

MEDICAL PROVIDER NETWORKS	RULEMAKING COMMENTS 2 nd 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
General Comment	Commenter recommends that the division implement a rule that an MPN physician must schedule an appointment upon request by an injured worker or his/her attorney without requiring a written authorization request from the claims administrator in accepted claims, or claims that are pending acceptance/denial (the 90 day investigatory period). Commenter opines that currently it is extraordinarily difficult to get an MPN physician appointment for injured workers and that getting a claims adjuster to promptly send written authorization, while it sounds an easy task, is not.	Christopher Trodden, Esq. March 14, 2014 Written Comment	Reject: Pursuant to Labor Code §4616.3(a) the employer is required to arrange the initial medical evaluation. Additionally, pursuant to Labor Code §4616(a)(5) MPN's shall provide medical access assistant's to help injured employees find available MPN physicians of the employee's choice. Complying with these sections will ensure that injured workers will get timely treatment.	None.
9767.1(a)(25)(A) and (a)(25)(B)	Commenter states that the listing in reference to the employee's work location or residence contradicts the express language of LC 4616(a)(1) which requires only that the MPN consider "the geographic area where the employees are employed" and NOT the employee's residence. The addition of the employee's residence exceeds the express terms of the statute and the regulation is therefore beyond the scope of authority. The regulation is directly contrary to the	Michael A. Marks, Esq. March 17, 2014 Written Comment	Reject: 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. The decision cited by commenter	None.

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	WCAB's holding in Miguel Robles, v. Evolution Fresh, Inc., et al, 2012 Cal. Wrk. Comp. P.D. LEXIS 434 which judicially determined the residence provision as invalid.		Miguel Robles, v. Evolution Fresh, Inc., et al, 2012 Cal. Wrk. Comp. P.D. LEXIS 434 has not been designated by the Workers' Compensation Appeals Board as a significant decision and is, therefore, not citable authority. However, to comport with this decision, the conjunction "and" was deleted from §§9767.1(a)(25)(A) and (B) but the conjunction "or" remains. Since MPN's have been in existence since 2005 and there are MPN's that have provider lists that meet either the employee's "residence or workplace" access standards, DWC will leave it up to the MPN's to decide which standard they wish to choose.	
9767.3(d)(8)(H)	Commenter states that the listing in reference to the employee's work location or residence contradicts the express language of LC 4616(a)(1) which requires only that the MPN consider "the geographic area where the employees are employed" and	Michael A. Marks, Esq. March 17, 2014 Written Comment	Reject: See previous response.	None.

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	<p>NOT the employee’s residence. The addition of the employee’s residence exceeds the express terms of the statute and the regulation is therefore beyond the scope of authority. The regulation is directly contrary to the WCAB’s holding in Miguel Robles, v. Evolution Fresh, Inc., et al, 2012 Cal. Wrk. Comp. P.D. LEXIS 434 which judicially determined the residence provision as invalid.</p> <p>Commenter opines that the regulation’s reference to “specialties commonly required” is contrary to 4616(a), which references physicians as defined by 3209.3(which makes no reference to specialties, but rather only to MD, DO, DC) 4616(a) . This statutory reference makes it clear that the MPN physician availability does not relate to specialty, but rather to “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</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 specialty or recognized expertise in treating the particular injury or condition in question.”</p>	<p>None.</p>

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	<p>are employed.” Thus, referencing “specialties commonly required” is different from the statute which, by referencing the 3209.3 definition only requires an MD,DO,DC, (not a specialist). Commenter states that the regulation is therefore beyond the scope of the statutory authority. Commenter opines that regulation should state “... at least three available physicians, as defined by 3209.3, to treat common injuries to injured workers ...”</p>			
9767.5	<p>Commenter states that throughout the regulations, the draft refers to “specialty.” Commenter opines that the term is not authorized by LC 4600 which, instead requires only that for access standards ,”The provider network shall include an adequate number and type of physicians, as described in Section 3209.” The statutory reference to “type” as defined by 3209.3 is NOT synonymous with a specialist. 3209.3 refers to “physicians and surgeons holding an M.D. or D.O. degree, psychologists, acupuncturists, optometrists, dentists, podiatrists, and chiropractic practitioners licensed by California state law”. Nothing in 4600</p>	<p>Michael A. Marks, Esq. March 17, 2014 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 specialty 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</p>	None.

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	<p>references a specialist in the context of physician access standards. Nor does anything in 4616 et seq. require specialist treatment within the MPN.. Commenter opines that the repeated reference to “specialty” or “specialist” in the regulations in the access standards sections goes beyond the scope of the legislative authorization and thus exceeds the regulator’s authority.</p>		specialties.	
9767.15(b)(5)	<p>Commenter states that throughout the regulations, the draft refers to “specialty.” Commenter opines that the term is not authorized by LC 4600 which, instead requires only that for access standards ,”The provider network shall include an adequate number and type of physicians, as described in Section 3209.” The statutory reference to “type” as defined by 3209.3 is NOT synonymous with a specialist. 3209.3 refers to “physicians and surgeons holding an M.D. or D.O. degree, psychologists, acupuncturists, optometrists, dentists, podiatrists, and chiropractic practitioners licensed by California state law”. Nothing in 4600 references a specialist in the context of physician access standards. Nor does</p>	<p>Michael A. Marks, Esq. March 17, 2014 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 specialty 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>	None.

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	anything in 4616 et seq. require specialist treatment within the MPN.. Commenter opines that the repeated reference to “specialty” or “specialist” in the regulations in the access standards sections goes beyond the scope of the legislative authorization and thus exceeds the regulator’s authority.			
9767.19(a)(2)(E)	<p>Commenter opines that it should be clarified that this refers to an “out-of-network physician specialist” ... consistent with the reference in (D) to physician</p> <p>Commenter opines that it should be clarified that it refers to a “appropriate physician specialist” ... consistent with the reference in (D) to physician.</p>	Michael A. Marks, Esq. March 17, 2014 Written Comment	Reject: Specialist can mean physical therapists or occupational therapist and neither are considered physicians.	None.
9767.3(c)(3) and 9795.1.6(a)(2)(A) and (B)	Commenter remains steadfast in his opposition to the Division’s proposal to permit medical provider networks to include interpretation as an ancillary service. Commenter supports the amendment to section 9767.3(c)(3) that provides that “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).	Caryle R. Brakensiek Legislative Advocate AdvoCal March 18, 2014	Agree.	None.
9767.3(c)(3)	Commenter remains steadfast in her	Shilpa Kapadia	Reject: Goes beyond the scope	None.

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	<p>opposition to the Division’s proposal to permit medical provider networks to include interpretation as an ancillary service.</p> <p>Commenter would like to know if her organization gets placed in an MPN what the process for application will be. Commenter would like to know how the Division will ensure that all interpreting agencies in each geographic area will be including in a carriers’ MPN. Commenter would like to know if interpreters will be subject to lower rates that current prescribed by the labor code (\$90).</p>	<p>SAI Professional Services March 18, 2014</p>	<p>of these regulations because it will be the MPN that determines their provider application process.</p> <p>Reject: The ancillary service listing by an MPN is voluntary.</p> <p>Reject: Goes beyond the scope of these regulations. The interpreters listed must be certified pursuant to section 9795.1.6(a)(2)(A).</p>	<p>None.</p> <p>None.</p>
9767.1(a)(12)	<p>Commenter recommends the addition of the term “qualified” before the term “physician” in the last sentence of this subsection.</p> <p>As currently proposed, commenter opines that the last sentence restricts her organization’s right to select the quality of MPN providers in a network. Commenter opines that not being Board certified or having Medical Board actions should allow the MPN applicant to exclude those providers even though they are “available and willing” in a shortage</p>	<p>Anita Weir, RN CRRN Director, Medical & Disability Management Safeway Inc. March 19, 2014 Written Comment</p>	<p>Reject: A physician would not be “available” if he/she is not “qualified”.</p> <p>Reject: See previous response.</p>	<p>None.</p> <p>None.</p>

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	area.			
9767.1(a)(27)	<p>Commenter recommends that the term “permanent” be replaced by the term “temporary.”</p> <p>Commenter opines that the MPN should be allowed to reapply for approval at some time.</p>	<p>Anita Weir, RN CRRN Director, Medical & Disability Management Safeway Inc. March 19, 2014 Written Comment</p>	<p>Reject: Beyond the scope of this comment period because no changes were made from the 1st 15-day comment period.</p>	<p>None.</p>
9767.2(f)	<p>Commenter would like clarification if existing MPNs are required to include any identifier on notices and if re-approvals will also include a new ID number.</p>	<p>Anita Weir, RN CRRN Director, Medical & Disability Management Safeway Inc. March 19, 2014 Written Comment</p>	<p>Accept: The regulatory text will be revised to make the suggested clarifications.</p>	<p>§9767.2(f) is revised to state, “This unique MPN Identification number shall be used in all correspondence with DWC regarding the MPN, including but not limited to future filings and complaints, and shall be included in the complete employee notification, transfer of care notice, continuity of care notice, MPN IMR notice and end of MPN coverage notice.”</p>
9767.3(c)(2)	<p>Commenter opines that provider codes are arbitrary and do not represent uniform specialty groups. What</p>	<p>Anita Weir, RN CRRN Director, Medical &</p>	<p>Reject: The physician codes will be used by DWC only for</p>	<p>None.</p>

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	<p>physicians belong to “Occupational therapy medicine” (OT)? Commenter states that there is no indication that all of these types (specialties) are not required for a valid MPN. Commenter seeks clarification that they are not all required. Commenter also finds the PTP designation confusing - most of the specialists will also be PTP’s so commenter questions if the Division is requesting that they be listed twice or more for DWC access assessment. Must they also be listed twice in the web site listing? What value does this bring except to DWC approval process which is not necessarily any more accurate with the codes vs. specialty since we are now not identifying body part specific access.</p> <p>Commenter recommends that the Division delete all of these codes or least omit the OT code or clarify what physicians would be listed as OT.</p>	Disability Management Safeway Inc. March 19, 2014 Written Comment	geocoding purposes. If a physician is a primary treating physician but also treats as a secondary treating physician, then “If a physician falls under more than one provider code, the physician shall be listed separately for each applicable provider code.”	
9767.2(c)(3)	Commenter states that medical interpreters are not required to be “certified,” only “qualified.” Commenter recommends that we change the term “certified” to “qualified.”	Anita Weir, RN CRRN Director, Medical & Disability Management Safeway Inc.	Reject: In order for an interpreter to be listed as an ancillary service provider “the interpreter listed must be certified pursuant to section 9795.1.6(a)(2)(A) and (B).”	None.

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		March 19, 2014 Written Comment		
9767.2(d)(8)(A)	Commenter would like to know if DWC has some expectation or ratio in mind or if an MPNs past experience and use of prior providers be adequate.	Anita Weir, RN CRRN Director, Medical & Disability Management Safeway Inc. March 19, 2014 Written Comment	Reject: No, DWC does not have an expectation or ratio in mind, MPN needs to affirm that the MPN network is adequate to handle the expected number of claims, past experience and use of prior providers is adequate.	None.
9767.3(d)(8)(E)	<p>Commenter opines that it is not practical on any level to expect that any listing over 24 hours old will have an accurate listing of providers who are or are not taking new WC patients. Providers change their practice decisions daily so this section will provide low hanging fruit for constant challenges to the validity of the MPN. Commenter states that they can show that a provider was willing or not on the day of contract signature but there is no way to know other than placing a call to the providers office on any other given day and that they may get different answers depending on who answers the phone and how our staff approaches the conversation.</p> <p>Commenter recommends deleting the line regarding not taking new patients.</p>	Anita Weir, RN CRRN Director, Medical & Disability Management Safeway Inc. March 19, 2014 Written Comment	Accept: The regulatory text will be revised to delete the provision requiring the MPN's indicate if a physician is taking new patients.	§9767.3(d)(8)(E) is revised to delete "Affirm that the roster of treating physicians in the MPN shall indicate if a physician is not currently taking new workers' compensation patients and a".

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9767.2(d)(8)(G)	<p>Commenter states that there is a conflict here with <u>Section 9767.5.1 (b)(1)</u> which allows the Group Practice to sign an acknowledgement letter that all members of the group agree without listing them in that document. This is the common practice for occupational health groups. Commenter states that occupational clinics and Kaiser move physicians around and hire/fire so often that there is no way to list the individual physicians with any accuracy.</p> <p>Commenter recommends that occupational clinic groups should be listed as the Group Practice only and not as individual physicians.</p>	<p>Anita Weir, RN CRRN Director, Medical & Disability Management Safeway Inc. March 19, 2014 Written Comment</p>	<p>Reject: There is a difference between this subdivision and the section dealing with physician acknowledgments because they address different issues. 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, physicians need to be listed individually instead of by the medical group's name.</p>	None.
9767.2(d)(8)(H)	<p>Commenter appreciates the clarification that the standard is from home or work. Commenter states that the center of a zip code is not useful parameter and will not show the actual provider access relative to employees. Some rural zip codes include an entire county where there is no population 60 miles from the center and the access for those employee typically come from adjacent counties (zips) where the population is clustered.</p>	<p>Anita Weir, RN CRRN Director, Medical & Disability Management Safeway Inc. March 19, 2014 Written Comment</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.</p>	None.

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	<p>Commenter recommends that if the MPN is employer specific with finite work addresses listed geocoding by zip should not be required. Access should be based solely on those work locations. Allow zip code population centers or city or employer location.</p>			
9767.2(d)(8)(S)	<p>Commenter questions why this section was added. Commenter opines that there is implication that data analysis is required. Commenter conjectures adding “if analysis is done” at the end of the sentence and asks that if no analysis is done will the plan be approved.</p>	<p>Anita Weir, RN CRRN Director, Medical & Disability Management Safeway Inc. March 19, 2014 Written Comment</p>	<p>Reject: §9767.3(d)(8)(S) requires a description of the MPN’s procedures to review quality of care. Certainly some analysis needs to be done to review quality of care but formal data analysis is not required.</p>	None.
9767.5(a)	<p>Commenter states that LC 4616(a) requires an adequate number and type of physician to treat common injuries. Commenter opines that DWC arbitrarily selected 3 of any specialty requested by employee or his attorney or the PTP. Commenter states that now the addition of “available” adds a complexity to the network that is not in the statute and the administrator has no control over on any given day. Commenter opines that this allows challenges to every MPN every day depending on uncontrollable decisions by providers or the way the caller asks</p>	<p>Anita Weir, RN CRRN Director, Medical & Disability Management Safeway Inc. March 19, 2014 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 specialty or recognized expertise in treating the particular injury or condition in question.” DWC’s interpretation of the word “type” is synonymous with “specialty”. Therefore,</p>	None.

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	<p>for an appointment. Commenter asks how the DWC or WCAB can possibly know the “availability” of each physician at any given time. Commenter states that Access Assistant service was added to get employee appointments and alert MPN administrator of access issues.</p> <p>Commenter recommends that the term “available” be deleted.</p>		<p>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(c)	<p>Commenter thanks the Division for allowing them to bring an employee back into MPN when access standards are met.</p> <p>Commenter would like to know what is a “reasonable” geographic area for treating outside MPN is. Commenter states that it is not uncommon for Applicant Attorney to send EE outside the 30 miles we are bound by in the MPN. Shouldn’t the AA and employee be bound to the same distance standards as the MPN? Commenter opines that if the MPN were allowed to go beyond the</p>	<p>Anita Weir, RN CRRN Director, Medical & Disability Management Safeway Inc. March 19, 2014 Written Comment</p>	<p>Agree in part. Commenter needs to be aware the regulatory text states “when a transfer is appropriate”. This takes into consideration Labor Code §4603.2 that describes situations when transfer of care may not be allowed.</p> <p>Reject: The definition of “reasonable” can only be determined on a case-by-case basis. Certainly the distance standards required of MPNs should be considered when determining what a</p>	<p>None.</p> <p>None.</p>

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	<p>mileage limits other physicians could be included and treatment would still be in the MPN! Commenter states that now that DWC has added that for shortage areas and that they must accept any willing provider they have less choice to direct to quality and the employee has no limits.</p> <p>Commenter recommends that the Division define “reasonable” geographical area as the same restrictions that the MPN plan identified.</p>		“reasonable” geographic area for treating outside the MPN.	
9767.5(h)(2)	<p>Commenter opines that the DWC is going beyond the statute to create complexity beyond SB863 language.</p> <p>Commenter recommends that the Access Assistant log be limited to calls coming in to the phone number (800#) listed as contact for Access Assistants and not to the claims office in general nor claims examiner specifically regardless of who picks up that phone call. This allows a separation of functions for the claims office where there is frequent dialogue with the employees for many issues including help getting medical care.</p>	<p>Anita Weir, RN CRRN Director, Medical & Disability Management Safeway Inc. March 19, 2014 Written Comment</p>	<p>Labor Code §4616(a)(5) makes clear that MPNs shall provide MPN medical access assistants. These regulations address the duties and responsibilities of the MPN medical access assistant. Who the MPN designates as their MPN medical access assistant must comply with these regulations despite any dual role that person may have.</p>	None.
9767.5.1	Commenter states that LC 4616(a)(3)	Anita Weir, RN	Reject: Labor Code	None.

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	<p>only requires this acknowledgement at <u>renewal or new contracting</u>. Commenter opines that because this section is so complex and requires reporting from providers that the MPN administrator has no control over, it is never going to be truly current. Providers are already refusing to participate in MPNs because they cannot agree to notify every MPN of changes in providers every 90 days. Even a small, well managed MPN will not be able to be compliant based on changes in the listings from a group alone. How is this acknowledgement to be used? If limited to the DWC in approving an MPN or managing complaints from only the physician, it <u>could</u> make sense. BUT, as written, it will become a gamesmanship showdown for AA's at the WCAB to challenge us every time to produce the current acknowledgment and then to challenge us with a letter from the provider that he signed no agreement or that the group "master list" has changed and MPN does not have a timely notice of that change (which will never be timely, by the way).</p> <p>Commenter recommends that this</p>	<p>CRRN Director, Medical & Disability Management Safeway Inc. March 19, 2014 Written Comment</p>	<p>§4616(a)(3) mandates physician acknowledgments so physicians can affirmatively elect to be a member or not be a member of an MPN. The regulatory provisions have already been re-written to simplify this process by allowing more efficient means of obtaining the physician acknowledgments such as faxes, electronic signatures and website portals.</p>	

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	section be rewritten to simplify it and allow some of the responsibility for contracting to be borne by the provider's business practice. Remove provider's requirement to report more than annually.			
9767.5.1(a)	Commenter questions why the current signed contract with the physician or Medical Group is not adequate so long as the facts are clearly stated. She states that a workers' comp MPN, may be leased to many other employers or MPNs, fee schedule and UR apply, and physician may opt out with specific notice.	Anita Weir, RN CRRN Director, Medical & Disability Management Safeway Inc. March 19, 2014 Written Comment	Reject: If the current signed contracts meet the requirements of §9767.5.1 <i>et seq.</i> that it could qualify.	None.
9767.5.1(d)	<p>Commenter states that many contracts currently include the operational aspects of this section; i.e. MPN is identified, opt in/out process is stated; URL is identified, and notice of termination from MPN by administrator is required.</p> <p>Commenter recommends that the Division define that the physician acknowledgement may be contained as part of a signed contract which will be produced at request of provider or DWC and NOT applicant attorney/employee.</p>	Anita Weir, RN CRRN Director, Medical & Disability Management Safeway Inc. March 19, 2014 Written Comment	Reject: A physician acknowledgement may be contained as part of a signed contract. However, to preclude physician acknowledgments from discovery in a legal proceeding or Public Records Act request goes beyond the scope of these regulations.	None.

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9767.5.1(e)(1) through (5)	<p>Commenter states that the MPN administrator has no control over this process and is never advised of additions to their practice. Commenter opines that this should be covered by the Medical Group’s single acknowledgement and their contract with the individual physician. Commenter recommends that the Division delete this requirement</p> <p>Commenter states that it is a very expensive and time consuming process to re-contract with every physician or medical group regardless of how recent or clean the contract relationship. Commenter recommends that the Division only require acknowledgement outside new or renewing contracts when a request from the provider or a complaint has been received by the Division.</p>	Anita Weir, RN CRRN Director, Medical & Disability Management Safeway Inc. March 19, 2014 Written Comment	Reject: Ultimately, the MPN is responsible for obtaining and ensuring that all physician acknowledgments are up to date, meet regulatory requirements, and are readily available for review upon request by the Administrative Director.	None.
9767.7(g)	Commenter recommends that the Division define reasonable geographical area as the same as MPN access standards for same area.	Anita Weir, RN CRRN Director, Medical & Disability Management Safeway Inc. March 19, 2014 Written Comment	Reject: The definition of “reasonable” can only be determined on a case-by-case basis. Certainly the distance standards required of MPNs should be considered when determining what is a “reasonable” geographic area for treating outside the MPN	None.

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9767.12(a)(2)(A)	Commenter would like to know if reapproved MPN's who do not receive an ID number will require an MPN approval number.	Anita Weir, RN CRRN Director, Medical & Disability Management Safeway Inc. March 19, 2014 Written Comment	Reject: All MPNs will be assigned an MPN ID number and will be required to use it.	None.
9767.15	Commenter states that this section must be changed to be consistent with the recommendations made for new applications which allows for flexibility of how geocoding is done by city or specific work location.	Anita Weir, RN CRRN Director, Medical & Disability Management Safeway Inc. March 19, 2014 Written Comment	Reject: The geocoding requirements in this section are consistent with the geocoding requirements of §9767.3(d)(8)(H).	None.
9767.17(a)(2)	Commenter opines that these numbers do not represent "systematic" nor repetitive behavior when managing a program as variable as a provider network. There are constant changes with little to no requirement for the providers to notify or respond to the network requests. Some employees are so complex, old, specialized that no physician will accept their care. Commenter recommends that the Division make it more than 2 occasions in 3 areas and without providing alternate medical care.	Anita Weir, RN CRRN Director, Medical & Disability Management Safeway Inc. March 19, 2014 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	None.

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			more is overkill.	
9767.18(a)(1)	Commenter opines that random reviews should be 5 years, the same as PAR audits.	Anita Weir, RN CRRN Director, Medical & Disability Management Safeway Inc. March 19, 2014 Written Comment	Reject: MPN Random Reviews are not the same as Claims PAR audits.	None.
9767.18(a)(2)(B) (v)	Commenter opines that call logs, unless made by sophisticated automated, telephony systems are not reliable nor accurate and should not be reviewed without also referencing the claims system notes for team response to a request for assistance.	Anita Weir, RN CRRN Director, Medical & Disability Management Safeway Inc. March 19, 2014 Written Comment	Reject: DWC may make reasonable requests for information or documentary evidence to ensure that the MPN medical access assistants are in compliance. Who the MPN designates as their MPN medical access assistant must comply with these regulations despite any dual role that person may have.	None.
9767.19(a)(2)(A)	Commenter opines that this penalty is so broad and cost so high some MPNs will elect to shut down. The accuracy of each providers address and phone number depends on many people and processes coming together at a given point in time which the MPN administrator has little to no control over. When did provider actually change location, when was MPN	Anita Weir, RN CRRN Director, Medical & Disability Management Safeway Inc. March 19, 2014 Written Comment	Reject: Penalties will only be assessed pursuant to §9767.19(a)(2)(A) if an MPN fails to perform the quarterly updates or refresh of its provider listings and inaccuracies result.	None.

MEDICAL PROVIDER NETWORKS	RULEMAKING COMMENTS 2 nd 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>notified, if at all, when did the URL manager get the change uploaded after info was sent and was the upload complete, when was the error noticed and by whom, was there attempt to allow MPN to remedy; and then that same provider may change or add locations immediately and the information is never really accurate. Currently physicians move about the state with regularity, joining and leaving group practices or setting up and closing satellite offices so that there may be 2-4 changes for each provider per year. Group practices never notify the MPN of physicians leaving and certainly not where that MD went next. Commenter states that a small MPN may be able to keep the listing current quarterly but those with 3000 or more will always have something “out of date”.</p> <p>Recommendation: end the sentence at the LC citation and delete the “each inaccurate entry” section. Rely on (B) for specific entries.</p>			
9767.19(a)(2)(B)	Commenter questions how will the DWC know about calls to our MPN contact phone or e-mail? Some reports received are not correct from	Anita Weir, RN CRRN Director, Medical & Disability	Reject: DWC may make reasonable requests for information or documentary evidence to ensure that the	None.

MEDICAL PROVIDER NETWORKS	RULEMAKING COMMENTS 2 nd 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	the caller and our data is accurate. Most of the inaccuracies are found and reported by the claims examiner and nurse on the file. Commenter states that complaints to DWC will be easy to check, however. Commenter recommends a penalty only on errors reported to DWC that are not corrected.	Management Safeway Inc. March 19, 2014 Written Comment	MPN is in compliance.	
9767.19(a)(2)(C)	Commenter states that manual call logs are only a “he said/she said” document. What will auditor use to determine if a call was actually made and not responded to? Commenter recommends adding that penalty is based on complaints to the DWC by the employee who is willing to sign statement as to when call made, to which number and what request was made.	Anita Weir, RN CRRN Director, Medical & Disability Management Safeway Inc. March 19, 2014 Written Comment	Reject: DWC may make reasonable requests for information or documentary evidence to ensure that the MPN medical access assistants are in compliance.	None.
9767.19(a)(2)(D)	Commenter recommends adding “or claims team” after “Medical Access Assistant.” Commenter opines that anyone in the claims department or MPN should be able to schedule appointments and we should avoid putting a job description tag on the outcome.	Anita Weir, RN CRRN Director, Medical & Disability Management Safeway Inc. March 19, 2014 Written Comment	Reject: Labor Code §4616(a)(5) makes clear that MPNs shall provide MPN medical access assistants. These regulations address the duties and responsibilities of the MPN medical access assistant. Who the MPN designates as their MPN medical access assistant must comply with these regulations	None.

MEDICAL PROVIDER NETWORKS	RULEMAKING COMMENTS 2 nd 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
			despite any dual role that person may have.	
9767.19(a)(2)(F)	Commenter opines that if MPN has an acknowledgment from a physician while at one group practice and does not secure another acknowledgment from another group - the original acknowledgment should suffice to avoid any penalty to the MPN because the physician is aware of being in a specific MPN and has either not notified the MPN of the change in group or of a desire to opt out. See Labor Code section 4616(a)(3).	Anita Weir, RN CRRN Director, Medical & Disability Management Safeway Inc. March 19, 2014 Written Comment	Reject: Ultimately, the MPN is responsible for obtaining and ensuring that all physician acknowledgments are up to date, meet regulatory requirements, and are readily available for review upon request by the Administrative Director.	None.
9767.1(a)(12)	<p>Commenter opines that the proposed language 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 recommends that the first sentence should be 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 <u>insufficient to</u></p>	Greg Moore President, Harbor Health Systems – One Call Care Management March 21, 2014 Written Comment	Reject: Beyond the scope of this comment period because no changes were made to §9767.1(a)(12) from the 1 st 15 day comment period.	None.

