: A minimum of three available physicians are needed to fulfill access standards because of Labor Code §4616.3 requirements that specifically describes an injured worker’s right to seek a second and third opinion from physicians in the MPN. DWC acknowledges the examples provided by commenter, but a minimum standard that allows some choice by the injured worker is necessary.</p>	<p>None.</p>

MEDICAL PROVIDER NETWORKS	RULEMAKING COMMENTS 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>of being required to keep “open time” on their calendars, just in case a Workers’ Compensation patient has a need, potentially putting these providers at a competitive disadvantage.</p> <p>Commenter requests the DWC to modify the wording of section 9767.5(a)(1) to state that an MPN must have “three <b>choices</b> of primary treating physicians...” Commenter states that if three <i>choices</i> are provided, and the current rules provide for treatment outside the MPN in an exigent circumstance such as those described above, the needs of the injured workers, the providers, and the network are all satisfied</p>			
9767.5(c) and 9767.5(d)	<p>Commenter supports the AD’s provisions to allow treatment outside an MPN in a situation wherein exigent circumstances (such as those outlined above) prevent an MPN from being able to provide timely and adequate care with an appropriate specialist and/or ancillary provider within a given geographic area. Commenter opines that inclusion of these sections ensures that an MPN may take extraordinary strides to ensure that</p>	<p>Lisa Anne Forsythe Senior Compliance Consultant Coventry Worker’s Compensation Services December 27, 2013 Written Comment</p>	<p>Agree.</p>	<p>None.</p>

MEDICAL PROVIDER NETWORKS	RULEMAKING COMMENTS 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	patient care is not compromised in the face of unexpected circumstances without exposure to potential adverse consequences associated with self-procured treatment.			
9767.5(f)	<p>Commenter notes that this section, as amended, provides that "...for non-emergency services, the MPN applicant shall ensure that an appointment for the <i>first treatment visit</i> under the MPN is available within 3 business days ..." However, no specific definition is provided for "first treatment visit". Commenter opines that in some circumstances, the first visit might be to an urgent care clinic or other type of facility on a walk-in basis with no advance appointment, and it is unclear from the rules if this type of visit would qualify as an "appointment for the first treatment".</p> <p>Commenter recommends modifying the rules to provide a definition for "first treatment visit" to specifically include urgent care and/or clinic treatment.</p>	<p>Lisa Anne Forsythe Senior Compliance Consultant Coventry Worker's Compensation Services December 27, 2013 Written Comment</p>	<p>Reject: The commenter's recommendations are unnecessary because the regulatory language specifically uses the phrase "for non-emergency services".</p>	<p>None.</p>
9767.5(f)	<p>Commenter notes that this section, as amended, also provides for notice to either the employer or the MPN's</p>	<p>Lisa Anne Forsythe Senior Compliance Consultant</p>	<p>Reject in part. Accept in part. The commenter's recommended revisions will</p>	<p>§9767.5(f) is revised to state "For non-emergency services,</p>

MEDICAL PROVIDER NETWORKS	RULEMAKING COMMENTS 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>Medical Access Assistant. However, no provision is made for notification/communication with other potential parties, such as other personnel that may be acting on behalf of the MPN applicant.</p> <p>Commenter recommends modifying the language to add the MPN employer, <b>MPN applicant</b>, or the MPN applicant’s Medical Access Assistant as potential first notification contactees.</p>	<p>Coventry Worker’s Compensation Services December 27, 2013 Written Comment</p>	<p>not be adopted although DWC agrees with the issues raised. Therefore, the regulatory text will be revised to make sure only communications with the MPN will be subject to these regulations.</p>	<p>the MPN applicant shall ensure that an appointment for the first treatment visit under the MPN is available within 3 business days of a covered employee’s notice to an MPN medical access assistant that treatment is needed.”</p>
9767.5(f)	<p>Commenter notes that this section provides for “...a covered employee’s notice to the employer...” Commenter opines that this language should be modified to read a “covered <i>injured</i> employee”, to accurately reflect the injured worker, and to be consistent with other sections throughout the rules.</p>	<p>Lisa Anne Forsythe Senior Compliance Consultant Coventry Worker’s Compensation Services December 27, 2013 Written Comment</p>	<p>Reject: Unnecessary because a covered employee would not be requesting medical treatment unless he/she is injured.</p>	<p>None.</p>
9767.5(g)	<p>Commenter notes that this section provides for scheduling of initial specialist appointments within 5 days, and first appointment dates within 20 days. Commenter opines that scheduling an appointment with a specialist within 5 days can be very problematic, especially in geographic areas where limited specialists may be</p>	<p>Lisa Anne Forsythe Senior Compliance Consultant Coventry Worker’s Compensation Services December 27, 2013 Written Comment</p>	<p>Accept: The regulatory text will be revised to extend the time period for an MPN medical access assistant to set an appointment with a specialist from five days to ten days.</p>	<p>§9767.5(g) will be revised to delete the phrase “directly with a physician or” and the word “five”. The five day time period will be extended to “ten” days.</p>

MEDICAL PROVIDER NETWORKS	RULEMAKING COMMENTS 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>available and/or in situations where a specialist requires time for a complete records review <i>in advance</i> of scheduling a new patient.</p> <p>Commenter recommends that the DWC expand the timeframe for setting an initial appointment with a specialist from 5 days to 10 days to allow a more reasonable timeframe.</p>			
9767.5(h)	<p>Commenter notes that this section contains provisions that govern the functioning of the Medical Access Assistants, including the services that the Medical Access Assistant should be able to provide. Commenter states that the rules do not indicate what can be done in a situation where the injured worker who is calling into the Medical Access Assistant lacks the requisite information needed for the Medical Access Assistant to perform his/her duties. Commenter states that this section does not specify how, operationally, the Medical Access Assistant duties will be carried out on behalf of the MPN.</p> <p>Commenter recommends modifying section 9767.5(h) to: (1) relieve the obligation of the MPN to schedule an</p>	<p>Lisa Anne Forsythe Senior Compliance Consultant Coventry Worker’s Compensation Services December 27, 2013 Written Comment</p>	<p>Reject: An MPN medical access assistant is provided by the MPN to help injured workers’ with finding available MPN physicians. The operative word is “help”. As long as “help” is being provided to the injured worker, it is unnecessary to indicate all the possibilities how this can be done or the multitude of situations that can arise.</p>	<p>None.</p>

<b>MEDICAL PROVIDER NETWORKS</b>	<b>RULEMAKING COMMENTS 15 DAY COMMENT PERIOD</b>	<b>NAME OF PERSON/ AFFILIATION</b>	<b>RESPONSE</b>	<b>ACTION</b>
	<p>appointment within the 3 or 5-day timeframe in a situation where inadequate information is provided by the injured worker to the Medical Access Assistant, and (2) to expand the language of the section to indicate that the Medical Access Assistant role will be operationalized as delineated in the MPN policies and procedures, and in conjunction with the MPN notification letter sent to the injured worker.</p>			
9767.5.1(a)	<p>Commenter notes that this section provides that if a "...physician authorizes a medical group's agent or designee, the specification of MPNs by the medical group's agent or designee shall comply with subdivision (d)." Commenter supports the addition of this language, as one of the larger challenges that commenter's organization has faced in conjunction with the MPN physician acknowledgements is how to handle medical groups with large personnel rosters that change regularly, and for which her organization has no direct contractual relationships with the individual physicians. Commenter opines that it can sometimes be difficult to determine which</p>	<p>Lisa Anne Forsythe Senior Compliance Consultant Coventry Worker's Compensation Services December 27, 2013 Written Comment</p>	<p>Note: The organizational structure of §9767.5.1 has been rearranged in its entirety for brevity and clarity to make it easier to follow.</p> <p>Accept.</p>	<p>None.</p>

MEDICAL PROVIDER NETWORKS	RULEMAKING COMMENTS 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>physicians within a group accept Workers' Compensation patients and which do not. This additional new language helps to alleviate that concern.</p>			
9767.5.1(b)	<p>Commenter notes that this section provides for a physician to provide acknowledgment of participation in multiple MPN's in a single provider acknowledgment. Commenter states that these rules do not provide for an electronic means of acknowledgement or approval, but only reference an "electronic signature".</p> <p>Commenter recommends modifying the language of the section to state that "...a physician may acknowledge participation in one or more MPNs in a single written acknowledgment <b>through mail, fax, or electronic form including a web-based portal...</b>" Also, expand the later sentence to state that "...the acknowledgment shall be signed <b>or approved electronically</b> by the physician..."</p>	<p>Lisa Anne Forsythe Senior Compliance Consultant Coventry Worker's Compensation Services December 27, 2013 Written Comment</p>	<p>Reject in part. Agree in part. The commenter's recommended language will not be adopted but DWC agrees with the provision for an electronic means of submitting physician acknowledgments.</p>	<p>§9767.5.1(c) is deleted in its entirety and revised to state: "A written acknowledgment may be in any of 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 (3) An electronic acknowledgment using generally accepted means of authentication to confirm the identity of the person making</p>

