

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

INITIAL STATEMENT OF REASONS

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

**TITLE 8, CALIFORNIA CODE OF REGULATIONS
SECTIONS 9767.1 – 9767.14**

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| Section 9767.1 | Medical Provider Networks - Definitions |
| Section 9767.2 | Review of Medical Provider Network Application |
| Section 9767.3 | Application for a Medical Provider Network Plan |
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| Section 9767.5 | Access Standards |
| Section 9767.6 | Treatment and Change of Physicians Within MPN |
| Section 9767.7 | Second and Third Opinions |
| Section 9767.8 | Modification of Medical Provider Network Plan |
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| Section 9767.10 | Continuity of Care Policy |
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| Section 9767.13 | Denial of Approval of Application and Reconsideration |
| Section 9767.14 | Suspension or Revocation of Medical Provider Network Plan; Hearing |

BACKGROUND TO REGULATORY PROCEEDING

In response to the State's widely-acknowledged workers' compensation crisis, the Legislature passed Senate Bill 899 (Chapter 34, stats. of 2004, effective April 19, 2004). Senate Bill 899 included several provisions designated to control workers' compensation costs including Labor Code section 4616 et seq. which provides for the implementation of medical provider networks. These regulations set forth the requirements for a medical provider network, the application process, the second and third opinion process, the procedure to modify a medical provider network, the process to transfer ongoing care into the medical provider network, the employer notification requirements, and the procedures concerning the denial of a medical provider network plan or the suspension or revocation of a medical provider network plan.

TECHNICAL, THEORETICAL, OR EMPIRICAL STUDIES, REPORTS, OR DOCUMENTS

The Division relied upon:

(1) The Commission on Health and Safety and Workers' Compensation, Workers' Compensation Medical Care in California: Costs, Fact Sheet Number 2, August 2003: http://www.dir.ca.gov/chswc/WC_factSheets/WorkersCompFSCost.pdf); and

(2) Outline: Estimating the Range of Savings from Introduction of Guidelines Including ACOEM (Revised), Frank Neuhauser, UC DATA/Survey Research Center, University of California, Berkeley, October 20, 2003: <http://www.dir.ca.gov/chswc/EstimatingRangeSavingsGuidelinesACOEM.doc>).

(3) Consultation letter from Warren Barnes of Department of Managed Health Care dated September 29, 2004.

SPECIFIC TECHNOLOGIES OR EQUIPMENT

None of the proposed regulations mandates the use of specific technologies or equipment.

FACTS ON WHICH THE AGENCY RELIES IN SUPPORT OF ITS INITIAL DETERMINATION THAT THE REGULATIONS WILL NOT HAVE A SIGNIFICANT ADVERSE IMPACT ON BUSINESS

The Division made an initial determination that these regulations will not have a significant adverse effect on business. The regulations are expected to result in a savings for the self-insured employers and insurers. The self-insured employers and insurers are not required to provide a medical provider network, but may choose to as the medical provider networks are intended to reduce medical costs. The administrative cost of setting up the medical provider network and adopting new forms and procedures to follow these regulations is minimal and offset the substantial savings in medical treatment.

Section 9767.1 Medical Provider Networks - Definitions

Specific Purpose of Section 9767.1:

Section 9767.1 lists and defines the terms used in these regulations. The purpose of the definitions is to implement, interpret, and make specific Labor Code section 4616 et seq. and to ensure that the meanings of the terms are clearly understood by the regulated community.

Necessity:

It is necessary to define each of the key terms used in the Medical Provider Network Regulations to ensure that the content and meaning of the regulations are clearly understood by the regulated community.

Consideration of Alternatives:

No more effective alternative to any of the definitions, nor equally effective and less burdensome alternative, has been identified by the Administrative Director at this time.

Section 9767.2 Review of Medical Provider Networks Application

Specific Purpose of Section 9767.2:

The purpose of this section is to set forth the medical provider network (“MPN”) application approval process. The Administrative Director shall approve a MPN application within 60 days of receipt of a complete application or the application shall be deemed approved. An approval number shall be assigned to the MPN plan. The section also provides that the Administrative Director shall provide notification to the MPN applicant setting forth the date the application was received and informing the MPN applicant if the application is not complete and the item(s) necessary to complete the application.

Necessity:

It is necessary to set forth the process regarding the approval of a MPN application to ensure that the approval process is understood by the regulated community.