MEDICAL PROVIDER NETWORKS	RULEMAKING COMMENTS 2 nd 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p><u>allow the Applicant a choice of providers</u> 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 in that specialty are available within the access standards and willing to treat injured workers under the California workers' compensation system.</p>			
9767.3(d)(8)(E)	<p>Commenter opines that the "indication" of physician designation requirement (not taking new WC patients or "by referral only") is overly burdensome. This would require constant provider validation activities to ensure accuracy and compliance. Commenter recommends removal of this requirement in its entirety.</p>	<p>Greg Moore President, Harbor Health Systems – One Call Care Management March 21, 2014 Written Comment</p>	<p>Accept in part. Reject in part. Accept: The requirement to indicate "if a physician is not currently taking new workers' compensation patients" is deleted because it is overly burdensome. Reject: The requirement to indicate if a secondary treating physician can only be seen "by referral only" will remain because it is important information that is not overly burdensome to maintain.</p>	<p>§9767.3(d)(8)(E) is revised to state "Affirm that secondary treating physicians who are counted when determining access standards but can only be seen with an approved referral are clearly designated 'by referral only.'"</p>
9767.5.1	<p>Commenter states that this requirement would go into effect consistent with the "effective date of</p>	<p>Greg Moore President, Harbor Health Systems –</p>	<p>Reject: Labor Code §4616(a)(3) clearly states physician acknowledgments</p>	<p>None.</p>

MEDICAL PROVIDER NETWORKS	RULEMAKING COMMENTS 2 nd 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>the regulation.” However, networks that are used in multiple MPNs will need sufficient time to comply with the final language of this section. Commenter recommends adding three months to the effective date before renewals and new contracts are required to include the acknowledgement.</p>	<p>One Call Care Management March 21, 2014 Written Comment</p>	<p>shall be obtained by MPN’s “commencing January 1, 2014.” These regulations provide alternative, more efficient means of compliance to the statutory mandates that are already in effect.</p>	
9767.3(d)(8)(E)	<p>Commenter states that this section requires MPNs to affirm: (i) that the roster of treating physicians in the MPN indicates if a physician is not currently taking new workers’ compensation patients, and (ii) that secondary treating physicians who can only been seen with an approved referral are clearly designated “by referral only.”</p> <p>Commenter recommends that the DWC reconsider the requirement to designate when physicians are not taking “new” workers’ compensation patients. Commenter recognizes the DWC likely receives an abundance of inquiries from individuals trying to determine when a provider is accepting new workers’ compensation patients and desires to streamline this process for patients. However, if an</p>	<p>Marcus Watkins Director of Network Development HealthSmart March 24, 2014 Written Comment</p>	<p>Accept in part. Reject in part. Accept: The requirement to indicate “if a physician is not currently taking new workers’ compensation patients” is deleted because it is overly burdensome. Reject: The requirement to indicate if a secondary treating physician can only be seen “by referral only” will remain because it is important information that is not overly burdensome to maintain.</p>	<p>§9767.3(d)(8)(E) is revised to delete “Affirm that the roster of all treating physicians in the MPN shall indicate if a physician is not currently taking new workers’ compensation patients and a” the phrase “are counted when determining access standards” is added to the requirement that secondary treating physicians who can only be seen with an approved referral are clearly designated “by referral only”.</p>

MEDICAL PROVIDER NETWORKS	RULEMAKING COMMENTS 2nd 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>MPN is required employ a Medical Access Assistant and observe the Access Standards described in Sections 9767.5(c), (f), and (g), the need to designate when a provider is not accepting “new” workers’ compensation patients is incidentally addressed. For example, the addition of the Medical Access Assistant is designed to aid injured workers in timely scheduling an appointment with a physician that is accepting new workers’ compensation patients. If the injured worker or Medical Access Assistant is unable to schedule a timely appointment with an MPN physician, as defined in Section 9767.5(f) and (g), the injured workers’ remedy is to schedule an appointment and obtain treatment from a physician outside of the MPN, until a physician within the MPN is available and the injured worker is able to be transferred back into the MPN for further treatment.</p> <p>Commenter states that requiring an MPN to designate on its website when a physician is not taking “new” workers’ compensation patients would be administratively burdensome and</p>			

MEDICAL PROVIDER NETWORKS	RULEMAKING COMMENTS 2nd 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	Section 9767.5.1(e)(1)-(5) will simplify the implementation and subsequent administration of these provisions.			
9767.5.1(e)(5)	<p>Commenter opines that the phrase “further acknowledgement” prior to listing subsections (A) and (B) creates confusion. Specifically, the first half of this requirement is that a physician acknowledgement must be obtained no later than January 1, 2016; however, commenter is unable to discern whether it is the DWC’s intent that no acknowledgement be obtained from these providers (in other words, evergreen contracts are grandfathered in to these rules and MPNs are not required to obtain an acknowledgement altogether) assuming that either subsection (A) or (B) is satisfied. By utilizing the term “further acknowledgement,” it could be interpreted as requiring the MPN to obtain an initial acknowledgement for all evergreen contracts prior to January 1, 2016, but eliminating the requirement to obtain any additional acknowledgements provided either subsection (A) or (B) is satisfied.</p> <p>Commenter recommends that the</p>	<p>Marcus Watkins Director of Network Development HealthSmart March 24, 2014 Written Comment</p>	<p>Accept: This clarification will be made as suggested.</p>	<p>§9767.5.1(e)(5) is revised to delete “provided, however that no further acknowledgement is required if either of the following is true” and add the phrase “unless the MPN applicant can satisfy either (A) or (B) below:”</p>

MEDICAL PROVIDER NETWORKS	RULEMAKING COMMENTS 2 nd 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	DWC remove the word “further” from Section 9767.5.1(e)(5) to make clear that an MPN applicant is required to obtain a physician acknowledgement for providers under an evergreen contract before January 1, 2016 unless the MPN applicant can satisfy either subsection (A) or (B).			
9767.3(d)(8)(L)	<p>Commenter recommends the following revised language:</p> <p>Describe how the MPN complies with the access standards set forth in section 9767.5 for all covered employees. <u>In addition, from the following list, state the five most commonly used specialties based on the common injuries for workers covered under the MPN: orthopedic medicine, chiropractic medicine, occupational medicine, acupuncture medicine, psychology, pain specialty medicine, occupational therapy medicine, psychiatry, neurosurgery, family medicine, neurology, internal medicine, physical medicine and rehabilitation, or podiatry. If there is a specialty not listed in this subsection that is used to treat common injuries of covered injured workers under the MPN, please state</u></p>	<p>Marcus Watkins Director of Network Development HealthSmart March 24, 2014 Written Comment</p>	<p>Reject: Goes beyond the scope of this comment period because no changes were made to §9767.3(d)(8)(L) after the First 15-day comment period.</p>	<p>None.</p>

MEDICAL PROVIDER NETWORKS	RULEMAKING COMMENTS 2 nd 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p><u>the specialty and explain how it is one of the five most commonly used specialties for the workers covered under the MPN;</u></p> <p>Commenter recommends that the DWC define the list of “specialties” commonly required to treat injured workers’ covered by the MPN. Commenter opines that this will eliminate ambiguity between providers, patients, and MPNs.</p>			
9767.5.1(e)(2) and (e)(4)	<p>Commenter states that these subsections address the physician acknowledgement requirement and how it applies to medical groups. Section 9767.5.1(e)(2) requires the MPN to obtain an acknowledgement at the time a new physician joins a medical group that has already contracted to participate in the MPN. Section 9767.5.1(e)(4) requires the MPN to obtain a physician acknowledgement no later than January 1, 2015 if, on or after January 1, 2014 but before the effective date of the regulations, a physician joins a medical group that has already contracted to participate in the MPN.</p> <p>Commenter opines that the</p>	<p>Marcus Watkins Director of Network Development HealthSmart March 24, 2014 Written Comment</p>	<p>Reject: Commenter’s statement, “This suggests that the MPN would not be required to obtain a separate physician acknowledgement for any new physicians that join the medical group” is incorrect. For any new physician that joins the medical group that already has a contract to participate in an MPN or MPNs, an acknowledgment must be obtained. This new physician will then be included in the MPN list of participating physicians updated by an officer or agent of the medical group within 90 days.</p>	None.

MEDICAL PROVIDER NETWORKS	RULEMAKING COMMENTS 2nd 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>requirements related to medical group acknowledgements in the second notice of modifications appear to conflict. For example, in Section 9767.5.1(b)(2), a medical group participating in an MPN is required to update the list of participating physicians within ninety (90) days of any additions to or removals from the list. This suggests that the MPN would not be required to obtain a separate physician acknowledgement for any new physicians that join the medical group.</p> <p>In an effort to simplify the MPN's obligation to obtain medical group acknowledgements, commenter recommends that the DWC modify Sections 9767.5.1(e)(2) and (e)(4) to be consistent with 9767.5.1(b)(2). Commenter requests that, in the event a new physician joins a medical group, a separate physician acknowledgement would not be required. Rather, the MPN would be entitled to rely upon the physician acknowledgment it originally obtained by the medical group, and physicians new to the group be incorporated into the existing group acknowledgement on file via</p>			

MEDICAL PROVIDER NETWORKS	RULEMAKING COMMENTS 2 nd 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	the periodic update required by the officer or agent of the group in accordance with the update frequency established in Section 9767.5.1(b)(2).			
9767.3(c)(2) 9767.3(d)(8)(H) 9767.15(b)(5)	Commenter states that the provider “codes” are clearly required in the provider list submitted with an MPN application or re-approval based on the pending MPN rules. Commenter doesn’t see any requirement to have the same acronym “codes” in the provider directory (web URL listing). Commenter states that it appears the codes are not required in the provider directory accessed by the injured worker. Commenter would like confirmation.	Darlene Ondecker Managed Care Compliance Manager Bunch CareSolutions March 25, 2014 Written Comment	Reject: The commenter is correct that codes are not required in the MPN website roster of treating physicians but no modifications will be made because it is unnecessary.	None.
9767.3(c)(3)	Commenter requests that the Division strike the words “interpreting services” from the definition of “ancillary services.”	Bradley Brown Certified CA Medical Interpreter #500400 March 25, 2014 Written Comment Darrin Altman Certified Interpreters March 25, 2014 Written Comment	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.	None
General Comment	Commenter opines that the changes that the Division has proposed are excellent and reflect the full intent of the legislature when then enacted SB	Don Balzano Chief Legal Counsel MEDEX Healthcare March 25, 2014	Accept.	None.

MEDICAL PROVIDER NETWORKS	RULEMAKING COMMENTS 2 nd 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	863.	Written Comment		
9767.5.1(a)	<p>Commenter states that the language in this section discusses exemptions for physicians who are stakeholders, partners, or employees. Commenter states that the majority of all specialists in many of these groups are contractors or consultants so he believes that these categories should be added to this section. In addition, these providers change constantly, and would be the most difficult to reach out to for individual signatures.</p>	<p>Don Balzano Chief Legal Counsel MEDEX Healthcare March 25, 2014 Written Comment</p>	<p>Reject: Labor Code §4616(a)(3) states “This paragraph shall not apply to a physician who is a shareholder, partner, or employee of a medical group” and does not include contractors or consultants.</p>	None.
9767.1(a)(20)	<p>Commenter recommends the following revised language:</p> <p>“MPN Contact” means an individual(s) designated by the MPN Applicant in the employee notification who is responsible for responding to complaints, for answering employees’ questions about the Medical Provider Network and for assisting the employee in arranging for an MPN independent medical review pursuant to Labor Code section 4616.4(c)-(d)(1)(2).”</p> <p>Commenter states that references to Labor Code section 4616.4 should specify subsection (c)-(d)(1)(2) to</p>	<p>Jose Ruiz, Director Corporate Claims Regulatory Division</p> <p>Rick J. Martinez Medical Networks Manager Corporate Claims Regulatory Division State Compensation Insurance Fund March 25, 2014 Written Comment</p>	<p>Reject: Unnecessary because it is clear from Labor Code section 4616.4 which subdivisions address the MPN IMR process.</p>	None.

MEDICAL PROVIDER NETWORKS	RULEMAKING COMMENTS 2 nd 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	clarify with which part of the IMR process the MPN Contact should provide assistance.			
9767.1(a)(28)and (32)	<p>Commenter recommends adding “(c)” after “Labor Code section 4616.3.”</p> <p>Commenter opines that references to Labor Code section 4616.3 in both paragraphs should be limited to the subsection discussing the second/third opinion process.</p>	<p>Jose Ruiz, Director Corporate Claims Regulatory Division</p> <p>Rick J. Martinez Medical Networks Manager Corporate Claims Regulatory Division State Compensation Insurance Fund March 25, 2014 Written Comment</p>	Reject: Unnecessary because it is clear from Labor Code section 4616.3 which subdivision addresses the second/third opinion process.	None.
9767.2(f)	<p>Commenter recommends the following revised language:</p> <p>“Upon approval of a new Medical Provider Network Plan, the MPN shall be assigned a unique MPN Identification number. This unique MPN Identification number shall be used in all correspondence with DWC regarding the MPN, including but not limited to future filings and complaints, and shall be included in the complete employee notification, transfer of care notice <u>notification</u></p>	<p>Jose Ruiz, Director Corporate Claims Regulatory Division</p> <p>Rick J. Martinez Medical Networks Manager Corporate Claims Regulatory Division State Compensation Insurance Fund March 25, 2014 Written Comment</p>	Reject: DWC disagrees that the word “notice” is overly broad and unclear. Regardless, the MPN Identification number should be regularly used in letters or formal notice since it will be the unique identifier assigned to each MPN.	None.

MEDICAL PROVIDER NETWORKS	RULEMAKING COMMENTS 2 nd 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>letter, continuity of care notice <u>notification letter, MPN IMR notice and end of MPN coverage notice.</u>”</p> <p>Commenter states that this subdivision proposes that the MPN Identification number be included in various correspondences. Commenter recommends adding clarity and specificity to the transfer of care and continuity of care notices. Commenter opines that the word ‘notice’ is overly broad and unclear, as it may signify either a letter or a policy.</p>			
9767.3(d)(8)(E)	<p>Commenter recommends the following revised language:</p> <p>“State the web address or URL to the roster of all treating physicians in the MPN. Affirm that the roster of all treating physicians in the MPN shall indicate if a physician is not currently taking new workers’ compensation patients and affirm that secondary treating physicians who can only be seen with an approved referral are clearly designated “by referral only”.”</p> <p>Commenter recommends removal of the proposed requirement that the roster shall indicate if a physician is</p>	<p>Jose Ruiz, Director Corporate Claims Regulatory Division</p> <p>Rick J. Martinez Medical Networks Manager Corporate Claims Regulatory Division State Compensation Insurance Fund March 25, 2014 Written Comment</p>	<p>Accept in part. Reject in part. Accept: The requirement to indicate “if a physician is not currently taking new workers’ compensation patients” is deleted because it is overly burdensome. Reject: The requirement to indicate if a secondary treating physician can only be seen “by referral only” will remain because it is important information that is not overly burdensome to maintain.</p>	<p>§9767.3(d)(8)(E) is revised to delete “Affirm that the roster of all treating physicians in the MPN shall indicate if a physician is not currently taking new workers’ compensation patients and a” the phrase “are counted when determining access standards” is added to the requirement that secondary treating</p>

MEDICAL PROVIDER NETWORKS	RULEMAKING COMMENTS 2 nd 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>not currently taking new workers' compensation patients. Commenter opines that this would require considerable administrative work and would also present significant challenges to the MPN in maintaining the accuracy and completeness of the provider listing as physician availability fluctuates on a regular basis.</p> <p>Commenter recommends deletion of the proposed language designating secondary treating physicians who can only be seen with an approved referral. Commenter states that inclusion of "by referral only" designation would require modification of current procedures and create considerable administrative work.</p>			<p>physicians who can only be seen with an approved referral are clearly designated "by referral only".</p>
9767.3(d)(8)(H)	<p>Commenter recommends the removal of the following sentence:</p> <p>"The access standards set forth in section 9767.5 are determined by the injured employee's residence or workplace address and not the center zip code."</p> <p>Commenter opines that the second</p>	<p>Jose Ruiz, Director Corporate Claims Regulatory Division</p> <p>Rick J. Martinez Medical Networks Manager Corporate Claims Regulatory Division State Compensation</p>	<p>Reject: Disagree because the second sentence is making a distinction between §9767.5 and the geocoding requirements from the center of a zip code.</p>	<p>None.</p>

MEDICAL PROVIDER NETWORKS	RULEMAKING COMMENTS 2 nd 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	sentence of this subdivision regarding access standards is duplicative and unnecessary as the preceding sentence already mentions section 9767.5. Commenter states that the part regarding “not the center of a zip code” may be confusing to the reader.	Insurance Fund March 25, 2014 Written Comment		
9767.4 – Cover Page for Medical Provider Network Application or Plan Reapproval	Commenter opines that the choices for eligibility status of MPN Applicant listed in item 4 is erroneous as State Compensation Insurance Fund has been removed under Insurer; whereas Uninsured Employers Benefits Trust Fund (UEBTF) was added instead. This is inconsistent with the definition of “Insurer” as defined in section 9767.1(13), which includes CIGA and State Compensation Insurance Fund. Commenter recommends retaining SCIF under Insurer, and listing UEBTF under Entity that provides physician network services, which is in line with section 9767.1(7).	Jose Ruiz, Director Corporate Claims Regulatory Division Rick J. Martinez Medical Networks Manager Corporate Claims Regulatory Division State Compensation Insurance Fund March 25, 2014 Written Comment	Reject: State Compensation Insurance Fund was deleted because it has been in existence since 1914 and it is well known that it is an insurer. The UEBTF was recently renamed from the Uninsured Employers Fund in 2003 and the general public may not realized it should be categorized as an insurer.	None.
9767.5.1(e)(1)	Commenter recommends the following revised language: “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	Jose Ruiz, Director Corporate Claims Regulatory Division Rick J. Martinez Medical Networks Manager Corporate Claims	Reject: Labor Code §4616(a)(3) and §9767.5.1(e)(1) as written, make it clear the physician acknowledgments must be obtained “at the time of entering or renewing the contract.”	None.

MEDICAL PROVIDER NETWORKS	RULEMAKING COMMENTS 2 nd 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>acknowledgment shall be obtained <u>within 90 days from</u> at the time of entering into or renewing the contract.”</p> <p>Commenter states that this subdivision does not specify the timeframe that the acknowledgement must be obtained when the physician or medical group enters into a new contract or renews a contract. Commenter recommends adding a timeframe of 90 days to allow the MPN Applicant adequate time to obtain the acknowledgements.</p>	<p>Regulatory Division State Compensation Insurance Fund March 25, 2014 Written Comment</p>		
9767.5.1(e)(2)	<p>Commenter recommends the following revised language:</p> <p>“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 <u>within 90 days</u> at the time of the physician’s joining the medical group.”</p> <p>Commenter states that the proposed language is contradictory to §9767.5.1(b)(2), where it states that the listing included or referred to, in</p>	<p>Jose Ruiz, Director Corporate Claims Regulatory Division</p> <p>Rick J. Martinez Medical Networks Manager Corporate Claims Regulatory Division State Compensation Insurance Fund March 25, 2014 Written Comment</p>	<p>Reject: Labor Code §4616(a)(3) make it clear the physician acknowledgments must be obtained “at the time of entering or renewing the contract.” §9767.5.1(e)(2) since the medical group 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. However, as §9767.5.1(b)(2) makes clear, the officer or agent of the medical group shall update the list of participating physicians</p>	None.

MEDICAL PROVIDER NETWORKS	RULEMAKING COMMENTS 2 nd 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	the acknowledgement shall be updated with physician additions or removals within 90 days. Commenter recommends amending the subsection to be in line with §9767.5.1(b)(2).		within 90 days of any additions to or removals from the list.	
9767.5.1(e)(5)	<p>Commenter recommends the following revised language:</p> <p>“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 <u>or group</u>, then the acknowledgment 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>Commenter opines that the proposed subsection is specific to an individual physician. It’s inconsistent with (e)(5)(A) and (e)(5)(B), where the entities listed are physician or group. Commenter recommends adding the entity “group”, for uniformity.</p>	<p>Jose Ruiz, Director Corporate Claims Regulatory Division</p> <p>Rick J. Martinez Medical Networks Manager Corporate Claims Regulatory Division State Compensation Insurance Fund March 25, 2014 Written Comment</p>	<p>Reject: Pursuant to Labor Code §4616(a)(3) physician acknowledgements are signed by the physician or “on behalf of the physician” makes commenter’s recommendation to add the phrase “or group” unnecessary.</p>	None.
9767.12(a)	<p>Commenter recommends the following revised language:</p> <p>“When an injury is reported or an employer has knowledge of an injury</p>	<p>Jose Ruiz, Director Corporate Claims Regulatory Division</p> <p>Rick J. Martinez</p>	<p>Reject: Commenter’s recommendation will not be adopted because “MPN Applicant” is too broad. There may be some MPN Applicants</p>	None.

MEDICAL PROVIDER NETWORKS	RULEMAKING COMMENTS 2 nd 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 insurer for the employer <u>MPN Applicant</u>. This MPN notification shall be provided to employees in English and also in Spanish if the employee primarily speaks Spanish.”</p> <p>Commenter state that the proposed text deletion disallows notices sent from third party administrators to satisfy the subdivision’s requirement, since they do not actually insure the employer.</p>	<p>Medical Networks Manager Corporate Claims Regulatory Division State Compensation Insurance Fund March 25, 2014 Written Comment</p>	<p>who will not be responsible for providing the complete employee notification directly to an injured employee.</p>	
9767.15(b)(5)	<p>Commenter recommends the removal of the following sentence:</p> <p>“The access standards set forth in section 9767.5 are determined by the injured employee’s residence or workplace address and not the center of a zip code.”</p> <p>Commenter opines that the sentence of</p>	<p>Jose Ruiz, Director Corporate Claims Regulatory Division</p> <p>Rick J. Martinez Medical Networks Manager Corporate Claims Regulatory Division State Compensation</p>	<p>Reject: Disagree because the second sentence is making a distinction between §9767.5 and the geocoding requirements from the center of a zip code.</p>	None.

MEDICAL PROVIDER NETWORKS	RULEMAKING COMMENTS 2 nd 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	this subdivision regarding access standards is duplicative and unnecessary as the preceding sentence already mentions section 9767.5. In addition, the part regarding “not the center of a zip code” may be confusing to the reader. Commenter recommends removing the whole sentence regarding access standards.	Insurance Fund March 25, 2014 Written Comment		
9767.19(a)(2)(D) and (E)	<p>Commenter recommends the following revised language:</p> <p>“(D) Failure of an MPN Applicant to permit an injured covered employee to obtain necessary non-emergency services for <u>the first an initial MPN treatment visit</u> from an out-of-network physician when <u>both</u> the Medical Access Assistant <u>and the MPN Applicant</u> fails to schedule an appointment within 3 business days of receipt of request from the injured covered employee, \$500 for each occurrence, <u>where “schedule an appointment” refers to the act of scheduling an appointment.</u></p> <p>“(E) Failure of an MPN Applicant to permit an injured covered employee to obtain necessary medical treatment from an appropriate out-of-network</p>	<p>Jose Ruiz, Director Corporate Claims Regulatory Division</p> <p>Rick J. Martinez Medical Networks Manager Corporate Claims Regulatory Division State Compensation Insurance Fund March 25, 2014 Written Comment</p>	<p>Reject: Unnecessary as the word “initial” and “first” are synonymous and used interchangeably.</p> <p>Reject: The commenter’s recommendation is unnecessary because the MPN Applicant is responsible for §§9767.19(a)(2)(D) and (E) through the MPN Medical Access Assistant.</p> <p>Reject: The commenter’s recommendation is unnecessary because it is redundant.</p>	<p>None.</p> <p>None.</p> <p>None.</p>

MEDICAL PROVIDER NETWORKS	RULEMAKING COMMENTS 2 nd 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>specialists requested by the primary treating physician when, within 10 business days of receipt of request from the injured covered employee, <u>both the MPN Medical Access Assistant and the MPN Applicant</u> has failed to schedule or offer an appointment with an appropriate specialist to occur within 20 days of the receipt of the request, \$500 for each occurrence.”</p> <p>Commenter states that the penalties in the two sections are for failure of an MPN Applicant to permit an injured covered employee to obtain necessary services out-of-network when the Medical Access Assistant fails to meet certain requirements. The MPN Applicant should also be allowed to comply by having one of their employees meet the requirements.</p> <p>Specifically for paragraph 2(D), in order to maintain consistency with Access Standards regulation § 9767.5(f), commenter recommends changing the language “for an initial MPN treatment” to “for the first treatment visit”. Commenter opines that Paragraph 2(D) should distinguish</p>			

MEDICAL PROVIDER NETWORKS	RULEMAKING COMMENTS 2 nd 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	the act of scheduling an appointment versus apart from the actual appointment date.			
9767.19(b)(1)	<p>Commenter recommends the following revised language:</p> <p>“(1) Failure to provide the complete MPN employee notification pursuant to section 9767.12 to an injured covered employee, \$500 per occurrence up to \$10,000<u>\$1,000.</u>”</p> <p>Commenter states that the proposed language in this section assesses a penalty of \$500 per occurrence up to \$10,000 against the employer or insurer for failure to provide a complete MPN employee notification to an injured covered employee. Commenter opines that this is overly punitive and imposes an excessive cost for the employer/insurer. Commenter recommends that the maximum be changed from \$10,000 to \$1,000.</p>	<p>Jose Ruiz, Director Corporate Claims Regulatory Division</p> <p>Rick J. Martinez Medical Networks Manager Corporate Claims Regulatory Division State Compensation Insurance Fund March 25, 2014 Written Comment</p>	Reject: Providing the complete MPN employee notification to injured covered employees is important and the penalty is commensurate with a violation.	None.
9767.19(b)(5)	<p>Commenter recommends the following revised language:</p> <p>“(5) Failure to provide the Transfer of Care notice <u>notification letter</u> to an injured covered employee pursuant to</p>	<p>Jose Ruiz, Director Corporate Claims Regulatory Division</p> <p>Rick J. Martinez Medical Networks</p>	Reject: Providing the Transfer of Care notice to injured covered employees is important and the penalty is commensurate with a violation.	None.