MEDICAL PROVIDER NETWORKS	RULEMAKING COMMENTS 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
				<p>the acknowledgment.”</p> <p>Also, §9767.5.1(e)(5)(B) includes the addition of a “website” authentication.</p>
9767.5.1(c)	<p>Commenter notes that this section provides details governing physician acknowledgements at contract renewal, and provides specified timeframes, providing an extension of time for so-called “evergreen” (or auto-renewing) contracts. In pertinent part, the rules provide <i>that if there is no contract renewal date</i>, then the written acknowledgment shall be obtained by the MPN on or before July 1, 2015...” Commenter states that all other providers and contracts are subject to the standard 30-day provision after contract renewal. Commenter states that this results in a two-tiered system where “evergreen” contracts are afforded a longer grace period before an initial physician acknowledgement is required, as compared to “standard” contracts or even evergreen contracts that <i>do</i> have renewal dates. Commenter opines that</p>	<p>Lisa Anne Forsythe Senior Compliance Consultant Coventry Worker’s Compensation Services December 27, 2013 Written Comment</p>	<p>Reject: The commenters suggested language will not be adopted. However, the timelines for acquiring Physician Acknowledgments will be revised.</p>	<p>§9767.5.1(e) is revised as follows:</p> <p>“The acknowledgment shall be obtained at the time of the following occurrences: (1) If, on or after [OAL to insert effective date of regulations], the physician or medical group enters into a new contract or renews a contract to participate in the MPN, then the acknowledgment shall be obtained at the time of entering into or renewing the</p>

MEDICAL PROVIDER NETWORKS	RULEMAKING COMMENTS 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>this also places providers with contracts that have no renewal date at a competitive advantage relative to other providers. Commenter states that for those providers that already completed their Physician Acknowledgments prior to January 1, 2014, there is no provision to allow those agreements to remain in force.</p> <p>Commenter recommends that the DWC remove the language of Section 9767.1(c) that begins with "...if there is no contract renewal date..." and amend the remaining part of that section to read, "...the <b>initial</b> written acknowledgment shall be obtained by the MPN on or before July 1, 2015..."</p> <p>Commenter opines that removal of this language will not only create parity among providers, it will also reduce the number of material modification applications that the state will receive. Secondly, commenter opines that the rules should be modified to allow those providers that signed Physician Acknowledgement forms prior to January 1, 2014 to continue operating under those agreements until June 30, 2016, or until such time as the provider notifies</p>			<p>contract.</p> <p>(2) If, on or after [OAL to insert effective date of regulations], the physician joins a medical group that already has a contract to participate in an MPN or MPNs, the acknowledgment shall be obtained at the time of the physician's joining the medical group.</p> <p>(3) If, on or after January 1, 2014 but before [OAL to insert effective date of regulations], the physician or medical group enters into a new contract or renews a contract to participate in the MPN, then the acknowledgment shall be obtained no later than January 1, 2015.</p> <p>(4) If, on or after</p>

<b>MEDICAL PROVIDER NETWORKS</b>	<b>RULEMAKING COMMENTS 15 DAY COMMENT PERIOD</b>	<b>NAME OF PERSON/ AFFILIATION</b>	<b>RESPONSE</b>	<b>ACTION</b>
	<p>the MPN that he no longer desires to participate in the network, whichever comes first.</p>			<p>January 1, 2014 but before [OAL to insert effective date of regulations], the physician joins a medical group that already has a contract to participate in an MPN or MPNs, the acknowledgment shall be obtained no later than January 1, 2015.</p> <p>(5) If a contract entered prior to [OAL to insert effective date of regulations] is continuous or automatically renews without a new execution by or on behalf of the physician, then the acknowledgment shall be obtained no later than January 1, 2016, provided, however that no further acknowledgment is</p>

MEDICAL PROVIDER NETWORKS	RULEMAKING COMMENTS 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
				<p>required if either of the following is true:  (A) The contract identifies the MPN in which the physician or group is participating.  (B) A website address is openly published where a person described in subdivision (b) is enabled to observe which MPN or MPNS have been selected for the physician or group and to de-select any MPN. The means to authenticate a person to access the website and to de-select any MPN shall be made available upon reasonable proof of the requesting person's identity as one of the persons authorized in subdivision (b)."</p>

MEDICAL PROVIDER NETWORKS	RULEMAKING COMMENTS 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
9767.5.1(d)	<p>Commenter notes that this section addresses physician acknowledgements and does not contain a specific reference to electronic means of approvals. Commenter requests that the Division modify the language to provide for acknowledgments <b>through mail, fax, or electronic form including a web-based portal.</b></p>	<p>Lisa Anne Forsythe Senior Compliance Consultant Coventry Worker’s Compensation Services December 27, 2013 Written Comment</p>	<p>Accept: The regulatory text will be revised to provide for acknowledgments through mail, fax, or electronic form including a web-based portal.</p>	<p>See Action above.</p>
9767.5.1(g)	<p>Commenter notes that this section specifies that “...the MPN applicant is responsible for obtaining physician acknowledgments and must ensure that all physician acknowledgments are up to date, meet regulatory requirements, and are readily available for review upon request by the Administrative Director..” However, this section does not anticipate a scenario wherein the MPN Applicant may not have a direct contract with providers and may not be in a position to obtain the physician acknowledgements.</p> <p>Commenter recommends that the DWC remove section 9767.5.1(g) entirely, or, alternatively, modify the language of the section to read that the “...<b>MPN applicant shall ensure that</b></p>	<p>Lisa Anne Forsythe Senior Compliance Consultant Coventry Worker’s Compensation Services December 27, 2013 Written Comment</p>	<p>Reject: Ultimately, the MPN applicant is responsible for the physician acknowledgments and must ensure that all physician acknowledgments are up to date, meet regulatory requirements, and are readily available for review upon request by the Administrative Director. The commenter’s recommended language is unnecessary.</p>	<p>None.</p>

MEDICAL PROVIDER NETWORKS	RULEMAKING COMMENTS 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p><b>the network holding the direct contracts with the providers”</b> will obtain the physician acknowledgements.</p>			
9767.8(a)(1)	<p>Commenter notes that this section requires “written documentation” reflecting the date of change if an MPN applicant changes and/or the MPN name changes, but does not specify the means by which said change should be communicated to the DIR.</p> <p>Commenter recommends modifying the underlying MPN application itself to add a field for the “Effective Date of Change”.</p>	<p>Lisa Anne Forsythe Senior Compliance Consultant Coventry Worker’s Compensation Services December 27, 2013 Written Comment</p>	<p>Reject: Unnecessary because written documentation can mean a letter, facsimile, e-mail.</p>	<p>None.</p>
9767.12(a)	<p>Commenter notes that this section provides that MPN notices “...shall be provided to employees in English and also in Spanish <i>if the employee primarily speaks Spanish...</i>” However, the rules as stated do not account for an MPN that routinely provides communication to all injured workers in a bilingual manner.</p> <p>Commenter recommends modifying the rule to read that MPN notices “shall be provided to employees in English and also in Spanish if the</p>	<p>Lisa Anne Forsythe Senior Compliance Consultant Coventry Worker’s Compensation Services December 27, 2013 Written Comment</p>	<p>Reject: Unnecessary if a MPN wishes to provide the complete employee notification to all injured employees bilingually at their discretion, it can do so.</p>	<p>None</p>

MEDICAL PROVIDER NETWORKS	RULEMAKING COMMENTS 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	employee primarily speaks Spanish, <i>but nothing in this section shall prevent an MPN from providing notification to all injured employees bilingually at their discretion...</i>			
9767.15(b)(5)	<p>Commenter notes that this section as amended requires extensive geocoding descriptions, including a very comprehensive narrative explaining health care shortage areas. Commenter opines that additional lead time will be required to implement these new requirements. Commenter opines that an MPN should be able to provide one single report for all geo-zips that outline the requirements presented rather than separate narratives for each individual geo-zip.</p> <p>Commenter recommends amending the rules to allow MPN's significant lead time to implement the new geocoding requirements (such as an effective date of Jan 1, 2015), as well as specifically permit an MPN to file a single narrative report for multiple geo-zips.</p>	<p>Lisa Anne Forsythe Senior Compliance Consultant Coventry Worker's Compensation Services December 27, 2013 Written Comment</p>	<p>Reject: The commenter's recommended amendments will not be adopted although the provisions regarding health care shortage areas will be deleted. The proposed regulatory text does not require separate narratives for each individual geo-zip but will continue to require narrative or graphic reports for the separate categories listed. Geocoding is not required until reapproval and the first 4 year expiration period will expire December 2014.</p>	None.
9767.16(b)(3)	<p>Commenter notes that this section provides that "...the Administrative Director shall notify the MPN's authorized individual and MPN</p>	<p>Lisa Anne Forsythe Senior Compliance Consultant Coventry Worker's</p>	<p>Reject: The MPN Contact is the individual designated by the MPN Applicant to be responsible for responding to</p>	None.