Consideration of Alternatives:

No more effective alternative to this section, nor equally effective and less burdensome alternative, has been identified by the Administrative Director at this time.

Section 9767.3 Application for a Medical Provider Network Plan

Specific Purpose of Section 9767.3:

This purpose of this section is to set forth what information is required from the MPN applicant on the MPN application. There is a subdivision setting forth the requirements for a network that is not a Health Care Organization, Health Care Service Plan, Group Disability Insurance Policy, or Taft-Hartley Health and Welfare Fund; a subdivision setting forth the requirements for a network that is a Health Care Organization; and a subdivision setting forth the requirements for a network that is a Health Care Service Plan, Group Disability Insurance Policy, or Taft-Hartley Health and Welfare Fund. The MPN applicant may submit for approval one or more medical provider networks in its

application and shall submit one original and one copy of the Cover Page for Medical Provider Network Application and one original and one copy of the application to the Division of Workers' Compensation.

Necessity:

This section is necessary so that the regulated public knows what information it is required to provide when filing a MPN application.

Consideration of Alternatives:

No more effective alternative to this section, nor equally effective and less burdensome alternative, has been identified by the Administrative Director at this time.

Section 9767.4 Cover Page for Medical Provider Network Application

Specific Purpose of Section 9767.4:

The purpose of this section is to provide a copy of the mandatory form entitled "Cover Page for Medical Provider Network Application." This form, which requests information about the MPN applicant, the medical provider network, the liaison to the DWC, and an authorized signature, must be completed and submitted with the Medical Provider Network application to the Division of Workers' Compensation.

Necessity:

This section is necessary to ensure that the MPN applicant provides the appropriate identifying information, verification language, and signatures with the application materials. The mandatory form will ensure that the required information is provided and will streamline the DWC's approval process.

Consideration of Alternatives:

No more effective alternative to this section, nor equally effective and less burdensome alternative, has been identified by the Administrative Director at this time.

Section 9767.5 Access Standards

Specific Purpose of Section 9767.5:

This purpose of this section is to provide the access standards that must be complied with by the MPN. A MPN must have at least three physicians of each specialty expected to treat common injuries of the covered employees. A MPN must have a primary care physician 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. In addition, an MPN must have

providers of occupational health services and specialists within 60 minutes or 30 miles of a covered employee's residence or workplace.

However, if a MPN applicant believes that, given the facts and circumstances with regard to a portion of its service area, specifically rural areas including those in which health facilities are located at least 30 miles apart, the accessibility standards are unreasonably restrictive, 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 original plan application or in a notice of MPN plan modification. The alternative standards shall provide that all services shall be available and accessible at reasonable times to all covered employees.

The purpose of this section is to also ensure that the MPN applicant has a written policy for arranging or approving medical care if an employee is temporarily working or traveling for work outside of the service area when the need for medical care arises and a written policy to allow an injured employee to receive emergency medical treatment from a medical service or hospital provider who is not a member of the MPN.

For non-emergency services, the MPN applicant shall ensure that an appointment for initial treatment is available within 3 business days of the MPN applicant's receipt of a request for treatment within the MPN. 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 appointment is available within 20 business days of the MPN applicant's receipt of a referral to a specialist within the MPN.

Necessity:

It is necessary for the MPN to meet access standards in order to ensure that injured workers will receive medical treatment that is readily available at reasonable times as required by Labor Code section 4616(a)(2).

Consideration of Alternatives:

No more effective alternative to this section, nor equally effective and less burdensome alternative, has been identified by the Administrative Director at this time.

Section 9767.6 Treatment and Change of Physicians Within MPN

Specific Purpose of Section 9767.6:

The purpose of this section is to require the employer or insurer to arrange an initial medical evaluation with a MPN physician when the injured covered employee notifies the employer of the injury or files a claim for workers' compensation with the employer. Within one working day after an employee files a claim form under Labor Code section 5401, the employer or insurer must authorize the provision of all treatment, consistent with guidelines adopted by the Administrative Director pursuant to Labor Code section

5307.27 or, prior to the adoption of these guidelines, the American College of Occupational and Environmental Medicine's Occupational Medicine Practice Guidelines (ACOEM), and for all injuries not covered by the ACOEM guidelines or guidelines adopted by the Administrative Director, authorized treatment shall be in accordance with other evidence based medical treatment guidelines generally recognized by the national medical community and that are scientifically based. The employer or insurer shall authorize the treatment with MPN providers for the alleged injury and shall continue to provide the treatment until the date that liability for the claim is rejected. Until the date the claim is rejected, liability for the claim shall be limited to ten thousand dollars (\$10,000).