MEDICAL PROVIDER NETWORKS	RULEMAKING COMMENTS 2 nd 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>§ 9767.9, \$250 per occurrence up to \$10,0001,000.”</p> <p>Commenter states that this subdivision proposes that a penalty be assessed for failure to provide the Transfer of Care notice to an injured covered employee. It should be clarified that penalties will be imposed only when the employer or insurer has failed to provide the proper notices outlined in § 9767.9.</p> <p>Commenter recommends adding clarifying language to the term “notice”. It is unclear whether it signifies the Transfer of Care policy or letter.</p> <p>Commenter states 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 Transfer of Care notice to an injured covered employee. Commenter opines that this is overly punitive and imposes an excessive cost for the employer/insurer. Commenter recommends that the maximum be changed from \$10,000 to \$1,000.</p>	<p>Manager Corporate Claims Regulatory Division State Compensation Insurance Fund March 25, 2014 Written Comment</p>	<p>Reject: Unnecessary it is clear that Transfer of Care is addressed in §9767.9.</p> <p>Reject: The distinction commenter is making between the Transfer of Care policy or letter is unclear. The Transfer of Care policy is described in the MPN Plan and also in the complete employee notification. Transfer of Care notice is the letter to the injured worker of the determination regarding the completion of treatment and the decision to transfer medical care into the MPN.</p>	<p>None.</p> <p>None.</p>

MEDICAL PROVIDER NETWORKS	RULEMAKING COMMENTS 2 nd 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
9767.19(b)(6)	<p>Commenter recommends the following revised language:</p> <p>“(6) Failure to provide the Continuity of Care notice <u>notification letter</u> to an injured covered employee <u>pursuant to § 9767.10</u>, \$250 per occurrence up to \$10,000 <u>\$1,000</u>.”</p> <p>Commenter states that this subdivision proposes that a penalty be assessed for failure to provide the Continuity of Care notice to an injured covered employee. It should be clarified that penalties will be imposed only when the employer or insurer has failed to provide the proper notices outlined in § 9767.10.</p> <p>Commenter recommends adding clarifying language to the term “notice”. It is unclear whether it signifies the Continuity of Care policy or letter.</p> <p>Commenter states that the 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 Continuity of Care notice to an injured covered employee.</p>	<p>Jose Ruiz, Director Corporate Claims Regulatory Division</p> <p>Rick J. Martinez Medical Networks Manager Corporate Claims Regulatory Division State Compensation Insurance Fund March 25, 2014 Written Comment</p>	<p>Reject: Providing the Continuity of Care notice to injured covered employees is important and the penalty is commensurate with a violation.</p> <p>Reject: Unnecessary it is clear that Continuity of Care is addressed in §9767.10.</p> <p>Reject: The distinction commenter is making between the Continuity of Care policy or letter is unclear. The Continuity of Care policy is described in the MPN Plan and also in the complete employee notification. Continuity of Care notice is the letter to the</p>	<p>None.</p> <p>None.</p> <p>None.</p>

MEDICAL PROVIDER NETWORKS	RULEMAKING COMMENTS 2 nd 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>Commenter opines that this is overly punitive and imposes an additional excessive cost for the employer/insurer. Commenter recommends that the maximum be changed from \$10,000 to \$1,000.</p>		<p>injured worker of the determination regarding the completion of treatment and whether or not the employee will be required to select a new provider from within the MPN.</p>	
9767.3(d)(8)(E)	<p>Commenter requests that this section state the web address or URL to the MPN shall display the roster of all treating provider listing physicians in the MPN. Web address shall also include a method to report any inaccuracies.</p> <p>Commenter states that the status of the physician participation and ability to accept new patients changes frequently as does the physicians ability to determine if can accept the case. Capacity issues are fluid and can change weekly. This is also applicable for the secondary physician. The provider does not always know until they look at the case if they can take the case. Commenter asks how one can force the provider to take a case that they cannot impact. Sometimes this is not known until there is communication with the secondary treating physician.</p>	<p>Margaret Wagner CEO, Signature Networks Plus, Inc. March 25, 2014 Written Comment</p>	<p>Reject: Unnecessary to include “the MPN shall display” because it is already clear that the “roster of treating physicians” shall be posted on the MPN’s internet website. Also, there is no reason to reiterate the “Web address shall also include “a method to report any inaccuracies” because this is already mandated in §9767.12(a). Accept in part. Reject in part. Accept: The requirement to indicate “if a physician is not currently taking new workers’ compensation patients” is deleted because it is overly burdensome. Reject: The requirement to indicate if a secondary treating physician can only be seen “by referral only” will remain because it is important</p>	<p>None.</p> <p>§9767.3(d)(8)(E) is revised to delete “Affirm that the roster of all treating physicians in the MPN shall indicate if a physician is not currently taking new workers’ compensation patients and a” the phrase “are counted</p>

MEDICAL PROVIDER NETWORKS	RULEMAKING COMMENTS 2 nd 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>Commenter opines that the provider who is at capacity (for the next couple of weeks), could be going on vacation or even a sabbatical. This changes daily and would be impossible monitor. The MPN is fluid at all times. Commenter states that her organization will be putting a disclaimer on our listing advising that the list is current as of the date of posting and every effort is made to ensure accuracy. Commenter will also incorporate a portal to report any inaccuracies.</p>		<p>information that is not overly burdensome to maintain.</p>	<p>when determining access standards” is added to the requirement that secondary treating physicians who can only be seen with an approved referral are clearly designated “by referral only”.</p>
9767.5(h)(2)	<p>Commenter recommends the following revised language:</p> <p>“MPN medical access assistants have different duties than claims adjusters. MPN medical access assistants 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. All calls directed to and handled by the MPN medical access assistant shall be logged.”</p> <p>Commenter recommends this revision in order to tie all calls directed to the Medical Access Assistant to the log.</p>	<p>Margaret Wagner CEO, Signature Networks Plus, Inc. March 25, 2014 Written Comment</p>	<p>Reject: Commenter’s recommended language will not be adopted because calls directed to a claims adjuster who happens to be serving the dual role of MPN medical access assistant will not need to be logged if the discussion requires the claims adjuster to switch roles to an MPN medical access assistant in the middle of a call.</p>	<p>None.</p>

MEDICAL PROVIDER NETWORKS	RULEMAKING COMMENTS 2nd 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
9767.5.1(a)	<p>Commenter recommends the following revised language:</p> <p>“An MPN applicant shall obtain from each physician participating in the MPN a written acknowledgement in which the physician affirmatively elects to be a member of the MPN as provided in this section. .Written acknowledgement may be obtained via direct contract, or alternative methods such as direct contracts with source networks that include written acknowledgement as part of the provider network participation contract. This section does not apply to a physician who is a shareholder, partner, or employee of a medical group that elects to participate in the MPN.”</p> <p>Commenter recommends adding alternative methods language for participation. Commenter opines that this will eliminate a large burden for the provider and mitigate redundant and duplicate efforts.</p>	Margaret Wagner CEO, Signature Networks Plus, Inc. March 25, 2014 Written Comment	Reject: The commenter’s recommended language will not be adopted although the methods described are certainly allowed. Ultimately, however, the MPN is responsible for obtaining and ensuring that all physician acknowledgments are up to date, meet regulatory requirements, and are readily available for review upon request by the Administrative Director.	None.
9767.5.1(e)(2)	<p>Commenter recommends the following revised language:</p> <p>“If, on or after [OAL to insert</p>	Margaret Wagner CEO, Signature Networks Plus, Inc. March 25, 2014	Reject: Commenter’s recommended language will not be adopted. A physician acknowledgment must be	None.

MEDICAL PROVIDER NETWORKS	RULEMAKING COMMENTS 2nd 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>effective date of regulations], the physician joins a medical group that already has a contract to participate in an MPN or MPNs, the physician acknowledgment shall be considered as part of the group's acknowledgment unless the provider sends written notice of opt out to the MPN or contracting agent. Physician acknowledgement of notice of the MPN does not guarantee physician acceptance into the MPN.”</p> <p>Commenter opines that the acknowledgement can be considered part of the group’s acknowledgement (unless the provider opts out), but acknowledgement cannot guarantee physician acceptance into the MPN. The MPN shall have the exclusive right to determine the members of their MPN.</p>	Written Comment	obtained from a new physician joining a medical group that already has a contract to participate in an MPN or MPNs. This new physician will then be included in the MPN list of participating physicians updated by an officer or agent of the medical group within 90 days.	
Not Sure How to Cite	<p>Commenter recommends adding the following subparagraph:</p> <p>“The submission of a request for payment pursuant to subdivision (b) of Labor Code section 4603.2 for treatment of an injured worker who is covered under an MPN shall be deemed to constitute acknowledgment</p>	<p>Margaret Wagner CEO, Signature Networks Plus, Inc. March 25, 2014 Written Comment</p>	Reject: Although, Labor Code §4616(d) makes it clear that “An employer or insurer shall have the exclusive right to determine the members of their network.” Labor Code §4616(a)(3) requires a physician affirmatively elect to be a member of an MPN. A	None.

MEDICAL PROVIDER NETWORKS	RULEMAKING COMMENTS 2 nd 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>of willingness to participate in the MPN but does not guarantee provider acceptance for participation in the MPN.”</p> <p>Commenter states that payers/insurers and employers have to submit payment for services rendered to providers who are not MPN participants nor are they selected to be part of a MPN. A request for payment then subsequent payment to the provider does not and cannot guarantee MPN automatic acceptance or participation.</p>		<p>physician submitting a request for payment for services rendered is not tantamount to a physician affirmatively electing to be a member of an MPN, it merely means the physician wished to be paid for services rendered.</p>	
9767.1(a)(27)	<p>Commenter recommends the following revised language:</p> <p>“Revocation” means the permanent termination of a Medical Provider Network’s approval.</p> <p>Commenter opines that the word “permanent” should be removed from this section as it could be construed that the MPN could not restart the application process. Commenter states that there is currently no authority that would preclude an MPN from restarting this process. Eliminating this term will reduce disputes and</p>	<p>Jeremy Merz California Chamber of Commerce</p> <p>Jason Schmelzer California Coalition on Workers’ Compensation March 25, 2014 Written Comment</p>	<p>Reject: Goes beyond the scope of this comment period because no changes were made to §9767.1(a)(27) after the First 15-day comment period.</p>	None.

MEDICAL PROVIDER NETWORKS	RULEMAKING COMMENTS 2 nd 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>uncertainty over when an MPN can seek approval.</p> <p>Commenter recommends that the DWC include the termination date upon issuing a revocation.</p>			
9767.2(b)	<p>Commenter recommends the following revised language:</p> <p>Within 180 <u>90</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 reapproval 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 180 <u>90</u> days of receipt of a complete plan for reapproval, it shall be deemed approved on the 181st <u>91st</u> day for a period of four years.</p> <p>Commenter opines that given the plan was previously approved no distinguishable rationale exists as to</p>	<p>Jeremy Merz California Chamber of Commerce</p> <p>Jason Schmelzer California Coalition on Workers' Compensation March 25, 2014 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 90 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.</p>	None.

MEDICAL PROVIDER NETWORKS	RULEMAKING COMMENTS 2 nd 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	why it would take 6 months for reapproval. Commenter recommends that consideration be given to reducing this timeframe to 90 days.			
9767.2(f)	<p>Commenter recommends the following revised language:</p> <p>Upon approval of a new Medical Provider Network Plan, the MPN shall be assigned a unique MPN Identification number <u>by the DWC</u>.</p> <p>Commenter recommends that this phrase be included in order to eliminate potential confusion as to who is responsible for assigning the unique MPN Identification number.</p>	<p>Jeremy Merz California Chamber of Commerce</p> <p>Jason Schmelzer California Coalition on Workers' Compensation March 25, 2014 Written Comment</p>	Reject: Unnecessary because "by the DWC" is already stated in the definition for "Medical Provider Network Identification Number" in §9767.1(a)(15).	None.
9767.3(c)	<p>Commenter recommends the following revised language:</p> <p>All MPN applicants shall complete the section 9767.4 Cover Page for Medical Provider Network Application or Plan for Reapproval with an original or <u>electronic</u> signature and an MPN Plan meeting the requirements of this section or the optional MPN Application form. The completed application or plan documents and a copy of the completed documents shall be</p>	<p>Jeremy Merz California Chamber of Commerce</p> <p>Jason Schmelzer California Coalition on Workers' Compensation March 25, 2014 Written Comment</p>	Reject: Pursuant to the regulatory text, electronic signatures in compliance with California Government Code §16.5 are already allowed.	None.

MEDICAL PROVIDER NETWORKS	RULEMAKING COMMENTS 2nd 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>submitted in word-searchable PDF format on a computer disk, CD ROM, or flash drive with an original <u>or electronic signature</u> on the Cover Page for Medical Provider Network Application or Plan for Reapproval. The hard copy of the original <u>or electronic</u> signed cover page shall be maintained by the MPN applicant and made available for review by the Administrative Director upon request. Electronic Signatures in compliance with California Government Code section 16.5 are accepted.</p> <p>In order to promote uniformity in the regulation and consistency with completing the application, commenter recommends that references to electronic signature be added to this section.</p>			
9767.3(c)(3)	<p>Commenter recommends deleting the following sentence:</p> <p>“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> <p>Commenter states that Labor Code</p>	<p>Jeremy Merz California Chamber of Commerce</p> <p>Jason Schmelzer California Coalition on Workers’ Compensation March 25, 2014 Written Comment</p>	<p>Reject: These regulations pertain to an MPN’s ability to list an interpreter service as an ancillary service provider. In order for an interpreter to be listed as an ancillary service provider “the interpreter listed must be certified pursuant to section 9795.1.6(a)2)(A).”</p>	None.

MEDICAL PROVIDER NETWORKS	RULEMAKING COMMENTS 2 nd 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>4600(f) outlines the requirements of an interpreter for the purposes of medical appointments. Further, it states the interpreter must be qualified, but not certified. Commenter opines that this reference is unnecessary given the authority of Labor Code 4600. Commenter requests that the sentence referencing certified interpreters be stricken.</p>			
9767.3(d)(8)(E)	<p>Commenter recommends deleting this section.</p> <p>Commenter states that many physicians act as both a primary and consulting physician. The ability to take on new patients changes daily. This roster requirement would place an impractical administrative burden on both the physician and MPN. Commenter opines that this section is unnecessary due to the addition of the medical access assistant. The MAA is charged with finding a physician that will take the employee as a patient and treat the injury. Commenter states that this section should be removed in its entirety.</p>	<p>Jeremy Merz California Chamber of Commerce</p> <p>Jason Schmelzer California Coalition on Workers' Compensation March 25, 2014 Written Comment</p>	<p>Accept in part. Reject in part. Accept: The requirement to indicate "if a physician is not currently taking new workers' compensation patients" is deleted because it is overly burdensome. Reject: The requirement to indicate if a secondary treating physician can only be seen "by referral only" will remain because it is important information that is not overly burdensome to maintain.</p>	<p>§9767.3(d)(8)(E) is revised to delete "Affirm that the roster of all treating physicians in the MPN shall indicate if a physician is not currently taking new workers' compensation patients and a" the phrase "are counted when determining access standards" is added to the requirement that secondary treating physicians who can only be seen with an approved referral are clearly designated</p>

MEDICAL PROVIDER NETWORKS	RULEMAKING COMMENTS 2 nd 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
				“by referral only”.
9767.3(d)(8)(H)	<p>Commenter recommends the following revised language:</p> <p>“... The access standards set forth in section 9767.5 are determined by the injured employee’s <u>address</u> residence or workplace address and not the center of a zip code.”</p> <p>Commenter states that the injured workers’ residence is not always known to the MPN and/or claims administrator. However, the address is on file and can be utilized for this purpose. Commenter requests that residence be replaced by address to avoid confusion on how to properly determine access standards.</p>	<p>Jeremy Merz California Chamber of Commerce</p> <p>Jason Schmelzer California Coalition on Workers’ Compensation March 25, 2014 Written Comment</p>	Reject: Residence is used for clarity because an address can be a P.O. Box which would not be meaningful when determining access standards.	None.
9767.4 – Cover Page for Medical Provider Network Application or Plan for Reapproval	Commenter requests that Line 10 for “Signature of authorized individual” allow for an electronic signature.	<p>Jeremy Merz California Chamber of Commerce</p> <p>Jason Schmelzer California Coalition on Workers’ Compensation March 25, 2014 Written Comment</p>	Reject: Unnecessary because electronic signatures are allowed.	None.
9767.5(h)(2)	Commenter recommends the	Jeremy Merz		

MEDICAL PROVIDER NETWORKS	RULEMAKING COMMENTS 2 nd 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>following revised language:</p> <p>MPN medical access assistants have different duties than claims adjusters. MPN medical access assistants 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. Although their duties are different, if the same person performs both, the MPN medical access assistant's contacts must be separately and accurately logged. All calls directed to and handled by the MPN medical access assistant shall be logged.</p> <p>Commenter opines that one could interpret that the language requires both the examiner and the MPN medical access assistant to keep logs when assisting injured workers with securing an appointment within the MPN. The examiner's role is much different than the MAA and encompasses a myriad of duties and responsibilities in providing timely and accurate benefits. Commenter requests that no additional administrative burden be placed on the</p>	<p>California Chamber of Commerce</p> <p>Jason Schmelzer California Coalition on Workers' Compensation March 25, 2014 Written Comment</p>	<p>Reject: Commenter's recommended language will not be adopted because calls directed to a claims adjuster who happens to be serving the dual role of MPN medical access assistant will not need to be logged if the discussion requires the claims adjuster to switch roles to an MPN medical access assistant in the middle of a call.</p>	<p>None.</p>

MEDICAL PROVIDER NETWORKS	RULEMAKING COMMENTS 2 nd 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	examiner and that any calls handled by the MAA be logged.			
9767.5.1(a) and (g)	<p>Commenter recommends the following revised language:</p> <p>(a) An MPN applicant shall obtain from each physician participating in contracting directly with the MPN a written acknowledgment in which the physician affirmatively elects to be a member of the MPN as provided in this section. This section does not apply to a physician who is a shareholder, partner, or employee of a medical group that elects to participate in the MPN, however this section applies to the medical group that elects to participate in the MPN. <u>Physician acknowledgments are to be used only by the Division of Workers' Compensation to approve plans, respond to physician complaints and for audits only.</u></p> <p>(g) The MPN applicant <u>contracting directly with the physician or medical group</u> is responsible for obtaining physician acknowledgments and must ensure that all physician acknowledgments are up to date, meet regulatory requirements, and are</p>	<p>Jeremy Merz California Chamber of Commerce</p> <p>Jason Schmelzer California Coalition on Workers' Compensation March 25, 2014 Written Comment</p>	<p>Reject: Labor Code §4616 makes it clear that a physician shall affirmatively elect to be a member of an MPN. No distinction is made that physician acknowledgments are only required if the MPN is contracting directly with the physician. Ultimately, the MPN is responsible for obtaining and ensuring that all physician acknowledgments are up to date, meet regulatory requirements, and are readily available for review upon request by the Administrative Director.</p> <p>Reject: To preclude physician acknowledgments from discovery in a legal proceeding or Public Records Act request goes beyond the scope of these regulations.</p>	<p>None.</p> <p>None.</p>

MEDICAL PROVIDER NETWORKS	RULEMAKING COMMENTS 2 nd 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>readily available for review upon request by the Administrative Director. <u>The original physician acknowledgment should suffice to avoid any penalty to the MPN when a physician is aware of their participation in said MPN and has either not notified the MPN of the change in group or of a desire to opt out.</u></p> <p>Commenter opines that the physician acknowledgment should be secured by the entity via the contractual agreement. This would eliminate duplicative efforts of securing additional acknowledgments from physicians that have already entered into a contract with an MPN.</p> <p>Commenter opines that mandating additional acknowledgments places an unnecessary burden on both the physicians and MPN applicant. To avoid unnecessary litigation and achieve the true intent of SB 863 dealing with strengthening MPN's and reducing frictional, commenter requests the addition to specify that acknowledgments are to be used by the exclusively by the DWC for compliance measurement and provider</p>			

MEDICAL PROVIDER NETWORKS	RULEMAKING COMMENTS 2 nd 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>issues. LC 4616 (a)3 only requires this acknowledgement at renewal or new contracting. Because this section is so complex and requires reporting from providers that the MPN administrator has no control over, it will be extremely difficult if not impossible to be truly current. Commenter states that providers are currently refusing to participate in MPNs because they cannot agree to notify every MPN of changes in their providers every 90 days. MPN's will have difficult achieving compliance based on frequent changes in the listings from medical groups who do not timely inform the MPN or changes.</p>			
<p>9767.5.1(c)(2) and (c)(3)</p>	<p>Commenter recommends the following revised language:</p> <p>(c)(2) An electronically signed document in compliance with Government Code section 16.5</p> <p>(3) An electronic acknowledgment using generally accepted means of authentication to confirm the identity of the person making the acknowledgment <u>consistent with the provisions of Title 2.5 (commencing with Section 1633.1) of Part 2 of</u></p>	<p>Jeremy Merz California Chamber of Commerce</p> <p>Jason Schmelzer California Coalition on Workers' Compensation March 25, 2014 Written Comment</p>	<p>Reject in part. Accept in part. Reject: The commenter's recommendation will not be adopted because there are government entity MPN Applicants.</p> <p>Accept: The recommendation to include Civil Code sections 1633.1 will be adopted.</p>	<p>None.</p> <p>§9767.5.1(c)(2) is revised to include "or Civil Code sections 1633.1 et seq. whichever is applicable."</p>

MEDICAL PROVIDER NETWORKS	RULEMAKING COMMENTS 2 nd 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p><u>Division 3 of the Civil Code.</u></p> <p>Commenter states that Government Code Sec. 16.5 is not applicable to a transaction between two private parties. The section begins with the language, “In any written communication with a public entity...” Electronic signatures in private commerce are governed by the Uniform Electronic Transactions Act (UETA) as referenced in the above Civil Code citation. Commenter recommends that Government Code section 16.5 be replaced with Title 2.5 of Part 2 of Division 3 of the Civil Code.</p>			
9767.5.1(c)(3)	<p>Commenter recommends the following language:</p> <p><u>(c)(3) The submission of a request for payment pursuant to subdivision (b) of Labor Code section 4603.2 for treatment of an injured worker who is covered under an MPN shall be deemed to constitute acknowledgment of participation in the MPN effective as of the date of execution of the agreement in which the physician agreed to be included in the MPN.</u></p>	<p>Jeremy Merz California Chamber of Commerce</p> <p>Jason Schmelzer California Coalition on Workers’ Compensation March 25, 2014 Written Comment</p>	<p>Reject: Although, Labor Code §4616(d) makes it clear that “An employer or insurer shall have the exclusive right to determine the members of their network.” Labor Code §4616(a)(3) requires a physician affirmatively elect to be a member of an MPN. A physician submitting a request for payment for services rendered is not tantamount to a physician affirmatively electing to be a member of an</p>	None.

MEDICAL PROVIDER NETWORKS	RULEMAKING COMMENTS 2nd 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>Commenter states that the suggested subparagraph (3) of subdivision (c) should be acceptable under the regulatory authority under section 133 of the Labor Code. Commenter states that the recommended section should be read in conjunction with Labor Code Sec. 4609 regarding “silent PPOs” and should be harmonized with its provisions. Further, entering into the agreement can be made manifest upon accepting an appointment under the contract and then billing at the contract rate for reimbursement. Commercial Code Sec. 1303 provides, in part that a course of performance is a sequence of conduct between the parties to a particular transaction that exists if:</p> <p>(1) the agreement of the parties with respect to the transaction involves repeated occasions for performance by a party; and</p> <p>(2) the other party, with knowledge of the nature of the performance and opportunity for objection to it, accepts the performance or acquiesces in it without objection.</p>		MPN, it merely means the physician wishes to be paid for services rendered.	
9767.5.1(e)(2)-(5)	Commenter recommends the following revised language:	Jeremy Merz California Chamber	Reject: Labor Code §4616(a)(3) mandates	None.

MEDICAL PROVIDER NETWORKS	RULEMAKING COMMENTS 2 nd 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>(e)(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 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</p>	<p>of Commerce</p> <p>Jason Schmelzer California Coalition on Workers' Compensation March 25, 2014 Written Comment</p>	<p>physician acknowledgments so physicians can affirmatively elect to be a member or not be a member of an MPN. Pursuant to §9767.5.1(e)(2), since the medical group 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. When a physician joins a medical group isn't a contract required? Physician acknowledgments may be included in these contracts. §9767.5.1(b)(2) makes clear, the officer or agent of the medical group shall update the list of participating physicians within 90 days of any additions to or removals from the list.</p>	

MEDICAL PROVIDER NETWORKS	RULEMAKING COMMENTS 2 nd 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>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 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 the requesting person's identity as one of the persons authorized in subdivision (b).</p> <p>Commenter opines that the proposed wording in (e)(2) would make compliance with this section difficult if not impossible when one takes into account the "group" that is being referenced. In many instances, industrial clinics have physicians</p>			

MEDICAL PROVIDER NETWORKS	RULEMAKING COMMENTS 2 nd 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>coming in and out on a weekly or even daily basis. This language defies the intent of the statute, which was to provide an easier compliance mechanism when dealing medical groups.</p> <p>In regard to recommended deletions of (e)(2) through (e)(5) commenter asserts that the attempt to require physician acknowledgments where a continuous/automatically renewed contract exists is outside the language in the statute. Labor Code section 4616(a)(3) controls acknowledgments involving a network that is new or renewing and does not have authority over networks involving a contract that automatically renews.</p>		<p>Reject: §9767.5.1(e)(5) no physician acknowledgments are required if a physician entered into a contract that automatically renews without a new execution if: the contract identifies the MPN in which the physician or group is participating or a website address is openly published where a physician or his/her designee is enabled to observe which MPN or MPNs have been selected for the physician or group and to de-select any MPN.</p>	<p>None.</p>
9767.15(b)(5)	<p>Commenter recommends the following revision:</p> <p>...The access standards set forth in section 9767.5 are determined by the injured employee's residence <u>address</u> or workplace address and not the center of a zip code.</p>	<p>Jeremy Merz California Chamber of Commerce</p> <p>Jason Schmelzer California Coalition on Workers' Compensation</p>	<p>Reject: Residence is used for clarity because an address can be a P.O. Box which would not be meaningful when determining access standards.</p>	<p>None.</p>

MEDICAL PROVIDER NETWORKS	RULEMAKING COMMENTS 2 nd 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>Commenter recommends that in order to avoid any confusion “residence” be replaced with “address”. Commenter opines that this will help promote an efficient process and consistent result in geocoding results.</p>	<p>March 25, 2014 Written Comment</p>		
9767.17(a)(2)	<p>Commenter recommends the following revised language:</p> <p>...Additionally, the MPN failed to ensure in each instance that a worker received necessary medical treatment within the MPN or <u>and</u> failed to authorize treatment outside of the MPN within the required time frames and access standards.</p> <p>Commenter states that the need to authorize treatment outside of the MPN would stem from the inability to provide necessary care within the MPN. Commenter recommends that the word “or” be replaced with “and” to rationally partner these two intertwined circumstances.</p>	<p>Jeremy Merz California Chamber of Commerce</p> <p>Jason Schmelzer California Coalition on Workers’ Compensation March 25, 2014 Written Comment</p>	<p>Reject: Goes beyond the scope of this comment period because no changes were made to §9767.17(a)(2) after the First 15-day comment period.</p>	None.
9767.17(c)	<p>Commenter recommends the following revised language:</p> <p>...The petition shall include details that show a MPN no longer meets the</p>	<p>Jeremy Merz California Chamber of Commerce</p> <p>Jason Schmelzer</p>	<p>Reject: Goes beyond the scope of this comment period because no changes were made to §9767.17(c) after the First 15-day comment period.</p>	None.

MEDICAL PROVIDER NETWORKS	RULEMAKING COMMENTS 2 nd 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>eligibility requirements to have a Medical Provider Network and/or an MPN systemically fails to meet the access standards <u>for specific locations within the geographic service described in its plan.</u></p> <p>Commenter notes that the underlined phrase was deleted from the most recent version of the proposed regulations concerning revocation. Commenter recommends that this phrase not be deleted as it gives specific guidance to the petitioner and the DWC on criteria necessary to justify revocation regarding access standards. Commenter opines that the deletion of this phrase could inadvertently result in frivolous petitions for revocation.</p>	<p>California Coalition on Workers' Compensation March 25, 2014 Written Comment</p>		
9767.18(a)(2)(B)(v)	<p>Commenter recommends the following revised language:</p> <p>A copy of the telephone call logs tracking the calls and the contents of the calls made to and by the MPN medical access assistants and the MPN Contact within a reasonable time period.</p> <p>Commenter recommends that the call</p>	<p>Jeremy Merz California Chamber of Commerce</p> <p>Jason Schmelzer California Coalition on Workers' Compensation March 25, 2014 Written Comment</p>	<p>Reject: Goes beyond the scope of this comment period because no changes were made to §9767.18(a)(2)(B)(v) after the First 15-day comment period.</p>	<p>None.</p>

MEDICAL PROVIDER NETWORKS	RULEMAKING COMMENTS 2 nd 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>logs be narrowed to the individual(s) designated by the MPN to assist individuals in securing medical treatment within the MPN.</p> <p>Commenter opines that specifying ownership of the call logs will ensure integrity and consistency with the information collected.</p>			
9767.19(b)(1) and (b)(2)	<p>Commenter recommends the following revised language:</p> <p>(b)(1) Failure to provide the complete MPN employee notification pursuant to section 9767.12 to an injured covered employee, \$500.00 per occurrence up to \$10,000.00. <u>MPN's will be given a 6 month grace period from the approval of the MPN by the DWC to perfect employee notifications. All penalties shall be assessed on all future employee notifications after the effective date of this regulation and post the 6 month grace period.</u></p> <p>(b)(2) Failure to provide the entire or correct complete MPN employee notification notice required under section 9767.12 to an injury covered employee, \$250.00 per occurrence up to \$10,000.00.</p>	<p>Jeremy Merz California Chamber of Commerce</p> <p>Jason Schmelzer California Coalition on Workers' Compensation March 25, 2014 Written Comment</p>	<p>Reject: The commenter's recommended language will not be adopted. Mitigating factors can be considered when assessing penalties. In addition, the Administrative Director can use her discretion when applying her enforcement authority.</p>	None.