MEDICAL PROVIDER NETWORKS	RULEMAKING COMMENTS 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>Contact in writing of the specific violation(s) found...” Commenter states that nowhere within the rules is the term “MPN Authorized Individual” defined. While the term “MPN Contact” is, in fact, defined the rules, it is unclear how the “MPN Contact” is distinct from the “MPN Authorized Individual” – <i>i.e.</i> whether an “MPN Authorized Individual” is someone who has authorization to bind the MPN legally as a signatory versus an “MPN Contact” that is just an administrative function.</p> <p>Commenter recommends modifying the rules to define “MPN Authorized Individual” as opposed to “MPN Contact”. Alternatively, strike reference to “MPN Authorized Individual” entirely.</p>	<p>Compensation Services December 27, 2013 Written Comment</p>	<p>complaints. The Authorized Individual is the individual designated by the MPN Applicant to act on behalf of the MPN and who has legal authority to bind the MPN as a signatory.</p>	
9767.17(a)(2)	<p>Commenter notes this section has changed the language that defines the circumstances under which an MPN may have failed to meet access standards. Commenter opines that this language is confusing, and potential coverage gaps are more difficult to identify using these new standards.</p> <p>Commenter requests that the DWC</p>	<p>Lisa Anne Forsythe Senior Compliance Consultant Coventry Worker’s Compensation Services December 27, 2013 Written Comment</p>	<p>Reject: This section defines the circumstances under which a Petition for Suspension or Revocation of Medical Provider Network may be filed not “the circumstances under which an MPN may have failed to meet access standards.” The word “additionally” is important</p>	None.

MEDICAL PROVIDER NETWORKS	RULEMAKING COMMENTS 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	restore the previous language of Section 9767.17(a)(2) that defined a failure using the 3-physician standard. Also, strike the word “additionally” from the second half of the section.		because a petitioner must show this additional element to properly file this petition.	
9767.18(a)(2)(B) (iv)	<p>Commenter notes that this section contains provisions for producing documentation in the face of a complaint. However, the section does not draw a distinction between an “MPN” and an “MPN Applicant”.</p> <p>Commenter recommends modifying the language of this section to read that the “MPN Applicant” has the obligation of producing the necessary documentation in the event of an inquiry.</p>	<p>Lisa Anne Forsythe Senior Compliance Consultant Coventry Worker’s Compensation Services December 27, 2013 Written Comment</p>	Reject: MPN Applicant is defined in 9767.1(a)(19) “who is legally responsible for the Medical Provider Network.”	None.
9767.19(a)(2)(C)	<p>Commenter notes that the language of this section has been modified to remove the aggregate penalty cap for MPN violations, exposing an MPN to potentially extremely high financial liabilities. Commenter opines that this cap must be reinstated and set at \$25,000, which is fair in the California market to limit potential exposure, while also ensuring compliance with the regulations and guidelines</p>	<p>Lisa Anne Forsythe Senior Compliance Consultant Coventry Worker’s Compensation Services December 27, 2013 Written Comment</p>	Reject: §9767.19(a)(2)(C) as written will be deleted in its entirety because there is a conflict between the penalty and the regulatory requirement under §9767.5(c).	None.
9767.19(a)(2)(D) and (E)	<p>Commenter notes that both of these sections listed discuss the</p>	<p>Lisa Anne Forsythe Senior Compliance</p>	Reject: Labor Code §4616(a)(5) makes it clear that	None.

MEDICAL PROVIDER NETWORKS	RULEMAKING COMMENTS 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>consequences associated with a Medical Access Assistants' failure to respond on a timely basis. Commenter opines that the rules fail to consider that operational personnel <i>acting in the capacity of a Medical Access Assistant</i> might also be serving in this role.</p> <p><i>Commenter recommends modifying the language of these sections to read, "... "Failure of a designated MPN medical access assistant <b>or his/her designee</b> to respond to calls by the next day..."</i></p>	<p>Consultant Coventry Worker's Compensation Services December 27, 2013 Written Comment</p>	<p>an MPN "shall provide" one or more persons to serve as a medical access assistant. Nothing in the Labor Code or regulations allows for the MPN medical access assistant's duties to be designated to another person.</p>	
9767.19(d)	<p>Commenter notes that this section provides that "...penalty amounts may be mitigated upon written request to the Administrative Director by the MPN applicant <i>within twenty-one days</i> of the date of the Notice of Action". Commenter opines that the 21-day timeframe is unusual and is inconsistent with all other timeframes included within the MPN regulations. Commenter recommends that this timeframe be extended to 30 days for consistency, as well as to provide the MPN with a more reasonable timeline to gather documentation and communicate with other parties.</p>	<p>Lisa Anne Forsythe Senior Compliance Consultant Coventry Worker's Compensation Services December 27, 2013 Written Comment</p>	<p>Reject: Unnecessary because the 21-day time frame to request mitigation of penalties is sufficient.</p>	None.
9767.19(a)(2)(G)	<p>Commenter notes that this section</p>	<p>Lisa Anne Forsythe</p>	<p>Reject: Request for mitigation</p>	None.

MEDICAL PROVIDER NETWORKS	RULEMAKING COMMENTS 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>provides a \$250 penalty for a non-compliant physician acknowledgement, but does not provide an opportunity for mitigation in a situation wherein an MPN has made the best efforts to cure the defect and comply with the regulations.</p> <p>Commenter recommends modifying the rule to mimic the earlier provision in the rules that provide for mitigation, as follows: “Penalty amounts may be mitigated upon written request to the Administrative Director by the MPN applicant within 30 days of the date of the notice of Action. Mitigation will be determined based on the MPN’s documentation to remedy the Physician Acknowledgement discrepancy.”</p>	<p>Senior Compliance Consultant Coventry Worker’s Compensation Services December 27, 2013 Written Comment</p>	<p>of penalties may be requested for any penalty provision expressed in §9767.19 et seq.</p>	
9767.3(c)(2)	<p>Commenter recommends that the DWC include an additional comment in this section to allow an MPN to list the Group Name, i.e. ABC Urgent Care Clinic. Comments states that when the Group Name is displayed, she would want to be able to include an asterisk noting that not all providers in this group may be eligible to participate in the MPN.</p>	<p>Margaret Wagner – CEO Signature Network PLUS, Inc. December 23, 2013 Written Comment</p>	<p>Reject: Unnecessary because the listing described by commenter is already allowed.</p>	<p>None.</p>
9767.5.1(a) and (b)	<p>Commenter states that when an</p>	<p>Margaret Wagner –</p>	<p>Note: The organizational</p>	<p>§9767.5.1(c) is</p>

MEDICAL PROVIDER NETWORKS	RULEMAKING COMMENTS 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>organization like a TPA or any entity that manages or administers more than one MPN it would make sense to allow the physician or group to acknowledge that they (providers and groups) are agreeable to participate in all MPN's for the certified entity. An organization like a TPA has clients coming and going all the time. Commenter opines that if there is a requirement to have the physician or group acknowledge / update their affirmation statement the providers will be overwhelmed with additional administrative responsibilities to participate in the MPN. This strategy will drive the providers away from the MPN environment.</p> <p>Commenter stats that there are more than 2,000 MPNs in the State of California. Commenter opines that having to have each provider acknowledge any changes or additions on a quarterly basis will cripple the providers and entities with unrealistic and expensive administrative tasks.</p>	<p>CEO Signature Network PLUS, Inc. December 23, 2013 Written Comment</p>	<p>structure of §9767.5.1 has been rearranged in its entirety for brevity and clarity to make it easier to follow.</p> <p>Reject: DWC is aware of the potential burdens to fulfill the Physician Acknowledgment provisions of the Labor Code. Therefore, the regulatory text will be revised to allow for more efficient means of obtaining these acknowledgments i.e. electronic means and web based portals that will allow physicians to view a list and to de-select any MPN.</p>	<p>deleted in its entirety and revised to state: "A written acknowledgment may be in any of 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 (3) An electronic acknowledgment using generally accepted means of authentication to confirm the identity of the person making the acknowledgment."</p> <p>Also, §9767.5.1(d) and (e)(5)(B) includes the addition</p>

MEDICAL PROVIDER NETWORKS	RULEMAKING COMMENTS 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
				of “website” authentication.
9767.19(a)(2)(E)	<p>Commenter opines that many times the injured worker fails to attend the scheduled appointment on the advice of their attorney. If on the advice of the attorney the injured worker fails to attend the appointment, commenter recommends that some sort of penalty should be assessed on the attorney, or at a very minimum for the entity to be able to charge back the cost of the MAA service for the appointment to be charged back to the applicant attorney who advised his/her client not to attend the meeting.</p>	<p>Margaret Wagner – CEO Signature Network PLUS, Inc. December 23, 2013 Written Comment</p>	<p>Reject: Beyond the scope of this rulemaking because these regulations cannot assess penalties against entities other than MPN Applicants.</p>	None.
9767.1(a)(12)	<p>Commenter recommends the following revised language:</p> <p>“Health care shortage” means a situation in a geographical area in which the number of physicians <del>in</del> <u>of</u> a particular <del>specialty</del> <u>specialty type</u> who are available and willing to treat injured workers under the California workers’ compensation system is insufficient to meet the Medical Provider Network access standards set forth in 9767.5(a) through (c) to ensure medical treatment is available and accessible at reasonable times. A lack of</p>	<p>Steven Suchil Assistant Vice President/Counsel American Insurance Association December 26, 2013 Written Comment</p>	<p>Reject: Disagree with commenter’s definition of “type” of physician. Labor Code §4616.3(d)(1) states, “Selection by the injured employee of a treating physician and any subsequent physicians shall be based on the physician’s <b>specialty</b> or recognized expertise in treating the particular injury or condition in question.” DWC’s interpretation of the</p>	None.