This section also provides that at any point in time after the initial medical evaluation with a MPN physician, the covered employee may select a physician of his or her choice from within the MPN. The insurer or employer shall notify the employee of his or her right to be treated by a physician of his or her choice within the MPN after the first visit with the MPN physician and the method by which the list of participating providers may be accessed by the employee.

Necessity:

This section is necessary to inform the employers and insurers of their duties to provide medical treatment and to inform covered injured employees of their right to receive medical treatment within the MPN.

Consideration of Alternatives:

No more effective alternative to this section, nor equally effective and less burdensome alternative, has been identified by the Administrative Director at this time.

Section 9767.7 Second and Third Opinions

Specific Purpose of Section 9767.7:

The purpose of this section is to set forth the process for obtaining second and third physician opinions if the covered employee disputes either the diagnosis or the treatment prescribed by the treating physician. During this process, the employee is required to continue his/her treatment with the treating physician or a physician of his or her choice within the MPN pursuant to section 9767.6.

The purpose of this section is also to set forth the second and third opinion physicians duties and to inform the injured worker of his or her right to file a request for an independent medical review if the injured covered employee disputes the diagnosis or treatment of the third opinion physician.

Necessity:

Because the covered injured employee who is treated within the MPN may dispute the treating physician's diagnosis or treatment, and because Labor Code section 4616.3 provides a right to a second and third opinion and a right to an independent medical review, it is necessary to set forth the procedure that the injured worker must follow in order to obtain a second or third opinion and an independent medical review. It is also necessary that the regulated public understand the second and third opinion physicians' duties.

Consideration of Alternatives:

No more effective alternative to this section, nor equally effective and less burdensome alternative, has been identified by the Administrative Director at this time.

Section 9767.8 Modification of Medical Provider Network Plan

Specific Purpose of Section 9767.8:

The purpose of this section is to set forth the procedure and requirements for a MPN applicant to modify its MPN plan. The types of modifications that require the insurer or employer to file a Notice of Modification of MPN Plan are (1) a change of 10% or more in the providers participating in the network; (2) a change of 25% or more in the number of covered employees; (3) a change in the continuity of care policy; (4) a change in policy or procedure that is used by the applicant to conduct "economic profiling of MPN providers" pursuant to Labor Code section 4616.1; (5) a change in the name of the MPN; (6) a change of the DWC liaison; (7) a change in geographic service area; or (8) a change in how the MPN complies with the access standards.

Necessity:

It is necessary to require the MPN applicant to file a Modification of MPN Plan if changes are made in order to determine if the statutory requirements are still met by the modified MPN Plan.

Consideration of Alternatives:

No more effective alternative to this section, nor equally effective and less burdensome alternative, has been identified by the Administrative Director at this time.

Section 9767.9 Transfer of Ongoing Care into the MPN

Specific Purpose of Section 9767.9:

The purpose of this section is to provide the procedure for the transfer of ongoing care into the MPN. This section requires the insurer or employer to provide for the completion of treatment for injured employees who are being treated by a physician or provider outside of the MPN for an occupational injury or illness that occurred prior to the coverage of the MPN and whose treating physician is not a provider within the MPN, including injured employees who pre-designated a physician and do not fall within the Labor Code section 4600(d), for the following conditions: (1) an acute condition; (2) a serious chronic condition; (3) a terminal illness; or (4) performance of a surgery or other procedure that is authorized by the insurer or employer. The regulation defines these conditions. The purpose of this section is also to set forth that referrals made to providers subsequent to the inception of the MPN shall be made to a provider within the MPN.

Additionally, the purpose of this section is to set forth the requirements regarding the notification that is required to be sent to the employee and the procedure if the injured employee disputes the medical determination under this section.

Necessity:

This section is necessary because when the employer or insurer establishes a MPN there may be injured employees who are currently receiving medical treatment for their injuries. Without this section, which sets forth the procedure, reporting requirements and exceptions, there would be confusion and disputes regarding transferring all injured employees who are currently treating into the newly established MPN.