MEDICAL PROVIDER NETWORKS	RULEMAKING COMMENTS 2 nd 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>Commenter states that the number of covered employees in most, if not all, MPN's exceed 20. Errors, glitches and bugs are identified during the launch of any new product in any industry. Commenter opines that providing a grace period would enable the MPN to identify any clerical typographical errors in the employee notification early on and prior to having exposure to \$10,000.00 in penalties. Commenter recommends that section (b)(2) be deleted as it duplicative to section (b)(1).</p>			
9767.19(b)(5) and (b)(6)	<p>Commenter recommends that these subsections be deleted.</p> <p>Commenter states that these subsections are outside the control of the MPN and lies with the carrier/claims administrator. Commenter opines that the MPN should not be penalized for the failure of the carrier/claims administrator in failing to provide the transfer/continuity of care notices.</p>	<p>Jeremy Merz California Chamber of Commerce</p> <p>Jason Schmelzer California Coalition on Workers' Compensation March 25, 2014 Written Comment</p>	<p>Reject: §9767.19(b) specifically states that these penalties will only apply to MPN who are employer's or insurer's because DWC recognizes there will be some MPN Applicants who cannot be held responsible because they have no control over whether or not these notices are provided to injured covered employees.</p>	None.
9767.1(a)(12)	<p>Commenter recommends the following revised language:</p> <p>“Health care shortage” means a</p>	<p>Steven Suchil Assistant Vice President/Counsel American Insurance</p>	<p>Reject: Goes beyond the scope of this comment period because no changes were made to §9767.1(a)(12) after the</p>	None.

MEDICAL PROVIDER NETWORKS	RULEMAKING COMMENTS 2 nd 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>situation in a geographical area in which the number of physicians of in a particular specialty <u>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 physicians participating in an MPN does not constitute a health care shortage where a sufficient number of physicians of in that type-specialty are available within the access standards and willing to treat injured workers under the California workers' compensation system.</p> <p>Commenter opines that the Division is exceeding its statutory authority by establishing specialty requirements rather than the Legislature's very clear mandate for adequate types of physicians, as provided in Labor Code Section 4616(a)(1), which references Labor Code Sections 3209.3 and 3209.5.</p> <p>Commenter states that the statutory</p>	<p>Association March 25, 2014 Written Comment</p>	<p>First 15-day comment period.</p>	

MEDICAL PROVIDER NETWORKS	RULEMAKING COMMENTS 2 nd 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>citations for defining a Health Care Shortage are Labor Code Section 3209.3 which includes "...physicians and surgeons holding an MD or DO degree, psychologists, acupuncturists, optometrists, dentists, podiatrists, and chiropractic practitioners licensed by California state law" and Labor Code Section 3209.5.</p>			
9767.1(a)(16)	<p>Commenter recommends that following revised language:</p> <p>"Medical Provider Network Medical Access Assistant" means an individual in the United States provided by the Medical Provider Network to help injured workers, <u>when needed</u> with finding available Medical Provider Network physicians of the injured workers' choice and with scheduling provider appointments.</p> <p>Commenter states that while it might not be a bad idea to have the Medical Access Assistant (MAA) provided by the MPN, this would be a new concept. To date this has been the responsibility of the payor.</p> <p>Commenter recommends adding "when needed" that use of the MAA</p>	<p>Steven Suchil Assistant Vice President/Counsel American Insurance Association March 25, 2014 Written Comment</p>	<p>Reject: Labor Code §4616(a)(5) specifically states, "every medical provider network shall provide one or more persons within the United States to serve as medical access assistants."</p> <p>Reject: Labor Code §4616(a)(5) specifically uses phrases such as "to help injured employee", "to respond to injured employees". It can</p>	<p>None.</p> <p>None.</p>

MEDICAL PROVIDER NETWORKS	RULEMAKING COMMENTS 2 nd 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>may not be required in all instances. The injured worker, his or her representative, and/or the adjuster may also make appointments.</p> <p>Commenter states that the initial attempt to set an appointment with the injured worker's choice of physician may be ideal he opines that it may not be successful within the tight time frames under the regulations. Commenter opines that to confine the MAA to the injured worker's choice would potentially lead to treatment delays and penalties. Commenter states that an injured worker may request a provider or specialty that is inappropriate for their injury.</p>		<p>be assumed that injured worker's seek the assistance of a MPN medical assistant "when needed".</p> <p>Reject: Labor Code §4616(a)(5) specifically uses the phrase "of the employee's choice" and to alleviate commenter's concerns the word "appropriate" is already used in §9767.5(h)(2).</p>	None.
9767.1(a)(20)	<p>Commenter notes that this subsection includes a provision requiring the MPN contact to be responsible for responding to complaints. Commenter states that this additional requirement should be deleted. Commenter states that many nationwide companies have established mechanisms for handling complaints, and he opines that the addition of this requirement is duplicative, costly and could lead to additional errors.</p>	<p>Steven Suchil Assistant Vice President/Counsel American Insurance Association March 25, 2014 Written Comment</p>	<p>Reject: DWC disagrees this is not an additional requirement and has been in place since the 45-day comment period.</p>	None.
9767.3(c)(4) and	<p>Commenter opines that these sections</p>	<p>Steven Suchil</p>	<p>Reject: Goes beyond the scope</p>	None.

MEDICAL PROVIDER NETWORKS	RULEMAKING COMMENTS 2 nd 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
(c)(5)	should be amended to include language that explicitly states that insurers have the right to select MPN participant physicians.	Assistant Vice President/Counsel American Insurance Association March 25, 2014 Written Comment	of this comment period because no changes were made to §§9767.3(c)(4) and (c)(5) after the First 15-day comment period.	
9767.3(d)(8)(E)	<p>Commenter recommends the following revised language:</p> <p>State the web address or URL to the <u>MPN provider listing</u>. roster of all treating physicians in the MPN. Affirm that the roster of all treating physicians in the MPN shall indicate if a physician is not currently taking new workers' compensation patients and affirm that secondary treating physicians who can only be seen with an approved referral are clearly designated "by referral only".</p> <p>Commenter opines that requiring such affirmations for a roster that is to be updated quarterly will not provide a service to the injured workers accessing the roster. Commenter states that a physician's ability/willingness to take new patients can change on a weekly, if not daily, basis, yet the physician would appear as unavailable for the rest of</p>	Steven Suchil Assistant Vice President/Counsel American Insurance Association March 25, 2014 Written Comment	<p>Accept in part. Reject in part. Accept: The requirement to indicate "if a physician is not currently taking new workers' compensation patients" is deleted because it is overly burdensome.</p> <p>Reject: The requirement to indicate if a secondary treating physician can only be seen "by referral only" will remain because it is important information that is not overly burdensome to maintain.</p>	§9767.3(d)(8)(E) is revised to delete "Affirm that the roster of all treating physicians in the MPN shall indicate if a physician is not currently taking new workers' compensation patients and a" the phrase "are counted when determining access standards" is added to the requirement that secondary treating physicians who can only be seen with an approved referral are clearly designated "by referral only".

MEDICAL PROVIDER NETWORKS	RULEMAKING COMMENTS 2 nd 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>the quarter. Commenter opines that By Referral Only may be a more stable provision, but also changes from time to time and may only apply to specified services.</p> <p>Commenter opines that these proposed additions create further complexity to the production of the roster, require quarterly confirmation with the entire roster of participants and produce little if any benefit for the effort expended.</p>			
<p>9767.3(d)(8)(H) and 9767.15(b)(5)</p>	<p>Commenter recommends deleting the following sentence:</p> <p>The geocoding results will be used by DWC in reviewing MPN plans to give an approximation of MPN compliance with the access standards set forth in section 9767.5.</p> <p>In the interests of simplicity commenter recommends deleting this sentence as it just restates the first sentence in the paragraph.</p> <p>Commenter opines that this subsection is unclear. The applicant is told to show geocoding from the injured employee's residence or workplace, not the center of the zip code. Later</p>	<p>Steven Suchil Assistant Vice President/Counsel American Insurance Association March 25, 2014 Written Comment</p>	<p>Reject: Disagree because this sentence is clarifying how DWC will be using the geocoding results and making a distinction between §9767.5.</p> <p>Reject: Geocoding results are taken from the center of a zip code NOT and employee's residence or workplace address.</p>	<p>None.</p> <p>None.</p>

MEDICAL PROVIDER NETWORKS	RULEMAKING COMMENTS 2 nd 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>on, the subsection provides that geocoding for primary care providers, hospitals, and specialists results should be from the center of each zip code within the MPN access service area. The relationship between how these provisions, and the information to be provided, is not clear.</p> <p>Commenter opines that the Division only has authority for “types” of physicians as described in Labor Code Section 3209.3, as provided in Labor Code Section 4616(a)(1).</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 specialty or recognized expertise in treating the particular injury or condition in question.”</p>	None.
9767.5(h)(2)	<p>Commenter recommends the following revised language:</p> <p><u>MPN medical access assistants do not authorize treatment and</u> have different duties than claims adjusters. MPN medical access assistants 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.</p> <p>Commenter recommends that the highlighted language be retained. Commenter states that there are occasions, when setting up a future</p>	<p>Steven Suchil Assistant Vice President/Counsel American Insurance Association March 25, 2014 Written Comment</p>	<p>Reject: The phrase “do not authorize treatment and” is deleted and replaced with a statement that recognizes “their duties are different” instead pointing any particular duty.</p>	None.

MEDICAL PROVIDER NETWORKS	RULEMAKING COMMENTS 2 nd 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>appointment, that the physician’s office will request that lab work or imaging services be obtained prior to the appointment. The MAA - who is not an adjuster - cannot authorize these services.</p>			
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 MPN physicians of the injured workers’ choice and scheduling and confirming physician appointments, and the times they are available to assist workers with obtaining access to medical treatment under the MPN;</p> <p>Commenter opines that the phrase “of the injured workers’ choice” should be deleted because it has the potential for delaying treatment and for creating penalties if their choice is not available within the tight timeframes the regulations provide. Additionally, an injured worker may request a provider or specialty that is inappropriate for their injury.</p>	<p>Steven Suchil Assistant Vice President/Counsel American Insurance Association March 25, 2014 Written Comment</p>	<p>Reject: Labor Code §4616(a)(5) uses the phrase “of the employee’s choice”. 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.

MEDICAL PROVIDER NETWORKS	RULEMAKING COMMENTS 2 nd 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>Commenter does not find statutory authority for the addition of confirming appointments to the tasks for the Medical Access Assistant. Commenter states that confirmation generally comes from the physician's office to the patient, not through a third party.</p>			
9767.19(b)(1) and (b)(2)	<p>Commenter opines that these two subsections are similar and will result in duplicate fines for the same defect. Commenter recommends that subsection (b)(1) be deleted because (b)(2) also includes the word "correct."</p>	<p>Steven Suchil Assistant Vice President/Counsel American Insurance Association March 25, 2014 Written Comment</p>	<p>Reject: "Complete MPN employee notification" is a specific notification that must be provided to injured workers. The "entire or correct" complete MPN employee notification is set forth in §9767.12(a)(2).</p>	None.
9767.19(a)(2)(F) and (b)(1)-(6)	<p>Commenter opines that the penalties in these sections are excessive.</p>	<p>Steven Suchil Assistant Vice President/Counsel American Insurance Association March 25, 2014 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.
9767.3(c)(3)	<p>Commenter remains opposed to the categorization of interpreter as an "ancillary service." Commenter states that interpreters are not "medical services or goods" and that the complexity of the profession is not</p>	<p>Beatriz Ugarte Helena Salvador Debora Marchevsky Marina Herrera Marisol Ugas Eleonora Ronconi</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</p>	None.

MEDICAL PROVIDER NETWORKS	RULEMAKING COMMENTS 2 nd 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>being considered.</p> <p>Commenter states that the amendment to this section, which states that if interpreters are to be listed in an MPN, that they must be certified, doesn't address the following:</p> <ol style="list-style-type: none"> 1) Since certification is only given to individual interpreters, which does it leave Language Service Providers? How does this fit in with the reality that most insurance companies' preferred vendors are Language Service Providers who systematically use non-certified interpreters? 2) If an MPN system is put in place, what will the application process be for individual interpreters and small Language Service Providers? 3) If included in the MPNs, will interpreters be subjected to rates lower than the statutory amount in the Labor Code, solely to be included in this MPN? 4) How can one assure that all 	<p>Paloma Gaos Pilar Garcia Brad Bowen Raul Beguiristain Norma Herrera William Loney Jimena Perez Elva Reyes Alia Volz Victor Fridman David Shafer Maria Jaeger Leyre Carbonell Carolina Hnizdo Verónica Morgan Liliana Loofbourow Carol Tonelli Julia Rodríguez Verónica Bonfiglio Blaine Stoddard Clemencia Rodríguez Elizabeth Milos Rebecca Cervantes Manuel Rojas Maribel Escobedo Andres Marquez Alex Varela Alejandro de Hoyos Raymond Chon David R. Zubia Estela Sadler</p>	<p>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 & 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 judicial interpretation was codified in Section 4600(g).</p> <p>Reject: The interpreters must be certified pursuant to section 9795.1.6(a)(2)(A). An</p>	<p>None.</p> <p>None.</p>

MEDICAL PROVIDER NETWORKS	RULEMAKING COMMENTS 2 nd 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	certified individuals and included and not a select few?	Julia Bustillo Armando Ortiz Clara Newton Anahita Ghafourpour Judit Marin Mary Frances Johnson Claudio Rosig Lily Saavedra White Cristina Bravo Diaz Ana Vining Jackie Foigleman Rosalie Foigleman Verónica Jenks Rosario Linarez Claudia Gonzalez Yasmin Carranza Patty Ponce Jessica Lopez Felix Shields Rogelio Regalado Monica Meinardi Zuceli Sedar Ana Araujo Carmen Gonzalez Maria Torres Raquel Isunza Jesús Rocha Catherine Battaglia-Donapetry Bannie Chow	<p>insurance company cannot list an interpreter as an ancillary service provider if he/she is not certified as mentioned above.</p> <p>Reject: Goes beyond the scope of these regulations because it will be the MPN that determines their provider application process.</p> <p>Reject: Goes beyond the scope of these regulations. The interpreters listed must be certified pursuant to section 9795.1.6(a)(2)(A).</p>	<p>None.</p> <p>None.</p>

MEDICAL PROVIDER NETWORKS	RULEMAKING COMMENTS 2 nd 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
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		Gladis Reyna Olga Casey Jesús Rocha Magda Benavides Alexander Diamonds Marcelo Lopez Amy Alcantara Deborah Alcantara- Velasco Cindy Chacon Elizabeth Abello Alice Pambil Anna De La Mora Lucy Blakney Alberto Villagomez Maribel Valencia- Tossman Eugenia Cross Luz M España Angelica Z Rouse Miguel Arriola Leonardo Garcia Raemon Blandon Laura V. Mingo Khanh Pham Fernando Rodríguez Alia Volz Nina Mortensen Hazel Georgetti Rosa Elena Elder Joan Jurado-Blanco		
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MEDICAL PROVIDER NETWORKS	RULEMAKING COMMENTS 2 nd 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>the medical access assistant is truly facilitating "access" to medical care for the injured worker, by adding the following language:</p> <p>"an individual in the United States provided by the Medical Provider Network to help injured workers with finding available Medical Network Provider Physicians of the injured worker's choice <u>who are available and willing to treat injured workers under the California's workers' compensation system</u> and with scheduling provider appointments <u>within the required timeframes as set forth in § 9767.5 of these Regulations.</u>"</p> <p>Commenter urges the Division to adopt this clarifying language because many physicians listed in MPN directories do not accept new patients. Commenter recognizes that one of the proposed revisions in these rules requires MPN directories to identify physicians who are not accepting new patients. Consequently, it might be assumed that this added language is not necessary. Commenter states that MPN directories are not updated daily,</p>		<p>not be adopted. §9767.1(a)(16) is the section that provides the definitions for terms used in this article. Commenter's recommendations are substantive recommendations that are already provided for in other sections of these regulations.</p> <p>Agree: The regulatory text will be revised to delete the provision requiring the MPN's indicate if a physician is taking new patients.</p>	<p>§9767.3(d)(8)(E) is revised to delete "Affirm that the roster of treating physicians in the MPN shall indicate if a physician is not currently taking new workers' compensation patients and a".</p>

MEDICAL PROVIDER NETWORKS	RULEMAKING COMMENTS 2 nd 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	and the listings in the directory may or may not be accurate. With the goal of assisting an injured worker to find a physician the injured worker chooses so that treatment can be provided as soon as possible, commenter recommends adding this language to reach that goal.			
9767.1(a)(25)	<p>Commenter notes that an injured employee's worksite and residence may be in completely different geographic areas of the state, in order to facilitate the ease of use of an MPN, commenter opines that it is essential that the injured worker be provided with a choice as to the geographic area they wish to treat, as sometimes it may be more convenient to treat near one's home, and other times near the worksite. Therefore, commenter recommends that the word "and" not be deleted from paragraph (25) (A) and (B), and that "at the election of the injured worker" be added as follows:</p> <p>"(A) a listing of all MPN providers within a 15-mile radius of an employee's worksite and/or residence, <u>at the election of the injured worker</u>; or</p>	Diane Worley California Applicants' Attorneys Association March 25, 2014 Written Comment	Reject: The commenter's recommended language will not be adopted. The MPN will have the choice to determine if access standards are determined from an injured employee's residence or the injured worker's employer's address.	None.

MEDICAL PROVIDER NETWORKS	RULEMAKING COMMENTS 2 nd 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	(B) a listing of all MPN providers in the county where the employee resides and/or works, <u>at the election of the injured worker if...</u> "			
9767.3(c)(3)	Since part of the optimal treatment experience includes an interpreter both the physician and patient is comfortable with, commenter does not support including interpreter services within an MPN’s ancillary services. Commenter opines that if cost containment overrides such considerations, the ancillary service provider file for interpreters should include information on whether they are certified for medical appointments, and/or medical legal evaluations, as well as any other certification levels. Commenter recommends that in the notice provided to the employee in section 9767.12, the language should be easily understandable, and provided in both English and Spanish, so an unrepresented injured worker can easily access an interpreter to assist with translation at their medical appointment.	Diane Worley California Applicants’ Attorneys Association March 25, 2014 Written Comment	<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: The regulatory text already clarifies that “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> <p>Reject: English and Spanish are already provided for in complete employee notification set forth in §9767.12(a).</p>	<p>None.</p> <p>None.</p> <p>None.</p>
9767.3(d)(8)(E)	We oppose the proposed language in this subdivision as both undesirable	Diane Worley California	Reject: The requirement to include “by referral only” for	None.

MEDICAL PROVIDER NETWORKS	RULEMAKING COMMENTS 2 nd 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>and in violation of the relevant statute. Commenter opines that designating a new sub-category of MPN physician as a secondary treating physician who can only be seen with an approved referral violates the statutory mandate of Labor Code sections 4600 and 4616.3 allowing the employee to select <u>any</u> treating physician within the MPN after the initial visit.</p> <p>Specifically, Labor Code section 4616.3(c) recognizes that an “employee may seek the opinion of another physician in the medical provider network” and the only limitations to this are in Labor Code section 4616.3(d)(1) with regard to “selection by the injured employee of a treating physician and any subsequent physician shall be based on the physician’s specialty, or recognized expertise in treating the particular injury or condition...” and (d) (2) for “treatment by a specialist who is not a member of the medical provider network...”</p> <p>Commenter opines that this amended</p>	<p>Applicants’ Attorneys Association March 25, 2014 Written Comment</p>	<p>secondary treating physicians who can only be seen with an approved referral is a practical solution to the realities of medical practice. An MPN must still make sure that access standards are met pursuant to §9767.5(a) – (c) and if the MPN does not have three available physicians to treat an injured worker, then out of MPN network treatment should be permitted.</p> <p>Reject: Commenter’s recommended language will not be adopted for the reasons previously stated.</p>	<p>None.</p>

MEDICAL PROVIDER NETWORKS	RULEMAKING COMMENTS 2 nd 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>language is a move in the wrong direction in further limiting an injured worker's access to medical treatment not only outside the MPN but within the MPN. Commenter urges that the following proposed language be struck:</p> <p>“...and affirm that secondary treating physicians who can only be seen with an approved referral are clearly designated “by referral only”.</p> <p>Commenter recognizes the likely intent behind the amended language in this section that "the roster of all treating physicians in the MPN shall indicate if a physician is not currently taking new workers' compensation patients." Commenter opines that while this may facilitate an injured worker obtaining an appointment only with those physicians who are available and willing to accept new workers' compensation patients, it actually creates more problems than it solves. For example, on any given day, a physician may not be accepting new patients (or may begin accepting</p>			

MEDICAL PROVIDER NETWORKS	RULEMAKING COMMENTS 2 nd 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>them again). But the MPN roster is not required to be updated on a daily, weekly or even monthly basis, but rather every <u>three</u> months. Thus, this provision practically guarantees that the roster will be stale at any given time, and is sure to increase the anxiety level of an injured worker who expected that the physician was available, but in reality isn't (and vice versa). Commenter states that this provision is further complicated by not defining how frequently the roster will be updated, and what criteria will be used, who updates the roster and how will this be communicated to the injured worker. Finally, it does not require any written assurance from the physician what their availability status is at any given time.</p> <p>Commenter opines that it seems a given that only those physicians who are accepting new patients should be included in the number of doctors counted for each medical specialty in the MPN. Commenter states that physicians who are not taking new workers' compensation patients should not even be included on the MPN roster for any purpose. Commenter</p>			

MEDICAL PROVIDER NETWORKS	RULEMAKING COMMENTS 2 nd 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>recommends that the language be amended to state:</p> <p>“Affirm that the roster of all treating physicians in the MPN shall only include indicate if a physicians who are is not currently taking new workers’ compensation patients, and if the physician’s status changes, the roster be updated within 10 days of written notification from the physician to indicate a physician is not currently taking new worker’s compensation patients.”</p>			
9767.3(d)(8)(H)	<p>Commenter objects to the addition of the words “estimated” and “approximation” in this subparagraph. As proposed this language allows for “estimated” compliance with access standards set forth in section 9767.5, and an “approximation” of MPN compliance with access standards. Commenter states that these words must be deleted from the proposed regulation if the access standards imposed on the MPN are to have any practical meaning.</p> <p>Commenter states that Labor Code</p>	Diane Worley California Applicants’ Attorneys Association March 25, 2014 Written Comment	Reject: The access standard pursuant to §9767.5 takes into consideration an injured workers’ address or an injured workers employer’s address. An MPN Applicant must submit geocoding pursuant to Labor Code §4616(b)(3) “to establish that the number and geographic location of physicians in the network meets the required access standards.” Unfortunately, an MPN will not know all of their injured workers’ address or their injured workers	None.