MEDICAL PROVIDER NETWORKS	RULEMAKING COMMENTS 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>physicians participating in an MPN does not constitute a health care shortage where a sufficient number of physicians <del>in</del> <u>of</u> that <del>specialty</del> <u>type</u> are available within the access standards and willing to treat injured workers under the California workers' compensation system.</p> <p>Commenter states that he two sentences in this paragraph appear to state the same thing. Further clarification may be needed.</p> <p>Commenter states that the word "specialty" should be replaced by "type" to be consistent with statutory terminology.</p>		word "type" is synonymous with "specialty". Therefore, the "types" of physicians listed in 3209.3 are listed by their specialties.	
9767.3(c)(2)	Commenter notes that Labor Code Section 4616 (a) states: "The provider network shall include an adequate number and type of physicians, as described in Section 3209.3, or other providers, as described in Section 3209.5, to treat common injuries experienced by injured employees based on the type of occupation or industry in which the employee is engaged, and the geographic area where the employees are employed."	Steven Suchil Assistant Vice President/Counsel American Insurance Association December 26, 2013 Written Comment	Reject: Disagree with commenter's definition of "type" of physician. As mentioned in above response, Labor Code §4616.3(d)(1) states, "Selection by the injured employee of a treating physician and any subsequent physicians shall be based on the physician's <b>specialty</b> or recognized expertise in treating the particular injury or condition in question."	None.

MEDICAL PROVIDER NETWORKS	RULEMAKING COMMENTS 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>The Labor Code addresses the most common injuries, not specialties. Further it mandates access to “type” of physician or provider as described, not specialty.</p> <p>Commenter opines that he is unclear why the provider codes/occupational titles are listed. No information is provided as to what the data will be used for, and it is not clear how the categories listed can be useful for any type of data collection. For example, the term “primary treating physician” is one of the categories, yet this could cover any of the others listed as well. “Primary care physician” might be a more useful category. Physical Medicine and Rehabilitation PMR - a specialty - is listed along with occupational medicine (OCCM) and occupational therapy medicine (OT), but it is unclear what these last two categories signify.</p>		<p>DWC’s interpretation of the word “type” is synonymous with “specialty”. Therefore, the “types” of physicians listed in 3209.3 are listed by their specialties.</p> <p>Reject: The provider codes will remain because these codes are necessary for geocoding purposes.</p>	None.
9767.5(a)	<p>Commenter recommends the following revised language:</p> <p>(a) A MPN must have <del>at least three</del> available physicians of each <del>specialty</del> <u>type</u> to treat common injuries experienced by injured employees</p>	<p>Steven Suchil Assistant Vice President/Counsel American Insurance Association December 26, 2013 Written Comment</p>	<p>Reject: Disagree with commenter’s definition of “type” of physician. As mentioned in above response,</p>	None.

MEDICAL PROVIDER NETWORKS	RULEMAKING COMMENTS 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>based on the type of occupation or industry in which the employee is engaged and within the access standards set forth in (1) and (2).</p> <p>(a)(1) An MPN must have <del>at least three</del> available primary treating physicians and a hospital for emergency health care services, or if separate from such hospital, a provider of all emergency health care services, within 30 minutes or 15 miles of each covered employee's residence or workplace.</p> <p>Commenter states that Labor Code Section 4616 (a)(1) does not mandate a specific number of physicians that an MPN must have available in a given area. That statute provides that there must be an adequate number and type of physicians. Commenter opines that it does not appear that DWC has the authority to mandate “at least three available physicians of each specialty.”</p>		<p>Labor Code §4616.3(d)(1) states, “Selection by the injured employee of a treating physician and any subsequent physicians shall be based on the physician’s <b>specialty</b> or recognized expertise in treating the particular injury or condition in question.” DWC’s interpretation of the word “type” is synonymous with “specialty”. Therefore, the “types” of physicians listed in 3209.3 are listed by their specialties.</p> <p>Reject: A minimum of three physicians in each specialty are needed to fulfill access standards because of Labor Code §4616.3 requirements that specifically describes an injured worker’s right to seek a second and third opinion from physicians in the MPN.</p>	None.
9767.5(f) and (g)	<p>Commenter recommends the following revised language:</p> <p>(f) For non-emergency services, the</p>	Steven Suchil Assistant Vice President/Counsel American Insurance	Reject: An injured worker who refuses to see an appropriate, available MPN physician will not be able to	None.

MEDICAL PROVIDER NETWORKS	RULEMAKING COMMENTS 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>MPN applicant shall ensure that an appointment for the first treatment visit under the MPN is <del>available</del> <u>offered</u> within 3 business days of a covered employee's notice to the employer or to an MPN medical access assistant that treatment is needed.</p> <p>(g) For non-emergency specialist services to treat common injuries experienced by the covered employees based on the type of occupation or industry in which the employee is engaged, the MPN applicant shall ensure that an initial appointment with a specialist in an appropriate referred specialty is <del>available</del> <u>offered</u> within 20 business days of a covered employee's reasonable requests for an appointment directly with a physician or through an MPN medical access assistant. If an MPN medical access assistant is unable to <del>schedule</del> <u>offer</u> a timely medical appointment with an appropriate specialist within five business days of an employee's request, <u>and the covered employee has cooperated with the mpn medical access assistant's efforts</u>, the employer shall permit the employee to obtain</p>	<p>Association December 26, 2013 Written Comment</p>	<p>seek control outside of the MPN. The commenter's recommended language will not be adopted.</p>	

MEDICAL PROVIDER NETWORKS	RULEMAKING COMMENTS 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>necessary treatment with an appropriate specialist outside of the MPN.</p> <p>Commenter states that in both subsections, changing “available” and “schedule” to “offered” will serve to clarify that an appointment was made and “offered” to the injured worker within the time frame. For subsection (g), the added language will provide that an employee must cooperate with the medical access assistant's appointment setting process. Commenter opines that the added language will help to prevent the possibility of the injured worker refusing the appointment in order to seek treatment outside the MPN.</p>			
9767.5(h)	<p>Commenter recommends the following revised language:</p> <p>(h) MPN medical access assistants shall be located in the United States and shall be available, at a minimum, from Monday through Saturday from 7 am to 8 pm, Pacific Time, to provide employee assistance with access to medical care under the MPN<sup>7</sup>. <del>The employee assistance shall be available in English and Spanish.</del> The assistance</p>	<p>Steven Suchil Assistant Vice President/Counsel American Insurance Association December 26, 2013 Written Comment</p>	<p>Reject: MPN medical access assistants are statutorily mandated to help an injured employee find an available MPN physician. In order to properly assist and respond to injured workers’ in California an MPN medical access assistant must be able to</p>	<p>None.</p>

MEDICAL PROVIDER NETWORKS	RULEMAKING COMMENTS 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>shall include but not be limited to contacting provider offices during regular business hours and scheduling medical appointments for covered employees.</p> <p>Commenter opines that it does not appear that there is statutory authority for mandating bilingual medical access assistants.</p>		<p>communicate either directly or through an interpreter with the injured worker.</p>	
9767.5(h)(2)	<p>Commenter recommends the following revised language:</p> <p>(h)(2) The MPN medical access assistants do not authorize treatment and have different duties than claims adjusters. The MPN medical access assistants are not to function as claims adjusters. However, the assistants shall work in coordination with the MPN Contact and the claims adjuster(s) to ensure timely <del>and appropriate</del> medical treatment is <del>provided</del> <u>initiated for</u> the injured worker.</p> <p>Commenter appreciates the modification made to distinguish the job duties of the claims adjuster from that of the medical access assistant, but additional work is necessary on</p>	<p>Steven Suchil Assistant Vice President/Counsel American Insurance Association December 26, 2013 Written Comment</p>	<p>Reject: The word “appropriate” is used because an MPN medical access assistant need not assist an injured worker in scheduling an appointment with an inappropriate MPN specialist. For example, if UR found it reasonable and necessary for an injured worker to see an orthopedist but the injured worker makes a request to the MPN medical access assistant to help schedule an appointment with a pain specialist.</p>	None.