Consideration of Alternatives:

No more effective alternative to this section, nor equally effective and less burdensome alternative, has been identified by the Administrative Director at this time.

Section 9767.10 Continuity of Care Policy

Specific Purpose of Section 9767.10:

The purpose of this section is to require an insurer or employer that offers a MPN to complete the treatment by a terminated provider as set forth in Labor Code section 4616.2 upon the request of a covered employee.

Necessity:

This section is necessary so that the employer or insurer is aware of the responsibility to provide continuity of care and so that an injured employer who is treating with a provider who is terminated from the MPN is provided with continued treatment as required by Labor Code section 4616.2.

Consideration of Alternatives:

No more effective alternative to this section, nor equally effective and less burdensome alternative, has been identified by the Administrative Director at this time.

Section 9767.11 Economic Profiling Policy

Specific Purpose of Section 9767.11:

The purpose of this section is to state what is required in the insurer's or employer's filing of its economic profiling policies and procedures.

Necessity:

It is necessary to state what is required in the insurer's or employer's filing of its economic profiling and procedures because the filing is required with the application and will be made available to the physician and to the public upon request.

Consideration of Alternatives:

No more effective alternative to this section, nor equally effective and less burdensome alternative, has been identified by the Administrative Director at this time.

Section 9767.12 Employee Notification.

Specific Purpose of Section 9767.12:

The purpose of this section is to set forth the requirements for the employee notifications concerning medical provider networks. An insurer or employer that offers a Medical Provider Network is required to notify each employee in writing about the use of the Medical Provider Network prior to the implementation of an approved MPN, at the time of hire, or when an existing employee transfers into the MPN, whichever is appropriate to ensure that the employee has received the initial notification. This section requires that the notification be sent to the employee at the time of injury and be written in English and Spanish.

This section also provides that at the time of the selection of the physician for a third opinion, the covered employee shall be notified about the Independent Medical Review process. Finally, a covered employee shall be notified 30 days prior to a change of the medical provider network and a copy of the notification shall be served on the employer. The notifications shall be written in English and Spanish.

Necessity:

It is necessary that insurers or employers who offer a MPN provide information about the MPN and its procedures so that the injured employees are able to access the appropriate medical treatment.

Consideration of Alternatives:

No more effective alternative to this section, nor equally effective and less burdensome alternative, has been identified by the Administrative Director at this time.

Section 9767.13 Denial of Approval of Application and Reconsideration

Specific Purpose of Section 9767.13:

The purpose of this section is to set forth when approval of a MPN plan will be denied by the Administrative Director. If the MPN applicant does not satisfy the requirements of this article and Labor Code section 4616 et seq., the Administrative Director shall state the reasons for disapproval in writing in a Notice of Disapproval, and shall transmit the Notice to the MPN applicant by U.S. Mail.

The purpose is also to inform the regulated public how to either submit a new application addressing the deficiencies or request reconsideration by the Administrative Director, and the section sets forth the procedure for a request for reconsideration and the hearing process.

Necessity:

This section is necessary to inform the regulated public why a MPN application is denied and to inform the regulated public the procedure for resubmitting the application or for requesting reconsideration.

Consideration of Alternatives:

No more effective alternative to this section, nor equally effective and less burdensome alternative, has been identified by the Administrative Director at this time.

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

Specific Purpose of Section 9767.14:

The purpose of this section is to provide that the Administrative Director may suspend or revoke approval of a MPN if: (1) service under the MPN is not being provided according to the terms of the approved MPN plan; (2) the MPN fails to meet the requirements of Labor Code section 4616 et seq. and this article; (3) false or misleading information is knowingly or repeatedly submitted by the MPN or a participating provider or the MPN

knowingly or repeatedly fails to report information required by this article; or (4) the MPN knowingly continues to use the services of a provider or medical reviewer whose license, registration, or certification has been suspended or revoked or who is otherwise ineligible to provide treatment to an injured worker under California law.

The purpose of this section is also to provide the procedure to correct the deficiency, and if the deficiencies have not been cured, the time period in which the suspension or revocation will take effect.

Necessity:

It is necessary to inform the regulated public that the MPN plan will be revoked or suspended if the requirements of the Labor Code and regulations are not met and for the other reasons set forth above to ensure that covered injured workers have continued access to medical treatment.

Consideration of Alternatives:

No more effective alternative to this section, nor equally effective and less burdensome alternative, has been identified by the Administrative Director at this time.