MEDICAL PROVIDER NETWORKS	RULEMAKING COMMENTS 2 nd 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>section 4616(b)(3) was added by SB 863 to mandate that “Every medical provider network shall submit geocoding of its network for re-approval to establish that the number and geographic location of physicians in the network meets the required access standards.” This statutory change was adopted to address the problem that many injured workers have faced in trying to find a MPN physician who will treat them.</p> <p>Commenter states that there is no language in the statute allowing an “estimation” or “approximation” of the required access standards and opines that the insertion of such language renders the statutory provision completely ineffective. The MPN provider directory should provide actual geocoding results which will document actual compliance for the DWC to review MPN plans to determine compliance with the required access standards. Data is Data. Compliance is compliance. If a MPN can’t meet the access standards, additional physicians can be added to the network. It is a</p>		<p>employer’s addresses. These are unknown variables. Therefore, at best, DWC can obtain an estimate or approximation that there are sufficient medical providers in a given area. Actual, compliance will not be possible until DWC has the actual address of an injured worker or the injured workers employer’s address.</p>	

MEDICAL PROVIDER NETWORKS	RULEMAKING COMMENTS 2 nd 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>simple remedy, and obviously such was contemplated by the legislature. Commenter opines that the proposed language does nothing but create “flexibility” where none exists, and is clearly against public policy and a violation of the statute.</p>			
9767.5(a)	<p>Commenter acknowledges that no modification to subdivision (a) has been made for this comment period, but she suggests that the access standards for MPNS are so crucial to the operation of an effective medical treatment network for workers’ compensation patients that language be added as follows to this section to create clarity and consistency as to the definition of “available”:</p> <p>A MPN must have at least three available physicians of each specialty <u>who are available and willing to treat injured workers under the California’s workers’ compensation system and are expected 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 (a) (1) and (a)</u></p>	<p>Diane Worley California Applicants’ Attorneys Association March 25, 2014 Written Comment</p>	<p>Reject: Beyond the scope of this comment period because no changes were made to §9767.5(a) after the 1st 15-day comment period.</p>	<p>None.</p>

MEDICAL PROVIDER NETWORKS	RULEMAKING COMMENTS 2 nd 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	(2).			
9767.5(f)	<p>Commenter opposes the deletion of the phrase “the employer or to” in this section. Commenter states this deletion does not consider the likely possibility that an injured worker will make a request <u>to the employer</u> for an initial treatment visit immediately after an injury. Under these circumstances it is almost certain that the worker will not know how to contact a MPN medical access assistant. The timeline for scheduling a medical appointment cannot be tolled when notice has properly been given to the employer, but the employer fails to communicate the reported injury to either the MPN or the claims administrator. Therefore, in order to reduce such risks of this possibility, commenter recommends that subdivision (f) be amended, as follows:</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 the MPN applicant's receipt of a covered employee’s notice to <u>the employer or</u></p>	<p>Diane Worley California Applicants’ Attorneys Association March 25, 2014 Written Comment</p>	<p>Reject: These regulations only have the authority to regulate the behavior and actions of an MPN. Pursuant to Labor Code §4616(a)(5), the MPN medical access assistant shall be provided by an MPN. Since an MPN applicant can now be neither an employer nor an insurer, these regulations focus on the behavior of the MPN medical access assistant.</p>	<p>None.</p>

MEDICAL PROVIDER NETWORKS	RULEMAKING COMMENTS 2 nd 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p><u>to</u> an MPN medical access assistant of a request for that treatment is needed.</p> <p>Commenter states that the proposed amendment is inconsistent with Labor Code section 5402 (c) which requires an employer to “Within one working day after an employee files a claim form under section 5401, the employer shall authorize the provision of all treatment, consistent with Section 5307.27, for the alleged injury and shall continue to provide the treatment until the date that liability for the claim is accepted or rejected.” Pursuant to Labor Code Section 5402 the employer’s knowledge of the injury is equivalent to notice of injury.</p>			
9767.5(g)	<p>Commenter opposes the amendment to this section allowing a medical access assistant to schedule a timely medical appointment with a non-emergency specialist for an initial visit ten business days from an employee’s request for treatment. Ten business days means a minimum of two weeks, and if there is a holiday, longer. Commenter opines that for an injured worker, waiting to get treatment so they can get back to work, there is no reasonable argument in support of</p>	<p>Diane Worley California Applicants’ Attorneys Association March 25, 2014 Written Comment</p>	<p>Reject: The appointment must be scheduled within 20 business days but the MPN medical access assistant has ten business days to assist injured worker with scheduling and confirming the timely appointment.</p>	<p>None.</p>

MEDICAL PROVIDER NETWORKS	RULEMAKING COMMENTS 2 nd 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>why they should wait two weeks to see a physician, and is in violation of the Labor Code provisions noted above. Commenter states that the medical access assistant should not be allowed more than five business days from an employee's request to schedule a timely medical appointment, as set forth in the prior draft of these regulations.</p> <p>Commenter opines that such delays are a breeding ground for frustration on the part of the injured worker who is attempting to navigate the MPN network on their own.</p>			
9767.5(h)(2)	<p>Commenter states that SB 863 added Labor Code section 4616 (a) (5) , requiring that every MPN, commencing January 2014, provide one or more persons within the United States to help injured employees find an available physician of their choice, and to schedule appointments. A toll free number is to be provided with someone available at least from 7 am to 8 pm PST, Monday through Saturday, to respond to injured employees, and contact physician's offices, and schedule appointments.</p>	<p>Diane Worley California Applicants' Attorneys Association March 25, 2014 Written Comment</p>	<p>Reject: The commenter's recommendation to delete "Although their duties are different, if the same person performs both, the MPN medical access assistant's contacts must be separately and accurately logged" will not be accepted. This provision is important to make clear any contact by an injured worker with the MPN medical access assistant must be logged, regardless of any dual role he/she may play. Although</p>	<p>None.</p>

MEDICAL PROVIDER NETWORKS	RULEMAKING COMMENTS 2 nd 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>Commenter states that the legislative purpose of the creation of the medical access assistant was to address the many delays and difficulties historically faced by injured workers in getting an appointment with an MPN doctor. The legislative intent was to have a <u>neutral</u> dedicated individual responsible for helping injured workers get medical treatment and an initial appointment so these delays could be eliminated.</p> <p>Commenter opines that by amending subdivision (h) (2) and adding language that <i>“Although their duties are different, if the same person performs both, the MPN medical access assistant’s contacts must be separately and accurately logged.”</i>, the proposed language would permit the irreconcilable conflict to continue with the claims adjuster also attempting to serve as the medical access assistant - the exact conflict legislature attempted to resolve in SB 863. Commenter states that this regulation would allow the claims adjuster and the medical access assistant to be the same person, exactly as it was before the passage of SB 863. Commenter opines that this</p>		<p>earlier versions of these regulations attempted to delineate the duties of a claims adjuster versus the duties of an MPN medical access assistant, DWC accepts it cannot impinge on a business’ operational functions.</p>	

MEDICAL PROVIDER NETWORKS	RULEMAKING COMMENTS 2 nd 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>would completely abrogate the legislative intent of SB 863, and the delays and difficulties to be addressed by this statutory change would continue unabated.</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 medical access assistants, a person independent of the claims adjuster. 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 recommends that the sentence "<i>Although their duties are different, if the same person performs both, the MPN medical access assistant's contacts must be separately and accurately logged.</i>" be necessarily eliminated. Commenter</p>			

MEDICAL PROVIDER NETWORKS	RULEMAKING COMMENTS 2 nd 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>recommends that language be added to make it clear that a medical access assistant and claims adjuster cannot be the same person, as follows:</p> <p>MPN medical access assistants have different duties than claims adjusters <u>and shall not be the same person.</u></p> <p>MPN medical access assistants 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. Although their duties are different, if the same person performs both, the MPN medical access assistant's contacts must be separately and accurately logged.</p> <p>In her previous comments, she recommended that after assisting the worker to make an appointment with an MPN physician, the access assistant should immediately contact the claim adjuster in order to facilitate delivery of written authorization for treatment to the selected MPN provider's office. Commenter states that unfortunately, in the real world, getting an appointment with a</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</p>	<p>None.</p>

MEDICAL PROVIDER NETWORKS	RULEMAKING COMMENTS 2 nd 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>physician for a work-related injury is only the first important step. Physicians who treat injured workers will usually not provide treatment unless the employer, or the employer's insurer, has provided <u>written authorization</u>.</p> <p>Commenter opines that the benefit gained from the introduction of the medical access assistants will be severely limited if they merely assist in making an appointment and do not facilitate the delivery of written authorization for treatment. If medical access assistants are to successfully assist employees, commenter states 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 office visit. In this way, the injured worker will enjoy a seamless process which will no doubt foster satisfaction with the MPN.</p>		<p>the claims adjuster impinges on a business' operational functions.</p>	
9767.5.1(d)	<p>In general, commenter supports the amended language added to 9767.5.1, Subdivision (d), but suggests a timeframe should be added to the</p>	<p>Diane Worley California Applicants' Attorneys</p>	<p>Reject: §9767.5.1 pertain to physician acknowledgments and are different from the MPNs requirement to post a</p>	<p>None.</p>

MEDICAL PROVIDER NETWORKS	RULEMAKING COMMENTS 2 nd 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>regulation by which the change to the MPN is posted and notification provided to the physician. It is recommended that (15) calendar days be the designated time frame, as follows:</p> <p>If permitted by the written acknowledgment, the website listing may be amended without further action by the physician or the group, provided that the website enables the physician or the group to de-select any MPN, and the change to the MPN is posted <u>within 15 calendar days</u>. If the physician or group is removed from an MPN by anyone other than a person described in subdivision (b), the MPN applicant shall give the physician or group notice of that fact in writing or electronically <u>within 15 calendar days</u>.</p> <p>Commenter opines that keeping the information current will reduce confusion for the injured worker and foster satisfaction with the MPN.</p>	<p>Association March 25, 2014 Written Comment</p>	<p>roster of treating physicians. Pursuant to §9767.5.1(b)(2), the officer or agent of a medical group shall have 90 days to update the participating physician's list.</p>	
9767.7.(g)	<p>Commenter states that this subdivision has been amended to allow an employee to choose a physician outside the MPN within a reasonable</p>	<p>Diane Worley California Applicants' Attorneys</p>	<p>Reject: As unnecessary because the second to the last sentence states "the employee may choose a physician</p>	<p>None.</p>

MEDICAL PROVIDER NETWORKS	RULEMAKING COMMENTS 2 nd 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>geographic area, if the MPN does not contain a physician who can provide the recommended treatment.</p> <p>Based on this, commenter opines that the last sentence of this subdivision must be amended to allow treatment outside the MPN as follows:</p> <p>“The covered employee may obtain the recommended treatment by changing physicians to the second opinion physician, third opinion physician, or <u>a other MPN physician outside the MPN within a reasonable geographic area.</u>”</p>	<p>Association March 25, 2014 Written Comment</p>	<p>outside the MPN within a reasonable geographic area.”</p>	
9767.12(a)	<p>Commenter opines that the addition to this subdivision of the language “that is subject to an MPN” is poorly worded and may be subject to differing interpretations. Commenter recommends that this language be deleted and the following language added:</p> <p>“When an injury is reported or an employer has knowledge of an injury <u>and the employer has an MPN that is subject to an MPN</u> or when an employee with an existing injury is required to transfer treatment to an</p>	<p>Diane Worley California Applicants’ Attorneys Association March 25, 2014 Written Comment</p>	<p>Reject: The commenter’s suggested language will not be adopted because it is too broad. Not all injuries are subject to an MPN, for example “first aide” claims.</p>	<p>None.</p>

MEDICAL PROVIDER NETWORKS	RULEMAKING COMMENTS 2 nd 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
9767.12(a)(2)(C)	<p>MPN, a complete written...”</p> <p>Commenter states that it is axiomatic that reducing an injured worker’s potential frustrations with obtaining the information regarding an MPN, particularly those desiring to change the MPN provider that they are unsatisfied with will reduce frictional costs. Commenter opines that even if an injured worker has a computer, MPN websites are notoriously difficult to navigate due to programming constraints, registration, and graduated access to information, and well as update gaps.</p> <p>Commenter states that for those who wish to access and review and research a prospective treating physician, being faced with such a process only increases their frustration level. Continuing to provide the injured worker the option to access the MPN directory both on a web based and written format at <u>their election</u> would continue to assure ease of access and achieve the goal of a “user friendly” process. Commenter recommends the following revised language:</p>	<p>Diane Worley California Applicants’ Attorneys Association March 25, 2014 Written Comment</p>	<p>Reject: The commenter’s recommended language will not be accepted as unnecessary because the injured worker will be able to obtain a written listing or any website listing shall be listed with any additional information needed to access the directory online including any necessary instructions and passcodes.</p>	<p>None.</p>

MEDICAL PROVIDER NETWORKS	RULEMAKING COMMENTS 2 nd 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>“How to review, receive or access the MPN provider directory. An employer, or insurer, or entity that provides physician network services shall ensure covered employees have access to, at minimum, a regional area listing of MPN providers in addition to maintaining and making available its complete provider directory listing in writing and/or on the MPN’s website <u>at the employee’s election which version they choose to access to obtain medical treatment. If the employee elects to request a written directory, it may be limited to providers not less than 100 miles of the employees residence.</u>”</p>			
9767.15(a)	<p>Commenter notes that this section has been amended to change the required deadline for updating to the current regulations from 2016 to 2018 for MPNs approved prior to January 1, 2014.</p> <p>Commenter opines that there is no reason to delay the implementation of the new MPN requirements for two additional years. The negative impact on injured workers and delayed cost savings from SB 863 outweigh any call for “more time” from the carriers</p>	<p>Diane Worley California Applicants’ Attorneys Association March 25, 2014 Written Comment</p>	<p>Reject: Labor Code §4616(b) states, “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”. MPN’s will have until January 1, 2018</p>	<p>None.</p>

MEDICAL PROVIDER NETWORKS	RULEMAKING COMMENTS 2nd 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>who have already had several years to prepare for these changes. The longer the delay, the greater to pool of frustrated injured workers who are attempting to navigate the process.</p>			
9767.15(b)(5)	<p>For the same reasons set forth for section 9767.3, subdivision (d), paragraph (8), subparagraph (H), commenter objects to the addition of the words “estimated” and “approximation” in section 9767.15, subdivision (b), paragraph (5), to allow for “estimated” compliance with access standards set forth in section 9767.5, and an “approximation” of MPN compliance with access standards. Commenter opines that these words should be deleted from the proposed regulation if the access standards imposed on the MPN are to have any practical meaning.</p> <p>Commenter states that Labor Code section 4616(b)(3) was added by SB 863 to mandate that “Every medical provider network shall submit geocoding of its network for re-approval to establish that the number and geographic location of physicians in the network meets the required access standards.”</p>	<p>Diane Worley California Applicants’ Attorneys Association March 25, 2014 Written Comment</p>	<p>Reject: The access standard pursuant to §9767.5 takes into consideration an injured workers’ address or an injured workers employer’s address. An MPN Applicant must submit geocoding pursuant to Labor Code §4616(b)(3) “to establish that the number and geographic location of physicians in the network meets the required access standards.” Unfortunately, an MPN will not know all of their injured workers’ address or their injured workers employer’s addresses. These are unknown variables. Therefore, at best, DWC can obtain an estimate or approximation that there are sufficient medical providers in a given area. Actual, compliance will not be possible until DWC has the actual address of an injured</p>	None.

MEDICAL PROVIDER NETWORKS	RULEMAKING COMMENTS 2 nd 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>Commenter states that there is no language in the statute allowing an “estimation” or “approximation” of the required access standards. The MPN provider directory should provide actual geocoding results which will document actual compliance for the DWC to review MPN plans to determine compliance with the required access standards. Data is Data. Compliance is compliance. If a MPN can’t meet the access standards, additional physicians can be added to the network. It is a simple remedy. Commenter opines that adding language to allow some “wiggle room” if the MPN does not meet the access standard, is clearly against public policy and a violation of the statute.</p>		<p>worker or the injured workers employer’s address.</p>	
9767.19	<p>Commenter states that the administrative penalties that are set forth in this section remain woefully inadequate in comparison to the harm suffered by an injured worker who is denied access to medical care when they don’t receive proper notifications or access to an MPN to schedule necessary medical treatment.</p>	<p>Diane Worley California Applicants’ Attorneys Association March 25, 2014 Written Comment</p>		

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	<p>Simply put, strong enforcement encourages compliance.</p> <p>Commenter believes that the minimal penalties set forth in this proposal clearly contravene the intent of the Legislature when it set the maximum penalty at \$5,000 per day.</p> <p>Commenter recommends that penalties be increased for violations that impact either a notice of or the receipt of medical treatment to an injured employee, not as a punitive measure for its own sake, but to assure compliance. The failure of the medical access assistant to respond promptly can delay treatment and return to work, harming both the employee and the employer for the reasons noted above. For this situation, commenter recommends a penalty of at least \$1,000 per day would be appropriate, with no aggregate maximum (as there would be no incentive to comply once the maximum penalty was due).(9767.19 (2) (C)) Another consideration would be a graduated penalty structure for repeat offenders.</p> <p>Commenter recommends that other</p>		<p>Reject: Labor Code §4616(b)(5) sets the maximum penalty at \$5,000 per violation, not per day.</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. However, in addition to penalty the DWC has other enforcement tools available from the formal complaint process, random reviews, to the Petition for Suspension or Revocation of a Medical Provider Network.</p>	<p>None.</p> <p>None.</p>

MEDICAL PROVIDER NETWORKS	RULEMAKING COMMENTS 2 nd 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	penalties that directly impact the employee's receipt of medical treatment also be increased to \$1,000 per day, or consideration of a graduated structure. Where a violation can or does result in a delay in treatment to the employee, commenter opines that the penalty for those violations should be significantly higher.			
9767.3(d)(8)(E)	Commenter states that the ability for a private network and even an entity where network services are their sole business will find it most difficult to obtain this information. Commenter states that many physicians may change his/her status from month to month depending on activity, coverage, sabbatical, etc. Commenter believes that the addition of the MAA will aid the injured employee to limit these kinds of difficulties when scheduling appointments or findings providers for care. Commenter does not believe that this level of identification will assist the employee in obtaining a medical appointment.	Gale Chmidling AVP Managed Care March 25, 2014 Written Comment	Accept in part. Reject in part. Accept: The requirement to indicate "if a physician is not currently taking new workers' compensation patients" is deleted because it is overly burdensome. Reject: The requirement to indicate if a secondary treating physician can only be seen "by referral only" will remain because it is important information that is not overly burdensome to maintain.	§9767.3(d)(8)(E) is revised to state "Affirm that secondary treating physicians who are counted when determining access standards but can only be seen with an approved referral are clearly designated 'by referral only.'"
9767.3(d)(8)(H)	Commenter opines that requiring networks to map missing zip codes is a very challenging request that will virtually eliminate small custom	Gale Chmidling AVP Managed Care March 25, 2014 Written Comment	Reject: Labor Code §4616(b)(3) mandates every MPN to submit geocoding of its network.	None.

MEDICAL PROVIDER NETWORKS	RULEMAKING COMMENTS 2 nd 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>networks. Large PPO's already have the ability to data mine and compare provider locations to existing zip codes. Smaller networks that are not comprised of carve out PPO networks will find this task difficult. Commenter states that many independent employers who have created their own network will not have the ability to create these models without the aid of expensive software and programming to their networks.</p> <p>Commenter states that the MPN already has a requirement in handling out of network care and the Access Standards of 9767.5 address limitations of the network, and opines that this additional requirement in mapping is burdensome to the independent network.</p>		<p>Reject: Labor Code §4616(b)(3) mandates every MPN to submit geocoding of its network.</p>	<p>None.</p>
9767.5(h)	<p>Commenter would like to make an additional comment regarding the hours of availability for medical access assistants, despite this not being eligible under this round of comments. Commenter's network has been tracking activity after hours since 12/26/13. To date, one (1) call has been received during the time of 5:01 pm and 8:00pm M – F and none on</p>	<p>Gale Chmidling AVP Managed Care March 25, 2014 Written Comment</p>	<p>Reject: Goes beyond the scope of this comment period because no changes to §9767.5(h) were made after the First 15-day comment period.</p>	<p>None.</p>

MEDICAL PROVIDER NETWORKS	RULEMAKING COMMENTS 2 nd 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>Saturday. Commenter states that the requirement to expect MPN's to staff outside normal business hours for the MPN and outside the hours of most participating medical providers creates a hardship for Networks and overly burdensome in meeting staffing requirements.</p>			
9767.5.1(a)	<p>Commenter references the following sentence:</p> <p><i>“...This section does not apply to a physician who is a shareholder, partner, or employee of a medical group that elects to participate in the MPN, however this section applies to the medical group that elects to participate in the MPN.”</i></p> <p>Commenter opines that this statement is contradictory to itself and directly contradicts the statute under LC 4616(a)(3) where this agreement would “not apply to a physician who is a shareholder, partner, or employee of a medical group that elects to be part of the network”. The medical group that agrees to contract directly with an MPN or an entity that provides physician network services is clearly identified in the statute as not</p>	<p>Gale Chmidling AVP Managed Care March 25, 2014 Written Comment</p>	<p>Reject: The exception in Labor Code §4616(a)(3) refers to each individual physician in a medical group. However, it does not exempt the medical group.</p>	<p>None.</p>

MEDICAL PROVIDER NETWORKS	RULEMAKING COMMENTS 2 nd 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	subject to the acknowledgement, yet the entire added sections of 9767.5.1 speak to this requirement.			
9767.12(a)(2)(C)	<p>Commenter references the following sentence:</p> <p><i>“...An employer, insurer, or entity that provides physician network services shall ensure covered employees have access to, at a minimum, a regional area listing of MPN providers in addition to maintaining and making available its complete provider directly listing in writing and/or on the MPN’s website.”</i></p> <p>Commenter recommends that further clarification be given the use of and/or and that this statement reflect that a network may provide its complete list electronically.</p> <p>Commenter opines that leaving this section and/or continues the debate over the requirement to provide a complete written list that is completely unnecessary when the list is available via website or electronic list.</p> <p>Networks are often asked to provide a complete written list that is easily 5000 pages or more. Commenter opines that refusal to provide this</p>	<p>Gale Chmidling AVP Managed Care March 25, 2014 Written Comment</p>	<p>Reject: Unnecessary because covered employees have a right to, at minimum, a regional area listing of MPN providers and it shall be in writing and/or on the MPN website.</p>	<p>None.</p>

MEDICAL PROVIDER NETWORKS	RULEMAKING COMMENTS 2 nd 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>waste of paper is construed to be a denial of service and reason to exit the network. Commenter recommends that this section clarify when a geographic list is appropriate and <i>IF</i> it cannot be provided, when a written list is appropriate or required.</p> <p>Commenter recommends that consideration be made to the ability for electronic service of the list verses a demand on paper.</p>			
9767.1(12)	<p>Commenter states that in light of the recently-revised provision in the rules to allow treatment outside of an MPN in the event where in-network treatment is not available (due to a lack of providers stemming from geographical or other constraints), it is now unclear where the “health care shortage” concept would be applied. Commenter states that the definition also includes reference to providers that are “...willing to treat injured workers under the California workers’ compensation system...” - however, there is no specificity as to how “willingness” would be indicated.</p> <p>Commenter recommends revising this subsection to either (a) further define “willingness” (and/or indicate if the</p>	<p>Lisa Anne Forsythe Senior Regulatory Consultant Coventry Workers’ Comp Services March 25, 2014 Written Comment</p>	<p>Reject: Goes beyond the scope of this comment period because no changes were made to §9767.1(12) after the First 15-day comment period.</p>	<p>None.</p>

MEDICAL PROVIDER NETWORKS	RULEMAKING COMMENTS 2 nd 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	state will maintain a list of providers with that designation) as well as outline and define the implications of a “health care shortage”, or (b) remove the “health care shortage” language entirely.			
9767.1(15)	Commenter seeks clarification on whether the change in terminology from “Approval Number” to “Identification Number” is intended to have any practical and/or procedural implications to MPN applicants, or whether the change was simply a change in wording.	Lisa Anne Forsythe Senior Regulatory Consultant Coventry Workers’ Comp Services March 25, 2014 Written Comment	Reject: The MPN log number (currently 4 digits) will be the MPN Identification Number. The MPN Approval will not be used because it contained an MPN’s TIN number. Because of privacy concerns, DWC did not want to publish the MPN Approval number.	None.
9767.1(16)	<p>Commenter opines that the language as amended is ambiguous, as reference is made to provision of MAA services “...by the Medical Provider Network” but fails to clarify that, in accordance with subsection 19 thereafter (in the definition of “MPN Applicant”), those services are to be provided by the MPN applicant.</p> <p>Commenter recommends rewording this section to read, “...Medical Provider Access Assistant means an individual in the United States provided by the Medical Provider Network <i>applicant</i> to help injured</p>	Lisa Anne Forsythe Senior Regulatory Consultant Coventry Workers’ Comp Services March 25, 2014 Written Comment	Reject: Labor Code §4616(a)(5) specifically uses the phrase “every medical provider network shall provide” an MPN medical access assistant. Commenter is technically correct that it is the MPN Applicant who is legally responsible for the MPN.	None.

MEDICAL PROVIDER NETWORKS	RULEMAKING COMMENTS 2nd 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	workers with finding available Medical Provider Network physicians...”			
9767.2(b)	<p>Commenter notes that this section allows a 180-day period for the Administrative Director (AD) to approve or disapprove an MPN reapproval application. Commenter states that such an extended time period (6 months) places the reapproval applicant in a tenuous position from an operational point of view, as it is unclear from the rules if the MPN is permitted to continue its current operations while awaiting the finalized AD decision, or if some alternative action/process needs to be taken during said time period.</p> <p>Commenter recommends modifying the language of this section to specify that pending a finalized AD decision during the 180-day “reapproval waiting period”, the MPN applicant is permitted to conduct its standard operating procedures within the framework of its previous approval.</p>	Lisa Anne Forsythe Senior Regulatory Consultant Coventry Workers’ Comp Services March 25, 2014 Written Comment	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 90 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.	None.
9767.3(c)(2)	Commenter opines that the revised language “have been informed” is a great improvement over the prior language that placed a burden on an	Lisa Anne Forsythe Senior Regulatory Consultant Coventry Workers’	Accept.	None.

MEDICAL PROVIDER NETWORKS	RULEMAKING COMMENTS 2nd 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	MPN applicant to affirm that its providers “understand” the MTUS, which she opines is not possible.	Comp Services March 25, 2014 Written Comment		
9767.3(c)(2)	<p>Commenter notes that this section makes reference to a provider code for a category of “Pain Specialty Medicine (PM)” and opines that it is unclear whether this term was intended to refer to “pain management” physicians, and is unclear what specific qualifications a provider would need to maintain in order to have such a designation. Commenter states that the list of provider codes does not mention anesthesiology, despite its relatively frequent use; it is unclear whether this was a simple oversight, or whether anesthesiologist were intended to be included in the catch-all “MISC” category.</p> <p>Commenter recommends that the DWC clarify and define “pain specialty medicine” to indicate what credentials are necessary to qualify for this designation (and to distinguish this category from among the other listed specialties). Furthermore, consider providing an additional category of “ANS” (or similar</p>	Lisa Anne Forsythe Senior Regulatory Consultant Coventry Workers’ Comp Services March 25, 2014 Written Comment	Reject: Goes beyond the scope of this comment period because no changes were made after the First 15-day comment period.	None.

MEDICAL PROVIDER NETWORKS	RULEMAKING COMMENTS 2nd 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	description) for anesthesiology, and/or define specifically in the rules that anesthesiologists are intended to fall within the “MISC” category.			
9767.3(c)(3)	Commenter supports the revised language that indicates that the inclusion of ancillary services within the realm of a given MPN is solely discretionary on the part of MPN applicant. Commenter welcomes this change that permits the MPN application to very specifically define which services to include or exclude within the network.	Lisa Anne Forsythe Senior Regulatory Consultant Coventry Workers’ Comp Services March 25, 2014 Written Comment	Accept.	None.
9767.3(c)(4)	<p>Commenter notes that this section used to contain language that provided an automatic mechanism for inclusion of all providers in a medical group by default where a medical group is listed on an MPN’s provider listing. Commenter is unclear as to why this language has been removed, as it seemed to provide a clear framework for handling larger group physician practices. Commenter opines that without the inclusion of this language, it is less clear how these larger group practices are to be addressed.</p> <p>Commenter recommends reinstating</p>	Lisa Anne Forsythe Senior Regulatory Consultant Coventry Workers’ Comp Services March 25, 2014 Written Comment	<p>Reject: Goes beyond the scope of this comment period because no changes were made to §9767.3(c)(4) since the First 15-day comment period.</p> <p>Reject: Goes beyond the scope of this comment period but the</p>	<p>None.</p> <p>None.</p>

MEDICAL PROVIDER NETWORKS	RULEMAKING COMMENTS 2 nd 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	the previous language in this section and/or providing alternative clear instructions for how an MPN applicant is to address individual physicians that are included as part of a larger group practice on the provider listing.		instructions are included in §9767.3(d)(8)(G).	
9767.3(5)(d)(1)	<p>Commenter notes that this subsection outlines documentation that an MPN applicant must submit in support of its “proof of MPN eligibility”.</p> <p>Commenter opines that while the requirements for a self-insured employer or joint powers authority are clear, as are the requirements for an insurer, the requirement that an entity providing physician network services “...attach documentation of current legal status...” is less clear.</p> <p>Commenter wonders if it the state’s intention that said entity would provide documentation of its business license.</p> <p>Commenter recommends that the DWC clarify the language of the section to more specifically define what documentation an entity providing physician network services is required to submit in support of its MPN application.</p>	<p>Lisa Anne Forsythe Senior Regulatory Consultant Coventry Workers’ Comp Services March 25, 2014 Written Comment</p>	<p>Accept: Yes, a business license is acceptable. The regulatory text will be revised to clarify entities that provide physician network services shall affirm that it employs or contracts with physicians and other medical providers or contracts with physician networks.</p>	<p>§9767.3(5)(d)(1) is revised to add “and affirm that the entity employs or contracts with physicians and other medical providers or contracts with physician networks.”</p>
9767.3(5)(d)(8)(A)	Commenter notes that this subsection	Lisa Anne Forsythe	Reject: Goes beyond the scope	None.