MEDICAL PROVIDER NETWORKS	RULEMAKING COMMENTS 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>this sub-section. Commenter states that imposing the duty to determine “appropriate” treatment goes far beyond the statutory mandate to “contact physician’s offices and set up appointments” as found in Labor Code Section 4616 (a) (5). Commenter opines that the phrase “to ensure timely and appropriate medical treatment is provided to the injured worker” could be read to mean that some on-going responsibility to monitor the medical care being provided.</p>			
9767.5.1(a)	<p>Commenter recommends the following revised language:</p> <p>a) Each physician in an MPN, unless the physician is a shareholder, partner, or employer of a medical group that elects to be part of the MPN, shall <del>have</del> <u>provide</u> a written acknowledgment that the physician elects to participate in a California workers’ compensation medical provider network.</p> <p>Commenter states that the word “have” indicates that the physician retains the acknowledgement. The acknowledgment should be provided</p>	<p>Steven Suchil Assistant Vice President/Counsel American Insurance Association December 26, 2013 Written Comment</p>	<p>Note: The organizational structure of §9767.5.1 has been rearranged in its entirety for brevity and clarity to make it easier to follow.</p> <p>Accept in part. Reject in part. Accept: The word “have” will be deleted. Reject: Instead of “provide” the word “obtain” will replace “have”.</p>	<p>§9767.5.1(a) is revised to delete “have” and replace it with “obtain”.</p>

MEDICAL PROVIDER NETWORKS	RULEMAKING COMMENTS 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	or submitted to the MPN.			
9767.12(e)(2)(A)	<p>Commenter recommends the following revised language:</p> <p>(e)(2)(A) "...A toll-free number must also be listed for MPN Medical Access Assistants, with a description of the access assistance they provide, including finding available physicians and scheduling <del>and confirming</del> physician appointments, and the times they are available to assist workers with obtaining access to medical treatment under the MPN;"</p> <p>Commenter states it does not appear that there is statutory authority for the addition of confirming appointments to the tasks of Medical Access Assistants.</p>	<p>Steven Suchil Assistant Vice President/Counsel American Insurance Association December 26, 2013 Written Comment</p>	<p>Reject: Requiring an MPN medical access assistant to assist in scheduling appointment with MPN physicians and confirming that the appointment is set is consistent with the mandates of Labor Code §4616(a)(5) because an appointment should not be considered scheduled unless it is confirmed.</p>	None.
9767.17(a)(2)	<p>Commenter opines that this definition for systematic failure - more than 1 occasion in at least 2 locations - has a very low threshold. Commenter recommends that the DWC consider amendments based on more than a very few defects.</p>	<p>Steven Suchil Assistant Vice President/Counsel American Insurance Association December 26, 2013 Written Comment</p>	<p>Reject: Systematic failure of an MPN is sufficiently shown if access standards are not met on more than one occasion in at least two specific access locations within the MPN geographic service area and that in each instance an MPN failed to ensure that a worker received necessary medical treating within the MPN or</p>	None.

MEDICAL PROVIDER NETWORKS	RULEMAKING COMMENTS 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
			failed to authorize treatment outside of the MPN within the required time frames and access standards. Requiring more is overkill.	
9767.16(a)	<p>Commenter references that this section provides that “Any Person” can file a complaint. Commenter opines that, being absurd, it could possibly be filed by a homeless person with no direct or indirect contact with the MPN and its associated employer. Commenter recommends incorporating language that would limit the “person” to someone with a direct interest in the program, i.e. the insured employee or his/her attorney on their behalf. Commenter opines that without this clarification he can envision applicant attorneys filing specious complaints thereby causing havoc and taking away the time necessary for the MPN to do the job it has been created for.</p>	<p>Stuart J. Baron, Esq. President Stuart Baron &amp; Associates December 23, 2013 Written Comment</p>	<p>Labor Code §4616(b)(5) specifically uses the phrase “any person” and is adopted in these regulations.</p>	None.
9767.5.1	<p>Comment states that this section addresses the physicians’ acknowledgment of being in the MPN and it describes different ways a physician or medical group can “acknowledge” but he notes that there is no form proposed by the Division.</p>	<p>Tim Madden Randlett Nelson Madden December 19, 2013 Written Comment</p>	<p>Reject: The Physician Acknowledgment requirements of Labor Code §4616(a)(3) are straight forward. A physician merely needs to affirmatively elect to be a member of a MPN. Therefore, a DWC form</p>	None.

MEDICAL PROVIDER NETWORKS	RULEMAKING COMMENTS 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>Commenter recommends that the DWC create a form for this purpose.</p>		<p>is unnecessary.</p>	
<p>9767.3(c)(3)</p>	<p>Commenter would like to know if this section implies that the ancillary service provider will have to give the names of certified interpreters ONLY? If so, how will this be regulated, to insure that the provider is in fact providing an interpreter with a valid California State certification or a valid certification from the approved testing entities like NBCMI or CCHI? What does the DWC mean by “Valid license number” and what is it exactly? Commenter opines that pursuant to this subsection carries will be allowed to list anyone and everyone that DOES NOT provide service in California, to just give a bogus California address to satisfy the regulation. Commenter wonders if the MPN/LPN's are going to have a minimum number of certified interpreters in the MPN for each language based on geographical area?</p> <p>Commenter opines that while MPN’s may work for doctors it will not work for interpreters. Commenter states that the DWC has forgotten that there is still a shortage of interpreters; it will</p>	<p>Veronica S. Perez Nunez &amp; Barrera Interpreters December 23, 2013 Written Comment</p>	<p>Reject in part. Accept in part. Reject. The reference to “interpreter services” is a clarification of an existing right of an MPN to provide necessary ancillary services to effectuate Labor Code 4616 and 4600.</p> <p>Reject. DWC is authorized to make the proposed changes to the MPN regulations that would expressly authorize interpreters to be included in an MPN as ancillary service providers (8 CCR §§ 9767.1 &amp; 9767.3) because Labor Code section 4616 states that an MPN may be established “for the provision of medical treatment to injured workers,” and section 4600 describes medical treatment expansively to include all reasonably required services, not limited to physicians. In <u>Guitron v. Santa Fe Extruders</u> (2011) 76 Cal. Comp. Cases 228, the WCAB <i>en banc</i> interpreted</p>	<p>None.</p> <p>None.</p>

MEDICAL PROVIDER NETWORKS	RULEMAKING COMMENTS 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>be a long time before newly certified interpreters will catch up, if ever to the demand. Commenter opines that to date, the division has not addressed how a Certified Interpreter and/or an in State Language Service Provider can apply for these MPNS.</p> <p>Commenter states that the DWC has left the application task up to the carrier, and as history has shown they haven't done a very good job of it. Commenter opines that the DWC is acting beyond the scope of its powers. Commenter states that the DWC has failed to address exactly where in SB899 or SB863 that states interpreters are to be included in the MPN's. Commenter states that she has reviewed all of the Labor Codes and there is not ONE mention of interpreters having to be part of an MPN. Commenter states that the DWC has given the carriers with MPN's a choice to provide these services. Commenter opines that the DWC is a regulatory agency not a legislative body.</p>		<p>Section 4600 to include the right to an interpreter as part of medical treatment, and that judicial interpretation was codified in Section 4600(g).</p> <p>Accept: DWC agrees that clarification is needed for the word "certification." The regulatory text will be revised to clarify this meaning as it relates to interpreter services.</p>	<p>§9767.3(c)(3) is revised to state "if interpreter services are included as an MPN ancillary service, the interpreters listed must be certified pursuant to section 9795.1.6(a)(2)(A) and (B)."</p>
9767.1(a)(12)	<p>Commenter notes that the health care shortage definition has been expanded from the original concept to facilitate rural access to care to one that does</p>	<p>Robert Mortensen President</p> <p>Angie O'Connell</p>	<p>Reject in part. Accept in part. Reject: §9767.1 is the section that provides definitions to terms used in this article. The</p>	<p>None.</p>

<b>MEDICAL PROVIDER NETWORKS</b>	<b>RULEMAKING COMMENTS 15 DAY COMMENT PERIOD</b>	<b>NAME OF PERSON/ AFFILIATION</b>	<b>RESPONSE</b>	<b>ACTION</b>
	<p>not allow a healthcare shortage to be claimed when there is a non MPN physician in the community that is “willing to treat within the workers’ compensation system” with the intent to “ensure” medical treatment is available and accessible at reasonable times. Commenter states that provider appointment availability and willingness to treat injured workers’ is an ever changing dynamic that is complex and situational and is not necessarily a rural phenomenon today. Commenter has several issues with the interpretation of the definition as written which would require each MPN to: 1) track, monitor, report and have knowledge of appointment availability and willingness in every geographic service area at all times for not just in MPN providers but non MPN providers as well. Such real world knowledge of this type of information is technically beyond their means at this time. 2) If challenged on the standard there would be no way for each MPN to provide an evidence based defense as to the “willingness and availability” and any moment in time. And 3) the regulation also necessitates a continuous submission</p>	<p>Director of Account Management &amp; MPN Services Anthem Workers’ Compensation December 26, 2013 Written Comment</p>	<p>commenter’s recommendations are substantive issues that go beyond what is necessary to define this term and are not suited for this section. Accept: DWC agrees that the provider appointment availability and willingness to treat injured workers’ is an ever changing dynamic. Therefore, as commenter points out §9767.5(c) is the remedy to allow injured worker to treat outside the MPN. If this is allowed, the MPN is NOT in violation of access standards.</p>	

<b>MEDICAL PROVIDER NETWORKS</b>	<b>RULEMAKING COMMENTS 15 DAY COMMENT PERIOD</b>	<b>NAME OF PERSON/ AFFILIATION</b>	<b>RESPONSE</b>	<b>ACTION</b>
	<p>of modifications to the DWC for approval. Commenter opines that since provider willingness and availability is dynamic, every submission is out of date upon filing and non-compliant upon approval. The new regulations provide a remedy that this new definition is attempting to solve. Commenter recommends that Section 9767.5 (a) through (c) - Access Standards serve as the remedy and that the last sentence be stricken or only apply when an alternate standard is being proposed.</p>			
9767.19(a)	<p>Commenter states that the revised regulations appear to have attempted to address the penalty problem (a data error occurs in a source PPO) under this subsection -- a penalty multiplier effect that could occur when a source PPO Network is leased to several MPN applicants for their use as an MPN. Commenter opines that the issue with the revised regulations is the introduction of the term “same network.” Commenter states that many MPNs, by applicant and log number, could use the same network as a single provider data source, however with the introduction of the variability of physician choice there is</p>	<p>Robert Mortensen President</p> <p>Angie O’Connell Director of Account Management &amp; MPN Services Anthem Workers’ Compensation December 26, 2013 Written Comment</p>	<p>Reject: Unnecessary because the term “same network” means the underlying source network of the MPN. The purpose of §9767.19(a) is to prevent the assessment of penalties if a violation is found in one MPN that affects multiple MPNs. Multiple penalties will not be assessed against the MPN applicant, provided that the violation is remedied for all affected MPNs within a reasonable time period.</p>	None.

MEDICAL PROVIDER NETWORKS	RULEMAKING COMMENTS 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	no such entity as a “same network” -- all source PPOs will be unique variations and instances of a source PPO. Commenter opines that if the term “same network” is replaced with a concept of source data this would resolve this concern.			
9767.19(a)(2)(E) and (F)	<p>Commenter notes that the current penalty model for Medical Access Assistants failure to ensure a timely appointment is \$500 for each occurrence. Commenter’s analysis (which is consistent with the DWC’s own study) shows that while 15% of appointments are not scheduled in the required time frames for numerous reasons, approximately 2% to 3% of all appointments historically have not been able to be scheduled within the prescribed time frames. Commenter opines that based on her company’s estimates of the systemic penalty liability this could amount to over \$100M annually. Commenter states that a failure to meet the standard is not necessarily within the control of the Medical Access Assistant. Commenter recommends that the penalty not be ascribed to an appointment outcome but the MPN applicant’s failure to comply with the</p>	<p>Robert Mortensen President</p> <p>Angie O’Connell Director of Account Management &amp; MPN Services Anthem Workers’ Compensation December 26, 2013 Written Comment</p>	<p>Agree: The regulatory text of §§9767.19(a)(2)(E) and (F) will be revised so that the that the penalty not be ascribed to an appointment outcome but the MPN applicant’s failure to comply with the new requirement of a controllable factor to allow the injured worker to seek treatment outside the MPN when an appointment is not available within the access standards Section 9767.5 (a) through (c).</p>	<p>§9767.19(a)(2)(E) is re-lettered to (D) and is revised to delete the regulatory text and re-phrased to state “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, \$500 for each</p>

<b>MEDICAL PROVIDER NETWORKS</b>	<b>RULEMAKING COMMENTS 15 DAY COMMENT PERIOD</b>	<b>NAME OF PERSON/ AFFILIATION</b>	<b>RESPONSE</b>	<b>ACTION</b>
	<p>new requirement of a controllable factor to allow the injured worker to seek treatment outside the MPN when an appointment is not available within the access standards Section 9767.5 (a) through (c). Commenter opines that if this penalty model is not changed we do not envision service companies being willing to provide this service due to the onerous penalty burdens.</p>			<p>occurrence.”</p> <p>§9767.19(a)(2)(F) is re-lettered to (E) and is revised to delete the regulatory text and re-phrased to state, “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 receipt of the request,</p>

MEDICAL PROVIDER NETWORKS	RULEMAKING COMMENTS 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
				\$500 for each occurrence.”
9767.5.1(d)	<p>Commenter states that the new regulations introduce a requirement to provide the physician with greater MPN participation transparency and provider MPN participation choice. Commenter supports greater transparency and provider choice of MPN participation. For many source PPOs, the PPO Network has an existing written agreement with a provider which includes; an original signature or electronic signature at the time of original contract, amendment or renewal, the provider’s expressed agreement to treat injured workers’/workers compensation patients, agreement to leased contract arrangements and an agreement for use in MPNs. Commenter opines that the new requirement of the separate written acknowledgment required for both the individual practitioners and group based physicians by MPNs will create the unintended consequence of the contraction of service areas, limit injured worker provider choice and create access to care complications. In addition, it will delay and or prevent new filings for MPN’s if affirmations</p>	<p>Robert Mortensen President</p> <p>Angie O’Connell Director of Account Management &amp; MPN Services Anthem Workers’ Compensation December 26, 2013 Written Comment</p>	<p>Note: The organizational structure of §9767.5.1 has been rearranged in its entirety for brevity and clarity to make it easier to follow.</p> <p>Reject: Labor Code §4616(a)(3) mandates Physician Acknowledgments. DWC is aware of the potential burdens to fulfill the Physician Acknowledgment provisions of the Labor Code. Therefore, the regulatory text will be revised to allow for more efficient means of obtaining these acknowledgments i.e. electronic means and web based portals that will allow physicians to view a list and to de-select any MPN.</p>	<p>§9767.5.1(c) is deleted in its entirety and revised to state: “A written acknowledgment may be in any of 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 (3) An electronic acknowledgment using generally accepted means of authentication to confirm the identity of the person making the acknowledgment.”</p>

MEDICAL PROVIDER NETWORKS	RULEMAKING COMMENTS 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>are required to identify the providers willing to participate and be included on the list. If one goal is to avoid a health care shortage the regulation will actually facilitate it. Commenter acknowledges there are some physicians that have signed agreements to provide workers' compensation services who want to selectively participate or opt all together from MPNs but that the vast majority of physicians have not expressed this concern. Given there are over 50K physicians in California that participate to some degree in the delivery of care to injured workers, and given there are over 2,000 MPNs, the cost, the effort, commenter opines that the administrative burden on providers and groups, and the penalty liability form MPN applicants make the "opt in" approach highly administratively burdensome and impossible to fully comply with except by wholesale elimination of thousands of providers from the MPN that neglect to comply. Commenter states that this regulation is attempting to solve a problem for a small population of providers while adversely impacting the many.</p>			<p>Also, §9767.5.1(d) and (e)(5)(B) includes the addition of "website" authentication that allows a physician to opt-out of an MPN.</p>

MEDICAL PROVIDER NETWORKS	RULEMAKING COMMENTS 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>Commenter recommends that an alternative approach which allows individual and group based providers to selectively “opt out” of MPNs be allowed as an alternative means of compliance. In the “opt out” alternative provider participation transparency and provider choice are still facilitated but with much less administrative burden on the provider whose does not consider this new right a priority. In the opt out alternative there will be no across the board removal of tens of thousands of providers for their lack of compliance. Injured workers access to care and greater physician choice will be sustained and the unintended consequence of a real health care shortage for penalty avoidance and compliance will be avoided on 7/1/2015. Commenter opines that if this remains a requirement, that the penalty be on the provider for non-compliance, not the MPN Applicant.</p>			
General Comment	<p>Commenter opines that the revised regulations still does not answer accessibility issues. Commenter states that the MPN may not be approved if there's insufficient number of providers within every specialty</p>	<p>Michael Bazel, MD December 24, 2013 Written Comment</p>	<p>Reject: Commenter’s recommendation that an MPN cannot be approved if there’s an insufficient number of providers within every specialty is impractical given</p>	<p>None.</p>

MEDICAL PROVIDER NETWORKS	RULEMAKING COMMENTS 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>offered by the network. For example, the basic standard is 3 providers per specialty must be provided. This would allow 2nd and 3rd opinion, required by the rules. The MPN applicant must prove that all the willing physicians are admitted into network before they can claim area accessibility problem. Commenter states that insurance companies use area accessibility as an excuse to deny care. Commenter states that the patient walks into non-MPN willing physician because, there's no one available within his geographical area and that the insurance company still denies care since the doctor is outside of MPN. Commenter opines that there are plenty of willing physicians anywhere in CA, who are more than capable to take care of injured worker.</p>		<p>the §9767.5(c). In order for an MPN to be approved for an alternative access standard, it must prove its case to DWC. A geographic area may be deemed to have a health care shortage, only after it is confirmed by DWC.</p>	
9767.1	<p>Commenter notes that the group practice description is taken out and he hopes this is not intentional. Commenter opines that a group medical practice is the only way to efficiently take care of the injured worker. If the carrier lists the group in their directory, it must be accepted that any physician within the group is</p>	<p>Michael Bazel, MD December 24, 2013 Written Comment</p>	<p>Reject: under Labor Code §4616.3(d)(1) the injured worker has the right to select a physician based on the physician's specialty or recognized expertise. If a medical group is permitted to list the group name instead of the physician's in the group,</p>	<p>None.</p>