MEDICAL PROVIDER NETWORKS	RULEMAKING COMMENTS 2nd 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>has been revised to change the criteria for the “description of a medical provider network plan” from a quantitative-based criteria (derived from the number of covered employees) to a qualitative-based criteria, wherein the MPN applicant is slated with affirming “...that the MPN network is adequate to handle the expected number of claims covered under the MPN...” Commenter states that the rules as revised do not provide specific guidance for how “adequacy” to handle claims is to be established.</p> <p>Commenter recommends that the DWC modify the rules to specifically permit an MPN applicant to define its own methodology for a determination of adequacy (provided that appropriate documentation and rationale are provided to assess “adequacy”), or, alternatively, define what specific criteria are needed for an MPN applicant to establish “adequacy”.</p>	<p>Senior Regulatory Consultant Coventry Workers’ Comp Services March 25, 2014 Written Comment</p>	<p>of this comment period because no changes were made to §9767.3(5)(d)(8)(A) since the First 15-day comment period.</p>	
9767.3(5)(d)(8)(E)	<p>Commenter notes that this revised subsection includes new requirements that the MPN provider roster track which providers are “not currently taking new workers’ compensation patients”, as well as indicate if a</p>	<p>Lisa Anne Forsythe Senior Regulatory Consultant Coventry Workers’ Comp Services March 25, 2014</p>	<p>Accept in part. Reject in part. Accept: The requirement to indicate “if a physician is not currently taking new workers’ compensation patients” is deleted because it is overly</p>	<p>§9767.3(d)(8)(E) is revised to delete “Affirm that the roster of all treating physicians in the MPN shall indicate if</p>

MEDICAL PROVIDER NETWORKS	RULEMAKING COMMENTS 2 nd 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>provider is designated as “by referral only”. Commenter states that the rules do not indicate specifically what is meant by “referral only” – <i>i.e.</i>, it is not indicated whether the underlying assumption is that all primary care physicians are “non-referral-only” and that all specialists are “by referral only”. Commenter states that it is unclear how a provider (such as an orthopedist), who <i>sometimes</i> takes referrals from other providers and <i>other times</i> receives direct referrals, would be labeled. Commenter opines that the MPN applicant is not in a position to assume proactive responsibility for keeping “by referral” and “not currently taking Workers’ Compensation patients” data current and accurate, as these indicators are within the sole discretion of the providers and not under the MPN’s control. Commenter states that this information should rightly be included in the list of data elements that a provider is obligated to disclose to the MPN when a material change has occurred.</p> <p>Commenter recommends that the DWC amend the rules to require a</p>	Written Comment	<p>burdensome. Reject: The requirement to indicate if a secondary treating physician can only be seen “by referral only” will remain because it is important information that is not overly burdensome to maintain.</p>	<p>a physician is not currently taking new workers’ compensation patients and a” the phrase “are counted when determining access standards” is added to the requirement that secondary treating physicians who can only be seen with an approved referral are clearly designated “by referral only”.</p>

MEDICAL PROVIDER NETWORKS	RULEMAKING COMMENTS 2 nd 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>provider to report changes in the aforementioned data elements to the MPN in a timely manner, and in deference to the fact that the MPN cannot guarantee the accuracy of this information, remove any potential exposure to the MPN for fines/penalties associated with the inaccuracy of either of these data elements.</p>			
9767.5(a)(1)	<p>Commenter notes that this section indicates that an MPN must have at least three available “primary treating physicians”, yet does not specifically define what constitutes a “primary treating physician”.</p> <p>Commenter recommends that the DWC amend this section to clearly define “primary treating physician” for the purposes of establishing access standards.</p>	<p>Lisa Anne Forsythe Senior Regulatory Consultant Coventry Workers’ Comp Services March 25, 2014 Written Comment</p>	<p>Reject: Goes beyond this comment period because no changes were made to §9767.5(a)(1) since the First 15-day comment period.</p>	<p>None.</p>
9767.5(a)(2)	<p>Commenter notes that reference is made to requiring an MPN to have “providers of occupational health services and specialists <i>who can treat common injuries...</i>” Commenter states that this section does not define what constitutes a “common injury”, nor does it define the selection criteria for a specialty that would theoretically</p>	<p>Lisa Anne Forsythe Senior Regulatory Consultant Coventry Workers’ Comp Services March 25, 2014 Written Comment</p>	<p>Reject: Goes beyond this comment period because no changes were made to §9767.5(a)(2) since the First 15-day comment period.</p>	<p>None.</p>

MEDICAL PROVIDER NETWORKS	RULEMAKING COMMENTS 2 nd 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>treat a “common Workers’ Compensation injury”.</p> <p>Commenter’s organization is currently defining its specialist criteria by deriving it from its HCO requirement list, based on specialist utilization patterns (<i>i.e.</i>, the total number of bills received, broken down by type of specialist). Commenter states that it is unclear from the new rules whether deriving the specialists in this manner would continue to be acceptable.</p> <p>Commenter recommends that the DWC, (1) Amend the rules to provide a definition of “common injuries”, as well as (2a) specifically outline the methodology for determining which specialists “treat common injuries”, or, alternatively, (2b) amend the rules to establish that an MPN may use its own criteria for defining specialists, so long as the methodology is clearly outlined and logically defined (such as the HCO-based methodology). Lastly (3), amend the rules to indicate how <i>many</i> specialties are to be defined – the previous requirements capped the number at five (5).</p>		<p>Reject: Goes beyond this comment period because no changes were made to §9767.5(a)(2) since the First 15-day comment period.</p> <p>Reject: Goes beyond this comment period because no changes were made to §9767.5(a)(2) since the First 15-day comment period.</p>	<p>None.</p> <p>None.</p>
9767.5.1(a)	Commenter notes that this section has	Lisa Anne Forsythe	Reject: Labor Code	None.

MEDICAL PROVIDER NETWORKS	RULEMAKING COMMENTS 2 nd 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>been substantially revised to include the requirement that a physician “affirmatively elect” to be a member of a given MPN. Commenter opines that by inclusion of the “affirmatively elect” language (which implies an “opt in” option only), a conflict has been created with the latter Section 9767.5.1(d), which specifically permits an MPN Acknowledgement to allow a physician to <i>either opt in or opt out of one/more MPN’s</i> when offered a list of multiple MPN’s to choose from.</p> <p>Commenter recommends that the DWC remove the “affirmatively elect” language from Section 9767.5.1(a) and substitute it with language that indicates that a Physician Acknowledgement may allow for either an “opt in” <i>or</i> “opt out” option, in accordance with Subsection 9767.5.1(d).</p>	<p>Senior Regulatory Consultant Coventry Workers’ Comp Services March 25, 2014 Written Comment</p>	<p>§4616(a)(3) states that a physician provide “a separate written acknowledgment in which the physician affirmatively elects to be a member of the network.” DWC defines this as a physician shall have notice of and decide whether or not he/she elects to be a member of a network.</p>	
9767.5.1(e)(1) – (e)(5)	<p>Commenter notes that these subsections contain multiple complex rules governing the “due dates” for physician acknowledgements, tied to the as-yet-un-established date of OAL approval of the finalized regulations. Commenter opines that since the date</p>	<p>Lisa Anne Forsythe Senior Regulatory Consultant Coventry Workers’ Comp Services March 25, 2014 Written Comment</p>	<p>Reject: Commenter’s recommended language will not be adopted. Labor Code §4616(a)(3) states “commencing January 1, 2014” physician acknowledgments must be</p>	None.

MEDICAL PROVIDER NETWORKS	RULEMAKING COMMENTS 2 nd 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>of OAL approval still remains uncertain (and the state has indicated that there may even be another round of MPN rule revisions and public comments, <i>etc.</i>), it is much easier to tie the “due date” for the initial Physician Acknowledgements to a fixed length of time following OAL approval, rather than defining multiple criteria, multiple years, etc.</p> <p>Commenter recommends removing the multiple provisions contained in sections 9767.5.1(e)(1-5), and replacing all of those subsections with language stating that <i>for all legacy contracts</i> (defined as those contracts, evergreen or fixed length, that were already in place as of the date of OAL regulatory approval), the MPN has a fixed period of 6 months from OAL regulatory approval to get all Initial Physician Acknowledgements signed and updated in the Provider Database. Thereafter, when new providers are added, the MPN has a period of 90 days from the date of notification to the MPN of the change (for group physicians) or 90 days from the date of contracting (for new, directly-contracted physicians) to obtain the</p>		<p>obtained by MPNs. These regulations merely provide guidance to a requirement that is already in effect and already provides a sufficient period of time for all contracts entered into before these regulations are in effect.</p>	

MEDICAL PROVIDER NETWORKS	RULEMAKING COMMENTS 2nd 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>Initial Physician Acknowledgement and update the Provider Database. Commenter opines that this conceptual framework is much simpler, and provides a consistent approach for administration of both legacy and new contracts, and the 90-day provision is consistent with other sections throughout the rules that provide for 90 days to update the provider database with other material changes in provider information.</p>			
9767.15(b)(1)	<p>Commenter notes that the current regulations specify that for all MPN's that were approved on or before January 1, 2011, reapproval applications are due no later than June 30, 2014, a date that is rapidly approaching. Given the inherent uncertainties associated with OAL approval of the finalized regulations (see #15 above), commenter opines that this section should be modified to allow flexibility in the application deadline, or the MPN's will be faced with meeting an overly restrictive deadline, and the state will be faced with a deluge of legacy MPN reapproval applications.</p> <p>Commenter recommends that this</p>	<p>Lisa Anne Forsythe Senior Regulatory Consultant Coventry Workers' Comp Services March 25, 2014 Written Comment</p>	<p>Reject: Goes beyond the scope of this comment period because no changes were made to §9767.15(b)(1) since the First 15-day comment period.</p>	<p>None.</p>

MEDICAL PROVIDER NETWORKS	RULEMAKING COMMENTS 2 nd 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>section be amended to allow an MPN a period of 6 months following OAL approval of finalized regulations to file all outstanding legacy re-approval applications (for those MPN's whose last approval date was on/before January 1, 2011).</p>			
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 in <u>of</u> a particular specialty <u>type</u> described in <u>Labor Code section 3209.3, necessary to treat common injuries experienced by injured employees</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 physicians participating in an MPN does not constitute a health care shortage where a sufficient number of physicians in <u>of</u> that specialty <u>type</u> are available within the access standards and willing to treat injured workers</p>	<p>Brenda Ramirez Claims & Medical Director California Workers’ Compensation Institute (CWCI) March 25, 2014 Written Comment</p>	<p>Reject: Goes beyond the scope of this comment period because no changes were made to §9767.1(a)(12) since the First 15-day comment period.</p>	<p>None.</p>

MEDICAL PROVIDER NETWORKS	RULEMAKING COMMENTS 2 nd 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>under the California workers' compensation system.</p> <p>Commenter states that here and elsewhere in these regulations the Administrative Director has defined "physician type" to mean "specialty," even though the statute specifically defines physician type by reference to sections 3209.3. Commenter opines 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. The Supreme Court has ruled, an administrative agency has no discretion to promulgate a regulation that is inconsistent with the governing statutes. See her comments on Section 9767.5(a).</p>			
9767.1(16)	<p>Commenter recommends the following revised language:</p> <p>"Medical Provider Network Medical Access Assistant" means an individual in the United States provided by <u>the claims administrator or</u> Medical Provider Network to help injured workers with finding available Medical Provider Network physicians</p>	<p>Brenda Ramirez Claims & Medical Director California Workers' Compensation Institute (CWCI) March 25, 2014 Written Comment</p>	<p>Reject: Goes beyond the scope of this comment period because no changes were made to §9767.1(a)(16) since the First 15-day comment period.</p>	<p>None.</p>

MEDICAL PROVIDER NETWORKS	RULEMAKING COMMENTS 2 nd 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>of the injured workers' choice and with scheduling provider appointments. <u>An access assistant may not authorize payment of goods or services unless she or he is a certified adjuster.</u></p> <p>Commenter states that a claims administrator may also provide an individual to help injured employees find and schedule appointments with available MPN physicians.</p> <p>Commenter states that the recommended modification clarifies that a medical access assistant may not authorize payment for goods or services if she or he is not a certified adjuster. Commenter opines that it is important that physicians understand that an appointment set by an access assistant does not imply authorization for payment.</p>			
9767.1(25)(C)	<p>Commenter recommends the following revised language:</p> <p>If the listing described in either (A) or (B) does not provide a minimum of three physicians of each <u>specialty type</u>, then the listing shall be expanded by adjacent counties or by 5-mile</p>	<p>Brenda Ramirez Claims & Medical Director California Workers' Compensation Institute (CWCI) March 25, 2014 Written Comment</p>	<p>Reject: Goes beyond the scope of this comment period because no changes were made to §9767.1(a)(25)(C) since the First 15-day comment period.</p>	<p>None.</p>

MEDICAL PROVIDER NETWORKS	RULEMAKING COMMENTS 2 nd 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>increments until the minimum number of physicians per <u>specialty type</u> are met.</p> <p>Commenter states that here and elsewhere in these regulations the Administrative Director has defined “physician type” to mean “specialty,” even though the statute specifically defines physician type by reference to sections 3209.3. Commenter opines 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. The Supreme Court has ruled, an administrative agency has no discretion to promulgate a regulation that is inconsistent with the governing statutes. See here comments on Section 9767.5(a).</p>			
9767.2(b)	<p>Commenter recommends the following revised language:</p> <p>Within 180 60 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 reapproval based</p>	<p>Brenda Ramirez Claims & Medical Director California Workers’ Compensation Institute (CWCI) March 25, 2014 Written Comment</p>	<p>Reject: Goes beyond the scope of this comment period because no changes were made to §9767.2(b) since the First 15-day comment period.</p>	<p>None.</p>

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	<p>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 180 <u>60</u> days of receipt of a complete plan for reapproval, it shall be deemed approved on the 181 <u>61</u>st day for a period of four years.</p> <p>Commenter states that it is not necessary for the Administrative Director to allow six months for a review of a complete plan for MPN approval. Sixty 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. Commenter opines that a plan for reapproval that waits from three to six months for approval may be outdated or obsolete before it is approved</p>			
9767.2(f)	<p>Commenter recommends the following revised language:</p> <p>Upon approval of a new Medical Provider Network Plan, the <u>DWC</u></p>	Brenda Ramirez Claims & Medical Director California Workers' Compensation	Reject: The commenter's recommendation will not be	None.

MEDICAL PROVIDER NETWORKS	RULEMAKING COMMENTS 2 nd 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p><u>shall assign a unique MPN Identification number to that MPN.</u> This unique MPN Identification number shall be used in all correspondence with DWC regarding the MPN, including but not limited to future filings and complaints, and shall be included in the complete employee notification, transfer of care notice, continuity of care notice, MPN IMR notice and end of MPN coverage notice.</p> <p>Commenter opines that without this change it will not be clear that the Identification number will be assigned by the DWC to the MPN upon approval.</p>	<p>Institute (CWCI) March 25, 2014 Written Comment</p>	<p>adopted because it is unnecessary. The definition for Medical Provider Network Identification Number set forth in §9767.1(a)(15) already makes it clear that this number will be “assigned” by DWC.</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 columns shall be in the following order: (1) physician name (2) <u>specialty type</u> (3) physical address (4) city (5) state (6) zip code (7) any MPN medical group affiliations and (8) an</p>	<p>Brenda Ramirez Claims & Medical Director California Workers’ Compensation Institute (CWCI) March 25, 2014 Written Comment</p>	<p>Reject: Goes beyond the scope of this comment period because no changes were made to §9767.3(c)(2) since the First 15-day comment period.</p>	None.

MEDICAL PROVIDER NETWORKS	RULEMAKING COMMENTS 2 nd 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>assigned provider code for each physician listed. If a physician falls under more than one provider code, the physician shall be listed separately for each applicable provider code. The following are the provider codes to be used: 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). If the specialty does not fall under any one of the previously listed categories, then the specialty shall be clearly identified in the specialty column and the code used shall be (MISC). By submission of its provider listing, the applicant is affirming that all of the physicians 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</p>			

MEDICAL PROVIDER NETWORKS	RULEMAKING COMMENTS 2nd 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>diagnostic services and have a valid and current license number to practice in the State of California.</p> <p>Commenter states that the necessity for the newly proposed “provider codes” in the second sentence is not clear. The physician’s specialty must already be submitted in one column. No reason for the codes has been given and none is evident. No definitions are provided for the code names except for “occupational medicine” which means “the diagnosis or treatment of any injury or disease arising out of and in the course of employment,” which surely is what every physician in the network is providing. “Occupational therapy medicine,” on the other hand, is a mystery. Commenter opines that if these codes are meant to identify the type of physicians the Division believes generally treat common injuries experienced by injured employees as referenced in Labor Code section 4616(a), these regulations must define them and clarify their use in lieu specialties. If not, the commenter recommends deleting them because they are</p>			

MEDICAL PROVIDER NETWORKS	RULEMAKING COMMENTS 2 nd 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>unnecessary.</p> <p>See her comment on physician type versus physician specialty in Section 9767.5(a).</p>			
9767.3(c)(3)	<p>Commenter recommends deleting the last sentence; however, if it is not deleted, she recommends the following revision:</p> <p>If interpreter services are included as an MPN ancillary service, the interpreters listed must be certified <u>qualified</u> pursuant to section 9795.1.6(a)(2)(A), and (B), or (C).</p> <p>Commenter provides the following rationale:</p> <p>LC 4600(f) requires the use of a <u>qualified</u> interpreter when an employee who does not proficiently speak or understand English <u>submits to examination at the request of the employer, insurer, the administrative director, appeals board or judge.</u> In these circumstances a qualified interpreter must have been certified by the State Personnel Board as a court or administrative hearing interpreter, be on the DWC Administrative</p>	<p>Brenda Ramirez Claims & Medical Director California Workers' Compensation Institute (CWCI) March 25, 2014 Written Comment</p>	<p>Reject: In order for an interpreter to be listed as an ancillary service provider "the interpreter listed must be certified pursuant to section 9795.1.6(a)(2)(A) and (B)." Interpreters who qualify under 9795.1.6(a)(2)(C) cannot be listed as an ancillary service provider.</p>	None.

MEDICAL PROVIDER NETWORKS	RULEMAKING COMMENTS 2 nd 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>Director's updated list of certified administrative hearing or medical examination interpreters, or be a certified court interpreter per the Judicial Council or State Personnel Board.</p> <p>LC 4600(g) requires the use of a <u>qualified</u> interpreter during <u>medical treatment appointments</u> if the injured employee cannot effectively communicate with his or her treating physician because he or she cannot proficiently speak or understand the English language. However, to be a qualified interpreter for purposes of medical treatment appointments, an interpreter is specifically not required to meet the requirements of subdivision LC 4600(f),* (i.e., is not required to be a certified interpreter) but must meet any requirements established by rule by the Administrative Director that are substantially similar to the requirements set forth in Health and Safety Code section 1367.04.** This section also requires the Administrative Director to adopt a fee schedule for qualified interpreter fees in accordance with this section and</p>			

MEDICAL PROVIDER NETWORKS	RULEMAKING COMMENTS 2nd 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>requires the employer or insurance carrier to pay for interpreter services upon request of the injured employee, but does not require the employer to pay for the services of an interpreter who is not certified or an interpreter who is provisionally certified by the provider unless either the employer consents in advance to the selection of the individual interpreter, or the language is other than the languages designated pursuant to Government Code section 11435.40.</p> <p>(f)*includes interpreters certified by State Personnel Board as court or administrative hearing interpreters, and the DWC Administrative Director’s updated list of certified administrative hearing and medical examination interpreters; and Judicial Council or State Personnel Board certified court interpreters.</p> <p>1367.04**requirements for health care service plans – no requirement for certified interpreters.</p> <p>Commenter states that since MPNs are used for medical treatment, and the statute specifically says qualified</p>			

MEDICAL PROVIDER NETWORKS	RULEMAKING COMMENTS 2 nd 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>interpreters for medical treatment appointments are not required to be certified, a regulation that limits MPN interpreters to certified interpreters is contrary to the statute.</p> <p>9795.1.6(a)(2)(A) and (B) are requirements pursuant to Labor Code section LC 4600(f) whereas 9795.1.6(a)(2)(C) relates to qualified interpreter standards for medical treatment appointments pursuant to LC 4600(g). Commenter opines that the Administrative Director does not have authority to prohibit the inclusion of qualified interpreters, who may be non-certified, in an MPN for medical treatment appointments, nor their payment at contracted rates.</p>			
9767.3(c)(4)	<p>Commenter recommends restoring the previous language as follows:</p> <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>Brenda Ramirez Claims & Medical Director California Workers' Compensation Institute (CWCI) March 25, 2014 Written Comment</p>	<p>Reject: Goes beyond the scope of this comment period because no changes were made to the previously deleted §9767.3(c)(4) since the First 15-day comment period.</p>	<p>None.</p>

MEDICAL PROVIDER NETWORKS	RULEMAKING COMMENTS 2 nd 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>Commenter recommends restoring this section to accommodate MPN applicants who choose to include medical groups in their networks and opines that by doing so will make compliance for both the MPN applicants and the selected groups less onerous.</p>			
9767.3(d)(1)	<p>Commenter recommends the following revised language:</p> <p>Type of Eligible MPN applicant. Provide a description of the entity's qualifications to be an eligible MPN Applicant. Attach proof of MPN eligibility.</p> <p>Commenter opines that the additional requirement is not necessary. If it is not deleted it will be necessary to clarify what license, certification or other proof of MPN eligibility must be supplied by a managed care entity, CIGA, State Fund, SISF and the State because otherwise it is not clear what is available or sufficient as proof for these entities.</p>	<p>Brenda Ramirez Claims & Medical Director California Workers' Compensation Institute (CWCI) March 25, 2014 Written Comment</p>	<p>Reject in part. Accept in part. Reject: The commenter's recommended deletion will not be accepted, because more clarification is needed. Accept: The regulatory text will be revised to clarify entities that provide physician network services shall affirm that it employs or contracts with physicians and other medical providers or contracts with physician networks.</p>	<p>§9767.3(5)(d)(1) is revised to add "and affirm that the entity employs or contracts with physicians and other medical providers or contracts with physician networks."</p>
9767.3(d)(8)(E)	<p>Commenter recommends the removal of the following language:</p> <p>Affirm that the roster of all treating</p>	<p>Brenda Ramirez Claims & Medical Director California Workers'</p>	<p>Accept in part. Reject in part. Accept: The requirement to indicate "if a physician is not currently taking new workers'</p>	<p>§9767.3(d)(8)(E) is revised to delete "Affirm that the roster of all treating</p>

MEDICAL PROVIDER NETWORKS	RULEMAKING COMMENTS 2 nd 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>physicians in the MPN shall indicate if a physician is not currently taking new workers' compensation patients and affirm that secondary treating physicians who can only be seen with an approved referral are clearly designated "by referral only".</p> <p>Commenter opines that since the status of whether a physician is currently taking new workers' compensation patients changes frequently (sometimes daily) and can change unexpectedly at any time, and since the roster cannot be instantly changed, the MPN applicant cannot "affirm that the roster of all treating physicians in an MPN indicate if a physician is not currently taking new workers' compensation patients."</p> <p>Comment states that it is not appropriate to require physicians to be indicated on the roster as "secondary treating physicians" who are seen "by referral only" since those same physicians may also serve as primary treating physicians and/or the "by referral" may depend on the type of service being sought or other circumstances. The legislature required no such complexity and she</p>	<p>Compensation Institute (CWCI) March 25, 2014 Written Comment</p>	<p>compensation patients" is deleted because it is overly burdensome. Reject: The requirement to indicate if a secondary treating physician can only be seen "by referral only" will remain because it is important information that is not overly burdensome to maintain.</p>	<p>physicians in the MPN shall indicate if a physician is not currently taking new workers' compensation patients and a" the phrase "are counted when determining access standards" is added to the requirement that secondary treating physicians who can only be seen with an approved referral are clearly designated "by referral only".</p>

MEDICAL PROVIDER NETWORKS	RULEMAKING COMMENTS 2 nd 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>opines that such additional requirements will foster yet more disputes and litigation. Instead, the medical access assistant position was created by the legislature in Senate Bill 863 to assist the injured employee with finding and securing appointments with appropriate and available physicians.</p>			
9767.3(d)(8)(G)	<p>Commenter recommends the following revised language:</p> <p>Provide a listing of the name, specialty type, and location of each physician as described in Labor Code Section 3209.3, <u>and each medical group or subgroup of a larger medical group that includes every physician in the group or subgroup</u> who will be providing occupational medicine services under the plan. Only individual physicians in the MPN shall be listed, but MPN medical group affiliation(s) may be included with each individual physician listed.</p> <p>Commenter states that the modifications will accommodate MPN applicants who choose to include medical groups in their networks. Commenter opines that this will make</p>	<p>Brenda Ramirez Claims & Medical Director California Workers' Compensation Institute (CWCI) March 25, 2014 Written Comment</p>	<p>Reject: Goes beyond the scope of this comment period because no changes were made to §9767.3(d)(8)(G) since the First 15-day comment period.</p>	<p>None.</p>

MEDICAL PROVIDER NETWORKS	RULEMAKING COMMENTS 2nd 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>compliance for both the MPN applicants and the selected groups less onerous. If an entire medical group or subgroup of a medical group is contracted to provide occupational medicine services under the plan, it is not necessary to list the individual physicians.</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 her comment on section 9767.1(a)(25)(C) regarding physician type versus physician specialty.</p>			
9767.3(d)(8)(H)	Commenter recommends the	Brenda Ramirez		

MEDICAL PROVIDER NETWORKS	RULEMAKING COMMENTS 2 nd 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>following revised language:</p> <p>The geocoding results shall include the following separate files summarizing data reasonably available at the time of compilation: 1) a complete list of all zip codes within the MPN geographic service area; 2) a narrative or graphic report that establishes where there are at least three available primary treating care physicians within the fifteen <u>thirty</u>-mile access standard from the center of each zip code within the MPN geographic service area; 3) a narrative or graphic report that establishes where there is a hospital or an emergency health care service provider within the fifteen-mile access standard from the center of each zip code within the MPN geographic service area; 4) a narrative or graphic report that establishes where there are at least three available <u>types of</u> physicians <u>described in Labor Code section 3209.3</u> in each of the specialties commonly required to treat injured workers covered by the MPN within the thirty-mile access standard from the center of each zip code within the MPN geographic service</p>	<p>Claims & Medical Director California Workers' Compensation Institute (CWCI) March 25, 2014 Written Comment</p>	<p>Reject: The term Primary Treating Physician is the term of art used in workers' compensation not "primary care physician."</p> <p>Reject: The commenter cites Labor Code §4616(a)(2) which states "the administrative director shall consider the needs of <u>rural areas</u>, specifically those in which health facilities are located at least 30 miles apart." This suggests the outer most limits of the MPN access standards are 30 mile and infers tighter standards for non-rural areas. 15 miles is the access standard in the current regulations and remains the access standard for specialist in the MPN network for this rulemaking.</p> <p>Reject: Disagree with commenter's definition of "type" of physician. Labor Code §4616.3(d)(1) states, "Selection by the injured</p>	<p>None.</p> <p>None.</p> <p>None.</p>

MEDICAL PROVIDER NETWORKS	RULEMAKING COMMENTS 2 nd 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>area; 5) a list of all zip codes where access standards are not met for primary treating care physicians, for acute care hospitals or emergency facilities, and for each specialty listed to treat common injuries experienced by injured workers covered by the MPN; and a narrative report explaining if medical treatment will be provided according to an approved alternative access standard or according to a written policy permitting out of MPN treatment in those areas; and 6) each physician listed in the MPN provider directory listing shall be assigned at least one provider code as set forth in subdivision (c)(2) of this section to be used in the geocoding reports.</p> <p>Commenter appreciates the clarification that while access standards are measured from the employee's residence or workplace address, geocoding results that measure distance from the center of a zip code are to show estimated compliance with the access standards.</p> <p>Labor Code section 4616(a)(2) directs the Administrative Director to</p>		<p>employee of a treating physician and any subsequent physicians shall be based on the physician's specialty 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>	

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	<p>consider the needs of areas in which health facilities are at least thirty miles apart. According to Health and Safety Code section 1250, a "health facility" is any facility, place, or building that is organized, maintained, and operated for the diagnosis, care, prevention, and treatment of human illness.</p> <p>Commenter states that Labor Code section 4616(a)(1) and section (b) of this section that implements it, and the MPN access standards in (a) of this section must harmonize. It is therefore necessary to revise the MPN access standards to reflect a thirty mile distance standard for health care facilities. In areas of MPNs where health facilities are at least <u>fifteen</u> miles apart the MPN will often be unable to meet the existing MPN access standards, yet pursuant to Labor Code section 4616(a)(2), the Administrative Director is only directed to consider the needs where health facilities are at least <u>thirty</u> miles apart. Commenter opines that it is reasonable and necessary to tie both to a thirty mile standard so that the MPN can offer alternative standards when they are needed.</p>			

MEDICAL PROVIDER NETWORKS	RULEMAKING COMMENTS 2 nd 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>See her comments on section 9767.5(a) regarding physician type versus physician specialty.</p> <p>See her comment on section (c)(2). Commenter opines that there is no apparent purpose for the newly proposed provider codes for this section as well and they are therefore unnecessary.</p>			
9767.5(a), (a)(1) and (a)(2)	<p>Commenter recommends the following revised language:</p> <p>(a) An MPN must have at least three available physicians of each specialty type necessary 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).</p> <p>(a)(1) An MPN must have at least three available primary treating care physicians and a hospital for emergency health care services, or if separate from such hospital, a provider of all emergency health care services, within 360 minutes or 15-30 miles of each covered employee's residence or</p>	Brenda Ramirez Claims & Medical Director California Workers' Compensation Institute (CWCI) March 25, 2014 Written Comment	Reject: Goes beyond the scope of this comment period because no changes were made to §§9767.5(a), (a)(1) or (a)(2) since the First 15-day comment period.	None.

MEDICAL PROVIDER NETWORKS	RULEMAKING COMMENTS 2 nd 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p><u>workplace, and must include hospitals for emergency health care services, and/or providers separate from such hospitals of all emergency health care services.</u></p> <p>(a)(2) An MPN must have include <u>providers of occupational health services and specialists</u> <u>the types of physicians described in Labor Code section 3209.3</u> who can treat common injuries experienced by the covered injured employees within 60 minutes or 30 miles of a covered employee's residence or workplace, <u>and physicians primarily engaged in the treatment of occupational injuries.</u></p> <p>Commenter states that Labor Code section 4616(a)(2) directs the Administrative Director to consider the needs of areas in which health facilities are at least thirty miles apart. According to Health and Safety Code section 1250, a "health facility" is any facility, place, or building that is organized, maintained, and operated for the diagnosis, care, prevention, and treatment of human illness.</p> <p>Commenter states that Labor Code section 4616(a)(1) and section (b) of</p>			

MEDICAL PROVIDER NETWORKS	RULEMAKING COMMENTS 2 nd 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>this section that implements it, and the MPN access standards in (a) of this section must harmonize. Commenter opines that it is necessary to revise the MPN access standards to reflect a thirty mile distance standard for health care facilities. In areas of MPNs where health facilities are at least <u>fifteen</u> miles apart the MPN will often be unable to meet the existing MPN access standards, yet pursuant to Labor Code section 4616(a)(2), the Administrative Director is only directed to consider the needs where health facilities are at least <u>thirty</u> miles apart. It is reasonable and necessary, as well as consistent to tie both to a thirty mile standard so that the MPN can offer alternative standards when they are needed.</p> <p>Commenter opines that there is no statutory authority for specific access standards for a hospital for emergency health care services or a provider of all emergency health care services. Commenters states that MPNs include and will continue to include such facilities; however, there is no necessity for requiring them to be included in the access standards</p>			

MEDICAL PROVIDER NETWORKS	RULEMAKING COMMENTS 2 nd 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>because subsection (j) requires “a written policy to allow an injured employee to receive emergency health care services from a medical service or hospital provider who is not a member of the MPN.”</p> <p>Commenter states that it is not clear what is meant by “available physician.” Commenter opines that if the term remains, it will generate unnecessary disputes over whether or not a physician is “available.”</p> <p>Commenter states that Labor Code section 4616(a)(1) requires a sufficient number of physicians of the types described in Labor Code section 3902.3, not of specialists, nor of providers of occupational health services. In addition, it simply requires the network to “include physicians primarily engaged in the treatment of occupational injuries.” Commenter opines that the Administrative Director does not have authority to expand this statutory requirement.</p> <p>Commenter states that Labor Code section 4616(a) requires an adequate</p>			

MEDICAL PROVIDER NETWORKS	RULEMAKING COMMENTS 2 nd 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>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. [Copy available upon request.]</p> <p>Commenter states that the list of common injures in Table A are relevant for most MPNs including those used by insurers that provide statewide homogenous coverage. These common injuries are treated by primary care physicians as defined in CCR, Title 10, section 2240(k) of the Insurance Commissioner's regulations on Network Access Standards:</p> <p>(k) "Primary care physician" means 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-</p>			

MEDICAL PROVIDER NETWORKS	RULEMAKING COMMENTS 2 nd 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>gynecologist or family practitioner.</p> <p>Commenter states that there is no statutory authority for specific access standards for a hospital for emergency health care services or a provider of all emergency health care services. Commenter opines that while most, if not all MPNs include and will continue to include such facilities, there is no necessity for requiring them to be included in the access standards because subsection (j) requires “a written policy to allow an injured employee to receive emergency health care services from a medical service or hospital provider who is not a member of the MPN.”</p>			
9767.5(h)	<p>Commenter recommends the removal of the following sentence:</p> <p>The employee assistance shall be available in English and Spanish.</p> <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>	<p>Brenda Ramirez Claims & Medical Director California Workers' Compensation Institute (CWCI) March 25, 2014 Written Comment</p>	<p>Reject: Goes beyond the scope of this comment period because no changes were made to §9767.5(h) since the First 15-day comment period.</p>	<p>None.</p>
9767.5(h)(1)	<p>Commenter recommends that this</p>	<p>Brenda Ramirez</p>	<p>Reject: Goes beyond the scope</p>	<p>None.</p>

MEDICAL PROVIDER NETWORKS	RULEMAKING COMMENTS 2 nd 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>subsection be deleted.</p> <p>Commenter states that there is no statutory requirement for voice messaging, faxes or messages.</p>	<p>Claims & Medical Director California Workers' Compensation Institute (CWCI) March 25, 2014 Written Comment</p>	<p>of this comment period because no changes were made to §9767.5(h)(1) since the First 15-day comment period.</p>	
9767.5(h)(2)	<p>Commenter recommends the following revised language:</p> <p>MPN medical access assistants have different duties than claims adjusters. <u>A medical access assistant who is not an adjuster may not authorize medical treatment.</u> MPN medical access assistants 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. Although their duties are different, if the same person performs both, the <u>Contacts by MPN medical access assistant's who are not adjusters</u> contacts must be separately and accurately logged <u>documented</u>.</p> <p>Commenter states that specific language is necessary to clarify that an access assistant who is not an adjuster may not authorize medical goods or</p>	<p>Brenda Ramirez Claims & Medical Director California Workers' Compensation Institute (CWCI) March 25, 2014 Written Comment</p>	<p>Reject: The commenter's recommendation to delete "Although their duties are different, if the same person performs both, the MPN medical access assistant's contacts must be separately and accurately logged" and reinstate "A medical access assistant who is not an adjuster may not authorize medical treatment" will not be accepted. The provision above is important to make clear any contact by an injured worker with the MPN medical access assistant must be logged, regardless of any dual role he/she may play. Although earlier versions of these regulations attempted to</p>	None

MEDICAL PROVIDER NETWORKS	RULEMAKING COMMENTS 2 nd 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>services. This clarification will prevent the disputes that will otherwise occur.</p> <p>Commenter opines that claims adjusters already document their contacts in the claims file and should not be required to document them again. Commenter states that it is not appropriate to mandate workflow, coordination or similar matters of internal administration. Commenter opines that there is no statutory requirement for logging contacts and the term “logged” is not clear and not necessary. Commenter recommends replacing the term “logged” with “documented.” Commenter recommends that if a requirement to “log” is retained, that the division require contacts to be “logged” only by medical access assistants who are not adjusters.</p>		<p>delineate the duties of a claims adjuster versus the duties of an MPN medical access assistant, DWC accepts it cannot impinge on a business’ operational functions.</p>	
9767.5.1(a)	<p>Commenter recommends the following revised language:</p> <p><u>An MPN applicant or network contracting agent shall obtain from each physician participating in the at the time of entering into or renewing the MPN agreement, commencing on</u></p>	<p>Brenda Ramirez Claims & Medical Director California Workers’ Compensation Institute (CWCI) March 25, 2014 Written Comment</p>	<p>Reject: Commenter’s suggested language will not be adopted as unnecessary because this distinction is made clear in §9767.5.1(b)(2).</p>	<p>None.</p>

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	<p><u>[OAL to insert effective date of regulations]</u> MPN a written acknowledgment in which the physician affirmatively elects to be a member of the MPN as provided in this section. This section does not apply to a physician who is a shareholder, partner, or employee of a medical group that elects to participate in the MPN, however this section applies to the medical group that elects to participate in the MPN.</p> <p>Commenter recommends that the division specify in this section that the written acknowledgement is required at the time of entering into or renewing a network agreement, to conform with Labor Code section 4616(a)(3), which says that, commencing January 1, 2014, a treating physician shall be included in the network only if the physician/authorized employee affirmatively elects to be a network member in writing <u>at the time of entering into or renewing a network agreement.</u></p> <p>Commenter states that if the subdivision is restricted to contracting</p>			

MEDICAL PROVIDER NETWORKS	RULEMAKING COMMENTS 2 nd 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	physicians, the medical group reference is not applicable.			
9767.5.1(b)	<p>Commenter recommends the following revised language:</p> <p>(b) The following persons may execute the acknowledgment:</p> <p>(b)(1) If the acknowledgment is for one or more physicians, it shall be executed by:</p> <p>(b)(1)(A) By tThe physician(s); or</p> <p>(b)(1)(B) By aAn employee of the physician or an employee of the physician’s office; or</p> <p>(b)(1)(C) If authorized by the physician(s), <u>by</u> an agent or representative of a medical group.</p> <p><u>(b)(1)(D) Pursuant to written contractual agreement.</u></p> <p>Commenter opines that an alternative method agreed to in writing will provide more flexibility and opportunities for more efficiency.</p>	<p>Brenda Ramirez Claims & Medical Director California Workers’ Compensation Institute (CWCI) March 25, 2014 Written Comment</p>	<p>Reject: The commenter’s recommended stylistic change is not accepted because the word “by” is used in §9767.5.1(b)(1) and need not be repeated in (A)(B) and (C).</p> <p>Reject: §9767.5.1(b) identifies the people who may execute the acknowledgment not the form of the physician acknowledgment. §9767.5.1(c) would be the subdivision better suited for commenter’s suggestions but it will not be adopted because it is unnecessary since a “written contractual agreement” is already allowed.</p>	<p>None.</p> <p>None.</p>
9767.5.1(e)	Commenter recommends the following revised language:	Brenda Ramirez Claims & Medical	Reject: §9767.5.1(e)(5) no	None.

MEDICAL PROVIDER NETWORKS	RULEMAKING COMMENTS 2 nd 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>(e) The acknowledgment shall be obtained at the time of the following occurrences:</p> <p>(e)(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> <p>(e)(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>(e)(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>Director California Workers' Compensation Institute (CWCI) March 25, 2014 Written Comment</p>	<p>physician acknowledgments are required if a physician entered into a contract that automatically renews without a new execution if: the contract identifies the MPN in which the physician or group is participating or a website address is openly published where a physician or his/her designee is enabled to observe which MPN or MPNs have been selected for the physician or group and to de-select any MPN.</p>	

MEDICAL PROVIDER NETWORKS	RULEMAKING COMMENTS 2 nd 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>(e)(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>(e)(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 the following is true:</p> <p>(e)(5)(A) The contract identifies the MPN in which the physician or group is participating.</p> <p>(e)(5)(B) A website address is openly published where a person described in subdivision (b) is enabled to observe which MPN or MPNSs have been selected for the physician or group and to de-select any MPN. The means to authenticate a person to access the</p>		<p>Accept: The typographical error will be corrected.</p>	<p>§9767.5.1(e)(5)(B) is revised to delete capital “S” and replace it with a lower-case “s”.</p>

MEDICAL PROVIDER NETWORKS	RULEMAKING COMMENTS 2 nd 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>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> <p>Commenter states that per Labor Code section 4616(a)(3), commencing January 1, 2014, a treating physician shall be included in the network <u>only if</u> the physician/authorized employee affirmatively elects to be a network member in writing <u>at the time of entering into or renewing a network agreement</u>. Commenter opines that the Labor Code specifically states the circumstances under which the acknowledgement is required and the Administrative Director has no authority to expand them. If a physician or group is already under contract, an acknowledgement is required only at the time of renewing the network agreement.</p>			

MEDICAL PROVIDER NETWORKS	RULEMAKING COMMENTS 2 nd 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
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 and confirming physician appointments, and the times they are available to assist workers with obtaining access to medical treatment under the MPN;</p> <p>Commenter states that physician offices confirm appointments with patients. The physician’s office needs to know whether to expect the employee on the scheduled day, or to reschedule it and make that slot available for another patient. Commenter opines that if the medical access assistant also contacts the employee to confirm an appointment, there will be potential for miscommunication and confusion. Commenter states that requiring</p>	<p>Brenda Ramirez Claims & Medical Director California Workers’ Compensation Institute (CWCI) March 25, 2014 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>	<p>None.</p>

MEDICAL PROVIDER NETWORKS	RULEMAKING COMMENTS 2 nd 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>medical access assistants to confirm appointments is not necessary and is not supported by statute.</p>			
9767.15(b)(5)	<p>Commenter recommends the following revised language:</p> <p>2) a narrative or graphic report that establishes where there are at least three available primary treating care physicians within the fifteen <u>thirty</u>-mile access standard from the center of each zip code within the MPN geographic service area; 3) a narrative or graphic report that establishes where there is a hospital or an emergency health care service provider within the fifteen-mile access standard from the center of each zip code within the MPN geographic service area; 4) a narrative or graphic report that establishes where there are at least three available physicians in <u>of</u> each of the specialties <u>type</u> commonly required to treat injured workers covered by the MPN within the thirty-mile access standard from the center of each zip code within the MPN geographic service area; 5) a list of all zip codes where access standards are not met for primary treating care physicians, for acute care hospitals or</p>	<p>Brenda Ramirez Claims & Medical Director California Workers' Compensation Institute (CWCI) March 25, 2014 Written Comment</p>	<p>Reject: The term Primary Treating Physician is the term of art used in workers' compensation not "primary care physician."</p> <p>Reject: The commenter cites Labor Code §4616(a)(2) which states "the administrative director shall consider the needs of <u>rural areas</u>, specifically those in which health facilities are located at least 30 miles apart." This suggests the outer most limits of the MPN access standards are 30 mile and infers tighter standards for non-rural areas. 15 miles is the access standard in the current regulations and remains the access standard for specialist in the MPN network for this rulemaking.</p> <p>Reject: Disagree with commenter's definition of "type" of physician. Labor Code §4616.3(d)(1) states,</p>	<p>None.</p> <p>None.</p> <p>None.</p>

MEDICAL PROVIDER NETWORKS	RULEMAKING COMMENTS 2 nd 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>emergency facilities, and for each specialty physician type listed to treat common injuries experienced by injured workers covered by the MPN, and a narrative report explaining if medical treatment will be provided according to an approved alternative access standard or according to a written policy permitting out of MPN treatment in those areas; and 6) each physician listed in the MPN provider directory shall be assigned at least one provider code as set forth in section 9767.3(c)(2) of this section to be used in the geocoding reports.</p> <p>See her comments on Section 9767.5(a) regarding primary care physicians, a thirty-mile access standard, physician type verses specialty, hospitals and emergency facilities access standards; and see comments on Section 9767.3(c)(2) regarding provider codes.</p>		<p>“Selection by the injured employee of a treating physician and any subsequent physicians shall be based on the physician’s specialty 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>	
9767.17(a)(2)	<p>Commenter recommends the following revised language:</p> <p>Additionally, the MPN failed to ensure in each instance that a worker received necessary medical treatment within the MPN or <u>and</u> failed to</p>	<p>Brenda Ramirez Claims & Medical Director California Workers’ Compensation Institute (CWCI) March 25, 2014</p>	<p>Reject: Goes beyond the scope of this comment period because no changes were made to §9767.17(a)(2) since the</p>	<p>None.</p>

MEDICAL PROVIDER NETWORKS	RULEMAKING COMMENTS 2 nd 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>authorize treatment outside of the MPN within the required time frames and access standards.</p> <p>Commenter states that this suggested change corrects what appears to be an inadvertent typographical error, as there is no violation unless the MPN failed to provide necessary treatment within the MPN and also failed to authorize that treatment outside the MPN.</p>	Written Comment	First 15-day comment period.	
9767.18(a)(2)(B)(v)	<p>Commenter recommends the following revised language:</p> <p>A copy of the telephone call logs documentation tracking the calls and the contents of the calls made to and by the MPN medical access assistants other than claims adjusters and the MPN Contact within a reasonable time period.</p> <p>See her comments on Section 9767.5(h)(2). Commenter states that there is no such requirement for the MPN Contact.</p>	Brenda Ramirez Claims & Medical Director California Workers' Compensation Institute (CWCI) March 25, 2014 Written Comment	Reject: Goes beyond the scope of this comment period because no changes were made to §9767.18(a)(2)(B)(v) since the First 15-day comment period.	None.
9767.19(a)	<p>Commenter recommends the following revised language:</p> <p>Penalties may be assessed against an MPN applicant for the following</p>	Brenda Ramirez Claims & Medical Director California Workers' Compensation	Reject: Goes beyond the scope of this comment period because no changes were made to §9767.19(a) since the First 15-day comment period.	None.

MEDICAL PROVIDER NETWORKS	RULEMAKING COMMENTS 2 nd 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>violations <u>that occur on or after [OAL to insert the date that is six months after the effective date of regulations]:</u></p> <p>Commenter opines that since penalties and other consequences are new, time will be needed to revise work-flows, to educate staff and other entities, and to roll out changes, violations must be considered on a going-forward basis, allowing a minimum of six months for implementation prior to assessing penalties and other consequences.</p>	<p>Institute (CWCI) March 25, 2014 Written Comment</p>		
<p>9767.19(b)(1) and (b)(2)</p>	<p>Commenter recommends the following revised language:</p> <p>(b) Penalties may be assessed against the employer or insurer responsible for these notice violations:</p> <p>(b)(1) Failure to provide the complete MPN employee notification pursuant to section 9767.12 to an injured covered employee, \$500, per occurrence up to \$10,000.</p> <p>(b)(2) Failure to provide the entire or correct complete MPN employee notification notice required under section 9767.12 to an injured covered</p>	<p>Brenda Ramirez Claims & Medical Director California Workers' Compensation Institute (CWCI) March 25, 2014 Written Comment</p>	<p>Reject: "Complete MPN employee notification" is a specific notification that must be provided to injured workers. The "entire or correct" complete MPN employee notification is set forth in §9767.12(a)(2) and is not duplicative.</p>	<p>None.</p>

MEDICAL PROVIDER NETWORKS	RULEMAKING COMMENTS 2 nd 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>employee, \$250 per occurrence up to \$10,000.</p> <p>Commenter opines that subsection (1) is unnecessary and duplicative of subsection (2).</p>			
9767.19(b)(3)	<p>Commenter recommends the following revised language:</p> <p>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, <u>\$250</u> \$1,000 per occurrence.</p> <p>Commenter opines that \$1,000 is excessive and that \$250 is more reasonable, particularly since the injured employee continues to receive treatment.</p>	<p>Brenda Ramirez Claims & Medical Director California Workers' Compensation Institute (CWCI) March 25, 2014 Written Comment</p>	<p>Reject: Goes beyond the scope of this comment period because no changes were made to §9767.19(b)(3) since the First 15-day comment period.</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 in a particular specialty who are available and willing to treat injured workers under the California workers’ compensation system is insufficient not greater than the number</p>	<p>Karen Greenrose President & CEO American Association of Preferred Provider Organizations March 25, 2014 Written Comment</p>	<p>Reject: Goes beyond the scope of this comment period because no changes were made to §9767.1(a)(12) since the First 15-day comment period.</p>	None.

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	<p>required 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> <p>Commenter appreciates the improvements to the proposed language concerning health care shortages; however, she feels that the proposed language would force an MPN to take “any willing provider” in circumstances when three providers are available. Commenter recommends this modification in order to preserve the exclusive right of the MPN to have a choice of who to include in its MPN.</p>			
9767.3(d)(8)(E)	<p>Commenter recommends the following revised language:</p> <p>State the web address or URL to the roster of all treating physicians in the MPN. Affirm that the roster of all treating physicians in the MPN shall indicate if a physician is not currently taking new workers’ compensation patients. and affirm that secondary treating physicians who can only be seen with an approved referral are clearly designated “by referral</p>	<p>Karen Greenrose President & CEO American Association of Preferred Provider Organizations March 25, 2014 Written Comment</p>	<p>Reject in part. Accept in part. Reject: The commenter’s recommended language will not be adopted because it doesn’t substantively change an MPN’s requirements. Accept: DWC agrees that this provision is overly burdensome, therefore, the following revision will be made to delete “if a physician is not currently taking new workers’ compensation</p>	<p>§9767.3(d)(8)(E) is revised to delete “Affirm that the roster of treating physicians in the MPN shall indicate if a physician is not currently taking new workers’ compensation patients and a”.</p>

MEDICAL PROVIDER NETWORKS	RULEMAKING COMMENTS 2 nd 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>only".</p> <p>Commenter requests that the Department reconsider the requirement to designate when physicians are not taking "new" workers' compensation patients. Commenter recognizes the Department likely receives an abundance of inquiries from individuals trying to determine when a provider is accepting new workers' compensation patients and desires to streamline this process for patients. However, if an MPN is required employ a Medical Access Assistant and observe the Access Standards described in Sections 9767.5(c), (f), and (g), the need to designate when a provider is not accepting "new" workers' compensation patients is incidentally addressed. For example, the addition of the Medical Access Assistant is designed to aid injured workers in timely scheduling an appointment with a physician that is accepting new workers' compensation patients. If the injured worker or Medical Access Assistant is unable to schedule a timely appointment with an MPN physician, as defined in Section</p>		patients".	

MEDICAL PROVIDER NETWORKS	RULEMAKING COMMENTS 2nd 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>9767.5(f) and (g), the injured workers' remedy is to schedule an appointment and obtain treatment from a physician outside of the MPN, until a physician within the MPN is available and the injured worker is able to be transferred back into the MPN for further treatment.</p> <p>Commenter opines that requiring an MPN to designate on its website when a physician is not taking "new" workers' compensation patients would be administratively burdensome and result in a high likelihood of inaccuracy if a patient relies on this information, as a physician's ability to accept new patients has the potential to change daily. Commenter states that providers are continually changing when they are accepting new patients, and this would purport to require providers to notify the MPN when and if it no longer decided to take new workers' compensation patients. Commenter opines that this opens up the provider to liability in the event a patient relies on this information, and also opens the MPN up to liability as well in the event the information is inaccurate on any given</p>			

MEDICAL PROVIDER NETWORKS	RULEMAKING COMMENTS 2nd 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>day.</p> <p>Commenter requests that the Department incorporate a separate effective date for this provision to be consistent with Section 9767.5.1(e)(1)-(5). Commenter opines that incorporating an effective date to Section 9767.3(d)(8)(E) that is consistent with Section 9767.5.1(e)(1)-(5) will simplify the implementation and subsequent administration of these provisions.</p>		<p>Reject: Labor Code §4616(a)(4) makes it clear that the requirement that every MPN post on its internet web site a roster of all treating physicians shall commence “January 1, 2014.”</p>	<p>None.</p>
<p>9767.5.1(e)(5)</p>	<p>Commenter recommends eliminating the phrase “further” before the phrase “acknowledgement” in this subsection.</p> <p>Commenter states that the phrase “further acknowledgement” prior to listing subsections (A) and (B) creates confusion. Specifically, the first half of this requirement is that a physician acknowledgement must be obtained no later than January 1, 2016; however, commenter is unable to discern whether it is the Department’s intent that no acknowledgement be obtained from these providers (in other words, evergreen contracts are</p>	<p>Karen Greenrose President & CEO American Association of Preferred Provider Organizations March 25, 2014 Written Comment</p>	<p>Accept: The word “further” will be deleted and this provision will be clarified.</p>	<p>§9767.5.1(e)(5) is revised to delete “provided, however that no further acknowledgment is required if either of the following is true” and add the phrase “unless the MPN applicant can satisfy either (A) or (B) below:”</p>

MEDICAL PROVIDER NETWORKS	RULEMAKING COMMENTS 2nd 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>grandfathered in to these rules and MPNs are not required to obtain an acknowledgement altogether) assuming that either subsection (A) or (B) is satisfied. By utilizing the term “further acknowledgement,” it could be interpreted as requiring the MPN to obtain an initial acknowledgement for all evergreen contracts prior to January 1, 2016, but eliminating the requirement to obtain any additional acknowledgements provided either subsection (A) or (B) is satisfied.</p> <p>Commenter recommends that the Department remove the word “further” from this subsection to make clear that an MPN applicant is required to obtain a physician acknowledgement for providers under an evergreen contract before January 1, 2016 unless the MPN applicant can satisfy either subsection (A) or (B).</p>			
9767.5.1(e)(2) and (e)(4)	<p>Commenter states that Section 9767.5.1(e)(2) requires the MPN to obtain an acknowledgement at the time a new physician joins a medical group that has already contracted to participate in the MPN. Section 9767.5.1(e)(4) requires the MPN to obtain a physician acknowledgement</p>	<p>Karen Greenrose President & CEO American Association of Preferred Provider Organizations March 25, 2014 Written Comment</p>	<p>Reject: Commenter’s statement, “This suggests that the MPN would not be required to obtain a separate physician acknowledgement for any new physicians that join the medical group” is incorrect. For any new</p>	<p>None.</p>

MEDICAL PROVIDER NETWORKS	RULEMAKING COMMENTS 2nd 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>no later than January 1, 2015 if, on or after January 1, 2014 but before the effective date of the regulations, a physician joins a medical group that has already contracted to participate in the MPN.</p> <p>Commenter opines that the requirements related to medical group acknowledgements in the second notice of modifications appear to conflict. For example, in Section 9767.5.1(b)(2), a medical group participating in an MPN is required to update the list of participating physicians within ninety (90) days of any additions to or removals from the list. This suggests that the MPN would not be required to obtain a separate physician acknowledgement for any new physicians that join the medical group.</p> <p>In an effort to simplify the MPN's obligation to obtain medical group acknowledgements, the commenter recommends that the Department modify Sections 9767.5.1(e)(2) and (e)(4) to be consistent with 9767.5.1(b)(2). Commenter recommends that, in the event a new</p>		<p>physician that joins the medical group that already has a contract to participate in an MPN or MPNs, an acknowledgment must be obtained. This new physician will then be included in the MPN list of participating physicians updated by an officer or agent of the medical group within 90 days.</p>	

MEDICAL PROVIDER NETWORKS	RULEMAKING COMMENTS 2 nd 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>physician joins a medical group, a separate physician acknowledgement would not be required. Rather, the MPN would be entitled to rely upon the physician acknowledgment it originally obtained by the medical group, and physicians new to the group be incorporated into the existing group acknowledgement on file via the periodic update required by the officer or agent of the group in accordance with the update frequency established in Section 9767.5.1(b)(2).</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 but not limited to non-rural areas and rural areas ...</p> <p>Commenter opines that the proposed language could be interpreted as limiting the areas that could qualify for an alternative standard. Commenter states that it is important that anywhere MPN's identify a "health care shortage" that they retain</p>	<p>Karen Greenrose President & CEO American Association of Preferred Provider Organizations March 25, 2014 Written Comment</p>	<p>Reject: Goes beyond the scope of this comment period because no changes were made to §9767.5(b) since the First 15-day comment period.</p>	<p>None.</p>

MEDICAL PROVIDER NETWORKS	RULEMAKING COMMENTS 2 nd 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	the ability to seek approval of an alternative standard. Commenter states that revised language clarifies that an alternative standard can be approved when needed.			
9767.5(c)	<p>Commenter requests clarification regarding 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, <u>Applicant may require</u> a covered employee treating outside the MPN may be required to treat with an MPN physician when a transfer is appropriate <u>in accordance with the MPN's Transfer of Care Policy.</u></p>	Karen Greenrose President & CEO American Association of Preferred Provider Organizations March 25, 2014 Written Comment	Reject: Goes beyond the scope of this comment period because no changes were made to §9767.5(c) since the First 15-day comment period.	None.
9767.5(h)(1)	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	Karen Greenrose President & CEO American Association of Preferred Provider Organizations March 25, 2014	Reject: Goes beyond the scope of this comment period because no changes were made to §9767.5(h)(1) since the First 15-day comment period.	None.