MEDICAL PROVIDER NETWORKS	RULEMAKING COMMENTS 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	on MPN.		then the mandates of Labor Code §4616.3(d)(1) will not be fulfilled.	
<b>Not sure how it cite.</b>	Commenter opines that the MPN physician should be able to delegate care to another physician even if that physician is not within the MPN as long as supervision is provided. This would allow a wider access to patient's without overwhelming physician who is listed within the MPN.	Michael Bazel, MD December 24, 2013 Written Comment	Reject: under Labor Code §4616.3(d)(1) the injured worker has the right to select a physician based on the physician's specialty or recognized expertise. If an MPN physician is permitted delegate care to another physician not within the MPN, then the mandates of Labor Code §4616.3(d)(1) will not be fulfilled.	None.
<b>Not sure how it cite.</b>	Commenter states that the MPN applicant must have a specific grievance process prior to termination of the provider. Commenter opines that this should start with an internal process, but if unsuccessful to resolve issues, must pass to an independent entity, which is to decide the outcome of the contract. Commenter states that at the end of each piece of workers' compensation legislation, there's always an injured worker and that his/her relationship with his/her treating physician is so much more important than any written guidelines. Commenter opines that Guidelines are	Michael Bazel, MD December 24, 2013 Written Comment	Reject: Goes beyond the subject of this rulemaking. Labor Code §4616(d) states, "In developing a medical provider network, an employer or insurer shall have the exclusive right to determine the members of their network."	None.

MEDICAL PROVIDER NETWORKS	RULEMAKING COMMENTS 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>exactly what they are meant to be, GUIDELINES. Commenter states that only the treating physician, the person who actually examined the patient, understands what is appropriate for the patient. Commenter opines that an adjuster or even a physician who sits many miles away and never examines the patient should not be the ultimate decision makers.</p>			
9767.1(a)(12)	<p>Commenter cites Labor Code sections 4616(a)(1), 4616(a)(2), 4616(b)(3) and 4616(c) that refer to access requirements for MPN's. Commenter opines that the Division has exceeded its authority by expanding these access requirements with this subsection.</p> <p>Commenter notes that "health care shortage" is defined in this section to refer to a geographic area. The proposed geocoding provisions would appear to narrow that definition to zip codes. Rather than address this on an MPN Applicant by MPN Applicant basis, commenter recommends that the Division rely on existing work by other agencies to identify "health care shortage" areas and publish those so there is a common understanding of</p>	<p>Mark E. Webb Vice President &amp; General Counsel PacificComp Insurance Company December 26, 2013 Written Comment</p>	<p>Reject: The California Healthcare Workforce Policy Commission's designation of health care shortage areas has no relation to whether or not physicians are willing to treat injured employees under the California worker's compensation system. In addition, their definition of primary care physician does not comport with the California workers'</p>	<p>None.</p>

MEDICAL PROVIDER NETWORKS	RULEMAKING COMMENTS 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>where there truly is a shortage?<sup>1</sup>  Committer opines that the fact that there may be a shortage in one zip code doesn't mean that the MPN Applicant cannot meet its access requirements under 8 CCR § 9767.5.</p> <p>Committer states that the guidance from Labor Code § 4616 is that it is centered on address of employment, not zip code. Labor Code § 4616(a)(2) specifically identifies access in rural areas, "...in which health facilities are located at least 30 miles apart and areas in which there is a health care shortage."</p> <p>Committer states that proposed regulations would generate considerable data by zip code<sup>2</sup>. At some point in time – and with appropriate authorization from the Legislature – this data could be of great use to injured workers. If the Division wants to create the equivalent of the Office of Statewide Health</p>		<p>compensation system which allows other specialties to be primary treating physicians (i.e. chiropractors, acupuncturists, podiatrists, etc.). Therefore, the data will be inaccurate for our purposes.</p> <p>Reject: The commenter's recommendation that the geocoding results should be "covered employees place of employment" makes it much more difficult to run geocoding software. Street names have multiple variations (i.e. North Main Street versus Main Street versus Main Avenue). The proposed regulatory language uses the "center of a zip code" not to allow MPNs to provide access based on the center of the geographic zip code, but rather to run geocoding sweeps at the centroid of a land parcel.</p>	None.

<sup>1</sup> See: <http://gis.oshpd.ca.gov/atlas/topics/shortage/pcsa>

<sup>2</sup> This is not to suggest that data generated by zip-centroid geocoding would not be useful for a variety of studies, including epidemiological studies, but rather than for purposes of Labor Code § 4616(c) this is not a useful, or even relevant, tool.

MEDICAL PROVIDER NETWORKS	RULEMAKING COMMENTS 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>Planning &amp; Development’s Healthcare Atlas (OSHPD) (<a href="http://gis.oshpd.ca.gov/atlas">http://gis.oshpd.ca.gov/atlas</a>) then it should fully consider the costs and benefits of that and bring forth a proposal to the community. In the meantime, geocoding as contemplated in Labor Code § 4616(c) is a <i>compliance</i> tool. Commenter opines that implementing regulations should facilitate that objective rather than make it even more unclear.</p> <p>Commenter recommends that the proposed language be deleted and that, as an interim measure, the Division simply state the MPN Applicants shall submit in an Microsoft® Excel format compliance with the access requirements of 8 CCR § 9767.5 using a commercial or proprietary geocoding program that identifies providers within the MPN geographic service area within the appropriate time and distance from a covered employee’s place of employment.</p>		<p>In either case, access standards will not be precisely determined because the unknown variable of an injured employee’s address is not considered. Requiring the address of every employee covered by an MPN is overly burdensome and impractical.</p>	
9767.1(a)(25)	<p>Commenter cites Labor Code sections 4616(a)(1), 4616(a)(2), 4616(b)(3) and 4616(c) that refer to access requirements for MPN’s. Commenter opines that the Division has exceeded</p>	<p>Mark E. Webb Vice President &amp; General Counsel PacificComp Insurance Company</p>	<p>Reject: Goes beyond the scope of this comment period because the definition for “Regional area listing” was not changed since the 45-day</p>	<p>None.</p>

MEDICAL PROVIDER NETWORKS	RULEMAKING COMMENTS 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	its authority by expanding these access requirements with this subsection.	December 26, 2013 Written Comment	comment period.	
9767.3(d)(8)(H)	Commenter cites Labor Code sections 4616(a)(1), 4616(a)(2), 4616(b)(3) and 4616(c) that refer to access requirements for MPN's. Commenter opines that the Division has exceeded its authority by expanding these access requirements with this subsection.	Mark E. Webb Vice President & General Counsel PacificComp Insurance Company December 26, 2013 Written Comment	Reject: The proposed regulatory language uses the "center of a zip code" not to allow MPNs to provide access based on the center of the geographic zip code, but rather to run geocoding sweeps at the centroid of a land parcel. In either case, access standards will not be precisely determined because the unknown variable of an injured employee's address is not considered. Requiring the address of every employee covered by an MPN is overly burdensome and impractical.	None.
9767.3(d)(8)(I)	Commenter cites Labor Code sections 4616(a)(1), 4616(a)(2), 4616(b)(3) and 4616(c) that refer to access requirements for MPN's. Commenter opines that the Division has exceeded its authority by expanding these access requirements with this subsection.	Mark E. Webb Vice President & General Counsel PacificComp Insurance Company December 26, 2013 Written Comment	Reject: Other than "the ancillary services will be available at reasonable times and within a reasonable geographic area to covered employees" no access standards were expressed in these regulations for ancillary service providers.	None.
97967.3(d)(8)(L)	Commenter cites Labor Code sections 4616(a)(1), 4616(a)(2), 4616(b)(3) and 4616(c) that refer to access	Mark E. Webb Vice President & General Counsel	Reject: A minimum of three available physicians are needed to fulfill access	None.

MEDICAL PROVIDER NETWORKS	RULEMAKING COMMENTS 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	requirements for MPN's. Commenter opines that the Division has exceeded its authority by expanding these access requirements with this subsection.	PacificComp Insurance Company December 26, 2013 Written Comment	standards because of Labor Code §4616.3 requirements that specifically describes an injured worker's right to seek a second and third opinion from physicians in the MPN. DWC acknowledges the examples provided by commenter, but a minimum standard that allows some choice by the injured worker is necessary.	
9767.3(d)(8)(Q)	<p>Commenter cites Labor Code sections 4616(a)(1), 4616(a)(2), 4616(b)(3) and 4616(c) that refer to access requirements for MPN's. Commenter opines that the Division has exceeded its authority by expanding these access requirements with this subsection.</p> <p>Commenter opines that while this is not the subject of discourse during this rulemaking proceeding, this language, directly from Labor Code section 4616(c) may become an issue of dispute if an MPN applicant decides to discount below fee schedule in specialty services. Commenter recommends that the Division consider expressly providing a safe harbor for fee schedule rates when determining whether an MPN</p>	Mark E. Webb Vice President & General Counsel PacificComp Insurance Company December 26, 2013 Written Comment	Reject: Goes beyond the scope of this comment period because no changes were made to §9767.3(d)(8)(Q) since the 45-day comment period.	None.