MEDICAL PROVIDER NETWORKS	RULEMAKING COMMENTS 2 nd 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>employees. Commenter notes that in some of their members operations, a call center based solution has been built out to allow for the proper monitoring of 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. Keeping a facility open during non-business hours to allow one person to be available is not possible.</p> <p>Commenter opines that the intent is to make sure the services are available at 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 revised language:</p> <p>There shall be at least one MPN medical access assistants available to respond at all required times <u>during normal business hours</u>, with the ability for callers to leave a voice message. There shall be enough</p>	Written Comment		

MEDICAL PROVIDER NETWORKS	RULEMAKING COMMENTS 2 nd 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	medical access assistants to respond to calls, faxes or messages by the next business day, excluding holidays.			
9767.9 and 9767.10	In order to avoid confusion, commenter recommends that the terms “insurer” and “employer” be capitalized throughout to make it clear that they are used as defined in the definitions.	Karen Greenrose President & CEO American Association of Preferred Provider Organizations March 25, 2014 Written Comment	Reject: Unnecessary and will likely cause more confusion.	None.
9767.19	Commenter notes that this section sets forth certain administrative penalties for failing to comply with the MPN requirements. Commenter opines that the penalties in the proposed modifications to the MPN regulations are substantial, and much of the language surrounding penalty assessment is ambiguous. For example, Section 9767.19(a)(2)(C) includes a \$1,000 per failure penalty for failing to meet the access standards as required by Section 9767.5(a)-(c). Commenter states that there is no clear delineation in the proposed modifications of what constitutes a “failure” for purposes of this penalty assessment.	Karen Greenrose President & CEO American Association of Preferred Provider Organizations March 25, 2014 Written Comment	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. Reject: The provision commenter cites as an example of an ambiguity §9767.19(a)(2)(C) has already been deleted.	None. None.

MEDICAL PROVIDER NETWORKS	RULEMAKING COMMENTS 2 nd 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>Due to the complicated requirements of the MPN regulations, and with the effective date for compliance quickly approaching, commenter requests a delayed enforcement date for assessment of the administrative penalties to allow additional time for MPNs and physicians to comply with and understand these new requirements. Commenter opines that this would be especially helpful in light of the fact that the MPN regulations have not yet been finalized (and will likely not be finalized by January 1, 2014). Commenter recommends that the Department delay enforcement of the rules until January 1, 2015.</p>		<p>Reject: Commenter's suggestion to delay enforcement of the penalties until January 1, 2015 will not be accepted. Many of the provisions of SB863 that are already in effect are simple and straight-forward and do not need the guidance of regulations in order for an MPN to comply. However, mitigating factors can be considered when DWC assesses penalties or other enforcement tools and certainly the fact the MPN regulations have not yet been finalized will be taken into consideration.</p>	<p>None.</p>
9767.19(c)	<p>Commenter requests that this section be modified to allow a reasonable and consistent timeline during holidays for corrective action. Commenter recommends the following revised language:</p> <p>The Administrative Director shall allow the MPN applicant an opportunity to correct the violation or to respond within ten business days with a plan of action to correct the</p>	<p>Karen Greenrose President & CEO American Association of Preferred Provider Organizations March 25, 2014 Written Comment</p>	<p>Reject: Goes beyond the scope of this comment period because no changes were made to §9767.19(c) since the First 15-day comment period.</p>	<p>None.</p>

MEDICAL PROVIDER NETWORKS	RULEMAKING COMMENTS 2 nd 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	violation in a timely manner.			
9767.3(c)(3)	<p>Commenter is not in favor of interpreters working under an MPN. Commenter opines that often interpreters that work for an MPN are not properly certified and they cannot be trusted to give their client accurate information since they are employed by the insurance company. Commenter requests that if injured workers are forced have an interpreter from an MPN that they be allowed to select one from a list of interpreters provided by the MPN.</p>	<p>M. Hollie Rutkowski, R.N., J.D., M.B.A., Attorney at Law The Compensation Law Center March 26, 2014 Written Comment</p>	<p>Reject: The changes to the regulatory text to §9767.3(c)(3) addresses interpreter qualifications “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). If an MPN chooses to have ancillary service providers, a list will be available to injured workers.</p>	None.
General (Not sure how to classify)	<p>Commenter opines that the Division should require MPNs to submit: (1) data regarding the number of providers removed from networks on a semi-annual basis and (2) the reasons for removal. Currently, MPNs who engage in economic profiling are required to submit reports regarding their methods and guidelines of economic profiling. However, without more detailed reporting regarding the reasons for MPN removal, and the sheer number of providers removed from MPNs throughout the year, MPNs’ potential abuse of improper removal of providers can go unchecked.</p>	<p>Anne S. Kelson RPNA March 24, 2014 Written Comment</p>	<p>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.”</p>	None.

MEDICAL PROVIDER NETWORKS	RULEMAKING COMMENTS 2 nd 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
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	<p>Commenter states that many providers are unilaterally removed from MPNs without any notice or reason for removal. Commenter recommends that at a minimum, MPNs should be required to provide MPN participants: (1) advanced notice of removal; (2) documented reasons for removal; (3) methods for appealing the removal decision; and (4) an explanation of the methods to appeal removal.</p> <p>Commenter states that some MPNs maintain an “elite” MPN within the general MPN framework (“MPNs within the MPN”). Commenter opines that operation of the alleged elite MPNs harm the general MPN participants by siphoning off patients and referrals to only those providers who are selected to participate within the elite MPN. Commenter opines that MPNs must abolish elite MPN practices, as maintaining elite MPNs erodes the quality, integrity, and overall purpose of belonging to the general MPN. In the alternative, commenter recommends that MPNs who maintain elite MPNs (or “MPNs within the MPN”) must provide</p>			
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MEDICAL PROVIDER NETWORKS	RULEMAKING COMMENTS 2 nd 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	extensive reports to the DWC and MPN participants regarding (1) the criterion used to determine membership within elite MPNs; (2) methods for application to the elite MPN; (3) methods for appealing denial of membership to the elite MPN; and (4) the differences of participation and benefits between general MPN membership and membership within the elite MPN.			
9767.5.1(d)	Commenter states that with respect to the provider affirmation process, the proposed regulations for the provider portal require different processes for different types and different terms of contracts. Commenter opines that this will create difficulties for the State auditors, add costs and complexity to the contracting process. With the goal of establishing provider MPN participation transparency and facilitating ease of provider choice commenter recommends that the provider opt out portal method be a standard option for all existing contracts and future contracts regardless whether they are ever green individual or group. Commenter recommends the following language:	Robert Mortensen President Angie O’Connell Director of Account Management & MPN Services Anthem Workers’ Compensation March 25, 2014 Written Comment	Reject: DWC disagrees that web based portal allowing a physician to opt in or opt out shall be the standard option for all existing contracts and future contracts. Although this method is perhaps the most efficient method of obtaining physician acknowledgments, DWC cannot mandate this method for all MPNs because this will be a business decision that will be left to each MPN.	None.

MEDICAL PROVIDER NETWORKS	RULEMAKING COMMENTS 2 nd 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
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	<p>The acknowledgement shall identify the MPN in which the physician or group participates regardless of the contract or amendment effective dates. Multiple MPNs may be identified in a single acknowledgment or separate acknowledgments or in any combination. Any form that presents more than one MPN that the physician has been selected by and shall enable the physician either to opt in or to opt out of each MPN that the provider has been selected for participation. The MPN or MPNs may be identified by reference to a website listing where a person described in subdivision (b) is enabled to observe which MPN or MPNs are selected for the physician or group. If permitted by the written acknowledgment, the website listing may be amended without further action by the physician or the group, provided that the website enables the physician or the group to de-select any MPN. If the physician or group is removed from an MPN by anyone other than a person described in subdivision (b), the MPN applicant shall give the physician or group notice of that fact in writing or</p>			
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MEDICAL PROVIDER NETWORKS	RULEMAKING COMMENTS 2 nd 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
9767.1(a)(12)	<p>electronically.</p> <p>Commenter opines that the definition of systemic failure regarding an MPN’s failure to meet access standards at least twice in an MPN service area (zip code) is too extreme. Commenter states that this standard is based on the ever changing condition of appointment availability which would make all MPNs potentially in violation and subject to revocation in one or more zip codes at any one time or at all times if there are not at least three providers with available appointments. Commenter recommends the following revised language:</p> <p>“Health care shortage” means a situation in a geographical area in which there is an insufficient the number of physicians in a particular specialty who are available and willing to treat injured workers under the MPN 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.</p>	<p>Robert Mortensen President</p> <p>Angie O’Connell Director of Account Management & MPN Services Anthem Workers’ Compensation March 25, 2014 Written Comment</p>	<p>Reject: Goes beyond the scope of this comment period because no changes were made to §9767.1(a)(12) since the First 15-day comment period.</p>	<p>None.</p>
9767.3(d)(8)(S)	<p>Commenter opines that the</p>	<p>Robert Mortensen</p>	<p>Reject: Goes beyond the scope</p>	<p>None.</p>

MEDICAL PROVIDER NETWORKS	RULEMAKING COMMENTS 2nd 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>requirement by the statute for applicants to establish a continuous quality monitoring process which has the same definition as the economic profiling policy in essence now imposes that all applicants have an economic profiling policy. Commenter recommends changing the definition of the continuous quality monitoring process to be different than economic profiling, be specific or return to the previous definition which allowed the MPN to define the standard. Commenter recommends the following language:</p> <p>Describe the MPN’s procedures, how they are used to ensure ongoing criteria and how data is used to continuously review quality of care and how performance of medical personnel, utilization of services and facilities, and costs provided by the MPN are sufficient to provide adequate and necessary medical treatment for covered employees.</p>	<p>President Angie O’Connell Director of Account Management & MPN Services Anthem Workers’ Compensation March 25, 2014 Written Comment</p>	<p>of this comment because no changes were made to §9767.3(d)(8)(S) since the First 15-day comment period.</p>	
9767.3(d)(8)(H)	<p>Commenter states that Labor Code § 4616(a)(1) is clear in terms of access requirements necessary to provide injured workers prompt access to appropriate medical care secured</p>	<p>Mark E. Webb Vice President and General Counsel PacificComp March 25, 2014</p>	<p>Reject: The commenter recommends that the geocoding results should be based on the geographic area “where employees are</p>	<p>None.</p>

MEDICAL PROVIDER NETWORKS	RULEMAKING COMMENTS 2 nd 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>through a medical provider network (MPN):</p> <p>“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 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, <i>and the geographic area where the employees are employed.</i>”</p> <p>Commenter notes that paragraph (2) of subdivision (a) of Section 4616 further states:</p> <p>"To the extent feasible, all medical treatment for injuries shall be readily accessible to all employees. With respect to availability and accessibility of treatment, the administrative director shall consider the needs of rural areas, specifically those in which health facilities are</p>	Written Comment	<p>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 geocoding of its network “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</p>	

MEDICAL PROVIDER NETWORKS	RULEMAKING COMMENTS 2nd 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>located at least 30 miles apart and areas in which there is a health care shortage."</p> <p>Commenter points out that as added by Senate Bill 863 (De Leon), Section 4616(b)(3) states:</p> <p>"Every medical provider network shall submit geocoding of its network for reapproval to establish that the number and geographic location of physicians in the network meets the required access standards."</p> <p>Commenter states that this is the statutory framework that provides the authority for these regulations. As stated in Government Code § 11342.2: "Whenever by the express or implied terms of any statute a state agency has authority to adopt regulations to implement, interpret, make specific or otherwise carry out the provisions of the statute, no regulation adopted is valid or effective unless consistent and not in conflict with the statute and reasonably necessary to effectuate the purpose of the statute."</p>		<p>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 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 2 nd 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>Commenter opines that the continued reference to the center point of zip codes for the purpose of geocoding the location of providers under the MPN is neither consistent with Section 4616 requirements nor does it effectuate the purpose of the statute. Commenter states that the provisions of Section 4616 are drafted for a reason; since these providers and facilities are delivering care for workers injured arising out of and in the course of employment, access to medical care must be measured from the location where the injury is most likely to occur – at the place of work. This is explicit in the provisions of 8 CCR § 9767.5.</p> <p>Commenter states that there is no mention of center point of a zip code area in 8 CCR § 9767.5. And yet, the proposed changes in 8 CCR § 9767.3(H) repeatedly require the geocoding to locate providers, "...within the fifteen mile access standard <i>from the center of each zip code</i> within the MPN geographic service area." [See: proposed 8</p>			

MEDICAL PROVIDER NETWORKS	RULEMAKING COMMENTS 2nd 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>CCR §§ 9767.5(H)(2), 9767.5(H)(3), 9767.5(H)(4) -regarding the 30 mile access standard for specialty care .]</p> <p>Commenter points out that to make it clear that the Division is considering distance from the center point of a zip code an access standard requirement, the proposed regulations further state that the MPN Plan must include:</p> <p>"a list of all zip codes where access standards are not met for primary treating physicians, for acute care hospitals or emergency facilities, and for each specialty listed to treat common injuries experienced by injured workers covered by the MPN, and a narrative report explaining if medical treatment will be provided according to an approved alternative access standard or according to a written policy permitting out of MPN treatment in those areas." Proposed 8 CCR § 9767.3(H)(5).</p> <p>Commenter states that there is no question that geocoding is now required of MPNs to demonstrate compliance with the access</p>			

MEDICAL PROVIDER NETWORKS	RULEMAKING COMMENTS 2 nd 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>requirements in the Labor Code. Commenter opines that this should mean that regulations implementing this requirement be consistent with this statutory mandate and fall within the boundaries of the statute providing the authority for these regulations. (Government Code § 11349) Commenter states that not only is there no support for zip-centric geocoding in the statute, and provider distance from the center of a zip code is not required either in the statute or the Division's own access standards regulation, but zip centric geocoding is not the most reliable form of geocoding and is certainly not preferable to address specific geocoding. See: Goldberg, D. (2008). <i>A Geocoding Best Practices Guide, North American Association of Central Cancer Registries, Inc.</i></p> <p>Commenter states that the Division should not look to Labor Code § 133 for support for this new mandate. Commenter opines that there is nothing either "necessary" or "convenient" about the requirement to locate providers by geocoding from a center point of a zip code.</p>			

MEDICAL PROVIDER NETWORKS	RULEMAKING COMMENTS 2 nd 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>Commenter recommends that the Division rethink this language and conform the geocoding requirement to the access standards already existing in statute and regulation.</p>			
9767.5.1	<p>Commenter notes that Labor Code § 4616(a)(3) states:</p> <p>"Commencing January 1, 2014, a treating physician shall be included in the network only if, at the time of entering into or renewing an agreement by which the physician would be in the network, the physician, or an authorized employee of the physician or the physician's office, provides a separate written acknowledgment in which the physician affirmatively elects to be a member of the network. Copies of the written acknowledgment shall be provided to the administrative director upon the administrative director's request. This paragraph shall not apply to a physician who is a shareholder, partner, or employee of a medical group that elects to be part of the network."</p>	<p>Mark E. Webb Vice President and General Counsel PacificComp March 25, 2014 Written Comment</p>	<p>Reject: §9767.5.1(e)(5) no physician acknowledgments are required if a physician entered into a contract that automatically renews without a new execution if: the contract identifies the MPN in which the physician or group is participating or a website address is openly published where a physician or his/her designee is enabled to observe which MPN or MPNs have been selected for the physician or group and to de-select any MPN.</p>	<p>None.</p>

MEDICAL PROVIDER NETWORKS	RULEMAKING COMMENTS 2 nd 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>Commenter sates that administrative regulations that alter or amend the statute or enlarge or impair its scope are void. <u>Marshall v. McMahon</u> (1993) 17 Cal.App.4th 1841, 22 Cal.Rptr.2d 220. In short, the question is whether the regulation is within the scope of the authority conferred; if it is not, it is void. <u>Association of California Ins. Cos. v. Poizner</u> (2009) 180 Cal.App.4th 1029.</p> <p>"The essentials of the legislative function are the determination and formulation of the legislative policy. Generally speaking, attainment of the ends, including how and by what means they are to be achieved, may constitutionally be left in the hands of others. The Legislature may, after declaring a policy and fixing a primary standard, confer upon executive or administrative officers the 'power to fill up the details' by prescribing administrative rules and regulations to promote the purposes of the legislation and to carry it into effect, and provision by the Legislature that such rules and regulations shall have the force,</p>			

MEDICAL PROVIDER NETWORKS	RULEMAKING COMMENTS 2 nd 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>effect, and sanction of law..." <u>First Industrial Loan Co. v. Daugherty</u> (1945), 26 Cal.2d 545, 549.</p> <p>This grant of authority, however, is first and foremost constrained by the plain language of the statute that is being implemented. While an administrative agency is not limited to the exact provisions of a statute in adopting regulations to enforce its mandate, <u>Ford Dealers Assn. v. Department of Motor Vehicles</u> (1982) , 32 Cal.3d 347, there is no need to construe a provision's words when they are clear and unambiguous and thus not reasonably susceptible of more than one meaning. <u>Arias v. Superior Court (Angelo Dairy)</u> (2009)46 Cal.4th 969. Commenter opines that in the case of Labor Code § 4616(a)(3), there is no ambiguity, there are no blanks to be filled in, and the Division's efforts to significantly expand the acknowledgment requirement is beyond the scope of authority granted or reasonably inferred from SB 863.</p>			

MEDICAL PROVIDER NETWORKS	RULEMAKING COMMENTS 2nd 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>Commenter opines that specifically, there is no authority for the Division to regulate those who have executed an "evergreen" contract prior to January 1, 2014 [8 CCR § 9767.5.1 (e)(5)]. Similarly, there is no authority to require written authorizations of medical groups from their participating physicians. [8 CCR §§ 9767.5.1(e)(2) -(e)(4).</p> <p>Commenter notes that Labor Code § 4609 states: "In order to prevent the improper selling, leasing, or transferring of a health care provider's contract, it is the intent of the Legislature that every arrangement that results in any payor paying a health care provider a reduced rate for health care services based on the health care provider's participation in a network or panel shall be disclosed by the contracting agent to the provider in advance and shall actively encourage employees to use the network, unless the health care provider agrees to provide discounts without that active encouragement."</p>			

MEDICAL PROVIDER NETWORKS	RULEMAKING COMMENTS 2 nd 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>Commenter notes that existing DWC regulations, now proposed to be codified as 8 CCR § 9767.3(d)(8)(G), state: "(b)y 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>Commenter states that laws that are in pari materia are of the same matter and must be construed with reference to each other. <u>Altaville Drug Store, Inc. v. Employment Development Department</u> (1988) 44 Cal.3d 231, 746 P.2d 871; 242 Cal.Rptr. 732. These two provisions relate to similar, but not identical, transactions involving providers and the networks in which they participate. Because of this, the Legislature is considered to have intended the existing requirements of Section 4609 to still</p>			

MEDICAL PROVIDER NETWORKS	RULEMAKING COMMENTS 2 nd 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>be in effect. <u>Lambert v. Conrad</u>, (1960) 185 Cal.App.2d 85. Commenter opines that would be a reasonable interpretation but for the efforts of the Division to essentially by regulation espouse that the Legislature intended to <i>amend</i> Section 4609 when SB 863 amended Section 4616. Such an effort fails to give consideration, "...to the whole system of law of which it is a part so that all may be harmonized and have effect." People ex rel. <u>Van de Kamp v. American Art Enterprises, Inc.</u> (1977), 75 Cal.App.3d 523.</p> <p>Commenter opines that the Division should implement Section 4616(a)(3) as it is clearly and unambiguously worded and not extend its provisions to participants in medical groups or to providers who, prior to January 1, 2014, executed a contract with a network ("contracting agent"¹) whose contracts are not for a fixed term.</p>			

¹ "Contracting agent" means an insurer licensed under the Insurance Code to provide workers' compensation insurance, a health care service plan, including a specialized health care service plan, a preferred provider organization, or a self-insured

MEDICAL PROVIDER NETWORKS	RULEMAKING COMMENTS 2 nd 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
9767.1(a)(7)	<p>Commenter notes that the currently proposed regulations expand entities eligible to file as an MPN Applicant from just insurers and employers to now also include an “Entity that provides physician network services” (EPNS). The DWC proposes that an EPNS must be “employing or contracting with physicians...”</p> <p>Commenter recommends that the DWC broaden its proposed MPN eligibility requirements to <i>include</i> entities that contract directly with networks as well as those that contract directly with physicians. Commenter opines that such latitude could allow significant improvement in the efficiency of MPN operations, reduce the administrative challenges of regulation by the state, as well as make it easier for physicians to understand in which MPN’s they are participating. Commenter states that there is great potential for merging many essentially parallel MPN’s via umbrellas that could be operated by</p>	<p>Robert Evans National Director Network Solutions March 25, 2014 Written Comment</p>	<p>Accept: §9767.1(a)(7) will be revised as commenter suggests.</p>	<p>§9767.1(a)(7) is revised to add “or contracting with physician networks”.</p>

employer, while engaged, for monetary or other consideration, in the act of selling, leasing, transferring, assigning, or conveying a provider or provider panel to provide health care services to employees for work-related injuries." Labor Code § 4609 (d)(1).

MEDICAL PROVIDER NETWORKS	RULEMAKING COMMENTS 2 nd 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	entities other than the contracting networks.			
9767.5.1(e)	<p>Commenter recommends that the DWC consider a special grandfathering provision for those MPN's filed and approved prior to January 2014, for claims with <u>injury dates prior</u> to that date. For these claims only, in order to allow continuity of care to occur without disruption to the treating physician, it should not be required that any type of new physician or group acknowledgement apply. Commenter is concerned that any acknowledgement-related interference in the continuity of care on these claims could contribute to further delays in the claim reaching P&S.</p> <p>For <u>claims initiated after</u> the adoption of new MPN regulations, or for MPN's that are newly filed, commenter recommends that the DWC develop specifications in the MPN regulations that outline requirements for providers' advance, clear, and written notice of MPN participation status changes, and the acceptance of new workers' compensation patients. Commenter</p>	Robert Evans National Director Network Solutions March 25, 2014 Written Comment	Reject: Commenter's recommended language will not be adopted. Labor Code §4616(a)(3) states "commencing January 1, 2014" physician acknowledgments must be obtained by MPNs. These regulations merely provide guidance to a requirement that is already in effect and already provides a sufficient period of time for all contracts entered into before these regulations are in effect.	

MEDICAL PROVIDER NETWORKS	RULEMAKING COMMENTS 2nd 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>opines that physicians should have the right to determine which MPN's they participate in, changes in participation status can have a material and adverse impact on both the continuity of care for patients currently in treatment, as well as on workers' efficient access to new care.</p> <p>Commenter states that given the complexities, volume, and variety of acknowledgements required of physicians under these new requirements, this process could easily lead physicians who otherwise would be willing to participate in MPN's to discontinue that participation. Additionally, because all MPN's will likely be pushing acknowledgement requests to physicians during a relatively short period of time, commenter opines that it is important to provide reasonable timeframes for physician processing.</p> <p>Commenter recommends that the DWC add a requirement that in the event a physician currently participating in an MPN wishes to cease such participation, they will be required to provide the MPN at least</p>		<p>Reject: Goes beyond the scope of these regulations because DWC has no authority to regulate the contractual relationships between an MPN and its physicians.</p>	

MEDICAL PROVIDER NETWORKS	RULEMAKING COMMENTS 2 nd 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>ninety days’ written notice prior to the requested effective date of that change. This same type of requirement should be applied to those physicians who plan to cease accepting new patients, particularly since that status appears to be a required provider directory notation going forward.</p>			
<p>9767.8(a) and 9767.15 (a) – note not sure which is most appropriate</p>	<p>Commenter notes that it appears that under the latest proposed regulations that existing MPN’s may have up to four years before they need to re-file, and until that new filing date will have some latitude in reaching full compliance with all aspects of the new regulations. The proposed regulations also imply that when a re-filing occurs, the MPN needs to be fully compliant as of that date. Commenter states that there are two related considerations that the DWC should carefully weigh before finalization of these regulations.</p> <p>The first consideration is that a “filing” could be triggered by any number of events. On one extreme, the event could be that the MPN’s certification is about to lapse (end of four- year approval). On the other extreme, the filing could be based on a</p>	<p>Robert Evans National Director Network Solutions March 25, 2014 Written Comment</p>	<p>Reject: Labor Code §4616(b)(1) states “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.”</p>	<p>None.</p>

MEDICAL PROVIDER NETWORKS	RULEMAKING COMMENTS 2nd 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>simple administrative change, such as the suite number changing for a corporate contact. Under the latter example, commenter notes that one could interpret the new regulations as triggering a need for full compliancy, which in some cases could be three or more years in advance of a renewal. Commenter recommends that the DWC exempt certain types of application “updates” from being categorized as a new filing or recertification.</p> <p>The second consideration relates back to the issue of when acknowledgements need to be completed/on file, versus how a re-filing can indicate a physician’s participation in the MPN. Commenter notes that the proposed regulations state that acknowledgement on contracts prior to 1/1/14 or auto-renewals need to have acknowledgements on file by 1/1/16. Commenter questions what an MPN should do if it needed to file in January 2015, but the provider contracts don’t have an acknowledgement due until a year later. Commenter opines that the best</p>		<p>Reject: For physician acknowledgments the provisions set forth in §9767.5.1 are controlling.</p>	<p>None.</p>

MEDICAL PROVIDER NETWORKS	RULEMAKING COMMENTS 2nd 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	manner in which to address this is that the DWC should formally direct that all acknowledgements are assumed valid until 1/1/16, unless such a contract was entered into after 1/1/14. In that case, the acknowledgement would need to be on file.			
9767.3(d)(8)(E)	Commenter opines that the regulations would benefit from clarification as to how these new data indicators should be accommodated in filings. Commenter seeks clarification if physicians not accepting new patients should be included in filing or in geo-maps.	Robert Evans National Director Network Solutions March 25, 2014 Written Comment	Reject: When filing, an affirmation needs to be made by the MPN Applicant. The requirement that physicians not accepting new patients be indicated in the MPN website has been deleted.	None.