MEDICAL PROVIDER NETWORKS	RULEMAKING COMMENTS 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	applicant has met the requirements of this section.			
9767.5	<p>Commenter cites Labor Code sections 4616(a)(1), 4616(a)(2), 4616(b)(3) and 4616(c) that refer to access requirements for MPN's. Commenter opines that the Division has exceeded its authority by expanding these access requirements.</p> <p>Commenter states that the provisions of Labor Code § 4616 are reasonable clear that the purpose of the geocoding requirement – a requirement that will not find itself in the provisions of the Health &amp; Safety Code or the Insurance Code – is to create documentation that access requirements are being met. That requires two basic elements – the physical location of the employer and the physical location of the physician. Any yet, the Division proposes the following:</p> <p>“The geocoding results shall include the following separate files: 1) a complete list of all zip codes within the MPN geographic service area; 2) a narrative and/or graphic report that establishes</p>	Mark E. Webb Vice President & General Counsel PacificComp Insurance Company December 26, 2013 Written Comment	Reject: No, that is not DWC's intent. The proposed regulatory language uses the “center of a zip code” not to allow MPNs to provide access based on the center of the geographic zip code, but rather to run geocoding sweeps at the centroid of a land parcel. The commenter recommends that the geocoding results should be based on the geographic area “where employees are employed”. However, pursuant to §9767.5, access standards can be based on either an injured covered employee's “ <u>residence or workplace.</u> ” Determining access standards from either an injured covered employee's residence or workplace address is the current regulatory standard that is in effect and will not be altered by these proposed regulations. With the passage of SB 863, Labor Code § 4616(b)(3) now requires MPN's submit	None.

MEDICAL PROVIDER NETWORKS	RULEMAKING COMMENTS 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>that 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 and/or graphic report that establishes that 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 and/or graphic report that establishes that there are at least three available specialists to provide occupational health services in each listed specialty 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 in which there is a health care shortage and where the access standards are not met for each specialty and an explanation of how</p>		<p>geocoding of its network for reapproval “to establish that the number and geographic location of physicians in the network meets the required access standard.” Unfortunately, requiring MPNs provide the residential addresses of all of its injured covered employees and the employers’ addresses of all of its injured covered employees is overly burdensome and virtually impossible to submit because this data is constantly changing. The proposed regulatory language uses the “center of a zip code” not to allow MPNs to provide access based on the center of the geographic zip code, but rather to run geocoding sweeps at the centroid of a land parcel. Running geocoding sweeps from a zip code is relatively stable because the areas covered by a zip code remain unchanged for prolonged periods of time. In addition, a zip code would not be subject to multiple variations that</p>	

MEDICAL PROVIDER NETWORKS	RULEMAKING COMMENTS 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>medical treatment will be provided in those areas not meeting the access standards; 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.”</p> <p>Commenter questions if it is the Division’s intent that the provisions of 8 CCR § 9767.5 requiring time and distance from place of employment for access to primary and specialty care to be met by the seemingly new access requirement of “at least three available primary treating physicians within the fifteen-mile access standard from the center of each zip code”?</p> <p>Commenter opines that if this is the Division’s intention, then it should clearly state that. This would require an amendment to 8 CCR § 9767.5.</p> <p>Commenter questions the point of having a geocoding requirement attached to any geographic</p>		<p>street names are subject to. For example, North Main Street versus Main Street versus Main Avenue. Therefore, DWC can run geocoding sweeps from the center of a zip code to get a map of the geographic areas covered by the MPN physicians. Once an address of an injured covered worker or the injured covered worker’s employer’s address is obtained, access standards can be verified.</p>	

MEDICAL PROVIDER NETWORKS	RULEMAKING COMMENTS 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>subdivision, whether zip code, legislative district, county, or other boundary? Commenter references the discussion of zip-centroid geocoding in the following document prepared by the Department of Health Services:</p> <p><a href="http://www.dhcs.ca.gov/dataandstats/statistics/Documents/4_1_Medi_Cal_population_by_Senate_District_2010.xls">http://www.dhcs.ca.gov/dataandstats/statistics/Documents/4_1_Medi_Cal_population_by_Senate_District_2010.xls</a></p> <p>Commenter states that the Department notes, the least accurate geocoding comes from using just zip code. Zip + 4 centroid coding is more accurate, but neither is superior to actual physical address. In the case of MPNs, that physical address is that of the employer.</p>			
9767.5 and 9767.17	<p>Commenter opines that the discussion of access requirements and the issues surrounding geocoding are relevant to the question of the scope of the action contemplated in Labor Code § 4616(b)(5). Commenter states that the proposed regulations, 8 CCR § 9767.17, continue the lack of clarity created by apparently having one set of access requirements for geocoding and another for compliance with the</p>	<p>Mark E. Webb Vice President &amp; General Counsel PacificComp Insurance Company December 26, 2013 Written Comment</p>	<p>Reject: See previous response.</p> <p>Reject: The penalty regulations follow the statutory language of establishing a schedule of administrative penalties not to exceed five thousand dollars (\$5,000) per violation.</p>	<p>None.</p> <p>None.</p>

<b>MEDICAL PROVIDER NETWORKS</b>	<b>RULEMAKING COMMENTS 15 DAY COMMENT PERIOD</b>	<b>NAME OF PERSON/ AFFILIATION</b>	<b>RESPONSE</b>	<b>ACTION</b>
	<p>MPN access standards in 8 CCR § 9767.5. Commenter opines that this is not a significant problem when contrasted with the gross expansion by the Appeals Board of the statutes to encompass a private cause of action to enforce administrative penalties.</p> <p>Commenters states to not take solace in the fact that such penalties are not recoverable under Labor Code § 2699(m).</p> <p>Code of Civil Procedure § 1021.5 states:</p> <p>“Upon motion, a court may award attorneys' fees to a successful party against one or more opposing parties in any action which has resulted in the enforcement of an important right affecting the public interest if: (a) a significant benefit, whether pecuniary or nonpecuniary, has been conferred on the general public or a large class of persons, (b) the necessity and financial burden of private enforcement, or of</p>			

MEDICAL PROVIDER NETWORKS	RULEMAKING COMMENTS 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>enforcement by one public entity against another public entity, are such as to make the award appropriate, and (c) such fees should not in the interest of justice be paid out of the recovery, if any. With respect to actions involving public entities, this section applies to allowances against, but not in favor of, public entities, and no claim shall be required to be filed therefor, unless one or more successful parties and one or more opposing parties are public entities, in which case no claim shall be required to be filed therefor under Part 3 (commencing with Section 900) of Division 3.6 of Title 1 of the Government Code.”</p> <p>Commenter states that the significant benefit noted in the statute, “...need not represent a 'tangible' asset or a 'concrete' gain but, in some cases, may be recognized simply from the effectuation of a fundamental constitutional or statutory policy.”</p> <p><u>Environmental Protection Information</u></p>			

MEDICAL PROVIDER NETWORKS	RULEMAKING COMMENTS 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p><u>Center v. California Dept. of Forestry and Fire Protection</u> (2010), 190 Cal.App.4th 217 (citations omitted). It can hardly be disputed that the many and various methods by which claims administrators may be subject to administrative penalties, including regulations governing the use of MPNs, do not effectuate a fundamental statutory policy.</p> <p>Commenter opines that there will be various arguments as to why this code section doesn't apply to proceedings under the workers' compensation system. Whether those will prevail remains to be seen. It is important to note, however, that the Legislature has granted any person – not just a person aggrieved – standing to assume the role of the Administrative Director and seek to impose penalties. It is hard to call this anything other than a private attorney general provision and, correspondingly, that attorneys fees cannot be awarded as would be applicable under any other provision of state law when a private citizen seeks to enforce statutory provisions that should arguably have been enforced by a governmental agency.</p>			

<b>MEDICAL PROVIDER NETWORKS</b>	<b>RULEMAKING COMMENTS 15 DAY COMMENT PERIOD</b>	<b>NAME OF PERSON/ AFFILIATION</b>	<b>RESPONSE</b>	<b>ACTION</b>
	<p>Commenter states the problem exists for this concept in its entirety, he opines that the real problem is the expansion, contrary to statute, by the Appeals Board to include the collection of administrative penalties. Commenter states that there is no justification for this. Commenter opines that the Department of Industrial Relations must reconcile these provisions and recognize that the Legislature did not, either expressly or impliedly, give license to the WCAB to expand the scope of actions under Labor Code § 4616(b)(5).</p>			